

Nichols, Jr., individually and as officers of said corporation, Sumner E. Burdette, individually, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

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IN THE MATTER OF  
A. G. SPALDING & BROS., INC.

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

*Docket 6478. Complaint, Dec. 8, 1955—Decision, Mar. 30, 1960*

Order of divestiture requiring the nation's second largest seller of athletic goods to sell a principal competitor—the fourth largest seller prior to the acquisition—which it purchased in 1955 for about \$5.8 million, in violation of Sec. 7 of the Clayton Act.

*Mr. James S. Kelaher and Mr. Thomas P. Luscher for the Commission.*

*Cravath, Swaine & Moore, by Mr. Albert R. Connelly and Mr. John D. Calhoun, and Spalding, Shiland & Marangelo, by Mr. H. Boardman Spalding, all of New York, N.Y., for respondent.*

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

PRELIMINARY PROCEEDINGS

The Complaint

The complaint in this proceeding was issued on December 8, 1955, charging the Respondent, A. G. Spalding & Bros., Inc. (hereinafter referred to as the Respondent or as Spalding) with violating §7 of the Clayton Act (15 U.S.C., §18) by its acquisition on or about December 6, 1955, of Rawlings Manufacturing Company (hereinafter referred to as Rawlings). The pertinent part of §7 of the Clayton Act which the respondent is charged with violating is as follows:

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

#### The Answer

On March 12, 1955, respondent submitted its answer, admitting certain descriptive allegations of the complaint, but denied that it had violated the Clayton Act as alleged, and moved for the dismissal of the complaint.

#### Stipulation to Preserve the Status Quo

Thereafter, on December 14, 1955, counsel for the Commission applied for an injunction in the United States Court of Appeals for the First Circuit to preserve the status quo of the acquired company, pending final determination by the Commission of the legality of the merger. A stipulation was thereupon executed by counsel supporting the complaint and counsel for the respondent, whereby the respondent agreed, in substance, to maintain the status of Rawlings as at the time of acquisition, and to make no changes therein without advance notice to the Commission. Upon the basis of that stipulation, the injunction proceeding was withdrawn.

#### Litigation With Respect To Subpoenas *Duces Tecum* Issued to Persons Not Parties to This Proceeding:

Extended litigation contesting the legality of two subpoenas *duces tecum* materially delayed the holding of hearings on the merits of this proceeding. The first of those subpoenas was issued on February 24, 1956, to W. W. Tuttle of the firm of Ernst & Ernst, certified public accountants, directing him to produce certain books and records prepared by his firm for the Athletic Manufacturers Association. The second subpoena was issued on June 25, 1956, to Fred J. Bowman, president, Wilson Athletic Goods Manufacturing Company, Chicago, Illinois, directing him to produce certain records of his company which were deemed relevant to this proceeding. Both persons subpoenaed appeared at a hearing, but respectfully refused to produce the records requested in the subpoenas. Litigation upon the issues thus raised was finally resolved in favor of the Commission in two separate proceedings in the United States Courts of Appeals for the Second and Seventh Circuits. Thereafter both subpoenas *duces tecum* were duly complied with.

## Hearings on the Merits

Hearings were held on the merits of this proceeding in Chicago, Illinois; Cincinnati, Ohio; and Washington, D.C. A great number of documents, many of which have been placed in camera, were produced through the cooperation of counsel, and were received in evidence. Upon the completion of the hearings in Washington, D.C., counsel supporting the complaint rested their case, and counsel for the respondent, without offering any evidence, also rested and renewed his motion for the dismissal of the complaint.

## Rulings on Proposed Findings

Consideration has now been given to the entire record herein, including numerous proposed findings as to the facts and conclusions presented by both counsel supporting the complaint and counsel for the respondent, and the lengthy briefs and oral argument in support thereof. Each of those proposals which has been accepted is, in substance, incorporated into this initial decision. All proposals not so incorporated are hereby rejected.

## The Issue

The broad, controlling issue in this proceeding is whether "in any line of commerce in any section of the country" the effect of the acquisition of Rawlings by Spalding "may be substantially to lessen competition or tend to create a monopoly."

In view of the scope of this issue, we are confronted with a multiplicity of relevant facts. Thus, we must consider the history of the acquiring company and its economic and competitive status; the history of the acquired company and its economic and competitive status; the circumstances surrounding the actual acquisition; the general economic and competitive conditions existing in the athletic-goods industry as a whole; the section of the country in which such conditions obtain; and, most important of all, an analytical survey must be made, defining the specific line of commerce and determining the particular competitive conditions therein between the two principals involved, as well as between the two principals and other competitors; the number of competitors engaged; the ease or difficulty of entry into that line of commerce and survival therein; and any other relevant factors which may show or tend to show the probable effect of the acquisition in question upon competition, both general and specific, within the defined line of commerce.

*The Acquiring Company (Spalding) and its Economic and  
Competitive Status*

History

In 1876, two brothers, Albert G. Spalding and J. Walter Spalding, formed a partnership called A. G. Spalding & Bros., for the purpose of selling baseball equipment at wholesale and retail. Two years later a brother-in-law, William T. Brown, joined the firm, and, about the same time, they opened a factory for the manufacture of baseball bats at Hastings, Michigan. In 1885, the Spalding partnership was incorporated in Illinois under the name "A. G. Spalding & Bros." In 1892, A. G. Spalding & Bros. was incorporated in New Jersey, to which corporation was transferred all the capital stock of the following corporations:

1. A. G. Spalding & Bros., the Illinois corporation;
2. Wright & Ditson, a New Jersey corporation engaged in the manufacture of athletic goods, with emphasis on tennis rackets;
3. A. J. Reach Company, originally a partnership incorporated in about 1885, engaged principally in the manufacture of baseballs and baseball mitts and gloves;
4. George Bernard & Company, a New Jersey corporation engaged in the manufacture of uniforms and knit goods;
5. Spalding Manufacturing Company, an Illinois corporation formed to operate the A. G. Spalding & Bros. baseball-bat factory; and
6. Peck & Snyder, a retail store in New York City dealing in sporting equipment.

This reorganized corporation continued its activities, with minor changes, from 1892 until 1934, when it entered upon another period of reorganization which was designed to solve problems resulting from a sharp decrease in sales during the depression years of the 1930s, when the national market for athletic goods declined more than 60%. On May 5, 1939, the present corporate respondent was organized as a Delaware corporation, under its present name of A. G. Spalding & Bros., Inc., with all the assets of the former New Jersey corporation.

As of December 8, 1955, the date of the acquisition of Rawlings, and after a long period of growth and expansion, Spalding had its main factory and executive offices in Chicopee, Massachusetts; one minor manufacturing establishment located in Easley, South Carolina; a wholly owned selling subsidiary, Spalding Sales Corporation, operating sales offices and wholesale distributing offices located

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in Chicopee, Massachusetts, and in the principal cities throughout the United States; one operating division, the Toy Tinkers; one wholly owned foreign subsidiary, A. G. Spalding Products of Canada, Ltd.; and business relations with British and Australian companies operating independently under the Spalding name.

## Financial Status

From an original investment of \$800.00 in 1876, the business of Spalding has grown so that immediately prior to its acquisition of Rawlings, its total assets amounted to \$16,665,299.00. Its plant at Chicopee, Massachusetts, is the largest and most complete athletic-goods manufacturing plant in the United States. At the time of its acquisition of Rawlings, Spalding was in sound financial condition.

## Athletic Goods Manufactured

Spalding has manufactured and sold a general line of athletic goods since its early history. Its full line consists of more than 1,100 different articles. Particularly, it sells golf, baseball, football, basketball, volley ball, soccer, tennis, badminton and boxing equipment, athletic clothing and related products.

## Channels of Distribution

Spalding distributes its products through wholesale distributing depots and sales offices located throughout the United States. Prior to 1952, such facilities were located in Chicopee, Massachusetts; Boston, Massachusetts; New York, N.Y.; Philadelphia, Pennsylvania; Washington, D.C.; Chicago, Illinois; and Los Angeles, California. Subsequent to 1952 Spalding has had distribution offices in Seattle, Washington, Dallas, Texas; Miami, Florida; and Atlanta, Georgia. The comparative importance of Spalding's sales, by customer classes, prior to its acquisition of Rawlings is shown by the following analysis of its total sales of athletic goods for the year 1954:

|                                                                                     |        |
|-------------------------------------------------------------------------------------|--------|
| Dealers .....                                                                       | 53.9%  |
| Professional golf .....                                                             | 30.8%  |
| Professional, others .....                                                          | .5%    |
| Retail stores (discontinued subsequent to 1955) .....                               | 3.2%   |
| Private brand, export, baseball leagues, employee commissaries,<br>Government ..... | 7.7%   |
| Other manufacturers .....                                                           | 3.9%   |
|                                                                                     | 100.0% |

## Advertising and Promotional Programs

Well-known trade names and trademarks are recognized as valuable assets in the athletic-goods industry. This is particularly true of those trade names and trademarks which are nationally advertised. Spalding is one of the principal advertisers in the athletic-goods field. In fact, in 1955 Spalding conducted what it termed "the largest advertising campaign ever run in the sporting-goods industry."

Some of the more important selling factors available to Spalding for advertising major-sport products are the following:

## Baseball

The Spalding and Spalding-Reach baseballs, "The twins of the Majors," have been the official baseballs for the National League (Spalding) and the American League (Reach) since the Leagues began. Spalding's present contract with the major leagues extends through 1966.

## Tennis

In 1885 Spalding made the first tennis rackets and tennis balls made in America. The Spalding-made Wright & Ditson tennis ball has been the official ball for the United States Lawn Tennis Association National Championship tournaments since the 1880s, for every Davis Cup and Wightman Cup match in America, and has been chosen for almost every major tournament here and abroad.

## Golf

In 1894 Spalding made the first golf club and golf ball "ever seen in America. Nearly every major development in golf since then has been pioneered by Spalding."

## Football

Spalding was the first to introduce the game of football to colleges and universities in America. "Today Spalding footballs are No. 1 on college gridirons around the country."

## Basketball

Spalding, in its 1953 Annual Report, claims that in 1892 it made the first basketball ever made in the world. Today basketball is one of the most popular team sports in America, and "Spalding-made basketballs are the No. 1 choice on professional and college courts throughout the country."

### Position in the Industry

The position of Spalding in the athletic-goods industry at the time of its acquisition of Rawlings, as shown by Spalding's 1953 and 1955 Annual Reports, was as follows:

1. Throughout the world the Spalding name is recognized as a leader in athletic goods.
2. Spalding was the first to introduce equipment to the sports world in baseball, basketball, football, golf and tennis, and has been consistently the leader in each one of these fields. Truly, for over 75 years Spalding has set the pace in the sports.
3. On this, Spalding's 80th anniversary, we are proud of our position as the world's leading manufacturer of athletic equipment.
4. In 1885 Spalding acquired the A. J. Reach Company, and in 1892, Wright & Ditson. Two years later Spalding moved to Chicopee, Massachusetts, where it set up the first manufacture of golf balls and clubs in America. From that time on A. G. Spalding & Bros. has been the undisputed leader in the athletic-goods industry.
5. Spalding's salesmen cover the nation, bringing to millions of Americans the finest athletic equipment ever made. And this great sales staff is backed up by the biggest advertising and promotional campaigns in the sport industry. It's a history that gives pride to anyone connected with the great name of Spalding. In short, it's the greatest success story in the history of American sports.

### *The Acquired Company (Rawlings) and its Economic and Competitive Status*

#### History

The Rawlings Manufacturing Company, which was acquired by the respondent herein on December 8, 1955, was originally founded in St. Louis, Missouri, by George H. Rawlings and Charles W. Scudder for the purpose of manufacturing and selling athletic equipment and sporting goods, primarily clothing, at wholesale and retail. After a period of acquisition and internal expansion over a period of almost 58 years, Rawlings was, at the time of its acquisition by Spalding, a Missouri corporation engaged in the manufacture and sale of a general line of athletic goods, with its main office and principal place of business located in St. Louis, Missouri. It had three plants there; a second plant located at Licking, Missouri; and a third plant located at Newburg, Missouri. Rawlings also had a wholly owned subsidiary, called "Rawlings Sporting Goods Company," and sales offices and wholesale distribution depots in St. Louis, Missouri; Chicago, Illinois; and Los Angeles, California.

### Financial Status

At the time of its acquisition Rawlings was in sound financial condition. For example, from 1953 to 1955 the total assets of the company increased by 22%, to approximately \$6,500,000.00. During the same period the net worth of the company increased 25%, to approximately \$4,288,000.00. During 1953, 1954 and 1955, Rawlings paid cash dividends at the rate of \$4.00 per share on preferred stock and an increasing rate of \$6.00, \$7.00, \$7.40 and \$8.00 per share on common stock. The total amount of cash dividends paid during this period was \$8,000.00 on 500 shares of preferred stock outstanding, and in excess of \$425,000.00 on the 15,000 shares of common stock outstanding. Approximately 90% of the outstanding common stock and 20% of the outstanding preferred stock was owned by six shareholders.

From 1953 to 1955, the total earnings invested in the business by Rawlings, after payment of taxes and cash dividends, exceeded one million dollars, resulting in a 67% increase in the earnings invested in the business during this period. During the same period, the annual net earnings of the business increased 148%, from \$222,524.00 in 1953 to \$551,824.00 in 1955.

### Athletic Goods Manufactured

Throughout its history Rawlings manufactured and sold a general line of sporting goods, including baseball, football, basketball and softball equipment and accessories. Its St. Louis plant was primarily engaged in the manufacture of baseball gloves, mitts, athletic clothing, protective equipment, footballs, basketballs and other inflated balls. At Licking, Missouri, it made baseballs, baseball gloves, striking-bag gloves, and the principal functions performed there were baseball center windings and stitching baseball covers. Its Newburg, Missouri, plant was devoted primarily to making athletic clothing, baseball protectors, bases, masks, softball centers and footballs.

In addition to its own manufactured products, Rawlings had for many years purchased and resold, under its own trade name and trademark, a wide range of products, amounting, in the year 1955, to \$2,252,371.00. Its purchases from other manufacturers in that year represented a 74% increase over such purchases during 1954.

### Channels of Distribution

Rawlings distributed its products nationally for many years prior to the date of its acquisition by Spalding. It maintained branch

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offices in Los Angeles, California, and Chicago, Illinois. The strength of its distribution system is revealed by a statement of its President in 1952, as follows:

Rawlings now maintains a national sales force and has also developed outlets for its brands in foreign markets. This sales force not only handles the products of Rawlings Manufacturing Company, but it is also becoming increasingly useful in the sale of products manufactured by others. During the last twelve years sales in that category have increased from \$120,000.00 to \$950,000.00 annually, and the company's office thinks a substantial volume of additional business is available in this direction.

Rawlings sold a substantial quantity of its goods to other manufacturers for resale by them under their various trade names and trademarks. The comparative importance of Rawlings' sales, by customer classes, prior to its acquisition by Spalding is shown by the following analysis of the total sales of athletic goods for the year 1954:

|                                  |       |
|----------------------------------|-------|
| Dealers .....                    | 90.0% |
| National contract accounts ..... | 5.4%  |
| Other manufacturers .....        | 4.6%  |
|                                  | 100%  |

## Advertising and Promotional Programs

At the time of its acquisition by Spalding, Rawlings' trade name and trademark were nationally known and advertised. The extent of its program of national advertising is shown by the fact that in 1948 it expended \$88,651.00 for that purpose; in 1952, \$207,684.00; and in 1955, \$351,484.00, an increase of 134% from 1948 to 1952, and 69% from 1952 to 1955.

## Position in the Industry

At the time of its acquisition by Spalding, Rawlings was the fourth-largest manufacturer in the athletic-goods industry in point of production of a general line of athletic equipment and clothing.

## The Actual Acquisition

Early in 1955 Spalding's Board of Directors authorized negotiation for the acquisition of Rawlings. Thereafter, negotiations were begun between the executives of the two companies, and investigation, examination and analysis of relevant data were made. On December 8, 1955, Spalding acquired all the capital stock of Rawlings for approximately \$5,698,063.00. On December 9, 1955, Rawlings Manufacturing Company was liquidated and dissolved. At the time of the acquisition, Rawlings ceased to do business as a

going concern, and Spalding immediately took over the business and has since operated it as the Rawlings Division of Spalding, using the name "Rawlings Manufacturing Company."

As previously stated, the integration of Rawlings' facilities with Spalding's facilities during the pendency of the present proceeding has been controlled by the above-mentioned stipulation between counsel, dated December 29, 1955. At the time of acquisition the president of Rawlings was elected a vice-president and director of Spalding, and certain other executives of Rawlings were appointed officers of Spalding. Since the acquisition, Spalding has operated the former wholly owned subsidiary of Rawlings, the Rawlings Sporting Goods Company, as a sales company for merchandise bearing the Rawlings trademark. As such, it is maintained as a sales organization separate from Spalding's sales organization.

In addition to acquiring Rawlings' manufacturing facilities and other assets, tangible and intangible, Spalding also acquired the increasingly important national sales organization and the well-known, nationally advertised trade name of Rawlings, which it has continued to use.

#### AGMA Census

The principal companies engaged in the manufacture and sale of athletic equipment are all members of an organization called the "Athletic Goods Manufacturers Association," hereinafter referred to as AGMA. The declared primary purpose of that organization is "the protection and advancement of the athletic-goods industry."

AGMA has, over the period from 1944 through 1954, gathered together and published statistics of the industry's production. This activity was begun originally in the post-war era in order to supply the Government with information for the allotment of scarce commodities, such as yarn, leather and other raw materials. The practice was continued, however, after such commodities became plentiful, because the information so gathered together was deemed highly valuable by members of the industry and by the industry as a whole. Questionnaires were prepared and sent to all known manufacturers of all products listed by the Association. The 1954 mailing-list included the names of 184 firms, and the 1955 mailing-list included the names of 197 firms. These lists showed that the number of manufacturers in the industry has averaged under 200 companies.

#### Firms Participating in AGMA Census

In 1954, 74 firms participated in the Association's census, out of a total of 184 firms to whom the questionnaire was sent; in 1955,

75 out of 197 firms participated. The number of firms participating amounted to about 40% of the total number of firms in the athletic-goods industry. This 40%, however, included the largest and most important producers in the industry, and accounted for approximately 90% of the total volume of athletic goods produced in the industry for those years. The questionnaire requested a listing of the articles manufactured, and also "the manufacturer's low selling price" thereof. For example, the baseballs included in the 1954 report are classified by price ranges, as follows:

1. Balls selling to jobbers, distributors and dealers at up to \$9.00 per dozen;
2. Balls similarly selling at from \$9.01 to \$16.75 per dozen;
3. Balls similarly selling at more than \$16.75 per dozen.

All information was furnished on a confidential basis, and delivered for tabulation and accounting purposes to the accountant firm of Ernst & Ernst. The tabulations produced by that firm are known and will hereafter be referred to as "AGMA's Census Report."

Respondent has criticized the use of AGMA's Census Report for purposes of the present proceeding on the theory that it does not include all the industry, and does not include or mention foreign importations of athletic products. Although it is true that the AGMA's Census Report does not cover every phase of the industry and does not give a complete report of existing figures of production, it nevertheless offers an approximately 90% correct picture of the industry's production. It appears that the Respondent clearly regarded the AGMA's Census Report as reflecting a sufficient portion of the total products of the industry to serve as a basis for its own industrial computations. For example, on May 20, 1955, respondent's comptroller presented to the Board of Directors certain reports, one of which was an "industry report comparing Spalding's sales against total industry sales for the years 1951-1954 inclusive." The industry totals quoted in that report were the AGMA's Census totals. Another report compares Spalding's and Rawlings' sales to "total industry sales" for 1954, using the AGMA's Census totals as representative of the industry's production. These reports probably were a factor in the ultimate decision of Spalding to acquire Rawlings; therefore it is reasonable to conclude that since the AGMA's Census Report was regarded as trustworthy by the respondent and by the other members of the industry in the conduct of their business, and by the United States Government in allotting scarce materials, it may be regarded as trustworthy, within its limits, for the purposes of this proceeding.

## United States Census of Manufacturers

The United States Department of Commerce, Bureau of the Census, conducted a census of manufacturers of sporting and athletic goods in 1954. Manufacturers were required, by an Act of Congress, to comply with requests for census data. The census of manufacturers represents the total United States production and related sales value of those athletic goods for which statistics were compiled. Although it does not include data on all the products listed in the AGMA's Census Report, and does not segregate the data included categorically by price, nevertheless it substantiates, in a large measure, the figures presented in that report.

## Leading Athletic Goods Manufacturers

The 1954 AGMA's Census Report reveals that 83% of the industry's total production was manufactured by 19 leading manufacturers, including Spalding and Rawlings, the remaining 17% being produced by 55 firms, each with less than 1% of the industry's total. Foremost among these 19 leaders was the firm of Wilson Athletic Goods Manufacturing Company, Inc., which was the largest in point of production in the industry.

## Wilson Athletic Goods Manufacturing Company, Inc.

Wilson was originally organized in 1910 as the Ashland Manufacturing Company, a subsidiary of Wilson & Company, meat packers of Chicago, Illinois. The name of the firm was subsequently changed, in 1917, to Thomas E. Wilson & Company, and after various other changes in name, Wilson emerged in its present form in 1941, with Wilson Sporting Goods Company remaining in existence as a wholly owned sales subsidiary of Wilson. From its inception in 1910 to 1950, Wilson acquired at least seven smaller firms. Wilson now operates thirteen manufacturing plants located in eleven towns or cities in various parts of the United States. Like respondent, Wilson sells a general line of athletic goods, which are either manufactured by it or purchased from other manufacturers for resale. Wilson distributes its products nationally through 29 branches located in 28 states throughout the United States, and for a number of years has been recognized as the leading producer of athletic goods in the industry.

## MacGregor Sporting Products, Inc.

Another leading manufacturer of athletic goods and competitor of Spalding and Rawlings at the time of the acquisition was Mac-

Gregor Sporting Products, Inc. This organization originated in 1875 as a partnership. In 1922 it was incorporated in Ohio under the name of P. Goldsmith Sons. After a period of transition, the corporation emerged in 1952 in its present form. In about March of 1958, 98% of its outstanding stock was acquired by Brunswick-Balke-Collender Company of Chicago, Illinois. From its inception in 1875 to 1958, MacGregor acquired at least five other smaller manufacturers, and is recognized as the third largest in the industry in point of total sales, Respondent Spalding being second and Rawlings fourth.

#### Other Leading Manufacturers

The remaining fifteen of the nineteen leaders, while some manufacture more than one line of athletic goods, are not general-line companies in the same sense as the four largest firms.

#### Concentration of Production and Sales

Prior to the acquisition of Rawlings by Spalding, those two companies, together with Wilson and MacGregor, constituted the group which counsel supporting the complaint referred to as the "Big Four," which have consistently accounted for approximately 50% of the total industry production and sales, as shown by the following tabulation based upon the AGMA Census Reports for the years 1952 through 1955:

*Percentage of total industry business, based on dollar value, done by the leading general-line companies*

|           | Spalding | Rawlings | Wilson | MacGregor | Total |
|-----------|----------|----------|--------|-----------|-------|
| 1952..... | 14%      | 6%       | 19%    | 12%       | 51%   |
| 1953..... | 15%      | 6%       | 19%    | 11%       | 51%   |
| 1954..... | 14%      | 7%       | 18%    | 11%       | 50%   |
| 1955..... | 13%      | 6%       | 18%    | 11%       | 48%   |

The competitive importance of what counsel supporting the complaint calls the "Big Four" is not to be denied. We think, however, that in his proposed findings and in his analysis of the various lines of commerce he has placed too great an emphasis on the so-called "Big Four," for the reason that the manufacturers constituting the "Big Four," in relationship to the particular line of commerce being considered, are not always the same. The leadership in production and sales in various lines is often found in other companies. We think, therefore, that a fairer approach for an analysis of the problems of this case requires consideration of all producers of each line of commerce, avoiding any undue emphasis upon the

four largest general-line manufacturers, and thus obviating the danger of trial by shibboleth.

#### Relevant "Section of the Country"

An analysis of competition, for the purposes of this proceeding, requires not only an examination of the competing lines of commerce within a geographical area, but a determination of the extent of that geographical area, in order to ascertain whether it may justly be regarded as encompassing a "section of the country" within the meaning of §7 of the Clayton Act.

As we have previously observed, the record herein shows that Rawlings, Spalding and a number of their competitors distribute their goods in all sections of the country. Counsel for the Respondent contends, however, that counsel supporting the complaint has not identified any "section of the country" as one of "effective competition." Although it is true that the respective proportions of Rawlings' and Spalding's sales in certain areas vary considerably, this fact does not necessitate a separate area analysis. In fact, a fair estimate of the total effect of competition in any market must necessarily embrace the total area into which that competition extends. The industry concerned in the present proceeding is nation-wide in scope, and so is competition therein. Therefore, the area of the market embraces, in varying degree, all sections of the country, and, for the purposes of this proceeding, the "section of the country" to be considered is the entire United States. The demarcation of competition into particular sections of the country is therefore not necessary herein, because the total effect of competition must be determined on the basis of the industry as a whole and not upon certain small segments thereof.

#### Lines of Commerce in Which Both Rawlings and Spalding are engaged

Prior to the acquisition, Spalding and Rawlings were what are termed in their industry as "general line sellers" of athletic goods. The AGMA Census lists approximately 30 major products in that industry. Of those thirty-odd products, counsel supporting the complaint has selected nineteen as "illustrative of the area in which the acquisition of Rawlings will have a substantial economic impact." The products selected by him include both those that are manufactured and sold by both Rawlings and Spalding, and also those that are sold by both, but are not manufactured by both. His list is as follows:

1. Golf clubs (irons),
2. Golf clubs (woods),
3. Golf balls,
4. Baseballs,
5. Softballs,
6. Baseball gloves,
7. Basemen's mitts,
8. Catchers' mitts,
9. Soccer balls,
10. Volley balls,
11. Footballs,
12. Football helmets,
13. Football shoulder pads,
14. Football hip and kidney pads,
15. Basketballs,
16. Tennis balls,
17. Tennis racket frames,
18. Strung tennis rackets, and
19. Badminton rackets (frames and strung rackets).

Although counsel for the Respondent suggests that the nineteen selected products should probably be considered as only sixteen products, he presents no other objection to the list selected, and agrees with counsel supporting the complaint that, for the purposes of this proceeding, "each of the product lines in the athletic-goods industry is a separate line of commerce under §7 of the Clayton Act."

The nineteen selected products are each usable only within the particular sport for which they are designed, and for a particular use within that sport. It is also true that none of these nineteen products are interchangeable with products used in other sports or for other uses within a single sport, as, for example, footballs can be used only in the game of football, and football helmets may only be used as protective headgear in that game. Similarly, each of the nineteen articles listed is inherently limited in its manner of use. It is clear, therefore, that each of the nineteen articles selected has "sufficient peculiar characteristics and uses to constitute them products sufficiently distinct from all other [products] to make them 'a line of commerce' within the meaning of the Clayton Act," as explained by the Supreme Court of the United States in the case of *United States v. E. I. du Pont de Nemours & Company*, 353 U.S. 586 (1957).

#### Price-Line Categories

In addition to the delineation of lines of commerce by products, as explained above, counsel supporting the complaint contends that

each product-line is further divided by the industry into separate lines of commerce, based on quality and peculiarities of use which are reflected in their price categories. He contends that each product-line is divided by the AGMA Census into classes based on quality. Witness Goldsmith, Chairman of the Board of MacGregor, in explaining the significance of the AGMA Census price classification, testified as follows:

The industry as a whole felt that it was necessary to break it down for quality's sake and you cannot take every item that is made in the athletic goods industry and examine it to find out what category it goes in so the best thing you can do is by price route. Probably the best illustration I can give would be that of baseballs \* \* \*. For example, we have baseballs broken down into three price categories. Baseballs up to \$9.00 a dozen is Category 1. \$9.00 a dozen was just picked out at random because it was a known fact that it would be necessary, that any ball that sold for under \$9.00 a dozen couldn't be a yarn-wound ball. Nobody in this country could make one for less than \$9.00 and have it to be a serviceable ball. So when we look at that figure there we know that there were in that particular year over 5,000 dozen baseballs sold that were not of a yarn-wound construction, that were of an inferior nature that would not be used in league games or in regular competition games.

Then the next category was from \$9.01 to \$16.80. That took in all the playable balls that the kids would use, the amateurs, the small leagues, and so forth, up to that price bracket and we did know from experience that no one could turn out the top ball for less than \$16.80 so \* \* \* some manufacturers might sell their top ball at \$16.80, others at \$18.00, others at \$19.00, others at \$20.00. Anything above that we knew was the official [i.e., serving the major and top minor leagues] top ball.

Counsel for the Respondent criticizes the separation of lines of commerce based upon price categories, contending that the courts have consistently held that lines of commerce cannot be "determined solely by reference to price differences." Counsel supporting the complaint admitted in his oral argument that

\* \* \* price differences alone do not necessarily separate lines of commerce. Nowhere have we contended that they do. What we do contend is that these price categories represent different types of products which go to different types of consumers, constituting different markets within the meaning of the Farm Journal decision. It is not the difference in price which causes this, but the difference in quality, in the quality of the raw material and in the quality of the labor going into the manufacture of those products which render these products incapable of being used interchangeably. To contend that a \$1.25 ball would even be considered by a major league team in league play is to border upon the ridiculous.

We believe no AGMA price category for any item of athletic goods can be analyzed independently of all other price categories of the same product. For example, counsel for the Respondent explains that low-priced boxing gloves are lower in price and quality

than medium-priced gloves, which in turn are medium because they are higher in price and quality than low-priced gloves, but lower in price and quality than high-priced gloves. The confusion attendant upon breaking down a single product into price categories for analysis is immediately apparent from that statement. Furthermore, it is clear that AGMA's price categories oversimplify the true price relationships and create the false impression that there are only three grades of products corresponding to the three price ranges shown. Actually, the catalogs and price lists reveal a much wider range of price and quality, Rawlings, for instance, offering baseballs at twelve different prices. Also, there is no sharp demarcation between one price range and another, or one quality and another, both price and quality overlapping from one range to another to a considerable extent. Furthermore, it appears that a change in one price range of a commodity is generally reflected in changes in price and quality throughout the entire line of commerce concerned. We believe, therefore, that to subdivide a line of commerce into arbitrary sublines, depending upon the price classifications used in the AGMA Census, is unrealistic and ignores the true competitive relationships existing between the types and variations of a given product. We cannot, therefore, find as a fact that lines of commerce can be determined on the basis of the price differentials presented in the AGMA Census.

*Analysis of the Effect of the Acquisition  
Upon Competing Lines of Commerce*

Of the nineteen lines of commerce listed by counsel supporting the complaint as representing those lines in which the competitive effect of the merger of Spalding and Rawlings may be most clearly discerned, we are first considering six of those lines in which the evidence shows that the product was both manufactured and sold by both Spalding and Rawlings. Those six lines are as follows:

1. Baseballs;
2. Softballs;
3. Footballs;
4. Basketballs;
5. Volley balls; and
6. Soccer balls.

We believe that if the effect of the acquisition "be substantially to lessen competition or tend to create a monopoly," such tendency should be revealed by a study of these lines.

Counsel supporting the complaint, in his proposed findings as to the facts, has made a proposed analysis based upon the AGMA

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Census survey for 1954, which he states “\* \* \* is representative of other years and also is the last complete year preceding the acquisition of Rawlings by Spalding.” This statement is not completely accurate. Since the acquisition occurred on December 8, 1955; since each of the two companies made complete and separate reports for that year; and since the data for 1955 shows a decline in many phases of Rawlings’ and Spalding’s business, we think that fairness requires a consideration of the data as to both years. In fact, any attempt to determine the future from the past should certainly include the latest evidence available. Accordingly, the data for 1955 has been included for consideration along with the data for 1954, as both relate to the discrete lines of commerce, as follows:

## 1. Baseballs

The AGMA Reports of 1954-1955 contained data from eleven baseball manufacturers. The competitive relationships, from the standpoint of quantity production and total sales, of these eleven manufacturers to Rawlings and Spalding and to each other are as follows:

|                                              | Quantity<br>(dozens) | Percent of<br>total | Value       | Percent of<br>total |
|----------------------------------------------|----------------------|---------------------|-------------|---------------------|
| <i>1954</i>                                  |                      |                     |             |                     |
| Total reported for the industry (AGMA) ..... | 603,928              | 100.0               | \$7,003,330 | 100.0               |
| Market share:                                |                      |                     |             |                     |
| Spalding.....                                | 99,467               | 16.5                | 1,589,086   | 22.7                |
| Rawlings.....                                | 63,640               | 10.5                | 909,547     | 13.0                |
| <i>1955</i>                                  |                      |                     |             |                     |
| Total reported for the industry (AGMA) ..... | 689,349              | 100.0               | 7,425,906   | 100.0               |
| Market share:                                |                      |                     |             |                     |
| Spalding.....                                | 105,393              | 15.3                | 1,621,258   | 21.8                |
| Rawlings.....                                | 64,654               | 9.4                 | 841,028     | 11.3                |

Percentagewise, the share of all baseballs produced by each of the eleven manufacturers was as follows:

|                | <i>1954</i> | <i>1955</i> |
|----------------|-------------|-------------|
| Lannom.....    | 18.8%       | 19.2%       |
| Spalding.....  | 16.5%       | 15.3%       |
| de Beer.....   | 16.2%       | 17.9%       |
| Wilson.....    | 16.1%       | 17.5%       |
| MacGregor..... | 10.9%       | 10.2%       |
| Rawlings.....  | 10.5%       | 9.4%        |
| Tober.....     | 3.9%        | 4.8%        |
| Hofran.....    | 3.8%        | 3.1%        |
| Sealand.....   | 1.7%        | 1.4%        |
| Harwood.....   | 1.5%        | 1.2%        |
| Kennedy.....   | 1.1%        | 1.1%        |

<sup>1</sup> Less than.

The above tabulation shows that in 1954 Spalding was the second-largest producer of baseballs, with a total by value of 22.7% of the industry's production and a total by quantity of 16.5% thereof. Rawlings was the sixth-largest producer, with a total by value of 13% and by quantity of 10.5% of the total production of the industry. In 1955 Spalding's share of the market declined approximately 1%, and Rawlings' declined somewhat more, from a total by value of 13% to 11.3%, and from a total production of 10.5% to 9.4%. Their combined total immediately preceding the merger amounted to 33.1% by value and 24.7% by quantity of the industry's total production. Thus the merger had the effect of increasing Spalding's share of the market 11.3% by value and 9.4% by quantity, so as to make the combined firms the largest producer of baseballs in the athletic-goods industry. Obviously, this increase in Spalding's share of the market, although less than 10% by quantity and only 11.3% by value, nevertheless is substantial. Whether this substantial increase warrants the conclusion that it is attended by a reasonable probability of a substantial lessening of competition in the baseball market depends, however, in part on other factors.

The Commission, in its recent opinion in the matter of *Brillo Manufacturing Company, Inc.*, Docket 6557, stated:

We do not concur in the holding that a significant increase in a producer's already substantial share of the market necessarily demonstrates likelihood of statutorily forbidden effects in every distributional situation. \* \* \*

In addition to the facts concerning market shares, likewise important is \* \* \* the general competitive situation, the number of competitors and degree of concentration prevailing in the industry.

In compliance with the above opinion, we must consider a number of factors other than the increase in Spalding's share of the baseball market. Spalding is and has been for many years a leader in the manufacture and sale of sport goods in general and baseballs in particular. Spalding baseballs have been the official ball for the two major leagues in professional baseball from their inception, and Spalding is now under contract to supply those leagues with their entire requirements of baseballs until 1966. In addition, in 1954 Spalding had adoption contracts with nine minor leagues. On the other hand, Rawlings had no such major-league contracts, but in 1954 it did have contracts with ten minor leagues. Wilson had seven such contracts, and MacGregor had five.

Although the circumstance of Spalding's leadership in high-priced baseballs has given it a considerable competitive advantage in that line of commerce, this advantage is not, however, an effect of the recent acquisition, but existed many years before that event. Furthermore, it must be observed that while in 1954 Spalding and

Rawlings together had 21 adoption contracts, in 1955 they had only 14, and in 1956, 16.

It must also be observed that, despite Spalding's venerable age and prestige in the industry, eleven companies are competing with it in the manufacture and sale of baseballs, and in 1955 three of these companies—Lannom, de Beer and Wilson—all surpassed Spalding in point of production, producing, respectively, 19.2%, 17.9% and 17.5% of all baseballs manufactured in that year, against Spalding's 15.3%.

It appears that the manufacture of baseballs is relatively simple, involving mainly cutting, stitching and molding of leather, rubber and cloth material, and, in the higher-quality baseballs, the winding of yarn around a core. The record contains no clear evidence as to the number of new companies recently entering into the field of baseball manufacture, but it is clear that in 1955 at least one new manufacturer entered that business. It further appears that companies specializing in the manufacture of baseballs have found no great difficulty in surviving and competing with Spalding, since two such companies, Lannon and de Beer, were the largest baseball producers in the industry in both 1954 and 1955.

The record shows that only three acquisitions of baseball manufacturers have occurred in the athletic-goods industry since 1876. One of these was the acquisition of Reach by Spalding as long ago as 1885. Another was by MacGregor in 1937, and the third by Rawlings in 1946. There is no evidence as to the competitive significance or effect of any of these acquisitions. Certainly mergers occurring at intervals of 52 and 18 years cannot reasonably be said to establish a trend of mergers in the baseball-manufacturing business.

The record contains no evidence of actual competitive injury to either large or small manufacturers which can in any way be considered an effect of the merger in question. On the other hand, the record does contain the testimony of Witness Goldsmith, Chairman of the Board of Directors of MacGregor, who testified as follows:

Q. Directing your attention to these products which I have just mentioned, that is to say, baseballs, softballs, footballs, basketballs, soccer balls, and volley balls, has the acquisition by Spalding had any effect upon MacGregor in its sale or ability to compete in those several items?

A. No.

Since the various non-quantitative factors which we have considered do not indicate the probability of a substantial lessening of competition, it seems appropriate to compare the quantitative increase of Spalding's production, resulting from its acquisition of Rawlings, with the quantitative increase resulting from the acqui-

sition in the *Brillo* case, *supra*, which the Commission regarded as insufficient alone to justify the issuance of an order of divestiture. The acquisition in the *Brillo* case combined with the largest producer of industrial steel wool (29.1%) with the fourth-largest producer (18.2%). In the present proceeding, Spalding, the second-largest producer of baseballs in 1954, declined in 1955 to the position of fourth-largest, and Rawlings declined, during that same period, from sixth place with 10.5%, to sixth place with 9.4%. In the *Brillo* case, after the acquisition, Brillo had a production share of 47.7%, and the next-largest producer had a production share of only 19.1%. On the basis of our 1955 figures, Spalding and Rawlings combined had a production of 24.1%, with the next-largest producer having a production of 19.2%. After the *Brillo* acquisition, there remained only seven competing manufacturers of industrial steel wool; while, after the Spalding acquisition of Rawlings, there remained at least twelve strongly-competing manufacturers of baseballs. Thus it appears that any inference as to competitive effect which can be drawn from quantitative data is more favorable to Spalding in the instant case than it was to Brillo in that proceeding.

All factors considered, we believe that the substantial, reliable and probative evidence in the record does not indicate that the effect of the acquisition of Rawlings by Spalding may be substantially to lessen competition or tend to create a monopoly in the manufacture and sale of baseballs.

## 2. Basketballs

The AGMA Reports of 1954 and 1955 contain data from eighteen basketball-manufacturing companies. The competitive relationships, from the standpoint of quantity produced, of these eighteen manufacturers to Rawlings and Spalding and to each other are as follows:

|                                              | Quantity<br>(dozens) | Percent of<br>total | Value       | Percent of<br>total |
|----------------------------------------------|----------------------|---------------------|-------------|---------------------|
| <i>1954</i>                                  |                      |                     |             |                     |
| Total reported for the industry (AGMA) ..... | 158,958              | 100.0               | \$6,801,889 | 100.0               |
| Market share:                                |                      |                     |             |                     |
| Spalding.....                                | 9,767                | 6.1                 | 709,175     | 10.4                |
| Rawlings.....                                | 2,972                | 1.9                 | 418,987     | 6.2                 |
| <i>1955</i>                                  |                      |                     |             |                     |
| Total reported for the industry (AGMA) ..... | 236,195              | 100.0               | 8,022,886   | 100.0               |
| Market share:                                |                      |                     |             |                     |
| Spalding.....                                | 10,585               | 4.5                 | 772,411     | 9.6                 |
| Rawlings.....                                | 3,120                | 1.3                 | 429,902     | 5.4                 |

Percentagewise, the share of all basketballs produced by each of the eighteen manufacturers was as follows:

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|----------------------------------------|-----------|-------|
|                                        | 1954      | 1955  |
| Voit.....                              | 35.1%     | 24.2% |
| Sun Rubber.....                        | 21.4%     | 15.6% |
| Seamless Rubber.....                   | 11.9%     | 10.3% |
| General Tire & Rubber.....             | 9.0%      | 6.1%  |
| Spalding.....                          | 6.1%      | 4.5%  |
| Dubow.....                             | 6.1%      | 4.7%  |
| MacGregor.....                         | 4.5%      | 2.8%  |
| Wilson and Ohio-Kentucky combined..... | 3.3%      | 2.4%  |
| Rawlings.....                          | 1.9%      | 1.3%  |
| Hutchinson Bros.....                   | .6%       | .2%   |
| Reach.....                             | .1%       | 1.1%  |
| Kennedy.....                           | .1%       | 1.1%  |
| Nocona.....                            |           | 1.1%  |
| Barr Rubber.....                       |           | 18.4% |
| Collette Mfg.....                      |           | 8.1%  |
| Everlast.....                          |           | .1%   |
| Eagle.....                             |           | .9%   |

<sup>1</sup> Less than.

The above tabulation shows that the four largest producers of basketballs in 1954 were Voit, Sun Rubber, Seamless Rubber and General Tire & Rubber, and in 1955, Voit, Barr Rubber, Sun Rubber and Seamless Rubber, with Collette Mfg. and General Tire & Rubber in the fifth and sixth places. Obviously none of the group referred to by counsel supporting the complaint as the "Big Four" are included. In 1954 the four largest manufacturers in point of production manufactured 77.4% of the reported production of basketballs in the industry, while in 1955 it took the five largest producers, a group which included neither Spalding nor Rawlings, to manufacture 76.6% of the reported production. It should be noted that in 1955 Barr Rubber and Collette Mfg., two companies not reporting for the 1954 Census, accounted for 26.5% of the reported production of basketballs. After the acquisition in question, the combined Spalding-Rawlings production of 5.8% was seventh, while Wilson and MacGregor, the other two members of the so-called "Big Four," produced only 2.4% and 2.8%, respectively. Spalding's and Rawlings' combined value share of the market was, however, larger, amounting to 15%.

The general competitive data, considering merger history, patents, trademarks, and contracts with professional leagues and athletes, reveals a healthy active, competitive market in the production and sale of basketballs. These facts indicate that there will probably be no substantial effect on competition in this line of commerce as a result of the merger of Spalding and Rawlings. Accordingly, we must conclude that the substantial, reliable and probative evidence

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in the record does not indicate that the effect of the acquisition of Rawlings by Spalding may be substantially to lessen competition or tend to create a monopoly in the manufacture and sale of basketballs.

## 3. Footballs

The AGMA Reports of 1954 and 1955 contain data from nineteen football manufacturers. The competitive relationships, from the standpoint of quantity produced, of these nineteen manufacturers to Rawlings and Spalding and to each other are as follows:

|                                             | Quantity<br>(dozens) | Percent of<br>total | Value       | Percent of<br>total |
|---------------------------------------------|----------------------|---------------------|-------------|---------------------|
| <i>1954</i>                                 |                      |                     |             |                     |
| Total reported for the Industry (AGMA)..... | 149,753              | 100.0               | \$4,213,466 | 100.0               |
| Market share:                               |                      |                     |             |                     |
| Spalding.....                               | 11,856               | 7.9                 | 615,449     | 15.3                |
| Rawlings.....                               | 6,193                | 4.1                 | 273,870     | 6.5                 |
| <i>1955</i>                                 |                      |                     |             |                     |
| Total reported for the Industry (AGMA)..... | 306,812              | 100.0               | 5,322,125   | 100.0               |
| Market share:                               |                      |                     |             |                     |
| Spalding.....                               | 10,810               | 3.5                 | 616,777     | 11.5                |
| Rawlings.....                               | 6,595                | 2.1                 | 278,867     | 5.2                 |

Percentagewise, the share of the reported production of footballs produced by each of the nineteen manufacturers was as follows:

|                                                    | <i>1954</i> | <i>1955</i> |
|----------------------------------------------------|-------------|-------------|
| Wilson (combined with Ohio-Kentucky Mfg. Co.)..... | 20.1%       | 13.4%       |
| Voit Rubber.....                                   | 16.0%       | 8.1%        |
| Sun Rubber.....                                    | 14.5%       | 6.1%        |
| Dubow.....                                         | 10.8%       | 5.1%        |
| Hutchinson Bros.....                               | 9.5%        | 5.0%        |
| Spalding.....                                      | 7.9%        | 3.5%        |
| MacGregor.....                                     | 5.7%        | 2.5%        |
| Rawlings.....                                      | 4.1%        | 2.1%        |
| Trio.....                                          | 5.3%        | .....       |
| General Tire & Rubber.....                         | 3.5%        | 1.1%        |
| Seamless Rubber.....                               | 1.9%        | .9%         |
| Kennedy.....                                       | .5%         | .3%         |
| Reach.....                                         | .2%         | .1%         |
| Nocona.....                                        | .....       | .1%         |
| Collette.....                                      | .....       | 13.7%       |
| Everlast.....                                      | .....       | 0.4%        |
| Barr Rubber.....                                   | .....       | 36.8%       |
| Eagle.....                                         | .....       | .6%         |

The above tabulation shows that in 1954 Spalding was the sixth-largest producer of footballs, with a total by value of 15.3% of the industry's production, and a total by quantity of 7.9% thereof.

Rawlings was the eighth-largest producer, with a total by value of 6.5% and by quantity of 4.1% of the total reported football production of the industry. In 1955, Spalding was the eighth-largest producer of footballs, with a total by value of 11.5% of the industry's reported total, and a total by quantity of 3.5% thereof. Rawlings was the tenth-largest producer, with a total by value of 5.2% and by quantity of 2.1% of the total reported football production of the industry. In 1955 Spalding's share of the market declined in quantity by 4.4%, and in value by 3.8%. Their combined total immediately preceding the merger amounted in value to 16.7%, and in quantity to 5.6%. Thus the merger had the effect of increasing Spalding's share of the football market by 5.2% in value and by 2.1% in quantity, which made the combined firms the sixth-largest in the industry in point of quantity produced. Barr Rubber was first, with a total production of 36.8%; Collette was second with a total of 13.7%; Wilson, combined with Ohio-Kentucky Mfg. Co., which it acquired in January of 1955, was third with 13.4%; Voit Rubber, fourth with 8.1%; and Sun Rubber, fifth with 6.1%. Dubow followed in seventh place with 5.1%.

It should be observed that the increase in Spalding's share of the football market resulting from the merger, which was 5.2% by value and 2.1% by quantity, effected no overall change in its relative place in competition therein, the combined companies occupying the sixth place—the position previously occupied in 1954 by Spalding alone.

The record shows that in 1955 at least five manufacturers, namely, Barr Rubber, Eagle, Elliott-Morris, Midwestern and Moneco, appeared as new entries in the football-manufacturing field. It is also interesting to note that Barr Rubber became, within the year, the leading producer in point of quantity in the manufacture of footballs.

Concerning prior acquisitions, it seems that only one other acquisition of a football manufacturer has occurred since 1876; Wilson acquired Ohio-Kentucky Mfg. Co. in 1955. It should also be observed that there is no indication that patents, trademarks, use of athletes' names, or contracts with athletic leagues, have had any substantial effect on competition. Accordingly, we must conclude, all factors considered, that the substantial, reliable and probative evidence in the record does not show that the acquisition of Rawlings by Spalding had any appreciable effect on competition, since Spalding remained substantially in the same competitive position after the acquisition as before.

## 4. Softballs:

The AGMA Reports of 1954 and 1955 contain data from thirteen softball manufacturers. The competitive relationships, from the standpoint of quantity produced, of these thirteen manufacturers to Rawlings and Spalding and to each other are as follows:

|                                             | Quantity<br>(dozens) | Percent of<br>total | Value       | Percent of<br>total |
|---------------------------------------------|----------------------|---------------------|-------------|---------------------|
| <i>1954</i>                                 |                      |                     |             |                     |
| Total reported for the Industry (AGMA)..... | 323,765              | 100.0               | \$3,618,900 | 100.0               |
| Market share:                               |                      |                     |             |                     |
| Spalding.....                               | 33,570               | 10.4                | 410,737     | 11.3                |
| Rawlings.....                               | 22,617               | 7.0                 | 314,507     | 8.7                 |
| <i>1955</i>                                 |                      |                     |             |                     |
| Total reported for the Industry (AGMA)..... | 338,694              | 100.0               | 3,716,042   | 100.0               |
| Market share:                               |                      |                     |             |                     |
| Spalding.....                               | 32,003               | 9.4                 | 387,810     | 10.4                |
| Rawlings.....                               | 19,613               | 5.8                 | 255,607     | 6.9                 |

Percentagewise, the share of the reported production of softballs produced by each of the thirteen manufacturers was as follows:

|                            | <i>1954</i> | <i>1955</i> |
|----------------------------|-------------|-------------|
| de Beer.....               | 17.9%       | 18.4%       |
| Lannom.....                | 15.9%       | 14.7%       |
| Voit.....                  | 12.2%       | 11.8%       |
| Spalding.....              | 10.4%       | 9.4%        |
| Wilson.....                | 10.3%       | 11.7%       |
| MacGregor.....             | 9.3%        | 9.2%        |
| Rawlings.....              | 7.0%        | 5.8%        |
| Tober.....                 | 5.8%        | 6.6%        |
| Harwood.....               | 4.8%        | 5.1%        |
| Sealand.....               | 2.4%        | 1.8%        |
| Hofran.....                | 2.1%        | 2.6%        |
| General Tire & Rubber..... | 1.9%        | 2.8%        |
| Kennedy.....               | 1.1%        | 1.1%        |

<sup>1</sup> Less than.

The above tabulation shows that both Spalding's and Rawlings' share of the market in softballs declined substantially from 1954 to 1955 in terms of both value and quantity. During the same period five companies—de Beer, Tober, Harwood, Hofran and General Tire & Rubber—substantially increased their respective shares of the market in softballs. In 1954 Spalding was fourth in production of softballs, and in 1955, fifth. In 1955 the combined firms of Spalding and Rawlings produced 15.2% of all softball production reported, which placed the combination in third place, barely ahead of Lannom with 14.7%, and with at least ten and probably fourteen other active competitors.

There is no evidence of the number of companies who abandoned the manufacture of softballs during these years. It appears from the fact that in this line of commerce the small companies are the leading producers, that small companies have had no great difficulty in surviving, in continuing to compete, and even in exceeding Spalding's production in the softball market.

Only one acquisition of a softball manufacturer has occurred since 1876, the acquisition of Grady by Rawlings in 1946, and we believe that one transaction does not constitute a trend.

There are no patents relating to softballs owned or licensed by Spalding, Rawlings, Wilson or MacGregor. The competitive significance of trademarks and trade names appears to be as favorable to the smaller companies as to the large general-line manufacturers. Spalding, Rawlings, Wilson and MacGregor have no contracts with players for the use of their names on softballs, and no adoption contracts with any softball leagues. In fact, evidence on this phase of softball competition is lacking.

In view of all the evidence, we must conclude that there is no substantial, reliable, probative evidence in the record showing that the acquisition of Rawlings by Spalding may lessen competition or tend to create a monopoly in the manufacture and sale of softballs.

#### 5. Volley Balls:

The AGMA Reports of 1954 and 1955 contain data from fifteen volley-ball manufacturers. The competitive relationships, from the standpoint of quantity produced, of these fifteen manufacturers to Rawlings and Spalding and to each other are as follows:

|                                             | Quantity<br>(dozens) | Percent of<br>total | Value       | Percent of<br>total |
|---------------------------------------------|----------------------|---------------------|-------------|---------------------|
| <i>1954</i>                                 |                      |                     |             |                     |
| Total reported for the Industry (AGMA)..... | 19,383               | 100.0               | \$1,014,576 | 100.0               |
| Market Share:                               |                      |                     |             |                     |
| Spalding.....                               | 1,601                | 8.3                 | 99,018      | 9.7                 |
| Rawlings.....                               | 554                  | 2.8                 | 38,338      | 3.8                 |
| <i>1955</i>                                 |                      |                     |             |                     |
| Total reported for the Industry (AGMA)..... | 23,012               | 100.0               | 1,131,319   | 100.0               |
| Market Share:                               |                      |                     |             |                     |
| Spalding.....                               | 1,431                | 6.2                 | 88,193      | 7.8                 |
| Rawlings.....                               | 524                  | 2.3                 | 36,206      | 3.2                 |

Percentagewise, the share of the reported production of volley balls produced by each of the fourteen manufacturers was as follows:

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|                               | 1954  | 1955  |
|-------------------------------|-------|-------|
| Voit Rubber.....              | 43.1% | 41.6% |
| Seamless Rubber.....          | 12.6% | 12.9% |
| Wilson and Ohio-Kentucky..... | 12.1% | 11.0% |
| General Tire & Rubber.....    | 8.7%  | 7.8%  |
| Spalding.....                 | 8.3%  | 6.2%  |
| MacGregor.....                | 6.1%  | 4.7%  |
| Rawlings.....                 | 2.8%  | 2.3%  |
| Sun Rubber.....               | 2.7%  | 4.1%  |
| Dubow.....                    | 2.0%  | 1.3%  |
| Reach.....                    | .7%   | .6%   |
| Kennedy.....                  | .6%   | 1.0%  |
| Hutchinson Bros.....          | .2%   | .8%   |
| Nocona.....                   |       | .5%   |
| Collette.....                 |       | 5.2%  |

The above tabulation shows that in both 1954 and 1955 the four largest producers of volley balls were Voit, Seamless Rubber, Wilson and General Tire & Rubber. Voit led in 1954 with a production of 43.1% and in 1955 with 41.6%. In 1954 Spalding, with 8.3% of production, was in fifth place, and in 1955, with only 6.2% Spalding was still in fifth place, while Rawlings was in seventh place with 2.3%. The combined production of Spalding and Rawlings in 1955 gave them a proportion or market share of 8.5%, a total of only two-tenths of a percent above Spalding's production for 1954.

The above facts, when considered in the light of the evidence concerning entry and survival in the market, merger history, patents, trademarks, contracts and other related factors, indicate active competition in the manufacture and sale of volley balls. Accordingly, we must conclude that the acquisition of Rawlings by Spalding had no appreciable effect upon competition in this line of commerce.

## 6. Soccer Balls:

The AGMA Reports of 1954 and 1955 contain data from fourteen soccer-ball manufacturers. The competitive relationships, from the standpoint of quantity produced, of these thirteen manufacturers to Rawlings and Spalding and to each other are as follows:

|                                             | Quantity<br>(dozens) | Percent of<br>total | Value     | Percent of<br>total |
|---------------------------------------------|----------------------|---------------------|-----------|---------------------|
| <i>1954</i>                                 |                      |                     |           |                     |
| Total reported for the Industry (AGMA)..... | 11,297               | 100.0               | \$681,018 | 100.0               |
| Market share:                               |                      |                     |           |                     |
| Spalding.....                               | 675                  | 6.0                 | 48,002    | 7.0                 |
| Rawlings.....                               | 117                  | 1.0                 | 9,734     | 1.4                 |
| <i>1955</i>                                 |                      |                     |           |                     |
| Total reported for the Industry (AGMA)..... | 13,104               | 100.0               | 760,419   | 100.0               |
| Market share:                               |                      |                     |           |                     |
| Spalding.....                               | 853                  | 6.5                 | 56,756    | 7.5                 |
| Rawlings.....                               | 168                  | 1.3                 | 14,107    | 1.9                 |

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Percentagewise, the share of the reported production of soccer balls produced by each of the thirteen manufacturers was as follows:

|                               | 1954  | 1955  |
|-------------------------------|-------|-------|
| Voit Rubber.....              | 51.7% | 50.7% |
| Seamless Rubber.....          | 11.1% | 11.6% |
| General Tire & Rubber.....    | 9.9%  | 8.4%  |
| Wilson and Ohio-Kentucky..... | 7.5%  | 4.8%  |
| Spalding.....                 | 6.0%  | 6.5%  |
| MacGregor.....                | 4.7%  | 3.0%  |
| Sun Rubber.....               | 4.1%  | 5.7%  |
| Dubow.....                    | 2.0%  | .9%   |
| Kennedy.....                  | 1.3%  | 1.8%  |
| Rawlings.....                 | 1.0%  | 1.3%  |
| Hutchinson Bros.....          | .8%   | 1.4%  |
| Nocona.....                   |       | .1%   |
| Collette.....                 |       | 3.8%  |

The above tabulation shows that the combined production of the fourteen manufacturers of soccer balls reporting to AGMA amounted to only \$681,018 in 1954 and only \$760,419 in 1955. In terms of quantity, the four largest producers in 1954 were, in order of production, Voit, Seamless Rubber, General Tire & Rubber, and Wilson. In 1955 Wilson's place was taken by Spalding. In both of these years, however, Voit led the market production with 51.7% and 50.7%, respectively. Ten manufacturers, including both Spalding and Rawlings, accounted for only 29.3% of the reported 1955 production. Thus the acquisition of Rawlings by Spalding had no effect upon the lead held by the first three producers in 1955, who accounted for 70.7% of that year's production. The combined production of Spalding and Rawlings in 1955 was only 7.8%, leaving them in fourth place. There appears to be no evidence in the record to show that the slight quantitative gain accruing to Spalding as a result of its acquisition of Rawlings indicates a trend by Spalding toward a monopoly, or a substantial lessening of competition in the sale of soccer balls.

Lines of Commerce Sold By Both Spalding and Rawlings,  
But Not Manufactured By Both

In addition to the six lines of commerce analyzed in the preceding section, which are manufactured and sold by both Spalding and Rawlings, counsel supporting the complaint lists thirteen additional lines of commerce as relevant to this proceeding, which are sold by both Spalding and Rawlings, but which are not manufactured by both. These lines are as follows:

1. Golf clubs (iron);
2. Golf clubs (wood);

3. Golf balls;
4. Baseball gloves;
5. Basemen's mitts;
6. Catchers' mitts;
7. Football helmets;
8. Football shoulder pads;
9. Football hip and kidney pads;
10. Tennis balls;
11. Tennis-racket frames;
12. Strung tennis rackets; and
13. Badminton rackets.

We believe that a detailed analysis of each of these lines of commerce would unduly lengthen this opinion without contributing substantially to the ultimate adjudication of this proceeding. This appears to be true because the record presents, as to these lines, no evidence which could reasonably be interpreted as indicating that the merger has affected competition, with the possible exception of two lines, namely, gloves and mitts. We are, therefore, confining our discussion to baseball gloves and mitts, the only lines concerning which counsel supporting the complaint has sought to show a specific post-acquisition effect on competition. As to these two lines, he argues that "\* \* \*" by the acquisition of Rawlings respondent has been virtually eliminated as a purchaser of gloves and mitts from other manufacturers for resale under respondent's trade names and trademarks."

In order to substantiate the above statement, counsel supporting the complaint points to three factors, as follows:

1. That Spalding's purchases of gloves and mitts from Wilson and MacGregor declined substantially after the acquisition;
2. That Spalding's purchases of gloves and mitts from three small manufacturers, namely, Kennedy, Stall & Dean Mfg. Co., and Franklin Mfg. Co., declined substantially after the acquisition; and
3. That Spalding's purchases from Rawlings increased substantially from 1954 to 1955.

First, counsel supporting the complaint, in what appears to be an effort to show competitive injury to Wilson and MacGregor, requests factual findings based upon the purchase records of Spalding from those companies from 1954 to 1956 and beyond. Counsel for the respondent states, without questioning their accuracy, that the 1954 figures relied upon by counsel supporting the complaint are based upon Respondent's reply to a Commission questionnaire which is not in evidence. Since, however, the accuracy of the 1954 figures cited is in effect admitted by counsel for the Respondent and

quoted by him, no serious problem arises concerning them. Figures recognized as correct by both counsel show that Wilson was Spalding's largest supplier of gloves and mitts in 1954; the second-largest in 1955 and 1956. Furthermore, Witness Bowman, president of Wilson, testified that Spalding ceased its purchases of gloves and mitts from his company following 1956. Respondent's purchases of gloves and mitts from MacGregor is shown to have fluctuated from year to year. A representative of each of those two large general-line companies testified in this proceeding at length, and neither suggested that his company had been adversely affected by the acquisition in question. In fact, the representative of MacGregor, the Chairman of its Board, testified that as to the six lines of commerce manufactured by both Spalding and Rawlings, his company had not been affected by the acquisition. His testimony in no wise indicates that his company had been adversely affected as to any other line of commerce, and it is reasonable to assume, therefore, that no such effect existed. Thus, we must conclude that these two companies, the first and fourth in point of general production in the industry, were not substantially affected by Spalding's acquisition of Rawlings.

Second, concerning the small companies referred to above by counsel, it is clear that Spalding's purchases from them have substantially declined. At the same time, it must be observed that Spalding's purchases from Royal in 1955, the first year Spalding bought from that company, totaled \$74,184.00, and in 1956 such purchases rose to \$220,730.09. It must be further observed that in 1954 Spalding's total purchases of gloves and mitts were \$732,812.35, and in 1955, \$1,144,703.00. These latter figures decreased in 1956 to \$675,879.05. Thus, in the year subsequent to the acquisition, Spalding's purchases of gloves and mitts declined by only \$56,933.00. What changes in Spalding's purchases may have occurred in subsequent years is not shown by any evidence in the record.

Third, while it is a fact that Spalding purchased more from Rawlings in 1955 than in 1954, this increase cannot reasonably be attributed to Spalding's acquisition of Rawlings, since that acquisition did not take place until in December of 1955.

When we consider that Spalding had the right to hunt and choose its own suppliers; that the two principal companies whose sales to Spalding in these lines of commerce declined were Wilson and MacGregor, who are the largest companies in the industry and whose representatives were not questioned as to whether their companies had been adversely affected by the acquisition; and the

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## Opinion

further fact that Spalding's overall decrease in the purchase of gloves and mitts from 1955, preceding the merger, to 1956, following the merger, was very slight, amounting to only \$56,933.00, we must conclude that the merger in question has not had the effect of lessening competition nor tending to create a monopoly in the lines of commerce here under consideration.

## CONCLUSIONS

Because of all the facts and reasons stated herein, we are of the opinion that the evidence fails to establish that the effect of the acquisition of Rawlings by Spalding may be substantially to lessen competition, or to tend to create a monopoly, in violation of §7 of the Clayton Act. Accordingly,

*It is ordered.* That the complaint herein be, and the same hereby is, dismissed.

## OPINION OF THE COMMISSION

By SECRET, *Commissioner*:

The complaint in this matter charges respondent, A. G. Spalding & Bros., Inc., with violating Section 7 of the Clayton Act (15 U.S.C. §18), as amended, by acquiring Rawlings Manufacturing Company, a corporation. The hearing examiner held in his initial decision that the evidence failed to establish that Section 7 had been violated and ordered that the complaint be dismissed. The matter is now before the Commission on the appeal of counsel supporting the complaint from this decision. The primary issues raised by the appeal relate to the hearing examiner's rulings concerning "lines of commerce" and to his holding with respect to the competitive effects of the merger.

Respondent, A. G. Spalding & Bros., Inc., a corporation (hereinafter referred to as Spalding or as respondent), is engaged in the manufacture and sale of a general line of athletic goods. Its full line of products consists of some 1,100 different articles, the most important being equipment used in major spectator sports such as baseball, football, basketball, boxing and golf. Spalding manufactures many of these products but also purchases a substantial number from other producers. It ranks as one of the largest firms in the athletic goods industry, and prior to the merger its sales were second only to those of Wilson Athletic Goods Manufacturing Co., Inc. In 1955 its total assets were \$16,665,299, and its sales of finished athletic products amounted to \$23,200,737.

Prior to December 8, 1955, Rawlings Manufacturing Company

(sometimes hereinafter referred to as Rawlings) was a Missouri corporation with its office and principal place of business in St. Louis, Missouri. It was also engaged in the manufacture and sale of a general line of athletic products, manufacturing the majority of them and purchasing the remainder from other producers. It was one of the leading firms in the athletic goods industry, selling nationally through sales offices and wholesale distribution depots in Los Angeles, California, Chicago, Illinois, and St. Louis, Missouri. In 1955 its total assets were approximately \$6,500,000 and its net sales were \$11,209,825.

On December 8, 1955, Spalding acquired all of the capital stock of Rawlings for approximately \$5,698,000. On December 9, 1955, the corporation, Rawlings Manufacturing Company, was liquidated and dissolved, and Spalding succeeded to all of its assets including all of the capital stock of Rawlings' wholly owned subsidiary, Rawlings Sporting Goods Company. Spalding has since operated the acquired company as the Rawlings Division of Spalding, using the name "Rawlings Manufacturing Company." It did not dissolve Rawlings Sporting Goods Company and has operated this corporation as the sales company for merchandise bearing the Rawlings' trade-mark. The integration of Rawlings' facilities with those of Spalding is controlled by stipulation between counsel supporting the complaint and counsel for respondent. Respondent has agreed, in substance, to maintain the pre-merger status of Rawlings and to make no changes therein without advance notice to the Commission.

Prior to the merger, Wilson Athletic Goods Manufacturing Co., Inc., Spalding, MacGregor Sport Products, Inc., and Rawlings, in that order, were the principal producers of athletic products in the United States and were the only members of the industry which sold a general line of these products. A few firms, such as Kennedy Sporting Goods Manufacturing Company, Hutchinson Brothers Leather Co., Dubow Manufacturing Company, Inc., George A. Reach Company, and Stall and Dean Manufacturing Company, produce and sell a partial line of athletic goods, but the great majority of companies in this industry manufacture and sell only a single product or a single line of products. The total number of firms engaged in the production of athletic goods is approximately 200. The trade association for this industry, The Athletic Goods Manufacturing Association (hereinafter referred to as AGMA), was organized prior to 1925 and its membership includes the principal manufacturers of the aforementioned products.

## Line of Commerce

The hearing examiner found that each of nineteen major products of the athletic goods industry constitutes a separate line of commerce within the meaning of Section 7 of the Clayton Act,<sup>1</sup> and his findings with respect to the competitive effects of the acquisition of Rawlings by Spalding were based solely on a study of certain of these product lines. It is the position of counsel supporting the complaint, however, that there are separate and distinct lines of commerce within many of the product lines and that the hearing examiner erred in failing to consider the impact of the merger on competition in these more narrow lines.

After World War II the AGMA, in order to assist industry members in obtaining raw material allocations in times of war or national emergency, initiated a census program to determine the total volume of athletic goods produced by the industry. Beginning with the year 1949 and continuing through 1954, all known manufacturers of athletic products were requested to report their annual sales of some 43 specified items, on both a quantity and value basis. The compilations of these individual reports, showing total annual production of each item, were prepared by the accounting firm of Ernst and Ernst and were published and disseminated by the AGMA. They are known as the AGMA Census Reports or Census Surveys. Individual company reports were also prepared for the year 1955 but were not tabulated by Ernst and Ernst. Although only about 40 percent of the members of the industry filed production reports in 1954 and 1955, these participating firms accounted for approximately 90 percent of the total volume of athletic goods produced in the industry for those years.

The AGMA Census Reports show, by units and dollars, industry sales of athletic goods produced by reporting manufacturers by products, with breakdowns by price categories for many of such products. For example, manufacturers participating in the 1955 Census reported the quantity and value of leather covered softballs sold in the following price ranges: Up to \$9.00 per dozen, \$9.01 to \$16.75 per dozen, and over \$16.75 per dozen; leather footballs in price ranges of up to \$48 per dozen, \$48.01 to \$89.99 per dozen, and \$90.00 and over per dozen; boxing gloves in price ranges of up

<sup>1</sup> Golf clubs (irons); Golf clubs (wood); Golf balls; Baseballs; Softballs; Baseball gloves; Basemen's mitts; Catchers' mitts; Soccer balls; Volley balls; Footballs; Football helmets; Football shoulder pads; Football hip and kidney pads; Basketballs; Tennis balls; Tennis racket frames; Strung tennis rackets; and Badminton rackets (frames and strung rackets).

to \$60 per dozen (sets of 4), \$60.01 to \$102.00 per dozen, and \$102.01 and up per dozen.

It is the contention of counsel supporting the complaint that the AGMA Census Report price categories were designed by the manufacturers themselves through the AGMA Census Report Committee to delineate differing physical characteristics, markets, prices, and end-uses with respect to all of the athletic products for which such price categories had been established. He argues in this connection that the products in each of the price categories are sufficiently different and distinct from those in any other price category within the same product line to constitute each group of products so classified a separate line of commerce for the purpose of this proceeding. To support this position, he relies primarily on the testimony of two former members of the AGMA Census Report Committee and the testimony of the Executive Secretary of the AGMA.

According to the testimony of Mr. George J. Herrmann, Executive Secretary of the AGMA, the price categories in question were designed "to particularly find out the market for various types of equipment, the volume that would be in various price classifications." He further stated that "the price would govern whether it was the better quality or whether it might have been in the toy classification, or whether it would be high quality equipment."

Mr. Fred J. Bowman, President of Wilson, testified to the effect that price categories reflect the quality of raw materials and workmanship that go into the manufacture of a product and that these categories or classifications have been utilized by the AGMA in place of specifications for different grades within a product line.

Mr. Philip H. Goldsmith, Chairman of the Board of MacGregor, stated that the best method of classifying industry products on the basis of quality is by price categories. Using baseballs as an illustration and referring to the 1950 AGMA Census, Mr. Goldsmith testified that the price category of "Up to \$9.00" was selected because it was a known fact that any baseball that sold for under \$9.00 a dozen could not be a yarn-wound ball, and that baseballs in this category "were of an inferior nature that would not be used in league games or in regular competition games." The next price category, "\$9.01 to \$16.80," according to Mr. Goldsmith, "took in all the playable balls that the kids would use, the amateurs, the small leagues, and so forth." He further testified that the "\$16.80 and up" bracket included the official top ball since such a ball could not be made for less than \$16.80 per dozen.

Mr. Bowman described the Wilson American Player line of prod-

ucts as "juvenile line of equipment sold for Christmas selling, including lower priced footballs, basketballs, shoulder pads, basketball goals, bat and ball sets, youth boxing gloves and striking bags, equipment of that type sold mostly to the toy departments." He also stated that this line of products "goes to the younger children who are not yet old enough \* \* \* to participate in the games and use regular equipment."

Mr. Herrmann also testified that "the reason for the classification particularly as to rubber athletic goods was so designed as I understand it so that anything that may be in the toy classification would not be confused with that which was in the regular official size of equipment."

We think it clear from this testimony that in each of the various product lines for which AGMA price categories were established there is a separate line of low priced items which is not sold in competition with other items in the same product line. These low priced items may properly be classified as toys or as products not suitable for use in organized competitive games. Other items within the same product line are of higher quality, more durable and are designed for use in regular competition by both professional and amateur teams and players. The products in each of these categories are physically distinct from those in the other; they are different in quality and price, as well as in the purpose for which they are made and used. There can be no doubt that these two categories within the various product lines can be distinguished competitively from each other and that they constitute separate and distinct lines of commerce within the meaning of Section 7.

Using baseballs as an example, the uncontradicted testimony of the witness Goldsmith establishes that there are sufficient differences between baseballs selling for under \$9.00 a dozen and those selling for more than \$9.00 a dozen to constitute them separate lines of commerce. One is yarn-wound; the other is not. One is suitable for use in organized competitive play; the other is not. They are of different quality, are sold at different prices, and have different end-uses and different markets. The market for the higher priced baseballs consists of major and minor league teams, semi-professional and amateur teams, colleges and high schools, and all others who use baseballs in organized games. The low priced baseballs are not suitable for use by customers who make up this market and for that reason cannot be considered to be competitive with the higher priced baseballs.

Counsel supporting the complaint contends that there are three separate lines of commerce within the baseball product line. The

first, or low priced line, includes baseballs selling for under \$9.00 a dozen. The second, or medium priced line, includes baseballs in the \$9.01 to \$16.80 category. This line consists of baseballs used primarily by juveniles in organized competition. The third, or high priced line, includes baseballs selling for more than \$16.80 a dozen. This line is used primarily by professional leagues, colleges, and others who require a top quality baseball.

He has also proposed similar lines for other products such as footballs, basketballs and boxing gloves. While we agree that the record supports his contention that there are separate and distinct markets for low, medium and high priced items within each of several product lines, we are of the opinion that for the purpose of this proceeding it will be necessary to consider only the lower priced and higher priced lines as indicated above.

Counsel supporting the complaint also contends that the athletic goods industry as a whole constitutes a line of commerce within the meaning of Section 7 of the Clayton Act. We believe the record fully supports this contention. The testimony of AGMA officials establishes that the principal products of this industry are those listed in the AGMA Census Reports. These products are manufactured and sold by Spalding and formerly had been manufactured and sold by Rawlings. They are products which are required to be used in established and well-recognized athletic games. They have peculiar characteristics and end-uses for which there are no substitutes; they are distinct from the products of other industries; and are sold in a recognized market with its own competitive standards. See *United States v. Bethlehem Steel Corporation*, 168 F. Supp. 576 (1958). Moreover, the athletic goods industry is recognized by its members and by its trade association as a separate and distinct industry. It is our opinion, therefore, that the industry itself is a relevant market within which to measure the impact of the merger.

#### Section of the Country

The hearing examiner held that the relevant geographical area to be considered for the purpose of determining the effects of the acquisition on competition is the entire United States. We agree with this conclusion. The record establishes that both Spalding and Rawlings distributed their products throughout the United States and that purchasers of such products are located in all sections of the country. Moreover, competing manufacturers and sellers of athletic goods are located throughout the United States.

The adoption of the United States as the appropriate geographical market does not implicitly assume that Spalding and Rawlings directly competed for every sale they made, as contended by respondent, nor does it assume that these two firms were equally strong factors in competition in every section of the country. Under Section 7, "section of the country" may include any market area in which the acquired and acquiring firms do business and may cover potential, as well as actual, competition. *Pillsbury Mills, Inc.*, 50 F.T.C. 555 (1953). As stated by the Court in *United States v. Bethlehem Steel Corporation*, *supra*:

\* \* \* section 7 is intended to protect buyers as well as competing sellers. Therefore, section of the country must be determined with respect to both buyers and sellers. The determination must be made on the basis of not only where the companies have in the past made sales, but also on the basis of where potentially they could make sales and where buyers could reasonably turn to them as alternative substantial sources of supply.

#### Competitive Effect of the Acquisition

The final question presented in this appeal is whether the effect of the acquisition of Rawlings by respondent may substantially lessen competition or tend to create a monopoly in any of the relevant lines of commerce in the relevant section of the country. In making this determination, we are not required to find an actual lessening of competition resulting from the acquisition. The test is whether there is a reasonable probability that the merger will substantially lessen competition or tend to create a monopoly. *Reynolds Metals Company*, Docket 7009 (1960); *United States v. Bethlehem Steel Corporation*, *supra*; *Crown Zellerbach Corporation*, Docket 6810 (1957); *United States v. E. I. du Pont de Nemours*, 353 U.S. 586 (1957).

The hearing examiner's findings with respect to the competitive effect of the merger were based primarily on an analysis of the following product lines: baseballs, basketballs, footballs, softballs, volley balls, soccer balls, and baseball gloves and mitts. He concluded from this analysis that the evidence failed to establish that the effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in violation of Section 7.

We will consider first the discussion in the initial decision of the competitive effect of the merger on the manufacture and sale of baseballs. Using the quantity of baseballs produced as the basis for his computation, the hearing examiner found the market shares of all manufacturers participating in the 1954-1955 AGMA Census Survey to be as follows:

|                | Opinion         | 56 F.T.C.       |
|----------------|-----------------|-----------------|
|                | 1954            | 1955            |
| Lannom.....    | 18.8%           | 19.2%           |
| Spalding.....  | 16.5%           | 15.3%           |
| de Beer.....   | 16.2%           | 17.9%           |
| Wilson.....    | 16.1%           | 17.5%           |
| MacGregor..... | 10.9%           | 10.2%           |
| Rawlings.....  | 10.5%           | 9.4%            |
| Tober.....     | 3.9%            | 4.8%            |
| Hofran.....    | 3.8%            | 3.1%            |
| Sealand.....   | 1.7%            | 1.4%            |
| Harwood.....   | 1.5%            | 1.2%            |
| Kennedy.....   | <sup>1</sup> 1% | <sup>1</sup> 1% |

<sup>1</sup> Less than.

Relying solely on the data relating to the number of items produced, he found that in 1955 three firms, Lannom, de Beer and Wilson, surpassed Spalding in point of production by producing, respectively, 19.2%, 17.9% and 17.5% of all baseballs manufactured against Spalding 15.3%. This finding is somewhat misleading, however, since it ignores completely the value of the respective market shares. On a value basis, Spalding's share of the market was 21.8% as opposed to 11.6% for de Beer and 10.7% for Lannom. Nor does the above finding support the hearing examiner's conclusion that manufacturers of baseballs have found no difficulty in competing with Spalding. In this connection, the great majority of the baseballs produced by Lannom and de Beer were in the low priced category, while the total value of their combined production of higher priced baseballs was less than half the value of Spalding's production in that category.

A comparison of the market shares of the companies reporting in the 1954-1955 AGMA Census Survey, based on the value of all baseballs produced, is shown in the following table:

|                | 1954  | 1955  |
|----------------|-------|-------|
| Wilson.....    | 21.3% | 22.9% |
| Spalding.....  | 22.7% | 21.8% |
| MacGregor..... | 14.0% | 13.8% |
| de Beer.....   | 10.6% | 11.6% |
| Rawlings.....  | 13.0% | 11.3% |
| Lannom.....    | 10.4% | 10.7% |
| Tober.....     | 2.1%  | 2.6%  |
| Hofran.....    | 2.6%  | 2.2%  |
| Harwood.....   | 1.8%  | 1.6%  |
| Sealand.....   | 1.4%  | 1.4%  |
| Kennedy.....   | .1%   |       |

Prior to the acquisition, six firms accounted for over 90% of the production of all baseballs on a value basis. The merger

brought together the second and fifth ranking producers to make Spalding the largest producer in the industry with a market share of 24.7% on a quantity basis and 33.1% on a value basis. The hearing examiner recognized that Spalding's share of the market was increased substantially by the acquisition. He also noted that prior to the merger Spalding had been a leader in the manufacture and sale of baseballs. He failed to attach any significance, however, to the substantial increase in Spalding's market share in this line of commerce or to the fact that Spalding had eliminated a major competitor. Nor did he comment on the high degree of concentration in this line of commerce.

Although it is not entirely clear from the initial decision, the hearing examiner apparently concluded that a new entrant in this field would have no difficulty competing with respondent. This conclusion, however, is not supported by the record, nor is the specific finding that the manufacture of higher quality baseballs is relatively simple. Moreover, in reaching the conclusion that there was no reasonable probability of a substantial lessening of competition in this line of commerce, the hearing examiner was unduly influenced by the statement of the witness Goldsmith that MacGregor had not been injured by the merger. Even assuming MacGregor was not injured, there are many other competitors in this field and we find that there is probability of injury as to competition generally. Nor does his comparison of the quantitative increase of Spalding's production with that resulting from the merger in the *Brillo* case<sup>2</sup> support his conclusion with respect to the competitive effect of the acquisition.

A somewhat similar but less comprehensive study has been made by the hearing examiner with respect to the effect of the acquisition on other product lines. Each of these products, except volley balls and soccer balls, was also broken down by price categories in the AGMA Survey. As in the case of baseballs, the hearing examiner in evaluating the effect of the merger on competition failed to recognize that there are separate and distinct markets for different lines of products within each of these product lines. He also compounded this error by emphasizing the number of items produced rather than the value of such items in comparing the competitive positions of Spalding and Rawlings with other manufacturers in the industry. As a result, his comparisons, in many instances, do not reflect the true competitive relationship existing among these companies.

<sup>2</sup> *Brillo Manufacturing Company, Inc.*, Docket 6557 (1958).

One of the most significant points in the entire record is that Spalding and Rawlings were engaged primarily in the production and sale of athletic goods in the higher priced, higher quality line. It is, therefore, within this higher quality line of the various product lines that an appraisal of the competitive effect of the merger should properly be made. The manufacture and sale of the low price line of athletic products involves an entirely different market and may be completely disregarded in making this appraisal.

Prior to the acquisition, Spalding, Rawlings, Wilson, and MacGregor were the only firms engaged in the production and sale of a general line of athletic products. On the basis of the AGMA Census Reports, these four firms accounted for approximately 50 percent of the total industry production and sales in 1954 and 46.4 percent in 1955. The next fifteen firms, ranging fifth through nineteenth, accounted for 34.7 percent of the total production and the remaining fifty-six companies participating in the survey accounted for only 18.9 percent of the total.

The merger brought together the second and fourth largest companies with market shares of 12.5 percent and 6 percent, respectively, and placed Spalding in a leading position in the industry. Almost 50 percent of the total industry production was then concentrated in three firms, Spalding, Wilson, and MacGregor. After the merger, Spalding's sales were more than four times that of the fifth ranking firm, W. J. Voit Rubber Corporation, and five times that of the sixth ranking firm, Acushnet Process Sales Co. None of the other firms accounted for as much as 4 percent of the total industry sales.

Although a comparison of the production and sales of athletic products by members of the industry reveals the dominant positions held by Spalding-Rawlings, Wilson and MacGregor, it nevertheless tends to magnify the degree of real competition existing between these firms and other members of the industry. Spalding-Rawlings, Wilson and MacGregor are engaged primarily in the production and sale of higher quality items in each of the product lines. Many of the smaller firms, on the other hand, are engaged almost exclusively in the manufacture and sale of goods in the lower quality line and consequently are not significant factors in that area of competition where Spalding and the other general line firms are predominant.

As stated above, Rawlings was one of four general line firms in the athletic goods industry. It sold 29 of the major products in competition with Spalding, 18 of which it manufactured. In addi-

tion to being able to compete with Spalding on a general line basis, Rawlings also had comparable distribution facilities, a well-known trade name, and the financial resources to compete successfully with Spalding in national advertising, research and development, exclusive adoption contracts with professional leagues and teams, endorsement contracts with established athletes, and in all other respects. Of particular significance in this connection is that immediately prior to the merger, Rawlings was experiencing a period of rapid growth and expansion. From 1953 to 1955, its total assets increased by 22% and its net worth increased 25%.

The immediate effect of the acquisition, therefore, was the elimination of a substantial competitive factor in the production and sale of athletic goods, leaving the general line concerns, Wilson and MacGregor, as the only firms having the capacity to compete on equal terms with Spalding. The absorption of Rawlings' share of the market greatly increased the concentration in the hands of these three firms, particularly in the higher priced, higher quality line of merchandise. Three firms instead of four now control approximately 50% of the market for all athletic goods and considerably more than 50% of the market for higher quality products.

The possibility of another firm replacing Rawlings as a strong competitive factor in the industry is exceedingly remote. The record shows that it is not only difficult for smaller firms to grow in this industry, it is also difficult for them to survive. According to the uncontradicted testimony of the witness Goldsmith, the industry's mortality rate is high. A number of companies handling a partial line of athletic products have gone out of business but the highest mortality has been among the smaller, single line firms. Not since 1910, when Wilson was organized, has any firm risen to the status held by Rawlings at the time of the merger. It is noted in this connection that in reaching the competitive level of the older general line firms, Wilson acquired six manufacturers and five distributors of athletic equipment.

As previously stated, separate and distinct markets are involved in the manufacture and sale of lower quality athletic products and in the manufacture and sale of the higher quality products. It is in the latter market that an analysis of the competitive impact of the merger should properly be made. Computed on both a value and quantity basis, the market shares of the various AGMA reporting companies in the production and sale of higher quality baseballs (selling for more than \$9.00 a dozen) for the year 1955 was as follows:

| Opinion        | 56 F.T.C.                    |                          |
|----------------|------------------------------|--------------------------|
|                | <i>Dollar value<br/>1955</i> | <i>Quantity<br/>1955</i> |
| Wilson.....    | 26.9                         | 26.0                     |
| Spalding.....  | 26.5                         | 24.0                     |
| MacGregor..... | 16.1                         | 14.7                     |
| Rawlings.....  | 13.9                         | 15.3                     |
| J. deBeer..... | 7.1                          | 8.5                      |
| Lannom.....    | 5.4                          | 6.6                      |
| Harwood.....   | 1.9                          | 2.1                      |
| Sealand.....   | 1.6                          | 2.1                      |
| Tober.....     | 0.6                          | 0.7                      |
| Kennedy.....   | ( <sup>1</sup> )             | ( <sup>1</sup> )         |

<sup>1</sup> Less than 1 percent.

In 1955 baseballs selling for more than \$9.00 a dozen comprised 76.8 percent of the total sales value of all baseballs produced. Four firms, Spalding, Wilson, MacGregor and Rawlings, accounted for 83.4 percent of the industry total in this line. Wilson was the largest producer with a market share of 26.9 percent, Spalding was second with 26.5 percent, MacGregor was third with 16.1 percent and Rawlings was fourth with 13.9 percent. The high degree of concentration already existing in this product market was further increased by the merger. Spalding's market share increased to 40.4 percent of the industry total and one of its three major competitors was eliminated.

In considering the various competitive factors involved in the manufacture and distribution of higher quality baseballs, it appears extremely doubtful that Spalding's leadership in this line of commerce will be seriously challenged in the foreseeable future or that any change can be anticipated in the oligopolistic situation existing in this market. In addition to the competitive advantage of being general line distributors, Spalding, Rawlings, Wilson and MacGregor, over a period of many years have established reputations for quality resulting in consumer acceptance of their baseballs far surpassing that of any competitor. As found by the hearing examiner, Spalding's baseballs have been the official baseball for the two major leagues from their inception, and Spalding is now under contract to supply both leagues with their entire requirements of baseballs until 1966. That Spalding recognizes that the exclusive use of its baseballs by the major leagues greatly enhances the prestige and consumer acceptability of the trade names "Reach" and "Spalding" is attested to by the fact that these baseballs which are ordinarily sold to dealers at \$21.60 a dozen are sold for \$3.74 a dozen to the American League and \$4.48 to the National League. Similar adoption contracts with the minor leagues are also important factors from the standpoint of advertising and promotion

of baseballs. In 1954 Spalding, Rawlings, Wilson and MacGregor had exclusive contracts to supply baseballs to 32 of the 36 minor leagues then in existence. In 1955 Spalding and Rawlings together had 14 such contracts and in 1956 they had 16.

Other factors which have contributed greatly to the lead enjoyed by the general line firms are endorsement contracts with star athletes, national advertising, patents, and facilities and resources for research and development. These advantages, together with the exclusive adoption contracts, have created formidable barriers to effective competition from new entrants in the field or from firms now in existence.

Similar barriers also exist in the manufacture and sale of the higher priced lines in other major product lines. In these lines, as in the higher quality baseball line, a relatively few firms, including Spalding and Rawlings, have accounted for most of the industry's production and sales. The following illustrations are based on the AGMA Census Reports:

**Basketballs:** In 1955 the sales value of higher priced basketballs (leather and rubber covered selling for more than \$48.00 per dozen) was approximately \$3,800,000 or about 47 percent of the total sales value of all basketballs produced. In that year, five firms, Voit, Spalding, Wilson, MacGregor, and Rawlings, accounted for 83 percent of the total sales of this higher priced line. As a result of the acquisition, Spalding's market share, computed on a value basis, increased from 19.8 percent to 31.2 percent, making Spalding the leader in this line.

**Footballs:** In 1955 the sales value of higher priced footballs (leather and rubber covered selling for more than \$45.00 per dozen) was approximately \$1,600,000 or about 33 percent of the total sales value of all footballs produced. In that year, Spalding, Voit, Wilson, MacGregor, and Rawlings had a combined market share of 86.4 percent in this line. Spalding had been the largest producer, on the basis of dollar sales, prior to the merger and by the acquisition of Rawlings increased its lead from 24.9 percent to over 33 percent of the industry total.

**Softballs:** In 1955 the sales value of higher priced softballs (leather and rubber covered selling for more than \$9.00 per dozen) was approximately \$3,000,000 or 79 percent of the total sales value of all softballs produced. Spalding was the fifth largest producer in this line and Rawlings was the seventh largest. Seven firms, including Spalding, Rawlings, Wilson and MacGregor, accounted for about 87 percent of the total industry production. As a result of the merger, Spalding became the leading producer in this higher priced line, with a market share of 20 percent.

The acquisition of Rawlings by Spalding eliminated a substantial competitive factor in the manufacture and sale of the higher priced line in each of the aforementioned product lines and substantially increased the high degree of concentration already existing in these lines. Moreover, in these quality lines, as in others wherein the general line firms have been predominant, there is little likelihood that some other company will replace Rawlings as a strong factor in competition.

Although the merger is primarily a horizontal one, it also has certain important vertical aspects. Many of the major products in the general line handled by Rawlings were purchased from other manufacturers and resold by Rawlings under its own trade name. In 1955 Rawlings' purchases from other industry members amounted to \$2,252,371, a 74 percent increase over the preceding year. The importance of Rawlings' national sales organization to smaller manufacturers is evidenced by the following statement made in 1952 by Rawlings' president:

\* \* \* Rawlings now maintains a national sales force and has also developed acceptance for its brands in foreign markets. This sales force not only handles the products of Rawlings Manufacturing Company, but it also is becoming increasingly useful in the sale of products manufactured by others. During the last 12 years sales in that category have increased from \$120,000 to \$950,000 annually, and the Company's officers think a substantial volume of additional business is available in this direction. Many sporting goods manufacturers do not have the means of maintaining sales activities so large and effective as those of our Company. Such companies need the more adequate sales representation which our position offers.

Of 29 major athletic products handled by both Spalding and Rawlings, there are 9, including golf and tennis equipment, which are manufactured by Spalding but not by Rawlings. Prior to the merger, Rawlings purchased its requirements of these 9 products from Spalding and other manufacturers. By acquiring Rawlings, Spalding can, if it so desires, prevent other firms that manufacture these products from selling to Rawlings and thus cut off an important outlet for their merchandise. That there is a reasonable probability that this may occur is evidenced by a pre-merger announcement by Spalding that "where possible and practical, as much of both lines will be manufactured in Spalding's and Rawlings' factories as seems appropriate."

Prior to the merger, Spalding was a leading seller of baseball gloves and mitts, but did not manufacture these products. Consequently, it was an important purchaser of these products from other manufacturers of athletic goods. Its total purchases thereof amounted to \$732,812 in 1954 and \$1,144,703 in 1955. Rawlings,

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on the other hand, was the leading producer in these product lines. By acquiring Rawlings, Spalding can not only prevent competitors from purchasing such products from Rawlings but can also foreclose manufacturers of such products from access to Spalding as a purchaser thereof.

Prior to the merger, Spalding's principal suppliers of higher priced gloves and mitts were Rawlings, Wilson, MacGregor, Kennedy Sporting Goods Manufacturing Co., Inc., and Stall and Dean Manufacturing Co. Its requirements of these items are now being supplied almost entirely by Rawlings. The total amount of its purchases from the other four suppliers dropped from \$517,433 in 1955 to \$455,149 in 1956. In 1956 Spalding's purchases of such products from Wilson amounted to \$387,321. After 1956, Spalding discontinued purchasing these items from Wilson.

The hearing examiner, in concluding that the merger would not have the effect of lessening competition nor the tendency to create a monopoly in the aforementioned lines of commerce, placed considerable emphasis on the fact that neither of the officials of Wilson and MacGregor who had testified was questioned as to whether his company had been adversely affected by the acquisition. This was clearly an unsound basis for his conclusion. The statute refers to lessening of competition and not to injury to competitors. Moreover, it requires only that there be a reasonable probability that the acquisition have the proscribed effect on competition. Even if there had been testimony that Wilson and MacGregor had not been adversely affected, it would not alter the significant fact that competition which formerly existed among various manufacturers in the sale of higher priced gloves and mitts to Spalding has been virtually eliminated by the merger.

## CONCLUSION

It is our opinion that the effect of the acquisition of Rawlings by respondent may be substantially to lessen competition or tend to create a monopoly in each of the lines of commerce considered and, as such, is in violation of Section 7 of the Clayton Act, as amended. The hearing examiner erred in holding to the contrary and in ruling that the complaint be dismissed.

The appeal of counsel supporting the complaint is granted and our order providing for appropriate modification of the initial decision is issuing herewith.

## FINAL ORDER

The hearing examiner having filed his initial decision in this proceeding dismissing the complaint charging respondent with hav-

ing violated Section 7 of the Clayton Act, as amended, by its acquisition of all of the capital stock of Rawlings Manufacturing Company; and

Counsel supporting the complaint having appealed from the initial decision, assigning as error certain of the hearing examiner's rulings delineating the relevant market for determining the legality of said acquisition and the hearing examiner's holding that the evidence fails to establish that the effect of the acquisition of Rawlings Manufacturing Company by respondent may be substantially to lessen competition or tend to create a monopoly in any line of commerce; and

The Commission having determined, for the reasons appearing in the accompanying opinion, that the appeal of counsel supporting the complaint should be granted and that the initial decision should be modified by striking therefrom the findings and conclusions pertaining to the lines of commerce involved in said acquisition, the findings and conclusions pertaining to the competitive effect of said acquisition, and the order dismissing the complaint:

*It is ordered*, That the initial decision be modified by striking the date "March 12, 1955," from the first line of the first paragraph on page 2 thereof and substituting therefor the date "March 12, 1956."

*It is further ordered*, That the initial decision be modified by striking the date "1944" from the first line of the fourth paragraph on page 10 thereof and substituting therefor the date "1949."

*It is further ordered*, That the hearing examiner's initial decision be modified by striking therefrom the findings and conclusions beginning on page 13 with the words "Prior to the acquisition" and ending on page 32 thereof and substituting therefor the findings and conclusions embodied in the accompanying opinion beginning on page 3 with the words "The hearing examiner found" and ending on page 18 thereof.

*It is further ordered*, That the initial decision be modified by striking therefrom the order dismissing the complaint and substituting therefor the following:

*It is ordered*, That respondent, A. G. Spalding & Bros., Inc., shall divest itself absolutely, in good faith, of all rights, title and interest in all stock, assets, patents, trade-marks, trade names, contracts, business and good will, and all other properties, rights and privileges acquired by A. G. Spalding & Bros., Inc., as a result of the acquisition by A. G. Spalding & Bros., Inc., of the stock or share capital of Rawlings Manufacturing Company, in such manner as to restore Rawlings Manufacturing Company to substantially the

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same relative competitive standing it formerly had in the athletic goods 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, A. G. Spalding & Bros., Inc., 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, such plan to include the date within which compliance can be effected, the time for compliance to be hereafter fixed by order of the Commission, jurisdiction being retained for these purposes.

*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.

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IN THE MATTER OF

DAMASCUS HOSIERY MILLS, INC., ET AL.