

Complaint

52 F. T. C.

IN THE MATTER OF

UNION BAG & PAPER CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND OF SECS. 7 AND 8 OF THE
CLAYTON ACT

Docket 6391. Complaint, June 30, 1955—Decision, May 10, 1956

Consent order requiring two manufacturers of corrugated boxes and sheets—one manufacturing container board in excess of its own requirements and the other mainly a converter and dependent on a limited number of manufacturers for its supply, with sales in 1954 of \$105,000,000 and \$24,000,000, respectively—to cease violating the merger and interlocking directorates sections of the Clayton Act through entering into contracts which provided that the larger, Union, buy a substantial amount of common stock in the smaller, Hankins, and that Hankins' controlling stockholders vote for election to its board of directors of a director of Union; which provided further that Union not acquire stock of any substantial competitor of Hankins having plants in the latter's territory, and that Hankins restrict its production of container board and, with certain exceptions, confine its purchases thereof to Union.

Before *Mr. John Lewis*, hearing examiner.

Mr. Fletcher G. Cohn and *Mr. Paul R. Dixon* for the Commission.

Mr. Walter C. Taylor, Jr. and *Mr. Carney W. Mimms*, of New York City, for Union Bag & Paper Corp.

Mr. Philip E. Hoffman, of New York City, for Hankins Container Co.

COMPLAINT

The Federal Trade Commission, having reason to believe that the corporations named as respondents in the caption hereof, and hereinafter more particularly designated and described, have violated, and are now violating, the provisions of Section 5 of the Federal Trade Commission Act (15 U. S. C. Sec. 45), and the provisions of Section 7 of the Clayton Act (15 U. S. C. Sec. 18) as amended and approved December 29, 1950, and Section 8 of the Clayton Act (15 U. S. C. Sec. 19) as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondent Union Bag & Paper Corporation, hereinafter referred to as "respondent Union," is a corporation organized

and existing under the laws of the State of New Jersey, having an office and a place of business located at 233 Broadway, New York 7, New York.

Respondent Hankins Container Company, hereinafter referred to as "respondent Hankins," is a corporation organized and existing under the laws of the State of Ohio, with an office and a place of business located at 14801 Emery Avenue, Cleveland, Ohio.

PAR. 2. Respondent Union is one of the oldest companies in the paper packaging field. The company was originally a patent-holding company for paper bag machinery. It reorganized in 1874 to become a manufacturer of paper bags, and subsequently acquired pulp and paper mills to supply paper to its bag manufacturing plants. In its early days, when paper bags were made from sulphite paper, respondent Union owned and operated sulphite mills. During the early twenties the introduction of kraft paper as a superior material for bags forced respondent Union to abandon its sulphite mills and change its paper machines over to the production of kraft paper, and purchase foreign pulp for such machines. By the early thirties, due to the rapid expansion of respondent Union's bag business beyond the productive capacity of its paper machines, it was necessary for respondent Union to rely on outside sources for pulp and in addition purchase paper in the open market. By the year 1935, respondent Union was the largest producer of retail store and small industrial paper bags and wrapping paper in the industry. In the year 1935 respondent Union began the erection of a pulp and paper mill in Savannah, Georgia, which would use southern pine as its raw material. The first paper machine came into production in July 1935 at this plant. (The term "unit" designates a paper machine and sufficient pulp manufacturing facilities to supply that machine, each unit being comparable to a complete mill except that all units in the plant are under one roof.) At the end of 1937 a third unit came into production, so designed that it could produce container board as well as paper. With this addition, respondent Union added container board to its sales of paper products in 1938. At that time this board was sold to independent manufacturers of boxes.

In June 1946 respondent Union made the decision to build its own box factory, adjacent to its mill at Savannah, Georgia. This box factory commenced operation in September 1947. This factory was designed to convert only about one-half of the total board production of respondent Union. In order to assure a market for the production of its container board, in the latter half of 1947 respondent Union negotiated the purchase of two box factories, at Trenton, New Jersey, and Chicago, Illinois, and the purchase of a 48½ percent interest in

Complaint

52 F. T. C.

a box factory at Jamestown, North Carolina. Since the purchase of the plants at Trenton, New Jersey, and Chicago, Illinois, respondent Union has subsequently made additions to these factories, including a new corrugator at the Trenton plant.

In 1945 respondent Union sold all of the container board which it manufactured. In 1947 respondent Union, in addition to selling container board as such, began to convert substantial amounts of same into corrugated boxes and sheets in its own facilities and offer such corrugated boxes and sheets for sale. In the calendar year 1952, respondent Union sold 111,801 tons of container board and in the same year sold 89,522 tons of such container board in the form of corrugated boxes and sheets which said respondent had converted at its own plant from the container board which it had produced. In the calendar year 1953 it sold 160,682 tons of container board which it had produced, and 108,846 tons in the form of converted corrugated boxes and sheets. In the calendar year 1954, it sold 160,304 tons of container board which it had produced, and 106,929 tons in the form of converted corrugated boxes and sheets.

For the calendar year 1954 respondent Union had net sales of \$105,502,849, which included its sales of container board as such, as well as its converted corrugated boxes and sheets. At the end of the calendar year 1954, respondent owned and operated both a paper and a pulp mill at Savannah, Georgia. It owned and operated bag factories at Hudson Falls, New York, Savannah, Georgia, and St. Louis, Missouri. It owned and operated corrugated container plants at Savannah, Georgia, Trenton, New Jersey, and Chicago, Illinois.

Respondent Union is now, and has been for many years last past, engaged in the sale of container board and corrugated boxes and sheets throughout the United States. However, its sales of these products have been largely confined to that area of the United States east of the Rocky Mountains, and principally in that section of the United States lying adjacent to and east of the Mississippi River.

PAR. 3. Respondent Hankins is one of the oldest converters of container board into corrugated boxes and sheets in the United States. In the year 1954, respondent Hankins owned and operated plants at Union, New Jersey, Elmira, New York, Chicago, Illinois, Miamisburg, Ohio, and Little Rock, Arkansas, at which it converted container board into corrugated boxes and sheets. In addition to these plants, respondent Hankins operated as a subsidiary corporation, under the name of Munroe Falls Paper Company, an Ohio corporation, a pulp mill wherein it manufactured liner board. However, the capacity of this subsidiary pulp mill has never been sufficient to satisfy respondent Hankins' requirements of liner board. Prior to June 1954, when the

contracts and agreements hereinafter described were entered into between respondent Hankins and respondent Union, it was necessary for respondent Hankins to attempt to buy and purchase from the limited number of manufacturers of container board the additional amounts of that product needed for its manufacturing processes.

Respondent Hankins' operations in manufacturing corrugated boxes and sheets require approximately 100,000 tons of container board annually. The greater proportion of this had to be purchased by respondent Hankins from the manufacturers of such board.

Respondent Hankins' annual total dollar volume of sales approximates \$24,000,000.

Respondent Hankins is now, and has been for many years last past, engaged in the sale of corrugated boxes and sheets throughout the United States. However, its sales of these products have been largely confined to the area of the United States east of the Rocky Mountains, and principally in that section of the United States lying adjacent to and east of the Mississippi River.

PAR. 4. In addition to respondent Union, there are but a limited number of manufacturers of container board in the United States.

Within the past several years there has been a tendency on the part of the manufacturers of container board to offer but a limited amount of container board for sale to the independent converters in the United States. This trend has partially been caused by the fact that several of the producers or manufacturers of container board have acquired or built their own conversion facilities wherein they manufacture corrugated boxes and sheets, and in this process utilize most of the board that they individually manufacture. However, as hereinbefore set forth, in the year 1954 respondent Union produced, offered for sale, and sold more container board than it used in manufacturing corrugated boxes and sheets.

PAR. 5. As used herein, container board collectively refers to liner board and corrugating medium. It applies to a type of paper used primarily for the manufacture of sheets which, in turn, are manufactured into boxes.

A sheet is a paperboard from which a box is made. It is produced by putting the corrugating medium through a machine, where it is fluted and formed into a corrugated material. The corrugated material is then inserted between two sheets of liner board and run through a combining machine, where they are combined into a sheet or board by the application of an adhesive. As the sheet passes through the combining machine, it is cut into the desired widths and lengths ready for conversion into boxes.

Complaint

52 F. T. C.

PAR. 6. In June and July 1954, respondents Union and Hankins entered into a series of contracts and agreements which, among other things, provided:

1. Respondent Hankins was to increase its common shares of stock from 248,725 to 300,000 and respondent Union was to buy 25,000 shares of the authorized but unissued stock, in return for an estimated purchase price of \$1,872,250;

2. The contract or agreement for the stock purchase was supplemented by a stockholders' agreement whereby ten of the stockholders of respondent Hankins, who represented a majority of such stockholders both in number and amount, agreed, in order to induce respondent Union to enter into the stock purchase agreement with Hankins that, so long as the container board contract, hereinafter described, remained in effect, they would vote their stock for the election of a director of the Board of Directors of respondent Union to the Board of Directors of respondent Hankins;

3. The 25,000 shares of stock in respondent Hankins, which were to be purchased under the stock purchase agreement by respondent Union, plus the 176,540 shares in respondent Hankins which were owned by the stockholders who entered into the supplemental stockholders' agreement, constituted 66 $\frac{2}{3}$ percent of the authorized and outstanding stock of respondent Hankins;

4. Respondent Hankins agreed not to sell or transfer any of its stock to a competitor of respondent Union and respondent Union agreed likewise not to sell or transfer any of respondent Hankins' stock to a competitor of either respondent during the life of the container board contract;

5. The stock purchase contract gave respondent Hankins an option to purchase any stock of respondent Hankins which respondent Union might wish to sell or transfer during the life of the container board contract and for five years thereafter;

6. Respondent Union agreed that it would not, without prior consultation with respondent Hankins, purchase or acquire any stock of a box manufacturer "which has plants located in the area also served by plants of respondent Hankins * * * [if] the competition between the plant of Hankins and a plant of the other manufacturer * * * be of a substantial nature";

7. Contemporaneous with the stock purchase agreement and to be considered as supplementing such agreement, the respondents entered into a container board contract, hereinbefore referred to, for the sale by respondent Union of minimum and maximum quantities of liner board and corrugating medium. This agreement or contract was to run for a period of fifteen years commencing July 1, 1954, renewable

1278

Complaint

on a year-to-year basis after June 30, 1969, unless and until cancelled by either party's giving not less than 5 years' prior written notice to the other of such cancellation effective as of June 30, 1969, or as of any June 30 thereafter; however, no such notice of cancellation could be effective prior to June 30, 1969. The maximum amount involved was 16,000 tons for each calendar quarter-annual period, beginning with the second half of 1954 and extending through 1969; the minimum amounts range from 1,000 tons for each calendar quarter-annual period, beginning with the second half of 1954 to 16,000 tons, beginning with 1959 and extending through 1969;

8. Under said container board contract agreement, it is provided that as part of the container board to be purchased by respondent Hankins from respondent Union, respondent Hankins agreed to buy from respondent Union any corrugating medium it may purchase during the term of the container board contract in excess of (a) 5,400 tons in any calendar quarter-annual period; and (b) any amounts of corrugating medium purchased by respondent Hankins from West Virginia Pulp & Paper Company and Green Bay Pulp & Paper Company under existing contracts which provide for maximum aggregate purchases of 900 tons monthly;

9. The stock purchase agreement further provided that if the purchase of container board and corrugating medium by respondent Hankins from respondent Union under the container board contract should amount in the aggregate to 65,000 tons in a calendar year, then the two respondents would meet and consider the purchase of additional stock of respondent Hankins to a maximum amount that would bring respondent Union's stock interest in respondent Hankins to 25 percent in interest, on terms and conditions to be then mutually agreed upon;

10. Respondent Hankins was allowed, under the terms of the container board contract, to reduce its purchases for any calendar quarter-annual period below the maximum quantity specified in such agreement for such period, for an amount not exceeding 15 percent of the aggregate quantity so provided to be purchased by respondent Hankins for that period;

11. Under the terms of the container board agreement, if respondent Hankins should require more container board than the quantity which it is obligated at any time to purchase from respondent Union, then excluding (a) any commitments of respondent Hankins under its then existing contracts with West Virginia Pulp & Paper Company, International Paper Company, and Green Bay Pulp & Paper Company; (b) liner board (not including chip) to a maximum amount of 2,500 tons in any calendar quarter-annual period from respondent

Complaint

52 F. T. C.

Hankins' Munroe Falls plant; and (c) corrugating medium to a maximum of 5,400 tons in any calendar quarter-annual period, respondent Hankins agreed that it would advise respondent Union of such additional tonnage and would give said respondent the opportunity for a period of 30 days to negotiate with it for the sale of such additional tonnage;

12. Respondent Hankins agreed that it would not consume more than 2,500 tons of the liner board (not including chip) produced by it at its Munroe Falls plant in any calendar quarter-annual period;

13. The prices which respondent Hankins was to pay for the container board purchased from Union were not to "be higher on sellers for principal grades. * * * than the market price then in effect of the largest suppliers in the domestic national market."

PAR. 7. Respondents have, since 1954, performed, and are still performing, their respective obligations and undertakings set forth in Paragraph Six; furthermore, any and all parties who assumed any obligations or undertakings under said contracts or agreements have likewise performed and are still performing same.

There has been elected to the Board of Directors of respondent Hankins, Alexander Calder, Jr., Executive Vice President and General Manager and a member of the Board of Directors of respondent Union. Also, R. Carl Chandler, a Vice-President of respondent Union, has been elected as a member of the Board of Directors of the respondent Hankins.

PAR. 8. In the course and conduct of its business, respondent Union has engaged in commerce as "commerce" is defined in the Federal Trade Commission Act, having shipped its container board and corrugated boxes and sheets, or having caused them to be transported, from their places of manufacture to purchasers thereof located in the same and in other States of the United States and in other areas subject to the jurisdiction of the United States.

Respondent Hankins, in the course and conduct of its business, has engaged in commerce as "commerce" is defined in the Federal Trade Commission Act, having shipped its corrugated boxes and sheets, or having caused them to be transported, from their places of manufacture to purchasers thereof located in the same and in other States of the United States and in other areas subject to the jurisdiction of the United States.

Each of the respondents maintains a constant course and current of trade in their respective products in commerce between and among the various States of the United States.

PAR. 9. Except to the extent that competition has been hindered, frustrated, and lessened as set forth in this complaint, respondent

Union has been, and is, in competition with other corporations, firms, partnerships, and individuals engaged in the sale and distribution of container board, in commerce, as the term is defined in the Federal Trade Commission Act.

Except to the extent that competition has been hindered, frustrated, and lessened, as set forth in this complaint, respondents Union and Hankins have been, and are, in competition with each other and with other corporations, firms, partnerships, and individuals engaged in the sale and distribution of corrugated boxes and sheets, in commerce, as the term is defined in the Federal Trade Commission Act.

PAR. 10. The aforescribed contracts and agreements, as set forth in Paragraph 6, and the obligations and undertakings imposed thereby, as well as the fulfillment of such obligations and undertakings, and the acts and practices likewise performed pursuant thereto, are a part of, and were entered into and fulfilled, maintained, and effectuated in furtherance of, as part of, and pursuant to, an understanding, agreement, combination, conspiracy, and planned common course of action entered into in the year 1954 by and between respondent Union and respondent Hankins to adopt, fix, and adhere to the practice and policy of restricting and restraining competition in the offering for sale, sale, and distribution of container board, corrugated boxes, and corrugated sheets, in commerce between and among the several States of the United States.

PAR. 11. The capacity, tendency, and effect of the aforesaid understanding, agreement, combination, conspiracy, and planned common course of action and the policies, acts, practices, and the fulfillment of the obligations assumed and undertaken by the contracts or agreements between the respondents in the year 1954 have been, and are now, among others:

1. To monopolize, or may tend to monopolize, in respondent Union the production, sales, and distribution in commerce of container board and corrugated boxes and sheets.

2. To limit, restrict, and prevent actual and potential competition between respondent Union and other producers and manufacturers of container board in offering for sale, selling, and distributing in commerce container board.

3. To limit, restrict, and prevent the production by respondent Hankins of liner board.

4. To limit, restrict, and prevent actual and potential competition pricewise by and between respondent Union and respondent Hankins in the offering for sale, sale, and distribution in commerce of corrugated boxes and sheets.

Complaint

52 F. T. C.

5. To restrict and restrain all other forms of actual and potential competition by and between respondent Union and respondent Hankins in the offering for sale, sale, and distribution by them of the corrugated boxes and sheets manufactured or produced in their respective plants.

6. To eliminate respondent Hankins as a substantial competitive factor in the manufacture, sale, and distribution in commerce of corrugated boxes and boards.

7. To further concentrate the manufacture, sale, and distribution in commerce of container board.

8. To eliminate the manufacture, sale, and distribution in commerce of corrugated boxes and sheets by independent manufacturers who are not integrated with or a part of the manufacture of corrugated paper.

PAR. 12. The policies, acts, and practices of the respondents, all and singularly, as hereinbefore set forth, are to the prejudice of the public, have a dangerous tendency to unduly hinder competition, to enhance the prices which the consuming public must pay for container board and the products manufactured therefrom, including corrugated boxes and sheets, and to create a monopoly in respondent Union in the manufacture, sale, and distribution in commerce of container board and corrugated boxes and sheets, and constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

COUNT II

PARAGRAPH 1. The allegations of this Paragraph are the same as the allegations made in Paragraphs 1, 2, 3, 4, 5, 6 and 7 of Count I.

PAR. 2. Respondent Union has capital, surplus, and undivided profits aggregating more than \$1,000,000, and is not a bank, banking association, trust company, or common carrier subject to the Act to regulate commerce, approved February 4, 1887.

Respondent Hankins has capital, surplus, and undivided profits aggregating more than \$1,000,000, and is not a bank, banking association, trust company, or common carrier subject to the Act to regulate commerce, approved February 4, 1887.

PAR. 3. Respondent Union is engaged in the manufacture, shipment, and sale in interstate commerce of corrugated boxes and sheets.

Respondent Hankins is engaged in the manufacture, shipment, and sale in interstate commerce of corrugated boxes and sheets.

Respondents Union and Hankins, in the regular course of their respective businesses, in the offering for sale, sale, and distribution of corrugated boxes and sheets, cause the same to be shipped and

transported from the various points of production in certain respective States through and into other States of the United States. They are in competition between themselves in the offering for sale, sale, and distribution of such products in commerce, as "commerce" is defined in the Clayton Act.

For many years, respondents Union and Hankins, by virtue of their business and location of operation, have been, and now are, competitors, so that the elimination of competition by agreement between them would constitute a violation of a provision of the antitrust laws.

PAR. 4. Since the latter part of 1954, one Alexander Calder, Jr., has been a director, at the same time, of respondents Union and Hankins, and is now a director of respondents Union and Hankins.

Since the latter part of 1954, respondent Union has permitted Alexander Calder, Jr., to be elected and to serve as one of its directors at the same time that Alexander Calder, Jr., was a director of respondent Hankins; and at the present time respondent Union continues to permit Alexander Calder, Jr., to serve as one of its directors at the same time that Alexander Calder, Jr., is a director of respondent Hankins.

Since the latter part of 1954, respondent Hankins has permitted Alexander Calder, Jr., to be elected and to serve as one of its directors at the same time that Alexander Calder, Jr., was a director of respondent Union; and at the present time, respondent Hankins continues to permit Alexander Calder, Jr., to serve as one of its directors at the same time that Alexander Calder, Jr., is a director of respondent Union.

PAR. 5. The acts and practices, as hereinabove alleged, are continuing and are in violation of Section 8 of the Clayton Act.

COUNT III

PARAGRAPH 1. The allegations of this Paragraph are the same as the allegations in Paragraphs 1, 2, 3, 4, 5, 6 and 7 of Count I.

PAR. 2. Respondents Union and Hankins, in the regular course of their respective businesses, in the offering for sale, sale, and distribution of corrugated boxes and sheets, cause the same to be shipped and transported from the various points of production in certain respective States through and into other States of the United States, and both respondents are engaged in commerce, as "commerce" is defined in the Clayton Act.

In the course and conduct of its business, respondent Union has been, and is now, engaged in commerce, as "commerce" is defined in the Clayton Act, in offering for sale, selling, and distributing container board and causing the same to be shipped and transported from

Complaint

52 F. T. C.

its point of production in the State of Georgia through and into other States of the United States.

Prior to June 1954, respondents Union and Hankins were in direct competition in the offering for sale, sale, and distribution of corrugated boxes and sheets in that area of the United States east of the Rocky Mountains and principally in that section lying adjacent to and east of the Mississippi River.

Prior to June 1954, respondent Union was in substantial competition with other manufacturers of container board in the offering for sale and sale of container board to respondent Hankins.

PAR. 3. In June 1954, and subsequent thereto in the same year, respondents Union and Hankins entered into the agreements outlined in Paragraph Six of Count I of this complaint and made a part of Count III in Paragraph One hereof. The effect of the acquisition of Hankins' stock by Union, together with the other collateral agreements and understandings may be substantially to lessen competition or tend to create a monopoly, in violation of Section 7 of the Clayton Act, in the following ways, among others:

1. Actual and potential competition between respondents Union and Hankins in the offering for sale and sale or distribution of corrugated boxes and sheets throughout that area of the United States adjacent to and east of the Mississippi River has been eliminated.
2. Actual and potential competition generally in the offering for sale, sale, and distribution of corrugated boxes and sheets may be substantially lessened.
3. Respondent Union's competitive advantage over other converters, including those engaged in the manufacture, sale, and distribution of corrugated boxes and sheets, may be enhanced to the detriment of actual and potential competition.
4. Respondent Hankins has been permanently eliminated as a substantial competitive factor in the offering for sale, sale, and distribution of corrugated boxes and sheets.
5. Actual and potential competition between respondent Union and other manufacturers of container board in the solicitation and sale of container board to respondent Hankins has been eliminated.
6. Actual and potential competition generally in the manufacture and distribution of container board may be substantially lessened.
7. Respondent Union's competitive advantage over other manufacturers of container board, including those manufacturers engaged in the offering for sale and sale of container board in that part of the United States adjacent to and east of the Mississippi River may be enhanced to the detriment of actual and potential competition.

8. Respondent Hankins has been substantially eliminated as a buyer or purchaser of container board in the container board industry.

PAR. 4. The foregoing acquisition, acts, and practices of respondent Union, as hereinbefore alleged and set forth, constitute a violation of Section 7 of the Clayton Act (15 U.S.C. Sec. 18), as amended and approved December 29, 1950.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on June 30, 1955, charging them with use of unfair acts and practices and unfair methods of competition in commerce, in violation of Section 5 of the Federal Trade Commission Act and with engagement in acts and practices in violation of Sections 7 and 8 of the Clayton Act. After being duly served with said complaint, the respondents appeared by counsel and subsequently entered into an agreement containing consent order to cease and desist dated March 8, 1956. Said agreement, which has been signed by counsel supporting the complaint, counsel for respondents, and all respondents, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Commission's Rules of Practice and Procedure.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and have agreed that the record may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps 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 with said agreement. It has been agreed that the order to cease and desist provided for in said agreement may be entered without further notice, that when so entered it shall have the same force and effect as if entered after a full hearing, and that the complaint herein may be used in construing the terms of said order. Said agreement purports to dispose of all of this proceeding as to all parties and has been entered into by respondents for settlement purposes only and without admitting that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all

Order

52 F. T. C.

the allegations of the complaint and provides for an appropriate disposition of the proceeding as to all parties, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision pursuant to Section 3.21 and 3.25 of the Rules of Practice and Procedure, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Union is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 233 Broadway, in the City of New York, State of New York. Respondent Hankins is a corporation existing and doing business under and by virtue of the laws of the State of Ohio with its office and principal place of business located at 14801 Emergy Avenue, in the City of Cleveland, State of Ohio.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and the Clayton Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondent Union Bag & Paper Corporation (hereinafter referred to as respondent "Union"), and respondent Hankins Container Company (hereinafter referred to as respondent "Hankins"), either directly or through their respective officers, directors, agents, representatives and employees, together with the successors or assigns of same, directly or through any corporate or other device, in connection with the purchase, offering for purchase, sale, offering for sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and Clayton Act, as amended, of container board, liner board, corrugating medium, corrugated boxes, or corrugated sheets (hereinafter referred to collectively as "said products"), do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out, any planned common course of action, understanding, or agreement between said respondents or between either of said respondents and others not parties hereto, to do or perform any of the following acts:

1. Permitting, or attempting to permit, directly or indirectly, by any means or method, the acquisition by respondent Union, either directly or through any of its officers, directors, employees, agents, representatives, assigns or successors of any of the stock, assets or control of, or in, respondent Hankins other than 9% stock interest

1278

Order

in respondent Hankins, which may be acquired and held according to the proviso hereinafter set forth;

2. Causing, or attempting to cause, any stock, regardless of its type or designation, in respondent Hankins, to be voted or used, directly or indirectly, by any means or method, for the purpose or with the effect of having or causing any officer, director, employee, agent or representative of respondent Union, or of any subsidiary of respondent Union, to be elected, appointed, selected or designated as an officer or director of respondent Hankins, or of any subsidiary of respondent Hankins;

3. Permitting, or attempting to permit, directly or indirectly, by any means or method, the respondent Union, directly or through any officer, director, employee, agent or representative of said respondent, or of any subsidiary of said respondent, to control, conduct, or attempt to control or conduct, by any means or method, directly or indirectly, the management or operation of respondent Hankins or of any subsidiary of respondent Hankins;

4. Restricting, preventing, limiting or attempting to restrict, prevent or limit the right, power, or privilege of respondent Hankins to sell or transfer any of its stock;

5. Restricting, limiting, or attempting to restrict or limit the right, power or privilege of respondent Union to purchase or acquire any stock of any box manufacturer;

6. Restricting, preventing, limiting, or attempting to restrict, prevent or limit, the quantity or amount of said products, described in the preamble hereto, which respondent Hankins can or may purchase from sellers thereof other than respondent Union;

7. Fixing, or attempting to fix, the maximum amount or quantity which respondent Hankins shall, or may consume, use, produce, sell or distribute of any of said products produced or manufactured by respondent Hankins;

8. Restricting, limiting, preventing, or attempting to restrict, limit or prevent, actual or potential competition between respondent Union and other producers or manufacturers of said products, in offering for sale, selling or distributing any of same to respondent Hankins;

It is further ordered, That respondent Union cease and desist from permitting or allowing anyone to be elected or to serve as a director of respondent Union or of any of its subsidiaries who is a director of respondent Hankins.

It is further ordered, That respondent Hankins cease and desist from permitting or allowing anyone to be elected, or to serve as a director of respondent Hankins or any of its subsidiaries who is a director of respondent Union.

Order

52 F. T. C.

It is further ordered, That respondent Union, within 90 days from the date of service upon it of a copy of this order, shall divest itself absolutely, in good faith, retaining no interest whatsoever therein, of all stock which it now holds or owns, directly or indirectly, in, or of, respondent Hankins.

It is understood, however, That nothing in this order shall be construed or interpreted as preventing respondent Union from acquiring, owning, or holding stock in respondent Hankins when the total amount of such stock, by whatever means acquired, owned or held, does not exceed 9% of the total outstanding capital stock in respondent Hankins (this is the same percentage of stock interest in respondent Hankins which was represented by the 12,500 shares of respondent Hankins acquired by respondent Union on June 24, 1954, plus the 6,250 shares acquired on June 24, 1955, plus the 6,250 shares which were to be acquired on June 22, 1956, all under the provisions of the agreements or contracts entered into by and between respondent Hankins and respondent Union on June 7, 1954), *provided* said stock is held solely for investment and *provided* further that respondent Union, if it votes such stock, shall not vote it for the purpose, or with the effect, of evading or violating any of the provisions in this order, or of substantially lessening competition or tending to create a monopoly in any line of commerce in which said respondents are engaged, and *provided* still further that should the Commission bring any action based upon an alleged violation of these provisos, the burden of refuting same shall be assumed by respondent Union.

It is further understood, That nothing in injunctive provision 4 of this order shall be construed as preventing respondent Hankins, acting in good faith and without intent to violate any of the provisions of this order, from contracting to sell, selling or transferring stock to purchasers not owned, controlled or acting under the direction of respondent Union or any of its subsidiaries.

It is further understood, That nothing in injunctive provisions 6, 7 and 8 of this order shall be construed as preventing respondent Union from selling to respondent Hankins or respondent Hankins from buying, or committing itself to buy, from respondent Union or from others not parties hereto, any of the products described in the preamble hereof, pursuant to contract or contracts:

Provided, however, That the Commission hereby is not approving or disapproving the legality of any such contract or contracts, between the said respondents for the purchase or sale of such products, with regard to grounds of attack not arising from these specific provisions of the order.

1278

Decision

It is further understood, That nothing in this order shall be construed or interpreted as preventing either respondent Hankins or respondent Union from petitioning the Commission to reopen these proceedings and modify this order to cease and desist because of a change in conditions of fact, law or the public interest, so as to permit, respondent Union to purchase, or respondent Hankins to sell to respondent Union, additional stock in respondent Hankins; and if such petition alleges, as a change in conditions of fact, that there has been a full and complete compliance with all the injunctive provisions of this order, and that the acquisition of such additional stock does not substantially lessen competition or tend to create a monopoly in any line of commerce in which said respondents are engaged, the Commission shall reopen the proceedings and permit the introduction of evidence; and if at such reopening, the petitioning respondent can sustain these allegations, the Commission shall grant such petition to modify this order.

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 10th day of May, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein 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.

Complaint

52 F. T. C.

IN THE MATTER OF
WESTERN STAR MILL CO. ET AL.

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

Docket 6500. Complaint, Feb. 3, 1956—Decision, May 10, 1956

Consent order requiring a flour mill at Salina, Kans., and a wholesale grocery dealer of Tupelo, Miss., to cease furnishing to retail dealers and other purchasers of their flour, devices and merchandising plans involving the operation of a lottery scheme, in that purchasers of a bag of flour who selected either of two lucky numbers on a push card received an additional 25-pound bag of flour.

Before *Mr. Earl J. Kolb*, hearing examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Jason K. Yordy, of Salina, Kans., for Western Star Mill Co.,
John J. Vanier and Robert H. Adams.

Mitchell & McNutt, of Tupelo, Miss., for L. P. McCarty.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Western Star Mill Co., a corporation, and John J. Vanier and Robert H. Adams, individually and as officers of said corporation, and L. P. McCarty, an individual, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Western Star Mill Co. is a corporation, organized and doing business under and by virtue of the laws of the State of Kansas, with its office and principal place of business located at 215 East Iron Street, in the City of Salina, Kansas; respondent John J. Vanier is president of said corporate respondent, and respondent Robert H. Adams is sales manager of said corporate respondent, and these two respondents direct the sales and advertising practices of the corporate respondent.

Respondent Western Star Mill Co. is engaged in the milling, sale and distribution of flour to dealers and jobbers, and causes said flour, when sold, to be shipped from its place of business in the State of