

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
REYNOLDS METALS COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7
OF THE CLAYTON ACT

Docket 7009. Complaint, Dec. 27, 1957—Decision, Jan. 21, 1960

Order requiring one of the nation's major producers of aluminum and aluminum products to divest itself absolutely within six months of all the stock, assets, and all other properties, rights, and privileges it acquired as a result of its acquisition of the capital stock of a former customer, producer of decorative aluminum foil for the florist trade, together with the \$500,000 new plant subsequently built for the latter, and as much of the assets and properties put into the business as necessary to restore the pre-acquisition competitive standing of the florist foil producer; and requiring further that none of the property concerned be sold to anyone connected with Reynolds or its affiliates.

Mr. J. T. Walker and Mr. J. H. Kelley for the Commission.
Ellis, Houghton & Ellis, of Washington, D.C., and Mr. Gustav B. Margraf, of Richmond, Va., for respondent.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

PRELIMINARY STATEMENT

Complaint herein, issued December 27, 1957, charged violation of Section 7 of the Clayton Act, as amended, (U.S.C. Title 15, Section 18) by reason of the acquisition, as of August 31, 1956, of all of the stock and assets of Arrow Brands, Inc., a company then engaged in converting aluminum foil and selling it throughout the United States to the florist trade, by the respondent and further charged that such acquisition may have the proscribed statutory effect of substantially lessening competition or tending to create a monopoly in the production and sale of decorative aluminum foil to the florist trade. Answer by the respondent admitted substantially all of the jurisdictional and basic allegations of the complaint, alleging, however, that the aluminum foil market generally was keenly competitive, aluminum foil had substitute products wholly competitive with it, and the aluminum foil market structure at all levels is saturated with competition, that any possible effect of the acquisition was *de minimis*. The answer further set forth that respondent had submitted to the Commission full information regarding the acquisition and thereafter the Commission had advised respondent, prior to the issuance of the complaint, that no further action was contemplated and the file was closed with the reservation, however, to take action in the future if other evidence or subsequent developments warranted taking of such action. Answer further alleged there had been no subsequent developments or evidence.

Thereafter, hearings were held June 2 through June 12, 1958, at which time all evidence in support of the complaint was adduced, whereupon respondent moved for dismissal for failure of such evidence to constitute a *prima facie* case, which motion was orally argued and denied on the record. Thereafter, respondent took an interlocutory appeal to the Commission, same being briefed and counter-briefed, and appeal being denied August 21, 1958. Respondent's case was presented and hearings held beginning October 21 and continuing through October 30, 1958, and thereafter proposed findings with reasons, conclusions of law, and proposed orders were submitted to the undersigned hearing examiner February 10, 1959. The record consists of 1,655 pages of transcript plus 196 Commission exhibits and 91 respondent exhibits. The undersigned hearing examiner has carefully considered the proposed findings and conclusions submitted by both parties, and all those not specifically hereinafter found are refused. Upon consideration of these and the entire record the undersigned hearing examiner makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Background

1. Respondent Reynolds Metals Company (hereinafter referred to as respondent or Reynolds) is a corporation organized and existing under the laws of the State of Delaware, with its office and principal place of business in the Reynolds Metals Building, Richmond 18, Virginia. It was incorporated July 18, 1928 as a successor to the United States Foil Company, a Delaware corporation, incorporated December 13, 1919, engaged in the processing and sale of foil, including aluminum foil.

2. From 1928 to 1939, respondent enhanced its rolling, converting and printing of tin, lead composition and aluminum foils by the aggressive development of broader acceptance and usage of aluminum foil for packaging in the tobacco, food, electrical and confectionery industries. During this period respondent began the production of aluminum sheet and extrusions, from pig and coil forms which it purchased from producers.

3. From 1940-1954, respondent, through its subsidiaries, acquired bauxite mines in the United States, Jamaica, Haiti, and British Guiana, shipping the mined ore to plants which it erected at Hurricane Creek, Arkansas, and Corpus Christi, Texas, where the bauxite is converted to alumina. The latter was then sold or transported to respondent's reduction plants at Jones Mills and Arkadelphia, Arkansas; Listerhill, Alabama; Troutdale, Oregon; Longview, Washington; and Corpus Christi, Texas; where it is reduced to primary aluminum. The primary aluminum is then either sold or fabricated into finished or unfinished end products for sale. Since 1954 respondent has thus been a fully integrated operation in aluminum, from mine to final end uses.

4. The net sales of the respondent from 1951 through 1955 were as follows:

	Primary aluminum (in 000's of pounds and dollars)		Aluminum fabricated products	Other sales	Total net sales
	Pounds	Dollars			
1951.....	100,940	\$18,510	\$189,708	\$7,487	\$215,705
1952.....	133,474	25,186	203,521	6,032	234,739
1953.....	205,576	40,802	237,048	10,043	287,893
1954.....	387,248	76,615	222,155	8,009	306,779
1955.....	332,172	72,757	301,727	10,404	384,888

5. For the year 1955 the principal fabricated products of respondent, in the order of contribution to net sales were:

a. Sheet and plate

- b. Foil and foil products including foil and other packaging materials
- c. Extrusions
- d. Industrial parts
- e. Building products
- f. Wire, rod and bar
- g. Cable
- h. Powder and paste

Of respondent's net sales in 1955, approximately 78 percent was derived from the sale of aluminum semi-fabricated products, 19 percent from the sale of primary aluminum, and 3 percent from miscellaneous sales including the sale of alumina.

6. A significant part of the growth of the Reynolds Metals Company, or its predecessor, has been the result of mergers with competitors in fabricating lines.

7. By virtue of internal growth and the acquisition of Government plants and the businesses of various competitors, the respondent has increased its total assets from \$114,518,000 in 1948, to \$733,255,000 in 1957; its net sales from \$149,207,149 in 1948, to \$446,578,768 in 1957; and its earned surplus from \$30,983,000 in 1948, to \$166,416,000 in 1957.

8. The respondent, together with its wholly owned subsidiaries, controls sufficient proven bauxite reserves to provide for at least 75 years capacity operation; operates aluminum plants with a total projected capacity of 1,460,000 short tons per year, or over 28 percent of the total estimated domestic alumina capacity; operates primary aluminum plants with a capacity of 563,500 tons of primary aluminum, or 29 percent of the total domestic primary aluminum capacity and 28 percent of proposed domestic primary aluminum capacity. Its actual production of primary aluminum in 1957 was 466,089 tons, or 28 percent of the primary aluminum produced in the United States during the year. Reynolds operates facilities which have a fabricating capacity, excluding foil, of 853,500,000 pounds, and a foil capacity of 117,000,000 pounds, which establishes Reynolds as the leading domestic producer of aluminum foil.

9. Aluminum Company of America (Alcoa), together with its subsidiaries and affiliates, has been and is now the largest aluminum producer in the United States. It is wholly integrated from the mining of ore to the production of finished products, controlling large bauxite ore reserves, extensive transportation facilities, and a large part of its power needs. In addition to primary aluminum, its principal products include sheet, plate, foil (including decorative foil), extrusions, drawn tube, wire and rod (including bar), casts

Findings

and forgings, and powders and pastes, as well as other fabricated articles, including cooking utensils. Its primary aluminum production for the years 1951 through 1956 was as follows:

Year	Tons
1951	425,500
1952	467,500
1953	611,450
1954	665,000
1955	702,000
1956	756,000

For the year 1956, sales of aluminum fabricated products provided 75 percent of 1956 revenues, primary aluminum (204,149 tons sold), 13 percent, other sales, 7 percent, shipping and other operating revenues, 5 percent.

10. Alcoa's net sales and operating revenues from 1953 through 1957, in thousands of dollars were as follows:

Year	Primary aluminum (pig and ingot)		Fabricated products	Other sales and miscellaneous revenues (1)	Operating revenues (2)	Total net sales and operating revenues (3)
	Tons	Amounts				
1953	124,186	\$52,198	\$578,906	\$38,598	\$37,836	\$707,538
1954	317,766	132,726	493,619	43,375	38,624	708,344
1955	238,448	112,694	647,327	39,571	45,536	845,028
1956	204,149	107,732	667,822	43,421	45,441	864,416
1957	246,885	132,975	639,385	46,722	50,296	869,378

(1) Includes bauxite, alumina in various forms, and other products.

(2) Includes revenues from shipping and other operations.

(3) The figures in this column include the following approximate percentages of total net sales to, and operating revenues from, the U.S. Government: 1953—5 percent; 1954—16 percent; 1955—6 percent; 1956—1 percent; 1957—7 percent.

11. Over-all revenues from shipments of aluminum during 1957 were approximately equal to those of 1956. Alcoa, which includes its subsidiaries and affiliates, has bauxite mines in Suriname (Dutch Guiana), South America, and bauxite mines in Arkansas, Oregon, and Washington, with concessions from the Dominican Republic. It is exploring for bauxite in Costa Rica and the Republic of Panama. Bauxite is refined into alumina at plants in Mobile, Alabama; East St. Louis, Illinois, and Bauxite, Arkansas. Primary aluminum is produced at smelting plants in Alcoa, Tennessee; Vancouver and Wenatchee, Washington; Massena, New York; Point Comfort and Rockdale, Texas, and a subsidiary owns another at Badin, North Carolina. Primary aluminum is fabricated, cast, or otherwise processed at 17 plants of the company located in 12 states and generally located near the various market areas for the products produced by the company. The company produces and markets "Alcoa Wrap" household foil and "Wear-Ever" cooking utensils. Some of the

facilities at the various plants, including smelting facilities, are under expansion.

12. Kaiser Aluminum & Chemical Corporation is and has been during all material times an integrated producer of aluminum from bauxite down through the foil converter level. It is a major producer of primary aluminum and fabricated aluminum products. In 1956 it produced 25 percent of the primary aluminum output in the United States. Its aluminum operations include the mining and processing of bauxite, the production of alumina from bauxite, the reduction of alumina to aluminum, and the fabrication of aluminum and aluminum alloys into a variety of products.

13. Together with its subsidiaries, Kaiser owns and operates bauxite mines in Jamaica, British West Indies, from which bauxite is shipped to Baton Rouge, Louisiana, where it is processed into alumina. The alumina is shipped to reduction plants at Chalmette, Louisiana; to Mead and Tacoma, Washington; and to Ravenswood, West Virginia, and from those plants the primary aluminum is shipped to the corporation's fabricating plants at Ravenswood, West Virginia; Trentwood, Washington; Permanente, California; Newark, Ohio; Bristol, Rhode Island; Halethorpe, Maryland; Dalton, Illinois; Erie, Pennsylvania; Los Angeles, California; Wanatah, Indiana; and Belpre, Ohio. In addition, there is a new alumina plant under construction in Gramercy, Louisiana, and an expansion of the bauxite mining and shipping facilities have recently been completed in Jamaica. Its net sales for the years 1953 through 1956 were as follows:

<i>Year</i>	<i>Net Sales</i>
1953 -----	\$182,652,000
1954 -----	226,641,000
1955 -----	268,133,000
1956 -----	343,627,000
1957 -----	391,627,000

14. These three companies, respondent, Alcoa and Kaiser are the only fully integrated producers of aluminum and all of these reached their present size and economic power in some part, at least, through absorption and merger of smaller concerns.

15. In addition to these there are three partially integrated producers of primary aluminum and aluminum foil in the United States as follows:

(a) Anaconda Company produces aluminum pig and through its ownership of Cochran Foil Company (acquisition consummated May 1958), produces aluminum foil. Its foil production includes both plain and mounted on paper, employed for wrapping purposes by tobacco, food, chewing gum and other consumer goods industries,

and for housing insulation and in electric condensers and air conditioning equipment. It also makes colored and household foil. The foil plants are in Louisville, Kentucky, and Fair Lawn, New Jersey. Its annual foil production capacity is approximately 21,000,000 pounds. Net sales for the years 1954, 1955, and 1956 were, respectively, \$19,361,081; \$24,714,066 and \$22,201,053.

(b) Revere Copper & Brass Company, through its ownership of Standard Rolling Mills, Inc., and through its ownership along with Olin-Mathieson Chemical Corporation, of Ormet Corporation, is a producer of aluminum foil. Ormet Corporation produces aluminum pig. Ormet Corporation is scheduled to complete, in 1958, an alumina plant in Burnside, Louisiana, on the Mississippi, with an annual production capacity of 345,000 tons, and an aluminum reduction plant at Omal, Ohio, on the Ohio River, with an annual production capacity of 180,000 tons of primary aluminum. Power facilities will be provided through a subsidiary. Revere, through Standard Rolling Mills, has been and is a foil roller for all kinds of uses and colors, embosses, prints, and laminates foil, with a rated capacity of between 12-15,000,000 pounds per year. Its aluminum foil, plain and colored, in gauges of .00017 and heavier, is advertised for food wrap, candy wrap, displays, and for other uses.

(c) Aluminum Foils, Inc., having a foil rolling plant in Jackson, Tennessee, is a subsidiary of Aluminum Industrie A. G. (Switzerland), commonly referred to as the Swiss Aluminum Company. Aluminum Foils, Inc. is a large producer, having a foil rolling capacity of approximately 24 million pounds a year. The Swiss Aluminum Company is an integrated producer through aluminum foil production, and through its subsidiaries mines bauxite, produces alumina, reduces alumina to aluminum, and fabricates aluminum into various end products, and through Aluminum Foils, Inc., produces aluminum foil. It has an aluminum reduction plant at Lend, Salzburg, Austria.

16. The production of primary aluminum in the United States for 1955 was approximately 3,131,000,000 pounds, of which Reynolds' percentage was approximately 27½. The fabricating capacity of United States companies, excluding foil, was as follows:

<i>Reynolds</i> (as of 3-12-57)	
Sheet and Plate -----	620,000,000
Extrusions -----	105,500,000
Wire, Rod and Bar -----	60,000,000
Cable -----	50,000,000
Powder and Paste -----	18,000,000
	853,500,000
<i>Kaiser</i> (as of 6-26-57) -----	889,000,000
<i>Alcoa</i> (as of 9-30-55) -----	1,386,658,000

Low gauge aluminum sheet is the raw material for foil. Aluminum foil is processed from aluminum sheets or coils at .026 gauge (26/1000 of an inch).

17. The following companies, among others, are engaged in the rolling of aluminum foil, purchasing their raw material requirements, i.e., low gauge aluminum sheet, from Alcoa, Kaiser, Ormet, respondent, and others, and selling throughout the United States their products, which include aluminum foil suitable for use by florists, and through channels of commerce acquired by and used by florists and by other trades:

(a) Johnston Foil Manufacturing Company, St. Louis, Missouri, having an annual capacity of approximately 12,000,000 pounds. It processes colored and embossed foil which is suitable for use and used through channels of commerce by the florist trade. It processes for sale and advertises for sale aluminum foil "for every purpose in any desired gauge in 24 beautiful colors, plain or embossed." It is the oldest foil roller in the United States having started in business in 1889. It has recently been acquired by Standard Packaging Corporation.

(b) Republic Foil & Metal Mills, Inc., Danbury, Connecticut, having an annual capacity of six (6) million pounds.

(c) Stranahan Foil Co., Inc., South Hackensack, New Jersey, having an annual capacity of approximately six (6) million pounds.

(d) R. J. Reynolds Tobacco Company through its subsidiary, Archer Aluminum Company, Winston-Salem, North Carolina, having an annual capacity of approximately twenty-four (24) million pounds.

(e) Aluminum Foils, Inc., a subsidiary of Swiss Aluminum Company, Jackson, Tennessee, having an annual capacity of approximately twenty-four (24) million pounds.

18. The consumption of domestic converted aluminum foil was 192 million pounds in 1956 and 216 million pounds in 1957. 0.250 of an inch in thickness and greater is considered as plate. Flat products under 0.250 of an inch to 0.06 of an inch are considered sheet. Flat products under 0.006 of an inch are considered foil.

19. Aluminum foil is a flat-rolled sheet thinner than .006 inch in gauge, 99.45 percent pure aluminum, dead soft 0 temper, oil free and dry. It is most commonly used in continuous roll form for most converting and packaging operations but can also be furnished in sheets. Soft foil can be molded, crimped and formed easily and may with relative ease be colored, lacquered, embossed, printed, and laminated.

20. There are thousands of uses for aluminum foil. Fully three-

quarters of it is used in some form of packaging or wrapping. Some principal end uses are: semi-rigid containers for bakery products, specialty foods and frozen cooked foods. Unsupported foils are also made into milk closures, florist wraps, hermetically sealed packets and metal-parts wraps, as well as tags, name plates and sealing tapes. Other uses include wraps for yeast, hard candy, chocolate and cheese and overwraps for frozen food trays, liquor and wine bottle wraps, window display purposes, and household wrap.

21. For other applications, foil in combination with packaging materials, such as paper, plastic or cellulose film, and heat-seal coatings is used as direct wraps for chewing gum, candy bars, chocolate, tobacco, butter, cheese, photographic film and others; as carton overwraps for dried fruit, frozen foods of all descriptions, prunes, dates, figs, cookies, etc.; as case liners for lettuce, citrus fruits, celery and cauliflower; as bags or sealed pouches for breakfast cereals, leavening agents, potato chips, nuts, coffee, cocoa, tea, dry soups, drugs and cosmetics.

22. Foil is combined with paperboard for brown-and-serve trays, cake boxes, fibre drums, box liners, tube and canister liners and ice cream containers. Materials packed in such containers include oils, greases, refrigerated biscuits, self-rising flour and cake mixes, chemicals and metal parts. Foil body, neck and throat labels are employed extensively on glass bottles for packaging beer, wine, spirits, olives, condiments, etc. Specialty decorative uses of foil include tags, seals, name plates, gift wraps, labels, shredded foil, gift boxes and embossed rigid containers. The field of military packaging is another area in which aluminum foil plays a major role.

23. Consumption of 216 million pounds of aluminum foil was reported for 1957 by converters of aluminum foil according to "Facts for Industry, Aluminum Foil Converted," issued by Bureau of Census, United States Department of Commerce, 1957, representing a 10 percent increase over 1956. The most significant end uses for aluminum foil were stated in such report as follows: locker plant, freezer, restaurant and household packaging foil, 61 million pounds; metal containers for foods and bakery goods, 28 million pounds; tobacco, 18 million pounds; and insulation foil, 10 million pounds. Decorative foil according to that report accounted for 8,269,000 pounds of foil converted in 1957, and 9,761,000 pounds for 1956.

24. The respondent is the leading producer of aluminum foil in the United States. Its products are sold through 67 sales offices throughout the United States, and it also sells through various distributors, in addition maintaining an export division offering its products for sale in foreign countries.

The Acquisition

25. Arrow Brands, Inc., a California corporation, was incorporated in 1945 by one Harry Roth who since that time and until August 31, 1956, has been, for all practical purposes, its sole owner and its active and aggressive manager. Prior to his starting his own business Roth had been a traveling salesman for a New York City florist supply house and conceived a vast potential for foil as a decorative wrapping for flower pots and cut flowers.

26. Starting with relatively little capital he made an arrangement with a San Francisco concern, the John T. Raisin Corporation, to spool, color and emboss (converting) plain aluminum foil to designs of his own origination. The latter were highly successful. After disagreement with Raisin, ending in litigation, Roth for a time purchased his foil, colored and embossed, from respondent in jumbo rolls, spooling and rewinding it for the wholesale florist supply trade. Still later he had his converting done, again to his own individual designs, by Western Foil Converters in Berkeley, California. His success in newness and design enabled him in 1953 to rent a plant and through a newly formed subsidiary to acquire the necessary machinery and thereafter do his own converting. Success against competition, due to vigorous salesmanship, but mainly to originality of coloring and design and being one step ahead of that competition, built his business with wholesale florist supply houses up to the point of assets of nearly a half of a million dollars and sales of nearly \$600,000 in 1956, when his company Arrow Brands, Inc. was a leader in the field of decorative florist foil, not only by his own admission but by the rather grudging admission of two of his competitors, and where he was purchasing 90 percent of his unmounted aluminum foil from respondent (236,000 pounds—\$105,000 first eight months of 1956), although he had only the one plant with four part-time salesmen, nine hourly employees plus extra hourly employees during rush seasons, and seven administrative employees.

27. As a heavy purchaser from it, respondent of course knew much about Arrow Brands, Inc. Roth had mentioned to respondent's Los Angeles office that he was willing to sell. Shortly thereafter, in August 1956, respondent's sales manager of the foil division called Roth on long distance and introduced him over the phone to respondent's vice president, who within 48 hours was in Long Beach inspecting Arrow's plant with Roth, discussing price, terms, etc., and within 36 hours had, on behalf of respondent, purchased Arrow Brands, Inc., for close to a half a million dollars.

28. Respondent's interoffice files clearly show its motives in this

forward integration. "We believe that a company with elasticity and speed of action demonstrated by 'Arrow' holds the greatest promise for the development of these specialty fields." "The quick translation of ideas into finished product form and its distribution to specialty businesses, however, is difficult to develop in a large corporate operation. The time factor between the creation of an idea and its successful development through the various departments had proved a substantial stumbling block."

29. The above are the basic and largely uncontested facts of the acquisition complained of. Is it likely, as charged, to tend toward monopoly or substantially lessen competition in any line of commerce in any section of the United States?

Line of Commerce

30. The line of commerce, or relevant market, must first be determined—the burden being on counsel in support of the complaint.¹ Here, as usual in a Section 7 case, the battle is intense and the claims pole-distant. Counsel supporting the complaint contend for that vertical segment of the entire foil market which is distributed to the florist trade. Counsel for respondent give the subject cavalier treatment—"any discussion of the line of commerce is largely academic"—"no point in discussing line of commerce or relevant market—in the state of this record, it is purely academic." But by implication, at least, respondent contends for the entire foil market, regardless of end use or intermediate processing, at the narrowest orbit, or for the entire aluminum industry at its widest. Discussion of the latter in all the varied uses, alloys and mixtures of aluminum per se, for peculiar uses and characteristics vis-a-vis florist foil is obviously useless.

31. The Supreme Court² and the Commission³ have laid down as a test for determination of the relevant market or line of commerce whether the products opposingly claimed to be in or out, have sufficient peculiar characteristics and uses to constitute them products sufficiently distinct from [all others] to make them a line of commerce within the meaning of the Clayton Act.

32. One argument of respondent first needs to be disposed of—that since the complaint charges the proscribed effect on the production and sale of decorative aluminum foil to the florist trade, and since the florist trade by common knowledge and the applicable reported decisions is only the retail florist, and since Arrow Brands

¹ *U.S. v. E. I. du Pont de Nemours & Co.* 353 U.S. 586.

² *U.S. v. E. I. du Pont de Nemours & Co.*, 353 U.S. 586.

³ *F.T.C. v. Brillo Mfg. Co.*, D. 6557.

did not and does not sell the retail florist but only to the wholesale florist supply houses—therefore the complaint fails. In the first place, “the applicable reported decisions” are state tax cases in North Carolina, Tennessee, and Arkansas, having no element of interstate commerce or resemblance to the factual picture here. In the second place, respondent’s counsel are here doing exactly what they criticized this hearing examiner for in denying their motion to dismiss it—“fragmentizing and atomizing” a line of commerce, albeit horizontally rather than vertically.⁴ Finally, Duco and Dulux were sold in substantial quantities for other purposes and to other uses besides automobile finishes, as were automobile fabrics.⁵ Certainly the wholesaler is a necessary and integral part in the line of distribution (commerce) in many industries, even though his customer, the retailer, is the final seller. For the purposes of this case “florist trade” means decorative aluminum foil styled, processed (converted), and sold for use by florists in wrapping pots of plants and cut flowers.

33. In 1957, some 216,000,000 pounds of aluminum foil was consumed for a variety of end uses, including some 61,000,000 pounds for locker plants, freezers, restaurant and household packaging foil; 28,000,000 pounds for metal containers for food and bakery goods; 18,000,000 pounds for the tobacco industry; and some 10,000,000 pounds for insulation foil. In 1957, some 8,269,000 pounds of aluminum foil was used for all decorative purposes, including fancy paper, gift wrap and florist foil.

34. Historically, domestic decorative aluminum florist foil has been produced and sold by approximately eight small converters specializing in producing and selling an aluminum foil product to the florist market, which now consists of some 600 to 700 wholesale florists or jobbers, serving approximately 25,000 retail florists. Total sales of decorative aluminum florist foil to this market amount to approximately a million and a half to two million dollars annually.

35. Florist foil as a decorative wrap for potted plants was first introduced into the markets of the United States by the M. H. Levine Corporation, of New York, New York, around 1934, when Morris H. Levine, on a trip to Italy, first picked up the idea of using aluminum foil for this purpose.

36. Shortly thereafter, the Metal Goods Corporation, of St. Louis, undertook the sale of florist foil in the Midwest. Around 1940, H. D. Catty Corporation, of Huntley, Illinois, and Highland Supply Corp., of Highland, Illinois, entered the market with a complete line of decorative aluminum foil for the florist trade.

⁴ Appeal Brief, page 15.

⁵ U.S. v. E. I. du Pont de Nemours & Co., 253 U.S. 586.

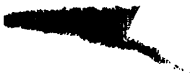
37. After the Second World War, Arrow Brands, Inc., of Los Angeles, California, H. Jacobson & Company, of Worcester, Massachusetts, John T. Raisin Corporation, of San Francisco, California, Western Foil Converters, of Berkeley, California, and Lion Ribbon Company, of New York, New York, all undertook, at various times, to produce and sell decorative aluminum florist foil to the florist trade.

In 1953, A. B. Howard & Co. and Winter Wolff, and in 1956, the Lion Ribbon Company, as agents for foreign suppliers, started to import plain, colored and embossed foil for sale to the florists.

38. This group of small converters and importing agents has uniformly offered to the florist trade an unmounted decorative aluminum foil, wound on an individual core, in 50-foot lengths, 20 inches wide, wrapped in cellophane, and boxed in an attractive package. Aluminum foil, as marketed by the aluminum producers and foil rollers, is sold in jumbo mill rolls, neither packaged nor boxed, nor otherwise physically prepared to satisfy the specialized requirements of the florist trade. Although the aluminum producers, the foil rollers, and the hundreds of foil converters are capable of converting their plants to produce a product to meet the demands of the florist trade, in actual practice there has been no such conversion. In fact, the major aluminum companies, Reynolds Metals, Alcoa, and Kaiser, and the foil rollers, Johnson Foil Company, Republic Foil and Metals, Stranahan, R. J. Reynolds, and all of the independent converters of aluminum foil, with the exception of M. H. Levine, Arrow Brands, Metal Goods Corporation, H. D. Catty, Highland Supply, John T. Raisin Corporation, Western Foil Converters, and Lion Ribbon Company, do not produce or sell an aluminum foil product suitable for use as a decorative material by the florist retailers.

Physical Characteristics

39. Coming now to the similar or identical and the different physical characteristics of aluminum foil generally from decorative aluminum foil for florists specifically, the source, low gauge aluminum sheet is the same. Both are rolled out on the same machinery. The gauge or thickness is slightly different being .00065, whereas household foil, which accounts for the great majority of foil usage is .0007 or heavier. Heavier foil can be used in the florist trade but the record shows that efforts to sell it by Arrow and others have failed. The florists won't buy it. Obviously the character of a product is always determined by the demand, not the supply. Much is made of the fact that all foil is made with a 10 percent tolerance in gauge and that, therefore, at one extreme the two gauges overlap. But this is the exception, not the rule. Respondent's officials testified that



Findings

56 F.T.C.

very little .00065 foil went to household wrap. There are other uses for .00065 foil, but there is no reliable evidence of their substantiality or effective competition. There is no chemical, metallurgical or alloy difference. There is, of course, marked differences between foil per se and where it is laminated with paper, cardboard, or other materials. The chief difference is in the coloring and embossing. True, these operations can be done simultaneously on the same machinery, and it is not a relatively expensive operation, nor time-consuming, nor any lack of facilities for doing it. But this is the purely mechanical view. Arrow Brands, Inc. built its business from scratch to nearly \$600,000 in sales, its assets from a few thousands of dollars to nearly a half a million in eleven years solely on the creativeness, the newness, the originality of its coloring and embossing. As its president testified, "Without this there isn't much left," and that this is an element not involved in selling to the packaging field. Further he testified that this factor, among others, distinguished his products from those of his competitors in the florist foil field. Arrow's leadership in the decorative florist foil field rests firmly on this physical characteristic, which makes it not only different from aluminum foil generally, but makes it peculiar and distinctive.

Uses

40. Coming to end uses, decorative florist foil has only two uses—one, as described, in the florist trade, the second, to a much more minor degree, for gift wrapping or makeshift decoration. Aluminum foil, generally, has dozens of uses, most of them, by far, in the packaging field. Respondent is the leading producer of household wrap. But obviously, subduing the pervasion of Limburger cheese in a refrigerator or preserving Junior's unconsumed spinach for yet another try is a far cry from fitting a potted poinsettia in with a fixed color scheme or to the individual and subjective taste of a housewife. Preservation and protection as against decoration. Utility versus aesthetic appeal. Product sale versus accessory sale. Prior to acquisition respondent did not sell to the florist trade as defined.

41. The record shows that lace and colored cellophane, chipmats, grass mats, painted pots, colored ceramic pots, burlap, crepe paper, styrofoam, polystyrene and plastic pots can be used in place of florist foil, but the record also shows such substitutes to be actually used to a negligible degree—5 percent or less. There is no effective competition between these substitutes and decorative florist foil. Furthermore, the prices of the latter are substantially lower than the former.

Marketing Characteristics

42. In addition to differences or distinctions in physical characteristics and uses, the Commission in its *Brillo* opinion (*supra*) observed that the manner of marketing and price behavior and "possibly other things bearing on the question of whether or not they may be undistinguished competitively from other wares" could be taken into account.

43. Sales of decorative aluminum florist foil by Arrow Brands, Inc., the other independent converters, and the importers of florist foil are made almost entirely to florist wholesale houses and jobbers. Sales are generally solicited by direct mail advertising to both wholesale and retail florists, and by mailing sample books and price lists to prospective purchasers, followed up by personal contact of each prospect by salesmen qualified through experience to reach the florist market.

44. None of the hundreds of producers or processors of aluminum foil, other than the specialized converters or importers of florist foil, mail sample catalogs or price lists, or employ salesmen to reach the florist market. When the respondent expanded the sales force of its subsidiary, Arrow Brands, Inc., it employed independent commission agents experienced in selling ribbons and other supplies to the florist market. It did not employ an aluminum foil salesman. Nor did the respondent utilize any one of its 700 salesmen trained and experienced in the sale of aluminum foil generally. Reynolds thus recognized the specialized marketing characteristics of the florist foil market, as opposed to the marketing characteristics of the markets of aluminum foil generally.

45. The promotional advertising and sales efforts of the processors of florist foil are all directed to the delineation and identification of this market. Price lists, advertising material, and sample catalogs designate the product as "Florist Foil," or some similar term calculated to isolate florist foil from aluminum foil in general. "Florist Foil" is a universal, meaningful, and commonly accepted designation of the decorative aluminum foil product sold to the florist trade. Arrow Brands in all of its price lists, advertising stuffers and other documents, consistently refers to "florist foil" without exception. The same is true of both the testimony of six of Arrow's competitors and their price lists and correspondence. Respondent's publicity release announcing the acquisition, also definitely recognized this.

46. Since 1950, the respondent has maintained a general sales division in charge of sales of the various products of the respondent

company, including aluminum foil. Reynolds' marketing organization has been departmentalized to meet the individual and specific requirements of the varied markets within the aluminum industry. Special divisions have been established to concentrate on, and coordinate production with, sales in each market.

47. Although Reynolds Metals Company maintained a highly specialized sales organization to sell its products, the respondent, after its absorption of Arrow Brands, Inc., set up and operated Arrow Brands' sales program independent of the sales organization of the parent company. This intracorporate separation of marketing responsibility for decorative aluminum florist foil from the general sales division of the respondent underscores the existence of an inherently specialized market for decorative aluminum florist foil.

48. Decorative aluminum florist foil has been generally marketed by the converter through florist wholesalers and jobbers to the retail trade. Over 90 percent of the florist retailers or jobbers purchase their requirements in small lots of less than 2,500 rolls. The domestic converters of decorative aluminum florist foil have traditionally sold this product without minimum order requirements or quantity price differentials, whereas the major producers and foil rollers have generally attempted to sell only to the large users of aluminum foil and have established specific minimum order requirements and quantity price differentials. Respondent was not in the pattern area prior to acquisition—most of its sales were plain aluminum foil. The domestic converters of decorative aluminum florist foil have adjusted their terms and conditions of sale to provide an opportunity for the small wholesale florist to purchase aluminum florist foil on an equal basis with the larger wholesalers who can and do purchase decorative aluminum florist foil in lots of over 2,500 rolls. The smaller wholesalers, or those who are able to purchase only in small lots, represent over 90 percent of all the florist wholesalers or jobbers in the United States and, numerically, are a substantial factor in the marketing of decorative aluminum florist foil and other floral products to the florist trade.

Price Behavior

49. The price of decorative aluminum florist foil 1955-6-7-8 as charged by converters selling to the florist trade, fluctuated independently and substantially lower than the price of aluminum foil generally as charged by foil rollers, when computed to a common comparable unit.

Additional Factors

50. In addition to the above, respondent itself has recognized the styling and processing of plain aluminum foil into sizes, quantities, and design suitable for, and sold to, the florist trade as a separate market and a distinct line of commerce.

51. In a formal report August 9, 1956, of negotiations to buy Arrow Brands, Inc., respondent's vice president stated:

"This is a specialty business. It is highly competitive and its success is dependent upon the creation of attractively designed, colored, and embossed foil in various packaging effects and its sale (through a close knowledge of requirements) to the floral trade who use the product in the wrapping and packaging of cut and potted flowers, plants and floral designs of all kinds. The nature of the business requires that the manufacturer be closely attuned to the changing style in floral packaging, have the type of operation that can promptly create new styles, get them quickly in manufacture, and promote and sell these styles to the florist trade."

Further, in response to Commission pre-complaint inquiry, November 8, 1956, respondent stated "Arrow Brands is engaged almost entirely in the styling, manufacture and sale of decorative foil for the florist trade" and "By the use of color and design, aluminum foil is ideally suited for use with floral products and there is a substantial potential market for foil for such purpose," and "The organization thus acquired could continue to operate the business with a high degree of autonomy in order to meet the special needs of the particular trade." Since acquisition respondent has continued to so regard the market (see paragraphs 45 and 46, *supra*). It has retained Roth as president of its Arrow Brands, Inc. subsidiary at a far from stingy salary and for a substantial term of years for this market in spite of its already existent large and specialized sales, advertising, and promotional personnel.

52. The finding, therefore, is that the styling, processing, and sale of decorative aluminum foil to the florist trade as above defined is a line of commerce within the meaning of Section 7 of the Clayton Act.⁶

53. The relevant market or line of commerce must be substantial "in terms of the market affected." Respondent officially estimated a potential of \$2,000,000 market with 10 or 12 suppliers. One of the latter, long in the business, a competitor of Arrow Brands, Inc.,

⁶ This segmentizing is certainly no more narrow than is separating championship boxing matches from boxing matches generally. *U.S. v. International Boxing Club of New York*, 79 U.S. Sup. Ct. Rep. 245.

estimated both domestic and imported sales to the florist trade in 1957 at 1½ million pounds. According to the Census, foil converters, generally, reported 216 million pounds consumed in 1957, divided as follows: locker plant, freezer, restaurant and household packaging foil—61 million pounds; metal containers for foods and bakery goods—28 million pounds; tobacco—18 million pounds; insulation foil—10 million pounds plus.

54. Respondent contends, of course, that vis-a-vis, the aluminum industry, as a whole, or as respects the national economy, this is de minimis; and so it is. Neither will collapse if the florist trade disappears. It also contends that as regards the foil market per se, it is de minimis—8 million out of 216 million. This assumes as a predicate that Section 7 of the Clayton Act was directed only at the major industries and the corporate giants thereof. The 1950 amendment thereof makes the opposite clear.⁷

55. Certainly this segment of the entire market is not so regarded by those in it; including respondent itself. Its corporate documents in this record, both pre-acquisition and post-acquisition, make it abundantly clear that respondent not only regarded this as a separate market but as a substantial one having great potential. The supply of 600-700 wholesale florist supply houses and through them, of 25,000 retail florists, the dramatic history of Arrow Brands, Inc., the acquisition itself, all lead to the conclusion that the market as above defined is substantial.

Effect

56. This leads to the final element—is this a case where “the effect of such acquisition may be to substantially lessen competition or tend to a monopoly” in the line of commerce as above found? Actual effect need not be shown, only a reasonable probability of the occurrence of either of the two proscribed effects.

57. For nearly 20 years prior to the acquisition, the relevant market, as above found, has been developed, serviced and invigorated by less than a dozen small business concerns. Originally, or until Arrow Brands, Inc. entry, this was done by M. H. Levine Corporation, Highland Supply Corporation and H. D. Catty Corporation. Entry therein has been easy, with low capital outlay, standardized and plentiful machinery, no dearth of supplies. Postwar, five small domestic foil converters entered this market—H. Jacobson & Company, John T. Raisin Corporation, Western Foil Converters, Lion Ribbon Company, Arrow Brands, Inc., plus several domestic agents

⁷ U.S. v. Bethlehem Corporation, et al., Civil No. 115-228 S.D.N.Y. 11-20-58.

for foreign foil suppliers. The competition in new designs, colors and patterns, as well as price, has been intense among these relatively small commercial units.

58. The intensity of the price competition has resulted in a gradual, though fluctuating, decline in the price of florist foil. Entirely conversely to the price of aluminum foil generally, the price of which, with the exception of 1958, has had regular semi-annual and annual increases. And, of course, all of these florist foil converters were forced to purchase their basic foil from the major domestic aluminum foil producers and the foil rollers. The latter, although selling both colored and embossed foils, did not offer the wide range of colors and designs developed by these small foil converters, nor in sizes or quantities obtainable by the customers of the latter.

59. The uniformity and regularity as well as the chronology of prices and price increases imposed by the major foil producers and foil rollers contrasted with the large unused productive capacity, and with either stable or slackening demand, is strongly suggestive, although by no means conclusive, of administered prices in the foil industry as a whole.

60. Decorative aluminum florist foil was distributed to the florist trade through some six to seven hundred florist wholesalers, of which approximately 90 percent are small businessmen, unable to purchase decorative aluminum florist foil in large lots. The sales policy of the seven or eight domestic producers of decorative aluminum florist foil has had the effect of increasing competition in the distribution of floral products generally by affording this large group of small florist wholesalers the equal opportunity to compete in the florist market with the larger wholesalers in the sale of decorative aluminum florist foil. This effect was accomplished by the adoption of a program of selling for immediate delivery, in any quantity, at the same price, to all purchasers alike.

61. In contrast to this, the importing agents of foreign produced decorative aluminum florist foil, sold only in minimum quantities of 2,500 rolls or more, three months' delivery after order, payable in full on arrival. Similarly, respondent and its foil producing and rolling competitors likewise gave quantity discounts, required minimum orders of 2,500 rolls. Only 10 percent of the florist wholesale supply houses can buy on such terms. The remaining 90 percent of the six or seven hundred florist wholesalers are small businessmen unable to meet these terms. The sales policy of the seven or eight domestic producers of florist foil named above in paragraph 57 has the effect of increasing competition in the distribution

of florist foil by affording this large group of small florist wholesalers the equal opportunity to compete for the retail florists' trade with the larger florist wholesalers, because they sold in any quantity on immediate delivery.

62. The pre-acquisition picture, in this line of commerce, therefore, was one of intense competition, price-wise, quality-wise, service-wise, and creative-wise, among a small group of more or less comparably equal competitive units. The acquisition has materially altered this picture. One of this group of small businesses now has behind it over 600 million in resources, with nearly 40 million set aside for general expansion, with a \$500,000 new plant having production facilities beyond those of any other, built with funds supplied by respondent. The financial statements of Arrow Brands, Inc. at the time of acquisition negate any possibility of such an undertaking. In addition, respondent has materially increased Arrow Brands, Inc.'s advertising budget providing at least two spot commercials on its nation-wide television programs. From their financial statements in the record, none of Arrow's competitors can afford any such promotional efforts. In brochures and advertisements sent to florists, respondent has represented to them that the acquisition means to them:

"Expanding printing and embossing departments in the new Arrow plant will permit production of popular styles and designs on a larger scale, with quicker delivery to you."

"Nationally known Reynolds' designers and stylists will bring added beauty to a line already recognized as the style leader in florist foil."

"On-the-spot stacks of Arrow originals the country over will permit quicker shipments from stock."

"Reynolds' nation-wide consumer advertising will be utilized to bring new sales and merchandising opportunities to florists who use Arrow foils."

63. In addition to this, and regardless of who caused or initiated the price cuts of August and October 1957, the latter price reduction by respondent was below cost and continued to be so until mid 1958. Arrow Brands, Inc. for the first time in its history showed continuing losses after the acquisition. The extent thereof is not too clearly reflected, but its financial statements at the time of acquisition indicate clearly that it could not have continued to sell at a loss, the length of time it did, in view of the losses which its post-acquisition financial statements show that it sustained.

64. From the financial and sales statements in the record, received in camera, of five of Arrow's competitors, it is plain that none of

these could so broaden their productive facilities, advertise, or sell at a loss over such a length of time and continue in business. And the low cost, ease of entry, plentiful supply of basic material and machinery while still there, are, in effect, unusable.

65. It is also plain that each of these competitors has steadily declined in sales of florist foil since the acquisition, whereas Arrow's sales have materially increased, albeit not at a profit.

66. The future of this post-acquisition picture was described by M. H. Levine who pioneered florist foil in the relevant market, as found, in 1934 and who has been in it ever since, as one where respondent can do things no small concern can do and it has taken prices down where there is nothing in it any more for the little man. The opinion testimony of three others—Jacobson, Highland and Western Foils was generally the same—"have to get out of foil fabrication," "profit eliminated" and "in time put us out of business," and "can't compete."

67. The record is confusing as to which florist foil actually started the price war of 1957. Arrow reduced its price below cost—65 cents per roll plain colored foil—across the board to all on November 1, 1957, and then made it retroactive to October 1, 1957, but Highland Supply had cut to 75 cents on August 20, 1957, effective September 1, 1957. But there is credible testimony in the record that this price cut of Highland's was brought about by Roth admitting to Highland on the telephone that Roth had sold one large customer at 65 cents although his price generally was 75 cents. In any event, Roth's price cut across the board to 70 cents undercut Highland's price and those of other florist foil converters to a point where sales declined and profits disappeared. Confidentially received sales figures show that Highland's sales of florist foil in 1957 were down 14.8 percent from 1955, Raisin's down 40.4 percent, Catty's down 32 percent, and Western Foils down 26.5 percent for the same comparable years, whereas Jacobson gained 6.5 percent and Arrow gained 18.9 percent. All of their officials who testified attributed this to Arrow's October 1, 1957, price cut. And Arrow's president knew it was below his cost. This is in contrast to substantial increases in sales from 1953 to 1956 by Highland, Catty, Jacobson, and Western Foils. Only Jacobson and Highland met Arrow's October 1957 price cut. Both have operated in the red since then. The others did not meet the price cut and have lost sales materially since then, two of them to the vanishing point. Six months after filing of the complaint herein Arrow, Highland, and Catty all went back up to 75 percent per roll. Jacobson has not. Nevertheless, the power has been demonstrated as has the damage which its exercise causes.

68. Respondent's response to this is that it was forced by foreign foil competition. The latter first appeared in this florist foil market in early 1954 at 52 cents a roll compared to \$1.00 a roll domestic. In the succeeding two years all the domestic florist foil sellers operated at a profit. Foreign foil was under a competitive disadvantage with them in that a minimum order of 2,500 rolls was required which only 10 percent of the market could afford, three months' delivery and spot cash. Notwithstanding this foreign foil competition price-wise, in 1956 Arrow raised its prices another 15 cents a roll to \$1.00 and remained there until one month after the acquisition by respondent when it was again cut to 85 cents a roll. Raising its prices cost Arrow no loss in sales—they and the profits therefrom increased in spite of this foreign foil competition. The hearing examiner does not accept this as the sole cause of the below-cost cut. Whether it was or was not, the power to sustain repeated losses and sell below cost has been demonstrated, a power not before possible to Arrow, in view of its financial resources as shown by its statements.

69. In any event, a heavily loaded donkey may still bear the burden, if that last additional sack is not added. It cannot be said that he was overloaded in the first place. The florist foil commerce had this foreign cross to bear since 1953, and moved on to increased sales and profits notwithstanding, but apparently from this record this acquisition and the subsequent price cutting was that last full measure which broke the donkey's back.

70. There are no accurate or reliable sales statistics of total florist foil market in the record, hence market shares as of acquisition time cannot be determined. But some idea can be obtained from various documents and other evidence in the record. Respondent named as its chief competitors in 1955 the following: Arrow Brands, Highland Supply Corporation, H. Jacobson & Company, M. H. Levine Corporation, John T. Raisin Corporation, and Bruder-Tach. In addition, the record shows two others: H. D. Catty Corporation and Western Foil Converters—seven in all. The sales of five of these are in the record for 1954-7. For the year 1956 these totaled \$913,174.76. Adding Arrow's 1956 sales of \$589,551.53 makes a total for six out of the eight of \$1,502,726.29. Of this, total Arrow in 1956, therefore, accounted for more than 33 $\frac{1}{3}$ percent. Accepting respondent's official estimate of a *potential* market of \$2,000,000, Arrow accounted for more than 25 percent of the total possible. On this basis of quantitative substantiality the acquisition cannot be said to be de minimis.

71. Respondent contends, and correctly, that the effect of this acquisition on the national economy, the aluminum industry in all its manifold aspects as a whole, on the entire foil market, is de minimis. It also contends, but incorrectly, that there has been no exclusion of competitors. Respondent now has the power to exclude its aluminum foil producing competitors from selling to Arrow Brands, Inc. True, Arrow's purchases from respondent in 1955 were only 135,000 pounds with 10 percent bought elsewhere, amounting to only about 150,000 pounds total as against a total of aluminum foil sold in 1955 of more than 175 million pounds, but the record abundantly shows that this relatively small amount was evidently quite important sales-wise not only to respondent but to its competitors, Alcoa, Kaiser and others, because of their constant solicitation and promotion, as do respondent's documents contemporaneous with the acquisition.

72. Respondent's entire de minimis argument, stressed so repeatedly, that there has been no shut-off or reduction in foil production or its conversion, that access to supplies and machinery for both have been unaffected, that retail florists have undiminished access to foil at cheap prices, that ease of entry is unaffected, and upon statistical comparisons seems to be founded basically on the assumption that the law ignores the capture of small markets from small businessmen. This hearing examiner does not believe the statute as amended was so intended. This case presents the picture of eight or ten small commercial units in imminent danger of being forced out of a formerly commercially livable enterprise by reason of the acquisition attacked. Much damage has already occurred, more with finality is reasonably to be expected. If the present and probable plight of these victims is to be ignored and written off as too insignificant it will have to be for others, at higher levels, to do it.

73. Respondent also seems to contend for Sherman Act criteria of control of supply, ability to raise or lower prices at will without regard to competition, power to exclude or eliminate competitors in the aluminum industry as a whole or in the entire foil market as necessary elements to be proved in this proceeding. Such are unnecessary—only a substantial *lessening* of competition in any affected market or segment of a larger market as found, or a *tendency* to monopoly—not the monopoly found in the old Alcoa case or others. It is the market, as above found, which has been affected, not foil production, or basic aluminum production, or their facilities, nor supplies, nor sellers—it is buyers, and their custom.

Conclusions

56 F.T.C.

74. The conclusory findings on probable effect, therefore, is that the acquisition of Arrow Brands, Inc. by respondent may substantially lessen competition or tend to monopoly in the relevant line of commerce, as above found, in violation of section 7 of the Clayton Act, as amended.

75. One further point must be disposed of. That is that this proceeding should be dismissed because on October 7, 1957, the Commission sent respondent the following letter:

Re File No. 5710630.
REYNOLDS METALS COMPANY,
Reynolds Metals Building,
Richmond 18, Va.

FEDERAL TRADE COMMISSION,
OFFICE OF THE SECRETARY,
WASHINGTON 25, October 7, 1957.

GENTLEMEN: Reference is made to past correspondence regarding the acquisition of Arrow Brands, Inc., by Reynolds Metals Company, which has been examined by the Commission with a view to determining whether possible violation of Section 7 of the Clayton Act may be involved.

You are advised that the Commission contemplates no further action in this matter at this time and it is accordingly being closed. You are advised further that the Commission reserves the right to take action in the future if other evidence or subsequent developments warrant such action.

Your cooperation in supplying the information as requested is greatly appreciated.

By direction of the Commission.

(Signed) ROBERT M. PARRISH,
Robert M. Parrish,
Secretary.

The contention is that this record shows no "other evidence or subsequent developments" to warrant the issuance of the complaint.

76. Discretion to issue or not to issue complaints, is vested by statute solely in the Commission, which discretion has not been delegated, assuming that it even can be, to this hearing examiner. No master or referee can question the discretion of the District Court which appointed him—neither can I. Having no authority, the contention must be ignored.

77. Respondent's other motions to dismiss this proceeding are denied.

CONCLUSIONS OF LAW

1. The burden of proof to establish potential competitive effect on "any line of commerce" affected by any acquisition attacked under Section 7 of the Clayton Act is on the proponent.⁸

2. Vertical as well as horizontal acquisitions are within the purview of the statute.⁸

3. Determination of the relevant market or line of commerce is a necessary predicate to a finding of a violation because the threatened

⁸ U.S. v. E. I. du Pont de Nemours & Co., et al., 353 U.S. 586.

monopoly must be one which will substantially lessen competition "within the area of effective competition."⁸

4. Substantiality can be determined only in terms of the market affected.⁸

5. One test is that the products involved have sufficient peculiar characteristics and uses to constitute them products sufficiently distinct from all other similar products to make them a "line of commerce" within the meaning of the Clayton Act.⁸

6. The market affected must be substantial.⁸

7. Other considerations in determining the relevant market or line of commerce, as well as physical characteristics and uses of the products involved, are price behavior, distributional differences, recognition or treatment by the industry or by respondent of a separate product market.⁹

8. Factors in determining the probability of the proscribed effects of the acquisition are a significant increase by reason thereof, of a producer's already substantial share of the market (quantitative substantiality), number of competitors, degree of concentration, ease of entry both before and after in each case, as well as the general competitive situation vis-a-vis the relevant market as found.¹⁰

9. The "reasonable interchangeability" test of the Cellophane case¹¹ is not controlling in a Section 7 case. That was a Sherman Act case, requiring a showing of actual monopoly—the power to raise or lower prices independently of competition and the power to exclude or eliminate competitors.¹²

10. By all of these tests, the acquisition of Arrow Brands, Inc., by respondent, may have the effect of substantially lessening competition or tending to create a monopoly in the conversion and sale of decorative aluminum foil to the florist trade in violation of Section 7 of the Clayton Act, as amended (U.S.C. Title 15 Section 18).

ORDER

It is ordered, That respondent Reynolds Metals Company, a corporation, and its officers, directors, agents, representatives, and employees, shall, within a time to be fixed by the Commission, divest itself of all of its right, title, and interest in and to:

(a) All stock, assets, patents, trade-marks, trade names, contracts, business and goodwill, and all other properties, rights and privileges

⁸ U.S. v. E. I. du Pont de Nemours & Co., et al., 353 U.S. 586.

⁹ In re Brillo Mfg. Co., Inc., Docket 6557, May 23, 1958.

¹⁰ In re Brillo Mfg. Co., Inc., Docket 6557, May 23, 1958.

¹¹ U.S. v. E. I. du Pont de Nemours & Co., 351 U.S. 377.

¹² U.S. v. Bethlehem Steel Corporation, et al., U.S.D.C. S.D.N.Y. Civil 115-328 Nov. 20, 1958 (see footnote 36 of that opinion).

acquired by the Reynolds Metals Company as a result of the acquisition by the Reynolds Metals Company of the stock or share capital of Arrow Brands, Inc.

(b) All other assets and properties acquired by Arrow Brands, Inc. since the acquisition of said Arrow Brands, Inc., by the Reynolds Metals Company.

It is further ordered, That after the date of the issuance of this order by the Federal Trade Commission, respondent shall cease and desist from acquiring, directly or indirectly, the whole or any part of the stock or other share capital, or the whole or any part of the assets of, any corporation engaged in the manufacture or distribution of decorative aluminum florist foil.

OPINION OF THE COMMISSION

By TAIT, *Commissioner*:

The complaint herein charged respondent, Reynolds Metals Company, a corporation, with violating Section 7 of the Clayton Act, as amended (15 U.S.C. §18), by the acquisition of the stock and assets of Arrow Brands, Inc., a corporation. Hearings were held in due course, and on March 3, 1959, the hearing examiner filed an initial decision in which he found and concluded that the acquisition violated Section 7, as alleged. His decision contains an order directing respondent, among other things, to divest itself of the stock and property so acquired. Respondent has appealed, raising issues having to do with the relevant "line of commerce," the substantiality of the market affected, the probable competitive effect and other questions.

ACQUISITION FACTS

Reynolds Metals Company, a Delaware corporation, with its principal place of business in Richmond, Virginia, on August 31, 1956, acquired all of the capital stock of Arrow Brands, Inc. (sometimes referred to hereafter as Arrow), a California corporation. Both the acquired and the acquiring companies on and before August 31, 1956, were corporations engaged in commerce, as "commerce" is defined in the Clayton Act.

Reynolds Metals Company, the respondent, is a major producer of primary aluminum and fabricated aluminum products. Its production includes sheet and plate, foil and foil products, extrusions, wire, rod and bars, cable, powder and paste, and welded tubing. Its net sales in 1957 were \$446,578,767.

Arrow Brands, Inc., the acquired company, was incorporated in

1945. Mr. Harry Roth was its president and principal stockholder. At the time of the acquisition, it was principally engaged in styling, designing, producing and selling an aluminum foil product to the florist trade. This product is used to decorate flower pots and cut flowers. Its sales were almost entirely to florist wholesale supply houses and jobbers. Arrow's manufacturing operations consisted of printing, coloring and embossing plain unmounted aluminum foil. In 1955, its total sales of foil products amounted to \$497,000.00.

BACKGROUND FACTS

Aluminum is a soft, ductile, metallic element produced out of bauxite ore. Other elements may be added to give it varying characteristics and properties. Pig, ingot, and billet are the bulk forms in which both aluminum and aluminum alloys are sold and constitute the starting material in the production of all aluminum fabricated products.

In the production of sheet or plate aluminum, the rolling ingot, heated to an elevated temperature, is repeatedly passed between the rolls of a rolling mill to break down its cast structure and reduce its thickness. Various other production and rolling procedures result in the finished aluminum plate or sheet. Further rolling converts sheet into foil. Foil is rolled through a series of mills until it is thin enough for its intended use.

Aluminum foil is a flat-rolled sheet thinner than 0.006 inch in gauge, 99.45 percent pure aluminum, oil free and dry. It is generally available with one shiny surface and one mat or satin surface. Most aluminum foil is dead soft, 0 temper. It can be molded, crimped and formed very easily.

Aluminum foil is used widely as a packaging and wrapping material. Decorative effects can be obtained by coloring or lacquering, embossing, printing and laminating (laminating is mounting the foil to paper). Among end uses of foil are the following: containers for bakery products, semi-rigid containers for specialty foods and frozen cooked foods, and wraps for yeast, hard candy, chocolate and cheese. It is also used as a household wrap and is made into milk closures, florist wraps and many other things.

The producers of aluminum foil in the United States include three fully integrated aluminum companies, namely, Aluminum Company of America (Alcoa), Kaiser Aluminum & Chemical Corporation, and Reynolds Metals Company, and several partially integrated companies, such as Anaconda Company, through its ownership of Cochran Foil Company, and Revere Copper & Brass Company, through its ownership of Standard Rolling Mills, Inc., and through

its ownership, along with Olin-Matheson Chemical Corporation, of Ormet Corporation.

There are, in addition, a number of companies which purchase their raw material requirements from Alcoa, Reynolds Metals Company, and others, and produce aluminum foil, such as the following: Johnston Foil Manufacturing Company, St. Louis, Missouri; Republic Foil & Metals Mills, Inc., Danbury, Connecticut; Stranahan Foil Co., Inc., South Hackensack, New Jersey; R. J. Reynolds Tobacco Company, through a subsidiary, Archer Aluminum Company, Winston Salem, North Carolina; and Aluminum Foils, Inc., a subsidiary of Swiss Aluminum Company, Jackson, Tennessee.

“LINE OF COMMERCE”

The “line of commerce” is one of the essential elements of a Section 7 case which the Government must define and prove. *Pillsbury Mills, Inc.*, 50 F.T.C. 555, 569 (1953); *United States v. E. I. du Pont de Nemours*, 353 U.S. 586 (1957); *United States v. Brown Shoe Company, et al.*, United States District Court, Eastern District of Missouri, Eastern Division (November 20, 1959). The “line of commerce” relates or refers to a product market. *United States v. E. I. du Pont de Nemours, supra*; *United States v. Bethlehem Steel Corporation*, 168 F. Supp. 576 (1958); *United States v. Brown Shoe Company, supra*. A test is whether the products involved (usually those produced by the acquiring or the acquired firm or both) are shown by the facts to have such peculiar characteristics and uses as to constitute them sufficiently distinct from others to make them a “line of commerce” within the meaning of the Act. *United States v. E. I. du Pont de Nemours, supra*; *Crown Zellerbach Corporation*, Docket No. 6180 (December 26, 1957); *Brillo Manufacturing Company, Inc.*, Docket No. 6557 (On Interlocutory Appeal, May 23, 1958); *United States v. Bethlehem Steel Corporation, supra*; *United States v. Brown Shoe Company, supra*.

In *Brillo, supra*, we held that the factor that the acquired and acquiring corporations both made the same product, industrial steel wool, was only one circumstance to be considered; that the additional factors which could have been taken into account included data relating to the manner in which the products were marketed, the physical characteristics, prices and possibly other things bearing on the question of whether or not they may be distinguished competitively from other wares.

It is clear that while a “line of commerce” may include an entire industry such as “the iron and steel industry,” it may also be confined to a lesser portion of the whole industry. *United States v.*

Bethlehem Steel Corporation, supra. In any such instance, the practices in the industry are of great significance. Each case requires an examination of its own particular facts before a determination can be made.

In this matter, the "line of commerce" alleged in the complaint was "the production and sale of decorative aluminum foil to the florist trade."

There are a large number of "converters" of aluminum foil in the United States who purchase their requirements of foil from domestic or foreign sources, including aluminum foil producers mentioned above, and who convert it for a variety of end uses. Some of these converters manufacture or "produce" a product which is sold to wholesale florist supply houses and jobbers for resale to retail florists who use it to decorate flower pots and cut flowers. The trade refers to such aluminum foil as "florist foil." Florist foil is clearly distinguishable from aluminum foil.

Physical Characteristics

Florist foil is usually made in a gauge which is preferred by florists, namely, .00065 of an inch thickness. This compares, for example, with .0007 gauge in which general household foil is made. The preference for .00065 gauge is due to the fact that it is the least expensive foil that can be practicably used as a florist wrap. The producers have bowed to the florists' preference in this connection. The florist foil purchased by florists is wound on an individual core in fifty foot lengths, 20 inches wide. It is wrapped in cellophane and attractively boxed. On the other hand, aluminum foil, marketed by aluminum producers and foil rollers, generally, is sold in jumbo mill rolls and is neither packaged nor boxed. The originality or newness of designs and coloring is also a factor in distinguishing florist foil from aluminum foil.

End Use

Florist foil is used by retail florists to wrap around and decorate potted plants and cut flowers. There is no evidence that it is used for other purposes.

Aluminum foil other than florist foil might be used by florists for decorating purposes; even household aluminum wrap could be so used. But the fact is that the florist foil business is a specialty business, and florists do not use other foils to any appreciable extent. They purchase florist foil because of styling, price and other reasons. Products like lace and colored cellophane, chipmats, grass mats and

others are used by florists for decorating purposes, but in a relatively minor way. There is no practical substitute for the florist foil.

Since the merger, Arrow has put on the market a product trade-named "Snap wrap" which is designed particularly for florist use. This further illustrates the distinctive nature of the product market.

Market Factors

The market for florist foil consists of the wholesale florist supply houses and jobbers who resell the product to retail florists. It appears that the M. H. Levine Corporation of New York, New York, first introduced into the United States aluminum foil to be used as a decorative wrap for potted plants. Among the companies which thereafter entered the field as "converters" or producers of florist foil were Metal Goods Corporation, St. Louis, Missouri; H. D. Catty Corporation, Huntley, Illinois; Highland Supply Corp., Highland, Illinois; Arrow Brands, Inc., Los Angeles, California; H. Jacobson & Company, Worcester, Massachusetts; John T. Raisin Corporation, San Francisco, California; Western Foil Converters, Berkeley, California, and Lion Ribbon Company, New York, New York.

Producing and selling florist foil developed into a specialty business. It is clear that Reynolds Metals Company and others recognized it as such. Florists had peculiar needs, such as in designs and coloring, and in service requirements. Arrow became one of the leaders, if not the leader, in the development of styles and colors. Price was a large factor in shaping and defining the market. Selling florist foil in such sizes and quantities as the trade needed and desired was another. Due to the specialty nature of the market only a few relatively small producers occupied the field. Other producers of aluminum foil did not sell in the market to any significant extent, if at all.

In addition, aluminum foil producers, generally, do not mail catalogs or price lists to customers nor employ salesmen to reach the florist market, whereas such are distinctive features in the florist foil field.

Prices

The price of aluminum florist foil sold to the florist trade by the florist foil producers or converters was substantially less than, and fluctuated independently from, the price of aluminum foil of a similar gauge and quality sold by major producers in other markets.

CONCLUSION AS TO CHARACTERISTICS AND USES

The above-mentioned factors are not necessarily all of the distinctions shown herein. They indicate clearly, however, that the "florist foil" market is a distinguishable product market. The record is persuasive on this point. Our conclusion is, therefore, that the production and sale of decorative aluminum foil to the florist trade is a "line of commerce" within the meaning of Section 7.

Respondent asserts that it was uninformed and confused as to the relevant "line of commerce" and that the examiner found a "line of commerce" at variance with that alleged in the complaint; therefore, denying it due process. The complaint alleges that the acquisition had the prescribed effects "in the production and sale of decorative aluminum foil to the florist trade." We believe this is clear, particularly when considered in conjunction with the alleged details of the business of Arrow, such as follows:

"Arrow Brands was engaged almost entirely in the styling, manufacture and sale of decorative aluminum foil for the florist trade. The product is used to decorate potted flowers and cut flowers. * * *"

"The sale of florist foil was made almost entirely to florist wholesale supply houses and jobbers throughout the United States. * * *"

There is no inconsistency in the charge and in the examiner's finding in this connection. In his reference to "conversion" instead of "production" he simply adopts the appropriate industry term. There is no difference in meaning so far as this case is concerned. Respondent's argument that it has been denied due process is rejected.

Respondent also contends that the question is *de minimis*. In this instance, the dollar volume of the industry is not large—about 1½ to 2 million—but the market is, nevertheless, substantial. The product is sold through some 600-700 wholesale florist supply houses or jobbers to 25,000 retail florists located over the entire United States. The impact, therefore, of any lessening of competition would be nationwide and it would involve thousands of small concerns. We agree, therefore, with the substance of the examiner's findings on this question, but to the extent they are inconsistent in detail they are rejected.

COMPETITIVE EFFECT

Respondent argues that every level of the aluminum industry is so saturated with competition that the acquisition could not have the anticompetitive effects prescribed in the statute. In making this argument, respondent apparently is looking at the entire aluminum industry as the relevant line of commerce. The market, however,

for testing the legality of this merger is that involving the production and sale of florist foil.

Moreover, the test is not whether an actual lessening of competition has occurred but rather whether there is a reasonable probability that the merger will substantially lessen competition or tend to create a monopoly. *United States v. Bethlehem Steel Corporation, supra*; *Pillsbury Mills, Inc., supra*; *Crown Zellerbach Corporation, supra*; *United States v. E. I. du Pont de Nemours, supra*.

The evidence in this case of probable competitive effects is almost entirely confined to the effects occurring at the level of competition in which Arrow and its competitors, the converters of florist foil, are engaged. There was no increase in concentration in the industry as a direct, immediate result of the merger because respondent was not in competition with Arrow and its competitors. Reynolds Metals Company produced aluminum foil but it did not make and sell florist foil. Reynolds sold aluminum foil to Arrow which converted it into florist foil, and the florist foil was then sold by Arrow to the wholesale florist supply houses. In other words, this was a forward, vertical acquisition. Respondent acquired a company which was its customer and not its competitor.

The examiner points out in his initial decision that respondent now has the power to exclude its aluminum foil producing competitors from selling to Arrow Brands, Inc. This is obvious. However, as we construe his decision, the finding was not relied on by the examiner to support his conclusion as to a violation of Section 7. The examiner also found that a significant part of the growth of the respondent, or its predecessor, has been the result of mergers with competitors in fabricating lines. Here again he did not rely on this finding to support his conclusion of a Section 7 violation.

Our consideration will be limited to competitive effects in the level of distribution in which Arrow Brands, Inc., and its competitors in the production and sale of florist foil were engaged. There were about eight companies engaged in this line of enterprise. A number of these have been named above. Prior to the acquisition, all were of a roughly equivalent competitive status, if looked at on a broad scale. In other words, no company was very big and all were relatively small. Some had advantages not shared by all, but they each had about the same competitive capabilities. Also they were active and aggressive competitors. Prices were lower than those which prevailed in the aluminum foil market as a whole. Success depended on competitive prices, personal relationships, creative designing, the providing of services, and other things.

After the acquisition, the balance of power in this small, competi-

tive arena shifted dramatically to Arrow Brands, Inc. Some of the competing converters were practically forced out of the field; others have operated at substantial losses in their sales of florist foil. Comparing the years 1955 and 1957, Highland's sales of florist foil dropped 14.8 percent; Raisin's, 40.3 percent; Catty's, 32 percent; Western Foil's, 26.5 percent. Jacobson, for the same period showed a gain in sales of 6.5 percent, but it operated in the red. In contrast, Arrow's volume of sales increased 18.9 percent over the same period.

We believe that the shift in market position toward Arrow, suggested by the above figures, and the general chaotic conditions which developed in this field were due in considerable part to the merger.

During 1957, some of the several competitors in the florist foil business began reducing prices. Effective October 1, 1957, Arrow drastically reduced its price on florist foil across the board to new lows. Its price for plain colored foil went to 70 cents per roll. This low price was evidently below Arrow's cost of production. At one point, Mr. Roth of Arrow testified that his prices were then "slightly above cost," but his other testimony and other evidence indicates that Arrow was selling at a loss. Arrow, previously, had shown an operating profit for each fiscal year from the time of its incorporation.

The below cost prices were maintained by Arrow from October 1957 to mid-1958. The contrast between the pre-acquisition and the post-acquisition practices is manifest. Arrow could not have maintained its price at such a low for so long a period of time strictly on its own. In addition, it is extremely unlikely that Arrow on its own could have built a new plant valued at \$500,000 or more, which it was able to do after the merger with financing from the respondent. That it could do these things after the acquisition illustrates something that is the real core of this case—Arrow (now a subsidiary of respondent) became, as a result of the merger, a dominating factor in this small but important industry. Any compensating advantages which competitors might have had were entirely lost in the face of this overwhelming competitive force.

Even if Arrow had not been selling below cost, it was selling at prices so near cost and so low that it virtually ran some of its competitors out of business. Witness Hyman Jacobson, of H. Jacobson & Company, testified that his business suffered a loss of about 5 or 6 percent of invested capital for the calendar year 1957 and that "it is just a question of not being able to remain in that business." Witness Irvin Weedes, of Highland, testified that the effect of the acquisition on his business was "that it has eliminated the possibility of our making a profit on florist foil; that it will over a period of

time put us out of business." Witness Raisin, of John T. Raisin Corporation, testified that "* * * our sales on florist foil in 1958 are practically nil, since this price reduction announced by Reynolds in the fall of last year. We have lost our principal accounts. We haven't been able to meet that price. * * *"

Another witness, Morris H. Levine, of the M. H. Levine Corporation, asserted in his testimony that "* * * our business dropped down, number one. I was originally the sole distributor for Reynolds Metals and we did a business into hundreds and thousands of dollars. Today our business of foil is down to nil." Witness Farrell, of H. D. Catty Corporation, testified that his company's sale had "fallen off" and that at the time he was selling "[v]ery little" florist foil to wholesale florists.

Finally, witness Stillman, of Western Foil, testified that he had lost most of his sales to florists because "* * * we can not meet a competitive price. The price that is prevailing in the industry now is one that would be below our cost."

Respondent contends that the price reductions in 1957 were not originated by Arrow and that Arrow was meeting the low prices on imported aluminum foil. Whether or not Arrow was actually the first to reduce prices is not too important. The significance in the situation is that Arrow could lower its prices and maintain them at low levels for an extended period, which it could not have done before the merger. The acquisition gave it market power which was so dramatically demonstrated. The foreign competition had existed before the acquisition and the natural advantages of domestic producers had theretofore permitted them to reach an accommodation with it. In addition, while there was also foreign competition in other aluminum foil fields, prices were reduced only on florist foil. In any event, we do not need to be particularly concerned with the justification Arrow may have had for reducing its prices below the cost of production. It is enough that the reductions show the exercise of a market power which Arrow achieved as a direct result of the acquisition.

In this connection, respondent takes the position that the hearing examiner used a per se approach and that he found a violation simply because Arrow had been acquired by a large corporation. This is not so. The evidence, as heretofore discussed, supports a finding that the effect of the acquisition was to actually, seriously and substantially lessen competition in the relevant line of commerce. The statute prohibits mergers even when there is only the probability of a substantial lessening of competition or a tendency toward monopoly. Here, competition has been actually lessened as a result of

the acquisition. All the more then is a finding of competitive injury justified. This, of course, also disposes of respondent's further claim that there has been a shifting of the burden of proof.

Respondent has raised other questions which will be briefly considered. It objects to the examiner's finding on administered prices. On this, we reject the findings because at best it constitutes only a vague generality.

We give no credence to respondent's further claim that the proceeding involves the labor of a human being. It actually concerns the acquisition of one corporation by another.

Another matter raised in the appeal relates to the so-called clearance letter dated October 7, 1957. Respondent contends that the complaint should be dismissed because there allegedly was no evidence or subsequent development warranting a change in the Commission's position from that stated in such letter. Some of the developments connected with the price reductions of 1957 occurred after the Commission's letter dated in October of that year. This clearly was adequate to justify a change in position. Aside from this, the clearance letter on its face is no more than a tentative closing of the file. It does not purport to be a final disposition. Moreover, respondent has not claimed nor does it appear that it was prejudiced or damaged as a result of the closing letter itself.

Respondent also objects to the manner in which the examiner ruled on its proposed findings, claiming that his holding does not unmistakably inform it of the action taken on such findings. Respondent claims, in effect, that he failed to follow the requirements of §3.19 of the Commission's Rules of Practice. The relevant portion states that the record shall show the hearing examiner's ruling on each proposed findings and conclusion, except when his order disposing of the proceeding otherwise unmistakably informs the parties of the action taken by him thereon. The examiner states in his decision that he has considered carefully the proposed findings and conclusions submitted by both parties and that those not specifically found were refused. This statement considered along with the examiner's findings and conclusions leave no doubt as to his action in the matter. We believe that §3.19 has been fully complied with.

All exceptions to the initial decision taken by the respondent other than those heretofore disposed of are rejected. We agree with the initial decision in substance, but as noted above, we cannot accept certain specific statements and others, though relevant, are unnecessary. Such will be excised. In the findings of fact we will strike findings 6, 59, 71 and the words "and so it is" in the first sentence in finding 54 for reasons appearing from our discussion of the issues,

and the first sentence of finding 53 because of its uncertain meaning. We will strike the last sentence in finding 70 and also paragraph 8 of the conclusion because of the uncertain significance of the references to "quantitative substantially" and because such do not appear to be necessary for the ultimate holding. Finally, we will strike paragraphs 9 of the conclusions because it is unnecessary. A question of end use interchangeability of the kind before the court in the so-called Celophane case, *United States v. E. I. du Pont de Nemours & Co.*, 351 U.S. 377 (1956), is not involved in the proceeding.

The order will be modified to provide that the divestiture be made in such a way as to reestablish Arrow Brands, Inc., as a competitive entity in substantially the form it existed immediately prior to the acquisition. It will also be modified to prevent sale of the properties to respondent's agents or representatives, and to provide for a plan of compliance to be submitted to the Commission.

Respondent's appeal is granted to the extent heretofore indicated and in all other respects denied. It is directed that an appropriate order issue with this opinion modifying the initial decision in conformity with the views herein expressed and adopting it, as modified, as the decision of the Commission.

FINAL ORDER

This matter having come on to be heard upon the appeal of the respondent from the hearing examiner's initial decision and upon the briefs and oral argument of counsel in support thereof and in opposition thereto; and

The Commission having rendered its decision granting the appeal in part and denying it in part, and having directed that the initial decision be modified in accordance with the views expressed in the Commission's opinion and that the initial decision be adopted, as so modified, as the decision of the Commission:

It is ordered, That the initial decision be, and it hereby is, modified by striking therefrom the following: (a) the findings of fact numbered 6, 59 and 71, in their entirety; (b) the first sentence of the finding of fact numbered 53; (c) the portion of the first sentence of the finding of fact numbered 54 which reads: "and so it is"; (d) the last sentence in the finding of fact numbered 70; and (e) the paragraphs numbered 8 and 9 in the conclusions of law, in their entirety.

It is further ordered, That the order contained in the initial decision be, and it hereby is, modified to read as follows:

It is ordered, That respondent, Reynolds Metals Company, a cor-

poration, and its officers, directors, agents, representatives, and employees, shall, within six months of the date of service of this order upon it, unless such time is extended by further order of the Commission, divest itself absolutely, in good faith, of all of its right, title, and interest in and to all stock, assets, patents, trade marks, trade names, contracts, business and good will, and all other properties, rights and privileges acquired by Reynolds Metals Company as a result of the acquisition by the Reynolds Metals Company of the capital stock of Arrow Brands, Inc., together with the new plant built after the acquisition for Arrow Brands, Inc., and so much of any other assets and properties put into the business of Arrow Brands, Inc., since the acquisition as may be necessary to restore it to at least the same relative, competitive standing it formerly had in the florist foil industry at or around the time of the acquisition.

It is further ordered, That in such divestment no property above mentioned to be divested shall be sold or transferred, directly or indirectly, to anyone who at the time of the divestiture is a stockholder, officer, director, employee, or agent of, or otherwise directly or indirectly connected with or under the control or influence of, respondent or any of respondent's subsidiaries or affiliated companies.

It is further ordered, That respondent Reynolds Metals Company shall, within sixty (60) days from the date of service upon it of this order, submit in writing, for the consideration and approval of the Federal Trade Commission, its plan for compliance with this order, including the date within which compliance can be effected.

It is further ordered, That the hearing examiner's initial decision, as modified, be, and it hereby is, adopted as the decision of the Commission.

IN THE MATTER OF

GETSOS & GERSHMAN, INC., ET AL.