

IN THE MATTER OF
NORTHERN BROKERAGE CO., NORTHERN PRODUCE
EXCHANGE CO., AND GEORGE M. KRISCHEL

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (C) OF
THE CLAYTON ACT AS AMENDED

Docket 6274. Complaint, Dec. 22, 1954—Decision, Mar. 10, 1955

Order requiring a corporate food broker, its president, and a second corporate wholesaler in which said president and his wife owned a 50% interest, to cease violating sec. 2(c) of the Clayton Act as amended, by receiving commissions, etc., from sellers on sales made by said broker to the affiliated wholesaler.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. Edward S. Ragsdale and *Mr. Cecil G. Miles* for the Commission.

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 March 10, 1955, the initial decision in the instant matter of hearing examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On December 22, 1954, the Federal Trade Commission issued its complaint in this proceeding, charging Respondents with violating, and having violated, the provisions of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936. On January 27, 1955, Respondents filed their answer thereto, admitting all the material allegations of fact set forth in said complaint. Under the provisions of Rule VIII (a) of the Commission's Rules of Practice, the submission of such an answer constitutes a waiver of Respondents' rights to a hearing as to the facts alleged in the complaint, and of all other intervening procedure. The Rule cited also provides that when such an answer is filed, the Hearing Examiner shall make findings as to the facts and conclusions based upon such complaint and answer, and issue an order disposing of the proceeding. Accordingly, the Hearing Examiner, having duly considered the record herein, finds that this proceeding is in the interest

of the public, makes the following findings as to the facts and conclusions drawn therefrom, and, in consonance therewith, issues the order hereinafter set forth.

FINDINGS AS TO THE FACTS

1. Respondent, Northern Brokerage Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 332 Tinker Street, Rockford, Illinois. Respondent corporation is engaged principally in the food brokerage business, representing numerous sellers outside the State of Illinois in the sale and distribution of their food products throughout the northern part of Illinois, and to a lesser extent in the State of Wisconsin. Respondent represents suppliers selling, among other things, canned foods, dried and frozen foods, and fresh fruits and vegetables, all of which are hereinafter sometimes referred to as food products.

Respondent George M. Krischel is president of respondent Northern Brokerage Co. The capital stock of said company is solely owned by Respondent Krischel and members of his family as follows:

George M. Krischel.....	25 shares
Alma E. Krischel (wife).....	24 shares
Joan E. Krischel (daughter).....	1 share

As president, and through ownership by himself and his immediate family, Respondent Krischel has exercised, and now exercises, authority and control over the business conducted by said corporate Respondent, including its purchase, sales and operational policies.

2. Respondent, Northern Produce Exchange Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 332 Tinker Street, Rockford, Illinois. Respondent corporation is engaged in business as a wholesaler and distributor of canned fruits and vegetables, dried foods of the various types, and fresh fruits and vegetables, all of which are hereinafter sometimes referred to as food products. Its average sales approximate \$1,000,000 annually. Robert B. Johnson is president of this corporation and owns 50% of its outstanding capital stock. Respondent George M. Krischel is vice-president and he, together with his wife, Alma E. Krischel, owns the remaining 50% of the outstanding stock of this corporation. Their share holdings are listed as follows:

Robert B. Johnson.....	100 shares
George M. Krischel.....	80 shares
Alma E. Krischel (wife).....	20 shares

Findings

51 F. T. C.

As vice president and with his wife, owner of fifty percent of the capital stock, Respondent George M. Krischel has exercised, and now exercises, a substantial and influential degree of authority and control over the business conducted by said corporate Respondent Northern Produce Exchange Co., including the direction of its purchase, sales and distribution policies. By virtue of such facts, purchases and other transactions on behalf of said Northern Produce Exchange Co. are also on behalf of said George M. Krischel.

3. Respondent George M. Krischel is an individual engaged principally in business as a broker and wholesale distributor of canned goods, dried fruits, and fresh fruits and vegetables. As such, he represents numerous sellers outside the State of Illinois in selling their merchandise throughout northern Illinois and, to a lesser extent, in the State of Wisconsin. He is president and, along with his immediate family, owns all the capital stock of Respondent Northern Brokerage Co. which has its principal office and place of business located at 332 Tinker Street, Rockford, Illinois. Respondent Krischel is also vice-president of Respondent Northern Produce Exchange Co. and he, along with his wife, Alma E. Krischel, owns 50% of the capital stock of this latter corporation, which is likewise located at 332 Tinker Street, Rockford, Illinois.

As president of Respondent Northern Brokerage Co., and with all the capital stock being owned by him, his wife and unmarried daughter, Respondent Krischel exercises authority and control over the business conducted by Respondent Northern Brokerage Co., including the direction of its sales and operational policies. As vice-president of Respondent Northern Produce Exchange Co., and with 50% of its capital stock being owned by him and his wife, he exercises a substantial and influential degree of authority and control over the business conducted by this corporation, including the direction of its purchases, sales, and distribution policies.

4. In the course and conduct of the business of Respondent Northern Brokerage Co. and the business of Respondent Northern Produce Exchange Co., both businesses being conducted from the same office and at the same address, said individual Respondent, has, since January 1, 1951, continuously made substantial sales for at least two of his principals through Respondent Northern Brokerage Co. to Respondent Northern Produce Exchange Co., of which he is vice-president, and in which he and his wife own a 50% interest. Respondent Northern Produce Exchange Co. has, since January 1, 1951, continuously purchased substantial quantities of fresh fruit through Respondent Northern Brokerage Co. from at least two of its suppliers, whose

784

Order

places of business are located in States of the United States other than the State of Illinois. On these purchases individual Respondent George M. Krischel, through corporate Respondent Northern Brokerage Co., has been and is now being allowed something of value as a commission, brokerage, or other compensation or allowance, or discount in lieu thereof by said sellers.

5. Said Respondents, both individual and corporate, directly or indirectly, cause said food products so purchased to be transported from said States of origin to destinations in another State. There has been at all times mentioned herein a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act in said food products across State lines between said individual Respondent, through corporate Respondents, and the sellers of said food products. Said food products are sold and distributed for use, consumption, or resale within the various States of the United States.

CONCLUSION

The acts and practices of the Respondents, both corporate and individual, in receiving and accepting something of value as a commission, brokerage, or other compensation, or discounts in lieu thereof, on their purchases of food products through a brokerage firm owned or controlled as indicated herein by an officer of, and substantial stockholder in, the corporation making the purchases, as above found, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

ORDER

It is ordered, That the Respondent, Northern Brokerage Co., a corporation, its officers and the individual Respondent, George M. Krischel, individually and as an officer of Northern Brokerage Co. and Northern Produce Exchange Co., and their respective representatives, agents, and employees, directly or indirectly, or through any corporate or other device in connection with the purchase of food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from 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 of food products by or for the account of Northern Produce Exchange Co., where George M. Krischel or any other officer of the Northern Brokerage Company are officers of or have a substantial stock ownership in or control of Northern

Order

51 F. T. C.

Produce Exchange Co., either directly or through family ownership of the stock, or where either of the Respondents, Northern Brokerage Co. or George M. Krischel, or both, are the agents, representatives or other intermediaries, or where it or he is acting for or in behalf of, or where it or he is subject to the direct or indirect control of Northern Produce Exchange Co., or any other buyer.

It is further ordered, That the Respondent Northern Produce Exchange Co., a corporation, its officers and the individual Respondent, George M. Krischel, while an officer of or major stockholder in said corporation, and their respective representatives, agents or employees, directly or through any corporate or other device, in connection with the purchase of food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from 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 of food products by or for their account or the account of any of them.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondents Northern Brokerage Co., a corporation, Northern Produce Exchange Co., a corporation, and George M. Krischel, individually and as President of Northern Brokerage Co. and Vice President of Northern Produce Exchange Co., shall, within sixty (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 March 10, 1955].

Complaint

IN THE MATTER OF
SPADA DISTRIBUTING COMPANY, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC.
2 (C) OF THE CLAYTON ACT AS AMENDED

Docket 6254. Complaint, Oct. 25, 1954—Decision, Mar. 11, 1955

Consent order requiring a fruit and vegetable wholesaler in Portland, Ore., to cease accepting commissions or brokerage fees from sellers on purchases for its own account for resale, in violation of sec. 2 (c) of the Clayton Act as amended.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. Edward S. Ragsdale and *Mr. Cecil G. Miles* for the Commission.

Mr. Irving Korn, of Portland, Ohio, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated, and is now violating, the provisions of subsection (c) of Section 2 of the Clayton Act (U. S. C. Title 15, Section 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 Spada Distributing Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oregon, with its principal office and place of business located at 335 S. E. Morrison Street, Portland, Oregon.

Respondent, to facilitate its business, maintains branch offices and warehouses at Redmond, Brooks, Gaston, and Madras, Oregon, and at Prossner and Moses Lake, Washington.

PAR. 2. Respondent is now engaged and, since July 1, 1946, has engaged in business principally as a wholesaler, buying and selling fresh fruits and vegetables, citrus juices and other food products, all of which are hereinafter designated as food products. It operates farms in the States of Oregon, Washington, and Idaho, which farms produce some of the food products respondent sells, although in addition to the quantity it produces, respondent also purchases substantial amounts from a number of sellers located in various States of the United States.

Complaint

51 F. T. C.

Respondent distributes and sells its food products principally to buyers located in the States of Oregon, Washington, and Idaho, but it also sells some of its food products to buyers located in various other States of the United States, and a small proportion to buyers in foreign markets.

Said respondent's sales average between \$4,000,000 and \$5,000,000 annually.

PAR. 3. Respondent in the course and conduct of its said business since July 1, 1946, has purchased, and is now purchasing a substantial quantity of its requirements of food products from sellers located in States other than the States where respondent is located, and as a result of respondent's purchases and its instructions, such food products are shipped and transported by the respective sellers thereof across state lines to respondent and respondent's customers, and there has been since July 1, 1946 and is now a constant current of trade and commerce conducted by said respondent in such products between and among the various States of the United States.

PAR. 4. Respondent, since July 1, 1946, in connection with its purchases of substantial quantities of food products in commerce, as hereinabove alleged, has received and accepted, and is now receiving and accepting, directly or indirectly, commissions, brokerage fees or other compensation or allowances, or discounts in lieu thereof from some, but not all, of the sellers from whom it purchases food products in commerce for its own account for resale.

A specific illustration of respondent's transactions with a seller from whom it is now, and has, since July 1, 1946, received commissions or brokerage fees on purchases of food products for its own account is set out as follows:

Since respondent began business in 1946, it has been a substantial purchaser in its own name, and for its own account for resale of substantial quantities of citrus products, including grapefruit, oranges, and tangerines, from a large seller located in the State of Florida. When the food products purchased by the respondent from the seller are lost or damaged in transit, respondent files claims in its own name and for its own account for such loss or damage against the transportation company responsible, and collects damages. The products so purchased, on arrival at respondent's place of business, are warehoused and insured by respondent at its own expense and for its own account.

Respondent sells such products to its customers, in its own name, and for its own account, and at prices and on terms it determines either receiving a profit or accepting a loss thereon as the case may be. Respondent on such transactions with said seller since July 1,

1946, has received and is now receiving and accepting directly or indirectly commissions or brokerage fees in a substantial amount.

PAR. 5. The foregoing acts and practices of the respondent as above alleged in receiving and accepting directly or indirectly commissions, brokerage fees or other compensation or allowances or discounts in lieu thereof from sellers in connection with its purchases in commerce of food products for its own account as above alleged, violates subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U. S. C. Title 15, Section 13).

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 March 11, 1955, the initial decision in the instant matter of hearing examiner Abner E. Lipscomb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On October 25, 1954, the Federal Trade Commission issued its complaint in this proceeding, charging the Respondent with receiving and accepting, directly or indirectly, commissions, brokerage fees or other compensation, allowances or discounts in lieu thereof from sellers in connection with the purchase in commerce of food products for its own account, in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U. S. C. Title 15, Sec. 13).

Thereafter, on January 17, 1955, Respondent, through its president and counsel, entered into an agreement with counsel supporting the complaint, and, pursuant thereto, submitted to the Hearing Examiner a Stipulation For Consent Order disposing of all the issues involved in this proceeding.

Respondent is identified in the stipulation as a corporation organized and existing under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 335 S. E. Morrison Street, in the city of Portland, State of Oregon.

Respondent admits all the jurisdictional allegations set forth in the complaint, and agrees that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance therewith.

All parties hereto request that the answer of Respondent, heretofore filed with the Commission on November 16, 1954, be withdrawn, and

Order

51 F. T. C.

expressly waive the filing of answer, a hearing before a hearing examiner of the Commission, the making of findings as to the facts or conclusions of law by the Hearing Examiner or the Commission, the filing of exceptions and oral argument before the Commission and all further and other procedure before the Hearing Examiner and the Commission to which Respondent may be entitled under the Clayton Act, as amended, or the Rules of Practice of the Commission. It is agreed by Respondent that the order contained in the stipulation shall have the same force and effect as if made after full hearing, presentation of evidence and findings and conclusions thereon. Respondent specifically waives any and all right, power or privilege to challenge or contest the validity of such order.

It is also agreed that said Stipulation For Consent Order, together with the complaint, shall constitute the entire record in this proceeding, upon which the initial decision shall be based. The stipulation sets forth that the complaint herein may be used in construing the terms of the aforesaid order, which may be altered, modified, or set aside in the manner provided by statute for orders of the Commission.

The stipulation further provides that the signing of the Stipulation For Consent Order is for settlement purposes only, and does not constitute an admission by Respondent of any violation of law alleged in the complaint.

In view of the facts outlined above, and the further fact that the order embodied in the aforesaid stipulation is identical with the order accompanying the complaint, it appears that such order will safeguard the public interest to the same extent as could be accomplished by the issuance of an order after full hearing and all other adjudicative procedure waived in said stipulation. Accordingly, in consonance with the terms of the aforesaid stipulation, the Hearing Examiner grants the request for withdrawal of Respondent's answer, accepts the Stipulation For Consent Order submitted herein, finds that this proceeding is in the public interest, and issues the following order:

It is ordered, That respondent Spada Distributing Company, Inc., a corporation, its officers, and its respective representatives, agents, or employees, directly or indirectly, or through any corporate or other device, in connection with the purchase of food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

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 or in connection with any purchase of food products or other commodities made for its own

789

Order

account, or where the respondent is the agent, representative, or other intermediary acting for, or in behalf of, or subject to the direct or indirect control of any buyer.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondent Spada Distributing Company, Inc., a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist [as required by said declaratory decision and order of March 11, 1955].

IN THE MATTER OF
STENOGRAPHIC MACHINES, INC.; LASALLE EXTENSION
UNIVERSITY: AND THE STENOTYPE COMPANY

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6076. Complaint, Jan. 14, 1953—Decision, Mar. 18, 1955

Order prohibiting an agreement between the only two distributors of mechanical shorthand machines in the United States to divide the market between themselves, one to confine its sales and solicitations mainly to private commercial schools or colleges while the other limited its activities mainly to home-study and correspondence students.

Before *Mr. John Lewis*, hearing examiner.

Mr. George W. Williams and *Mr. Paul H. LaRue* for the Commission.

McBride & Baker, of Chicago, Ill., and *Davies, Richberg, Tydings, Beebe & Landa*, of Washington, D. C., for Stenographic Machines, Inc.
Staehlin & Jantorni, of Chicago, Ill., for LaSalle Extension University and The Stenotype Co.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

STATEMENT OF THE CASE

The Federal Trade Commission issued its complaint against the above-named respondents on January 14, 1953, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act. Copies of said complaint and notice of hearing were duly served upon respondents. Said complaint charges, in substance, that respondents on November 16, 1948, and thereafter, agreed to divide, and did divide, among themselves the customers in the mechanical shorthand market, thereby tending to limit competition and create a monopoly in said market.

Respondents appeared by counsel and filed motions to dismiss the complaint based, in substance, on the insufficiency of said complaint and the mootness of this proceeding by reason of the cancellation of the alleged agreement of November 16, 1948. Said motions were denied by order of the undersigned hearing examiner dated March 19, 1953. Thereafter, said respondents filed their separate answers, in which they denied having engaged in any illegal practices as charged.