

IN THE MATTER OF

CONSOLIDATED COMPANIES, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5879. Complaint, May 7, 1951—Decision, Sept. 1, 1951

Where a corporate broker or manufacturer's agent, associated with two corporations which were engaged in the wholesale and retail grocery business in Louisiana and elsewhere, were, like it, under the control and management, through stock ownership, of four families, and members of the families of officers, directors and other key employees; included one of the largest wholesalers of food products in the state, owner and operator of thirty branch wholesale houses, and operator of associated companies in which certain of its stockholders had a substantial financial interest, and of wholesale and retail grocery companies owned in whole or in part by family members; and included, as the second, a large corporate operator of six branch wholesale grocery houses in said state, and, to a certain extent, of wholesale grocery organizations in Texas and in Mississippi, with controlling interests in two chains of nineteen and ten retail grocery stores in Baton Rouge and New Orleans, respectively, and with a large stock interest in said first named wholesaler—

Acting as the agent or representative of said two corporations, and subject to their control and that of members of said four families and that of members of the families of their officers, directors and key employees—

- (a) Received and accepted commissions or brokerage fees on purchases of food products made through it by said two corporations and associated companies, from many vendors in other states, and transmitted and paid said fees to members of said families and of families of officers and directors and other key employees of the three corporations, in the form of dividends on their stock in it; and

Where said two corporations, and various individuals, including their officers and directors, joined individually and collectively as the owners or as representative, agent or other fiduciary of the owners of a substantial majority of the capital stock of the three—

- (b) Received and accepted commissions or brokerage fees directly or indirectly upon the purchases of a substantial portion of said two corporations' requirements of food products:

Held, That such acts and practices of said respondents, corporate, individually and collectively, and each of them, in accepting and receiving commission or brokerage fees, directly or indirectly, under the circumstances set forth, constituted a violation of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Before *Mr. Frank Hier*, trial examiner.

Mr. George W. Williams and *Mr. Rufus E. Wilson* for the Commission.

Miller & Chevalier, of Washington, D. C., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the corporations and individuals named in the caption hereof (hereinafter designated respondents), individually and collectively, since June 19, 1936, have violated and are now violating, the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C., title 15, sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Consolidated Cos., Inc., hereinafter referred to as Consolidated, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 743 South Cortez Street, in the city of New Orleans, State of Louisiana. Said respondent is now and since several years prior to June 19, 1936, has been engaged in the business of buying and selling food and other products at wholesale within the United States. Such products include a complete line of fancy and staple groceries, such as fruits, vegetables, canned goods, sugar, salt, milk, tobacco, soap, flour, candy, and produce, as well as various items of hardware. Consolidated has three private brands or labels, namely, Red Ball, Autocrat and Conco. It is one of the largest wholesalers of food products in the State of Louisiana. Said respondent owns and operates some 30 branch wholesale houses in Louisiana, as well as operating others designated as associated companies. These latter companies are separate legal entities in which certain of the stockholders of Consolidated have a substantial financial interest. Such designation also includes respondent United and those companies in which United has a financial interest.

The following-named individuals are now, or have been during the time mentioned herein, officers of said respondent Consolidated, and as such, and individually, are named as respondents herein:

Victor J. Kurzweg, Jr., president.

Paul H. Kurzweg, Jr., M. D., vice president.

Charles J. Kurzweg, secretary-treasurer.

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The following-named individuals are or have been during the time hereinafter mentioned, members of the board of directors of Consolidated, and as such, and individually, are named as respondents herein:

Victor J. Kurzweg, Sr., chairman of the board.

Victor J. Kurzweg, Jr.	James I. Lipscomb.
Paul H. Kurzweg, Jr., M. D.	Henry J. Waguespack.
Charles J. Kurzweg.	Henry J. Le Blanc.

PAR. 2. Respondent United Investment Corp., hereinafter referred to as United, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 743 South Cortez Street, in the city of New Orleans, State of Louisiana. Said respondent is now, and since several years prior to June 19, 1936, has been engaged in the business of buying and selling food and other products at wholesale within the United States. Such products include fruit, vegetables, canned goods, sugar, salt, milk, tobacco, soap, flour, and candy. It is one, among others, of a group of large wholesalers of food products in the State of Louisiana. Said respondent controls and operates a total of some six branch wholesale grocery houses located in the State of Louisiana, and in addition thereto, partially owns, operates, and controls certain wholesale grocery organizations located in Orange, Tex., and Pascagoula, Miss.

Said respondent United is also engaged in the retail grocery business through its ownership of the majority of stock in Capital Stores, Inc., a Louisiana corporation, Baton Rouge, La. There are 19 retail stores in this chain. In addition thereto, Capital Stores, Inc., owns the entire capital stock of the Orleans Capital Stores, Inc. The latter is also a Louisiana corporation and operates 10 retail grocery stores under this name in New Orleans.

In addition to the wholesale and retail stores hereinabove listed as being owned, controlled, and operated by United, said respondent corporation also owns and controls through its officers and directors 8,000 shares of stock in respondent Consolidated.

The following-named individuals are, or have been during the time hereinafter mentioned, officers of said respondent United, and as such, and individually, are named as respondents herein:

Frank T. Kurzweg, M. D., president.
Colquitt O. Dupuy, executive vice president.
Clarence R. Caster, secretary.
George T. Vicknair, Treasurer.

The following-named individuals are, or have been during the time hereinafter mentioned, members of the board of directors of respondent United, and as such, and individually, are named as respondents herein:

Frank T. Kurzweg, M. D.
Colquitt O. Dupuy.
Clarence R. Caster.

Margaret L. Kurzweg.
George T. Vicknair.

PAR. 3. In addition to the wholesale and retail grocery companies hereinabove referred to as being owned, operated, and controlled by respondents Consolidated and United, there are a number of other wholesale and retail grocery companies owned in whole or in part by members of the Kurzweg family which are operated as associated companies under the direction and control of respondent Consolidated.

PAR. 4. Respondent Progressive Brokerage Co., Inc., hereinafter referred to as Progressive, is a corporation organized, existing, and doing business under the laws of the State of Louisiana, with its principal office and place of business located at 208-210 Cigali Building, 107 Camp Street, city of New Orleans, State of Louisiana. Said respondent was incorporated some years prior to June 19, 1936, and since its incorporation and continuing to the present time, has been, and is now, engaged in operating as a broker or manufacturer's agent, dealing primarily in food products.

Said respondent maintains a branch office at 318 Railroad Avenue, Lake Charles, La. This branch is managed by Arthur G. Waguespack (not a respondent herein), a relative of respondent Henry J. Waguespack, director of Consolidated.

The following-named individuals are, or have been during the time hereinafter mentioned, officers of said respondent Progressive, and as such, and individually, are named as respondents herein:

James M. Kinberger, Jr., president.
Eugene Holloway, M. D., vice president.
Edmund Kinberger, secretary-treasurer.

The above-named individuals also serve as directors of said respondent Progressive, and as such, and individually, are named as respondents herein.

PAR. 5. Respondent Consolidated, prior to March 1929, owned all of the capital stock of respondent Progressive Brokerage Co., Inc. In March 1929, Consolidated declared a stock dividend consisting, among other stocks, of the entire capital stock of Progressive. At this time a committee of three individuals was appointed as trustees to receive the stock dividends for the then stockholders of Consolidated and for

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the purpose of organizing a holding company. United Investment Corp. was thus formed, to which corporation the said trustees transferred title to all stocks they were then holding in trust, including that of Progressive Brokerage Co., Inc. All stock of respondent United was thereafter distributed to the then shareholders in Consolidated and subsequently transferred by the officers and directors to their children. On or about July 1936, respondent United distributed to its stockholders the entire capital stock of Progressive, consisting of 18,033 shares.

PAR. 6. Kurzweg, Le Blanc, Waguespack and Lipscomb, among others, are family names. At all times mentioned herein a substantial majority of the capital stock of said corporate respondents was and is owned by individuals who were and are now members of such families, by blood or marriage. Furthermore, there is a substantial number of branch managers or key employees of the corporate respondents, who, together with their families, by blood or marriage, own stock in the respective respondent corporations and who, because of their position or connection with said respondent corporations, are now and have been for the period of time mentioned herein, under the control, authority, direction, management, and domination of the Kurzweg, Le Blanc, Waguespack, and Lipscomb group who, through these individuals and their families, and in combination with their own holdings, exercise control and ownership over a substantial majority of the capital stock of the three corporations as hereinafter set forth.

For some time, and at the present, respondent Consolidated has had issued and outstanding approximately 64,000 shares of common stock. The Kurzweg, Le Blanc, Waguespack, and Lipscomb families, together with the families of other officers and directors of the three corporate respondents, own and thus control, approximately 37,900 shares, or 59.2 percent of Consolidated stock. This includes the 8,000 shares of Consolidated stock owned by respondent United and which is under control of this group. Furthermore, the stockholdings in the three respondent corporations of the managers of branch stores of respondents Consolidated and United, as well as other key employees, together with their families, by blood or marriage, amount to an additional holding of approximately 6,280 shares, or 9.8 percent of Consolidated stock.

For some time, and at the present, respondent United has had issued and outstanding some 18,033 shares of stock. The Kurzweg, Le Blanc, Waguespack, and Lipscomb families, together with the families of other officers and directors of the three respondent corporations, own, and thus control, approximately 12,631 shares, or 70 percent of

United stock. Furthermore, the stockholdings in the three respondent corporations of the managers of branch stores of respondents Consolidated and United, as well as other key employees, together with their families, by blood or marriage, as hereinbefore set forth, amount to an additional holding of approximately 756 shares, or 4.2 percent of United stock.

For some time, and at the present, respondent Progressive has had issued and outstanding some 18,033 shares of stock. The Kurzweg, Le Blanc, Waguespack, and Lipscomb families, together with the families of other officers and directors of the three respondent corporations own, and thus control, approximately 11,504 or 63.8 percent of Progressive stock. Furthermore, the stockholdings in the three respondent corporations of the managers of branch stores of respondents Consolidated and United, as well as other key employees, together with their families, by blood and marriage, as hereinbefore set forth, amount to an additional holding of approximately 1,724 shares, or 9.6 percent of Progressive stock.

PAR. 7. At all times mentioned herein, including the present, individuals who were or are members of the Kurzweg, Le Blanc, Waguespack, or Lipscomb families, by blood or marriage, together with individual representatives of the families of other officers and directors of the three respondent corporations, and each of them, directly or indirectly, and acting collectively as owners or as representative, agent or other fiduciary of the owners of a substantial majority of the capital stock of the respondent corporations, have controlled, regulated, directed, managed, and dominated, and do now control, regulate, direct, manage, and dominate all of said corporate respondents, including respondent Progressive, formulating, authorizing, managing, and directing all of their policies, practices, and acts as herein alleged.

PAR. 8. In the course and conduct of their wholesale food business since on or about June 19, 1936, said respondents, as aforesaid, continuously purchased, through respondent Progressive, food products from many vendors with places of business located in several States of the United States; and said respondents, individually and collectively, and each of them, caused such food products to be transported when purchased from said States to destinations in other States.

PAR. 9. In the course of said business in commerce, as aforesaid, beginning on or about June 19, 1936, and continuing to the present time, said respondents Consolidated and United, as well as those associated companies operating under Consolidated, as aforesaid, purchased through respondent Progressive Brokerage Co., Inc., and still continue to purchase, a substantial portion of their

requirements of food products from vendors, all, or substantially all, of whom paid said Progressive Brokerage Co., Inc., commissions or brokerage fees on said purchases.

Progressive Brokerage Co., Inc., received and accepted such fees and transmitted and paid them to, and a substantial amount thereof was received and accepted by, members of the Kurzweg, Le Blanc, Waguespack, and Lipscomb families and members of the families of other officers and directors of the three respondent corporations, as well as other key employees, together with their families, in the form of dividends on the capital stock of Progressive Brokerage Co., Inc., owned by them.

In making said purchases and (a) in receiving and accepting and (b) in transmitting and paying said fees, directly or indirectly, as above alleged, Progressive Brokerage Co., Inc., was, and is now, acting as agent or representative of respondents Consolidated and United, subject to the direct or indirect control of Consolidated and United and of those individuals who were and are members of the Kurzweg, Le Blanc, Waguespack, and Lipscomb families by blood or marriage, together with members of the families of other officers and directors of respondents Consolidated and United, and other key employees and their families, who, together, own a substantial majority of its capital stock, as aforesaid.

PAR. 10. The acts and practices of respondents, corporate, individually and collectively, and each of them, since June 19, 1936, in accepting and receiving commissions or brokerage fees, directly or indirectly, as above alleged, are in violation of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION OF THE COMMISSION

Pursuant to rule XXII of the Commission's rules of practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated September 1, 1951, the initial decision in the instant matter of trial examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13), the Federal Trade Commission on May 7, 1951, issued and subsequently served its complaint in this proceeding upon Consolidated Cos., Inc., a corporation; United Investment Corp., a corpora-

tion; Progressive Brokerage Co., Inc., a corporation; Victor J. Kurzweg, Sr., Victor J. Kurzweg, Jr., Paul H. Kurzweg, Jr. (M. D.), Charles J. Kurzweg, Frank T. Kurzweg (M. D.), James I. Lipscomb, Henry J. Waguespack, Henry J. Le Blanc, Colquitt O. Dupuy, Clarence R. Caster, George T. Vicknair, Margaret L. Kurzweg, James M. Kinberger, Jr., Eugene Holloway (M. D.), and Edmund Kinberger, as individuals, individually and collectively as the owners or as representative, agent, or other fiduciary of the owners of a substantial majority of the capital stock of the corporate respondents, charging them with violation of subsection (c) of section 2 of said act, as amended. On June 1, 1951, counsel for all respondents filed answer thereto which answer solely for the purpose of this proceeding, the enforcement or review thereof in the court of appeals and for any review thereof in the Supreme Court of the United States and for any court proceeding brought or instituted by or on behalf of the Federal Trade Commission or other department or agency of the Federal Government for the enforcement or for any violation of the order issued herein and not to be taken as admissions or prima facie evidence, for any purpose in any other of different proceedings by other parties, admitted all the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearing as to the said facts. Thereupon, the trial examiner, theretofore duly designated by the Commission, closed the proceeding, and, it coming on for final consideration upon said complaint and answer thereto, the said trial examiner, having duly considered the record herein, makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Consolidated Cos., Inc., hereinafter referred to as Consolidated, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 743 South Cortez Street, in the city of New Orleans, State of Louisiana. Said respondent is now and since several years prior to June 19, 1936, has been engaged in the business of buying and selling food and other products at wholesale within the United States. Such products include a complete line of fancy and staple groceries, such as fruits, vegetables, canned goods, sugar, salt, milk, tobacco, soap, flour, candy and produce, as well as various items of hardware. Consolidated has three private brands or labels, namely, Red Ball, Autocrat and Conco. It is one of the largest wholesalers of food products in the State of Louisiana. Said respondent owns and operates some 30 branch whole-

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sale houses in Louisiana, as well as operating others designated as associated companies. These latter companies are separate legal entities in which certain of the stockholders of Consolidated have a substantial financial interest. Such designation also includes respondent United and those companies in which United has a financial interest.

The following-named individuals are now, or have been during the time mentioned herein, officers of said respondent Consolidated, and as such, and individually, are named as respondents herein:

Victor J. Kurzweg, Jr., president.

Paul H. Kurzweg, Jr., M. D., vice president.

Charles J. Kurzweg, secretary-treasurer.

The following named individuals are or have been during the time hereinafter mentioned, members of the board of directors of Consolidated, and as such, and individually, are named as respondents herein:

Victor J. Kurzweg, Sr., chairman of the board.

Victor J. Kurzweg, Jr.

Paul H. Kurzweg, Jr., M. D.

Charles J. Kurzweg.

James I. Lipscomb.

Henry J. Waguespack.

Henry J. Le Blanc.

PAR. 2. Respondent United Investment Corp., hereinafter referred to as United, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 743 South Cortez Street, in the city of New Orleans, State of Louisiana. Said respondent is now, and since several years prior to June 19, 1936, has been, engaged in the business of buying and selling food and other products at wholesale within the United States. Such products include fruit, vegetables, canned goods, sugar, salt, milk, tobacco, soap, flour, and candy. It is one, among others, of a group of large wholesalers of food products in the State of Louisiana. Said respondent controls and operates a total of some six branch wholesale grocery houses located in the State of Louisiana, and in addition thereto, partially owns, operates and controls certain wholesale grocery organizations located in Orange, Tex., and Pascagoula, Miss.

Said respondent United is also engaged in the retail grocery business through its ownership of the majority of stock in Capital Stores, Inc., a Louisiana corporation, Baton Rouge, La. There are 19 retail stores in this chain. In addition thereto, Capital Stores, Inc., owns the entire capital stock of the Orleans Capital Stores, Inc. The latter is also a Louisiana corporation and operates 10 retail grocery stores under this name in New Orleans.

In addition to the wholesale and retail stores hereinabove listed as being owned, controlled, and operated by United, said respondent corporation also owns and controls through its officers and directors 8,000 shares of stock in respondent Consolidated.

The following-named individuals are, or have been during the time hereinafter mentioned, officers of said respondent United, and as such, and individually, are named as respondents herein.

Frank T. Kurzweg, M. D., president.

Colquitt O. Dupuy, executive vice president.

Clarence R. Caster, secretary.

George T. Vicknair, treasurer.

The following-named individuals are, or have been during the time hereinafter mentioned, members of the board of directors of respondent United, and as such, and individually, are named as respondents herein:

Frank T. Kurzweg, M. D.

Colquitt O. Dupuy.

Clarence R. Caster.

George T. Vicknair.

Margaret L. Kurzweg.

PAR. 3. In addition to the wholesale and retail grocery companies hereinabove referred to as being owned, operated, and controlled by respondents Consolidated and United, there are a number of other wholesale and retail grocery companies owned in whole or in part by members of the Kurzweg family which are operated as associated companies under the direction and control of respondent Consolidated.

PAR. 4. Respondent Progressive Brokerage Co., Inc., hereinafter referred to as Progressive, is a corporation organized, existing and doing business under the laws of the State of Louisiana, with its principal office and place of business located at 208-210 Cigali Building, 107 Camp Street, city of New Orleans, State of Louisiana. Said respondent was incorporated some years prior to June 19, 1936, and since its incorporation and continuing to the present time, has been, and is now, engaged in operating as a broker or manufacturer's agent, dealing primarily in food products.

Said respondent maintains a branch office at 318 Railroad Avenue, Lake Charles, La. This branch is managed by Arthur G. Waguespack (not a respondent herein), a relative of respondent Henry J. Waguespack, director of Consolidated.

The following-named individuals are, or have been during the time hereinafter mentioned, officers of said respondent Progressive, and as such, and individually, are named as respondents herein:

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James M. Kinberger, Jr., president.
Eugene Holloway, M. D., vice president.
Edmund Kinberger, secretary-treasurer.

The above-named individuals also serve as directors of said respondent Progressive, and as such, and individually, are named as respondents herein.

PAR. 5. Respondent Consolidated, prior to March 1929, owned all of the capital stock of respondent Progressive Brokerage Co., Inc. In March 1929, Consolidated declared a stock dividend consisting, among other stocks, of the entire capital stock of Progressive. At this time a committee of three individuals was appointed as trustees to receive the stock dividends for the then stockholders of Consolidated and for the purpose of organizing a holding company. United Investment Corp. was thus formed, to which corporation the said trustees transferred title to all stocks they were then holding in trust, including that of Progressive Brokerage Co., Inc. All stock of respondent United was thereafter distributed to the then shareholders in Consolidated and subsequently transferred by the officers and directors to their children. On or about July 1936, respondent United distributed to its stockholders the entire capital stock of Progressive, consisting of 18,033 shares.

PAR. 6. Kurzweg, Le Blanc, Waguespack, and Lipscomb, among others, are family names. At all times mentioned herein a substantial majority of the capital stock of said corporate respondents was and is owned by individuals who were and are now members of such families, by blood or marriage. Furthermore, there is a substantial number of branch managers or key employees of the corporate respondents, who, together with their families, by blood or marriage, own stock in the respective respondent corporations and who, because of their position or connection with said respondent corporations, are now and have been for the period of time mentioned herein, under the control, authority, direction, management, and domination of the Kurzweg, Le Blanc, Waguespack, and Lipscomb group who, through these individuals and their families, and in combination with their own holdings, exercise control and ownership over a substantial majority of the capital stock of the three corporations as hereinafter set forth.

For some time, and at the present, respondent Consolidated has had issued and outstanding, approximately 64,000 shares of common stock. The Kurzweg, Le Blanc, Waguespack, and Lipscomb families, together with the families of other officers and directors of the three corporate respondents, own and thus control, approximately 37,900

shares, or 59.2 percent of Consolidated stock. This includes the 8,000 shares of Consolidated stock owned by respondent United and which is under control of this group. Furthermore, the stockholdings in the three respondent corporations of the managers of branch stores of respondents Consolidated and United, as well as other key employees, together with their families, by blood or marriage, amount to an additional holding of approximately 6,280 shares, or 9.8 percent of Consolidated stock.

For some time, and at the present, respondent United has had issued and outstanding some 18,033 shares of stock. The Kurzweg, Le Blanc, Waguespack, and Lipscomb families, together with the families of other officers and directors of the three respondent corporations, own, and thus control, approximately 12,631 shares, or 70 percent of United stock. Furthermore, the stockholders in the three respondent corporations of the managers of branch stores of respondents Consolidated and United, as well as other key employees, together with their families, by blood or marriage, as hereinbefore set forth, amount to an additional holding of approximately 756 shares, or 4.2 percent of United stock.

For some time, and at the present, respondent Progressive has had issued and outstanding some 18,033 shares of stock. The Kurzweg, Le Blanc, Waguespack, and Lipscomb families, together with the families of their officers and directors of the three respondent corporations own, and thus control, approximately 11,504, or 63.8 percent of Progressive stock. Furthermore, the stockholdings in the three respondent corporations of the managers of branch stores of respondents Consolidated and United, as well as other key employees, together with their families, by blood or marriage, as hereinbefore set forth, amount to an additional holding of approximately 1,724 shares, or 9.6 percent of Progressive stock.

PAR. 7. At all times mentioned herein, including the present, individuals who were or are members of the Kurzweg, Le Blanc, Waguespack, or Lipscomb families, by blood or marriage, together with individual representatives of the families of other officers and directors of the three respondent corporations, and each of them, directly or indirectly, and acting collectively as owners or as representative, agent or other fiduciary of the owners of a substantial majority of the capital stock of the respondent corporations, have controlled, regulated, directed, managed, and dominated, and do now control, regulate, direct, manage, and dominate all of said corporate respondents, including respondent Progressive, formulating, authorizing, managing, and directing all of their policies, practices, and acts as herein alleged.

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PAR. 8. In the course and conduct of their wholesale food business since on or about June 19, 1936, said respondents, as aforesaid, continuously purchased, through respondent Progressive, food products from many vendors with places of business located in several States of the United States; and said respondents, individually and collectively, and each of them, caused such food products to be transported when purchased from said States to destinations in other States.

PAR. 9. In the course of said business in commerce, as aforesaid, beginning on or about June 19, 1936, and continuing to the present time, said respondents Consolidated and United, as well as those associated companies operating under Consolidated, as aforesaid, purchased through respondent Progressive Brokerage Co., Inc., and still continue to purchase, a substantial portion of their requirements of food products from vendors, all, or substantially all, of whom paid said Progressive Brokerage Co., Inc., commissions or brokerage fees on said purchases.

Progressive Brokerage Co., Inc., received and accepted such fees and transmitted and paid them to, and a substantial amount thereof was received and accepted by, members of the Kurzweg, Le Blanc, Waguespack, and Lipscomb families and members of the families of other officers and directors of the three respondent corporations, as well as other key employees, together with their families, in the form of dividends on the capital stock of Progressive Brokerage Co., Inc., owned by them.

In making said purchases and (a) in receiving and accepting and (b) in transmitting and paying said fees, directly or indirectly, as above found, Progressive Brokerage Co., Inc., was, and is now, acting as agent or representative of respondents Consolidated and United, subject to the direct or indirect control of Consolidated and United and of those individuals who were and are members of the Kurzweg, Le Blanc, Waguespack, and Lipscomb families by blood or marriage, together with members of the families of other officers and directors of respondents Consolidated and United, and other key employees, and their families, who, together, own a substantial majority of its capital stock, as aforesaid.

CONCLUSION

The acts and practices of respondents, corporate, individually and collectively, and each of them, since June 19, 1936, in accepting and receiving commissions or brokerage fees, directly or indirectly, as above found, are in violation of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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Order

ORDER

I. *It is ordered*, That the respondent, Progressive Brokerage Co., Inc., a corporation, its officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of fruits, vegetables, produce, groceries, household and other products of whatsoever nature in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

(a) Receiving or accepting, directly or indirectly, from any seller anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon any purchase in connection with which respondent Progressive Brokerage Co., Inc., is the buyer or is the agent, representative, or other intermediary acting for, or in behalf of, or subject to the direct or indirect control of any buyer exercised through the ownership or control of capital stock of Progressive Brokerage Co., Inc., by any stockholder or cooperating group of stockholders in such buyer who directly or indirectly controls such buyer.

(b) Transmitting, paying, or granting, directly or indirectly, any part of any commission, brokerage, compensation, allowance or discount, which is referred to in paragraph I (a) above, to any buyer or to any stockholder in any buyer, who is referred to in paragraph I (a) above, in the form of money, dividends, credits, services, facilities, or in any other form.

II. *It is further ordered*, That the respondents Consolidated Cos., Inc., and United Investment Corp., and their respective officers, directors, agents, representatives, and employees, directly or through any intermediary (including Progressive Brokerage Co., Inc.) in connection with the purchase of fruits, vegetables, produce, groceries, household and other products of whatsoever nature in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting from any seller, or from any agent, representative, or other intermediary acting for, or in behalf of, or subject to the direct or indirect control of respondents Consolidated Cos., Inc., and United Investment Corp., including such control by said respondents exercised through the ownership or control of capital stock of any such agent, representative, or other intermediary by any stockholder or cooperating group of stockholders of respondents Consolidated Cos., Inc., and United Investment Corp., or either of them who directly or indirectly controls said respondents or either of them, anything of value as a commission, brokerage, or other com-

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pensation, or any discount or allowance in lieu thereof, in the form of money, dividends, credits, or in any other form, upon purchases for their own accounts.

III. *It is further ordered*, That the respondents, Victor J. Kurzweg, Sr., Victor J. Kurzweg, Jr., Paul H. Kurzweg, Jr. (M. D.), Charles J. Kurzweg, Frank T. Kurzweg (M. D.), James I. Lipscomb, Henry J. Waguespack, Henry J. Le Blanc, Colquitt O. Dupuy, Clarence R. Caster, George T. Vicknair, Margaret L. Kurzweg, James M. Kinberger, Jr., Eugene Holloway (M. D.), Edmund Kinberger, either in their individual or other representative capacities, in connection with the purchase of fruits, vegetables, produce, groceries, household and other products of whatsoever nature in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting any part of any commission, brokerage, compensation, allowance, or discount which, in paragraphs I (a) and I (b) above, respondent Progressive Brokerage Co., Inc., is ordered to cease and desist from receiving or accepting and from transmitting, paying or granting, and which, in paragraph II above, respondents Consolidated Cos., Inc., and United Investment Corp. are ordered to cease and desist from receiving or accepting.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist [as required by said declaratory decision and order of September 1, 1951].

Syllabus

IN THE MATTER OF
MARLBORO TOBACCO BOARD OF TRADE ET AL.

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5857. Complaint, Mar. 7, 1951—Decision, Sept. 5, 1951

Where a number of concerns in various states, which (1) were engaged as sellers, buyers, brokers, warehousemen, packers, processors or manufacturers of tobacco products; and which (2), in the case of three operated auction warehouses near the town of Upper Marlboro, Md., through which there had been marketed, prior to the 1949 tobacco selling period, the entire loose leaf tobacco crop sold in said vicinity; and which (3) were members of an association or "Board of Trade", which they organized to regulate and control the marketing of tobacco in said town and adjacent territory (natural or preferential market for tobacco growers in three Maryland counties, where was produced the major portion of the leaf tobacco grown in the state), and which so dominated and controlled said market area that it was impossible to engage in the tobacco market therein without having been admitted to membership—

Entered into and carried out agreements and understandings between and among themselves to suppress competition in the sale and purchase of tobacco in said market area; and pursuant thereto concertedly and collectively—

- (1) Established and maintained a monopoly in the auction sale of tobacco on said market, in their aforesaid three member warehouses;
- (2) Denied membership in their said association or board to a tobacco warehouse corporation which desired to conduct a fourth tobacco auction warehouse in such area in addition to the aforesaid three, which had been unable to handle all the tobacco presented for sale by the Maryland growers, with resulting hardship and inconvenience;
- (3) Required that all member warehouses charge uniform fees;
- (4) Established and maintained a boycott of a potential competitor of said board's member warehouses; and
- (5) Made use of said board as a medium for effectuating and carrying out said agreements, etc. and the acts and practices herein set out;

Capacity, tendency and effect of which agreements, and the things done in pursuance thereof were to unreasonably restrain competition and trade in the sale, purchase and distribution of tobacco and tobacco products in various states and in foreign countries; and deprive the public of the advantage of competitive prices and other advantages which they would receive and enjoy under conditions of unobstructed competition; and otherwise to operate as a restraint upon free and legitimate competition in such trade and industry:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, and had a dangerous tendency to and did actually hinder and prevent competition and restrain trade between and among said member respondents and others in the sale, purchase and distribution of their said products; placed in themselves the power to control and enhance prices and terms and conditions of sale; had a dangerous tend-