

of December, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondent D. L. Piazza Co., 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.

IN THE MATTER OF
EGAN, FICKETT & CO., INC.

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

Docket 7520. Complaint, June 11, 1959—Decision, Dec. 8, 1959

Consent order requiring a New York City wholesale distributor of fresh fruits and vegetables to cease receiving and accepting commissions, etc., or lower net prices reflecting brokerage, on substantial purchases of food products from various suppliers, including Minute Maid Corporation, for its own account for resale.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has been and is now, violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Egan, Fickett & Co., Inc., hereinafter sometimes referred to as Egan or as respondent, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 266 West Street, New York, New York.

PAR. 2. Respondent is now and for the past several years has been engaged primarily in business as a wholesale distributor of fresh fruits and vegetables and other grocery products, all of which are hereinafter sometimes referred to as food products. Respondent purchases these food products from a large number of canners and packers, hereinafter sometimes referred to as suppliers, located in many states other than the State of New York. In the fresh fruit field, respondent deals primarily in citrus fruits, such as oranges, grapefruit and tangerines. Two of respondent's suppliers of citrus fruits are Minute Maid Corporation and its wholly owned

subsidiary Minute Maid Groves Corporation, with offices, packing plants and warehouses located in the State of Florida and elsewhere.

PAR. 3. In the course and conduct of its business for the past several years, in the purchase, sale and distribution of food products, respondent has directly or indirectly caused such food products to be shipped or transported from the places of business of its respective suppliers to its own place of business, or to the places of business of respondent's customers, in various other States of the United States. There has been at all times mentioned herein a continuous course of trade in commerce in said food products across state lines between respondent and its many suppliers. Thus, for the past several years respondent has been and is now engaged in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce as aforesaid, respondent has made and is now making substantial purchases of food products for its own account for resale from various suppliers, including Minute Maid Corporation and Minute Maid Groves Corporation, on which purchases respondent has received and accepted, and is now receiving and accepting, directly or indirectly from said suppliers, including Minute Maid Corporation and Minute Maid Groves Corporation, something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, or has been given lower net prices which reflect the allowance of a commission or brokerage on said purchases.

PAR. 5. The foregoing acts and practices of respondent as hereinabove alleged and described, violate the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Section 13).

Mr. Cecil G. Miles for the Commission.

Mr. Edward I. Kaplan, of New York, N.Y., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on June 11, 1959, issued its complaint herein, charging the above-named respondent with having violated the provisions of subsection (c) of §2 of the Clayton Act, as amended (U.S.C., Title 15, §13), and the respondent was duly served with process.

On October 19, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and ap-

proval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondent, its counsel, and counsel supporting the complaint, under date of October 13, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Egan, Fickett & Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Delaware (erroneously shown in the complaint as being incorporated in the State of New York), with its office and principal place of business located at 266 West Street, New York, New York.
2. Respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.
3. This agreement disposes of all of this proceeding as to all parties.
4. Respondent waives:
 - a. Any further procedural steps before the hearing examiner and the Commission;
 - b. The making of findings of fact or conclusions of law; and
 - c. All of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.
5. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.
6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.
7. This agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.
8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set

aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes a part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of the respondent herein; that the complaint states a legal cause for complaint under the Clayton Act as amended (U.S.C., Title 15, §13) against the respondent both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That the respondent Egan, Fickett & Co., Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase of citrus fruit or other 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 citrus fruit or other food products for its own account, or where respondent is an agent, representative, or other intermediary acting for or on behalf of, or is subject to the direct or indirect control of any buyer.

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 8th day of December, 1959, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Egan, Fickett & Co., 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

