

Complaint

58 F.T.C.

May 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein, except respondent Barnett L. Ribak, shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

BISESE & CONSOLE, INC.

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

Docket 8057. Complaint, July 29, 1960—Decision, May 16, 1961

Consent order requiring a Norfolk, Va., wholesale grocer or commission merchant to cease violating Sec. 2(c) of the Clayton Act by accepting unlawful brokerage on its own purchases of citrus fruit and produce, such as a discount of 10 cents per 1½ bushel box of citrus fruit or a lower price reflecting brokerage received from packers in Florida.

COMPLAINT

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

PARAGRAPH 1. Respondent Bise & Console, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 240 Brewer Street, Norfolk, Virginia.

PAR. 2. Respondent is now, and for the past several years has been, engaged in business primarily as a wholesale grocer or commission merchant, buying, selling and distributing for its own account, citrus fruit and produce, as well as other food products, all of which are hereinafter sometimes referred to as food products. Respondent purchases its food products from a large number of suppliers located in many sections of the United States. The volume of business done by respondent in the purchase and sale of food products is substantial.

PAR. 3. In the course and conduct of its business for the past several years, respondent has purchased and distributed, and is

now purchasing and distributing, food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several States of the United States other than the State of Virginia, in which respondent is located. Respondent transports or causes such food products, when purchased, to be transported from the places of business or packing plants of its suppliers located in various other States of the United States to respondent who is located in the State of Virginia, or to respondent's customers located in said State, or elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of said food products across state lines between respondent and its respective suppliers or sellers of such products.

PAR. 4. In the course and conduct of its business for the past several years, but more particularly since January 1, 1959, respondent has been and is now making substantial purchases of food products for its own account for resale from some, but not all, of its suppliers, and on a large number of these purchases respondent has received and accepted, and is now receiving and accepting, from said suppliers a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

For example, respondent makes substantial purchases of citrus fruit from a number of packers or suppliers located in the State of Florida, and receives on said purchases a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per 1 $\frac{3}{4}$ bushel box, or equivalent. In many instances respondent receives a lower price from the supplier which reflects said commission or brokerage.

PAR. 5. The acts and practices of respondent in receiving and accepting a brokerage or a commission, or an allowance or discount in lieu thereof, on its own purchases, as above alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Mr. Cecil G. Miles and *Mr. Ernest G. Barnes* for the Commission.
Broudy, Baker & Broudy, by *Mr. M. R. Broudy*, of Norfolk, Va., for respondent.

INITIAL DECISION BY RAYMOND J. LYNCH, HEARING EXAMINER

Pursuant to the provisions of subsection (c) of Section 2 of the Clayton Act, as amended, the Federal Trade Commission on July 29, 1960 issued and subsequently served its complaint in this proceeding against the above-named respondent.

Order

58 F.T.C.

On March 17, 1961 there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint, and that the complaint may be used in construing the terms of the order.

The hearing examiner finds that the content of the agreement meets all of the requirements of section 3.25(b) of the Rules of the Commission.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, and it is ordered that said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Bisese & Console, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 240 Brewer Street, Norfolk, Virginia.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Bisese & Console, Inc., a corporation, and its officers, representatives and employees, directly or through any corporate or other device, in connection with the purchase of citrus fruit or produce in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or produce for respondent's own account, or where respondent is the agent, representative, or

other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 16th day of May 1961, become the decision of the Commission; and, accord-