IN THE MATTER OF

CLOVER FARM STORES CORPORATION ET AL.

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

Docket 6444. Complaint, Nov. 8, 1955—Decision, Apr. 24, 1956

Consent order requiring 27 wholesale grocery firms, their wholly owned service corporation, and its subsidiary, to cease discriminating in price in violation of Sec. 2 (c) of the Clayton Act as amended, through receiving and accepting from sellers, brokerage and other compensation for services commonly rendered by independent brokers which Clover replaced in many transactions between sellers and respondent wholesalers.

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

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

Mr. Newell Blair, of Washington, D. C., and *Mooney, Hahn, Loeser, Keough & Freedheim*, of Cleveland, Ohio, for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, 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 Clover Farm Stores Corporation, hereinafter sometimes referred to as respondent Clover, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 2135 Columbus Road, Cleveland, Ohio.

It is wholly owned and controlled by a group of wholesale grocery firms, all or substantially all of which are the respondents listed in Paragraph Three. Said respondent was incorporated in Ohio on August 1, 1947, although the business had been operated under the same corporate name as a Delaware corporation by substantially the same owners and along similar lines for many years prior to its incorporation in Ohio.

PAR. 2. Respondent The Lane-Lease Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of

business located at 2135 Columbus Road, Cleveland, Ohio. It is wholly owned and controlled by respondent Clover and hereinafter a reference to respondent Clover is to be interpreted as including respondent The Lane-Lease Co., Inc. Said respondent was incorporated in Ohio on November 16, 1940, although the business had been operated as a Delaware corporation under a somewhat similar name (The Lane-Lease Company) by substantially the same owners and along similar lines for many years prior to respondent's incorporation in Ohio.

PAR. 3. Each respondent named below is a corporation which is organized, existing, and doing business under and by virtue of the laws of the state specified, and whose principal office and place of business is located at the address shown, opposite its name:

Respondent	State of incorporation	Location of principal office and place of business
The Bayer-Gilliam Company	Pennsylvania	Alley K and 10th St., Tyrone, Pa.
Fox Grocery Company	Pennsylvania	300 McKean Ave., Charleroi, Pa.
The John Blaul's Sons Company	Iowa	600 1st St. SE., Cedar Rapids, Iowa.
W. E. Osborn Company	Pennsylvania	8th St. and 5th Ave., New Brighton, Pa.
Jos. A. Goddard Company	Indiana	215 West Seymour St., Muncie, Ind.
Frey & Son, Inc	Maryland	1401 Cherry Hill Rd., Baltimore, Md.
Consolidated Foods, Inc	New Hampshire	375 West Hollis St., Nashua, N. H.
Krenning-Schlapp Grocer Company.	Missouri	3800 North Broadway, St. Louis, Mo.
Jageman-Bode Company	Illinois	1704 East Jefferson St., Springfield, Ill.
The F J. Beasley Co	Ohio	91 West Union St., Athens, Ohio.
M. B. Glackin, Inc	Pennsylvania	143-47 North Duke St., York, Pa.
Guyer & Calkins Company	Illinois	Spring St. and Liberty Ave., Freeport, Ill.
Arthur J. Hanson Company	Wisconsin	411 11th Ave., Ashland, Wis.
The Hornor-Gaylord Company	West Virginia	601 Baltimore St., Clarksburg, W. Va.
David Kirk Sons Company	Ohio	130 East Sandusky St., Findlay, Ohio.
Layton & Company, Inc	Delaware	Division St. and Pennsylvania RR., Dover, Del.
The Leedom & Worrall Company	Pennsylvania	200-202 Center Ave., Butler, Pa.
Peter G. Lennon Company	Illinois	114 Lafayette St., Joliet, Ill.
J. B. Maltby, Inc	New York	99 Chestnut St., Corning, N. Y.
Northern Sales Company, Inc	Maine	74 Bangor St., Houlton, Maine.
Plumb & Nelson Company	Wisconsin	716 Buffalo St., Manitowoc, Wis.
The Theo Poehler Mercantile Company.	Kansas	701 East 8th St., Lawrence, Kans.
Rice Lake Grocer Company	Wisconsin	16 East Messenger St., Rice Lake, Wis.
E. T. Smith Co	Massachusetts	203 Summer St., Worcester, Mass.
Standard Wholesale Co., Inc	Rhode Island	63-65 Long Wharf, Newport, R. I.
Waples-Platter Company	Texas	1819 Jones St., Fort Worth, Tex.
Wilcox Brothers Grocers Inc	New York	472 West 1st St., Oswego, N. Y.
Barrow Grocery Company, Inc	Virginia	Blackstone, Va.

Said respondents are the wholesale grocery firms referred to in Paragraph One and are sometimes hereinafter referred to as respondent members.

PAR. 4. Respondent Clover is now, and continuously since its organization in 1947 has been, engaged in acts and practices which facilitate transactions or purchase and sale of food products, grocery products, grocers' supplies, and grocers' equipment between sellers of such products and respondent members who purchase such food and grocery products for resale to retail grocery stores and who purchase such supplies and equipment for their own use and for resale to retailers.

In most of such transactions the member respondents order directly from and are invoiced by the sellers; but in others the member respondents order from and are invoiced by respondent Clover which is invoiced by the sellers.

Said acts and practices of respondent Clover consist in part of making arrangements with the sellers to sell products under brands which are owned by respondent Clover; of designating such sellers as approved suppliers; of listing such sellers in a book supplied by respondent Clover to respondent members; and of urging respondent members to buy directly from such sellers. Respondent Clover engages in substantially similar acts and practices with respect to the same and other sellers as to products sold under brands owned by the sellers.

Most of the transactions are between sellers and respondent members located in different states; and most of the products involved in such transactions are shipped across state boundaries.

PAR. 5. In engaging in the acts and practices above alleged respondent Clover is performing services commonly rendered by independent brokers which respondent Clover replaces in a large number of such transactions of purchase and sale.

In consideration for such acts and practices, many of the sellers pay or grant to respondent Clover, and respondent Clover receives and accepts from such sellers, sums of money as brokerage and as allowances and discounts in lieu of brokerage.

Prior to about 1953 such sums were typically a percentage of the purchases of respondent members. Subsequently many sellers, at the instance and request of respondent Clover, paid lump sums, the amounts of which were the same or approximately the same as theretofore paid on a percentage basis.

In some transactions where the seller invoices respondent Clover and it invoices respondent members, the payment takes the form of a discount which is in lieu of brokerage.

PAR. 6. The funds received by respondent Clover as brokerage and as allowances and discounts in lieu thereof are used by it, together with other funds received by it from respondent members, to pay its operating expenses. When such funds exceed expenses in any year, the excess or part thereof may be, and often is, distributed to respondent members as patronage dividends.

PAR. 7. For many years prior to 1947, respondent Clover's corporate predecessor, referred to in Paragraph One, engaged in the same business as respondent Clover as above alleged.

PAR. 8. The acts and practices of respondents and of each of them, as hereinabove alleged and described, violate subsection (c)

of Section 2 of said Clayton Act as amended by the Robinson-Patman Act.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On November 8, 1955, the Federal Trade Commission issued its complaint in this proceeding, charging the Respondents with violation of subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936, by receiving and accepting, directly or indirectly, commissions, brokerage or other compensation, or allowances or discounts in lieu thereof, from many of the various sellers from whom they purchase food and grocery products, grocers' supplies and grocers' equipment in commerce for their own accounts for resale.

Thereafter, on February 3, 1956, Respondents filed with the Commission their answer to said complaint, and on March 5, 1956, Respondents Clover Farm Stores Corporation and The Lane-Lease Co., Inc., by Grant A. Mason, their President and Treasurer, and Gladys S. Clark, their Assistant Secretary, and all the other Respondents herein, except Respondent The John Blaul's Sons Company, by their counsel of record, Samuel G. Wellman and Newell Blair, entered into an agreement with counsel supporting the complaint, and, pursuant thereto, submitted to the Hearing Examiner an Agreement Containing Consent Order To Cease And Desist, supported by formal statements of consent thereto and authorization therefor by all the wholesale member Respondents entering into said Agreement by their counsel, Samuel G. Wellman and Newell Blair, and an Affidavit executed by Attorney Samuel G. Wellman, attesting to the formal consent by all wholesale member Respondents to the form of the proposed consent cease-and-desist order contained in the agreement.

At the same time counsel for Respondents submitted a Motion To Dismiss Complaint As To One Respondent, The John Blaul's Sons Company, stating therein that said company had, on January 1, 1955, prior to the issuance of the complaint herein, ceased to be a stockholder-member of Respondent Clover Farm Stores Corporation, and, by about June 30, 1955, had been fully dissolved and its assets distributed. Therewith counsel for Respondents also submitted an Affidavit executed by Theo F. Blaul, the last acting president of The John Blaul's Sons Company, attesting to those facts. In view thereof, and of the fact that counsel supporting the complaint does not oppose the granting of said motion, the complaint herein will be dismissed as to Respondent The John Blaul's Sons Company.

Respondents are identified in the agreement as follows:

Each Respondent named below is a corporation which is organized, and doing business under and by virtue of the laws of the state specified, and whose principal office and place of business is located at the address shown opposite its name:

Respondent	State of Incorporation	Location of principal office and place of business
Clover Farm Stores Corporation	Ohio	2135 Columbus Rd., Cleveland, Ohio
The Lane-Lease Co., Inc.	Ohio	2135 Columbus Rd., Cleveland, Ohio
The Bayer-Gillam Company	Pennsylvania	Alley K and 10th St., Tyrone, Pa.
Fox Grocery Company	Pennsylvania	300 McKean Ave., Charleroi, Pa.
W. E. Osborn Company	Pennsylvania	8th St. and 5th Ave., New Brighton, Pa.
Jos. A. Goddard Company	Indiana	215 West Seymour St., Muncie, Ind.
Frey & Son, Inc.	Maryland	1401 Cherry Hill Rd., Baltimore, Md.
Consolidated Foods, Inc.	New Hampshire	375 West Hollis St., Nashua, N. H.
Krenning-Schlapp Grocer Company	Missouri	3800 North Broadway, St. Louis, Mo.
Jageman-Bode Company	Illinois	1704 East Jefferson St., Springfield, Ill.
The F. J. Beasley Co.	Ohio	91 West Union St., Athens, Ohio
M. B. Glackin, Inc.	Pennsylvania	143-47 North Duke St., York, Pa.
Guyer & Calkins Company	Illinois	Spring St. and Liberty Ave. Freeport, Ill.
Arthur J. Hanson Company	Wisconsin	411 11th Ave., Ashland, Wis.
The Hornor-Gaylord Company	West Virginia	601 Baltimore St., Clarksburg, W. Va.
David Kirk Sons Company	Ohio	130 East Sandusky St., Findlay, Ohio
Layton & Company, Inc.	Delaware	Division St. and Pennsylvania R.R., Dover, Del.
The Leedom & Worrall Company	Pennsylvania	200-202 Center Ave., Butler, Pa.
Peter G. Lennon Company	Illinois	114 Lafayette St., Joliet, Ill.
J. B. Maltby, Inc.	New York	99 Chestnut St., Corning, N. Y.
Northern Sales Company, Inc.	Maine	74 Bangor St., Houlton, Maine
Plumb & Nelson Company	Wisconsin	716 Buffalo St., Manitowoc, Wis.
The Theo Poehler Mercantile Company	Kansas	701 East 8th St., Lawrence, Kans.
Rice Lake Grocer Company	Wisconsin	16 East Messenger St., Rice Lake, Wis.
E. T. Smith Co.	Massachusetts	203 Summer St., Worcester, Mass.
Standard Wholesale Co., Inc.	Rhode Island	63-65 Long Wharf, Newport, R. I.
Waples-Platter Company	Texas	1819 Jones St., Fort Worth, Tex.
Wilcox Brothers Grocers Inc.	New York	472 West 1st St., Oswego, N. Y.
Barrow Grocery Company, Inc.	Virginia	Blackstone, Va.

Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record herein may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondents, in the agreement, waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance therewith. All parties agree that the answer heretofore filed by all Respondents shall be considered as having been withdrawn, and for all legal purposes it will hereafter be so regarded; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; and that the agreement is for settlement purposes only and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

The agreement sets forth that the order to cease and desist contained therein shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; and that the complaint herein may be used in construing the terms of said order.

After consideration of the charges set forth in the complaint, the agreement, the documents appendant thereto, hereinabove cited, and the provisions of the proposed order, the Hearing Examiner is of the opinion that such order will safeguard the public interest to the same extent as could be accomplished by an order issued after full hearing and all other adjudicative procedure waived in said agreement. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondents Clover Farm Stores Corporation, a corporation, and The Lane-Lease Co., Inc., a corporation, their officers, directors, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase of food products, grocery products, grocers' supplies and grocers' equipment, or other merchandise, in commerce, as "commerce" is defined in the 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 made by Respondents Clover Farm Stores Corporation, a corporation, or The Lane-Lease Co., Inc., a corporation, for resale

to their stockholder members, or upon any purchase made by any of said members.

It is further ordered, That the Respondents, The Bayer-Gillam Company, a corporation, Fox Grocery Company, a corporation, W. E. Osborn Company, a corporation, Jos. A. Goddard Company, a corporation, Frey & Son, Inc., a corporation, Consolidated Foods, Inc., a corporation, Krenning-Schlapp Grocer Company, a corporation, Jageman-Bode Company, a corporation, The F. J. Beasley Company, a corporation, M. B. Glackin, Inc., a corporation, Guyer & Caulkins Company, a corporation, Arthur J. Hanson Company, a corporation, The Hornor-Caylord Company, a corporation, David Kirk Sons Company, a corporation, Layton & Company, Inc., a corporation, The Leedom & Worrall Company, a corporation, Peter G. Lennon Company, a corporation, J. B. Maltby, Inc., a corporation, Northern Sales Company, Inc., a corporation, The Theo Poehler Mercantile Company, a corporation, Plumb & Nelson Company, a corporation, Rice Lake Grocer Company, a corporation, E. T. Smith Co., a corporation, Standard Wholesale Company, Inc., a corporation, Waples-Platter Company, a corporation, Wilcox Brothers Grocers, Inc., a corporation, and Barrow Grocery Company, Inc., a corporation, their respective officers, directors, agents, representatives, and employees, directly or through Clover Farm Stores Corporation, a corporation, or The Lane-Lease Co., Inc., a corporation, or any other corporate or other device, in connection with the purchase of food products, grocery products, grocers' supplies and grocers' equipment, or other merchandise, in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, or from Respondents Clover Farm Stores Corporation, a corporation, or The Lane-Lease Co., Inc., a corporation, or from any other agent, representative, or other intermediary, acting for or in behalf or subject to the direct or indirect control of said buyer Respondents, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof upon any purchase made by said member Respondents, or for them by Respondents Clover Farm Stores Corporation, a corporation, or The Lane-Lease Co., Inc., a corporation, or any other such intermediary.

It is further ordered, That the complaint, insofar as it relates to Respondent The John Blaul's Sons Company, a corporation, be, and the same hereby is, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 24th day of April, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Clover Farm Stores Corporation, a corporation, The Lane-Lease Co., Inc., a corporation, The Bayer-Gillam Company, a corporation, Fox Grocery Company, a corporation, W. E. Osborn Company, a corporation, Jos. A. Goddard, a corporation, Frey & Son, Inc., a corporation, Consolidated Foods, Inc., a corporation, Krenning-Schlapp Grocer Company, a corporation, Jageman-Bode Company, a corporation, The F. J. Beasley Company, a corporation, M. B. Glackin, Inc., a corporation, Guyer & Calkins Company, a corporation, Arthur J. Hanson Company, a corporation, The Hornor-Gaylord Company, a corporation, David Kirk Sons Company, a corporation, Layton & Company, Inc., a corporation, The Leedom & Worrall Company, a corporation, Peter G. Lennon Company, a corporation, J. B. Maltby, Inc., a corporation, Northern Sales Company, Inc., a corporation, The Theo Poehler Mercantile Company, a corporation, Plumb & Nelson Company, a corporation, Rice Lake Grocer Company, a corporation, E. T. Smith Co., a corporation, Standard Wholesale Company, Inc., a corporation, Waples-Platter Company, a corporation, Wilcox Brothers Grocers, Inc., a corporation, and Barrow Grocery Company, Inc., a corporation, 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.

IN THE MATTER OF

WILSON TOBACCO BOARD OF TRADE, INC., ET AL.

Docket 6262. Order and opinion, Apr. 25, 1956

Denial of leave to intervene in cross-appeals from hearing examiner's initial decision to applicant having a substantial private controversy with respondents.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Rufus E. Wilson for the Commission.

Lucas, Rand & Rose, Gardner, Connor & Lee, Mr. Chas. B. McLean and *Carr & Gibbons*, of Wilson, N. C., *Battle, Winslow & Merrell*, of Rocky Mount, N. C., *Blackwell, Blackwell & Canady*, of Winston-Salem, N. C., and *Sanders, Gravelle, Whitlock & Markey, Diamond & Brylawski* and *Howrey & Simon*, of Washington, D. C., for respondents.

ORDER DENYING APPLICATION FOR LEAVE TO INTERVENE

An application having been filed by C. B. Renfro, of Wilson, North Carolina, requesting leave to intervene in this proceeding for the purpose of filing a brief amicus curiae and participating in oral argument before the Commission on the pending cross-appeals from the hearing examiner's initial decision; and

The Commission having determined, for the reasons set forth in the accompanying opinion, that the request should not be allowed:

It is ordered, That the aforesaid application for leave to intervene be, and it hereby is, denied.

Commissioner Kern not participating.

ON APPLICATION FOR LEAVE TO INTERVENE

By SECREST, Commissioner:

This matter is before the Commission upon an application, filed by C. B. Renfro, requesting leave to intervene in this proceeding for the purpose of filing a brief amicus curiae and participating in oral argument before the Commission. The application is unopposed by counsel in support of the complaint, at least insofar as filing brief is concerned, but is resisted by respondents.

The complaint charged the respondents, the Wilson Tobacco Board of Trade, Inc., and its member warehousemen, with an unlawful conspiracy to suppress competition in the sale and purchase of leaf tobacco on the Wilson, North Carolina, tobacco market. The con-