

LURIA BROTHERS AND COMPANY, INC., ET AL.

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

Docket 6156. Amended and Supplemental Complaint, July 13, 1954—Decision,
Feb. 13, 1963*

Order requiring the nation's largest broker of iron and steel scrap, of Philadelphia, Pa., to cease acting as exclusive broker or supplier of purchased scrap for any buyer, domestic or foreign; requiring respondent mills,

*See 51 F.T.C. 15 for order granting motion to amend.

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for a 5-year period, not to purchase in excess of 50 percent of their annual requirements from Luria except to the extent that comparable scrap is not available from other suppliers; requiring Luria, for 5 years, not to acquire any interest in any other dealer in scrap without a finding by the Commission that an acquisition will not unduly restrain competition; and requiring Luria to divest itself of Southwest Steel Corp., a competing broker-dealer it acquired in 1950.

AMENDED AND SUPPLEMENTAL COMPLAINT

The Federal Trade Commission having reason to believe that the parties named in the caption hereof and hereby made respondents herein, and more particularly hereinafter described and referred to as respondents, have been and are using unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act, as amended and approved March 21, 1938 (52 Stat. 111; U.S.C., Title 15, Sec. 45), and that respondent Luria Brothers and Company, Inc., has violated Section 7 of the Clayton Act as approved October 15, 1914 (38 Stat. 731), and Section 7 of the Clayton Act as amended and approved December 29, 1950 (64 Stat. 1125; U.S.C., Title 15, Sec. 18), and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, the Commission hereby issues its amended and supplemental complaint, charging as follows:

COUNT I

Charging violation of Section 5 of the Federal Trade Commission Act, as amended and approved March 21, 1938 (52 Stat. 111; U.S.C., Title 15, Sec. 45), the Commission alleges:

PARAGRAPH 1.* The respondents named in this Paragraph 1 will sometimes hereinafter be referred to collectively as "respondent brokers."

(a) Respondent, Luria Brothers & Company, Inc., is a corporation, organized under the laws of the Commonwealth of Pennsylvania in June 1918, with its office and principal place of business located at Philadelphia National Bank Building, Philadelphia, Pennsylvania. On or about October 11, 1955, the name of this corporation was changed to L.B.C. Company. This respondent will sometimes hereinafter be referred to as "old Luria".

(b) Respondent, Luria Brothers & Company, Inc., is a corporation organized under the laws of the State of Delaware in September 1955, with its office and principal place of business located at Philadelphia National Bank Building, Philadelphia, Pennsylvania. Said respond-

* Paragraph 1 as amended, April 16, 1956.

ent was incorporated as Bayou Metals, Inc., but on or about October 11, 1955, its name was changed to Luria Brothers & Company, Inc. This respondent will sometimes hereinafter be referred to as "new Luria". Said respondent is a subsidiary of Ogden Corporation, a corporation organized under the laws of the State of Delaware in August, 1939, with its office and principal place of business located at 33 Pine Street, New York, New York.

On or about October 11, 1955, old Luria sold substantially all of its assets, tangible and intangible, real and personal, including its business as a going concern, its name and its good will, to new Luria, which has since continued the business of old Luria without substantial change.

For the purposes of this proceeding, therefore, new Luria is answerable and liable for such of the acts and practices of old Luria as may be relevant and material to this proceeding. Any allegation or other reference in this complaint with respect to respondent or to Luria Brothers and Company, Inc., is, accordingly, made with respect to both old Luria and new Luria.

(c) Respondent, Southwest Steel Corporation, is a corporation, organized under the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at Grant Building, Pittsburgh, Pennsylvania.

PAR. 2. The respondents named in this Paragraph 2 will sometimes hereinafter be referred to collectively as "respondent mills"; and "mills," as the term is used in this complaint, is intended to include generally foundries as well as steel mills. It is specifically alleged that each subsidiary respondent mill named in subparagraphs (a), (c), (d), and (e) of this Paragraph 2 has acted for and on behalf of the respondent mill which owns and operates it as well as for and on its own behalf in doing and performing the things hereinafter alleged in Paragraph 9.

(a) Respondent, Bethlehem Steel Corporation, is a corporation, organized under the laws of the State of Delaware in July 1919, with its office and principal place of business located at 701 East Third Street, Bethlehem, Pennsylvania. Said respondent owns and operates the corporations, Bethlehem Steel Company and Bethlehem Pacific Coast Steel Corporation, which are also named as respondents herein.

Respondent, Bethlehem Steel Company, a subsidiary of respondent, Bethlehem Steel Corporation, is a corporation, organized under the laws of the State of Pennsylvania in April 1899, with its office and principal place of business located at 701 East Third Street, Bethlehem, Pennsylvania.

Respondent, Bethlehem Pacific Coast Steel Corporation, a subsidiary of respondent, Bethlehem Steel Corporation, is a corporation, organized under the laws of the State of Delaware in October 1945,

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with its office and principal place of business located at 20th and Illinois Streets, San Francisco, California.

(b) Respondent, United States Steel Corporation, is a corporation, organized under the laws of the State of New Jersey in February 1901, with its office and principal place of business located at 71 Broadway, New York, New York. Said respondent owns and operates numerous plants, divisions, and subsidiary corporations, but it is especially because of its activities at the Geneva, Utah, plants of its Columbia-Geneva Division that it is named as a respondent herein. Said plants were once owned by the Geneva Steel Company, formerly a subsidiary of respondent, United States Steel Corporation, but on or about December 31, 1951, the Geneva Steel Company merged with the United States Steel Company, also a former subsidiary of respondent, United States Steel Corporation, and became part of the Columbia-Geneva Steel Division of said company. On or about December 31, 1952, the United States Steel Company merged with the United States Steel Corporation.

(c) Respondent, National Steel Corporation, is a corporation, organized under the laws of the State of Delaware in November 1929, with its office located at Grant Building, Pittsburgh, Pennsylvania. Said respondent owns and operates the corporation, Weirton Steel Company, which is also named as a respondent herein.

Respondent, Weirton Steel Company, a subsidiary of respondent National Steel Corporation, is a corporation, organized under the laws of the State of West Virginia in May 1939, with its office and principal place of business located at Weirton, West Virginia.

(d) Respondent, Colorado Fuel and Iron Corporation, is a corporation, organized under the laws of the State of Colorado in April 1936, with its office and principal place of business located at the Continental Oil Building, Denver, Colorado. Said respondent owns and operates the corporation, John A. Roebling's Sons Corporation, which is also named as a respondent herein. On or about June 30, 1952, The Claymont Steel Corporation, then a subsidiary corporation of respondent, Colorado Fuel and Iron Corporation, organized under the laws of the State of Delaware, with its office and principal place of business located at Claymont, Delaware, transferred its assets to the Wickwire-Spencer Division of respondent, Colorado Fuel and Iron Corporation. Said Claymont Steel Corporation was then formally dissolved.

Respondent John A. Roebling's Sons Corporation, a subsidiary of respondent, Colorado Fuel and Iron Corporation, is a corporation organized under the laws of the State of Delaware, with its office and principal place of business located at Trenton, New Jersey. On or

about December 31, 1952, said corporation (until December 22, 1952, named Colorado Steel Corporation) acquired all of the manufacturing business, plants, and inventories of John A. Roebling's Sons Company, a New Jersey corporation.

(e) Respondent, Central Iron and Steel Company, is a corporation, organized under the laws of the Commonwealth of Pennsylvania in May 1946, with its office and principal place of business located at Harrisburg, Pennsylvania. Said respondent is a subsidiary of the Barium Steel Corporation, a corporation organized under the laws of the State of Delaware, with its general office located at New York, New York. Said respondent, Central Iron and Steel Company, owns and operates the corporation, Phoenix Iron and Steel Company, which is also named as a respondent herein.

Respondent, Phoenix Iron and Steel Company, a subsidiary of Central Iron and Steel Company, is a corporation, organized under the laws of the Commonwealth of Pennsylvania in September 1949, with its office and principal place of business located at Phoenixville, Pennsylvania.

(f) Respondent, Granite City Steel Company, is a corporation, organized under the laws of the State of Delaware in November 1927, with its office and principal place of business located at Granite City, Illinois.

(g) Respondent, Lukens Steel Company, is a corporation, organized under the laws of the Commonwealth of Pennsylvania in January 1917, with its office and principal place of business located at Coatesville, Pennsylvania.

(h) Respondent, Detroit Steel Corporation, is a corporation, organized under the laws of the State of Michigan in March 1923, with its office and principal place of business located at Detroit, Michigan. Said respondent owns and operates a Portsmouth Division at Portsmouth, Ohio, and it is especially because of its activities at said division that it is named as a respondent herein.

(i) Respondent, McLouth Steel Corporation, is a corporation, organized under the laws of the State of Michigan in April 1934, with its office and principal place of business located at 300 South Livernois Street, Detroit, Michigan.

(j) Respondent, Baldwin-Lima-Hamilton Corporation, in a corporation organized under the laws of the Commonwealth of Pennsylvania in June 1911, with its office and principal place of business located at Eddystone, Pennsylvania. Said respondent owns and operates a Standard Steel Works Division at Burnham, Pennsylvania, and it is especially because of its activities at said division that it is named as a respondent herein.

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(k) Respondent, Edgewater Steel Company, is a corporation, organized under the laws of the Commonwealth of Pennsylvania in August 1916, with its office and principal place of business located at Oakmont, Pennsylvania.

(l) Respondent, Bucyrus-Erie Company, is a corporation, organized under the laws of the State of Delaware in November 1927, with its office and principal place of business located at South Milwaukee, Wisconsin. Said respondent is named as a respondent herein especially because of its activities at its plants located at Erie, Pennsylvania, and its activities with and through its former subsidiary, National Erie Corporation, a corporation, organized under the laws of the Commonwealth of Pennsylvania in May 1931, with its office and principal place of business located at Erie, Pennsylvania, which, on or about February 1, 1954, transferred all of its operating assets to said respondent, having previously adopted a resolution of dissolution.

(m) Respondent, Columbia Malleable Castings Corporation, is a corporation, organized under the laws of the State of New York in March 1917, with its office and principal place of business located at Providence, Rhode Island. Said respondent is a subsidiary of the Grinnell Corporation, a corporation organized under the laws of the State of Delaware, with its office and principal place of business located at Providence, Rhode Island.

PAR. 3. Respondent, Hugo Neu Corporation, hereinafter referred to as respondent Neu, is a corporation, organized under the laws of the State of New York in January 1947, with its office and principal place of business located at 31 Nassau Street, New York, New York.

PAR. 4. Respondent brokers are now engaged and for many years prior hereto have been engaged in the business of buying and selling in their own names and for their own accounts iron and steel scrap and finished and semi-finished iron and steel products. "Iron and steel scrap," as the term is used in this complaint, is intended to include generally all ferrous materials, either alloyed or unalloyed, of which iron or steel is a principal component, which are the waste of industrial fabrication, or objects that have been discarded on account of obsolescence, failure or any other reason.

Respondent brokers buy from and sell to various mills, fabricators of steel products, dealers, railroads, and other sellers and buyers who are located in States other than the State in which said respondents maintain offices and yards, and in connection therewith said respondents cause such iron and steel scrap and finished and semi-finished iron and steel products to be shipped and transported across State lines to said respondents or to parties designated by them.

Respondent, Luria Brothers and Company, Inc., owns the control-

ling interest in and directs the operations of Livingston & Southard, Inc., a corporation organized under the laws of the State of Delaware in June 1953, which is described as a division of respondent, Luria Brothers and Company, Inc. Said respondent, operating in its own name and through its subsidiary and affiliated companies, including Livingston & Southard, Inc., also buys iron and steel scrap for export purposes from various sources located in the several States of the United States, and causes such scrap to be shipped and transported across State lines to various ports, and causes iron and steel scrap purchased in the United States to be shipped to foreign countries.

PAR. 5. Respondent, Luria Brothers and Company, Inc., maintains offices located in 16 cities in 12 different States, and yards which serve as centers for the collection or preparation of iron and steel scrap in 6 cities in 2 different States. Said respondent also owns and controls other corporations, wholly or partially, directly or indirectly, which engage in the business of buying and selling iron and steel scrap, or collecting, accumulating, sorting, preparing, and then selling such scrap. Among said owned and controlled corporations are Pueblo Compressed Steel Corporation, A. M. Wood and Company, Inc., Lipsett, Inc., Lipsett Steel Products, Inc., Apex Steel and Supply Company, Inc., and the respondent, also described in this Paragraph 5, Southwest Steel Corporation. Said corporations are further described hereinafter in Paragraph 11.

Respondent, Southwest Steel Corporation, maintains offices located in Pittsburgh, Pennsylvania, and Portsmouth, Ohio, and yards which serve as centers for the collection and preparation of iron and steel scrap in Glassport, Pennsylvania, and Memphis, Tennessee. Said respondent, prior to August 31, 1953, also owned 405 of the 810 outstanding shares of voting common stock and 2,250 shares of preferred stock of Continental Iron and Steel Corporation, a New York corporation similarly engaged in the business of buying and selling iron and steel scrap. On or about August 31, 1953, said respondent purchased all the remaining outstanding stock of said Continental Iron and Steel Corporation, and in November 1953, voted the dissolution of said corporation, and all of its assets were transferred to said respondent.

In the course and conduct of their business, said respondent brokers have been and are now in competition with other corporations, and with individuals, firms, and partnerships engaged in the purchase and sale of iron and steel scrap and finished and semi-finished iron and steel products in interstate commerce. Prior to the acquisition of control of respondent, Southwest Steel Corporation, by respondent, Luria Brothers and Company, Inc., on or about February 1, 1950, said respondent brokers were also in competition with each other, and subse-

quent thereto have continued to hold themselves out to the trade and the public as being in competition with each other.

Respondent, Luria Brothers and Company, Inc., is and for several years prior hereto has been the largest purchaser and seller of iron and steel scrap in the United States, and respondent, Southwest Steel Corporation, is and for several years prior hereto has been a large purchaser and seller of iron and steel scrap in the Pittsburgh, Pennsylvania, area. Respondent, Southwest Steel Corporation, occupies a leading and dominant position in its own marketing area and respondent, Luria Brothers and Company, Inc., occupies the leading and dominant position in the industry throughout the United States.

PAR. 6. In buying and selling iron and steel scrap, many members of the industry act solely as dealers, others act solely as brokers, and still others act in the dual capacity of dealers and brokers, as the terms "dealers" and "brokers" are used in the trade. Respondent brokers buy and sell iron and steel scrap in the dual capacity of dealers and brokers, as more particularly set out below, their principal activity being in the capacity of brokers.

When acting as dealers, respondent brokers customarily take possession of the iron and steel scrap purchased by them and store, sort, and prepare said scrap, and subsequently sell it directly to consuming mills or foundries or to brokers or others.

When acting as brokers, as that term is used in the trade, respondent brokers customarily agree to sell a specified tonnage of iron and steel scrap at a specified price to a consumer who is usually a purchaser of such scrap for use in the production of iron and steel products. Respondent brokers customarily procure the specified tonnage by shopping the market and purchasing at the lowest prices they are able to obtain, realizing a profit or suffering a loss, as the case may be, on the basis of the difference between the prices at which they have agreed to sell and those at which they are able to buy. Suppliers of respondent brokers are usually authorized to ship directly to the customers of respondent brokers.

While respondent brokers are designated as "brokers," they are not brokers in fact. Respondent brokers purchase iron and steel scrap for their own account, taking title to such scrap and assuming all the risks incident to ownership. They sell such scrap to their customers in their own names and for their own accounts, and at prices and on terms determined by their customers and themselves. Said respondent brokers assume full and complete credit risks on such transactions, reaping a profit or sustaining a loss thereon as the case may be. Respondent brokers are responsible to their customers for the quantity and quality of the scrap, and it rests with the respondent brokers

themselves, to recoup any losses occasioned thereby by seeking recourse against their suppliers.

PAR. 7. Respondent mills are engaged in the production of iron and steel products by melting, rerolling, or forging, and the subsequent sale thereof to fabricators in numerous important industries, large ultimate consumers, jobbers, and other buyers. Some of the respondent mills are engaged in, or are affiliated with corporations engaged in the production of pig iron and other raw materials used in the making of steel products; the sale of pig iron; the sale of ingots and a broad variety of semi-finished iron and steel products; the fabrication and sale of certain finished steel products, among which are structural steel, plates, bars, sheets, wire, and other wire products; and the sale of the scrap incident to the fabrication of iron and steel products.

In the course and conduct of their business, respondent mills purchase iron and steel scrap and other raw materials from respondent brokers and other sources of supply, and sell finished and semi-finished iron and steel products and the scrap incident to the fabrication thereof to respondent brokers and other buyers located in the several States of the United States and cause said scrap so purchased and said products and scrap so sold to be shipped and transported across State lines.

PAR. 8. Respondent Neu maintains offices in New York, New York. It is now engaged, and for many years prior hereto, has been engaged in the business of buying and selling iron and steel scrap, among other things, in its own name and in other names, including the name, Asiatic Metals Company, Ltd. Respondent Neu is engaged extensively in the business of importing commodities into this country and of exporting commodities from this country. In the course and conduct of its export business, respondent Neu buys iron and steel scrap, among other things, from various sources located in the several States of the United States, and causes such scrap to be shipped and transported across State lines to various ports, and causes iron and steel scrap purchased in the United States to be shipped to foreign countries.

Except to the extent limited by the methods, acts and practices hereinafter alleged in Paragraph 12, respondent Neu has been and is now in competition with other corporations and with individuals, firms and partnerships, engaged in the purchase and sale of iron and steel scrap, among other things, in interstate and foreign commerce. Respondent Neu occupies a leading and dominant position in the exportation of iron and steel scrap from the continental United States to Japan.

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PAR. 9. Respondent brokers and respondent mills and other mills have entered into express and implied understandings, agreements, combinations, and conspiracies for the purpose and with the effect of lessening, hindering, restraining and suppressing competition, and tending to create a monopoly in respondent brokers in the interstate purchase and sale of iron and steel scrap. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, respondent brokers and respondent mills and other mills have acted and continue to act in concert and in cooperation in doing and performing the following methods, acts, and practices:

(a) Respondent brokers entered into understandings, agreements, and conspiracies with respondent mills and other mills to act as exclusive or substantially exclusive scrap brokers for said mills.

(b) Respondent mills and other mills agreed to and did make all or substantially all of their iron and steel scrap purchases from respondent brokers.

(c) Respondent mills and other mills agreed to and did notify former suppliers and others that respondent brokers were their exclusive iron and steel scrap brokers.

(d) Pursuant to and in compliance with said understandings, agreements, and conspiracies, respondent mills informed respondent brokers of offers of scrap received directly from former suppliers and others, and required former suppliers and others to solicit the business of respondent mills from or through respondent brokers.

(e) Respondent brokers either denied permission to said suppliers to sell iron and steel scrap to said mills or permitted them to do so only on terms and conditions dictated by respondent brokers.

(f) In furtherance of said understandings, agreements and conspiracies, respondent mills and other mills sold finished and semi-finished iron and steel products to fabricators and others under and subject to the condition, agreement or understanding that scrap resulting from further fabrication of such products, or other iron and steel scrap produced or offered for sale by said fabricators or others, would be sold to respondent brokers.

(g) In furtherance of said understandings, agreements, and conspiracies, respondent mills and other mills sold finished and semi-finished iron and steel products to respondent brokers, and respondent brokers sold such products to fabricators and others under and subject to the condition, agreement or understanding that scrap resulting from further fabrication of such products, or other iron and steel scrap produced or offered for sale by said fabricators or others, would be sold to respondent brokers.

(h) Respondent mills and other mills requested railroads and other sources of supply to sell to a respondent broker iron and steel scrap

offered for sale by such sources of supply. Because of the substantial volume of business which respondent mills and other mills were in a position to divert to or from various railroads and other sources of supply, their requests to sell iron and steel scrap to a respondent broker had a strong and frequently coercive influence. In many instances, railroads and other sources of supply, in response to and because of such requests, did sell iron and steel scrap to a respondent broker, thereby diverting business in iron and steel scrap to respondent brokers from their competitors.

(i) The regulations of the Office of Price Stabilization, effective on or about February 7, 1951, provided that where iron and steel scrap is allocated by the National Production Authority, other than from a government agency, the seller may designate a broker. (Sec. 19(a), C.P.R. 5, Iron and Steel Scrap, 16 F.R. 1066). Contrary to the spirit and purpose of that regulation, and pursuant to requests of respondent brokers, which were for the purpose of more fully implementing the exclusive arrangements hereinabove referred to, respondent mills and other mills requested railroads and other sources of supply to designate a respondent broker as the broker in connection with the sale of iron and steel scrap allocated to said mills. Because of the substantial volume of business which respondent mills and other mills were in a position to divert to or from various railroads and other sources of supply, their requests to designate a respondent broker as the broker in connection with the sale of iron and steel scrap allocated to said mills had a strong and frequently coercive influence. In many instances, railroads and other sources of supply, in response to and because of such requests, did designate a respondent broker as the broker in connection with the sale of allocated iron and steel scrap, thereby diverting business in allocated iron and steel scrap to respondent brokers from their competitors.

(j) The regulations of the Office of Price Stabilization, effective on or about February 7, 1951, provided that a consumer may designate a dealer or dealers to prepare steel scrap of dealer or industrial origin on a preparation fee basis under certain circumstances. (Sec. 15(a), C.P.R. 5, Iron and Steel Scrap, 16 F.R. 1066.) Pursuant to and consistent with the intent and purpose of the aforesaid understandings, agreements, and conspiracies, respondent mills and other mills customarily designated a dealer or dealers to prepare steel scrap in conformity with the requests of respondent brokers, this increasing the influence, domination, and control of respondent brokers over iron and steel scrap dealers.

PAR. 10. Respondent, Luria Brothers and Company, Inc., for the purpose and with the effect of lessening, hindering, restraining, and

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suppressing competition in the interstate purchase and sale of iron and steel scrap, and tending to create a monopoly in the interstate purchase and sale of iron and steel scrap, has engaged in and continues to engage in the following methods, acts, and practices, among others:

(a) Threatened to and did divert iron and steel scrap tonnage, or other tonnage, shipped via railroad, when it could do so without incurring undue additional expense, inconvenience or delay, from those railroads which failed or refused to sell substantial quantities of iron and steel scrap to said respondent.

(b) Threatened to and did divert iron and steel scrap tonnage, or other tonnage, shipped via railroad, when it could do so without incurring undue additional expense, inconvenience or delay, from those railroads which failed or refused to designate said respondent as broker for substantial quantities of allocated iron and steel scrap.

(c) Offered to sell and sold finished and semi-finished iron and steel products to fabricators and others under and subject to the condition, agreement or understanding that scrap resulting from further fabrication of such products or other iron and steel scrap produced or offered for sale by said fabricators or others would be sold to said respondent.

(d) Purchased certain grades of iron and steel scrap under and subject to the condition, agreement, or understanding that the dealer or other source of supply would sell to said respondent other grades of iron and steel scrap.

(e) In seeking to secure control of marketing areas in certain sections of the country, bid and paid for iron and steel scrap at prices so high that neither said respondent nor its competitors could resell such scrap at existing price ceilings or at generally prevailing market prices except at financial loss.

(f) Threatened to and did open competing yards or install additional equipment in existing yards for the collection or preparation of iron and steel scrap in areas where additional yards or equipment were economically undesirable, for the purpose and with the effect of harassing iron and steel scrap dealers in such areas who failed or refused to sell all or a substantial part of their scrap to said respondent.

(g) Held out and continues to hold out as being independent of and from said respondent certain corporations which are being operated under the direction and control of said respondent by means of outright ownership, substantial stock ownership, financial and contractual affiliations and otherwise. Said respondent has authorized, permitted, or required and continues to authorize, permit, or require purchases to be made by said corporations and products of said corporations to be offered for sale and sold without any disclosure of said respondent's interest in or its ownership or control of said corporations, thereby

diverting to such corporations and from their competitors substantial trade and business which could not have been so diverted had said respondent's interest in or its ownership or control of said corporations been known to the trade and the public.

PAR. 11. Respondent, Luria Brothers and Company, Inc., has also acquired, directly or indirectly, and continues to exercise substantial domination and control over the buying and selling of iron and steel scrap by certain dealers and brokers which were formerly substantial competitors of said respondent and of others in the business of buying and selling or buying, collecting, accumulating, sorting, preparing, and selling iron and steel scrap. Said domination and control was acquired for the purpose and with the effect of thereby lessening or eliminating, suppressing, and preventing competition with said respondent by such dealers and brokers in the buying and selling of iron and steel scrap, of lessening and suppressing competition generally in the buying and selling of iron and steel scrap, and of creating and maintaining a monopoly in said respondent. Said domination and control over the buying and selling of iron and steel scrap by certain dealers and brokers has been acquired by respondent, Luria Brothers and Company, Inc., by and through the use of the methods, acts, and practices set out in the following subparagraphs (a) and (b):

(a) Said respondent, Luria Brothers and Company, Inc., has made and is continuing to make substantial advances or loans to iron and steel scrap dealers to enable said dealers to purchase iron and steel scrap, additional machinery, equipment, or real estate, to make other capital improvements, or for other purposes. Many of said advances or loans are made subject to the express condition, understanding, and agreement, that, during the periods of the advances or loans, said dealers will sell to said respondent all of the iron and steel scrap acquired, processed, and produced by said dealers, and that during such periods said dealers will not sell any iron and steel scrap to parties other than said respondent except with the prior express approval of said respondent. Other advances or loans, not made subject to the above-mentioned express condition, understanding, and agreement, have the capacity and tendency to result and have actually resulted in tacit understandings, implied agreements, or other obligations on the part of dealers accepting such advances or loans to sell to said respondent all of the iron and steel scrap acquired, processed, and produced by said dealers.

(b) Respondent, Luria Brothers and Company, Inc., has acquired, directly or indirectly, all or a substantial part of the capital stock of certain corporations described more particularly in the following subsections (1) through (6). These corporations were formerly inde-

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pendent, but as a result of said stock acquisitions, they are now operating under and subject to the control of said respondent. They are now and for several years prior hereto have been large or the largest brokers or dealers in iron and steel scrap in their respective market areas, and they now occupy and have occupied an important position or the leading and dominant position in such areas. In connection with their purchases and sales, said corporations cause iron and steel scrap to be shipped and transported across State lines to said corporations or to parties designated by them.

(1) In or about July 1946, said respondent acquired 80 shares of the 150 shares of the issued and outstanding capital stock of Pueblo Compressed Steel Corporation, a corporation organized under the laws of the State of Colorado, with its office and principal place of business located at Pueblo, Colorado.

(2) In October 1947, said respondent acquired all of the issued and outstanding capital stock of A. M. Wood and Company, Inc., a corporation organized under the laws of the State of Delaware, with its office and principal place of business located at 117 South 17th Street, Philadelphia, Pennsylvania.

(3) On or about May 4, 1948, said respondent acquired all of the issued and outstanding capital stock of Lipsett, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located at 100 Park Avenue, New York, New York.

(4) On or about May 4, 1948, said respondent acquired all of the issued and outstanding capital stock of Lipsett Steel Products, Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business located at 222 Morgan Avenue, Brooklyn, New York.

(5) On or about February 1, 1950, said respondent acquired all of the voting stock of respondent, Southwest Steel Corporation, more particularly described herein in Paragraphs 1 and 5.

(6) On or about April 27, 1951, said respondent acquired one-half of the issued and outstanding capital stock of the Apex Steel and Supply Company, and one-half of the issued and outstanding capital stock of the Cermack-Laffin Corporation, as security for a loan of \$272,500 to Charles A. Mogilner. Pursuant to the terms of the loan agreement, said respondent may at any time take title to the said stock, or Charles A. Mogilner may at any time tender title to said stock to said respondent in satisfaction of the indebtedness. In addition to the loan to Charles A. Mogilner which is secured by the stock as aforesaid, said respondent holds a 3% interest bearing note from Apex Steel and Supply Company, in the amount of \$272,500, dated May 1, 1951, payable at the rate of \$25,000 per year or 50% of the net profits

after taxes of Apex Steel and Supply Company, whichever is larger. Apex Steel and Supply Company is a corporation organized under the laws of the State of Illinois with its office and principal place of business located at 2204 South Laflin Street, Chicago, Illinois. It occupies certain real estate owned by Cermack-Laflin Corporation, a corporation organized under the laws of the State of Illinois. Stockholders of the Apex Steel and Supply Company are the same as the stockholders of Cermack-Laflin Corporation and hold approximately the same proportions of stock in each company. Through and by virtue of the stock and note of the corporation, acquired as aforesaid, respondent, Luria Brothers and Company, Inc., has obtained and continues to exercise substantial working control of Apex Steel and Supply Company.

PAR. 12. Respondent, Luria Brothers and Company, Inc., and respondent Neu, and others, have entered into express and implied understandings, agreements, combinations and conspiracies for the purpose and with the effect of lessening, hindering, restraining and suppressing competition in the purchase and sale of iron and steel scrap in interstate and foreign commerce, and tending to create a monopoly in said respondents in the sale of iron and steel scrap from the continental United States to customers located in other countries. Pursuant to said understandings, agreements, combinations and conspiracies and in furtherance thereof, respondent Luria Brothers and Company, Inc., and respondent Neu, and others, have acted and continue to act in concert and cooperation in doing and performing the following methods, acts and practices:

(a) On or about July 3, 1953, respondent Neu entered into understandings, agreements, combinations and conspiracies with five steel producing companies located in Japan, which will sometimes hereinafter be referred to as the Japanese combination, to act as the exclusive or substantially exclusive supplier for those companies of iron and steel scrap obtained in the continental United States. The five steel producing members of this Japanese combination are among the six most important and largest steel producing companies in Japan, and represent and control the purchasing of iron and steel scrap from the continental United States by substantially all of the Japanese steel producing companies. Said understandings, agreements, combinations and conspiracies provided initially for the purchase and sale of a fixed amount of iron and steel scrap within a limited period of time, but also made provision for extensions and renewals on a continuing and exclusive basis.

(b) Respondent Luria Brothers and Company, Inc., and respondent Neu entered into understandings, agreements, combinations and con-

spiracies to participate and have participated jointly in supplying iron and steel scrap to the Japanese combination under the exclusive arrangement referred to in subparagraph (a) of this Paragraph 12.

PAR. 13. The purpose and effect of the understandings, agreements, combinations, and conspiracies, and of the methods, acts, and practices alleged in Paragraphs 9, 10, 11, and 12 herein, and things done pursuant to them, all of which allegations are sometimes hereinafter referred to as the acts and practices of the respondents, were and are, or may be, substantially to lessen, hinder, restrain and suppress competition with respect to prices and otherwise in the purchase and sale of iron and steel scrap in interstate and foreign commerce; unduly to burden the channels of free and open competition in the purchase and sale of iron and steel scrap in interstate and foreign commerce; to enable the respondents to dominate and manipulate various markets in which iron and steel scrap is purchased and sold; and to tend to create in respondent brokers a monopoly in the purchase and sale of iron and steel scrap in interstate and foreign commerce. Each of the acts and practices of the respondents has facilitated and contributed to the effectiveness of the other acts and practices of the respondents, and the capacity, tendency and effect of all or any of them are, therefore, herein alleged with respect to each of them.

It is further specifically alleged that the capacity, tendency and effect of the acts and practices of the respondents have been and are, among other things, to divert trade to respondent brokers from their competitors; to lessen competition between and among the respondent mills in the purchase of iron and steel scrap; to cause respondent mills and other mills to refrain from purchasing iron and steel scrap from competitors of respondent brokers; to prevent competitors of respondent brokers from selling to the principal consumers of iron and steel scrap in certain areas; unduly to hinder and prevent iron and steel scrap dealers and brokers from competing with respondent brokers and respondent Neu in purchasing and selling such scrap in interstate and foreign commerce; to coerce and cause suppliers and prospective suppliers of iron and steel scrap to sell to respondent brokers and to refrain from selling to competitors of respondent brokers without regard to the comparative services and facilities offered by respondent brokers and those offered by competitors of respondent brokers; to prejudice and injure brokers, dealers, and producers of iron and steel scrap who do not conform to the program of respondents, or who do not desire, but are compelled to conform to that program; and to prejudice and injure the public and consumers.

PAR. 14. The acts and practices of the respondents as herein alleged are all to the prejudice of competitors of respondent brokers and respondent Neu and to the prejudice of the public; have a dangerous

tendency to hinder and prevent, and have actually hindered and prevented, competition in the purchase and sale of iron and steel scrap in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in iron and steel scrap and have a dangerous tendency to create in respondent brokers a monopoly in the purchase and sale of iron and steel scrap; and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

COUNT II

Charging violation of Section 7 of the Clayton Act, as approved October 15, 1914 (38 Stat. 731), and Section 7 of the Clayton Act, as amended and approved December 29, 1950 (64 Stat. 1125; U.S.C., Title 15, Sec. 18), the Commission alleges:

PARAGRAPH 1.* For its allegations under this Paragraph 1 of Count II said Commission relies upon the allegations set out in subparagraphs (a) and (b) of Paragraph 1 of Count I of this complaint, as amended, to such an extent as though those allegations were set out in full herein, and said subparagraphs (a) and (b) of Paragraph 1 of Count I of this complaint, as amended, are therefore incorporated by reference and constitute the allegations of this Paragraph 1 of Count II.

PAR. 2. Respondent is now engaged and for many years prior hereto has been engaged in the business of buying and selling in its own name and for its own account iron and steel scrap and finished and semi-finished iron and steel products. Respondent buys from and sells to various mills, fabricators of steel products, dealers, railroads, and other sellers and buyers who are located in States other than the State in which said respondent maintains offices and yards, and in connection therewith causes such iron and steel scrap and finished and semi-finished iron and steel products to be shipped and transported across State lines to respondent or to parties designated by it.

Respondent maintains offices located in 16 cities in 12 different States, and yards which serve as centers for the collection or preparation of iron and steel scrap in 6 cities in 2 different States. Respondent has acquired and now owns and controls other corporations, wholly or partially, directly or indirectly, which engage in the business of buying and selling iron and steel scrap, or collecting, accumulating, sorting, preparing, and then selling such scrap.

In the course and conduct of its business, respondent has been and is now in competition with other corporations and with individuals,

*Paragraph 1 as amended April 16, 1956.

firms, and partnerships engaged in the purchase and sale of iron and steel scrap and finished and semi-finished iron and steel products in interstate commerce. It is, and for several years prior hereto has been, the largest purchaser and seller of iron and steel scrap in the United States, and it occupies the leading and dominant position in that industry.

PAR. 3. In buying and selling iron and steel scrap, many members of the industry act solely as dealers, others act solely as brokers, and still others act in the dual capacity of dealers and brokers, as the terms "dealers" and "brokers" are used in the trade. Respondent buys and sells iron and steel scrap in the dual capacity of dealer and broker, as more particularly set out below, its principal activity being in the capacity of broker.

When acting as a dealer, respondent customarily takes possession of the iron and steel scrap purchased by it and stores, sorts, and prepares such scrap, and subsequently sells it directly to consuming mills or foundries or to brokers or others.

When acting as a broker, as that term is used in the trade, respondent customarily agrees to sell a specified tonnage of iron and steel scrap at a specified price to a consumer who is usually a purchaser of such scrap for use in the production of iron and steel products. Respondent customarily procures the specified tonnage by shopping the market and purchasing at the lowest price it is able to obtain, realizing a profit or suffering a loss, as the case may be, on the basis of the difference between the prices at which it has agreed to sell and those at which it is able to buy. Suppliers of respondent are usually authorized to ship directly to respondent's customers.

While respondent is designated as a "broker," it is not a broker in fact. Respondent purchases iron and steel scrap for its own account, taking title to such scrap and assuming all the risks incident to ownership. It sells such scrap to its customers in its own name and for its own account, and at prices and on terms determined by its customers and itself. Respondent assumes full and complete credit risks on such transactions, reaping a profit or sustaining a loss thereon as the case may be. Respondent is responsible to its customers for the quantity and quality of the scrap, and it rests with the respondent itself to recoup any losses occasioned thereby by seeking recourse against its suppliers.

PAR. 4. For its charges under this Paragraph 4 of Count II, said Commission relies upon the matters and things set out in subparagraph (b), including subsections (1) through (6) thereof, of Paragraph 11 of Count I of this complaint, with the limitation that the words "respondent broker" be disregarded in all references herein to Southwest Steel Corporation, to such an extent and as though those allega-

tions in said subparagraph of Count I, as described above, were set out in full herein, and said subparagraph (b), including subsections (1) through (6), thereof, of Paragraph 11 of Count I, so limited, is therefore incorporated by reference and made a part of the allegations of this count.

PAR. 5. The effect of the aforesaid acquisitions by respondent of all or a substantial part of the capital stock of Pueblo Compressed Steel Corporation, A. M. Wood and Company, Inc., Lipsett, Inc., Lipsett Steel Products, Inc., Southwest Steel Corporation, Apex Steel and Supply Company, and Cermack-Laflin Corporation, or of all or a substantial part of the capital stock of each or any of said corporations has been, is, or may be to lessen, eliminate, or suppress competition between respondent and said corporations; to lessen, eliminate, or suppress competition between said corporations; to lessen, eliminate, suppress, and prevent competition with respect to prices and otherwise in the purchases and sale of iron and steel scrap in various sections of the United States; unduly to hinder and prevent iron and steel scrap dealers and brokers from competing with respondent in purchasing and selling such scrap in interstate commerce; unduly to impede, hinder, and prevent sellers of iron and steel scrap in interstate commerce from choosing a customer other than respondent or a company controlled by respondent, and buyers of iron and steel scrap in interstate commerce from choosing a supplier other than respondent or a company controlled by respondent; to tend to create in respondent a monopoly in the purchase and sale of iron and steel scrap in various sections of the United States; to prejudice and injure brokers, dealers, and producers of iron and steel scrap who do not conform to respondent's program of securing monopoly control over the iron and steel scrap market, or who do not desire, but are compelled to conform to said program; and to prejudice and injure the public and consumers.

Said acquisitions, and each of them, also constituted a part of the acts and practices of the respondents, and particularly of respondent, Luria Brothers and Company, Inc., which are alleged in Paragraphs 9, 10, 11 and 12 of Count I of this complaint, and facilitated and contributed to the effectiveness of those acts and practices. It is alleged, therefore, that said acquisitions, and each of them, have also had and continue to have, or may have, the capacity, tendency, and effect alleged in Paragraph 13 of Count I of this complaint with respect to the acts and practices of the respondents.

PAR. 6. The acts and practices of the respondent as herein alleged constitute violations of Section 7 of the Clayton Act as approved October 15, 1914 (38 Stat. 731), and of Section 7 of the Clayton Act, as amended and approved December 29, 1950 (64 Stat. 1125; 15 U.S.C., Sec. 18).

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Mr. Wilmer L. Tinley, Mr. John F. McCarty and Mr. Mark E. Richardson supporting the complaint.

Wolf, Block, Schorr and Solis-Cohen, by *Mr. Morris Wolf, Mr. Nathan Silberstein and Mr. Burton Caine*, of Philadelphia, Pa., for respondents Luria and Southwest Steel;

Cravath, Swaine & Moore, by *Mr. Albert R. Connelly and Mr. Jack E. Brown*, of New York, N.Y., for Bethlehem respondents;

Mr. L. L. Lewis, Mr. Merrill Russell and Mr. William H. Buchanan, of Pittsburgh, Pa., for respondent United States Steel;

Thorp, Reed & Armstrong, by *Mr. Earl F. Reed and Mr. James A. Bell*, of Pittsburgh, Pa., for respondents National, Weirton and Edgewater;

Holtzmann, Wise & Shepard, by *Mr. Howard M. Holtzmann, Mr. Daniel J. Ahearn and Mr. Mark J. Maged*, of New York, N.Y., for respondents Colorado Fuel & Iron and Roebling;

Donohue & Kaufmann and Arnold F. Shaw, of Washington, D.C., for respondents Central and Phoenix;

Bryan, Cave, McPheeters & McRoberts, by *Mr. R. H. McRoberts*, of St. Louis, Mo., for respondent Granite City;

Mr. Daniel E. Igo, of Coatesville, Pa., for respondent Lukens;

Cook, Beake, Miller, Wrock & Cross, by *Mr. Joseph A. Vieson*, of Detroit, Mich., for respondent Detroit;

Dickinson, Wright, Davis, McKean & Cudlip, by *Mr. William B. Cudlip and Mr. T. Donald Wade*, of Detroit, Mich., for respondent McLouth;

Morgan, Lewis & Bockius, by *Mr. Robert C. McAdoo*, of Philadelphia, Pa., for respondent Baldwin-Lima-Hamilton;

Quarles, Herriott & Clemons, by *Mr. Lester S. Clemons*, of Milwaukee, Wis., for respondent Bucyrus-Erie;

Barley, Snyder, Cooper & Mueller, by *Mr. Ralph M. Barley*, of Lancaster, Pa., for respondent Columbia Malleable; and

Root, Barrett, Cohen, Knapp & Smith, by *Mr. Whitman Knapp, Mr. David Simon and Mr. Martin F. Richman*, for respondent Hugo Neu.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

MARCH 29, 1961

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STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its original complaint in this proceeding on January 19, 1954. Said complaint was thereafter superseded by an amendment and supplemental complaint issued by the Commission on July 13, 1954. Said amended and supplemental complaint, in Count I thereof, charges respondents with having entered into certain understandings, agreements, combinations and conspiracies, and with engaging in certain unfair methods of competition and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act. Said complaint, in Count II thereof, charges respondent Luria Brothers and Company, Inc., with having made certain stock acquisitions in other corporations, in violation of Section 7 of the Clayton Act. Following service of copies of the amended and supplemental complaint upon them, respondents filed their separate answers denying, in substance, the violations charged. Hearings on the complaint were held in abeyance pending negotiations among counsel concerning certain interlocutory and procedural matters. Thereafter, a prehearing conference was held before the undersigned hearing examiner, on December 7, 1954, with counsel for various of the parties to discuss the possibilities of a settlement or simplification of the issues, and procedures with respect to the conduct of hearings.

Hearings on the amended and supplemental complaint were begun on January 12, 1955, in Philadelphia, Pennsylvania, and continued periodically thereafter, until May 14, 1958. Said hearings were held in Philadelphia, Pennsylvania; New York, New York; Boston, Massachusetts; Chicago, Illinois; St. Louis, Missouri; New Orleans, Louisiana; Pittsburgh, Pennsylvania; Cleveland and Toledo, Ohio; Detroit, Michigan; Denver, Colorado; Salt Lake City, Utah; Butte, Montana; Seattle, Washington; Portland, Oregon; San Francisco and Los Angeles, California; and Washington, D.C. The record includes approximately 14,000 pages of testimony, depositions of 130 pages and over 1,300 documentary exhibits, the latter aggregating many thousands of pages. There were 113 days of hearings and more than 250 witnesses testified in the proceeding. All parties were represented by counsel, participated in hearings, and were afforded full opportunity to be heard and to examine and cross-examine witnesses.

Prior to the close of the case-in-chief, the complaint was further amended, on motion of counsel supporting the complaint, by order of the undersigned dated April 16, 1956, so as to add a new Luria respondent as successor in interest and responsibility to the original Luria respondent. At the close of the case-in-chief, on November 1, 1957, the undersigned hearing examiner granted in part motions by

various respondents to dismiss the complaint, insofar as it alleged an over-all agreement, understanding or conspiracy between and among the respondent steel mills with respondent Luria. By agreement of counsel for said respondents the examiner withheld ruling on the balance of the motions to dismiss until the close of all the evidence, without prejudice to the position of respondents, certain of whom thereafter proceeded to offer defense evidence.

Pursuant to leave granted, counsel supporting the complaint filed proposed findings of fact, conclusions of law and order to cease and desist on November 10, 1958. The various respondents filed their separate proposed counter-findings of fact, conclusions of law and order, together with supporting briefs on various dates from January 5, 1959, to January 13, 1959. Counsel supporting the complaint were granted leave to file a reply to the proposed findings and briefs of respondents on February 16, 1959, and counsel for respondents National Steel, Weirton Steel and Edgewater Steel filed a reply memorandum to the reply of counsel supporting the complaint on March 20, 1959. Proposed findings not herein adopted, either in the form proposed or in substance, are rejected as not supported by the evidence or as involving immaterial matters.

After having carefully reviewed the entire record in this proceeding, and the proposed findings and conclusions, and the supporting briefs and memoranda filed by the parties, and based on the entire record and his observation of the witnesses, the hearing examiner makes the following:

FINDINGS OF FACT

I. The Business of Respondents, and Interstate Commerce

A. *Identity of the Parties*

1. Respondent Luria Brothers and Company, Inc., sometimes referred to herein as Luria, is a corporation organized under the laws of the Commonwealth of Pennsylvania in June 1918, with its office and principal place of business located at Philadelphia National Bank Building, Philadelphia, Pennsylvania. On or about October 11, 1955, the name of this corporation was changed to L.B.C. Company. This respondent will sometimes hereinafter also be referred to as "old Luria".

Respondent Luria Brothers & Company, Inc., added as a party on April 16, 1956, is a corporation organized under the laws of the State of Delaware in September 1955, with its office and principal place of business located at Philadelphia National Bank Building, Philadelphia, Pennsylvania. Said respondent was incorporated as

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Bayou Metals, Inc., but on or about October 11, 1955, its name was changed to Luria Brothers & Company, Inc. This respondent will sometimes hereinafter be referred to as "new Luria". Said respondent is a subsidiary of Ogden Corporation, a corporation organized under the laws of the State of Delaware in August 1939, with its office and principal place of business located at 33 Pine Street, New York, New York.

On or about October 11, 1955, old Luria sold substantially all of its assets (tangible and intangible, real and personal), including its business as a going concern, its name and its good will to new Luria, which has since continued the business of old Luria without substantial change. New Luria concedes that for purposes of this proceeding, it is answerable and liable for such of the acts and practices of old Luria as may be relevant and material in this proceeding, and that any allegation or other reference in the complaint to respondent Luria or to Luria Brothers & Company, Inc., may be considered as being made with respect to both old Luria and new Luria.

2. Respondent Southwest Steel Corporation, sometimes referred to herein as Southwest, is a corporation organized under the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at Grant Building, Pittsburgh, Pennsylvania. All of the voting stock of said respondent was acquired by respondent Luria on or about February 1, 1950.

3. Respondent Bethlehem Steel Corporation is a corporation organized under the laws of the State of Delaware in July 1919, with its office and principal place of business located at 25 Broadway, New York, New York. Said respondent owns all of the stock of Bethlehem Steel Company and Bethlehem Pacific Coast Steel Corporation, separate corporate entities hereinafter described.

4. Respondent Bethlehem Steel Company, sometimes referred to herein as Bethlehem, is a corporation organized under the laws of the State of Pennsylvania in April 1899, with its office and principal place of business located at 701 East Third Street, Bethlehem, Pennsylvania. Said respondent is a wholly owned subsidiary of respondent Bethlehem Steel Corporation.

5. Respondent Bethlehem Pacific Coast Steel Corporation, sometimes referred to herein as Bethlehem Pacific, is a corporation organized under the laws of the State of Delaware in October 1945, with its office and principal place of business located at 20th and Illinois Streets, San Francisco, California. Said respondent is a wholly owned subsidiary of respondent Bethlehem Steel Corporation.

6. Respondent United States Steel Corporation, sometimes referred to herein as U.S. Steel, is a corporation organized under the laws of the State of New Jersey in February 1901, with its office and principal

place of business located at 71 Broadway, New York, New York. Said corporation owns and operates numerous plants, divisions and subsidiary corporations, including plants at Geneva, Utah, the latter being part of its Columbia-Geneva Division. Insofar as said respondent is charged in the complaint with any violations of law, it is because of its activities at the Geneva, Utah plants. Said plants were acquired from the United States Government in 1946 and were operated by Geneva Steel Company, a wholly owned subsidiary of respondent U.S. Steel, until December 31, 1951, when it was merged into United States Steel Company, another wholly owned subsidiary of said respondent. The businesses which had been conducted and the facilities which had been operated by Geneva Steel Company and by Columbia Steel Company (another wholly owned subsidiary of United States Steel Corporation, which had also merged into United States Steel Company) were thereafter carried on and operated by the Columbia-Geneva Steel Division of said United States Steel Company. On December 31, 1952, United States Steel Company was merged with respondent United States Steel Corporation, and the Geneva, Utah plant, along with two plants in California, have since been operated by the Columbia-Geneva Steel Division of said respondent.

7. Respondent National Steel Corporation, sometimes referred to herein as National, is a corporation organized under the laws of the State of Delaware in November 1929, with offices located at Grant Building, Pittsburgh, Pennsylvania. Said respondent wholly owns the respondent Weirton Steel Company, which is a subsidiary of said respondent. Other subsidiaries of respondent National are Great Lakes Steel Corporation, operating a plant in Detroit, Michigan, and Hanna Furnace Corporation, operating a plant in Buffalo, New York, neither of which subsidiaries has been named as a respondent in this proceeding.

8. Respondent Weirton Steel Company, sometimes herein referred to as Weirton, is a corporation organized under the laws of the State of West Virginia, in May 1939, with its office and principal place of business located at Weirton, West Virginia. Said respondent is a wholly owned subsidiary of respondent National, which controls its operations.

9. Respondent The Colorado Fuel & Iron Corporation, sometimes referred to herein as CF&I, is a corporation organized under the laws of the State of Colorado in April 1936, with its office and principal place of business located at Continental Oil Building, Denver, Colorado. Said respondent owns all of the stock of respondent John A. Roebling's Sons Corporation. On March 5, 1951, CF&I purchased all the stock of Worth Steel Company, which operated a

plant at Claymont, Delaware. The name of the purchased company was then changed to Claymont Steel Corporation, which was operated as a wholly owned subsidiary of CF&I until June 30, 1952, when its assets were transferred to CF&I, and Claymont Steel Corporation was then dissolved. Since June 30, 1952, the Claymont plant has been operated as a part of the Wickwire-Spencer Steel Division of CF&I.

10. Respondent John A. Roebling's Sons Corporation, sometimes referred to herein as Roebling, is a corporation organized under the laws of the State of Delaware with its office and principal place of business located at Trenton, New Jersey. Said respondent, which is a wholly owned subsidiary of respondent CF&I, was named Colorado Steel Corporation until December 22, 1952, at which time it changed its name to John A. Roebling's Sons Corporation. On December 31, 1952, said respondent acquired all of the manufacturing business, plants and inventories of John A. Roebling's Sons Company, a New Jersey corporation.

11. Respondent Central Iron & Steel Company, sometimes referred to herein as Central, is a corporation organized under the laws of the Commonwealth of Pennsylvania in May 1946, and its office and principal place of business was formerly located at Harrisburg, Pennsylvania. On or about October 28, 1955, the name of said respondent was changed to Phoenix Iron & Steel Company, sometimes referred to herein as "new Phoenix", and its office and principal place of business was changed from Harrisburg to Phoenixville, Pennsylvania. Said respondent is a subsidiary of Barium Steel Corporation, a corporation organized under the laws of the State of Delaware, with its general office located at New York, New York.

12. Respondent Phoenix Iron & Steel Company, sometimes referred to herein as "old Phoenix" was a corporation organized under the laws of the Commonwealth of Pennsylvania in September 1949, with its office and principal place of business located at Phoenixville, Pennsylvania. Old Phoenix was a wholly owned subsidiary of respondent Central. On or about October 28, 1955, old Phoenix and two other companies were merged with Central. Thereupon the name of Central was changed to Phoenix Iron & Steel Company, and its office and principal place of business was changed from Harrisburg to Phoenixville, Pennsylvania.

13. Granite City Steel Company, sometimes referred to herein as Granite City, is a corporation organized under the laws of the State of Delaware in November 1927, with its office and principal place of business located at Granite City, Illinois.

14. Lukens Steel Company, sometimes referred to herein as Lukens, is a corporation organized under the laws of the Common-

wealth of Pennsylvania in January 1917, with its office and principal place of business located at Coatesville, Pennsylvania.

15. Respondent Detroit Steel Corporation, sometimes referred to herein as Detroit, is a corporation organized under the laws of the State of Michigan in March 1923, with its principal office located at Detroit, Michigan. Said respondent operates a Portsmouth Division at Portsmouth, Ohio, and it is because of its activities at said division that it is named as a respondent herein.

16. Respondent McClouth Steel Corporation, sometimes referred to herein as McClouth, is a corporation organized under the laws of the State of Michigan in April 1934, with its office and principal place of business located at 300 South Livernois Street, Detroit, Michigan.

17. Respondent Baldwin-Lima-Hamilton Corporation, sometimes referred to herein as Baldwin, is a corporation organized under the laws of the Commonwealth of Pennsylvania, in June 1911, with its office and principal place of business located at Eddystone, Pennsylvania. Said respondent owns and operates a Standard Steel Works Division at Burnham, Pennsylvania, and it is especially because of its activities at said division that it is named as a respondent herein. Said respondent also operates plants at Eddystone, Pennsylvania, and Hamilton, Ohio.

18. Respondent Edgewater Steel Company, sometimes referred to herein as Edgewater, is a corporation organized under the laws of the Commonwealth of Pennsylvania in August 1916, with its office and principal place of business located at Oakmont, Pennsylvania.

19. Respondent Bucyrus-Erie Company, sometimes referred to herein as Bucyrus-Erie, is a corporation organized under the laws of the State of Delaware in November 1927, with its office and principal place of business located at South Milwaukee, Wisconsin. In addition to its plant at South Milwaukee, Wisconsin, said respondent operates plants at Erie, Pennsylvania, and it is especially because of its activities at Erie, Pennsylvania, that it is named as a respondent in this proceeding. One of the plants at Erie was formerly owned by National Erie Corporation (sometimes referred to herein as National Erie), a corporation organized under the laws of the Commonwealth of Pennsylvania in May 1931, with its office and principal place of business located at Erie, Pennsylvania. Bucyrus-Erie acquired substantially all of the capital stock of National Erie in September 1951. It operated National Erie as a subsidiary until on or about February 1, 1954, when all of the assets of National Erie were transferred to Bucyrus-Erie, National Erie having previously adopted a resolution of dissolution. Since February 1954,

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the former National Erie plant has been operated as the Raspberry Street Plant of Bucyrus-Erie.

20. Respondent Columbia Malleable Castings Corporation, sometimes referred to herein as Columbia, was a corporation organized under the laws of the State of New York in March 1917, with its office and principal place of business located at Providence, Rhode Island. Said respondent was a subsidiary of Grinnell Corporation (sometimes referred to herein as Grinnell), a corporation organized under the laws of the State of Delaware in May 1923 under the name General Fire Extinguisher Company, its name having been changed to Grinnell Corporation on April 1, 1944. The office and principal place of business of Grinnell is located at Providence, Rhode Island. On December 31, 1955, Columbia was merged into Grinnell under the laws of the States of New York and Delaware, and Grinnell became successor by merger to Columbia.

21. Respondent Hugo Neu Corporation, sometimes referred to herein as Neu, is a corporation organized under the laws of the State of New York in January 1947, with its office and principal place of business located at 31 Nassau Street, New York, New York.

*B. The Business of Respondents**Respondent Brokers*

1. Respondents Luria and Southwest, which are sometimes referred to herein as "respondent brokers", are engaged primarily in the business of buying and selling iron and steel scrap. Such scrap is generated as a waste or by-product of the industrial fabrication of iron and steel products, or as a result of the discarding of iron and steel products due to obsolescence, failure or other reasons.

Respondent Mills

2. The remaining respondents (other than respondent Neu), which are sometimes referred to herein as "respondent mills", are producers of iron and steel products. Most of them operate steel mills which produce ingots and steel for castings. Some of said mills are fully integrated, *i.e.*, they operate blast furnaces which produce pig iron (used in making steel) and also operate facilities for the production of semi-finished and finished steel from ingots, including structural steel, plates, bars, sheets, wire and other wire products. Some of the mills are semi-integrated, *i.e.*, they do not operate blast furnaces for the production of pig iron but do produce ingots and have finishing facilities. Several of the respondent mills operate foundries which produce iron and steel castings.

Uses and Sources of Scrap

3. At least 98% of the iron and steel scrap consumed in the United States is purchased by producers of iron and steel, including steel mills, foundries and blast furnaces. Such scrap, together with pig iron, constitute the principal metallics used in the making of iron and steel. Pig iron and scrap each represent about 50% of the charge in the furnace, although the percentage may vary in individual plants. For example, integrated mills with their own pig iron resources tend to use a greater percentage of pig iron than do semi-integrated mills.

4. Part of the scrap used in the production of iron and steel is generated as a waste product of the mills' own steel-making activities. This is particularly true of the companies which produce finished and semi-finished steel products. Such scrap, generated as the result of the mills' own production operations, is known as "home scrap". On an average, home scrap constitutes roughly one-half of the scrap consumed by domestic iron and steel producers. The remaining half of the scrap which the mills consume is purchased from various outside sources, and this part of their requirements is referred to as "purchased scrap".

5. During the period from 1948 through 1954 (the period mainly involved in the evidence), the domestic consumption of purchased scrap ranged from a low of approximately 22,500,000 gross tons in 1949 to a high of approximately 33,800,000 gross tons in 1951. Prior to 1953 substantially all of the scrap produced in the United States was consumed within the country. However, in October 1953 export controls over the shipment abroad of iron and steel scrap, which had been in effect during World War II and through the Korean War, were relaxed. During 1954 there were exported from the United States approximately 1,500,000 gross tons of scrap, and in 1955 scrap exports amounted to more than 4,500,000 gross tons.

6. In 1954 there were 85 steel mills producing basic steel, i.e., steel ingots and in some instances steel for castings. Of these, 23 were fully integrated and produced pig iron in their own blast furnaces. The basic steel producers used approximately three-fourths of the purchased scrap which was consumed domestically. The remainder of the purchased scrap consumed in this country was used by some 3,000 iron and steel foundries and nonintegrated blast furnaces.

7. Iron and steel fabricators and manufacturers of durable goods made largely of iron and steel generate large quantities of scrap as a by-product of their primary operations. This scrap is generated on a fairly constant basis, varying with the rate of the primary operations of the manufacturer, and it is generally referred to as "prompt industrial scrap." Largely because of limitations of space it cannot

be allowed to accumulate in the fabricating or manufacturing plants, but must be moved out soon after it is generated. Where the scrap requires no further preparation, it may be sold directly to a consumer. Where further preparation is involved, it may be sold to a dealer or to a consumer having its own preparation facilities. Because it is new material and relatively free of contamination, prompt industrial scrap is generally considered to be desirable scrap and frequently commands a premium price.

8. The other main category of scrap consists of obsolescent or abandoned material, which is generated by a wide variety of sources including railroads, automobile wreckers, ship breakers, demolition concerns, Government installations, farmers and householders. Of these, railroads constitute one of the most important single sources. The operation of railroads produces large quantities of worn out and obsolete equipment, such as locomotives, cars, wheels, rails and many other items. Railroad scrap is sold, usually at monthly or other periodic intervals, on the basis of bids or by privately negotiated contracts. Like industrial scrap, railroad scrap is of a premium grade and is greatly desired by consumers, particularly for certain types of production. Such scrap, when it is sorted and prepared by the generating companies, may be purchased by the consumers directly or it may be purchased from both brokers and dealers when further preparation is required.

9. The other important sources of obsolescent or abandoned materials consist of wrecked or obsolete automobiles, and discarded farm and household implements and appliances. Scrap from the latter sources is collected by a vast army of peddlers and junk dealers who make regular rounds within their localities for the purpose of collecting the scrap. Such scrap is usually sold to regular dealers in ferrous scrap for further preparation and sale to consumers or to brokers.

The Channels of Distribution

10. While, as above indicated, some scrap is sold directly to consumers by the generators thereof, such as railroads and industrial fabricators, the vast preponderance of scrap purchased by steel mills and other consumers of scrap is purchased from brokers and dealers. Approximately 90% of the scrap purchased by consumers in this country is obtained from brokers and dealers, rather than directly from the generators of the scrap.

Scrap Dealers

11. Scrap dealers operate yards where they take physical possession of the scrap which they purchase. They sort the scrap into appropriate grades, cut it into useable sizes and, where they have the equip-

ment, press or bale the lighter materials into bundles which will fit into a furnace. Many small yards purchase a variety of waste materials, and ferrous scrap may constitute only a part of their business. Such yards frequently do not have the facilities for fully preparing the limited quantities of scrap which they accumulate, and they usually sell their ferrous scrap to larger yards which specialize in iron and steel scrap. The larger yards accumulate, sort and prepare the scrap in appropriate grades and resell it in carload lots directly to consuming mills or foundries, or to brokers or others.

There is considerable variation in the size and equipment of yard dealers. Some have little more than a small piece of ground, with a scale for weighing the scrap and rudimentary equipment for cutting and sorting it. Others operate larger yards containing costly equipment and facilities, including railroad sidings, torches, shears, cranes, magnets, baling presses and other equipment. The cost of this equipment may vary from a few thousand dollars to as much as several hundred thousands dollars in the case of the larger baling presses. Due to high transportation costs and the need to compress the lighter materials into a size which will fit into a furnace, a baling press is an important part of a dealer's equipment. The smaller dealers who do not have a press generally sell baleable materials to larger dealers. In 1954, there were 3,719 scrap dealers in the United States, considering as a dealer any person wholly or mainly in the scrap iron business and having some kind of a yard. Of these, 2,202 had processing or preparation equipment in their yards.

Scrap Brokers

12. Scrap brokers, as that term is used in the scrap industry, are not brokers in the conventional sense of the term. They purchase and sell scrap for their own account, taking title to it and assuming all the risks incident to ownership. They are in effect wholesale dealers who buy and sell scrap for their own account, but who do not physically handle the material.

13. While brokers and dealers are both recognized as separate categories of entrepreneurs in the scrap industry, there are no hard and fast lines in the classification of various firms as belonging in one category or the other. Many dealers operate to some extent as brokers, in that they purchase scrap from other dealers which they do not themselves prepare or handle, in order to fill orders from consumers. On the other hand, some brokers also operate scrap yards in which they process and prepare scrap material in partial fulfillment of orders which they have from consumers. To the extent that a firm largely handles scrap material which does not come into its possession and which it does not prepare, it is generally considered to be a broker.

Luria, for example, in 1953 had total net sales of \$270,522,000, of which its yard sales accounted for \$7,396,000, or 2¾%. It was and is clearly recognized as being primarily a scrap broker.

Due to the fact that there are no reliable statistics concerning the sources of the scrap sold by brokers and dealers to consumers, the record contains no precise breakdown as to the number of operators falling, respectively, within the dealer and within the broker category. However, a list of its broker competitors prepared by Luria as of July 1, 1953, indicates that there were 50 brokers competing with it. While the list does not purport to be complete, it covers most of the brokers of any size in the United States.

14. Brokers purchase scrap from many different sources, including government agencies, demolition companies, railroads, industrial producers, ship breakers, and others, but yard dealers constitute their principal source of scrap. Their purchases are generally made in carload quantities for direct shipment from the originating point to the mill. Each carload usually contains a single grade of sorted and prepared scrap.

15. Brokers tend to operate in the general area in which their offices are located, although their range of operations in purchasing scrap is considerably wider geographically than that of yard dealers. Some brokers have offices located in various sections of the country, which considerably extends their area of operations both in buying and selling.

16. Brokers receive their profits from the difference between the prices they receive from the consumers and the prices they pay to their sources of scrap, plus transportation and other incidental costs. The normal margin of profit contemplated in brokerage transactions, which is sometimes referred to as a commission, is \$1.00 a gross ton, and the scrap is purchased and sold by brokers with this prospective margin in mind. Because of market fluctuations and varying competitive conditions in various markets, the buying and selling of scrap by brokers is largely a speculative operation.

17. When a broker purchases scrap from a dealer he gives instructions for the shipment of the scrap to a particular mill or destination. When the scrap is shipped by the dealer, the latter sends a bill of lading or invoice to the broker. Normally the broker will pay to the dealer, upon receipt of such invoice or bill of lading, 75 to 90% of the invoice value of the scrap. The balance is retained by the broker until the scrap has been received and accepted by the mill. After any adjustments in weights, grades or prices are made, the mill makes payment on that basis to the broker, and the broker then makes final settlement with the dealer. The brokers usually receive payment from the mills 30 to 60 days after the scrap has been accepted.

18. The broker represents both the dealers and the mills and performs important and valuable services for each. He represents the mills in locating and obtaining adequate quantities of scrap, and it is his responsibility if the scrap does not meet the specifications of the mills. He serves the dealers and other suppliers in providing constant outlets for their scrap through adequate markets, in making prompt payments to the dealers so that they will have adequate financing for further purchasing, and in representing the dealers in connection with any adjustments in weights or grades which are made or proposed by the mills. Through wide knowledge of market conditions and mill requirements, the brokers also provide important services to the dealers in advising and guiding them in proper sorting and preparation to meet the specifications of particular mills.

19. Brokers endeavor to maintain their operations on a basis which will afford a constant supply of scrap to the mills when and where it is needed. They frequently purchase substantial quantities of scrap from dealers and other sources before they have received contracts from consumers of the scrap. When the quantity of scrap which they have purchased exceeds the quantity which they have sold, they are in a "long position." They frequently find, on the other hand, that they have accepted orders from consumers for grades and quantities of scrap which they have not purchased. When their sales exceed their purchases they are in a "short position."

20. Competition between brokers exists both in the sale of scrap to consumers and in purchasing scrap from dealers and other sources of supply. Successful operations require that brokers have a market for all grades of scrap. To the extent that they do not have a market for particular grades, brokers will frequently find it difficult to purchase other grades from dealers, since the latter normally expect to sell their less desirable grades along with their premium grades.

Scrap Grades

21. Scrap is sold in accordance with various grade classifications. While there are approximately 75 recognized grades of scrap, from the point of view of tonnage sold the principal classifications are No. 1 heavy melting steel, No. 2 heavy melting steel, No. 1 bundles, No. 2 bundles and cast iron scrap. No. 1 heavy melting steel is the highest and most expensive of the above grades. Different kinds of furnaces use different grades of scrap. In general, electric and cupola furnaces, acid open hearth furnaces and steel foundries use the higher grades. Open hearth furnaces are large users of No. 2 heavy melting steel and No. 2 bundles. They also consume large quantities of No. 1 heavy melting steel and No. 1 bundles. Cast iron scrap is used both by steel mills and foundries. The specifications for the various grades, while

generally understood by the mills and scrap suppliers, are somewhat flexible in accordance with demand. When scrap is badly needed, the specifications become less rigid and vice versa when scrap is in abundant supply.

Scrap Prices

22. The price of scrap is largely influenced by the rate of production of the mills making iron and steel products. As a result of variations in the demand for scrap to make steel and changes in the rate of production of steel, there are considerable price variations in the price of scrap. For example, in 1947 No. 1 heavy melting steel sold at a low of \$39.81 and a high of \$41.21; in 1949 the low was \$19.33 and the high \$41.36; in 1951 the low was \$42.00 and the high \$45.15; and in 1954 the low was \$23.83 and the high \$33.40. In December 1956 the price rose to \$64.58 a ton. The changes in price are reflected in various trade publications, including "Iron Age", "American Metal Market" and "Daily Metal Reporter". The trade paper price quotations are usually based on information received from brokers and dealers of scrap, and the prices paid by the consuming mills. Prices are quoted on the basis of different regional markets, e.g., Pittsburgh, Philadelphia, Chicago, etc.

Government Regulations

23. During a substantial part of the period covered by the evidence the price of scrap was subject to government regulations. From February 7, 1951 to February 13, 1953, the Office of Price Stabilization (OPS) established ceiling prices for scrap. The regulations also provided for commissions to brokers, not exceeding \$1.00 a ton. The broker was permitted to divide the commission with a sub-broker up to \$0.50 a ton. Ceiling prices were established for 41 basing points, which were in fact the major steel production centers. For shipping points outside of the basing points, the ceiling prices were established on a basis which resulted in freight costs being absorbed by consumers when they purchased scrap outside normal areas of supply.

In addition to the regulation of prices, the supply of scrap was regulated under the allocations program established by the National Production Authority (NPA). Consumers were expected to ask for allocations only when they could not obtain their needs in the open or "free" market. Scrap allocated to a consumer could be sold directly or through a broker. If the sale was made through a broker, the regulations gave the seller the right to select the broker, except in connection with sales by governmental agencies.

Organization of Market

24. The scrap market is organized essentially on a regional basis. There is a considerable concentration of dealers and brokers around

the centers of steel production. There is also a considerable concentration around the centers of scrap production. Certain regional markets are known as minus areas in that they consume more scrap than is produced in the area. (The Pittsburgh-Youngstown area is an example of a minus area.) It is necessary in such instances for the dealers and brokers operating in the area to reach out into other areas in order to obtain the additional quantities of scrap required to keep the mills within their own geographic area in production. The extent to which they reach out into these other areas is determined by the rate of production and the needs of the consuming mills, and by the prices being paid for scrap. Since transportation costs are a relatively large factor in the cost of scrap, consumers endeavor to obtain scrap from nearby areas first before reaching out to successively more remote areas.

Certain areas are known as plus areas, in that there is a relatively large production of scrap in relation to consumption, by reason of a high concentration of industrial fabricators and other generators of scrap and a somewhat smaller concentration of consumers of scrap. (The Detroit area is an example of a plus area.) A substantial portion of the scrap tends to move from such areas to the minus areas, depending upon the rate of production and the price of scrap.

Respondent Luria

25. Respondent Luria is the largest single factor in the dealer-broker segment of the ferrous scrap business. It has buying offices and yards in many sections of the country and buys scrap in almost every section of the country. It sells to consuming mills in most sections of the country and is the principal broker for a number of such mills, as will hereinafter appear. It is the only concern engaged in the scrap brokerage business on a nation-wide basis. It employs approximately 4,000 people and deals with 1,200 to 1,800 scrap dealers.

The business of old Luria was established in Reading, Pennsylvania, by Hirsch Luria about 1889 as a horse and wagon scrap dealer. In 1890 scrap yards were opened in Reading and Lebanon, Pennsylvania. After the beginning of the present century, the company began to perform a brokerage function (one of the earliest to engage in this type of operation), and in 1910 it opened brokerage offices in New York and Pittsburgh. In 1920 a brokerage office was opened in Boston, Massachusetts, and in 1924 one was opened in Philadelphia, Pennsylvania, which became the principal office of the company in 1934. Additional yards were opened in Pittsburgh and Modena, Pennsylvania, during the 1920's. In 1930 a brokerage office and scrap yard were opened in Detroit, Michigan. Between 1933 and 1942 additional brokerage offices were opened in Chicago, Cleveland and Houston.

During the postwar era, from 1945 to 1948, additional brokerage offices were opened in St. Louis, Missouri; Pueblo, Colorado; Birmingham, Alabama; Buffalo, New York; and San Francisco, California. Between 1951 and 1956 brokerage offices were opened in Seattle, Washington; Kokomo, Indiana; and Montreal, Canada. During the postwar period additional scrap yards were opened in Erie, Pennsylvania; Los Angeles, California; and Chicago, Illinois. At the time of the hearings in 1957 negotiations were under way to open yards in St. Louis, Missouri; and Seattle, Washington.

26. Beginning in 1946, respondent Luria acquired an interest in a number of other companies operating as scrap brokers or dealers. In 1947 Luria acquired a controlling stock interest in Pueblo Compressed Steel Corporation, operating a stock yard located at Pueblo, Colorado. In 1947 Luria acquired all of the outstanding stock of A. M. Wood & Company, Inc., a brokerage firm with offices in Philadelphia. In 1948 Luria acquired all of the outstanding stock of Lipsett, Inc., a demolition and construction company located in New York, and Lipsett Steel Products, Inc., which opened scrap yards in Brooklyn, New York, and Los Angeles, California, after acquisition by Luria. In 1950 Luria acquired the controlling stock interest in Southwest Steel Corporation, which at that time operated a brokerage office at Pittsburgh, Pennsylvania, and scrap yards at Glassport and McKeesport, Pennsylvania, and Memphis, Tennessee, and had a subsidiary, Continental Iron & Steel Corporation, which operated a brokerage office in New York, New York. In 1953 Luria acquired the good will and employed the principal owner of Livingston & Southard, Inc., an import-export company, which it utilized in connection with its export activities.

27. The business of Luria was operated first as an individual proprietorship and then as a partnership until June 1918, when it was incorporated. Control of this corporation was held by members of the Luria family until October 1955. Up to 1944 control of the corporation was in the hands of members of the families of Alex Luria and Max Luria, sons of the original founder. In 1944 the estate of Max Luria, then deceased, sold out its interest in the corporation to the other branch of the family and received, in return, control of another Luria company, Luria Steel & Trading Company, which had been engaged in the import-export business. In October 1955 the members of the family of Alex Luria sold substantially all of the assets of old Luria to Ogden Corporation, which thereafter formed a new Luria corporation, as previously mentioned. While members of the Luria family owned no stock in the new company, there were very few changes in the officers and directors of the company and its personnel continued substantially intact. One of the few changes which oc-

curred involved Ralph Ablon (a son-in-law of Alex Luria and a vice president of old Luria) becoming President of new Luria.

Other Respondents

28. As heretofore indicated, the remaining respondents, other than respondent Neu, are engaged in the production of basic iron or steel products. Most of them operate steel mills on an integrated or semi-integrated basis, and a few operate iron or steel foundries. Discussion of the nature and extent of each such respondent's operations and its relative position in the industry will be reserved for that part of this decision where consideration is given to the charge that such respondents have entered into certain agreements or understandings relative to the purchasing of scrap from respondent Luria on an exclusive basis.

29. Respondent Neu is engaged in the import-export business, principally of metals. Among the products in which it deals is ferrous scrap. In the handling of such scrap it operates essentially as a broker. The principal difference in its operations from that of most brokers in the United States is the fact that it specializes in the import-export field. Most of the mills to which it supplies scrap are foreign mills. Some of the scrap which it supplies to such mills is obtained from the continental United States. It has also, during its operations, supplied scrap to American mills which it has obtained from areas outside the United States.

C. Engagement in Commerce

1. Respondent brokers are now and for many years have been engaged primarily in the business of buying and selling iron and steel scrap in the capacity of brokers and dealers. They also, particularly during times of steel shortage, buy and sell finished and semi-finished steel. In connection with carrying on their business as aforesaid, respondent brokers buy from and sell to various steel mills, foundries, fabricators of steel products, dealers, railroads, and other sellers and buyers who are located in States other than the States in which said respondents maintain offices and yards, and cause iron and steel scrap and finished and semi-finished iron and steel products to be shipped and transported across State lines. Respondent Luria, operating in its own name and through its subsidiary and affiliated companies, also buys iron and steel scrap for export purposes from various sources located in the several States of the United States, and causes such scrap to be shipped and transported across State lines to various ports, and causes iron and steel scrap purchased in the United States to be shipped to foreign countries.

2. Respondent Neu buys iron and steel scrap, among other things, from various sources located in several States of the United States, and causes such scrap to be shipped and transported across State lines to various ports, and causes iron and steel scrap purchased in the United States to be shipped to foreign countries.

3. Respondent mills purchase iron and steel scrap and other raw materials from respondent brokers and others, and certain of them (as will hereafter appear) sell finished and semi-finished iron and steel products to respondent brokers and other brokers located in the several States of the United States, and cause such scrap so purchased and said steel products so sold to be shipped and transported across State lines.

4. It is concluded and found that respondent brokers, respondent mills and respondent Neu are engaged in commerce, as defined in the Federal Trade Commission Act, and that respondent brokers are engaged in commerce as defined in the Clayton Act.

II. The Alleged Unlawful Practices

A. *The Charges and Issues*

1. The complaint, as previously noted, contains two separate counts. Count I charges all of the respondents with engaging in various acts and practices in violation of Section 5 of the Federal Trade Commission Act, and Count II charges respondent Luria with making certain acquisitions of stock in other companies, in violation of Section 7 of the Clayton Act.

2. The first count is in reality a combination of four separate charges. The first of these involves respondent brokers (Luria and its wholly owned subsidiary Southwest) and respondent mills, and charges them with having entered into various agreements, understandings, combinations and conspiracies for the purpose and with the effect of lessening competition and tending to create a monopoly in respondent brokers in the purchase and sale of iron and steel scrap. The second charge in Count I is directed against respondent Luria alone and charges it with engaging in various acts and practices for the purpose and with the effect of restraining competition and tending to create a monopoly in the purchase and sale of iron and steel scrap. A third charge in Count I likewise involves respondent Luria alone, and charges it with the acquisition of control over other brokers and dealers through the making of monetary advances or loans and the acquisition of stock, for the purpose and with the effect of eliminating competition. The fourth charge in Count I involves respondents Luria and Neu and other unnamed parties, and charges them with

having entered into various agreements, understandings, combinations and conspiracies for the purpose and with the effect of lessening competition in the purchase and sale of iron and steel scrap in interstate and foreign commerce, and tending to create a monopoly in such respondents in the sale of iron and steel scrap from the continental United States to customers located in other countries.

3. Count II of the complaint involves respondent Luria alone, and charges that the acquisitions of stock in other companies which are challenged in the third charge of Count I referred to above, also constitute a violation of Section 7 of the Clayton Act.

4. The basic charge in Count I, as already noted, involves certain agreements, understandings, combinations and conspiracies between or among the Luria respondents and the mill respondents. These respondents are charged with engaging in ten specific acts and practices in pursuance of the basic agreements, understandings and conspiracies to monopolize the scrap industry. These are briefly as follows:

(a) The Luria respondents (Luria or its subsidiary Southwest) agreed to act as exclusive or substantially exclusive scrap brokers for the mills.

(b) The mills agreed to and did make all or substantially all of their scrap purchases from the Luria respondents.

(c) The mills agreed to and did notify former suppliers and others that the Luria respondents were their exclusive brokers.

(d) The mills informed the Luria respondents of offers of scrap received from former suppliers, and required such suppliers to solicit the business of the mills through Luria.

(e) The Luria respondents denied permission to other suppliers to sell iron and steel scrap directly to the mills or permitted them to do so only on terms dictated by Luria.

(f) The mills sold finished and semi-finished steel products to fabricators on the condition that the scrap resulting from further fabrication would be sold to the Luria respondents.

(g) The mills sold finished and semi-finished iron and steel products to the Luria respondents and the latter sold such products to fabricators on the condition that the scrap resulting from further fabrication would be sold to Luria.

(h) The mills brought pressure on railroads and other sources of supply to sell to the Luria respondents iron and steel scrap offered for sale by such sources of supply.

(i) During the period that the OPS regulations were in effect, which permitted a seller to designate a broker, the mills brought pressure on railroads and other sources of supply to designate Luria

as a broker in connection with the sale of iron and steel scrap allocated to the mills under the NPA allocations program.

(j) At the time that the OPS regulations were in effect, which provided that a consumer of scrap could designate a dealer to prepare the scrap, the mills customarily designated a dealer requested by the Luria respondents to prepare scrap destined for them.

The charge of a combination between or among Luria and the respondent mills, as outlined above, is the basic charge in Count I of the complaint. It is the position of counsel supporting the complaint that the combination between the mills and Luria conferred the economic power on Luria which made it possible for the latter to engage in the other acts and practices charged. Insofar as the complaint alleges a combination between Luria and the respondent mills, it is subject to a dual interpretation. On the one hand, it may be interpreted as charging an inter-mill combination or conspiracy with Luria, and on the other hand it may be interpreted as challenging certain alleged agreements, understandings or conspiracies between each mill and Luria, without regard to and not necessarily a part of any actual inter-mill combination with Luria. At the close of the case-in-chief, the examiner ruled that the record was lacking in reliable, probative and substantial evidence to establish any over-all combination or conspiracy among the mills with Luria to engage in the acts and practices charged, and indicated that he was prepared to dismiss that portion of the complaint to the extent that it so charged and to consider the remaining charge as challenging only a series of separate alleged agreements or combinations between each mill and the Luria respondents.¹

The gravamen of this charge, insofar as it remains for consideration in this initial decision, is that each of the respondent mills entered into separate agreements or understandings with the Luria respondents for the alleged purpose and with the effect of lessening competition in the purchase and sale of iron and steel scrap. The heart of these separate agreements or combinations is an alleged agreement or understanding to make Luria the exclusive broker for each of the mills and to purchase all or substantially all of their scrap from such broker. The other acts and practices charged as having been engaged in pursuant to these agreements involve primarily specific acts which reflect the exclusive brokerage arrangement with Luria.

Most of the mill respondents deny the existence of any exclusive

¹ Counsel supporting the complaint waived the right to take an interlocutory appeal from this ruling. While still asserting in their proposed findings that the mills acted in concert with each other in entering into the alleged agreements with Luria, this contention appears to be pro forma only and no evidence is cited as supporting it.

agreements or understandings to deal with Luria as their exclusive or substantially exclusive scrap broker, except that respondent Colorado Fuel & Iron admits having had an exclusive agreement with Luria to supply its Pueblo, Colorado plant, and respondent Granite City Steel Company and U.S. Steel (with respect to its Geneva, Utah plant) admit having dealt with Luria as exclusive broker on an informal basis. A number of mill respondents, while denying any exclusive brokerage agreement with Luria, admit making substantially all of their scrap purchases from it.

5. The second charge in Count I, which involves respondent Luria alone, charges it with having engaged in various acts and practices in restraint of trade, including the following:

(a) Threatening to and diverting scrap tonnage from railroads which refused to sell substantial quantities of scrap to it.

(b) Threatening to and diverting scrap tonnage from railroads which failed or refused to designate Luria as broker for substantial quantities of allocated iron and steel scrap.

(c) Offering to sell and selling finished and semi-finished steel to fabricators and others on the condition that the scrap resulting from further fabrication would be sold to Luria.

(d) Purchasing certain grades of iron and steel scrap on the condition that the dealer or other supplier would sell other grades of scrap to Luria.

(e) Bidding for and paying for scrap at prices so high that neither Luria nor its competitors could resell such scrap at existing price ceilings or generally prevailing market prices except at a loss.

(f) Threatening to and opening competing yards, or installing additional equipment in existing yards, in areas where it was economically undesirable to do so, for the purpose and with effect of harassing dealers who failed or refused to sell all or substantially all of their scrap to Luria.

(g) Holding out as being independent of Luria certain corporations which were being operated under the control of Luria by means of outright ownership or financial and contractual affiliations and otherwise.

Respondent Luria has, in general, denied these allegations, except that it has admitted favoring railroads in the shipment of iron and steel scrap where such railroads gave it business.

6. The third charge in Count I alleges that Luria acquired control and domination over competing dealers and brokers by (a) making substantial advances or loans to such dealers on the condition, in many instances, that they would sell to Luria all of the iron and steel scrap

produced by them, and (b) acquiring all or a substantial part of the capital stock of certain specifically named brokers and dealers.

Respondent Luria admits having made loans and advances to dealers, but denies that they were made on the condition that the dealers in question would sell it all of the scrap produced by them. It does admit, however, that in some transactions the dealer agreed that he would first offer his scrap to Luria, before offering it to other brokers or dealers. With respect to the allegation of stock acquisitions in other companies, respondent Luria has admitted the stock acquisitions alleged in the complaint, except in two instances.

7. The fourth charge in Count I involves alleged agreements and combinations pertaining to the export of scrap from the continental United States to customers located in other countries. A specific instance of such a combination alleged in the complaint is that between respondents Luria and Neu to act as the exclusive or substantially exclusive supplier for five steel producing companies located in Japan. Respondent Luria denies having entered into any combination such as that alleged in the complaint, but does admit having supplied a portion of the steel scrap which respondent Neu, in a separate agreement with certain Japanese steel producing companies, agreed to supply to such companies.

In addition to the alleged combination involving the Japanese mills, counsel supporting the complaint offered evidence with respect to a combination between respondent Luria and two other scrap brokers to act as the exclusive suppliers of iron and steel scrap to certain European mills comprising the European Coal and Steel Community, known as the OCCF. Respondent Luria admits that it supplied the OCCF with iron and steel scrap, in combination with two other brokers, but denies that this involved any exclusive agreement with the OCCF or prevented other suppliers from selling to the OCCF.

8. The Section 7 Clayton Act count, which is alleged as Count II of the complaint, involves the acquisition of six other brokers and dealers, and of a company owning the real estate occupied by one of the dealers. As previously noted, respondent Luria admits making the stock acquisitions charged, except in two instances, but denies that the effect thereof may be to substantially lessen competition or to create a monopoly in it in the purchase and sale of iron and steel scrap.

9. The essential issues for decision in this proceeding are:

(a) Did Luria and each of the mills enter into an exclusive brokerage agreement or understanding of the nature alleged in the complaint, and did the mills and Luria engage in each of the other specific practices alleged to have been engaged in by them in carrying out and implementing such basic agreement or understanding?

Initial Decision

(b) Did respondent Luria separately engage in each of seven different acts and practices charged in the complaint?

(c) Did respondent Luria acquire control over other brokers and dealers in scrap by (1) making advances or loans on condition that such brokers and dealers would sell their scrap exclusively to Luria and (2) acquire control over other brokers and dealers through stock acquisitions?

(d) Did respondents Luria and Neu enter into agreements to act as exclusive or substantially exclusive suppliers for Japanese steel companies, and did respondent Luria and others enter into agreements to act as exclusive suppliers for the OCCF countries?

(e) Assuming that the respondents or any of them engaged in any or all of the practices charged, are such practices, separately or in combination, calculated to substantially lessen, hinder, restrain or suppress competition, and create in respondent brokers a monopoly, in the purchase and sale of iron and steel scrap in interstate or foreign commerce?

(f) Are the stock acquisitions made by respondent Luria calculated to substantially lessen competition in the purchase and sale of iron and steel scrap between Luria and the companies whose stock it acquired, or to restrain commerce in any section or community of the United States, or to create a monopoly in any line of commerce?

B. The Alleged Exclusive Agreements

(1) Bethlehem Respondents

1. As already noted, Bethlehem Steel Corporation is the parent company, owning all of the Stock of Bethlehem Steel Company and Bethlehem Pacific Coast Steel Corporation. Bethlehem Steel Corporation is not itself directly engaged in the manufacture or sale of iron and steel products, and does not itself purchase any steel scrap used in the making of such products.

2. Bethlehem Steel Company (referred to for convenience as Bethlehem) operates five steel producing plants in the eastern part of the United States, and Bethlehem Pacific Coast Steel Corporation (referred to for convenience as Bethlehem Pacific) operates three steel producing plants on the West Coast. The two steel producing subsidiaries of Bethlehem Steel Corporation, together, constitute the second largest steel producer in the United States. Their ingot capacity, as of January 1, 1954, represented approximately 15% of the industry capacity in this country. The producer with the largest capacity as of that date was United States Steel with approximately 31%, and the producer with the third largest capacity was Republic Steel Corporation with approximately 8%.

3. While United States Steel has a substantially larger ingot capacity than the Bethlehem companies, the latter in some years purchase greater amounts of scrap than the former due to the fact that U. S. Steel generates larger quantities of home scrap as a result of its steel producing operations. Thus in 1953 the scrap purchases of the Bethlehem companies amounted to approximately 3,700,000 gross tons; U. S. Steel's amounted to 3,125,000 gross tons; and Republic Steel's amounted to 2,100,000 gross tons. In 1954 Bethlehem's scrap purchases were approximately 2,100,000 gross tons; U. S. Steel's were 1,350,000 gross tons; and Republic's were 1,900,000 gross tons.

Bethlehem Steel Company

4. Respondent Bethlehem Steel Company is the largest producer of iron and steel products in the eastern part of the United States and is the largest consumer of scrap in that area. Its scrap purchases increased from 1,977,000 gross tons in 1945 to 3,135,000 gross tons in 1953, and then declined to 1,659,000 gross tons in 1954 (following the end of the Korean conflict). Its scrap consuming plants are located at Lackawanna (Buffalo), New York; Bethlehem, Steelton, and Johnstown, Pennsylvania; and Sparrows Point (Baltimore), Maryland. During most of the period from 1945 to 1954 the Lackawanna plant was the largest scrap consumer of the company and the plants at Bethlehem and Sparrows Point were the second and third largest consumers of scrap, respectively. The Steelton plant was the smallest of the company's scrap consumers.

5. Much of the purchased scrap for the Lackawanna plant is obtained from the immediate Buffalo, New York area. As it requires additional amounts, it obtains scrap from northern New York State west of Rochester, then moves east of Rochester and into New England. It also obtains scrap in the metropolitan New York area for shipment over the Erie Canal. During the Lake shipping season it obtains scrap originating in the Midwest for shipment from Duluth and Detroit. The plant at Bethlehem, Pennsylvania, obtains its scrap in progressive order from local sources, then from northern New Jersey, metropolitan New York, lower Connecticut points and finally the rest of New England. The plant at Sparrows Point relies primarily upon the Baltimore and Washington, D.C. areas for its scrap. It also obtains substantial quantities of scrap from points further south, including Norfolk, Virginia. It also obtains some scrap from New England. The plant at Steelton obtains much of its scrap from the Harrisburg, Pennsylvania area and other points in central and eastern Pennsylvania. The plant at Johnstown is located on the fringe of the Pittsburgh district and obtains most of its scrap from the western part of Pennsylvania.

6. Bethlehem's scrap purchases are made centrally by its scrap department, which is located on premises near the plant at Bethlehem, Pennsylvania. Its requirements for purchased scrap are determined at approximately monthly intervals on the basis of information received from the individual plants of the company. Since May 1951, the head of the scrap department has been Allen R. Thurn, who is known as Assistant Purchasing Agent in Charge of Scrap. He is assisted by two scrap buyers and several clerks and stenographers. The scrap department is under the over-all jurisdiction of the Vice President in Charge of Purchases who, since 1949, has been Paul S. Killian. Purchase orders are issued by the scrap purchasing department in Bethlehem at approximately monthly intervals to various sellers of scrap and provide for the delivery of specified grades at stipulated prices to particular plants of the company. The orders usually specify the point of origin of the scrap and the period of delivery.

7. The principal sources from which Bethlehem purchases scrap are (a) industrial fabricators and other direct producers of scrap and (b) scrap dealers and brokers. The great bulk of the scrap which it purchases is obtained from dealers and brokers, rather than from direct producers. During the period from 1947 to 1954, for which figures are available in the record, the percentage of scrap purchased from dealers and brokers has varied as follows:

	Percent		Percent
1947.....	92.6	1951.....	76.3
1948.....	89.8	1952.....	84.8
1949.....	65.0	1953.....	78.8
1950.....	70.0	1954.....	62.9

8. The industrial fabricators and other direct scrap producers are Bethlehem's initial source of scrap. It has contracts with a number of such producers, for terms varying from three months to a year, to purchase all or part of the scrap produced in the plants of such companies, which are usually located near one of the Bethlehem plants, at prices keyed to monthly quotations of market prices in the trade magazine "Iron Age". During periods when Bethlehem is operating at a low rate of capacity and consequently is purchasing relatively small amounts of scrap, it is able to obtain a larger percentage of its scrap requirements from such direct producers than during periods of expanding production. Thus in 1949, when Bethlehem's total scrap purchases were 1,436,000 gross tons, its purchases from nonbroker-dealer sources (consisting largely of industrial producers) represented 35% of its purchased scrap, whereas in 1952 when it purchased 2,448,000 gross tons, the percentage purchased from nonbroker-dealer sources declined to approximately 15%. In 1954, when its total scrap purchases declined to 1,659,000 gross tons, the per-

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centage of its purchases from direct producers increased to approximately 37%.

In terms of absolute figures, the variations in purchases from direct producers have not been as great as the above percentages might appear to suggest. Thus, in 1949 it purchased approximately 503,000 gross tons from nonbroker-dealer sources; in the peak year of scrap purchases, 1953, the figure was approximately 663,000 gross tons, and in the slack year, 1954, approximately 615,000 gross tons were purchased from nonbroker-dealer sources. The principal change which has occurred in Bethlehem's pattern of purchasing from direct sources has been the fact that since about 1950 it has bought increasing tonnages of such scrap through brokers, principally Luria, rather than directly. Some of the industrial fabricators from whom it formerly purchased directly now sell to it through Luria. In addition, a number of railroads on whose scrap it used to regularly submit bids and receive awards, now sell to it through Luria as the highest bidder in many instances.

9. Bethlehem's broker-dealer suppliers fall into two main categories. The first of these consists of a group of small- and medium-sized dealers operating scrap yards in close proximity to one or another of Bethlehem's mills. In addition to its so-called "hard core" of industrial suppliers, Bethlehem relies on these local scrap dealers as a regular source for meeting the scrap requirements of its individual plants. During periods of relatively low production, it is able to obtain a very substantial part of its scrap requirements from direct producers and from these local yard dealers. However, as its production expands and its requirements of scrap increase, it is necessary for it to reach out in an ever widening circle, geographically, and it purchases a substantial portion of its requirements from brokers and dealers in more remote areas.

10. There have been several significant changes which have taken place during the period covered by the evidence, in Bethlehem's relations with its broker-dealer suppliers. Firstly, some of the local yard dealers who formerly sold to various of the Bethlehem plants directly, have in more recent years shipped their scrap to Bethlehem through Luria as broker. Secondly, Bethlehem has ceased purchasing, or has reduced to extent of its purchase, from other direct dealers and brokers, particularly in the case of scrap purchased on a brokerage basis. Thirdly, the proportion of its purchases from Luria has undergone a radical increase, particularly since 1951, so that in a number of years Luria has been by far the principal supplier of scrap to Bethlehem.

11. Counsel supporting the complaint contend that the changes

which have occurred in Bethlehem's relations with a number of its dealers and brokers and with certain of its direct suppliers, and the metamorphosis in its relations with Luria have been due to a basic agreement or understanding between Bethlehem and Luria whereby the latter became Bethlehem's exclusive or substantially exclusive broker. Counsel concede that there is no "direct evidence" of any "specifically stated agreement, either written or oral" pursuant to which Bethlehem uses Luria as its substantially exclusive broker. However, counsel contend that such an agreement may be inferred from the course of dealings between the parties. To a consideration of the elaborate structure of circumstantial evidence upon which counsel supporting the complaint rely the examiner now turns.

The Statistical Evidence.

12. Set forth below is a table reflecting the percentage of scrap supplied to Bethlehem by Luria from 1947 to 1954. In view of the conflicting contentions as to whether Luria's share of Bethlehem's scrap purchases should be measured in terms of the latter's total scrap purchases or in terms of its purchases from brokers and dealers only, the table uses both methods for measuring Luria's position as a supplier to Bethlehem. The table also reflects the percentage of scrap supplied by Luria to the individual plants, as well as to the company as a whole, in order to give recognition to the contentions of Luria and Bethlehem that a portrayal on the former basis disproves the argument of counsel supporting the complaint.

Percentage of Bethlehem's scrap purchases supplied by Luria and subsidiaries

	1947	1948	1949	1950	1951	1952	1953	1954
Bethlehem Co.:								
(a) Percent total purchased scrap.....	15.4	19.0	21.2	26.9	46.6	61.4	64.0	50.9
(b) Percent broker-dealer scrap.....	16.6	21.2	32.6	38.4	61.1	72.4	81.2	80.9
By plant:								
1. Bethlehem:								
(a) Percent total.....	18.4	24.3	23.5	33.1	42.4	52.0	66.0	62.7
(b) Percent broker-dealer.....	19.3	26.7	33.2	52.8	58.3	63.4	78.7	82.3
2. Johnstown:								
(a) Percent total.....	25.3	18.9	20.9	14.4	54.4	69.3	66.9	44.9
(b) Percent broker-dealer.....	36.2	28.6	39.9	22.6	67.9	73.7	83.0	59.4
3. Lackawanna:								
(a) Percent total.....		12.7	19.7	30.2	49.2	57.8	49.5	47.3
(b) Percent broker-dealer.....		13.7	31.3	37.7	61.7	70.6	72.0	79.4
4. Sparrows Point:								
(a) Percent total.....	15.2	14.4	16.8	11.0	48.7	79.1	82.9	51.2
(b) Percent broker-dealer.....	15.2	14.4	24.0	14.7	60.8	86.1	91.0	90.8
5. Steelton:								
(a) Percent total.....	34.1	39.1	28.0	18.9	37.1	49.7	64.8	23.1
(b) Percent broker-dealer.....	38.6	45.8	51.8	41.7	61.0	65.1	91.0	99.5

As is apparent from the above figures, there was a significant upturn in Bethlehem's purchases from Luria beginning around 1949 and accelerating sharply after 1950. The increase was particularly pronounced in terms of Luria's percentage of Bethlehem's purchases from

the broker-dealer segment of the market. By 1953 Luria was supplying 81% of the scrap purchased from dealers and brokers. Counsel supporting the complaint contend that substantially all of the remaining scrap falling in this category is accounted for by purchases from dealers or was purchased on a dealer basis. Respondent Bethlehem contends that a substantial part of the remainder consists of brokerage scrap. In view of the fact that records are not kept in such a manner as to permit a ready determination of whether scrap purchases by a mill are made on a dealer or a broker basis, the conflicting contentions cannot be resolved statistically. However, from the evidence as a whole, some of which will be hereafter discussed, the examiner is satisfied that the great preponderance of the dealer-broker scrap purchased from firms other than Luria was purchased from dealers or on a dealer basis.

Both Luria and Bethlehem emphasize in their proposed findings the substantiality of the latter's purchases from suppliers other than Luria. The purchases from direct suppliers and from certain local yard dealers do undoubtedly represent a substantial part of Bethlehem's total scrap supply, particularly in times when it is not operating at peak capacity. Thus in 1954 such sources supplied almost half of Bethlehem's purchased scrap requirements. However, this does not gainsay the fact that Bethlehem obtained from Luria substantially all the scrap which it purchased on a brokerage basis. It is true that the complaint not only charges that Luria agreed to act as Bethlehem's exclusive broker, but also that Bethlehem agreed to buy *all* of its scrap from Luria. However, the latter charge may be regarded as the opposite side of the coin from the former, and may be interpreted as charging Bethlehem with agreeing to purchase from Luria all of the scrap *which it purchased on a brokerage basis*.

The fact that certain of the plants, e.g., Johnstown, obtained particularly large portions of their scrap from sources other than Luria likewise does not necessarily rebut the basic conclusions sought to be drawn by counsel supporting the complaint since Bethlehem's scrap buying policy is determined on an over-all company-wide basis. The relatively large receipts of scrap by some plants from sources other than Luria may merely reflect the proximity of such plants to certain direct suppliers (e.g., industrial fabricators) and to certain local yard dealers, and the correspondingly lower proportion of brokerage scrap ordered shipped to such plants by Bethlehem's head office.

Relations with Other Brokers and Dealers
Schiavone-Bonomo Corporation

13. This company, whose main office is located in Jersey City, New Jersey, has been in the scrap business for a great many years. It

started out as a yard dealer and entered the brokerage business in 1928. A corporation using the present name was organized in 1937 for the specific purpose of handling the company's brokerage activities. All of its operations were later consolidated into this company. During the period from 1952 to 1955, for which there are figures in evidence, the scrap sales of Schiavone-Bonomo were in the order of magnitude of 390,000 to 450,000 tons annually. About 10 to 20% of the scrap originated in the company's own yard and the balance was purchased from other dealers, in some of whom it has an interest.

Schiavone-Bonomo has been a supplier of scrap to Bethlehem for over 24 years. In 1947, the earliest year for which there are figures in evidence, it was Bethlehem's second largest supplier, with sales of approximately 240,000 gross tons, as compared to sales of 295,600 tons by respondent Luria. It was the largest supplier to the Bethlehem, Pennsylvania plant of the company in that year, with shipments amounting to 112,000 gross tons. It also shipped 79,750 tons to Bethlehem's Sparrows Point plant and 47,000 tons to the Lackawanna plant, making it the second largest shipper to these two plants. In the following years its sales to Bethlehem declined significantly as follows: 1948—180,000; 1949—115,000; 1950—158,000; 1951—169,000; 1952—230,000; and 1953—177,200 tons. By 1954 it was no longer in the ranks of Bethlehem's five largest suppliers, as it had been from 1947 to 1953, although it was the second largest shipper to the Bethlehem, Pennsylvania plant, with sales of approximately 44,000 gross tons.

Schiavone-Bonomo's decline as a supplier to Bethlehem was accompanied by an increase in Luria's sales to Bethlehem, which was modest at first and then became very marked beginning in 1951. Luria's sales to Bethlehem were 340,000 tons in 1948 (compared to 295,000 in 1947); 304,000 in 1949; 408,300 in 1950; and 711,000 in 1951. In 1951 Luria's affiliate, Southwest Steel, came into the ranks of the five largest suppliers to Bethlehem, with sales of approximately 196,000 (compared to 169,000 by Schiavone), making a total of over 900,000 tons for the Luria affiliated companies. In 1952 this total arose to approximately 1,450,000 tons and in 1953 to approximately 1,950,000 gross tons. In 1954, a year in which Bethlehem's total scrap purchases were cut in half following the end of the Korean conflict, its purchases from Luria declined to approximately 780,000 tons. Despite this decline Luria supplied over 80% of the scrap purchased by Bethlehem in 1954 from brokers and dealers.

The decline in Bethlehem's purchases from Schiavone-Bonomo was accompanied by the imposition of certain restrictions and limitations on it in the procuring of scrap, which were not imposed on Luria. Prior to 1948 or 1949, in filling orders for Bethlehem of scrap originating in New England, Schiavone-Bonomo was permitted to obtain the

scrap from any point in the New England area. Thereafter scrap which was sold to Bethlehem from New England could only be shipped from the yards of two dealers in Connecticut, in one of which Schiavone-Bonomo had an interest. At about the same time restrictions were placed on the points of origin of scrap coming from the so-called "Capital District" of upper New York State, consisting of Albany and Troy, in that it could come from only two specified yards, one of which belonged to a company in which Schiavone-Bonomo had an interest. Limitations were also placed on the shipments of scrap to the Lackawanna plant of Bethlehem via the Erie Barge Canal. Formerly Schiavone-Bonomo was permitted to ship such scrap from any water point sufficient to accommodate a canal barge. Beginning about 1950 it was limited to shipping points adjacent to its own docks or those of affiliated companies, plus that of one customer in Brooklyn.

Respondent Bethlehem argues that the various restrictions were placed in its orders to Schiavone-Bonomo because these were the shipping points from which the latter had offered it scrap, and this was merely a method of identifying the scrap for the convenience of Bethlehem's scrap department. However, it is clear from the credited testimony of a Schiavone-Bonomo official that his company's identification of the scrap as coming from these specific yards or shipping points was due to advice from Bethlehem that it would not accept scrap originating from other points within these areas, and that after endeavoring to convince Bethlehem to the contrary over a period of time, Schiavone finally accepted the inevitable and merely offered scrap from the points from which Bethlehem had indicated it would accept it. The testimony of the Schiavone official, which indicates that Bethlehem's purchases from his company are now limited largely to scrap originating in Schiavone's own or affiliated yards, was actually corroborated by the testimony of Bethlehem's scrap purchasing agent.²

Respondent Bethlehem also argues that there was no difference in treatment between Luria and Schiavone-Bonomo, since there were similar limitations placed in orders given to the former. However, while Luria's orders specified a given geographic area as the point of shipment of the scrap, e.g., "New England Shipping Points", "New York Metropolitan Area And Connecticut", these were broad geographic designations, and did not restrict Luria to specific yards or shipping points within these general areas, as did orders to Schiavone-Bonomo covering shipments from the areas previously discussed.

These restrictions as to points of shipment or origin of scrap placed Schiavone-Bonomo at a disadvantage, vis-a-vis Luria, and impaired

² This employee, A. R. Thurn, testified (R. 1740) : "[W]e will always when we can use it, when we need the scrap, negotiate with Schiavone-Bonomo for any scrap they produce in any yard they operate * * *". [Emphasis supplied].

its ability to operate as a broker, in that it limited its flexibility in obtaining the necessary amounts of scrap to fill orders from Bethlehem, and gave Luria a competitive advantage by permitting it access to a wider number of potential suppliers of scrap. Bethlehem's practice in this respect is contrary to that of other consumers of scrap supplied by Schiavone-Bonomo, including United States Steel. While Schiavone was still technically free, as Bethlehem argues, to buy scrap from other dealers in the areas above discussed for resale to other consumers, this choice was more apparent than real in view of the fact that Bethlehem was by far the largest consumer of scrap in the area within which Schiavone operated. A broker's stock-in-trade is his ability to find a regular home for the scrap of his dealer-suppliers. If he is foreclosed from shipping to the largest consumer in the area, except from a limited number of dealers, his ability to serve other dealers is seriously impaired, particularly where a competitor is not so limited.

In addition to the restrictions on points of origin of scrap, Schiavone-Bonomo also experienced a price disadvantage in selling scrap to Bethlehem, in competition with Luria. Luria has admittedly been paid 50¢, and sometimes \$1.00, more a ton on scrap originating from a given point for shipment to Bethlehem, than has Schiavone-Bonomo. This has given Luria a competitive advantage since it was able to offer, and did offer, higher prices for scrap to dealers, thereby precluding Schiavone-Bonomo from buying scrap from such dealers.³

Bethlehem contends that the payment of higher prices to Luria has been due to the fact that (a) Luria offered to sell larger tonnages than Schiavone-Bonomo and (b) Luria is a broker, whereas Schiavone is essentially a dealer. This explanation, which is based on the testimony of A. R. Thurn, Bethlehem's scrap purchasing agent, impressed the examiner as a bit of ex post facto rationalizing and as not reflecting the true reason for favoring Luria.⁴

The examiner is satisfied that insofar as the offering of greater tonnages by Luria is concerned, this was a *result* of the favored treat-

³ Among the dealers lost as a result of the payment of higher prices by Luria was M. Schiavone & Sons of New Haven, Connecticut. Despite a family affiliation and the receipt of financial assistance from Schiavone-Bonomo, Mr. Schiavone gradually reduced its scrap sales to the former around 1950 and began to do an ever-increasing business with Luria and its affiliate Southwest due, in substantial part, to the receipt of higher prices from them.

⁴ When first interrogated about the matter of paying higher prices to Luria, Thurn testified that it was characteristic of the scrap industry to pay a higher price for a greater quantity of scrap than for a lesser quantity, and that the prices paid to Luria were usually higher "because Luria sells us the larger tonnage" (R. 1793). However, when later specifically interrogated about paying Luria higher prices than Schiavone-Bonomo, no reference was made to the matter of Luria's selling greater quantities, but the differences in prices were ascribed exclusively to the fact that Luria was primarily a broker and therefore entitled to an extra brokerage fee, whereas Schiavone was essentially a dealer (R. 1911). In their proposed findings counsel for Bethlehem have endeavored to reconcile these different reasons into an integrated explanation of Bethlehem's favored price treatment of Luria.

ment accorded it by Bethlehem rather than a *cause* of Luria's receiving such treatment price-wise. The decline in purchases from Schiavone-Bonomo (whose sales to Bethlehem in 1947 were only slightly below Luria's) was the result of a deliberate choice on the part of Bethlehem to give Luria an increasing part of its brokerage business, rather than a choice on Schiavone-Bonomo's part to offer less scrap. To the extent that Schiavone may later have been unable to offer quantities as large as Luria, this was due, in significant part, to the limitations placed upon it by Bethlehem with respect to the point of origin of scrap coming from certain areas and to the price disadvantage at which it had been placed vis-a-vis Luria.⁵

With respect to any difference in status between Luria and Schiavone-Bonomo being a factor in favoring Luria pricewise, it may be noted that Schiavone is a recognized broker in the scrap industry. In fact both Luria and Bethlehem have recognized its status as a broker.⁶ While it may be that a substantial part of the scrap which Schiavone-Bonomo handles is purchased from a number of so-called "affiliated" yards this does not, as respondents suggest, change its essential status as a broker. In the first place there is nothing to indicate what Schiavone's interest in these yards is or that they are not bona fide, independent yards with which it deals at arms' length.⁷ Furthermore, it may be observed that the fact Luria has shipped substantial quantities of scrap from its affiliate yards or even from its own yards has not been deemed to affect its status or to cause Bethlehem to pay it a lower price on such scrap.

The examiner is satisfied that the difference in status between Luria and Schiavone-Bonomo has not been a factor in the disparate treatment between the two companies, except to the extent that Bethlehem has deliberately chosen to give Luria its brokerage business and to limit Schiavone-Bonomo's role as a supplier largely to scrap coming from its own yards and from those of its so-called affiliated companies. There can be no doubt that had Schiavone not been so

⁵ At one point in his testimony Thurn suggested that Bethlehem had difficulty in buying more tonnage from Schiavone-Bonomo because the latter was "exporting large tonnages of scrap to foreign countries" (R. 1890). However, this did not occur until 1954, at least four years after Bethlehem begun curtailing purchases from Schiavone. The examiner is convinced that the increase in the latter's export business was an outgrowth of its inability to sell more to Bethlehem on competitive terms, rather than a cause of Schiavone's decline in sales to Bethlehem.

⁶ In a list of its broker competitors prepared by Luria, Schiavone-Bonomo is listed as a competitor (CX 126). Bethlehem's purchasing agent, Thurn, while referring to Schiavone as a dealer in seeking to explain the payment of higher prices to Luria, at another point in his testimony when he was seeking to establish that Bethlehem used brokers other than Luria, referred to Schiavone as falling in the broker category (R. 1769).

⁷ The only testimony indicative of Schiavone's connection with these yards is that of its Treasurer who stated (R. 2564) that his company had an "interest in other yards which are operated under other names, and which are separate entities, *separate stockholders*." [Emphasis supplied.]

limited and had it been paid prices comparable to those paid Luria, it would have been in position to act as an outlet for a larger number of unaffiliated dealers in supplying scrap to Bethlehem and others.

Luria Steel & Trading Corporation

14. Luria Steel & Trading Corporation (sometimes referred to herein for convenience as LS&T) started doing business in 1937, at which time it was owned by the same interests as owned respondent Luria. It was engaged in the import and export of scrap, and to some extent in the engineering and steel construction business. As previously noted, there was an exchange of interests within the Luria family in the latter part of 1944, whereby the family of Max Luria, a deceased son of the original founder of the business, sold out its interest in respondent Luria to the family of Alex Luria, and the latter sold out its stock in LS&T to the family of Max Luria. Since that time the two companies have been wholly separate and unrelated. By January 1945, LS&T had scrap brokerage offices in New York and Detroit. In the ensuing years it opened additional offices in Philadelphia, Boston, Norfolk, Pittsburgh, Cleveland, St. Louis, Buffalo and Chicago. LS&T's participation in the scrap business has been as a scrap broker. It has not owned or operated any scrap yards.

Among LS&T's more important customers was respondent Bethlehem. By 1947 LS&T had become the third largest supplier to Bethlehem, with sales approximately 89,000 gross tons. It was the third largest shipper in that year to the company's Bethlehem and Steelton plants. In the year 1948 it was the fourth largest supplier of Bethlehem, with sales of approximately 81,500 gross tons.⁸ It was among the five largest shippers to Bethlehem's plants at Bethlehem, Steelton and Sparrows Point during that year. In 1949 LS&T ceased to rank among the five largest suppliers to Bethlehem as a whole, but remained among the five largest shippers to the company's plants at Bethlehem, Steelton and Sparrows Point, its deliveries to those plants being approximately 37,000 gross tons. In 1950 it was likewise not among the five largest suppliers to Bethlehem as a whole, but was the third largest shipper to the Steelton plant with shipments of approximately 8,400 gross tons. Except for the shipment of allocated scrap during the Korean War (in which the originator of the scrap designated the broker), LS&T ceased to be a supplier of scrap to Bethlehem after 1950.

⁸ It was actually the third largest supplier among brokers and dealers in that year, but an industrial fabricator which had been the fifth largest supplier in 1947 became the third largest supplier in 1948.

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Up to 1949 LS&T was permitted to ship scrap, in filling Bethlehem orders, from various broad geographic areas in the Northeastern and Middle Atlantic States, without any restrictions as to the points of shipment within such areas, except for the Philadelphia area from which it had been requested not to ship scrap. However, beginning in the latter part of 1949, Bethlehem began to impose a number of restrictions as to the points or yards from which LS&T could ship scrap within the areas which had theretofore been open to it. For example, in the northern New Jersey area, it was restricted to three or four yards and was later advised not to ship from one of these yards, that of Tidewater Iron & Steel Company located in the Newark area. On orders for Sparrows Point, LS&T was restricted to obtaining scrap from the immediate Norfolk and Richmond areas, unlike the earlier period when it was permitted to acquire scrap and ship it to Bethlehem from any point in Virginia and North Carolina. During the same period LS&T also began receiving reports from some of its scrap buyers that dealers whom they had contacted were being offered prices by Luria which were equal to or higher than LS&T was receiving from Bethlehem.⁹

As a result of the restrictions as to points of shipment and the reports received from LS&T scrap buyers concerning the prices which were being offered by Luria, LS&T requested a conference with Bethlehem to discuss these matters. In a conference held in November or December 1949 with Bethlehem officials in charge of scrap purchasing, LS&T protested the area restrictions and the prices which it was receiving, as compared to its competitor Luria. The Bethlehem officials

⁹ The above findings are based on the uncontradicted and credited testimony of Herbert T. Luria, an LS&T official. Respondent Bethlehem has moved to strike such testimony on the ground that it is hearsay. While it is true that the Bethlehem purchase orders would have been the best evidence as to any restrictions imposed concerning points of shipment, the testimony of the LS&T official is sufficiently reliable to base a finding thereon. Such testimony was not contradicted by any Bethlehem official, although the examiner indicated that he would give great weight to the testimony of the Bethlehem official (Assistant Purchasing Agent Snyder) who was alleged to be the source of such restrictions. The testimony of H. T. Luria comports with the evidence of similar restrictions placed on Schiavone-Bonomo, which has been discussed above. It was also corroborated, in part, by a representative of Tidewater Iron & Steel, who had shipped scrap to Bethlehem through LS&T as broker up to the latter part of 1949, and was then informed that LS&T no longer had any Bethlehem orders but that Luria did. While Tidewater continued to sell to LS&T for shipment to U.S. Steel and other mills, its sales for shipment to Bethlehem after the latter part of 1949 were made only through Luria because it found the latter was the only broker which had orders for scrap from Bethlehem. It may be noted that Tidewater was one of the dealers from which Schiavone-Bonomo was also restricted from making shipments to Bethlehem.

The testimony of the reports received from LS&T scrap buyers concerning price offers allegedly made to dealers by Luria, while hearsay, was not received for the truth of the reports, but as the basis for a later conference with Bethlehem. As will appear, during such conference the Bethlehem officials did not deny the payment of higher prices to Luria.

were reluctant to discuss the matter, their only comment being that Bethlehem could pay any price it saw fit for scrap. Another conference in January or February 1950 on the same subject likewise produced no results from the point of view of LS&T. Finally in March 1950, a conference was arranged on the highest level, with Paul S. Killian, vice president in charge of purchases. After listening to the complaints of the LS&T officials, Killian advised them that Bethlehem had decided to favor Luria in the placement of its orders and that LS&T could no longer look to it for any business. Thereafter LS&T made no substantial effort to do business with Bethlehem and the latter made no effort to buy from LS&T.¹⁰

Bethlehem suggests in its proposed findings that LS&T was cut off as a supplier because of dissatisfactions with LS&T's performance, particularly because the latter was late in making deliveries and also sought to obtain higher prices after orders had been placed. The evidence upon which Bethlehem relies involves mainly the period after it had become apparent that Bethlehem was going to limit or eliminate LS&T as a supplier, and merely reflects the latter's unwillingness to extend itself for a customer which was placing it at a disadvantage vis-a-vis a competitor.¹¹ It is significant that at no time during the conferences between LS&T and Bethlehem which took place in the latter part of 1949 and early 1950 was LS&T ever advised that dis-

¹⁰ The above findings with respect to the conferences between LS&T and Bethlehem are based on the testimony of Herbert T. Luria, LS&T vice president, which was substantially uncontradicted. Respondent Bethlehem did not call Vice President Killian or Assistant Purchasing Agent Snyder, who was also present, to contradict the testimony of the LS&T witness; nor was A. R. Thurn, who was then a scrap buyer under Snyder and was present in Snyder's office during the first two conferences, called as a witness by Bethlehem.

¹¹ Bethlehem refers particularly to a letter received from LS&T dated March 30, 1950, in response to a letter by it, dated March 27, 1950, concerning an apparent delay in filling an order for Steelton, in which LS&T stated:

"* * * since the market has recently been upset it is most difficult to buy within the price limitations of these orders.

"Inasmuch as your present policy appears to place us in a minor role, we do not feel inclined to take large losses on these orders or any other orders that were placed with us under unfavorable conditions. However, we shall continue to do our utmost and hope to be able to complete shipment within a reasonable time."

This letter reflects LS&T's dissatisfaction with its unequal treatment by Bethlehem, and not any general policy of reneging on Bethlehem orders. Since it was written soon after the conference at which it was advised it would not be favored with further orders, its tone is not surprising. The Bethlehem letter of complaint, dated March 27, 1950, was not offered by Bethlehem but from the LS&T reply it would appear to involve only a single order or series of orders for Steelton, rather than a general complaint against LS&T's performance.

Also cited by Bethlehem is a survey made by it in May 1951, of orders on which there had not been full delivery by LS&T during 1950 (RX 82). However, this too involves mainly the period when it had become apparent that LS&T was going to be assigned a very minor role as a supplier to Bethlehem, and is not truly representative of LS&T's performance as a supplier to Bethlehem.

satisfaction with its performance was the reason why it was going to be limited or eliminated as a supplier.¹²

Based on the evidence as a whole, the examiner is satisfied that if there was any dissatisfaction on the part of Bethlehem with LS&T's performance, it was not a significant factor in the curtailment of LS&T's role as a supplier or in its later elimination. On the contrary, the examiner is convinced that such curtailment and elimination were an outgrowth of the same policy decision by Bethlehem which resulted in the curtailment of Schiavone-Bonomo's role as a broker for Bethlehem and in the curtailment or elimination of other brokers, as will hereafter appear. The primary difference between the Schiavone-Bonomo and LS&T situations was that the former as the owner of, or affiliate of, a number of yard operations was still in a position to supply Bethlehem with substantial quantities of scrap on a dealer basis, whereas LS&T which had no such yard operations could not and was therefore expendable.

Beginning around April 1956 LS&T gradually closed down its various brokerage offices, until by 1958 it was no longer in the brokerage business except for the Chicago area. Counsel supporting the complaint contend that this decline in LS&T's scrap operations has been due to its inability to sell to Bethlehem and to other scrap consumers which use Luria as their exclusive broker. Luria contends, on the other hand, that LS&T's more profitable operations in the engineering and steel construction end of its business were responsible for the de-emphasis of its scrap operations.

While the loss of access to the largest user of scrap in the Eastern United States was undoubtedly a handicap for LS&T, the examiner cannot make any finding on the basis of the evidence in the record that this was a significant factor in LS&T's substantial departure from the scrap business, particularly in the absence of statistical evidence as to the proportion of LS&T's business which was represented by sales to Bethlehem and to the other consumers involved. The fact that at least 6 years intervened between the loss of the Bethlehem account and LS&T's departure from the scrap business would tend to minimize any causal connection between these events. It may be argued that the increase in demand resulting from the Korean War and the later lifting of the embargo on scrap exports were responsible for delaying LS&T's exit. However, such speculation does not afford a sufficient basis for any affirmative finding.

¹² Bethlehem requests the examiner to infer that at the last conference in March 1950 LS&T was advised its poor performance was the reason why it would no longer be favored with orders. There is no record basis for such a finding. There was no reference to any such statement having been made in the plausible and uncontradicted testimony of Herbert T. Luria. As already noted, the Bethlehem officials who were present at the conference were not called by Bethlehem to give their version of the incident.

Commercial Steel & Chemical Corporation

15. Commercial Steel & Chemical Corporation of New York, New York, is engaged, among other things, in the scrap brokerage business and sells both imported and domestic scrap. It does not own any scrap yards. The company has been a supplier of scrap to Bethlehem since at least 1942. While it has not ranked among the largest suppliers to the company as a whole, it has been a substantial shipper to several of the company's plants. Thus, in 1947 and 1948 it was among the five largest suppliers to Bethlehem's Sparrows Point plant, with sales of approximately 68,000 and 54,000 gross tons, respectively. In 1948 and 1950 it was also among the five largest suppliers to the Johnstown plant, with sales of approximately 5,800 and 15,500 gross tons, respectively.

Up until about 1950, Bethlehem was one of Commercial Steel's main customers, its sales to Bethlehem representing about 75% of its total scrap business. It sold both domestic and imported scrap to Bethlehem. In the earlier years about 80% of its scrap sales to Bethlehem were of domestic scrap and about 20% imported scrap. During the period from about 1948 to 1950 the proportion of Commercial Steel's sales represented by imported scrap increased to about 40%.

Commercial Steel's sales of scrap to Bethlehem ceased early in 1951. In the spring of that year Commercial Steel offered a quantity of imported scrap to Bethlehem and the latter indicated that it did not wish to buy the scrap directly from Commercial, but suggested that the scrap be sold to Luria which would, in return, sell it to Bethlehem. While the Bethlehem representative, A. R. Thurn, indicated that he liked the scrap which Commercial Steel was importing, he wanted to get it through Luria since he was in need of large quantities of scrap and felt that Luria had the organization to help him acquire the amounts he needed in the open market better than anyone else. Commercial Steel declined the suggestion that it sell the scrap to Bethlehem through Luria.

Although nothing specific was said about domestic scrap in the discussion with Bethlehem, Commercial made no offers of domestic scrap for several months since it desired to sell both domestic and imported scrap to Bethlehem and did not wish to sell them separately. However, around October of that year, after the market for imported scrap had ceased to be as important because the price had become too high in relation to that of domestic scrap, Commercial Steel offered a quantity of domestic scrap to Bethlehem and the latter again declined, suggesting that the scrap be sold to Luria for delivery to it. The Bethlehem representative, Thurn, advised Commercial that he had to rely to a very large extent on Luria as a supplier, and that there would

be too much interference if more than one broker was permitted to cover the same market for it.

Commercial Steel thereafter periodically offered scrap to Bethlehem, but was met with the suggestion that it offer its scrap through Luria. This it declined to do except in one instance, which occurred in October 1952. At that time Commercial Steel had offered to sell Bethlehem 500 tons of imported scrap at \$42.50 a ton. The offer was declined. However, the next day a Luria representative telephoned Commercial stating that he understood Commercial Steel had offered 500 tons of imported scrap to Bethlehem at \$42.50 a ton, and offered to buy the scrap for \$43.50 a ton. Commercial accepted the order and shipped the scrap to Bethlehem for the account of Luria. This was the last shipment made to Bethlehem and no further sales were made to Luria, although Luria had assured Commercial Steel that it would receive as much for its scrap if it sold it through Luria as it would on direct sales to Bethlehem.¹³

Harcon Corporation

16. Harcon Corporation is a substantial scrap broker located in Boston. It does not directly operate any scrap yards, but does have an interest in several scrap yards operating under other corporate names in the New England area, which sell most of their scrap to it. In addition, it has a close working relationship with several hundred yard dealers, auto wreckers and similar sources of scrap, which regularly sell the bulk of their scrap to it.

For a number of years prior to 1950, Harcon was a regular supplier of scrap to Bethlehem, its sales to Bethlehem amounting to about 10% of its total scrap sales. While Harcon was not among Bethlehem's largest suppliers, its shipments were nevertheless substantial. Thus in

¹³ The above findings are based on the testimony of Commercial Steel's Treasurer, Joseph Rosenthal. Both Bethlehem and Luria suggest in their proposed findings that the failure to buy from Commercial Steel was due either to a decline in the demand for scrap or to a dispute between Bethlehem and Commercial Steel over a prior lot of imported scrap. Neither of these was, however, given to Rosenthal as the reason for not purchasing directly from him in his conversations with A. R. Thurn, Bethlehem's scrap purchasing agent. The latter was not called as a witness by respondents, and Rosenthal's plausible testimony, to the effect that Thurn advised him Bethlehem wished to buy directly from only a single broker (Luria) in the market, stands substantially uncontradicted. The testimony regarding Bethlehem's difficulties with Rosenthal's company over a prior lot of imported scrap was given by the Bethlehem scrap buyer, Melvin C. Cressman, a subordinate of Thurn, who did not himself talk to Rosenthal and made no claim that this was the reason for the cessation of relations between the companies. Despite all the emphasis on Commercial Steel's alleged derelictions in connection with a lot of imported scrap, in its proposed findings Bethlehem appears to suggest that it was the decline in the demand for scrap during 1951 which was the real reason for refusing Commercial Steel's offers. Aside from the fact that this reason was never mentioned to Rosenthal, the fact is that Bethlehem's scrap purchases increased substantially in both 1951 and 1952 to 2,001,000 and 2,448,000 gross tons, respectively, compared to 1,520,100 gross tons in 1950. The chief beneficiary of this increase was the Luria organization from which Bethlehem bought 917,000 and 1,443,000 gross tons in 1951 and 1952, respectively, compared to 408,000 gross tons in 1950.

1947 and 1948 its sales to Bethlehem amounted, respectively, to \$708,000 and \$561,000. In 1949, which was one of Bethlehem's slowest years in the postwar period, Harcon's sales to it declined to \$86,000. However, in 1950, up to October of that year, Harcon's sales increased to \$319,000. Harcon's last sale to Bethlehem was made on October 10, 1950, except for a negligible amount sold in February 1952.

Prior to 1950 Harcon's sales to Luria were relatively small, amounting to about 1% of its total sales. However, following the cessation of business with Bethlehem, there was a sharp increase in Harcon's sales to Luria, which in turn resold some of the scrap to Bethlehem. Harcon's sales to Luria amounted to over \$1,000,000 in 1951, representing 17% of its total sales, as compared to sales of approximately \$45,000 in 1949 and 1950. There was a steady increase thereafter in Harcon's sales to Luria, except for 1952, and by 1955 Harcon's sales to Luria amounted to over \$3,000,000, representing 38% of its total sales. A substantial part of the scrap sold to Luria after 1953 was shipped for export, but part of it was supplied to Bethlehem.

Respondents contend that the cessation of direct sales by Harcon to Bethlehem had no connection with any arrangement between Bethlehem and Luria, but was an outgrowth of the fact that Bethlehem and Harcon had only done business on a minimal and sporadic basis and that relations between them merely phased out in the normal course of events. However, the statistical evidence in the record discloses that there had been a regular and substantial business relationship between them for a number of years and, most significantly, that the volume of business between them was on the increase when it suddenly came to an end in October 1950. Because of the generally unreliable nature of the testimony regarding the break in relations it is difficult to ascertain the precise reasons for, or circumstances of, the cessation of direct dealing between Harcon and Bethlehem in the fall of 1950.¹⁴ However, the examiner is satisfied, from the record as

¹⁴ The principal witness to testify regarding the break in direct relations between Harcon and Bethlehem was Harcon's President, Frank P. Gordon, who was called as a Government witness. Gordon, whose company was then doing an annual business of over \$3,000,000 with Luria, was a most reluctant and evasive witness, and at times appeared to be making a deliberate effort to demean his own company in its relations with Bethlehem, so as to justify the latter's not giving it any further business. When first asked why his company had stopped doing business directly with Bethlehem in 1950, Gordon gave the following illuminating explanation:

They didn't want to buy it [scrap] and I guess maybe we didn't want to sell. We just couldn't get together.

Gordon later opined that the reason was that "we just couldn't get together pricewise." However, after considerable backing and filling Gordon revealed that: "Actually, I never handled the Bethlehem account too much." The account, it developed, had been handled by his father-in-law, who had died shortly prior to the hearing. Respondents cite Gordon's testimony on cross-examination to the effect that his father-in-law had told him Bethlehem was a "rather peculiar account" and not to "chase" them, as indicative of the strained relations between the two companies in 1950. However, Gordon also revealed that his

a whole, that Harcon's cessation in direct dealings with Bethlehem in October 1950 and the sharp increase in its sales to Luria thereafter were not a mere coincidence, but were part and parcel of the basic underlying change which was taking place in Bethlehem's relations with Luria and with other brokers and dealers.

Louis Cohen & Son

17. Louis Cohen & Son (hereinafter referred to as L. Cohen) operate two scrap yards, one in Wilkes-Barre and the other in Scranton, Pennsylvania. It has been a supplier of scrap to Bethlehem for over 30 years. Up until about 1952, L. Cohen was able to fill orders from Bethlehem with both scrap from its own yards which it already owned and with outside scrap which it did not yet own. It was also not limited as to the area from which it could purchase scrap for sale to Bethlehem. Around 1952 L. Cohen was advised by A. R. Thurn, Bethlehem's scrap purchasing agent, of a change in Bethlehem's policy in buying scrap. Thurn advised Cohen that his company would not purchase scrap which Cohen did not actually own, and also requested it to limit its purchases of scrap for Bethlehem to the two counties in which Cohen's yards were located. In connection with an offer of scrap of railroad origin on which L. Cohen was contemplating making a bid, as it had in the past, in anticipation of selling it to Bethlehem, it was advised by Thurn that Bethlehem did not wish to buy such scrap since Cohen would be competing with other brokers in buying it for Bethlehem.¹⁵

Following Bethlehem's refusal to purchase brokerage scrap which L. Cohen did not own there was a decline in both Cohen's brokerage sales generally and in the proportion of its business done with Bethlehem. At the same time there was a substantial increase in its sales to Luria. L. Cohen's brokerage sales declined from approximately 30% of its business to 10%. Its sales to Bethlehem declined from about 15% of its total sales in 1951 to about 7% in 1952 and reached a low of 3% in 1953. While there was an increase to 12% in 1954, its sales to Bethlehem again declined to 6% in 1955. By way of contrast its sales to Luria, which represented about 3% of its total sales in 1951, increased to 27% in 1952 and reached a high of 46% in 1955.

conversations regarding the cessation of dealings were: "Just in a general way, nothing particular." It is clear that Gordon's testimony is largely hearsay and of little reliability. In connection with his claim that the two companies couldn't get together price-wise, it may be noted that Harcon apparently had no difficulty in coming to terms with Luria which, in turn, was able to sell the scrap to Bethlehem at an average profit of \$1.00 a ton.

¹⁵ The above findings are based on the uncontradicted testimony of a witness from L. Cohen. Counsel for Bethlehem argue that Bethlehem's refusal to purchase brokerage scrap which L. Cohen did not own, was limited to railroad scrap. However, the examiner does not so interpret the testimony of the L. Cohen witness. While he referred to railroad scrap as illustrative of the restrictions imposed by Bethlehem, it is clear from his testimony as a whole that the Bethlehem policy applied to any brokerage scrap which L. Cohen did not actually own.

M. Glosser & Sons, Inc.

18. M. Glosser is a broker and dealer with its yard and office located in Johnstown, Pennsylvania. About 50% of the scrap sold by it is sold on a dealer basis, originating in its own yard, and the balance is sold on a brokerage basis. Glosser has been a direct seller and shipper to Bethlehem, particularly to the Johnstown plant, for many years. Over half of Glosser's sales since 1951 have been made to Bethlehem.

Prior to 1952 Glosser sold scrap to Bethlehem on a brokerage basis, without limitation as to the area from which the scrap could be shipped. By 1952, however, brokerage orders which Glosser received from Bethlehem were limited to certain specified areas. Bethlehem paid Glosser \$1.00 a ton more on brokerage scrap than it did on scrap shipped from its own yard. After protesting for some time that it should be permitted to ship brokerage scrap from its own yard and receive an additional \$1.00 thereon, Bethlehem acceded to the request in 1956 and also removed some of the limitations on the areas from which Glosser could ship scrap to it.

Buffalo Brokers and Dealers

19. Bethlehem buys from two brokers and dealers in the Buffalo, New York area. They are Morrison & Risman Co., Inc., and Hurwitz Brothers Iron & Metal Co. Both of these companies supply substantial quantities of scrap to Bethlehem, particularly to its Lackawanna, New York plant. Scrap supplied to Bethlehem by these two companies originates to a large extent in their own yards and is sold on a dealer basis. They also supply some scrap to Bethlehem on a brokerage basis. However, in filling brokerage orders they are permitted to obtain the scrap only from the "Local Buffalo, N.Y. Area" and are not permitted to obtain it from other brokers on a sub-brokerage basis.¹⁶

*Baltimore Brokers and Dealers**H. Klaff & Co., Inc.*

20. H. Klaff is one of four brokers and dealers in the Baltimore, Maryland area, which sell or have sold to Bethlehem. Klaff operates a yard in Baltimore, and also does a brokerage business in ferrous scrap. About half of the scrap sold by it originates in its own yard and the balance is brokerage scrap. Klaff has been a substantial supplier to Bethlehem for a number of years. In 1947 it was the fifth largest supplier to Bethlehem's Sparrows Point plant. At one time

¹⁶ The last finding is based on two purchase orders which are in evidence. Counsel for Bethlehem suggest that these orders are not typical, but are limited to the period of the Korean War when price controls were in effect. However, there is no countervailing evidence in the record by Bethlehem to support this assertion.

it sold Bethlehem both brokerage and yard scrap. However, since 1949 it has not sold Bethlehem any yard scrap. Such scrap has been sold largely to Luria which, particularly since 1952, has sold the bulk of such scrap to Bethlehem, mainly for Sparrows Point.

It is somewhat difficult to determine from the record why Klaff sold its brokerage scrap directly to Bethlehem, but sold its yard scrap through another broker. The explanation by the Klaff witness was that during the period of OPA and OPS price controls his company could not receive a brokerage commission on its yard scrap, and therefore it had no objection to selling through another broker. This attitude, it may be noted, is somewhat at variance with that of a number of other broker-dealer witnesses who indicated a preference for dealing directly with consumers. It also fails to explain why Klaff stopped selling yard scrap to Bethlehem in 1949, when OPA controls were no longer in effect and before OPS controls had been set up.

Whatever the reason for selling its yard scrap to Luria, Klaff did an ever-increasing business with Luria so that by 1953 it was selling approximately 43% of its scrap to Luria, compared to 18% directly with Bethlehem. Of the scrap sold to Luria, approximately 84% was shipped to Bethlehem, mainly at Sparrows Point. The explanation given by the Klaff witness for the fact that his company chose Luria as the broker to handle the bulk of its yard scrap was:

As far as we know Luria Brothers are the brokers for Bethlehem. They handle Bethlehem scrap, and we have never had any reason to try to get anyone else, or ship through anyone else.

While Klaff, unlike a number of other brokers and dealers, has continued to do a substantial business with Bethlehem on a brokerage basis, an even larger proportion of its scrap now reaches Bethlehem through Luria as broker.

United Iron & Metal Co., Inc.

21. United Iron & Metal is a dealer operating two scrap yards in Baltimore. United was a direct supplier of scrap to Bethlehem from about 1922 to 1951, mainly to the Sparrows Point plant. From 1947 to 1951 United ranked among the five largest suppliers to the Sparrows Point plant. In the years 1948, 1949 and 1950 United was either the largest or second largest supplier to Sparrows Point. United sold to Bethlehem under a series of long-term contracts, covering its entire production of certain grades of scrap at prices based on quotations in the trade publication, "Iron Age." The last of these contracts was for a term of 3 years, from April 16, 1948, to April 16, 1951.

When the last contract expired, negotiations for a new contract were undertaken with A. R. Thurn, who had just become Bethlehem's chief scrap purchasing official. United continued to ship scrap to Bethle-

hem for a number of months while negotiations were pending. In the latter part of 1951 negotiations were terminated and United ceased selling scrap to Bethlehem. From that point forward Luria replaced Bethlehem as the principal purchaser of United's scrap. The great preponderance of the scrap purchased by Luria was, however, resold to Bethlehem at Sparrows Point. Thus, the principal change which occurred was that instead of selling the bulk of its scrap to Bethlehem directly, United sold such scrap to Luria but delivered it to Sparrows Point.¹⁷

The exact circumstances under which the change, from direct dealing between United and Bethlehem to indirect dealing through Luria, occurred cannot be determined because of the confused and unsatisfactory testimony of the principal witness on this point.¹⁸ However, the examiner is satisfied from the record as a whole that such change is causally related to the over-all change which was occurring in Bethlehem's dealings with a number of other brokers and dealers, and with Luria.

Cambridge Iron & Metal Co., Inc.

22. Cambridge Iron & Metal is a broker and dealer which operates two scrap yards in Baltimore. Cambridge has been a supplier of

¹⁷ In 1950, the first year for which there are figures in evidence, United sold 73% of its scrap to Bethlehem. While it sold about 8% of its scrap to Luria, none of this was delivered to Sparrows Point. In 1951, the year during which its direct sales to Bethlehem came to an end, United's sales to Bethlehem were 67% and to Luria 11%. Between 1952 and 1955 United sold over 90% of its scrap to Luria, except in 1954 when such sales were 84%. In each of these years over 90% of the scrap sold to Luria was resold by Luria to Bethlehem and delivered at Sparrows Point, except for the first year of the new dispensation when about two-thirds of the scrap was resold to Bethlehem. In terms of United's total scrap sales, over 80% of its scrap was delivered to Bethlehem at Sparrows Point after the end of direct dealings, except for the first year, 1952, when about 60% was so delivered.

¹⁸ The principal witness was Jacob S. Shapiro, United's founder and president, who was called as a witness in support of the complaint. Shapiro's testimony as to why he and Thurn couldn't agree on a new contract was thoroughly confused and contradictory. Thus he testified that price differences were a factor, and later that they weren't a factor because OPS controls were in effect; that no complaint had been made about his performance under the old contract, and then that complaints were made; that the length of the term of renewal was not a factor, although correspondence between them indicates the matter was discussed. Shapiro's final explanation of why he and Thurn couldn't agree was: "He said I won't give you no contract. I am against giving you a contract. That's all he would say."

Shapiro's testimony as to how his company switched its business to Luria (upon whom his company was then relying for over 90% of its sales) lacked the ring of verisimilitude. He insisted that he had taken the initiative in going to Ralph Ablon, of Luria, to urge Luria to handle his scrap; that Ablon at first refused because United had been doing business directly with Bethlehem but generously promised to "see what I can do"; and that Ablon finally agreed to handle the scrap since it wouldn't make any difference to United inasmuch as it couldn't collect a commission on its yard scrap under OPS regulations, and because Luria had other outlets for United's scrap, thus decreasing its reliance on Bethlehem. According to Shapiro this promise to afford his company other outlets "worked out very satisfactorily". Despite Shapiro's efforts to rationalize the change as affording his company greater flexibility, the fact is that its reliance on Bethlehem has not basically decreased. An even greater proportion of its scrap continues to be shipped to Bethlehem at Sparrows Point than before, except that Luria now collects a commission.

scrap to Bethlehem at Sparrows Point since 1927. For several years after 1949 it was among the five largest suppliers to Bethlehem's Sparrows Point plant. At one time Cambridge supplied Bethlehem with scrap from its yards and also with scrap which it obtained on a brokerage basis from other dealers, particularly in Washington, D.C., and Virginia. However, in more recent years it has no longer sold its brokerage scrap directly to Bethlehem, but has been selling it to Luria which, in turn, has resold substantial portions thereof to Bethlehem at Sparrows Point. Orders which Cambridge receives from Bethlehem now restrict it to the shipment of scrap from its own yards.

The record indicates that while the proportion of Cambridge's direct sales to Bethlehem has declined after 1951, that sold to Luria has increased correspondingly in the same period, as has the proportion of Cambridge's scrap shipped to Bethlehem through Luria. Thus, it appears that Cambridge's direct shipments to Bethlehem, which represented 64% and 72% of its total sales in the years 1950 and 1951, respectively, declined in the years 1952-1956 to 58%, 52%, 26%, 36%, and 37%, respectively. Its sales to Luria, which were 14% and 7% of its total sales in 1950 and 1951, respectively, increased in the years 1952-1956 to 25%, 36%, 45%, 33% and 40%. Similarly, while only 0.5% of its total scrap sales were shipped to Bethlehem through Luria as broker in 1950, and only 1.8% in 1951, the percentage thereof increased to 17% in 1952, 23% in 1953, and 22% in 1954, declining somewhat in the years 1955 and 1956 to 16% and 13%, respectively.

When direct and indirect sales are added together, it becomes apparent that there has been no major change in the proportion of Cambridge's scrap reaching Bethlehem. The principal change which has occurred is that since 1952 a substantial portion of the scrap handled by Cambridge has been sold to Bethlehem through Luria on a sub-brokerage basis. The circumstances under which this change occurred cannot be determined precisely because of the nebulous state of the testimony pertaining thereto.¹⁹ However, the examiner is satisfied from the record as a whole that the sale by Cambridge of substantial quantities of its brokerage scrap to Luria for shipment to Bethlehem was part of the same over-all change which was occurring in Bethlehem's relations with other brokers and dealers and with Luria.

¹⁹ The only witness to testify concerning the matter was Cambridge's president, Isaac Shapiro. Shapiro's testimony was characterized by the same evasiveness and obfuscation as that of a number of similar witnesses who testified, at the instance of counsel supporting the complaint, regarding the circumstances of their selling to Luria instead of directly to Bethlehem. One explanation given by the witness for selling to Luria was that it was "easier to do business" with Luria than with Bethlehem because the latter had "a certain time to buy and they have a price." Yet the witness, in later discussing the manner of negotiating with Luria on price, testified that they had to wait until Bethlehem fixed the price before Luria could quote him a price, since the price which

The Boston Metals Company

23. Boston Metals is a substantial scrap dealer and shipwrecker in Baltimore. Most of the scrap which it handles comes from the dismantling of ships which it purchases. However, it also handles scrap of railroad, industrial and dealer origin. Boston Metals has been a substantial supplier to Bethlehem, particularly to the Sparrows Point plant. In 1950 it was the second largest supplier to the Sparrows Point plant, its sales to Bethlehem being over \$1,000,000. In 1951 its sales to Bethlehem declined to approximately \$850,000. Thereafter its sales to Bethlehem declined sharply, reaching a low of approximately \$160,000 in 1954. While there was an increase to \$280,000 in 1955, this consisted of the sale of a single lot of obsolete ships which Boston Metals had broken up in Buffalo and sold to Bethlehem's Lackawanna plant. In 1956 it made no sales to Bethlehem.

The precise reason for the change in relations with Bethlehem is difficult to determine in view of the reluctance of the Boston Metals witness who testified to reveal the circumstances thereof. It seems probable that in the early years, a decline in Boston Metals' over-all business, due to the fact that there was little scrapping of ships during the Korean War, was a factor in its not selling more to Bethlehem. Thus, Boston Metals' total sales declined from about \$1,500,000 in 1950 to \$460,000 in 1953. However, its sales almost doubled in 1954 and were around a quarter of a million dollars in 1955, and were running at an even greater rate in 1956. Yet its sales to Bethlehem continued to decline and even ceased in 1956.

The Boston Metals witness indicated that whereas in former years Bethlehem customarily approached his company and negotiated for its scrap, it had not done so in recent years. The witness was most reluctant to reveal why his company had not sought to sell to Bethlehem in view of the fact that, as he and others testified, Sparrows Point was the natural shipping point for scrap from the area due to freight rates. He sought to attribute his inability to get together with Bethlehem to "a little pride, and a little temperament, both ways." However, his testimony reveals that his company had received reports of a change in Bethlehem's buying policy and that he was unwilling to sell through Luria as a broker, but preferred to sell directly. Appar-

Luria paid was "match[ed] up" with the price it received from Bethlehem. Another reason given by the witness for selling to Luria was that "they got a market, a spread out market for different places." Yet in most years since 1952 from one-half to two-thirds of the scrap sold to Luria by Cambridge has been delivered to Bethlehem at Sparrows Point rather than to any "spread out market" in "different places". The sales to Luria have been accomplished at the expense of a decline in Cambridge's direct sales to Bethlehem which, in turn, has been largely counterbalanced by Cambridge's indirect sales of brokerage scrap to Bethlehem through Luria, on which the latter has received a commission not available to Cambridge.

ently the factor which enabled Boston Metals to maintain its "pride" in not approaching Bethlehem directly or selling to it through a broker was the fact that, after the lifting of export controls in 1954, it began shipping large quantities of scrap abroad.

Change in Relations with Direct Suppliers
Bethlehem's Elizabethport Yard

24. In addition to the changes which occurred in its relations with dealer-broker suppliers in the direction of favoring Luria with its business, counsel supporting the complaint also rely on changes which occurred in Bethlehem's relations with a number of industrial fabricators, railroads and other direct suppliers as further evidence to support an inference of the existence of an exclusive brokerage arrangement between Bethlehem and Luria. One of these changes involves a scrap preparation yard, which Bethlehem operated for many years at Elizabethport in northern New Jersey. The yard was used to prepare scrap generated by Bethlehem's shipyard in nearby Staten Island and by a number of industrial fabricators in the northern New Jersey area, to which Bethlehem sold steel and from which it purchased scrap generated by their fabricating operations. In April 1952, Bethlehem closed down its Elizabethport yard and arranged with the industrial fabricators to have their scrap sold to either Luria or Schiavone-Bonomo. It assigned certain of the fabricator accounts to Luria and others to Schiavone-Bonomo. It was understood that the scrap would continue to come to Bethlehem, except that it would be handled by one or the other of the two designated firms, which would prepare it and ship it to Bethlehem.

In the case of Schiavone-Bonomo, the scrap was prepared in its own yards in northern New Jersey or in those of certain dealers with which it regularly dealt. Respondent Luria, however, had no scrap yards in the area and the scrap of the accounts which were assigned to it was shipped to yard dealers in the area designated by it to prepare the scrap and later ship it to Bethlehem. In the resale of the scrap to Bethlehem, Schiavone-Bonomo received no commission, irrespective of whether the scrap was prepared in its own yards or in those of another dealer. In the case of Luria, it received a commission on all the scrap which it resold to Bethlehem.

Rheem Manufacturing Company

25. Rheem Manufacturing Company is an industrial fabricator with plants in Linden and Burlington, New Jersey; Sparrows Point, Maryland; Chicago, Illinois; New Orleans, Louisiana; Houston, Texas; and Newark, South Gate, Richmond and San Pablo, California. Its plant at Linden, New Jersey in the northern New Jersey area was one of the

accounts which Bethlehem had turned over to Luria in April 1952, in connection with the closing down of its Elizabethport yard. At that time the scrap at Rheem's Sparrows Point plant was being sold directly to Bethlehem or to H. Klaff, the Baltimore broker-dealer, for resale to Bethlehem. Scrap from Rheem's Richmond, California plant was sold directly to Bethlehem Pacific. The scrap generated at most of the remaining plants was sold to various local scrap dealers or brokers in the area of the various plants.

Luria had been soliciting Rheem's scrap for a number of years, without apparent success until 1952. Shortly after the arrangement pursuant to which Bethlehem released the scrap from Rheem's Linden plant to Luria, a conference was arranged among Bethlehem, Rheem and Luria as a result of which Luria was given the opportunity, on a trial basis, to handle the scrap from all the other Rheem plants, except for Sparrows Point. At the time of this arrangement Bethlehem owned approximately 25% of Rheem's common stock and was a substantial supplier of steel to certain of its plants. In January 1953 Bethlehem advised Rheem that it wished to have Rheem's Sparrows Point plant included in the arrangement with Luria. Thereafter Luria handled the scrap from all of the Rheem plants pursuant to a series of 3-month oral contracts.

In connection with the turning over of the Sparrows Point plant of Rheem to Luria, the record reveals that Thurn of Bethlehem instructed his scrap buyer by memorandum dated January 19, 1953, to "write Pappas [Rheem's director of purchases] that Sp. Pt. scrap will be included in over-all scrap deal with Luria." On January 22, 1953, a letter was addressed by Bethlehem's scrap buyer to Rheem, attention of Papas, as follows:

In order to complete your records and ours, we would like to confirm arrangements made through Luria Brothers & Co., Inc., whereby we will continue to receive your total production of No. 1 bundles and wheelabrator mill scale originating from your Sparrows Point, Md. plant.

In completing these arrangements, all of the production scrap which you are shipping to us from your various operations is now being handled through Luria Brothers & Co., Inc.

We thought it advisable to include the Sparrows Point tonnage in the over-all scrap arrangements, and we presume that this meets with your approval. [Emphasis supplied.]

Since Luria had no yards in the vicinity of the various Rheem plants, it arranged to sell the scrap to local yard dealers for preparation. In the areas where the Rheem plants had been suppliers of Bethlehem (such as the Linden and Sparrows Point plants) or of Bethlehem Pacific Coast (such as the Richmond, California plant), the prepared scrap or an equivalent tonnage, was resold to Luria by the

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dealers for delivery to Bethlehem or Bethlehem Pacific. Luria received its usual commission from Bethlehem on its resale of the scrap to the latter. Where the dealers had not been regular suppliers of the Bethlehem companies in areas remote from Bethlehem's plants they were, nevertheless, expected to resell to Luria a tonnage equivalent to that of the Rheem scrap which they had received through Luria. In 1953, the first full year of the arrangement between Luria and Rheem, Luria purchased over 50,000 tons of scrap from Rheem, substantial portions of which continued to be handled and prepared by local dealers.

Generally speaking, the yard dealers whom Luria used for the preparation of the Rheem scrap were the same dealers to whom Rheem had formerly sold the scrap from various of its plants directly. Rheem had requested Luria at the time of making the arrangement with it to use such dealers wherever possible. Rheem communicated with a number of the dealers and advised them they would no longer be able to purchase its scrap directly, but would have to handle it through Luria. One of the dealers, Southern Scrap Material Co., Ltd., of New Orleans, objected to the change. However, George Papas, Rheem's director of purchases, advised Southern Scrap that Bethlehem owned a percentage of Rheem's stock and had suggested to Rheem that it might be advantageous if Luria could handle the material from its plants since Luria was in a position to return an equivalent tonnage to Bethlehem in other parts of the country. Papas further indicated to Southern Scrap that while he didn't care too much about the arrangement, there wasn't much he could do about the change in policy, and that Southern Scrap would have to live with it.²⁰

The examiner is convinced, and finds, that Luria was chosen to handle the Rheem scrap because of its relationship with Bethlehem, and that Rheem made the arrangement with Luria because of Bethlehem's advice and urging. Respondents contend that the decision to have Luria handle the Rheem scrap was Rheem's own decision, arising out of its dissatisfaction with the way its existing corps of dealers was handling the scrap, and that Bethlehem's only participation was merely that of "putting in a friendly word for Luria with Papas". However, based on the record as a whole, the examiner is satisfied that

²⁰ The above findings concerning the advice given Southern Scrap by Papas are based on the uncontradicted, plausible and credited testimony of Stanley M. Diefenthal, a Southern Scrap official, relating a conversation with Papas. Luria contends that if the statement was made by Papas, it was made for the purpose of "mollifying" Diefenthal. The examiner finds that the statement accords too much with the realities of the situation to be regarded as mere idle gossip by Papas. Bethlehem has also moved to strike the statement as hearsay. However, in view of the close relationship between the two companies and the corroboration contained in Bethlehem's letter of January 22, 1953, to Papas, the examiner regards the motion as lacking in merit.

Bethlehem's role was more than that of a friendly bystander. While it may be, as respondents point out, that Rheem was an independent company, nevertheless Bethlehem owned a substantial part of its stock and was a major source of its steel supply. Considering that the change occurred during the Korean conflict when there was a critical shortage of steel, it would not be surprising if Bethlehem were able to bring considerable pressure to bear on Rheem. Any doubt as to whether it did is set at rest by its letter of January 22, 1953, which directed Rheem, albeit politely, to complete the "over-all scrap arrangements" with Luria by having it handle the Sparrows Point scrap.²¹ While it may be that Rheem was experiencing some dissatisfaction with its existing scrap outlets, it is significant that it was sufficiently satisfied with them to request Luria to continue to use substantially the same yards to prepare the scrap. Furthermore, even if it be assumed that Rheem's dissatisfaction with existing outlets would have caused it ultimately to make new arrangements, the record is clear that the arrangement which it did make was made when and as it was, and with whom it was, because of Bethlehem.

Respondents also argue that Bethlehem would have no interest in any over-all arrangement between Rheem and Luria since it only received scrap from some of Rheem's plants. However, the scrap from those plants constituted a major portion of the Rheem scrap. Furthermore, Bethlehem would also have an indirect interest in the remainder of the Rheem scrap. Since Luria had other customers more conveniently located to certain of Rheem's plants it could ship the scrap from such plants to those customers, thereby lessening its call on scrap from areas closer to Bethlehem for shipment to such other customers, and thus making more scrap available for Beth-

²¹ Thurn gave the tongue-in-cheek explanation that the reference, in his memorandum of January 19 to his scrap buyer, to an "over-all scrap deal with Luria" (which is again referred to in the letter of January 22), did not "mean what you think it means", but referred to a deal which Rheem, rather than Bethlehem, had made, and that he was merely stepping aside as a "favor" to Rheem. However, the letter of January 22 obviously refers to the arrangement as one which Bethlehem had made, informing Rheem that: "We [i.e. Bethlehem] thought it advisable to include the Sparrows Point tonnage" in the arrangement. Respondent Bethlehem cites the testimony of Papas to the effect that he alone made the decision to sell to Luria, and argues that he is "the one person competent to know his own mind". However, Papas' testimony also indicates that he did discuss the matter with Thurn and received the latter's advice. While Papas sought to create the impression that Thurn's advice was given during a casual visit when Thurn just "dropped over", Thurn's own testimony indicates that at Luria's request he set up a conference with Papas which was attended by Ralph Ablon of Luria. While claiming that the ultimate decision was Papas', Thurn conceded that he told Papas in substance: "These people [Luria] are doing a good job for us. We have come to rely on them and depend on them and know that they know the scrap business. Why don't you give them a trial?" [R. 1966.]

Considering the relationship which existed between Rheem and Bethlehem, this alone would be sufficient to assure favorable consideration for Luria, assuming the advice were as mild as indicated by Thurn and assuming no other pressure were brought to bear.

lehem. While it may also be, as respondents argue, that the total amount of Rheem scrap was not large in relation to Bethlehem's over-all scrap needs, it was sufficiently large to be of interest to both Bethlehem and Luria.

Spicer Manufacturing Division of Dana Corporation

26. Mayer-Pollack, a scrap dealer and broker in Pottstown, Pennsylvania, had since 1920 purchased all of the scrap generated by the Pottstown plant of Spicer Manufacturing Division of Dana Corporation. For some years prior to May 1952 the bulk of the scrap was resold by Pollack to E. & G. Brooke Company at Birdsboro, Pennsylvania, which was later acquired by CF&I. Around 1951 or 1952 Pollack also resold some of the scrap to Bethlehem, which was a supplier of steel to Spicer. Sometime in 1951 Pollack was approached by Luria and advised that Spicer wished Luria to handle its scrap due to the fact that Luria had done a "favor" for Dana's Toledo plant, apparently by supplying it with some new steel. The Luria representative advised Pollack that in view of the friendly business relations between Luria and Pollack in the past, Luria would not insist on obtaining the scrap directly from Spicer, and that if Pollack would agree to supply Luria with a tonnage equivalent to that which it was obtaining from Spicer, Luria would not disturb Pollack's existing relationship with Spicer at Pottstown. Although Pollack did not verify this information with Spicer, it agreed to the proposal of the Luria representative.

For a period of time thereafter Pollack sold to Luria tonnages equivalent to the scrap which it received from Spicer. The actual Spicer scrap was sold by Pollack partly to E. & G. Brooke and partly to Bethlehem. However, in May 1952, after E. & G. Brooke had been acquired by CF&I, Pollack ceased selling the Spicer scrap to Brooke directly but began shipping it through Luria. It also ceased selling the Spicer scrap directly to Bethlehem, and began selling equivalent tonnages to Luria for shipment to Bethlehem. Sales to Luria for shipment to Bethlehem ceased in 1955.

The Spicer scrap situation is cited by counsel supporting the complaint as another instance where an industrial fabricator gave favored treatment to Luria in the handling of its scrap, due to pressure by, or influence from, Bethlehem. There is not, however, sufficient evidence in the record to support counsel's position in this regard.²² In fact, at another point in their proposed findings, coun-

²² Counsel supporting the complaint cite the testimony of the Pollack witness that "in between there somewhere the Bethlehem Steel Company came into the picture directly to Spicer at the time of OPS", and "approached Spicer for their scrap" (R. 5020). It is not clear from the witness' testimony that this occurred prior to the time when Luria had

sel supporting the complaint contend that Dana agreed to sell its scrap to Luria because the latter sold it new steel, rather than because Bethlehem had sold it steel.²³ However, while this incident does not support the point for which it is cited, viz, pressure on industrial fabricators by Bethlehem in favor of Luria, the fact that Pollack later began shipping to Bethlehem through Luria as broker, rather than directly, is further evidence of Luria's position as Bethlehem's broker.

The Budd Company

27. The Budd Company is a manufacturer of steel products and operates a number of plants. The evidence offered by counsel supporting the complaint relates mainly to the plant located in the Hunting Park section of Philadelphia. This plant generates large quantities of very desirable scrap material, which it bales into No. 1 Bundles. For a number of years a substantial part of the scrap from the Hunting Park plant was sold to Bethlehem (the principal supplier of steel to Budd), pursuant to a long-term contract which was subject to cancellation on 30 days' notice. The plant also sold large quantities of scrap to Luria. In 1950 21%, out of the 151,000 tons of scrap sold by the Hunting Park plant, was sold to Bethlehem directly and 65% was sold to Luria.

In 1951 a change occurred in Budd's relations with Bethlehem. Instead of shipping scrap intended for Bethlehem directly to that company, on scrap allocated pursuant to Government orders Budd began to ship through Luria as broker. In explaining the decision to designate Luria as broker for Bethlehem, the Budd official in charge of scrap sales testified:

* * * I think it was almost general knowledge that the Bethlehem Steel Company were changing their policy in respect to buying direct, as they had at one time attempted to buy all of their material direct, and were buying scrap through brokers, and that Luria Brothers Company in Philadelphia was probably the one broker they would choose to do business with. [R. 5204.]

No objection to Luria's designation was received from Bethlehem, and Budd sold additional quantities of scrap to Luria, with instructions that it be shipped to Bethlehem and to other steel mills which were supplying Budd with steel. This was in accordance with Budd policy that "steel mills that did supply us with steel would be assured of a fair treatment in regard to being able to buy our scrap in times of short supply." In 1951 Luria shipped to Bethlehem approximately

requested Pollack to sell it the Spicer scrap or tonnage equivalent thereto. Furthermore, the Pollack witness' testimony with regard to alleged pressure on Spicer by Bethlehem appears to be based on what he understood to be a general industry situation, rather than any specific and direct knowledge that this had actually been done by Bethlehem.

²³ Proposed Findings of counsel supporting the complaint, p. 198, par. 59-61.

17,000 tons, or 23% of the scrap which it purchased from Budd, the balance being sold mainly to other steel mills, including respondents Lukens, Central, Phoenix, Roebling and CF&I (Claymont). Budd also sold approximately 17,000 tons of scrap directly to Bethlehem in 1951. Whether these sales were all made before Budd began shipping through Luria does not appear from the record, but a substantial portion apparently was.

In 1952 Budd advised Bethlehem that the long-term contract pursuant to which it had sold scrap to Bethlehem was being terminated. Thereafter all of the Budd scrap which was shipped to Bethlehem was sold through Luria. In the years 1952-1955, respectively, Budd sold 85%, 80%, 81% and 78% of its scrap to Luria. The latter, in turn, shipped to Bethlehem 26%, 41%, 50% and 53%, respectively, of the scrap sold to it by Budd. The balance was shipped to other steel mill consumers, including the respondents referred to above.

There is considerable controversy as to whether the decision by Budd to sell the great bulk of its scrap to Luria and to cease selling directly to Bethlehem was entirely its own decision or whether it was influenced by Bethlehem. Respondent Bethlehem argues that the decision was entirely Budd's, and cites the testimony of the latter's scrap official to the effect that the decision to designate Luria as broker on scrap for Bethlehem was his own decision and that he had received no instructions from Bethlehem. On the other hand, the witness also indicated that he had discussed with a Luria representative whether Luria "would be able to sell Budd scrap to Bethlehem" and that the Luria representative, after checking with Bethlehem, responded in the affirmative.

It is unnecessary to determine whether Bethlehem played any direct or open role in Budd's decision to sell to it through Luria. Even if it be assumed that Budd, for reasons of its own, was considering a change in policy so as to sell entirely through brokers, the examiner is convinced and finds that it took action when and as it did only after it was satisfied that that action was in accord with the wishes of its principal steel supplier. It taxes credulity to the utmost to believe that Budd would have taken action in conflict with the policy or wishes of that supplier during a period of critical steel shortage. The testimony of the Budd representative attests to his keen awareness of the necessity of keeping his company's steel suppliers happy. It is also clear from the testimony of that official, despite some efforts to minimize Bethlehem's role, that insofar as the latter was concerned, the

change by Budd merely gave recognition to the change in Bethlehem's policy.²⁴

American Car & Foundry Co.

28. American Car & Foundry Co., now known as ACF Industries, Inc., is a fabricator of steel products. For a number of years prior to 1951 ACF had an arrangement with Bethlehem to sell substantially all of the scrap production of its Berwick and Milton, Pennsylvania plants to Bethlehem, at prices geared to the price quotations appearing in "Iron Age". At that time Bethlehem was the principal supplier of steel to the Berwick plant.

During the summer of 1951 a representative of Luria, who had been selling some special scrap to ACF for use in its own foundries, approached ACF and inquired whether it would have any objection to Luria's acting as broker for the purchase and sale of ACF scrap to Bethlehem. The Luria representative indicated that his company was endeavoring to make an arrangement with Bethlehem to act as Bethlehem's broker, and that Bethlehem was agreeable to Luria's acting as broker on purchases of scrap from ACF's Milton and Berwick plants, if the latter were agreeable. The ACF representative inquired whether it would cost his company anything in the way of brokerage and was assured by Luria's representative that brokerage would be paid by Bethlehem and that ACF would get exactly the same return from the scrap as it had under the arrangement with Bethlehem.

Following this discussion a luncheon was arranged by the Luria representative at which the Bethlehem scrap buyer and the ACF official in charge of selling scrap were present. The Bethlehem representative inquired whether it was agreeable to ACF for Luria to act as broker on sales of scrap to Bethlehem and the ACF representative indicated that his company would be willing, provided that it wasn't going to cost ACF anything in the way of brokerage. Upon receiving assurance that it would not, and that the proposed change was acceptable to Bethlehem, toward which as its principal supplier of steel ACF "felt we had an obligation", ACF agreed to the change in existing arrangements for the reason, as its representative testified:

We were concerned with Bethlehem getting our scrap, and that was being accomplished by the new arrangements, and we were not being penalized in the matter, brokerage or otherwise, by the change in dealing. [R. 3899.]

²⁴ Bethlehem has moved to strike as hearsay the testimony of the Budd official previously quoted, to the effect that it was "general knowledge" Bethlehem was "changing their policy". In the opinion of the examiner the motion is without merit. The testimony is admissible minimally as indicating the reason, motive or basis for Budd taking action (*Lawlor v. Loewe*, 235 U.S. 522). It is also admissible as reflecting the practical construction placed by the industry on the relationship between Luria and Bethlehem and, together with other corroborative evidence, as evidence of the relationship itself.

Beginning around the middle of September 1951, ACF began receiving purchase orders from Luria covering the scrap generated by ACF's Berwick and Milton plants. The scrap covered most of the production of those plants and the orders provided for shipment of the scrap to Bethlehem under the same terms and conditions as the previous orders which had been issued directly by Bethlehem. During the ensuing years ACF continued to sell scrap from these two plants to Luria for delivery to Bethlehem. The price arrangement was substantially the same as it had been with Bethlehem, and the latter paid Luria a commission on the ACF scrap.²⁵

Respondents Luria and Bethlehem suggest in their proposed findings that the change in relations between Bethlehem and ACF was an outgrowth of dissatisfaction on the part of both Bethlehem and ACF with the former arrangement, and that Bethlehem accepted Luria's substitution with reluctance rather than lose the ACF scrap. The testimony cited by respondents in support of their contention is so implausible and incredible that the examiner can place no reliance thereon.²⁶ Even assuming there were differences between the two companies it seems clear that they were not the basic reason for the change. The examiner is satisfied that the change lies more deeply rooted in the change which was taking place during this period in the relations between Luria and Bethlehem, and that the ACF incident is merely another link in that change.

Railroad Scrap

29. Up to about the time of the Korean conflict, Bethlehem had purchased railroad scrap directly from a number of Eastern railroads, including the Pennsylvania Railroad, the Reading Company, the New York Central, the Baltimore & Ohio, the Central of New Jersey and

²⁵ The above findings are based primarily on the credited testimony of Thomas F. Wilson, who was purchasing agent of ACF during the events at issue. At the time of his testimony Wilson was retired from the company and was a wholly disinterested witness.

²⁶ The witnesses upon whom respondents primarily rely are Melvin C. Cressman, Bethlehem's scrap buyer, and Frederick W. Toohey, a scrap trader for Luria, both of whom attended the conference with Wilson of ACF. Toohey's testimony regarding this incident was particularly implausible and contradictory. Thus he first testified that he approached Wilson of ACF "on a competitive basis to take the scrap away from Bethlehem with an intention of selling it elsewhere" (R. 6586). Later he claimed that he was seeking to buy the scrap for Bethlehem and thought he could render better service to both Bethlehem and ACF (R. 6591-6593). Cressman of Bethlehem gave a highly exaggerated account of the differences between the two companies, particularly over the weights of the scrap shipped by ACF. However, the credited testimony of ACF's Wilson, which was corroborated by a number of other witnesses, indicates that these were normal differences in the industry which go on all the time, and that there was no change in the situation after Luria's intervention. It may be noted that in other respects Cressman's testimony largely corroborates that of Wilson to the effect that at the meeting with Cressman and Toohey, Wilson stated he was willing to cancel the contract with Bethlehem "providing Bethlehem Steel Company had no objection" and that Wilson was concerned because Bethlehem was "a substantial supplier to American Car and Foundry on steel", to which Cressman replied that his company had no objection. It seems clear from all the testimony that the impetus for the change came entirely from Bethlehem and Luria, and was not one which ACF particularly wished.

the Western Maryland. The Pennsylvania Railroad, in particular, was a substantial supplier of scrap to Bethlehem on a direct basis. For a number of years prior to 1950 the Pennsylvania was among the five largest suppliers to Bethlehem's Lackawanna, Steelton and Johnstown plants.

Bethlehem's purchases of scrap from railroads were usually the result of being the highest bidder in response to invitations to bid sent out by the railroads. However, during 1950 Bethlehem discontinued the practice of bidding directly on railroad scrap, except for obsolete locomotives or cars which it purchased for use in kind in its own plant operations and not as scrap. It also continued to purchase occasionally on a direct basis, although not in response to invitations to bid, railroad scrap resulting from train wrecks where the railroad did not have time to issue invitations to bid and wished to dispose of the resulting scrap as soon as possible to some consumer located along its lines. Except for these two items, the bulk of the railroad scrap purchased by Bethlehem since about 1950 has been obtained from Luria, which submitted bids in its own name and was the successful bidder in many instances.

Respondents contend that Bethlehem discontinued the direct purchase of railroad scrap because it found that the "professionals" (presumably brokers and dealers) were better qualified to bid on scrap than it was, but that it had no agreement or understanding with Luria whereby the latter would bid on railroad scrap for Bethlehem. There is, however, documentary evidence in the record, in the form of correspondence between the parties, indicating that Bethlehem did authorize Luria to bid for it on railroad scrap, and agreed to pay Luria \$1.00 a ton commission over and above what Luria paid for the scrap. It is urged by respondents that this arrangement was limited to obsolete railroad cars and did not cover railroad scrap generally. The examiner does not so interpret the correspondence between the parties which, at least in one instance, refers to an understanding with respect to "railroad scrap".²⁷

Aside from the documentary evidence, however, and even assuming that such evidence relates only to railroad cars, it seems clear that the purchase of almost all of its requirements of railroad scrap from Luria was not mere happenstance, but was the result of a definite policy decision on the part of Bethlehem. This policy was so obvious that in recognition thereof several of the railroads designated Luria

²⁷ Luria refers to a ruling by the examiner that the evidence in question (CX 472-483) was not sufficient by itself to establish an exclusive agreement with Luria, regarding the purchase of railroad scrap. However, such evidence together with other substantial evidence in the record is now deemed sufficient to support the position of counsel supporting the complaint.

as broker on scrap allocated to Bethlehem during the Korean conflict. Thus, the Pennsylvania Railroad purchasing agent testified that he had designated Luria, rather than others, as broker on almost all scrap allocated to Bethlehem because, based on prior dealings: "We could say that Luria was buying for Bethlehem" (R. 5772).

It is urged that Bethlehem bought the bulk of its railroad scrap from Luria since 1950 not because of any agreement, but because no one else offered it railroad scrap (R. 1957). However, it seems clear that the reason no one else was offering railroad scrap to Bethlehem was because the latter was only buying it from Luria. Thus L. Cohen of Wilkes-Barre, which had formerly bid on railroad scrap for Bethlehem, was advised that Bethlehem would not purchase from Cohen scrap which it did not actually own (R. 5514). Respondents contend that Luria likewise had no assurance that Bethlehem would purchase from it railroad scrap on which it was bidding. However, it seems evident that Luria would not have bid on the substantial quantities of railroad scrap which it did unless it had assurance from Bethlehem that it had a home for substantial portions thereof with Bethlehem. Bethlehem's scrap purchasing official, Thurn, acknowledged in his testimony that Luria did not "buy [railroad] scrap for speculative account, as a regular thing" (R. 1960). While it may be that Luria did not have a firm, express agreement with Bethlehem with respect to each purchase of railroad scrap, it knew that in the normal course of events, it could expect Bethlehem to take specified quantities of such scrap off its hands at cost, plus \$1.00 commission. Bethlehem likewise ceased to bid on such scrap because it knew that it could regularly expect to buy such scrap from Luria on this basis. It is clear from the evidence as a whole that Bethlehem did not cease purchasing railroad scrap directly because it wished to leave it to the "professionals" generally, but because it had decided to leave it to a particular "professional", viz, Luria.

Concluding Findings.

30. Up to about 1950 Bethlehem purchased its scrap from a number of different scrap brokers and dealers, and from various direct suppliers such as industrial fabricators and railroads. Around 1950 a number of changes occurred in Bethlehem's scrap buying practices, the most noticeable of which involved its relations with its broker-dealer suppliers. These changes included the cessation of purchases from certain brokers and dealers, the placing of limitations on the areas or yards from which certain brokers and dealers could ship scrap to it, and a rapid expansion in its purchases from one of its broker-dealer suppliers, viz, respondent Luria. The increase in purchases from Luria was accompanied by various forms of favored treatment

toward Luria, including the payment of higher prices in some instances, and the granting of more liberal provisions with respect to areas of shipment. Various brokers and dealers who had formerly been direct shippers to Bethlehem were encouraged to sell their scrap through Luria for shipment to Bethlehem. As a result of these changes, somewhere between 1950 and 1953 Luria became Bethlehem's substantially exclusive broker.

31. One of the substantial brokers eliminated by Bethlehem in 1950 was Luria Steel & Trading Corporation (LS&T). After making several complaints about restrictions imposed upon it with respect to the areas or yards from which it was permitted to ship scrap to Bethlehem, and with regard to alleged price favoritism toward Luria, LS&T was advised by Bethlehem's Vice-President in March 1950 that Bethlehem had decided to favor Luria with its business and that LS&T could no longer look to it for any orders. Another broker, Commercial Steel & Chemical Corporation, was advised in 1951 by the Bethlehem official in charge of scrap purchases, that it should offer its scrap to Bethlehem through Luria, as Bethlehem had to rely heavily on Luria for its scrap supply and that there would be too much interference if more than one broker covered the same market for it.

32. A number of other brokers and dealers who had formerly sold scrap directly to Bethlehem began to ship all or part of their scrap to Bethlehem through Luria after 1950. Thus Harcon Corporation, a substantial New England broker, ceased selling to Bethlehem directly in October 1950, and began to sell large quantities of its scrap to Luria, part of which was resold to Bethlehem. Louis Cohen & Son, a Pennsylvania broker and dealer, was advised by Bethlehem's scrap purchasing official in 1952 that Bethlehem would no longer purchase scrap which Cohen did not own (i.e., brokerage scrap), and that Cohen would have to restrict its purchases for Bethlehem to the immediate area of its yards. A Baltimore dealer, United Iron & Metal Co., Inc., which had been a direct shipper to Bethlehem up to 1951, ceased selling to Bethlehem directly and began shipping through Luria. Another Baltimore broker-dealer, Cambridge Iron & Metal Co., Inc., was permitted to ship its yard scrap directly to Bethlehem, but was required to sell its brokerage scrap through Luria. A third Baltimore broker-dealer, H. Klaff & Co., Inc., while still permitted to ship brokerage scrap directly to Bethlehem, began shipping its yard scrap through Luria around 1949 or 1950 for the reason that: "As far as we know Luria Brothers are the brokers for Bethlehem".

The record contains evidence of a number of other instances similar to those related above in which brokers or dealers were either eliminated as suppliers to Bethlehem, or were required to ship their scrap

through Luria or, if permitted to ship directly, were not permitted to ship brokerage scrap. The few broker-dealers which still ship directly to Bethlehem are relatively small dealers with yards located in close proximity to one or another of Bethlehem's mills. They do not, with minor exceptions, sell it brokerage scrap. One of the few broker-dealers of any size which still ships directly to Bethlehem is Schiavone-Bonomo. However, this company is largely restricted to shipping scrap from its own yards and from those of certain dealers with which it is affiliated. It does not receive a broker's price from Bethlehem, as does Luria, irrespective of whether the scrap originates in its own yards or those of other dealers.

33. The change in Bethlehem's buying practices, insofar as the broker-dealer segment of suppliers is concerned, was also accompanied by certain changes in its dealings with direct suppliers, albeit not as extensively. One of the most significant of these involved its purchase of scrap from railroads. After 1950 Bethlehem ceased to bid on and purchase railroad scrap directly, with certain minor exceptions, and began to purchase substantially all of its requirements of railroad scrap from Luria. Generally speaking, Luria was paid the cost of the scrap, plus \$1.00 commission. At least one former supplier of railroad scrap, L. Cohen & Son, was advised by Bethlehem that it did not wish Cohen to bid on such scrap as it would create competition with others bidding for Bethlehem. During the period of scrap allocations, at the time of the Korean conflict, a number of Eastern railroads designated Luria as broker on scrap allocated to Bethlehem because of their understanding that Luria was Bethlehem's broker.

Several industrial fabricators which had formerly sold their scrap directly to Bethlehem likewise began to ship their scrap to it through Luria beginning around 1951. The fabricators in question were all heavily dependent on Bethlehem for their steel supply. In one instance, that of Rheem Manufacturing Company, Bethlehem also had a 25%-stock interest in the company. In the case of Rheem and another of the fabricators, ACF Industries, Inc., it is clear that Bethlehem took an active part in having Luria designated as the broker to handle scrap destined for it. In the case of a third fabricator, the Budd Company, while it is not entirely clear that Bethlehem took the initiative in having Luria appointed to handle Budd's scrap, there is no doubt that Budd acted to choose Luria as broker on scrap destined for Bethlehem only after it was satisfied that it was acceptable to Bethlehem for its scrap to be sold through Luria, rather than directly.

34. The change which has come about in Bethlehem's scrap buying policy is graphically reflected in the statistical evidence of its scrap purchases between 1947 and 1954. Bethlehem's purchases from Luria,

which represented only 16.6% of its scrap purchases from broker-dealer sources in 1947, began increasing significantly in the 1949-1950 period when they rose to 32.6%-38.4%, and even more sharply in 1951 when they rose to 61.1%. This trend continued in the remaining years, and by 1953-1954 Bethlehem's purchases from Luria accounted for 81.2% and 80.9% respectively, of its purchases of scrap from broker-dealer sources. These sharp increases demonstrate concretely the change in Bethlehem's relations with other brokers and dealers which has been heretofore discussed.

While the increase in the proportion of Bethlehem's purchases from Luria is not quite as large in terms of its total scrap purchases, as it is when measured in terms of its purchases from brokers and dealers, it is nevertheless substantial. Thus while Luria's share of Bethlehem's total scrap purchases was only 15.4% in 1947, it increased to 46.6% by 1951 and to 64.0% in 1953, but declined to 50.9% in 1954 following the end of the Korean conflict, when Bethlehem's purchases of broker-dealer scrap fell in relation to its purchases from direct suppliers. The substantial increase in Luria's share of Bethlehem's over-all scrap purchases reflects not only the increased share of broker-dealer scrap purchased from Luria, but also the increase in railroad scrap and scrap of industrial origin obtained through Luria.

35. It is true that the statistical evidence indicates that in the 1953-1954 period Bethlehem was still purchasing a not insubstantial part of its broker-dealer scrap (approximately 19%) from sources other than Luria. However, the examiner is satisfied that all but a small fraction of this was purchased from scrap dealers or on a dealer basis. This cannot be demonstrated statistically in view of the fact that the record contains no breakdown in the figures, as between brokerage scrap and dealer scrap, because of the impracticality of keeping records on such a basis. However, from the testimony and other evidence with respect to Bethlehem's buying practices it seems clear that by 1953, if not earlier, Bethlehem was buying all but a minor fraction of its brokerage scrap from Luria.

36. Any doubt which may exist as to whether Luria is Bethlehem's substantially exclusive broker is resolved by the testimony of the Bethlehem official in charge of scrap purchases, A. R. Thurn. Despite extended, and sometimes belabored, efforts to explain Bethlehem's termination of relations with other brokers or its limitation of purchases from them, in terms of their faulty performance or some similar reason, Thurn conceded that basically it was not his company's policy to buy from more than one broker in a market and that the broker which it had selected for its Eastern plants was respondent Luria. This admission was initially made by Thurn in connection with an explana-

tion of why Luria was the only broker buying scrap for Bethlehem in New England,²⁸ Thurn stating (R. 1725) :

Luria Brothers has been our only broker buying New England scrap since year by year, month by month, and week by week, demonstrations on the part of others that we tried that the job could not be done to Bethlehem's best advantage with more than one broker.

Although this explanation related specifically to New England, Thurn made it clear that "it is not peculiar to New England" (R. 1725), and that his company had selected Luria on a broader basis because (R. 1758)—

** * * the most satisfactory performers * * * for all of Bethlehem's various and sundry requirements and its several plants in the East, was Luria Brothers & Company. [Emphasis supplied.]*

While Thurn also made the claim that "the doors of the Bethlehem Steel Company are open to any seller of scrap", he made it clear that this was limited to a seller who "has scrap which he owns and wants to sell" (R. 1726). In Luria's case, there is no requirement that it own the scrap which it offers to Bethlehem. It frequently buys scrap to fill orders which it has received from Bethlehem. To the extent a broker is limited to offering only scrap which he owns, his brokerage function is seriously impaired. Furthermore, even with respect to scrap which is owned by the seller, the record establishes that Bethlehem has cut down substantially on the quantity of such scrap purchased from broker-dealer sources, and has required or encouraged a number of such suppliers to sell their scrap through Luria.

The basic reason given by Thurn for limiting its purchases of brokerage scrap to a single broker is that Bethlehem does not desire to have different people bidding against each other for the same scrap for Bethlehem's account, thereby driving up the price (R. 1726). This reason, it may be noted, accords with that given to several broker-dealers by Thurn in explaining why he could not buy brokerage scrap from them. Bethlehem's basic reason in choosing a single broker being obviously to prevent competition among brokers purchasing scrap for it, it seems evident that the various reasons assigned by Thurn for not doing business with various brokers and dealers are largely rationalizations.

²⁸ Thurn later claimed that he was in error in stating that Luria was Bethlehem's only broker in New England, since Schiavone-Bonomo was also used as a broker in New England (R. 1769). However, as previously found, Bethlehem buys only scrap originating in yards affiliated with Schiavone-Bonomo and pays it a dealer's price. It may also be noted that while referring to Schiavone-Bonomo as a broker in seeking to counter the exclusive brokerage charge, Thurn in later explaining why Luria received a higher price than Schiavone-Bonomo claimed that the latter was essentially a dealer, rather than a broker (R. 1911).

37. It being clear that Luria is Bethlehem's substantially exclusive broker, the only remaining question is whether this relationship is one of mere happenstance or is the result of a conscious agreement, understanding or arrangement between the parties. Respondents contend, in substance, that the dealings between them are on an "order-to-order basis", that Luria is "merely the broker who at any particular time happened to be buying more scrap" for Bethlehem than others, and that there is no continuing obligation on Bethlehem's part to give Luria further orders or on Luria's part to fill such orders. While it may be that technically there is no binding legal obligation to continue the present relationship, the examiner has no doubt that the relationship which exists is more than a casual order-to-order relationship and is one which may be characterized, minimally, as constituting a conscious understanding or arrangement between the parties for Luria to act as Bethlehem's substantially exclusive scrap broker. It is a relationship which has been acknowledged to others in the industry by Bethlehem officials; it is a relationship which has been recognized as such by other brokers and dealers, and by railroads and industrial fabricators, and which has caused a number of these to take action based thereon; it is a relationship which has involved constant consultation and correspondence between Luria and Bethlehem with regard to the latter's scrap requirements and the best way to fill them; and it is a relationship which has caused Bethlehem to grant Luria more favorable terms as to price and area of shipment, and to refer offers from other brokers to it, and to otherwise deal with it on a close and intimate basis. As will hereafter appear, the relationship is also paralleled by a similar one covering the operations of Bethlehem's West Coast affiliate which, in part, is the subject of a written agreement. Such a relationship can hardly be characterized as a casual order-to-order relationship between vendor and vendee, nor as one in which Luria just happens at any particular time to have substantially all of Bethlehem's brokerage orders.

The fact that there is no obligation to continue the present relationship does not gainsay its existence. There is no question but that Bethlehem looks to Luria as its substantially exclusive broker, and that Luria is conscious of Bethlehem's reliance upon it and recognizes its responsibility to keep Bethlehem supplied with brokerage scrap. While dissatisfaction by either or both parties may result in a termination of their relationship, the fact remains that absent a decision to terminate it, the arrangement will continue indefinitely. To this extent it is as effective, in eliminating other brokers as suppliers to Bethlehem, as any express agreement in which the duration and other terms and conditions are defined by metes and bounds.

Bethlehem Pacific Coast Steel Corporation

38. Bethlehem Pacific operates three steel-making plants located, respectively, at Los Angeles and South San Francisco, California, and Seattle, Washington. These plants were acquired by Bethlehem Steel Corporation in 1930, and at the end of World War II they were reorganized into the newly formed Bethlehem Pacific Coast Steel Corporation. The amount of scrap purchased by Bethlehem Pacific is relatively small in comparison with that of its eastern affiliate, Bethlehem Steel Company. In 1953, for example, Bethlehem Steel Company purchased 3,135,343 gross tons of scrap, while Bethlehem Pacific purchased 621,329 gross tons. However, Bethlehem Pacific is the largest purchaser of scrap on the Pacific Coast. It is also more dependent on scrap in its steel-making operations than its eastern affiliate, since it operates no blast furnaces and uses proportionately less pig iron.

39. Approximately 90% of the scrap purchased by Bethlehem Pacific is obtained from brokers and dealers, with only about 10% being purchased directly from industrial or other sources without passing through the hands of brokers or dealers. Scrap brokers as they are known in the eastern scrap markets were unknown on the Pacific Coast until the extension of Luria's activities to that area in 1948. Theretofore scrap had been sold to the consumers mainly by yard dealers. Many of the dealers also sold scrap from the yards of other dealers, and in that way engaged in substantial brokerage operations. They were, however, fundamentally yard dealers who had incidentally extended their activities into the brokerage field.

40. Up to about 1950, Bethlehem Pacific had purchased its scrap from a number of different dealers. With few exceptions, the same dealers were not suppliers to more than one of the plants because of the distances and resulting freight rates which separated them. Bethlehem Pacific did not make any purchases from Luria until 1949. The latter did not operate any offices or yards on the Pacific Coast until 1948 when it opened a brokerage office in San Francisco, California. During the period 1947-1948, for which figures are available, Luria sold insignificant tonnages of scrap to the major West Coast steel mills. Its first sales to Bethlehem Pacific, which were made in 1949, were relatively small. However, in October 1950 it entered into a written agreement to supply Bethlehem Pacific's Los Angeles plant, and thereafter there was a sharp increase in its sales to the company, involving not only the Los Angeles plant but the other two plants as well. This was accompanied by the elimination of, or decline in purchases from, a number of other broker-dealer suppliers.

41. It is the position of counsel supporting the complaint that

Bethlehem Pacific, like its eastern affiliate, has an exclusive brokerage arrangement with Luria. Counsel's position is based, in part on the written agreement entered into in October 1950 with respect to the Los Angeles plant, and in part on the course of dealings between the parties, including the sharp increase in purchases from Luria by all Bethlehem Pacific plants, the decline in dealings with others, and various statements and admissions made by company officials. To a consideration of this evidence the examiner now turns.

The Statistical Evidence

42. As already indicated, Luria made no sales to Bethlehem Pacific prior to 1949. It sold only 15,375 gross tons to the company in 1949, constituting 4.5% of Bethlehem Pacific's scrap purchases from brokers and dealers. In 1950, the year in which a written agreement was entered into with respect to the Los Angeles plant, purchases from Luria increased to 72,461 gross tons, constituting 19.9% of the purchases from brokers and dealers. In 1951 purchases from Luria increased to 195,595 gross tons, accounting for 37.9% of Bethlehem Pacific's total purchases from brokers and dealers. The upward trend continued until 1953, when purchases from Luria reached 413,556 gross tons and constituted 75.4% of broker-dealer scrap purchases. In 1954, following the end of the Korean conflict, purchases from Luria declined to 321,935 gross tons, but increased on a relative basis to 80.4% of the purchases from all brokers and dealers.

Set forth below is a table reflecting Luria's share of Bethlehem Pacific's scrap purchases, both in terms of its purchases from broker-dealer suppliers and in terms of its total scrap purchases from all sources. The table indicates the proportion purchased from Luria by Bethlehem Pacific as a whole, and also contains a breakdown for the individual plants. As will be noted from the figures, the rise in Luria's share of purchases by the Los Angeles and Seattle plants is much more marked than that of purchases by the San Francisco plant, although the percentage of purchases achieved in the latter plant is by no means insignificant.

Luria's percentage of BP's purchases of scrap from all sources and from broker-dealers

	1949	1950	1951	1952	1953	1954
All Plants:						
(a) Percent Total.....	3.8	17.8	34.6	50.8	66.6	72.3
(b) Percent Broker-Dealers.....	4.5	19.9	37.9	55.7	75.4	80.4
L.A. Plant:						
(a) Percent Total.....	1.1	27.7	55.4	69.8	90.6	90.8
(b) Percent Broker-Dealers.....	1.2	29.6	56.9	73.5	94.2	91.7
S.F. Plant:						
(a) Percent Total.....	0.2	8.4	22.5	32.0	44.3	48.8
(b) Percent Broker-Dealers.....	0.3	9.5	24.8	36.7	50.8	56.9
Seattle Plant:						
(a) Percent Total.....	9.0	14.2	21.4	41.7	54.1	65.7
(b) Percent Broker-Dealers.....	11.9	16.8	25.4	46.4	70.6	83.1

*The Los Angeles Plant
The Written Agreement*

43. In October 1950 Luria and Bethlehem Pacific entered into a written agreement pertaining to the purchase of scrap by Bethlehem Pacific from Luria and the opening of a scrap yard by Luria on premises leased from Bethlehem Pacific. The consummation of the agreement was preceded by a period of discussions and negotiations which began in December 1949, and involved officials of the east coast subsidiary of Bethlehem Steel Corporation, as well as those of Bethlehem Pacific on the west coast.

44. In the latter part of 1949 Bethlehem Pacific was contemplating a substantial expansion of the production facilities of its Los Angeles plant and was concerned that it might not be able to obtain all of the scrap needed for an expanded operation through its existing suppliers. It became convinced that it should have a "financially strong dealer in Los Angeles with a yard capable of producing approximately 10,000 tons of scrap per month and with sufficient resources to finance small dealers to the extent of building up a brokerage business of up to 5,000 tons per month" (CX 214D).

During December 1949, while Elwin W. Thomas, the purchasing agent of the Bethlehem Pacific organization was on a visit to Bethlehem's East Coast office at Bethlehem, Pennsylvania, he discussed with Paul S. Killian, Bethlehem's assistant vice president in charge of purchases and with A. W. Snyder, Thurn's predecessor as assistant purchasing agent in charge of scrap, "our Los Angeles scrap situation and the advisability of having a financially strong dealer in that area." Thomas delayed his return to the West Coast after Killian advised him that he believed the situation to be "of sufficient importance for me [Thomas] to delay my return to San Francisco" until after the president of Bethlehem Pacific arrived in the East so that "we can discuss the whole situation with Mr. Killian" (CX 212).

On January 5, 1950, a meeting was held in Bethlehem, Pennsylvania, which was attended by Ralph Ablon, a Luria vice president, and by officials of both Bethlehem and Bethlehem Pacific. Ablon advised the Bethlehem representatives that his company had been approached by both Kaiser Steel and the Columbia-Geneva Division of U.S. Steel to start a yard operation in Los Angeles, but indicated that his company would prefer to do business with the Bethlehem organization. The Bethlehem officials inquired whether Luria would be interested in providing adequate yard facilities if Bethlehem Pacific "agreed to buy a certain percentage, such as 50% of our monthly requirements" from Luria at regular market prices (CX 214F).

Ablon undertook to discuss the proposal with his own people and to advise Bethlehem Pacific later in the month.

In the meantime, Bethlehem Pacific had also received a proposal to open a yard in Los Angeles from California Metals Co., a substantial dealer and broker in Oakland, California. It proposed that Bethlehem Pacific lease to it or finance, the necessary facilities over a 20-year period, at an estimated cost of \$410,000, and that the mill enter into a "close working agreement" with it (RX 32). Bethlehem Pacific considered an arrangement with Luria preferable to one with California Metals because Luria did not require direct financial assistance and did not have any conflicting commitments to other West Coast steel producers, as California Metals then had with the northern California plant of Columbia-Geneva. The president of Bethlehem Pacific, while in Bethlehem, Pennsylvania, during the week of January 10, 1950, arranged with Vice President Killian of Bethlehem "to proceed with the negotiations with Luria Brothers & Co. to the end that they will establish suitable facilities in the Los Angeles area for the development and handling of some 12,000 tons per month" (CX 215). It was recognized that such an arrangement with Luria would not, of itself, produce more scrap in the area, but that it would give Bethlehem Pacific "our best assurance of obtaining such a share of our requirements through the medium of one of the best and strongest sources." It was decided that Bethlehem Pacific would not proceed with any arrangement with California Metals and would advise that company accordingly.

Further discussions between Ablon of Luria and Thomas (purchasing agent of Bethlehem Pacific) were held in March 1950. Various problems arose which were discussed, not only with Bethlehem Pacific but with officials of the east coast affiliate, in Bethlehem, Pennsylvania (CX 216). During the course of the discussions Thomas of Bethlehem Pacific recognized that one of the problems involved in any arrangement with Luria was that it might "be difficult to control Luria price-wise" and that "the success of such a relationship with Luria will depend largely upon the relationship between Bethlehem and Luria in the East" (CX 214F).

45. The negotiations between Luria and Bethlehem Pacific culminated in a 10-year lease by Bethlehem Pacific of property adjacent to its Los Angeles plant, and an agreement with respect to the purchase of scrap by Bethlehem Pacific from Luria. The lease was dated October 6, 1950, and was entered into in the name of Luria's wholly owned subsidiary, Lipsett Steel Products Inc. The scrap agreement took the form of a letter from Luria to Bethlehem Pacific dated Octo-

ber 6, 1950, which was accepted by Bethlehem Pacific on October 11, 1950. The agreement contained the following essential provisions:

a. Luria would open a yard "as soon as practicable" on the site "leased to us" by Bethlehem Pacific, and would equip the yard in a manner which would be mutually satisfactory.

b. Bethlehem Pacific agreed to purchase and Luria agreed to sell to Bethlehem Pacific, a minimum of 70% and a maximum of 85% of the monthly requirements of open hearth scrap used by Bethlehem Pacific's Los Angeles plant. This provision was subject to the understanding that Bethlehem Pacific could purchase from others in the San Francisco area, even if this reduced its purchases from Luria to less than 70% of its requirements, provided that it purchased at least 50% of its requirements from Luria during any 3-month period when this occurred.

c. Bethlehem Pacific agreed not to purchase from anyone other than Luria its requirements of certain grades of scrap designated as hydraulic bundles, machine shop turnings and short shoveling turnings, except that it could purchase such grades directly from industrial fabricators.

d. Without regard to the amount of Bethlehem Pacific's requirements for any month, it agreed to purchase from Luria a minimum of 2,500 gross tons of scrap a month.

e. The scrap was to be sold on a delivered basis with the price to be agreed upon on or before the fifth day of each month, and with the "Iron Age" quotation for the Los Angeles market to govern in the event of disagreement, subject to certain adjustments in Luria's favor in the event the "average going market price" or the price paid to others by Bethlehem Pacific was higher than the Iron-Age price.

f. In addition to the price to be paid for the scrap at the agreed rate, Bethlehem Pacific agreed to pay Luria an additional 75¢ per ton with respect to the first 500,000 tons delivered by Luria from the new yard.²⁹

g. The term of the agreement was to be for 10 years from December 1, 1950, and was to continue thereafter as agreed, except that it could be terminated at the end of any month thereafter by the giving of at least six months' notice.

46. Because of a delay in the opening of the scrap yard in Los Angeles by Luria, and due to the instituting of government price

²⁹ The above provision was included at Luria's request to reimburse it, to the extent of \$375,000, for the cost of equipping the yard which it had leased. This is in contrast to Bethlehem Pacific's attitude toward the proposal of California Metals. As previously noted, it had refused to enter into an agreement with California Metals for the alleged reason, among others, that it was unwilling to help finance the opening of a yard by the latter at an estimated cost of \$410,000, which was to be repaid to Bethlehem Pacific (RX 32B).

controls in February 1951, the parties agreed by letter-agreement prepared by Luria and dated January 29, 1952, which was accepted by Bethlehem Pacific on March 3, 1952, that most of the provisions of the agreement of October 1950 would be suspended until the termination of price controls. By letter-agreement prepared by Bethlehem Pacific on October 26, 1953, and accepted by Luria on October 27, 1953, it was agreed that the original agreement of October 6, 1950, would be deemed to have come into full operation as of February 13, 1953, following the termination of price controls. The beginning date of the lease was fixed as June 30, 1951, instead of December 1, 1950. The actual opening of the yard did not occur until later in 1951.

The Agreement in Operation

47. Despite the delay in the opening of the yard by Luria and the purported suspension of portions of the formal agreement for a period of time, there was a steady and substantial increase in Bethlehem Pacific's purchases of scrap from Luria for the former's Los Angeles plant. The trend in Luria's favor started in 1950, even before negotiations for the formal agreement had been concluded. In 1950 Luria became the largest single supplier to the Los Angeles plant, the scrap sold by it constituting 27.7% of the Los Angeles plant's scrap purchases, as compared with only 1.1% supplied by Luria in 1949. In 1951, the first full year after the agreement had been entered into, Bethlehem Pacific purchased 55.4% of the scrap for its Los Angeles plant from Luria. By 1954 Luria was supplying 90.8% of the scrap purchased by Bethlehem Pacific for such plant. In terms of scrap purchased from broker-dealer sources the peak year was 1953, when Luria supplied 94.2% of the scrap purchased by Bethlehem Pacific from such sources for the Los Angeles plant.

48. When negotiations with Luria were started, Bethlehem Pacific had proposed that Luria supply it with a relatively modest 50% of its monthly scrap requirements at Los Angeles, and it was contemplated by Bethlehem Pacific that it would continue to deal with several of its existing dealer-suppliers as "secondary sources" (CX 215). This apparently was not acceptable to Luria, and the agreement as signed required Bethlehem Pacific to buy at least 70% of its requirements of open hearth grades from Luria, and all of its requirements of certain special grades. Moreover, in practice, as above indicated, Bethlehem Pacific was soon buying over 90% of the total scrap requirements of the Los Angeles plant from Luria. In addition, it eliminated almost all of the dealers whom it had considered using as "secondary sources" of supply.

Elimination of Other Suppliers

49. During the period from 1947 to 1950 the following Los Angeles dealers ranked among the larger suppliers of scrap to the Los Angeles plant of Bethlehem Pacific for all or part of the period: A-1 Iron & Metal Co., Alpert & Alpert, N. S. Colen & Son, Eastern Iron & Metal Co., J. Levin & Sons, Gate City Iron & Metal Co. and National Metal & Steel Corporation. In addition, there were several other firms which, while not among Bethlehem Pacific's larger suppliers, nevertheless supplied it with substantial tonnages, including Booster Iron & Metal Co., Berg Metals Corp., Finkelstein Supply Co. and Dave Needle & Son. Of these, Eastern Iron & Metal, Gate City Iron & Metal, and J. Levin were acknowledged by Bethlehem Pacific as being among its important suppliers, and A-1 Iron & Metal and Booster Iron & Metal as being among those who could supply it with additional tonnages "if the dealers were adequately financed" (CX 214-I).

In the period after 1950 all but J. Levin were eliminated as direct suppliers to Bethlehem Pacific's Los Angeles plant. Levin's sales to Bethlehem Pacific, which were 25,000 tons in 1947, declined to 7,000 tons in 1953 and 8,400 tons in 1954, compared to sales by Luria of 225,000 tons in 1953 and 182,000 tons in 1954. Of the other former direct suppliers, a number began to ship to Bethlehem Pacific through Luria. Included in this category were A-1, Alpert, Berg, Booster, Eastern, and Gate City (now known as Alex Novack & Sons). Most of these, except for Alpert and Berg, received substantial loans or other financial assistance from Luria. Eastern Iron & Metal, which from 1947 to 1950 was one of the largest suppliers to Bethlehem Pacific and thereafter began shipping through Luria, went out of business entirely in April 1954 when its president became assistant manager of the Los Angeles yard operated by Luria's affiliate, Lipsett. Several of the former suppliers, which were unwilling to ship through Luria, ceased to supply scrap to Bethlehem Pacific. Included in this category were National Metals, N. S. Colen, Needles, and Finkelstein.

While certain of the dealers claimed that they had ceased selling to Bethlehem Pacific because they preferred to sell through Luria due to the receipt of financial assistance or for some similar reason, a number indicated that the cessation of sales to Bethlehem Pacific was due to the latter's unwillingness to buy from them directly. In several instances dealers were specifically advised that they would have to sell through Luria. Thus, a representative of N. S. Colen testified that he was advised "purchases for Bethlehem Pacific Coast would be conducted by the Luria Brothers Company" and that his company was approached by Luria "to sell to Bethlehem and to them as brokers" (R. 11,840). Colen declined this offer because it wished to sell directly.

Thereafter certain of the yards from which it had purchased scrap for sale to Bethlehem Pacific began selling to Luria. A representative of Berg Metals was advised by a Bethlehem Pacific official that "Luria was the exclusive contractor" for Bethlehem Pacific, and that the "setup [with Luria] is here on the West Coast and also back East" (R. 11,899, 11,902). Berg acceded to the Bethlehem Pacific advice and thereafter began selling substantial quantities of scrap to Luria for shipment to Bethlehem Pacific. A representative of Dave Needles was informed by E. W. Thomas that he would "have to go through Luria" (R. 11,955), but declined to do so. A representative of Finkelstein Supply was also informed by Thomas that Bethlehem Pacific "were going to have Luria as their broker" and that Finkelstein would have to sell its scrap through Luria (R. 12,066).

50. The examiner entertains no doubt that under the impetus of the agreement entered into with Bethlehem Pacific in October 1950, Luria has become Bethlehem Pacific's substantially exclusive broker in supplying scrap to the Los Angeles plant. While this was not specifically spelled out in the agreement, it was contemplated by Bethlehem Pacific in entering into the agreement that Luria would become its exclusive broker for the Los Angeles plant for the reason, as expressed by Bethlehem Pacific's purchasing agent, E. W. Thomas (R. 11,121) that—

* * * we don't see any particular advantage in having several brokers competing for the same scrap for the same mill.

Bethlehem Pacific contends that, in spite of the view above expressed, it does deal with more than one broker. It is true that sometime in 1955, after the impetus of the present proceeding, Bethlehem Pacific began buying undisclosed, but apparently small, quantities of scrap from another broker, Charles Harley & Company. It is also true that since about 1953 it has bought small quantities of scrap from The Purdy Company, a broker and dealer whose Los Angeles manager had theretofore been a Bethlehem Pacific employee for many years. However, all but a small fraction of the scrap sold by Purdy has consisted of scrap which was prepared in its own yard and sold on a dealer basis. In 1953 Purdy supplied 1.1% of the scrap purchased by Bethlehem Pacific's Los Angeles plant, compared to 90.6% supplied by Luria. Of the balance, approximately 3% was supplied by J. Levin & Sons, a dealer, and approximately 3% was supplied by Kaiser Steel Corporation. This pattern was repeated substantially in 1954. It is clear, therefore, that except for minor purchases made on a dealer basis or from direct suppliers, substantially all of Bethlehem Pacific's purchases for its Los Angeles plant are made from Luria as its substantially exclusive broker.

The San Francisco Plant

51. While the proportion of scrap supplied by Luria to the San Francisco plant of Bethlehem Pacific has not been as great as that supplied to Los Angeles, there has nevertheless been a very marked change in Luria's position as a supplier to San Francisco, beginning at or about the time of the Los Angeles arrangement. In 1949 it supplied only 0.2% of the scrap purchased by the San Francisco plant from all sources and 0.3% of the scrap purchased from broker-dealer sources. By 1951 Luria was supplying 22.5% of the total scrap and 24.8% of the broker-dealer scrap purchased for the San Francisco plant. In 1954 Luria supplied 48.8% of the total scrap and 56.9% of the broker-dealer scrap. Prior to 1950 Luria was not among the five largest suppliers to the San Francisco plant. In 1950 it became the third largest supplier, and in the years 1951 to 1954 it was by far the largest supplier. While the change in the ranks of the other suppliers to the San Francisco plant was not as far-reaching as that in Los Angeles, there were nevertheless major changes in Bethlehem Pacific's relations with certain of the suppliers of the San Francisco plant after 1950.

Changes In Relations With Other Suppliers

52. During the period after 1950 Bethlehem Pacific ceased buying from a number of former suppliers of the San Francisco plant. Among the dealers or dealer-brokers from which Bethlehem Pacific ceased purchasing directly were The Learner Co., N. Circosta & Co., Salco Iron & Metal Co., East Bay Iron & Metal Co. and Associated Metals Co. of California. It also ceased direct purchases from the Southern Pacific Railroad. With the exception of East Bay and Associated, all of the foregoing had been in the ranks of Bethlehem Pacific's five largest suppliers to the San Francisco plant during some part of the period from 1947 to 1951. After 1950 or 1951 these suppliers, with the exception of Learner, began to sell substantial quantities of scrap to Luria for delivery to Bethlehem's Pacific San Francisco plant.

In several instances the suppliers testified that they began shipping through Luria as a matter of their own choice because they had received financial assistance from Luria or for some other reason. Among those in this category was Circosta, who received a substantial loan from Luria in 1951. Another dealer-broker who received financial assistance from Luria was Salco. However, while the Salco representative indicated that financial assistance was a factor in his company's selling through Luria, he also testified that another reason was (R. 11,343) :

* * * the desire of the consumers seemed to be that they were more interested in getting scrap through a larger broker rather than directly from a dealer.

In the case of the Southern Pacific Railroad the record is unclear as to the reason for the cessation of direct sales to Bethlehem Pacific, except that around the time of the Korean conflict the railroad decided to sell scrap to Luria for shipment to Bethlehem Pacific because the latter was buying "through their brokers" (R. 11,566).

Despite the apparent reluctance of some of the suppliers to ascribe their cessation of direct sales to any advice from Bethlehem Pacific, several of the suppliers were quite specific in assigning this as the reason. Among these was The Learner Company, a substantial dealer and broker with yards in Oakland, Stockton, San Francisco, Sacramento and Honolulu. From 1947 to 1950 Learner was either the largest or second largest supplier to the San Francisco plant of Bethlehem Pacific. In 1949 and 1950 Learner sold between 75% and 81% of its scrap to Bethlehem Pacific. Thereafter its sales to Bethlehem Pacific began to decline sharply, until 1954 when it made no sales, although it did sell small amounts of scrap in 1955 and 1956, amounting to less than 5% of its total sales. Most of the scrap sold to Bethlehem Pacific after 1950 consisted of cast iron and other special grades. When Learner sought to sell the regular grades of scrap which it had formerly sold in large quantities to Bethlehem Pacific it was advised by the latter that it "was being serviced by Luria Brothers and that they [Bethlehem Pacific] were happy with the service and did not need our scrap" (R. 11,172). It was suggested to Learner that it offer its scrap to Luria. This Learner declined to do, except for certain minor quantities. Another dealer-broker from which Bethlehem Pacific declined to buy directly was Associated Metals. Associated, which had been a direct supplier to the San Francisco plant, began selling through Luria in 1953, except for certain special grades, because Bethlehem Pacific would no longer give it orders for the regular grades which it had formerly sold.

Bethlehem Pacific has continued to deal directly with certain other dealers or broker-dealers in the San Francisco area. The most important of these are California Metals Co., The Purdy Company and Markovitz & Fox. However, while purchases from Luria soared during the period after 1950, those from these other suppliers have remained fairly constant or declined. Thus purchases from California Metals, which were 24,000 tons in 1950, as compared to approximately 10,000 tons from Luria, continued to range between 18,000 and 26,000 tons in the succeeding years, and declined to 11,000 tons in 1954, during which year purchases from Luria amounted to 60,000 tons. Purchases from Purdy have ranged between 7,000 and 18,000 tons, and those from Markovitz & Fox between 5,000 and 13,000 tons. The brokers and dealers other than Luria have not shared in the significant

increase in scrap purchases by Bethlehem Pacific's San Francisco plant during 1951, 1952 and 1953.

Furthermore, there is evidence of a deliberate down-grading in the role of such other suppliers or of limiting them largely to a dealer function. In the case of California Metals, the entry of Luria upon the scene resulted in its loss of the scrap which it had been obtaining from Rheem Manufacturing Company's Richmond and San Pablo, California plants, and supplying to Bethlehem Pacific. While Purdy is a broker as well as a dealer, approximately 90% of the scrap sold to Bethlehem Pacific is railroad scrap which is sold largely on a dealer basis. Purdy has been unable to broker scrap for more than a few dealers because of its inability to engage in the extensive financial assistance of dealers which has come to be required in the area. Another dealer which still continues to sell directly to Bethlehem Pacific is J. Levin, which also operates a yard in Los Angeles. Levin's sales to Bethlehem Pacific declined from 11,000 tons in 1947 to 2,500 in 1953 and 3,500 in 1954. While it makes some brokerage sales to other consumers, its sales to Bethlehem Pacific are limited to scrap from its own yard. Although undoubtedly there is a somewhat larger proportion of brokerage scrap sold to Bethlehem Pacific for its San Francisco plant by other dealers than is the case in Los Angeles, the examiner is satisfied that all but a minor fraction of the brokerage scrap is purchased from Luria.

The Seattle Plant

53. Luria first began selling substantial quantities of scrap to Bethlehem Pacific's Seattle plant in 1949. In that year it sold approximately 13,500 tons of scrap, which represented 11.9% of the scrap purchased by the plant from broker-dealer sources and 9.0% of the plant's total scrap purchases. In 1950 there was a modest increase in Luria's sales to the Seattle plant, to 16,766 tons, which constituted 16.8% of the scrap purchased from brokers and dealers. In 1951 Luria was requested to open an office in Seattle by Bethlehem Pacific, and thereafter the increase in its sales to the Seattle plant began to gain momentum. In 1952, the first full year following the opening of its Seattle office, Luria sold 72,500 tons of scrap to the Seattle plant of Bethlehem Pacific, constituting 46.4% of the scrap purchased from brokers and dealers. By 1954 Luria was selling 83.1% of the scrap purchased by the Seattle plant from broker-dealer sources, and 65.7% of the scrap purchased from all sources.

Elimination of Other Suppliers

54. The improvement in Luria's position as a supplier to the Seattle plant was accompanied by the elimination of a number of other bro-

kers and dealers as direct suppliers to the plant. A number of these dealers and brokers were requested by Bethlehem Pacific to ship their scrap to it through Luria. Those who refused were unable to sell their scrap to Bethlehem Pacific.

55. Foremost among those eliminated as suppliers to Bethlehem Pacific at Seattle was Dulien Steel Products, Inc. Dulien operated several yards in Seattle, and also operated yards or had an interest in yards in Portland, Los Angeles and Honolulu. It had been a substantial shipper to the Seattle plant of Bethlehem Pacific for a number of years. In 1948 it was the largest shipper of scrap to the Seattle plant, and in 1951 and 1952 it was the third and fourth largest shipper, respectively. Most of the scrap which it sold to Bethlehem Pacific was shipped from the yards of other dealers, with Dulien acting as broker and receiving \$1.00 a ton commission during the period of OPS. In 1951, for example, it shipped \$53,614 worth of scrap from its own yards, compared to \$217,242 from the yards of other dealers. During 1951 and 1952 Dulien was shipping from the yards of 35 other dealers in Washington, Oregon and Montana, and from four railroads.

Beginning sometime in 1952, Bethlehem Pacific began to advise Dulien that it could no longer ship scrap from the yards of certain of the latter's dealer sources because they were "somebody else's" accounts or because "somebody else" had an "outstanding order" (R. 10,600). The "somebody else" referred to was Luria. After it had lost a number of dealer accounts Dulien, by letter dated August 28, 1952, protested to Bethlehem Pacific that it did not wish to be an "information bureau as to available scrap which is not of interest to you" and asked to be advised as to what "portion of the territory in which we operate that you consider to be the exclusive territory of Luria Brothers & Company, Inc." (CX 988). It does not appear from the record what response was made to this letter, but by November 1952 Dulien was restricted to shipping from the yard of one other dealer and from one railroad, in addition to its own two yards in Seattle.

In February 1953, Bethlehem Pacific requested Dulien to cease all direct shipments of scrap to Bethlehem Pacific, including shipments from Dulien's own yards, and requested that it ship its scrap through Luria as broker. The Bethlehem Pacific scrap buyer advised Dulien that this change had come about as a result of a decision by the company's headquarters in San Francisco, and asked Dulien to endeavor to accommodate itself to the new arrangement on a trial basis. After endeavoring to ship to Bethlehem Pacific through Luria for a period of about a month Dulien, on April 7, 1953, wrote to Bethlehem Pacific

and advised it that the new arrangement was "unsatisfactory and unfair" because, among other things, it prevented Dulien from brokering scrap from other dealers and also deprived Dulien of direct contact with Bethlehem Pacific which it had enjoyed for thirty years. The letter advised Bethlehem Pacific that Dulien did not wish to do business with it, except on a direct basis, and urged Bethlehem Pacific to resume business dealings on such a basis (CX 983). The reply from Bethlehem Pacific was to the effect that Dulien was not a consistent shipper to Bethlehem Pacific and that in view of the mill's large requirements for scrap it had "no intention at this time of changing our present scrap buying policy, and unless we hear from you to the contrary we will proceed on the assumption that you do not desire to ship scrap to us when arranging for our requirements in the future" (CX 984). Following this exchange of correspondence, business relations between Bethlehem Pacific and Dulien came to an end.

Bethlehem Pacific contends that Dulien's handling of brokerage scrap for it was limited to the period of the Korean conflict, and that it had nothing to do with Dulien's loss of various dealer accounts for which it had formerly acted as broker. Neither of these contentions has any merit. While it is true that Bethlehem Pacific formally recognized Dulien's brokerage status in 1951 by paying it an additional \$1.00 commission on scrap originating outside its own yards, as was authorized by OPS regulations which went into effect in 1951, Dulien had been selling scrap from the yards of other dealers long before that time. There was nothing about the dropping of price controls in early 1953 to prevent Bethlehem Pacific from purchasing scrap from Dulien originating in the yards of other dealers. In fact, the curtailment of purchases from such yards occurred even prior to the expiration of controls. Contrary to the contention of Bethlehem Pacific, the record establishes that in a number of instances it did request dealers to ship their scrap through Luria, rather than through Dulien or other brokers. From the evidence as a whole, including the eventual dropping of Dulien as a direct supplier, it seems evident that the restrictions placed on Dulien were part of the development of the Bethlehem Pacific policy whereby Luria became the substantially exclusive broker for its Seattle plant.

The ostensible reason for dropping Dulien as a direct shipper was that it had not been a substantial and consistent shipper to Bethlehem Pacific. The fact of the matter is that Dulien was dropped at the very time it had become a substantial and consistent shipper. It is true that Dulien had shipped no scrap to Bethlehem Pacific in 1950, after having made substantial shipments amounting to \$585,000 in 1948 and \$248,000 in 1949. However, this was largely due to an over-all

decline in its scrap sales in 1950, which were only about 12% of those in the preceding year. In 1951 and 1952 it again returned to the ranks of the five largest shippers to Bethlehem Pacific, its sales to the latter constituting over 35% of its total scrap sales. Despite the gradual imposition of restrictions by Bethlehem Pacific on points of shipment of scrap by Dulien during 1952, Dulien's sales to Bethlehem Pacific in that year were \$100,000 in excess of its sales in 1951. To the extent Dulien's sales may have begun to decline in 1953, the examiner is satisfied that this was the result of Bethlehem Pacific's own action in limiting Dulien in the shipment of brokerage scrap.

It may be noted, in this connection, that Bethlehem Pacific declined an offer of scrap from Dulien's Hawaiian affiliate because it was not satisfied the scrap was of a nonbrokerage character. In replying to an offer of scrap by the Hawaiian affiliate in April 1953, Bethlehem Pacific stated that while it was "interested in off-shore scrap offerings" it was not clear from the offer "whether the scrap is actually owned by you or whether you are merely requesting a price in order that you may bid on this particular lot." It was suggested that the Dulien affiliate "contact Luria Brothers & Co., Inc., our brokers * * * as they are currently handling our off-shore scrap purchases for West Coast delivery" (CX 990).

Another substantial supplier of Bethlehem Pacific which was affected by Luria's advent into the Seattle market was Sternoff Metals Corporation of Seattle. Sternoff had sold scrap directly to Bethlehem Pacific for its Seattle plant for about 12 years. In 1950 and 1951 it was second only to Luria as a supplier to the plant, and in 1952 it was the third largest supplier. Sometime during 1952 a scrap buyer for Bethlehem Pacific advised Sternoff that thereafter Bethlehem Pacific's "purchases of heavy melting scrap and bundles would all be made through the Luria organization" (R. 10,813), and Sternoff was requested to ship its scrap to Bethlehem Pacific through Luria as broker. Sternoff indicated that it would prefer to continue direct shipments to Bethlehem Pacific since it did not wish to lose its "identity with the mill, our long-time relationship as a direct shipper" (R. 10,814). The Bethlehem Pacific official expressed regret with regard to the change, but stated that "he did not set the company policy, that it was beyond his control" (R. 10,817). Sternoff reluctantly agreed to ship its scrap through Luria, and between 1953 and 1956 sold the bulk of its scrap to Luria for shipment to Bethlehem Pacific's Seattle plant.

In addition to Dulien and Sternoff, Bethlehem Pacific ceased the direct purchase of scrap from a number of other dealers and brokers in the States of Washington and Oregon during the period from 1951 to 1953. While most of these did not sell as much scrap as Dulien or

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Sternoff, a number had been substantial shippers to Bethlehem Pacific over a number of years. Many of the dealers and brokers were specifically requested to ship their scrap through Luria by a Bethlehem Pacific representative, and in some instances the request came from a Luria representative.³⁰ Two of the dealers who made written offers of scrap in 1953, were advised in writing by Bethlehem Pacific that "Luria Brothers & Co., Inc. * * * have orders for our immediate requirements for this grade of scrap", and were requested to "contact them regarding the tonnage you have available" (CX 1005B and 1008). Several dealers who had been shipping scrap to Bethlehem Pacific through other brokers, including Dulien and Eastwood & Co. (the latter being operated by a former Bethlehem Pacific employee), were instructed by Bethlehem Pacific to ship their scrap through Luria.³¹

56. By 1953 and 1954 Bethlehem Pacific's direct purchases of scrap from other dealers, in any significant quantities, for delivery to the Seattle plant were limited to two other dealers, viz, M. Bloch & Co. and Seattle Iron & Metal Co. Its only other suppliers of any consequence were Kaiser Steel Corp. and Northern Pacific Railroad. These four suppliers, together with Luria, accounted for 146,586 tons out of 172,741 tons purchased for the plant in 1953, and 114,043 tons out of 121,161 tons purchased in 1954.

As previously noted, in 1954 Luria supplied 83.1% of the scrap purchased by the Seattle plant from broker-dealer sources. Substantially all of the balance was accounted for by the purchases from Bloch and Seattle Iron, and from a few other dealers, on a dealer basis. Why Bethlehem continued to purchase from Bloch and Seattle Iron, but eliminated suppliers such as Dulien and Sternoff is not clear from the record. It may be noted, in this connection, that whereas Dulien was eliminated ostensibly because it was not a substantial and consistent supplier, Bethlehem Pacific purchased scrap from Bloch despite the fact that Bloch had dropped from the ranks of the Seattle plant's five largest suppliers in 1948 and did not appear again until 1953. It seems probable that Dulien was eliminated because once its dealer sources (accounting for two-thirds or more of the scrap shipped by it) had been taken over by Luria, it no longer served any useful purpose as a direct supplier. However, whatever may have been Bethlehem Pacific's precise reason for retaining two of its dealers as direct

³⁰ Among those requested to ship their scrap to Bethlehem Pacific through Luria were: Simon Junk (Tacoma), Tacoma Junk, Alaska Junk (Seattle), Inland Hide & Metals (Spokane), Spokane Metals, Alaska Junk (Spokane), Schnitzer Steel Products (Portland), Zidell Machinery (Portland) and California Bag & Metal (Portland).

³¹ Among those who had shipped through other brokers and were requested to ship through Luria were: Schuman Steel Products (Bellingham), Riverside Junk (Everett), and Alaska Junk (Portland).

suppliers and eliminating almost all the others, it seems clear that it has confined its purchases of scrap on a brokerage basis almost entirely to Luria.

Concluding Findings

57. Up to about 1950 Bethlehem Pacific purchased scrap for its three west coast plants from a number of different dealers. These dealers supplied approximately 90% of the scrap purchased by Bethlehem Pacific. With few exceptions the dealers were located in the general area of the plant supplied by them, and shipped to only a single plant of Bethlehem Pacific. Most of the scrap supplied by the dealers came from their own yards, but in some instances dealers also brokered scrap originating in the yards of other dealers. Scrap purchases for the three plants were made under the over-all control of Elwin W. Thomas, purchasing agent for Bethlehem Pacific.

58. Up to 1950 Luria was a minor supplier to Bethlehem Pacific. It did not operate any offices or yards on the West Coast until 1948, when it opened a brokerage office in San Francisco. Beginning in 1950 Luria rapidly became the principal supplier to all three plants of Bethlehem Pacific. By 1954 it was supplying 80.4% of the scrap purchased by the three plants from brokers and dealers, and 72.3% of the scrap purchased from all sources. The percentages of broker-dealer scrap purchased from Luria for the Los Angeles and Seattle plants were somewhat higher than that purchased by Bethlehem Pacific for the San Francisco plant.

59. Luria's meteoric rise as a supplier to Bethlehem Pacific was an outgrowth of a written agreement entered into with Bethlehem Pacific to supply its Los Angeles plant with scrap. Pursuant to a written agreement entered into in October 1950, Luria undertook to open a scrap yard in Los Angeles on premises leased from Bethlehem Pacific, and to supply the latter for a period of 10 years with at least 70% of the requirements of its Los Angeles plants for the basic open hearth grades, and with all of the requirements of bundles and turnings purchased by the plant from sources other than industrial fabricators. Despite a delay in the opening of the yard by Luria and the purported suspension of certain of the terms of the agreement during the period of OPS controls, the agreement was fully implemented within a relatively short period and is still in effect.

60. While the agreement required the purchase of only 70% of the basic open hearth grades from Luria, Bethlehem Pacific has in fact obtained over 90% of the purchased scrap requirements of the Los Angeles plant from Luria. With one exception, that of J. Levin & Sons, all of the other dealers and dealer-brokers who had formerly been substantial suppliers of the Los Angeles plant have been elimi-

nated as direct shippers. Most of the former suppliers are now shipping their scrap to the plant through Luria as broker. Many of them agreed to this arrangement because of the receipt of financial aid from Luria. In some instances they have shipped through Luria because they were advised that Luria was Bethlehem Pacific's broker and were instructed to ship through Luria by Bethlehem Pacific. Several of the dealers who refused to ship through Luria were eliminated as suppliers to the Los Angeles plant. In addition to continuing direct purchases from J. Levin, Bethlehem Pacific has also made minor purchases from The Purdy Company for the Los Angeles plant. Its combined purchases from these two companies has been around 5% or less of its total purchases and consists largely of dealer scrap.

61. While Luria did not come to occupy the same predominant position as a supplier to the San Francisco plant of Bethlehem Pacific as it did in Los Angeles, it did become the principal supplier to the former plant. A number of the suppliers to the San Francisco plant began to ship through Luria after 1950, either because of the receipt of financial assistance from Luria or because they were requested to do so by Bethlehem Pacific. One of the largest suppliers, the Learner Company, which declined to sell through Luria after being requested to do so by Bethlehem Pacific, was cut off as a direct supplier except for minor amounts of special scrap.

While Bethlehem Pacific continued direct dealings with several other dealers, its purchases remained relatively static compared to those from Luria, or even declined. One of the more important of these, California Metals Co., lost a substantial source of industrial scrap when Rheem Manufacturing Company entered into a contract with Luria at the urging of Bethlehem Pacific's East Coast affiliate. By 1954 Luria was supplying approximately 57% of the scrap purchased from dealers and brokers for the San Francisco plant of Bethlehem Pacific. There were only three other dealers or dealer-brokers supplying scrap in quantities as large as 9,000 tons a year, and this was mainly scrap of dealer origin.

62. Luria's position as a supplier to the Seattle plant of Bethlehem Pacific is more nearly parallel to that with respect to the Los Angeles plant. At Bethlehem Pacific's request Luria opened a brokerage office in Seattle in 1951. Between the latter part of 1951 and 1953 a considerable number of other dealers and dealer-brokers were eliminated as direct suppliers to the Seattle plant. One of the larger of the dealer-broker suppliers to the plant, Dulien Steel Products, Inc., underwent a gradual curtailment of the yards or points from which it could ship scrap, which is reminiscent of the experience of certain of the suppliers of Bethlehem Pacific's East Coast affiliate which has been discussed

above. Dulien was finally requested in early 1953 to ship its remaining scrap through Luria, and when it refused it was entirely eliminated as a supplier. A number of other suppliers were likewise requested by Bethlehem Pacific to ship through Luria, and most of them agreed to do so lacking any alternative, in view of Bethlehem Pacific's predominant position as a consumer of scrap in the Pacific Northwest. By 1954 Luria was supplying 83.1% of the scrap purchased by the Seattle plant from dealer-broker sources. The examiner is satisfied that the great bulk of the remaining 16.9% was purchased on a dealer basis.

63. While the evidence indicates some differences in Luria's position as a supplier to each of the three plants of Bethlehem Pacific, there is a basic underlying pattern revealed by the evidence as a whole. This is not surprising since the over-all scrap policy of Bethlehem Pacific, insofar as that company's officials had a hand in determining it, was established by its chief purchasing agent located in San Francisco, E. W. Thomas. The evidence reveals that the changes which were made in the pattern of purchasing for the various plants were the result of instructions received from San Francisco. The basic policy of the company, as disclosed by Thomas' own testimony, was to use only one broker to purchase brokerage scrap. The broker chosen by Bethlehem Pacific for all three plants was clearly Luria.

64. Luria was initially selected with the idea that it would supply Bethlehem Pacific with substantial quantities of dealer scrap through the yard which it would open in Los Angeles, and would broker scrap for a number of smaller dealers to whom it would furnish financial assistance where necessary. Although it was contemplated that Bethlehem Pacific would still use several of the existing dealers as "secondary sources" of scrap, as the arrangement developed Luria soon began to supply almost all of the dealer scrap, as well as substantially all of the brokerage scrap. Through the use of financial aid and with the use of pressure from Bethlehem Pacific, Luria was able to induce most of the so-called secondary sources to ship through it on a brokerage basis.

65. The arrangement began to prove so successful that by October 1951 officials within the Bethlehem organization were giving consideration to whether it might be "advantageous to have Lipsett [Luria's affiliate] establish a similar operation at Seattle and/or San Francisco" (CX 221). Luria did not actually establish a yard in San Francisco. However, it did, at Bethlehem Pacific's request, open a brokerage office in Seattle in 1951, and as of July 1957 was negotiating with Bethlehem Pacific to also open a yard in Seattle.

66. As the arrangement began to prove successful in Los Angeles,

its basic principles were put into effect in San Francisco and Los Angeles. Lacking a yard operation in San Francisco, Luria was unable to supply Bethlehem Pacific with the substantial quantities of yard scrap which it had supplied to Los Angeles. However, through the use of financial aid as an inducement and with some persuasion from Bethlehem Pacific, Luria was able to induce a significant number of dealers to ship their scrap through it as broker. Bethlehem Pacific continued direct purchases from a somewhat greater number of secondary suppliers than it did in Los Angeles. It may be that its unfortunate experience when one of the larger dealers, Learner, refused to ship through Luria was responsible for this. In any event, its purchases from the secondary suppliers were largely on a dealer basis.

67. In Seattle, on the other hand, Bethlehem Pacific was somewhat more successful than in San Francisco. Even though it lost the scrap of one of the larger dealers, most of the rest were willing to ship through Luria. The few who did not do so were confined mainly to shipping dealer scrap. So successful was the experience there that negotiations were undertaken to have Luria establish a yard operation in Seattle. Once established, this would give Luria additional leverage for persuading other dealers to broker their scrap through it.

68. That Luria has become Bethlehem Pacific's substantially exclusive broker is clearly revealed by the record. It is a fact which may be inferred from the course of dealings between the parties, which was admitted by various Bethlehem Pacific officials to other dealers and brokers in the area, and which is accepted as an operative business reality by many dealers and brokers on the West Coast and by others in the industry. The only remaining question is whether the relationship existing between Luria and Bethlehem Pacific is one of mere happenstance or is the result of an agreement, understanding or arrangement by Bethlehem Pacific to buy substantially all of its brokerage scrap from Luria. As in the case of the East Coast relationship, the examiner is satisfied that there is a conscious agreement, understanding or arrangement between the parties for Luria to act as Bethlehem Pacific's substantially exclusive broker. While the basic elements of the arrangement have been reduced to writing only in the case of the Los Angeles plant, the principles of that agreement have been applied to the balance of the West Coast operation. Furthermore, as will be hereafter noted, the arrangement is part of the conscious policy of all the Bethlehem companies.

Bethlehem Steel Corporation

69. As has been previously found, Bethlehem and Bethlehem Pacific are wholly owned subsidiaries of Bethlehem Steel Corporation. Of

the 17 individuals who are officers or directors of Bethlehem Steel Corporation, 13 are also officers or directors of Bethlehem, 3 are officers of Bethlehem Pacific, and 3 are officers of both Bethlehem and Bethlehem Pacific.

70. Paul S. Killian, who is vice president in charge of purchases for Bethlehem, is also a director of Bethlehem Steel Corporation. While he is not an officer or director of Bethlehem Pacific, he is required by the chairman of the board of Bethlehem Steel Corporation to be familiar with the over-all activities of Bethlehem Pacific, including its purchase of scrap. He is kept informed concerning the scrap problems of Bethlehem Pacific through detailed reports from that company with respect to inventories, costs, suppliers, supplies, competition and market conditions generally. The purchasing agent for scrap of Bethlehem Pacific consults with Killian, and with Bethlehem's assistant purchasing agent in charge of scrap, concerning his scrap activities. The problems and policies of Bethlehem Pacific with respect to scrap are resolved after giving appropriate consideration to the advice and guidance of officials of Bethlehem and Bethlehem Steel Corporation. In reporting to Killian, the purchasing agent of Bethlehem Pacific draws no distinction between the former's position with Bethlehem and his position with Bethlehem Steel Corporation. One of the purposes of the reports by Bethlehem Pacific to Killian is for the latter's information in discussions with the chairman of the board of Bethlehem Steel Corporation concerning the operations of Bethlehem Pacific, because of the chairman's interest "in all operations that are owned and controlled by Bethlehem Steel Corporation" (R. 11,092).

71. The purchasing agents of Bethlehem and Bethlehem Pacific participate in management meetings at Bethlehem, Pennsylvania. These meetings are presided over by the chairman of the board or the president of Bethlehem Steel Corporation, and are attended by representatives of the various subsidiary companies of Bethlehem Steel Corporation. At these meetings managerial problems, including problems with respect to scrap are discussed. On important problems with respect to scrap, Bethlehem Pacific has consulted with Bethlehem Steel Corporation before arriving at its decision. The purchase orders issued by both Bethlehem and Bethlehem Pacific for the purchase of scrap are on stationery which does not identify the individual company, but bears only the heading "Subsidiary Companies of Bethlehem Steel Corporation".

72. In October 1950, Bethlehem Pacific entered into a contract with Luria for the purchase of scrap for its Los Angeles plant, the nature and details of which have already been described. The contract represented a major change in the method and policy which had previously

been followed by Bethlehem Pacific in the purchase of scrap. Before entering into the contract, the problem was thoroughly considered in conferences with representatives of Bethlehem Steel Corporation and Bethlehem. Arrangements were made for Vice President Killian to proceed with negotiations with Luria with respect to the contract. The latter characterized the arrangement as a major policy matter "for our corporation" (R. 1369). Throughout the negotiations with Luria, officials of Bethlehem and Bethlehem Steel Corporation took an active part. Even where Luria undertook separate discussions with Bethlehem Pacific officials, it saw fit "to go over the ground again with your associates at Bethlehem, Pa." (CX 216). After the agreement was entered into, Bethlehem Pacific kept its East-Coast "associates" advised as to the progress being made, and the latter gave consideration to having "our scrap man from the East spend a few weeks on the Coast" with a view to aiding in a determination of whether to have Luria establish "a similar operation at Seattle and/or San Francisco" (CX 221).

73. As has heretofore been found, in the period beginning around 1950 a profound change took place in the scrap buying practices and policies of both Bethlehem and Bethlehem Pacific, as a result of which Luria became the substantially exclusive broker for both companies. The change first began to manifest itself in the practices of the East-Coast Bethlehem respondent. Following this, officials of the West-Coast affiliate began to consider establishing a close relationship with Luria as a supplier to the Los Angeles plant. They recognized that "the success of such a relationship with Luria will largely depend upon the relationship between Bethlehem and Luria in the East" (CX 214F). The relationship proved to be successful, and within a period of about 2 years was in effect for the entire operation of the Bethlehem companies, both East and West Coast.

From the coincidence in the timing of the change, the close parallel in the manner and circumstances under which it was accomplished in both instances, and the part played by officials of all the Bethlehem companies in bringing it about, the examiner is convinced that the change reflected a policy decision which was made at the top echelons of the Bethlehem companies, including the parent company. Accordingly, to the extent any liability attaches from the relationship with Luria, it must be shared by all three Bethlehem companies.

(2) *Respondents CF&I and Roebling*

1. Respondent The Colorado Fuel and Iron Corporation (sometimes referred to herein as CF&I) is the ninth largest steel producer in the United States. Its ingot capacity, including that of its subsidiary

John A. Roebling's Sons Corporation (sometimes referred to herein as Roebling), represents approximately 2% of the industry total. It operates plants at Pueblo, Colorado; Claymont, Delaware; Birdsboro, Pennsylvania; and Buffalo, New York. Roebling operates a plant in Trenton, New Jersey.

2. Respondents CF&I and Roebling admit, in their joint answer, that on or about June 1, 1946, CF&I entered into an oral understanding with Luria, pursuant to which Luria was to act as exclusive scrap broker for CF&I's Pueblo mill, but allege that such oral understanding, while still in effect, is terminable at the will of either party. It is also alleged that the above oral understanding only applies to the mill located at Pueblo, Colorado. Respondents admit having made substantially all of the purchases of scrap for the Pueblo and Trenton plants from Luria during certain years.

Minnequa Works—Pueblo

3. CF&I's mill at Pueblo, Colorado is known as the Minnequa Works. Prior to entering into the arrangement with Luria, the Minnequa Works acquired the greater part of its scrap (60% in 1945) from railroads, and the balance from a number of small dealers in the Rocky Mountain area (particularly in Pueblo and Denver, Colorado) and from the relatively few industrial fabricators in the area. Prior to 1946 there were no brokers with offices or yards in the Rocky Mountain area, although brokers from other areas sporadically came into the market to buy or sell scrap. Luria had not been a regular supplier of scrap to the plant prior to 1946, although it had made some small sales in 1943.

4. In the spring of 1946, following discussions with Luria officials, CF&I entered into an informal arrangement, on a trial basis, for Luria to act as the exclusive broker for the Minnequa Works of the company. The arrangement was originally limited to dealer-broker scrap and did not cover railroad scrap. There was some difference of opinion as to the time period within which Luria was to become the exclusive broker for CF&I. The CF&I official who negotiated the arrangement originally contemplated that "our break with other sources of supply should be gradual which meant a continuing of purchasing on a continuously reducing scale while Luria Brothers were establishing themselves in our behalf" (CX 939). However, the Luria representatives opposed such a change-over and the CF&I officials, after reviewing the situation in the latter part of May 1946, "came to the conclusion that continuing of negotiations with other sources of supply had elements of self competition and elements of frustration to Luria Brothers when attempting to become established," and therefore decided that it would be in the "best interests [of CF&I] to imme-

diately withdraw from the market in connection with our other suppliers and give Luria Brothers immediate control of all commercial scrap customarily sold through dealers" (CX 939).

The Luria officials were still not satisfied with the arrangement, insofar as it did cover railroad scrap, and advised CF&I that if it "expected Luria Brothers to assume entire responsibility for keeping [CF&I's] plant in scrap they [Luria Brothers] should then be accorded the privilege of also handling [CF&I's] railroad transactions." (CX 939). There was some opposition to this from CF&I since it would result in paying Luria approximately \$50,000 in commissions, which it had not previously had to pay. However, since it was felt the over-all arrangement would improve CF&I's scrap-supply situation, the change requested by Luria was agreed to and letters were sent to a number of railroad suppliers between May 28 and 31, 1946, advising them that Luria had become CF&I's "exclusive broker for scrap purchases" (See CX 30). In addition to the notification to railroads, a formal announcement was issued to the trade by CF&I on June 1, 1946, "Announcing the Appointment of Luria Brothers & Company, Inc. of Philadelphia, Pennsylvania, As Our Exclusive Scrap Broker" (CX 191). The announcement requested that future offerings of scrap be made through Luria's office in St. Louis, Missouri.

5. Several months later the arrangement between Luria and CF&I was formalized into an actual written agreement, dated August 23, 1946, which provided that CF&I would purchase and Luria would supply all of the purchased scrap requirements of CF&I at the Pueblo, Colorado plant for a period of 5 years (CX 193). The price to be paid for such scrap was to be the OPA price, plus 50¢ commission per ton during the period of government regulations and, in the absence of government regulations, was to be determined by a formula based on the Pittsburgh, Pennsylvania price quoted in "Iron Age."

6. In October 1946 the new president of CF&I requested Luria to cancel the written contract of August 1946. Luria, by letter dated October 11, 1946, agreed to the cancellation, stating (CX 193):

Your intent with respect to your Company's continued purchase from us of its scrap needs as expressed in our recent interviews is satisfactory.

We look forward to many years of business relations based on mutual friendly cooperation. As you so forcibly and rightly said, our keeping scrap rolling into your plants in these difficult times will not be forgotten when it becomes easier to obtain scrap, and we appreciate your assurances of esteem and particularly your concluding words that we would not regret our compliance with your wishes in cancelling the existing agreement.

The reply from CF&I, dated October 21, 1946, expressed appreciation of Luria's consent to cancel the existing contract and contained the following assurance (CX 194):

You can feel assured that this has brought about a fine understanding and acquaintance between your representatives and myself and it will add tremendously to a business relationship in the future which will be mutually advantageous.

7. Despite the cancellation of the written contract, relations between CF&I and Luria continued as they had been before. No written notice was ever issued to the trade countermanding the announcement of June 1, 1946, nor were the railroads advised that Luria was no longer CF&I's broker. On the contrary, during the period of the Korean conflict, when the vendor of the scrap had the right to designate the broker on allocated scrap, CF&I requested a number of the railroads to designate Luria as broker on all scrap allocated to it. CF&I's scrap buyer went to work for Luria when the latter opened a brokerage office in Pueblo in 1946, and for all practical purposes CF&I closed down its own scrap buying office and depended entirely on Luria. In the years following the alleged cancellation of the brokerage contract, from 1947 to 1954, 100% of the scrap purchased by CF&I for the Minnequa Works was purchased through Luria, except for the year 1951, when as a result of the mill's receiving some allocated scrap pursuant to government regulations the percentage of scrap purchased from Luria was reduced to 95.4%.

8. It is unnecessary for the examiner to speculate as to the reasons why CF&I requested Luria to cancel the written contract within a few months after it was signed. However, it is obvious that Luria received oral assurances of a continuation of the relationship on a less formal basis, which convinced it that its long-range interests would be better served by consenting to a cancellation of the written agreement. Succeeding events demonstrated that this was a sound decision since in place of a 5-year written contract, it has enjoyed the benefit of an oral arrangement which, as of the close of evidence in this case, had been in effect for over twelve years and, as will hereafter appear, has been extended to more recently acquired plants of CF&I and of its subsidiary, Roebling.

9. CF&I, as has been noted above, does not deny that there exists an oral understanding pursuant to which Luria acts as its exclusive broker for the Pueblo plant. However, it argues that the arrangement is terminable at will, and will therefore continue only as long as CF&I is satisfied with Luria's performance. In the opinion of the examiner it is of little consequence that the arrangement has no fixed duration and may be terminated if CF&I becomes dissatisfied. As far as competitors of Luria and dealers in the area are concerned, it is of little consolation that the arrangement is of an indefinite, rather than a fixed, duration. They are, and have been for over twelve years, effectively precluded from dealing directly with CF&I.

10. Respondent Luria argues that the arrangement between CF&I and itself has actually benefited dealers in the area, citing in support of this argument the figures purporting to show an increase in CF&I's purchases of scrap from dealer sources. In the opinion of the examiner this argument is without merit since (a) it assumes that the alleged increase in dealer purchases by CF&I is attributable largely to Luria's intervention as CF&I's broker and (b) it overlooks the fact that increases in sales are not necessarily a barometer of economic well-being.

(a) It may be noted, at the outset, that the alleged increase in dealer purchases is not as large as that suggested by Luria. The latter's argument is based on an alleged increase in CF&I's purchases from broker-dealer sources, as revealed by the statistical evidence of CF&I's scrap purchases. However, after 1946 substantially all of CF&I's purchases were made from Luria. Since the scrap supplied by Luria included scrap of railroad and industrial fabricator origin, as well as scrap of dealer origin, it is clear that the figures cited by Luria are inflated to the extent that they include scrap of nondealer origin. It is true that the record does reveal a substantial decline in the percentage of scrap of railroad origin supplied to CF&I (e.g., from 60.3% in 1945 to 24.1% in 1954). To this extent it may be assumed that there was a significant increase in the proportion of scrap supplied by dealers. However, the increase is not as great as that suggested by Luria, and it is not established that all, or even most, dealers shared in the increase.

Even accepting the fact that there has been a significant increase in CF&I's purchases of scrap of dealer origin, it is by no means clear that this has been due to Luria's entry upon the scene. It is quite likely that a major factor has been CF&I's increase in steel production and the consequent increase in its need for scrap. One of the reasons given by CF&I for entering into the arrangement with Luria was an anticipated increase in its scrap needs due to an expansion in its production facilities. This may well have accounted for a substantial part of the increase in the purchase of broker-dealer scrap, cited by Luria, which rose from 44,000 tons in 1945 to 124,000 tons in 1946, and then to 281,000 tons in 1948. Overlooking the fact that 56.8% of the 1948 figure involves scrap of railroad origin, it is significant that with the nationwide drop in scrap consumption in 1949, CF&I's purchases of broker-dealer scrap declined to 213,000 tons. With the advent of the Korean conflict its purchases again rose, and reached a maximum of 334,000 tons in 1951. Again overlooking the fact that a substantial portion of this scrap was of railroad origin and an undisclosed quantity of industrial

origin, it is significant that with the decline in steel production, CF&I's scrap purchases again declined to 124,000 tons in 1953, returning substantially to the 1946 level.

(b) Luria's argument, based on the alleged increase in dealer sales, presupposes that an increase in sales is necessarily synonymous with an improvement in the competitive position of dealers in the Rocky Mountain area from which CF&I draws its scrap. There is, however, evidence to the contrary. For example, dealers had difficulty in selling No. 1 heavy melting steel to Luria for CF&I, and were required to sell such scrap commingled with the No. 2 steel, at the lower price of the latter grade.³² Dealers were discouraged from installing baling presses in competition with that of Luria's subsidiary Pueblo Compressed Steel Corp. and that operated by another dealer in Denver, which sold all its bundles to Luria and had operated a press prior to Luria's entry into the market. Dealers have had very little opportunity for genuine price negotiation with Luria. Usually they were given the opportunity of taking the price quoted by Luria or of holding their scrap. Because of the considerable distances to other scrap consuming markets and the high freight rates involved, this has left the dealers little real choice. Dealers who have endeavored on occasion to sell their scrap in other markets have been admonished by Luria or CF&I.³³

Luria contends that the nonavailability of other markets to dealers in the Denver-Pueblo area was a matter of geography over which it had no control, and that there was no difference in price negotiations by reason of its becoming CF&I's broker. It contends that "CF&I determined the price it was willing to pay for scrap in exactly the same manner whether it bought through its own buying organization or through Luria" (p. 323, Proposed Findings). This, however, is contrary to the evidence. The record establishes that CF&I turned over to Luria the primary responsibility for acquiring scrap in its

³² Luria cites an instance of a dealer who had recently (July 1957) sold some No. 1 steel to Luria for CF&I. The testimony of this witness is contrary to the general weight of the evidence. A number of other dealers indicated that CF&I, through Luria, did not recognize the No. 1 grade as far as dealers were concerned, and that they had had to sell it with No. 2 steel at the lower price. Considering the fact that one of the reasons CF&I entered into the arrangement with Luria was because it wished to lessen its reliance on the more expensive No. 1 grade which it was getting from the railroads, it would not be surprising if Luria were to have discouraged dealers from supplying such scrap, at least at the higher No. 1 price.

³³ One dealer who had sold heavy melting steel to a Chicago broker testified that he was told by Luria's scrap buyer that "in the long run it is going to hurt us more than help us" (R. 9896) and "that the steel in this area which you generate belongs to CF&I and Luria" (R. 9897). The dealer experienced a temporary cutback in its quota of orders from Luria. Another dealer was subtly reminded by a CF&I official at the time he was considering selling to a broker outside the area that while CF&I might be in need of his scrap at the time, "the time's coming when you are going to need us" (R. 10,058). As a result of this advice the dealer dropped all thought of selling out of the area.

behalf. It expected Luria to decrease its reliance on expensive railroad scrap, and to supply it with increased quantities of less expensive dealer scrap. Its former scrap buyer, John Crum, began to work for Luria as head of its newly-established Pueblo office. The prices which CF&I offered to pay were based largely on the advice which it received from Crum, as to the price at which scrap could be acquired. It is clear, therefore, that the price which dealers received was determined or influenced in large measure by Luria.

It is suggested that dealers in the area would have only one substantial outlet for their scrap irrespective of whether they dealt directly with CF&I or through Luria. It is also argued that if they were dissatisfied there were potential outlets in other markets. In the opinion of the examiner there is a considerable difference in the bargaining position of dealers vis-a-vis CF&I, and that vis-a-vis Luria. While the dealers would still be under considerable economic compulsion to come to terms with CF&I in bargaining with it, the latter would also be under economic pressure to come to terms with dealers because of its need for scrap and its isolation from other scrap-producing areas. In bargaining with Luria, on the other hand, dealers are faced with a considerably stronger adversary. With the nationwide scope of its operations, Luria is in a position, if circumstances were to require it, to ship in scrap from more distant areas so as to make dealers in the Rocky Mountain area more complaisant to its price terms. It also exercises a considerable amount of influence on the limited alternatives open to scrap dealers in the area by reason of the fact that it is the exclusive broker for a number of other scrap consumers in the Rocky Mountain area, including Electron Corporation, Pacific States Cast Iron Pipe Co., Kennecott Copper Co., and the Geneva plant of U.S. Steel, as well as being exclusive broker for Bethlehem Pacific whose plants at Seattle and San Francisco also represent alternative shipping points for Rocky Mountain scrap in times of unusual economic activity. While there are several other small mills in Kansas City and Houston, the freight rates to these points are so high as to make them unavailable except during periods of unusual demand.

Buffalo Plant

11. The plant at North Tonawanda, New York, near Buffalo, was acquired by CF&I from Wickwire Spencer Steel Company in 1945, and is known as the Buffalo plant of the Wickwire Spencer Division of CF&I. Between 1945 and 1947 it was supplied by from 13 to 19 different dealers and brokers, including respondent Luria. In 1945, when CF&I acquired the plant, Luria was supplying 4.1% of the scrap purchased by the plant, and in 1946 its percentage increased to 11.1%.

In 1947 Leonard C. Rose, who was the director of purchases for the Minnequa Works of CF&I, became a director of purchases for CF&I as a whole, including the Buffalo plant. During 1947 discussions were had between Rose and Ralph Ablon, Luria vice president, with regard to Luria's supplying the Buffalo plant. Ablon, who had been instrumental in bringing about the exclusive arrangement at Minnequa, felt that his company had done "a satisfactory job" for the Colorado plant and had proven "we had a service to perform and that we were of value" to CF&I, and decided to talk to Rose "about selling scrap to their other plants" (R. 3271). While denying that Rose automatically agreed to make Luria the exclusive supplier of the Buffalo plant, Ablon conceded that he "agreed to give us a try" and that "[o]n the basis of his being satisfied and pleased with our services, we continued to get the business" (R. 3272). As Rose explained the arrangement, "we began placing the responsibility on Luria Brothers to furnish the right kind of material" (R. 9837) for the Buffalo plant.

12. In the year 1947, 47.4% of all the scrap purchased by the plant was supplied by Luria. In 1948, the first full year following the decision to give Luria the responsibility for supplying the plant with scrap, purchases from Luria reached 97.5% of the scrap purchased for the plant. In the succeeding years the percentage of purchases from Luria varied from 95% to 99%, except for 1952 and 1954. In 1952, a year of scrap allocations, the percentage purchased from Luria was 91.3 and in 1954 it was 87.3%.

Claymont Plant

13. CF&I obtained control of the plant at Claymont, Delaware, in March 1951, when it acquired the stock of Worth Steel Company, which then operated the plant. Since June 30, 1952, the plant has been operated as part of the Wickwire Spencer Steel Division of CF&I, along with the plant at Buffalo. Luria had been a substantial supplier to Worth Steel prior to 1951, supplying between 49% and 70% of the broker-dealer scrap purchased by the plant, and between 35% and 65% of the total purchased scrap. In 1950, the last full year prior to the acquisition of the plant by CF&I, Luria supplied 62.1% of the broker-dealer scrap, and 64.3% of all scrap purchased by the Claymont plant. In 1951, these percentages increased to 76.1% and 77.5%, respectively.

14. In the middle of 1952 Leonard Rose, the director of purchases for CF&I, decided to purchase all of Claymont's scrap requirements from Luria for the reason, as he testified, that "you have no right to expect anybody to undertake such an obligation [i.e., supplying the tonnages Luria was supplying] unless they have total responsibility" (R. 9830). A representative of Luria Steel & Trading, which had

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been a substantial supplier of the Claymont plant,³⁴ was advised by Rose that, "we are imposing upon Luria [Brothers] the obligation to get our entire melt of scrap" (R. 9830). For the year 1952, the year during which the decision to make Luria the exclusive broker for Claymont was made, purchases from Luria increased to 89.1% of the scrap purchased from brokers and dealers, and 86% of the plant's total scrap purchases. In the years 1953 and 1954 the percentage of broker-dealer scrap purchased from Luria was 98.7% and 99.8% respectively, and the percentage of total scrap purchases was 96.3% and 93.8%, respectively.

Brooke Furnace, Birdsboro

15. CF&I's plant at Birdsboro, Pennsylvania, consists of a blast furnace, which it acquired from The E. G. Brooke Iron Company in January 1952. The plant was thereafter operated as a part of the Wickwire Spencer Steel Division. Luria had been a substantial supplier to the plant prior to its acquisition by CF&I. Purchases from Luria ranged from about 25% to 72% of the scrap purchased by the plant during the period 1945 to 1949. In 1950 and 1951, the 2 years immediately prior to the plant's acquisition by CF&I, purchases from Luria had dropped to 34.3% and 27.1%, respectively.

16. After CF&I acquired the plant in 1952, the new management decided it was not necessary to maintain a separate purchasing department at the plant. Rose, who was the purchasing director for the entire company, arranged for Luria to take over full responsibility for supplying the scrap requirements of the plant and, in 1953, 100% of the plant's scrap purchases from brokers and dealers, and 98% of the purchases from all sources, were purchased from Luria. In 1954, for reasons not appearing in the record, purchases from Luria declined to 87.1%.

17. One of the broker-dealers which was eliminated as a supplier for the plant was the Mayer-Pollock Company of Pottstown, Pennsylvania, which has previously been mentioned in connection with the exclusive arrangement between Luria and Bethlehem. Mayer-Pollock had been a substantial supplier to the Brooke plant, the amount of scrap purchased from Pollock exceeding that purchased from Luria in every year from 1945 to 1951, except for the year 1949. After May 1952, Pollock was unable to sell to the plant directly, but was required to sell through Luria as broker. The explanation given by Rose for the cessation of direct purchases from Pollock was that "we gave Luria Brothers a job to do, to keep us loaded with scrap of the kind and quantity that we want" (R. 9868). In the case of Pollock, it

³⁴ In 1950 LS&T was second only to Luria as a supplier to the Claymont plant, supplying it with 43,000 tons compared to 90,750 by Luria.

may be noted, that the shipments which it made to Brooke through Luria consisted of essentially the same scrap as it had previously been shipping directly, viz, the scrap originating from the Spicer Manufacturing Division of the Dana Corporation.

Roebbling Plant, Trenton

18. CF&I acquired the mill of John A. Roebbling's Sons Co., at Trenton, New Jersey, on December 31, 1952. Prior to that time Luria had been a substantial supplier to the mill for many years. The proportion of the mill's purchases from Luria increased steadily over the years until, by 1945, it was purchasing approximately 95% of its broker-dealer scrap and 90% of its total scrap from Luria. The trend continued during the succeeding years, and by 1950 it was purchasing 99.9% of its scrap from Luria. In the years 1951 and 1952, when the Government allocations program was in effect, the proportion of its purchases from Luria decreased slightly to 94.7% and 94.0%, respectively. However, in 1953, after the lifting of controls and Roebbling's acquisition by CF&I, the plant purchased 99.3% of its scrap from Luria.

Unlike the other plants acquired by CF&I, there was no significant change in the policy or pattern of purchases by the Roebbling plant from Luria after CF&I acquired control. As explained by Rose, there was: "No occasion to [change] * * * inasmuch as they were buying practically all of their scrap from Luria Brothers and it fitted in with our pattern of thinking for other points" (R. 9839).

Concluding Findings

19. In 1946 Luria became the exclusive broker of CF&I's then main plant at Pueblo, Colorado. An announcement to the trade that Luria had been appointed as CF&I's "Exclusive Scrap Broker" was made in June 1946, although Luria had been acting as such on a trial basis even prior thereto. An agreement formalizing the arrangement was entered into in August 1946, for a period of 5 years, but was cancelled in October 1946 by mutual consent. The arrangement, nevertheless, continued on a nonformal basis and CF&I has continued to purchase substantially all of the scrap for the Pueblo plant from Luria. It is admitted by CF&I, in its answer, that it has an oral understanding with Luria whereby the latter acts as exclusive broker for the Pueblo plant.

20. Over the next few years, after entering into the exclusive brokerage arrangement with Luria pertaining to the Pueblo plant, CF&I extended the arrangement to the other plants owned or subsequently acquired by it. The first extension involved its plant at Buffalo, New York. Following the appointment of Leonard C. Rose,

theretofore director of purchases only at Pueblo, as director of purchases for the whole company, Luria was given the responsibility of supplying the Buffalo plant with substantially all of its purchased scrap requirements. Following the acquisition of the plant at Claymont, Delaware in 1951, Rose decided to purchase all of that plant's scrap requirements from Luria. In 1952, after CF&I had acquired the plant at Birdsboro, Pennsylvania, Rose decided to give Luria the full responsibility for supplying that plant's scrap requirements. At the Trenton plant of its subsidiary, Roebling, which was acquired at the end of 1952, there was no need to make any change since Luria was already supplying the plant on an exclusive basis.

21. Respondents CF&I and Roebling contend that the decision to purchase substantially all of the scrap requirements of their various plants from Luria was based on "local operating conditions" at such plants, and that the agreement involving the Pueblo plant was not merely "extended" to the other plants, as contended by counsel supporting the complaint. The examiner regards this argument as merely an exercise in semantics. It is immaterial whether local conditions contributed to the decision to make Luria the exclusive broker for the other plants, in addition to Pueblo. The fact is that Luria did, by agreement or understanding with CF&I, become the exclusive broker for all its other plants. By 1954 Luria was supplying 100% of the scrap purchased by CF&I (including Roebling) from broker-dealer sources, and 99.3% of the scrap purchased from all sources.

It is inconceivable that substantially the same pattern of scrap purchases should have developed at all of the CF&I plants without some over-all agreement with Luria. That such an understanding existed is implicit in Rose's explanation of why no change was made in the scrap purchasing policy of Roebling when it was acquired in late 1952, at which time it was already purchasing substantially all of its scrap from Luria, viz, that Roebling's scrap policy "fitted in with our pattern for other points", i.e., other CF&I plants (R. 9839). At another point Rose admitted the existence of an over-all agreement with Luria on the part of CF&I, but merely claimed that it was terminable. When asked by CF&I counsel whether CF&I was "bound by any agreement to *continue* purchasing scrap from Luria", Rose responded (R. 9841):

No, it was made quite clear months and months ago that we could, either party could, cancel *the now verbal arrangement* on one day's notice, let's say. [Emphasis supplied.]

Granted that the exclusive brokerage arrangement between CF&I and Luria is cancellable on one day's notice, or at will, the fact remains that it exists, that it has existed for many years and that it will continue to exist indefinitely until it is cancelled. It is concluded and

found that respondents CF&I and Roebling have entered into an understanding or agreement with Luria whereby the latter acts as substantially exclusive broker for said respondents and said respondents purchase substantially all of their requirements of purchased scrap from Luria.

(3) *U.S. Steel*

1. Respondent United States Steel, sometimes hereinafter referred to as U.S. Steel, is the largest steel producer in the United States, its ingot capacity as of January 1, 1954, representing approximately 31% of the industry. U.S. Steel operates numerous plants and divisions throughout the United States, including one at Geneva, Utah. The plant at Geneva is the largest consumer of scrap on the western slope of the Rocky Mountain area.

2. U.S. Steel has been named as a respondent in this proceeding especially because of its activities at the Geneva, Utah plant. The proof offered by counsel supporting the complaint concerning an exclusive brokerage arrangement between that company and Luria is limited to the Geneva plant, and counsel supporting the complaint have conceded that their contention concerning the existence of such an arrangement is "limited to the Geneva plant of U.S. Steel" (R. 12,727).

3. In its main or Central Operation, it is the policy of U.S. Steel to purchase scrap from a number of different suppliers, including brokers and dealers and industrial concerns. It is not the policy of that respondent, in its Central Operation, to purchase all or substantially all of its scrap from a single or primary supplier for any of its plants. It is the policy of U.S. Steel in its Central Operation to pay the same price for scrap to all suppliers of a given plant and no distinction is made between brokers and dealers.

The Issue

4. In the case of the Geneva plant, U.S. Steel admits in its answer that in October 1948 it accepted the offer of Luria "to act on an informal basis as its exclusive broker for the purchase of iron and steel scrap" for that plant. It is alleged, however, that there was no commitment as to the period of time such arrangement would remain in effect, and that the arrangement came to an end early in 1952 when the operations at Geneva were merged with those of the parent company on the West Coast. The issue presented, therefore, is whether the exclusive brokerage arrangement between Luria and the Geneva operation of U.S. Steel was effectively terminated.

Geneva Plant

5. During the period of World War II and until its purchase by U.S. Steel in 1946, the plant at Geneva, Utah, was operated by the Geneva Steel Company for the Defense Plants Corporation. The

plant was designed to be self-sufficient, insofar as its metallics requirements were concerned. The pig iron from its blast furnace and its home scrap (*i.e.*, scrap generated from its own operations) were sufficient to take care of its needs.

6. After the cessation of hostilities at the end of World War II, the plant was put in a standby condition. It was purchased by U.S. Steel in June of 1946 and went into partial operation as Geneva Steel Company in 1947. By the time the plant was in full operation in the first quarter of 1948, it was found that it was necessary to obtain a substantial tonnage of scrap from outside sources. Even in 1947 it had been necessary to purchase some outside scrap, the major portion of which was obtained from Berg Metals, a Los Angeles dealer and broker. Purchases of scrap from outside sources increased from 1,710 tons in 1947 to 24,374 tons in 1948 and to 73,630 tons in 1949.

The Exclusive Arrangement

7. By late August or early September 1948, Geneva Steel Company began to take active steps to increase its supply of scrap from outside sources. The Geneva scrap buyer, George R. Ten Eyck, sought the advice of the purchasing agents of other U.S. Steel subsidiaries and of the vice president in charge of purchases of the parent company. The director of purchases of the West Coast affiliate of U.S. Steel, Columbia Steel Co., was unable to offer any assistance due to the fact that the plants within his jurisdiction were having difficulty themselves in meeting their own scrap requirements. However, the vice president of the parent company, C. A. Ilgenfritz, sent the following telegraphic advice to Ten Eyck on October 1, 1948 (CX 788):

Luria Bros. have heard you are about to come in market for scrap. They are large operators and good outfit. Understand they are now supplying Colorado Fuel & Iron. It might be to your advantage to line up Luria as your main source. In any event suggest you discuss matter with them and see what you think after so doing. I can recommend them without any reservation.

8. At or about the time of the sending of the above telegram two Luria representatives, B. L. Vernor of its Pittsburgh office and John L. Crum of its Pueblo office, called upon Ten Eyck to discuss the supplying of the Geneva plant's scrap requirements. At the conclusion of the meeting they were requested to submit a written proposal.

9. A few days later, Crum returned after conferring with Luria's president, and submitted a written proposal in the form of a letter dated October 7, 1948, addressed to Geneva Steel Company. The letter proposed a number of terms and conditions pertaining to price, commissions and other pertinent matters, and contained the proposal that Geneva (CX 9)—

* * * agree to accept iron and steel scrap only if sold by or through Luria Brothers & Company, Inc.

It also stated that Luria was prepared to start operating under the proposal immediately, with the understanding that "this agreement may be cancelled preemptorily" (sic). The letter called attention to the fact that in supplying Geneva's requirements Luria would have to obtain scrap "from territories not now accustomed to shipping to Geneva and with full consideration for the difficulties which will necessarily arise with other mills depending on scrap from these territories." It added:

* * * we have commitments and responsibilities at these other mills and it is to our advantage, as well as yours, that your requirements be satisfied with the least possible disturbance or disruption of the present markets.

10. The written proposal by Luria was discussed by Crum with Ten Eyck and with Geneva's attorney. There was some disagreement on certain of the terms of the proposed arrangement. Among other things, attention was called by the Geneva attorney to the fact that the provision requiring Geneva to buy scrap only from Luria would preclude Geneva from buying scrap elsewhere, in the event Luria was unable to supply Geneva with all the scrap it needed. Geneva was willing to use Luria as its exclusive broker, but wished to be free to buy elsewhere if Luria was unable to meet its requirements. Crum finally agreed to forget the written proposal and to proceed on the basis of an oral understanding under which Luria would act as Geneva's exclusive broker and would endeavor to supply it with its scrap requirements. It was agreed that Geneva would issue monthly orders for its requirements to Luria, with the price to be negotiated each month and with Luria to receive a commission of 50¢ per ton in addition to the agreed price.

11. While Crum was willing to proceed without any written contract, he did request Geneva to issue a written announcement of Luria's appointment as its exclusive broker. This Geneva agreed to do. The written announcement was prepared by Luria for issuance by Geneva, and was similar to the announcement used by CF&I in June 1946. The Geneva announcement, which was issued October 15, 1948, recited "The Appointment of Luria Brothers & Company Inc" as Geneva's "Exclusive Scrap Broker" and requested that future offerings of scrap be made through Luria. The reason for Luria's request that a written announcement be issued by Geneva was, as Crum testified, that "it was an introduction for me and it was a written assurance that the mill would buy their scrap" (R. 13,027).

12. While the main point of contention is whether the exclusive brokerage arrangement was later effectively terminated, there is also

some disagreement as to the nature of the brokerage arrangement between Luria and Geneva. In its answer to the complaint in this proceeding respondent U.S. Steel admits that it "accepted the offer of respondent Luria Brothers and Company, Inc., to act on an informal basis *as its exclusive broker for the purchases of iron and steel scrap for the said Geneva plant*" (emphasis supplied). This would imply that it agreed to purchase scrap on a brokerage basis from Luria only, irrespective of the sources of the scrap. However, in its memorandum filed in support of a motion to dismiss, U.S. Steel contends that the exclusive brokerage arrangement was intended to be limited only to the purchase of scrap "originating in dealers' yards in the [Geneva] area" (p. 2 U.S. Steel Memorandum).

The record fails to support the contention of U.S. Steel that the brokerage arrangement was limited to the supplying of scrap from the yards of dealers in the general Geneva area. The formal announcement itself contains no such limitation, but refers to Luria, generally, as Geneva's exclusive broker. The testimony of Geneva's scrap buyer, Ten Eyck, who represented Geneva at the meeting when the arrangement was consummated, likewise reveals no such limitation as that now contended for. According to Ten Eyck, he and the Luria representative orally agreed that Geneva would buy all of its requirements of scrap from Luria, but that "where they [Luria] didn't offer sufficient [scrap] * * * it [was] my duty as the purchasing agent to acquire such additional scrap as I could" from other sources (R. 13,657).

Ten Eyck's testimony, which indicates that there was no intention to limit the arrangement to scrap of dealer origin, is corroborated by correspondence sent within 4 months after the arrangement was made, in which this precise subject was discussed. In a letter dated February 1, 1949, from Luria Steel & Trading Corporation's Chicago office to Carl Ilgenfritz, U.S. Steel vice president, reference is made to the fact a representative of the Union Pacific Railroad (from which LS&T was interested in buying scrap for sale to the Geneva plant) had advised LS&T that Luria "had the exclusive at Geneva", that another U.S. Steel official after checking with Ten Eyck had advised LS&T that the exclusive was "only on dealer's scrap", but that when LS&T spoke to Ten Eyck directly it was advised that Luria "had an exclusive" and had bought the railroad scrap for Geneva (CX 789-B). The letter sought to have Ilgenfritz use his good offices on LS&T's behalf.

Ilgenfritz sent Ten Eyck a copy of the LS&T letter, and Ten Eyck by letter dated February 16, 1949, advised Ilgenfritz that Geneva had "entered into an exclusive brokerage agreement with Luria, *covering all types of scrap*" (emphasis supplied), and therefore "had no re-

course" other than to request LS&T and another broker (Purdy) "not to enter a bid on our behalf" for the railroad scrap (CX 789-E). Without awaiting a reply from Ten Eyck, Ilgenfritz, by letter dated February 4, 1949, replied to the LS&T letter, advising it as follows (CX 789-D) :

Up until a short time ago, the Geneva Steel Company was virtually self-contained on scrap. When it developed that they were going to require some outside tonnage, it seemed under the circumstances to be the part of wisdom to line up with someone that has been operating in that territory and knowing one particular scrap company was the main supplier for the Colorado Fuel & Iron Company, we felt it would be better for all concerned to look to this company *for as much of the Geneva tonnage as it could supply.*

Thus far, I think the arrangement has worked quite satisfactorily and I question whether now is the time to consider any change * * *. [Emphasis supplied.]

It seems clear, therefore, that the exclusive brokerage arrangement with Luria was not limited to dealer scrap, but included scrap originating for other sources, and covered all of Geneva's purchased scrap requirements to the extent Luria was able to supply them. Only where Luria was unable to fill Geneva's full requirements was the latter to purchase scrap elsewhere.

13. While the brokerage arrangement was not intended to be limited to dealer scrap originating in the general geographic area of the Geneva plant, it was in practice so limited to a large extent. Although Luria supplied Geneva with railroad and other scrap, the bulk of the scrap which it supplied consisted of scrap originating in the yards of dealers located in the Intermountain area, *i.e.*, Idaho, Utah, parts of Nevada, the western slope of Colorado and Montana. This was for the practical reason that this was the natural area, because of favorable freight rates, from which to obtain scrap to meet Geneva's requirements.

It is clear from the record that Geneva selected Luria as its exclusive broker because of the latter's familiarity with the Intermountain area, from which it was already supplying scrap to CF&I at Pueblo. Another important reason for the selection of Luria was that Geneva wished to minimize, as far as possible, competition with CF&I for the same scrap. Luria challenges such a finding on the ground that it is more natural for the area on the western slope of the Rockies to ship its scrap to Geneva "due to geographic and transportation conditions", and contends that there is very little competition between CF&I and Geneva. While competition between the two plants may have been considerably minimized by reason of their having a common broker, as the figures cited by Luria suggest, there can be no doubt that a vital element in the minds of both Luria and Geneva, in entering into

the arrangement, was the desire to minimize competition. This seems clear from the exchange of correspondence referred to above.

It cannot be assumed, for example, that Luria was engaging in mere salesman's talk, when it stated in its proposal of October 7, 1948, that it would have to draw scrap for Geneva "from territories not now accustomed to shipping to Geneva and with full consideration for the difficulties which will necessarily arise with other mills depending on scrap from these territories." As previously noted, the same letter emphasized Luria's "commitments and responsibilities at these other mills", and that it was to both Geneva's and Luria's advantage that Geneva's requirements "be satisfied with the least possible disturbance or disruption of present markets." That U.S. Steel was similarly concerned about possible conflict with competitors, particularly with CF&I, seems evident from its vice president's letter of February 4, 1949, to LS&T, that his company felt it "would be better for all concerned" to "line up with someone knowing the territory" who was also "the main supplier for the Colorado Fuel & Iron Company".

Termination of the Exclusive

14. On December 31, 1951, U.S. Steel's two western subsidiaries, Geneva Steel which operated the Geneva plant and Columbia Steel which operated several plants in California, were merged into the parent company and became known as the Columbia-Geneva Division of the company. The responsibility for the purchase of scrap for the entire division was assigned to Helmer L. Christensen, who had previously been director of purchases for the Columbia Steel Company with offices in San Francisco. On September 1, 1952, Christensen consolidated all of the division's purchasing activities into his San Francisco office, and Ten Eyck, purchasing agent for Geneva, was transferred from Geneva to San Francisco where he became assistant director of purchases.

15. Respondents U.S. Steel and Luria contend that the exclusive brokerage arrangement with Luria was terminated in 1952, shortly before the transfer of the purchasing functions from Geneva to San Francisco. This contention is based on Christensen's testimony to the effect that about 2 weeks prior to September 1, 1952, he called Luria's San Francisco representative (from whom he had been purchasing scrap for Columbia Steel's California plants) to his office and advised him that whatever arrangement Geneva had had with Luria was at an end and that henceforth purchases would be made from Luria "as a vendor, not as a broker; as another supplier on a competitive basis" and, further, that Crum who had handled the Geneva account from Pueblo "should assume no more responsibility as far as Geneva Works scrap requirements were concerned", but that negotiations would there-

after be conducted with Luria's San Francisco representative (R. 13,712).

Counsel supporting the complaint contend that there was actually no effective termination of the exclusive brokerage arrangement with Luria, despite Christensen's testimony of an alleged termination of the arrangement in a conversation with Luria's representative in San Francisco just prior to September 1, 1952. Cited in support of counsel's contention is the lack of notification to, or knowledge on the part of, those who would ordinarily be expected to be apprised of the cancellation of the brokerage arrangement, including Luria's home office, its Pueblo office and the trade generally. The evidence, in this connection, supports the position of counsel supporting the complaint. Thus, it appears that despite the alleged giving of notice of cancellation to a representative in Luria's San Francisco office, this fact was never communicated to Luria's home office, and the latter office was unaware that the exclusive brokerage arrangement at Geneva had ever been cancelled.³⁵ So far as appears, Luria's office in Pueblo, which had been buying scrap for Geneva, likewise received no notification, and was unaware, of any termination of the brokerage arrangement at Geneva. The only change which occurred, as far as Pueblo was concerned, was that after Geneva's buying functions were transferred to its San Francisco office, the price of the scrap to be supplied to Geneva was negotiated between Luria's San Francisco office and the U.S. Steel office in San Francisco, instead of directly by Crum, but this was only after "my office [Pueblo] and the San Francisco office [of Luria] go into what the right price should be pretty thoroughly before we talk to Geneva" (R. 13,030).

Of perhaps the greatest significance in determining the issue of termination, is the complete absence of any evidence of notification to, and the apparent lack of awareness of any such termination on the part of, those who were actually supplying the scrap which Luria sold to Geneva. Although the exclusive brokerage arrangement had

³⁵ William J. Luria, a Luria vice president, originally testified that as far as he was aware no notification had ever been received that the brokerage arrangement at Geneva had been terminated, and that if it had been he "would be likely to know about it" (R. 573). When called to testify more than a year later he stated, in response to interrogation by U.S. Steel counsel, that the "agreement was cancelled", but could not recall how this was accomplished (R. 4088). However, when counsel supporting the complaint directed the witness' attention to his earlier testimony, he agreed that such testimony was "correct insofar as I recall as to what happened" (R. 4094). He attempted to explain his later testimony, to the effect that the agreement had been cancelled, as being based on his assumption that the arrangement "just died of its own weight", because of the fact that Geneva "just stopped buying from us" following the "change in their organizational set-up" (R. 4094). However, the fact is that Geneva did not just stop buying from Luria, as will hereafter appear. The examiner is satisfied that the witness' original testimony is correct, and that his later testimony involved some *ex post facto* rationalizing, based on the factual assumption of a cessation of purchases which is not supported by the record.

been announced to the trade by a written formal announcement, no steps were taken to notify the trade that the arrangement had been revoked. So far as appears from the record, dealers and other sources of scrap which had sold through Luria for delivery to Geneva were unaware that any change in the relationship had occurred in 1952. The Pueblo office of Luria continued to supply scrap for Geneva from substantially the same sources as previously. No effort was made to advise the dealers in the area that Geneva desired to do business on a direct basis until sometime in 1954, after this proceeding had been initiated.

Also of considerable significance is the lack of any adverse change in the pattern of buying of the Geneva plant after 1952, despite the alleged termination of the exclusive brokerage arrangement. In 1949, the first year after the brokerage arrangement had been entered into, Luria supplied Geneva with 94.5% of the scrap purchased by the plant. In 1949 the percentage of scrap purchased from Luria declined to 72.4%. The balance of the scrap in these 2 years was supplied mainly by Geneva's former supplier in Los Angeles, Berg Metals, except for a small amount in 1950 by a San Francisco dealer. While the level of purchases from Luria in 1951 and 1952 remained as high as in previous years, viz, approximately 75,000 tons, the proportion of purchases from it declined to 63.2% and 60.1%, respectively. In terms of purchases from broker-dealer sources the percentage in 1952 was 69.1%. Most of the scrap purchased from sources other than Luria was supplied by dealers in Los Angeles and San Francisco which had been supplying Columbia Steel's plants in California. The decline in the proportion of purchases from Luria in 1951 and 1952 may be attributed to the latter's inability to supply Geneva with its full requirements during a period of peak demand incident to the Korean conflict, which left Geneva free under its agreement with Luria to obtain scrap from outside sources. In any event, in 1953, the first year after the brokerage arrangement was allegedly terminated, the proportion of Geneva's scrap purchased from Luria increased to 77.1% (compared to 60.1% in 1952), which represented 89.5% of all scrap purchased from broker-dealer sources. While there was a decline in over-all purchases from Luria in 1954, following the end of the Korean conflict, and the proportion of scrap purchased from it declined to 60.9% this represented an increase in purchases from broker-dealer sources to 93.9%.

It seems evident, therefore, that the alleged termination of the exclusive brokerage arrangement at Geneva has had no adverse effect on Geneva's pattern of purchasing from Luria but, on the contrary, it has continued to purchase as high if not a higher proportion of its

scrap from Luria, particularly scrap of broker-dealer origin. It is conceded by U.S. Steel that as far as the Intermountain area is concerned, which is the area where the agreement was intended to have its primary application, Geneva has not purchased scrap from any broker or dealer other than Luria, except for some government, demolition or railroad scrap. Luria contends that the continued high level of purchases from it, despite the alleged termination of the exclusive brokerage arrangement, is merely a tribute to its continued satisfactory performance as a supplier to Geneva. This argument does not impress the examiner, particularly when it is noted that Luria does not enjoy a comparable position as a supplier to the rest of the plants of Columbia-Geneva, where it has never had an exclusive brokerage arrangement and where, presumably, its performance has also been satisfactory.³⁶

Not only have purchases for Geneva continued at the same high level as before the alleged termination of the brokerage arrangement, but Luria has continued to supply scrap on a brokerage basis and to receive a commission of \$1 a ton. This would hardly seem to square with Christensen's putative advice to the Luria representative, at the time of the alleged termination, that henceforth purchases from Luria would be made "as a vendor, not as a broker". U.S. Steel's practice, in this respect, is contrary to that followed in its Central Operations where all suppliers are treated as vendors, irrespective of whether they are brokers or dealers.

In the light of the evidence discussed above, it is the opinion and finding of the examiner that there was no effective termination of the exclusive brokerage arrangement between Luria and U.S. Steel, with respect to the Geneva plant, in 1952. Even assuming that Christensen did inform the Luria representative in the manner testified to, this does not constitute such a termination of the relationship as to absolve U.S. Steel for such responsibility as may otherwise attach from the original relationship. The exclusive brokerage relationship was publicly announced, and many dealers and others, particularly in the Intermountain area, based their business relations with Luria and with Geneva thereon. After 4 years, the pattern of dealing with Geneva had become well established. Under these circumstances the private notification to Luria was not an effective termination of the relationship, particularly where Geneva continued to deal with Luria ostensibly in the same manner and to the same extent as theretofore.

³⁶ In 1951 and 1952 Luria supplied 9.3% and 13.7%, respectively, of the dealer-broker scrap purchased by the California plants of the division. In 1953, the first year after the consolidation of purchasing functions, Luria's share increased only modestly to 15.7%. While there was a further increase in 1954, Luria was still a long way from being the principal supplier of those plants.

Alleged Efforts to Purchase Directly from Dealers

16. Respondents contend that in June 1954 and again in April 1956, U.S. Steel offered to buy scrap directly from dealers in the Intermountain area for the Geneva plant, but that the dealers indicated they preferred to sell through Luria. This contention is based on the testimony of Leonard H. Atwood, a scrap buyer for the Columbia-Geneva Division, who claimed to have made such an offer to dealers in the course of scrap surveys of the area in 1954 and 1956. According to Atwood, the dealers preferred to sell through Luria because it advanced them money against bills of lading, whereas Geneva did not pay for scrap until 30 to 45 days from shipment; Luria purchased grades of scrap which Geneva did not use; and Luria had a market for their scrap at times when Geneva was not purchasing.

17. In evaluating respondents' contention it should be noted at the outset that the fact U.S. Steel thought it necessary in 1954 and 1956 to advise dealers in the Intermountain area of the fact that Geneva was willing to purchase scrap directly from them attests to the ineffectiveness of the alleged notification to Luria in 1952 that the brokerage arrangement was terminated, and to the lack of awareness on the part of dealers of any such termination. Secondly, the withholding of such notification to dealers until after the impetus of the present proceeding is hardly sufficient to absolve U.S. Steel from such responsibility as may otherwise attach from the original agreement. It should also be noted, in this connection, that the main effort in this direction occurred in 1956, well after this proceeding had been started, rather than in 1954. The main purpose of the 1954 survey by Atwood was to investigate "complaints from our operating department in Geneva that they were not receiving proper preparation on scrap" (R. 13,770). Atwood endeavored to talk to dealers about the proper preparation of their scrap, check their facilities and get an idea as to the amount of scrap which could be produced in the area.³⁷ From the evidence as a whole, the examiner is not convinced that any serious effort was made in 1954 to encourage dealers to ship directly to Geneva, although there may have been some casual reference to it in certain instances.

18. Aside from the fact that the alleged offers to buy directly did not take place *ante litem motam*, and even assuming that a bona fide offer was made by Geneva in 1954, it is not surprising that a number of the dealers declined to accept the offer. By the middle of 1954 the arrangement between Geneva and Luria had been in effect for 6 years, and Luria had become well entrenched in the Intermountain

³⁷ Atwood was transferred from the southern California plant of Columbia-Geneva to San Francisco in June 1954. He had made similar surveys of dealer facilities in southern California in prior years, and respondent U.S. Steel apparently considered it desirable to have an up-to-date survey of dealer facilities in the Intermountain area.

area. Its position in the area as exclusive broker for Geneva was reinforced by a similar arrangement with CF&I and with several lesser consumers in the Rocky Mountain area, as well as with consumers in contiguous areas who periodically came into the area for scrap, particularly Bethlehem Pacific at Seattle. Many of the dealers, under the circumstances, had come to rely on Luria as the accepted medium for disposing of their scrap, and were not anxious to change particularly, as will hereafter appear, where they were not offered terms of equality with Luria. Having contributed, in large measure, to the selling pattern of dealers in the area, Geneva cannot automatically purge itself 6 years later by an offer to buy direct.

19. While Atwood at first claimed that none of the dealers in the Intermountain area were willing to sell directly (R. 13,794), he later conceded that there were some who did wish to do so (R. 13,849). Such dealers, however, wished to receive the same price as Luria was being paid, which was generally \$1.00 a ton above what dealers were being paid. This Atwood declined to agree to for the alleged reason that Luria was a broker and was therefore entitled to a dollar a ton more than the price paid dealers. This attitude, as has previously been noted, is contrary to the position taken by U.S. Steel in its Central Operations where the same price is paid dealers and brokers. It is suggested by U.S. Steel that its payment of a differential to Luria merely accorded with the prevailing practice in the western part of the United States. However, it seems clear that if there were such a practice, it was largely an outgrowth of the arrangements which Luria had with a number of the major consumers in the area, including that with U.S. Steel at Geneva. The examiner is not convinced from the record as a whole that Geneva made any serious or genuine effort to encourage dealers in the Intermountain area to change the established selling pattern, which it had helped to bring about.

The Arrangement with E. J. Keeley

20. Counsel supporting the complaint cite the arrangement between Luria and E. J. Keeley, a broker-dealer in Butte, Montana, as indicative of the type of control which Luria was able to establish in the Intermountain area through the leverage of its brokerage agreement with Geneva, and as also indicating why certain of the dealers were reluctant to change the existing pattern after it had been in operation for a number of years. Keeley, it may be noted, was referred to by Atwood of U.S. Steel as being one of a few dealers in the area who were capable of shipping substantial quantities to Geneva.

Edward J. Keeley, the principal owner of the Keeley Company, owns an interest in another company which operates a scrap yard on the premises of Anaconda Mining Company in Butte, from which

it supplies scrap to the latter company. The E. J. Keeley Company itself is primarily a scrap broker, selling ferrous scrap from the yards of other dealers in the Montana-Idaho area. At one time Keeley sold scrap directly to a number of different consumers in the Rocky Mountain area and on the West Coast, including the Geneva plant of U.S. Steel, the Pueblo plant of CF&I and the Seattle plant of Bethlehem Pacific. After the exclusive brokerage arrangement with CF&I in 1946 Keeley ceased shipping directly to the Pueblo plant but began selling through Luria. Direct sales to Geneva ceased after 1948 and shipments to that plant were thereafter made through Luria. Direct sales to the Seattle plant of Bethlehem Pacific ceased in 1952 and shipments to that plant were thereafter made through Luria.

In 1950, the earliest year for which there are figures in evidence, Keeley sold 2,700 tons or approximately 20% of his scrap to Luria, most of the rest being sold to direct consumers. Of the scrap sold to Luria approximately 60% was shipped to Geneva and 27% to CF&I. After 1950 there was a sharp increase in Keeley's sales to Luria and a corresponding drop in its sales directly to consumers. In 1951 Keeley's sales to Luria increased to 7,251 tons, of which approximately 27% was shipped to Geneva and 39% to CF&I at Pueblo. Keeley's sales to Luria continued to grow in most of the succeeding years until, by 1956, it was selling 15,200 tons or 71% of its scrap to Luria (compared to 20% in 1950). During the period from 1952 to 1956 substantial quantities of the scrap sold to Luria by Keeley were shipped to Geneva, to CF&I at Pueblo and to Bethlehem Pacific at Seattle. The largest proportion of the scrap was shipped to Geneva, except for 1952 when more scrap was shipped to Bethlehem Pacific at Seattle than to Geneva.

Under its arrangement with Luria, Keeley became, in effect, Luria's representative in Montana and portions of Idaho. Luria made almost no purchases of scrap in the area where Keeley operated, but obtained scrap from the area through Keeley which, in turn, acted as broker for many of the dealers in the area. Luria endeavored to pay Keeley a dollar-a-ton commission on the scrap purchased by Keeley, and the record reveals that from time to time Luria made upward price adjustments in Keeley's favor, in order to enable the latter to make a profit of \$1.00 above the cost of the scrap. Luria also passed on the benefit of price increases to Keeley, where the mill increased the price to it. So close did the relationship between Luria and Keeley become that the latter felt it could, with confidence, inform dealers in the area that if they wanted to sell to Luria they would have to sell through Keeley.

While Luria denies that it has any understanding with Keeley to

buy scrap from the Montana area only through him, it concedes that it presently "buys little, if any, scrap directly" from dealers in the area, and that it finds it "easier" to deal with Keeley, than with the scattered small dealers and scrap collectors in the area. It points out that it did at one time buy directly from Carl Weissman & Son, a dealer in Great Falls, but claims that the latter began to sell its scrap elsewhere because it apparently found a better market. However, the evidence discloses that Weissman has sold large quantities of its scrap to Keeley for delivery to Geneva and to Bethlehem Pacific at Seattle, and that when it endeavored to sell directly to Luria it was advised by Luria that Keeley was its agent or sub-broker. On one occasion when Keeley suspected that Weissman and another dealer in the area, Pacific Hide & Fur Depot, were selling scrap directly to Bethlehem Pacific at Seattle it advised Luria of this fact, and asked the latter to look into the matter "through your usual channels" (CX 794). While there may be no legally binding agreement between them, there can be no doubt that there is a working arrangement between Luria and Keeley, whereby the latter acts as Luria's exclusive agent in part of the territory from which Luria obtains scrap to supply the consumers with which it has exclusive brokerage arrangements, including U.S. Steel's Geneva plant.

21. Respondent U.S. Steel refers to letters which it received in April 1956 from Keeley and from a scrap dealer in Salt Lake City (Pepper's Allied Metals) as establishing the fact that if these dealers continued to sell through Luria, it was as a result of a voluntary decision on their part and not because of any compulsion from Geneva. It may be noted, parenthetically, that both letters, in which the dealers decline an opportunity to sell directly and express a preference for selling through Luria, are similar in tone with their fulsome praise of Luria and its Pueblo manager (Crum), and their detailed explanation of the reasons for preferring to deal with Luria. They smack more of contrived evidence than of normal business correspondence. It is also unusual that these dealers, who were allegedly offered an opportunity to sell directly in 1954, should have waited till 1956 to place themselves on record. Assuming the genuineness of the correspondence, the fact that such letters were written in 1956, and not in 1954, suggests that the earlier alleged offer was not seriously made or considered.

In any event, the fact that these dealers should have declined the offer by Geneva to purchase from them directly is not sufficient to absolve Geneva from further responsibility for the state of facts to which it contributed. Aside from the fact that no offer was made to pay them a price comparable to that paid Luria, it is not surprising that they should have preferred to continue with the existing arrangement. By 1956 the Salt Lake City dealer was selling 95% of its scrap

to Luria, all of which was being shipped to Geneva. It had become almost completely dependent on Luria. Keeley had been given an exclusive territory by Luria and assured of a steady outlet for its scrap to three major consumers with which Luria had exclusives and to several lesser ones. Luria also had sought to protect Keeley's profit as far as possible. By 1956 Luria had achieved a dominant, if not monopoly, position in the Intermountain area, aided in large measure by its exclusive brokerage arrangement with Geneva. It is not surprising, therefore, that dealers in the area were somewhat timid in admitting they no longer wished to sell to Luria, particularly those like Keeley which Luria had placed in a favored position.

Concluding Findings

22. It is undisputed that in October 1948 respondent U.S. Steel's subsidiary, Geneva Steel Company, entered into an informal agreement with Luria pursuant to which Luria was to become the exclusive broker for Geneva's plant at Geneva, Utah. The arrangement was entered into by Geneva after conferring with, and upon recommendation of, the parent company. An important factor in the selection of Luria as Geneva's exclusive scrap broker was the desire to minimize competition for scrap with other consumers in the area for whom Luria was also the exclusive broker, particularly CF&I's plant at Pueblo, Colorado.

23. A printed announcement advising the trade of Luria's appointment as Geneva's "Exclusive Scrap Broker" was issued on October 15, 1948. While the extent of Luria's role as Geneva's exclusive broker was not spelled out in the announcement or in any formal agreement, it was understood that Geneva would give Luria an opportunity to supply its needs for purchased scrap as far as possible, but that Geneva would be free to purchase from other sources to the extent Luria was not able to supply its full requirements. The arrangement with Luria, while primarily intended to cover scrap of dealer origin, was not limited to such scrap but included scrap of railroad and other origin.

24. In 1949, the first full year after the exclusive brokerage arrangement went into effect, Geneva purchased 94.5% of its requirements of non-home scrap from Luria. In the succeeding years there was some decline in the proportion of scrap supplied by Luria, the lowest percentage being reached in 1952, when Luria supplied 60.1% of Geneva's total scrap purchases, which represented 69.1% of the scrap purchased from broker-dealer sources. The reason for the decline is not entirely clear from the record. However, since the period of the decline coincides largely with the period of the Korean conflict, it would appear likely that difficulties in obtaining scrap to meet

Geneva's increased demand was a factor. Thus it appears that while Luria supplied Geneva with approximately 75,000 tons of scrap in 1952, compared to 70,000 in 1949, Geneva's total scrap purchases had increased from 73,630 tons in 1949 to over 124,000 tons in 1952.

In any event, in 1953 the amount and proportion of scrap supplied by Luria again increased, accounting for 77.1% of Geneva's total scrap purchases and 89.5% of its purchases from broker-dealer sources. While the proportion of Geneva's total scrap purchases supplied by Luria declined to 60.9% in 1954, following the end of the Korean conflict and the decline in scrap consumption, the proportion of broker-dealer scrap supplied by Luria increased substantially to 93.9%.

25. From the pattern of Geneva's purchases as well as from other evidence in the record, it seems clear that Luria acts as Geneva's exclusive broker and supplies it with substantially all of the scrap which it obtains in the Intermountain area. Because of high transportation costs this is the area from which Geneva obtains the bulk of its scrap. As Geneva's scrap needs increase, and it becomes necessary to reach out beyond this area, it calls periodically on a few dealers and an industrial fabricator in California, who are substantial suppliers to its California plants, to supply it with additional scrap.³⁸ While the Geneva plant also purchases scrap from several other dealers or from direct sources, most of such purchases are insubstantial or sporadic.³⁹ For the bulk of its scrap, which originates in the Intermountain area, Geneva relies principally on Luria. Outside of a sporadic purchase of scrap of Government, demolition or railroad origin, Geneva has not purchased scrap in the Intermountain area for any broker or dealer other than Luria with a single minor exception in April 1958, when the Purdy Co. offered it scrap from a newly established yard in Salt Lake City. All other dealers or broker-dealers in the Intermountain area sell their scrap to Geneva through Luria.

26. On September 1, 1952, the purchasing functions of the Geneva plant were transferred to San Francisco, following the merger of Geneva Steel and U.S. Steel's California subsidiary, Columbia Steel Co., into the parent company. It is contended by respondents that as an incident of such transfer the exclusive brokerage arrangement

³⁸ In the peak year of outside purchases, 1952, Geneva's principal purchases in addition to those from Luria were from the Los Angeles dealers, Alpert & Alpert and Berg Metals; from the Oakland dealer, the Learner Company; and from Metal & Thermit Corp., an industrial fabricator of South San Francisco. Purchases from Alpert declined in 1953 and ceased in 1954. Purchases from Berg were negligible in 1953 and ceased in 1954. The same is true of those from Learner. Only Metal & Thermit continued to supply substantial quantities of scrap in the succeeding years. Almost all of the scrap purchased from sources other than Luria in 1954 is accounted for by purchases from Metal & Thermit.

³⁹ Outside of the sources previously mentioned, the only other substantial purchases by Geneva were a single purchase of 3,100 tons from Kennecott Copper Co. in 1952, purchases of 1,700 and 4,800 tons from a Fresno dealer in 1952 and 1953, and a single purchase of 2,700 tons from an Oakland dealer in 1953.

pertaining to Geneva was terminated. No notification of such termination was given to the trade, and the purchases for the Geneva plant from Luria continued as they had before, the proportion thereof, particularly of scrap from broker-dealer sources, even increasing. It is highly dubious, on the basis of the evidence in the record, whether there was any intention to terminate the exclusive brokerage arrangement with Luria. Assuming, however, that U.S. Steel did intend to terminate the arrangement in or around September 1952, the action which it took does not constitute an effective termination of the arrangement so as to relieve it from such responsibility as may otherwise attach from the initial arrangement.

27. It is further contended by U.S. Steel that in June 1954 and April 1956 it advised dealers in the Intermountain area that they could sell scrap directly to the Geneva plant, rather than through Luria as broker. For the most part, the dealers who were so advised indicated that they preferred to continue selling through Luria. However, several dealers indicated that they would be interested in selling directly to Geneva but wished to be paid the same price as Luria was receiving, which was generally \$1.00 above that paid dealers. This the U.S. Steel representative declined to agree to, although in its main operations in the eastern and central United States, the company makes no distinction between dealers and brokers with respect to the price which it pays for scrap. Outside of an apparently pro forma offer to buy directly, dealers were given no encouragement by U.S. Steel to break the existing market pattern.

After operating for from 6 to 8 years as the Geneva plant's exclusive broker, Luria had become the dominant factor in the Intermountain scrap market. Its position was further enhanced by a similar arrangement with the Pueblo plant of CF&I and with others, with which U.S. Steel was familiar when it entered into the arrangement pertaining to the Geneva plant. It is, accordingly, the opinion and finding of the examiner that the efforts allegedly made by U.S. Steel to buy directly from dealers in 1954 and 1956 do not, in the light of the conditions which it had helped create, and in view of the fact that they were made after the institution of this proceeding, present a set of circumstances sufficient to relieve it of such responsibility as may otherwise attach from its original action in entering into the exclusive brokerage arrangement with Luria.

(4) *Respondents National and Weirton*

National Steel Corporation

1. Respondent National Steel Corporation, hereinafter referred to as National, is not an operating company, but owns and controls three

companies which operate steel plants, viz, Weirton Steel Company at Weirton, West Virginia; Great Lakes Steel Corporation at Detroit, Michigan; and Hanna Furnace Corporation at Buffalo, New York. The National companies, combined, constitute the fifth largest integrated steel producer in the United States in terms of annual ingot capacity, with 4.8% of the steel capacity and 5.5% of the pig iron capacity of the country.

Weirton Steel Company

2. Weirton Steel Company, herein referred to as Weirton, operates a plant at Weirton, West Virginia, which is located on the Ohio River about 45 miles west of Pittsburgh and 65 miles south of Youngstown. It is within the Pittsburgh-Youngstown steel-producing complex and scrap-market area. This area is a "minus" area, as far as scrap is concerned, in that it generates less scrap than it consumes because of its large concentration of steel-producing and scrap-consuming facilities. It is therefore frequently necessary for Weirton to reach out to more distant areas to meet its scrap requirements, which amount to approximately 40,000 tons to 60,000 tons a month.

3. Weirton is generally able to obtain only about 1,000 tons a month from strictly local sources, mainly industrial fabricators. It obtains about another 1,000 to 2,000 tons a month from Vulcan Detinning Co., an industrial fabricator in Pittsburgh. Additional quantities of scrap are obtained from several dealers or dealer-brokers located outside the Pittsburgh-Youngstown area. Most of these are located further down the river and ship to Weirton by barge, which is considerably cheaper than rail transportation. Among the largest of these are American Compressed Steel Corp., with branches at Cincinnati and Louisville, and F. Perlman & Co. at Memphis. Such barge suppliers account for about 10% of Weirton's scrap requirements. Additional small quantities are purchased from a few other dealers, such as I. H. Schlezinger & Son of Columbus, for shipment by rail. The balance of Weirton's scrap, varying from 64.5% to 85.4% of its total purchases, is acquired from Luria.

4. In purchasing from dealers and dealer-brokers other than Luria, Weirton usually issues orders monthly calling for delivery of a fixed amount of scrap at a fixed price. These suppliers are generally expected to limit their shipments to scrap which originates in their own local areas. They receive no brokerage commission over and above the agreed price. In dealing with Luria, on the other hand, Weirton pays it a commission of \$1.00 a ton above the price agreed upon. No limitation is placed upon the areas from which Luria may ship scrap, and it may even ship from the areas within which the local dealer and dealer-broker suppliers described above are located.

5. Weirton looks to Luria to supply it with the bulk of its scrap requirements, outside of the relatively small and fairly stable amounts which it purchases at regular monthly intervals from a few industrial fabricators and dealers. It regularly confers with Luria with regard to its scrap requirements and with regard to market conditions. It also consults with Luria concerning the prices to be paid other suppliers.

6. Luria is the only firm from which Weirton buys scrap on a brokerage basis. While some of the dealers from whom it buys scrap also do a brokerage business, Weirton deals with them essentially as dealers. It generally issues monthly orders to these dealers based on the limited amounts of scrap which they expect to generate in their local areas. The dealers receive a fixed price which is set by Weirton. In Luria's case, orders are issued from time to time throughout the month, for as much scrap as is necessary to fill Weirton's requirements over and above the scrap ordered from the few other dealers and fabricators. Unlike the other dealers who receive a fixed price irrespective of cost, Luria is paid the cost of the scrap to it plus \$1.00 a ton commission.

7. It is generally recognized by brokers and dealers in the Pittsburgh, Youngstown and Cleveland areas that Luria is Weirton's only broker. Dealers in these areas shipping scrap to Weirton do so only through Luria. Other brokers who have attempted to sell to Weirton have been unsuccessful and have generally ceased to offer scrap to Weirton. Some brokers who have attempted to sell scrap to Weirton have been referred to Luria and, in some instances, have shipped scrap to Weirton through Luria.

8. It is undisputed that Luria is, and has been for a number of years, Weirton's principal supplier of scrap. Weirton's vice president in charge of scrap purchases, Wilmer A. Murphy, acknowledged in his testimony that Weirton looks to Luria to supply it with its "general run of dealers' scrap" (R. 9351), which constitutes its "main requirements" for scrap (R. 9354). While denying that there was any "obligation on either part, theirs or ours", for Luria to supply, or for Weirton to order, the bulk of Weirton's scrap requirements, Murphy conceded he "would like to feel" that Luria had a "moral obligation" to supply Weirton with its principal scrap requirements.

9. It seems clear that there is an informal understanding, agreement or arrangement between Luria and Weirton, that Luria will supply the principal part of Weirton's scrap requirements and, as a part thereof, that Luria will act as Weirton's substantially exclusive broker. There is no serious dispute as to what Weirton's policy or practice is in dealing with Luria. The principal dispute is as to the legally binding nature thereof. Weirton argues that there is "no

legally enforceable agreement between Luria and Weirton to supply Weirton's requirements of scrap" and that "[e]ither side may cancel at any time". Granted that the arrangement may not be legally enforceable and may be cancelled at any time, the fact remains that it exists, that it has existed since at least 1945 and probably prior to that time, and that it will continue to exist indefinitely until either side elects to cancel it. As such, it constitutes a substantial impediment to competitors of Luria in selling scrap to Weirton.

10. It is suggested by Weirton that the arrangement does not constitute a serious impediment to competitors of Luria since Weirton's purchases of scrap account for only a minor portion of the scrap purchased by the principal scrap consumers in the Pittsburgh-Youngstown area. The figures cited by Weirton do not, however, sustain its position. In the period from 1945 to 1954, Weirton's scrap purchases were never less than 9.74% of the scrap purchased by steel producers in the area and in most years exceeded 11%. In the years 1946, 1949 and 1954, Weirton's scrap purchases accounted for 14.07%, 15.18% and 13.62%, respectively, of the scrap purchased in the area. Weirton is the third largest consumer of broker-dealer scrap, being surpassed only by U.S. Steel and Republic Steel among the other consumers in the area. It seems clear, under the circumstances, that Weirton's scrap purchases involve a not insubstantial portion of the Pittsburgh-Youngstown scrap market.

Great Lakes Steel Corporation

11. Great Lakes Steel Corporation, herein referred to as Great Lakes, is not named as a respondent in this proceeding. Until the middle of 1954 it had no exclusive or preferential arrangement with any broker or dealer. It bought its scrap from a number of different brokers and dealers, including respondent Luria. In the years 1945 to 1953, Luria never supplied more than 19.6% of the total scrap purchased by the plant or 23.5% of the scrap purchased from broker-dealer sources. These maximum percentages were reached in the years 1948 and 1949. In the following years, from 1950 to 1953, the percentage of scrap purchased by Great Lakes from Luria declined until it was less than 5% in 1953. Among the brokers and dealers from whom Great Lakes purchased substantial tonnages of scrap during this period were Grant Iron & Metal Co., S. G. Keywell Co., Luria Steel & Trading Co., and Herman Golanty Co., who, respectively, accounted for 19%, 14.4%, 10.6% and 28.5% of Great Lakes' total scrap purchases in 1953.

12. While Great Lakes was owned and controlled by respondent National prior to 1954, it pursued an independent policy insofar as the purchase of scrap was concerned. However, in the middle of 1954

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a number of changes were made in the top management of Great Lakes, as a result of which Wilmer A. Murphy, vice president in charge of scrap purchases for Weirton, took over a similar responsibility for Great Lakes. As a result of this change, Great Lakes ceased doing business with all its former brokers and dealers, except for respondent Luria and The S. G. Keywell Company of Detroit. Murphy's explanation for selecting Luria as one of the two main suppliers for Great Lakes was that, "through my familiarity with Luria and my contact with Luria [at Weirton] it was only natural and I did select them as one of our brokers for the Detroit area" (R. 9360). His explanation for restricting his purchases for Great Lakes to two brokers was (R. 9360) :

Detroit being a plus scrap market where the scrap is produced rather plentifully at most times, I thought that two suppliers, two brokers in the Detroit area were sufficient * * *.

The examiner finds it somewhat difficult to follow the logic of Murphy's explanation. He apparently felt that he could get along with only two brokers at Great Lakes because of the abundance of scrap in the area. Yet at Weirton, which is a "minus" area, requiring that Weirton reach out for great distances to acquire scrap, Murphy instead of expanding his suppliers to encompass a greater number of brokers, has done the reverse and has limited himself to substantially one broker. This is the same broker which he chose as one of his two main suppliers for Great Lakes. One can only speculate as to whether the fact that Murphy's decision at Great Lakes occurred approximately 6 months after the institution of this proceeding had any effect on his decision to choose another broker in addition to Luria. Suffice it to say, that for purposes of this proceeding, the fact that Murphy catapulted Luria, which had been in a declining position at Great Lakes, into one of the prime positions as a supplier to the plant is indicative of the close relationship which existed between them at Weirton.

13. During the first 6 months of the new dispensation at Great Lakes, Luria received the lion's share of the business. For the last half of 1954 Great Lakes purchased 70.4% of its scrap from Luria as compared to 27.9% from Keywell, and a minor fraction from non-broker sources. However, in 1955 Great Lakes' purchases were more evenly distributed between its two brokers. In the first quarter of the year 56.9% was purchased from Luria, compared to 39.2% from Keywell, while in the second quarter 53.1% was purchased from Luria, compared to 44.7% from Keywell. Aside from any difference in quantities purchased, Keywell was placed in a position of competitive equality with Luria, in that it received \$1.00 a ton commission on

all purchases. This is in sharp contrast to the treatment of the other dealers and broker-dealers supplying the Weirton plant, who received no such commission on purchases made from them.

Hanna Furnace Corporation

14. Hanna Furnace Corporation, herein referred to as Hanna, is not named in the complaint as a respondent. It does not purchase any scrap directly. Purchases for that plant are made by the Great Lakes subsidiary of National.

15. Luria has been a relatively minor supplier of scrap for Hanna. The maximum percentage of scrap sold by it to Hanna was 21.7% in 1948. Thereafter, purchases from Luria for the Hanna plant declined, until they ceased entirely in 1953.

16. The change described above involving the top management of Great Lakes, which occurred in the middle of 1954, also affected Hanna, in that Murphy's scrap-buying responsibilities were also extended to Hanna. No scrap was purchased for Hanna in the second half of 1954, after Murphy assumed responsibility for the Hanna operation. However, in the second quarter of 1955, approximately 14,000 tons were purchased, of which 8,700 were purchased from Keywell, 3,000 tons from Luria and 2,500 tons from Buffalo Housewrecking & Salvage Co. The latter, it may be noted, had been by far the largest supplier to Hanna in the period prior to the middle of 1954. While it cannot be said that Luria became the chief supplier to Hanna following the assumption of control by Murphy of purchasing for Hanna, it is significant that there was a resumption of purchases from Luria in 1955 following a complete cessation of relations in 1953.

Concluding Findings

17. Since at least 1945 Luria has been the principal supplier of scrap to Weirton Steel, the largest scrap-consuming facility of National Steel. Luria supplies between 65% and 85% of Weirton's scrap requirements, which average between 500,000 and 750,000 tons annually. Luria is Weirton's substantially exclusive broker and supplies substantially all of the scrap which Weirton purchases on a brokerage basis. There exists an understanding, agreement or arrangement between Weirton and Luria for Luria to supply the principal part of Weirton's scrap requirements and to act as its substantially exclusive broker. This arrangement is informal, has no fixed duration, and is subject to cancellation at any time. However, from the period of time it has been in effect, and the conduct of the parties, there is no reason to anticipate any early cancellation of the arrangement.

18. Luria is also a substantial supplier to Great Lakes Steel and Hanna Furnace, National Steel's two other scrap-consuming facilities. Great Lakes scrap purchases average from 350,000 to 650,000

tons annually. It also purchases scrap for the Hanna plant, which generally averages less than 20,000 tons a year. Prior to 1954 Luria's sales to Great Lakes were either declining or had ceased. However, in the middle of 1954, Luria's position as a supplier to these plants underwent a marked improvement. This occurred after the vice president in charge of scrap purchasing at Weirton assumed a similar responsibility at Great Lakes and Hanna. Luria became the largest supplier to the Great Lakes plant, although the plant continued to purchase brokerage scrap from one other broker, The S. G. Keywell Company. Purchases from all other brokers ceased. Luria also became the second largest supplier to Hanna Furnace, following Keywell. Purchases from Buffalo Housewrecking & Salvage Co., formerly the largest supplier to Hanna, have been curtailed. While the change at Great Lakes and Hanna, which occurred after the institution of this proceeding, did not result in Luria's becoming exclusive broker for those plants, the examiner is satisfied that the improvement in its position is an outgrowth of the basic arrangement which exists at Weirton. The examiner is also satisfied that the relationships maintained with Luria by all three of National Steel's subsidiaries are the result of a policy decision by the parent company, and to this extent the latter must share any liability arising from such relationships.

(5) *Respondent Edgewater*

1. Edgewater Steel Company, sometimes referred to herein as Edgewater, operates a steel mill at Verona, Pennsylvania, about 15 miles north of Pittsburgh. As of January 1, 1954, it was the twenty-seventh largest semi-integrated steel producer in the United States, in terms of annual steel ingot capacity. Edgewater has no corporate connection with any other steel mill. However, the chairman of the board of respondent National is also a member of the board of Edgewater.

2. Up to 1948, Edgewater followed the practice of purchasing iron and steel scrap from a number of different scrap brokers and dealers, among which was included respondent Luria. In the years 1945 and 1946 Luria supplied 21.8% and 23.6%, respectively, of all the scrap purchased by Edgewater. In 1947 Edgewater bought no scrap from Luria.

3. Around the middle of 1948 Edgewater changed its scrap buying policies. It was decided to concentrate the company's scrap purchases on a single broker. Respondent Luria was chosen as this broker. While the decision was made during 1948, it was not fully implemented for over a year, Edgewater's arrangement with Luria being conducted on an experimental basis during this period. After the middle of 1948 it began to step up its purchases from Luria and curtail its purchases

from other suppliers. In 1949 it purchased scrap from only one broker other than Luria. Beginning in 1950 Luria became Edgewater's exclusive source of broker-dealer scrap, its sales to Edgewater constituting 100% of the scrap purchased by Edgewater from brokers and dealers in that year and in each succeeding year, except for the year 1951 when purchases from Luria amounted to 94.9% of the broker-dealer scrap acquired by Edgewater, due to Edgewater's acquiring some scrap under the Government allocations program. Edgewater also purchased some scrap from a non-broker-dealer source in the period after 1950. Purchases from such source were generally less than 10% of its total scrap purchases. Edgewater concedes, in its proposed findings, that it has "continued the practice of buying substantially all of its scrap from respondent Luria".

4. The decision to buy through a single broker was made by the operating officials of Edgewater. However, in choosing Luria as that broker they consulted with Ernest G. Weir, chairman of the board of respondent National Steel, who is also a member of Edgewater's board, and with officials of respondent Weirton. Discussions were had with an official in Luria's Pittsburgh office, who advised Edgewater that Luria could supply Edgewater's full requirements and would undertake to do so.

5. It is contended by Edgewater that its decision to buy from a single broker was motivated by the fact that it had been unable, particularly in 1948 and just prior thereto, to obtain sufficient scrap to meet its requirements. Edgewater's president testified that other brokers and dealers were unwilling to accept orders for the small quantities involved. The evidence discloses that 1948 represented a high-water mark in Edgewater's scrap purchases, which was approached again only in 1952. Thus it appears that the quantity of scrap supplied by Luria was generally no greater than that being supplied by multiple suppliers prior to the Luria exclusive. It may also be noted that in 1947, which was Edgewater's lowest postwar scrap year, quantity-wise, Luria supplied it with no scrap. Thus it appears that Edgewater was rewarding a company which ranked high among those which did not or would not supply it with scrap.

It is also contended that Edgewater had been unable to obtain scrap of the quality it needed when it purchased from multiple suppliers. However, Edgewater's president conceded in his testimony that he could recall no complaints regarding the quality of the scrap shipped to his company in the pre-exclusive period (R. 8840), and that there was no noticeable difference between the rate of rejection of scrap shipped by Luria and that shipped by other brokers (R. 8857).

6. While conceding that competition resulting from the use of multi-

ple suppliers might affect the price it would have to pay for scrap, Edgewater's president claimed that the small amount of scrap purchased by his company would be insufficient "to throw the market out" (R. 8848). Edgewater cites, in this connection, the figures of its scrap purchases as compared to those purchased from brokers and dealers in the Pittsburgh-Youngstown market as a whole. The figures cited reveal that Edgewater's purchases from brokers and dealers constitute around 2/10 of 1% of the total purchases of broker-dealer scrap in the Pittsburgh-Youngstown market in most years. It thus appears that Edgewater is a very minor factor in the market, insofar as its purchases of scrap are concerned.

7. Aside from the relative quantities of scrap involved, it is contended by respondents that there is no agreement between Edgewater and Luria to continue purchasing from Luria, and that the arrangement between them is on a day-to-day basis. The evidence discloses that Edgewater looks to Luria to supply it with its scrap requirements and has done so for over 10 years, that during the Korean conflict Government agencies were advised Luria was Edgewater's exclusive supplier (CX 860), and that other brokers or dealers who attempt to sell to Edgewater would be advised that Edgewater wishes to continue with Luria (R. 8855). It is concluded and found, from the evidence as a whole, that there exists an agreement or understanding between Luria and Edgewater for Luria to act as Edgewater's broker and to supply it with substantially all of its scrap. The agreement is similar to the one with respondent Weirton, with whom Edgewater conferred before entering into the agreement with Luria. While the arrangement is informal and is subject to cancellation, there is no question that it is more than an order-to-order or day-to-day arrangement. Until steps are taken to cancel it, the arrangement will continue indefinitely.

(6) *Respondents Central and Phoenix*

1. At the time of the issuance of the complaint herein, Central Iron & Steel Company, referred to herein as Central, operated a steel mill at Harrisburg, Pennsylvania. Central was then a subsidiary of Barium Steel Company, having been acquired by Barium in 1946. Central, in turn, owned and controlled Phoenix Iron & Steel Company, referred to herein as Old Phoenix, which was acquired in 1949. Old Phoenix operated a steel plant at Phoenixville, Pennsylvania. Following the issuance of the complaint, Old Phoenix and several other companies then owned by Barium were merged into Central and the name of Central was changed to Phoenix Iron & Steel Company, which is referred to herein as New Phoenix. The plants operated at Harris-

burg and Phoenixville are the only substantial scrap-consuming and steel-producing plants of Barium or its subsidiaries. The Barium companies were the twentieth largest integrated steel producer in the United States as of January 1, 1954.

Central

2. Luria was a supplier to the mill operated at Harrisburg by Central prior to the acquisition of the mill by Barium. In 1947, the first year after Barium's acquisition of the mill, Luria supplied 44.7% of the scrap purchased by Central. Other substantial suppliers were Luria Steel & Trading, which supplied approximately 14% of the mill's requirements and Charles Dreifus Company of Philadelphia, which supplied about 12%.

3. In July 1948, Joseph Sisto, chairman of the board of Barium, entered into an oral agreement with Luria and with Southwest Steel Corporation to buy the scrap requirements for Central's mill at Harrisburg exclusively from these two brokers. The arrangement was apparently not for any fixed duration and was subject to termination at any time by any of the parties. At the time the agreement was entered into, Southwest was an independent company and was not affiliated with Luria, which, as previously noted, acquired control of Southwest in February 1950. In 1948, during which year the agreement had been in effect for about 6 months, Central purchased 53.8% of its scrap requirements from Luria and 17.4% from Southwest. In the succeeding years Central's purchases from Luria increased substantially and those from Southwest declined until they ceased entirely during 1954. The percentage figures of Central's purchases from Luria and from Southwest between 1949 and 1954 are as follows:

	1949	1950	1951	1952	1953	1954
Luria.....	74.9	92.9	79.2	83.7	90.0	97.9
Southwest.....	21.7	4.3	11.9	13.9	10.0	0.6

4. Although the evidence establishes that Central agreed to buy its scrap exclusively from Luria and Southwest, it is not clear what understanding was reached with respect to the proportion of scrap which would be purchased from each company. Harold B. Freeman, vice president of Central in charge of scrap purchases, who assumed that responsibility for Central in 1951, testified that while he was instructed by Sisto to buy scrap only from Luria and Southwest, he received no instructions as to how to divide his purchases as between the two companies. From the purchase figures themselves, it is apparent that even before Freeman took over the responsibility of purchasing scrap for Central in 1951, the bulk of the scrap was being

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acquired from Luria. Freeman's testimony suggests that purchases from Southwest involved mainly specialty grades of scrap, such as cast iron. Southwest was restricted to supplying scrap from the Pittsburgh area and points further west. It was not permitted to purchase scrap in the Harrisburg area. No such limitation was placed on Luria.

While Luria acquired control of Southwest in 1950, according to Freeman's testimony he did not learn of this until early in 1954 when the complaint in this proceeding was issued, although he had heard rumors of the acquisition prior to that time. Freeman testified that he ceased further purchases from Southwest in 1954 because "[t]hey now belong to Luria Brothers" (R. 4937). As of the middle of 1956, when Freeman testified, Central was buying substantially all of its scrap requirements from Luria.

Phoenix

5. Barium acquired control of Old Phoenix in September 1949, when it became a subsidiary of Central. Prior to its acquisition by Central, the principal suppliers of the Old Phoenix plant at Phoenixville, Pennsylvania, were Luria, Charles Dreifus Company, and Luria Steel & Trading. Harold B. Freeman, the vice president in charge of scrap purchases at Old Phoenix as well as Central, assumed responsibility of buying scrap for the Phoenixville plant in March 1950. At that time he received instructions from Sisto to follow the same scrap buying policy as was then in effect at Central, viz, to buy only from Luria and Southwest. The proportion of Phoenixville's purchases from Luria and Southwest in the years 1950 through 1954, for which there is information in the record, was as follows:

[Percent]					
	1950	1951	1952	1953	1954
Luria.....	87.0	61.9	77.9	92.9	100.0
Southwest.....	12.1	23.0	12.0	5.9	0.0

As is apparent from the above figures, the proportion of purchases from Southwest declined after 1951 and ceased entirely in 1954. This was due to the same reason discussed above in connection with Central, viz, that Luria had acquired control of Southwest and Phoenix considered it part of the same organization.

6. Luria suggests in its proposed findings that Old Phoenix ceased doing business with its former suppliers, Dreifus and LS&T, because they had refused to complete certain orders which were outstanding when the plant at Phoenixville was closed down in June 1949, prior to its acquisition by Barium in September 1949. This argument is based on Freeman's testimony that when Barium sought to reinstate

the old orders with Dreifus and LS&T, after they had been suspended for 4 or 5 months, the latter brokers were unwilling to fill the orders. The examiner is not convinced that this had anything to do with the dropping of the two former suppliers. In the first place, Freeman did not take charge of scrap purchases for Old Phoenix until March 1950, and was obviously speculating in his testimony as to why purchases from these companies had ceased prior thereto. In the second place, it is apparent from Freeman's testimony that with the rapid changes in the scrap market, there could have been no serious expectation that a contract which had been suspended for four or five months could be reinstated at the same price. Finally, and most important, it is clear that the reason why Old Phoenix ceased buying from these two former suppliers was that Barium had decided to apply to the plant at Phoenixville the scrap buying policy which was already in effect at Central. Freeman himself testified that after Barium acquired control of Phoenixville, he received instructions from either Sisto of Barium or the president of Central "that we were buying our scrap from Luria Brothers and Southwest" (R. 4944).

Concluding Findings

7. It is undisputed that the Central and Phoenix respondents purchase substantially all of the requirements of scrap for their plants at Harrisburg and Phoenixville, Pennsylvania from respondent Luria. This is admitted in the answer filed by the mill respondents in this proceeding, and in the testimony of the official who is in charge of scrap purchases for said mills at the present time.

8. This practice has its origin in an oral agreement entered into by the chairman of the board of Barium Steel, parent company of the mill respondents, in July 1948, pertaining to the Harrisburg plant of respondent Central. Pursuant thereto it was agreed that Central would buy its scrap requirements exclusively from respondents Luria and Southwest. This agreement was extended to the Phoenixville plant of respondent Phoenix after that plant was acquired by respondent Central in September 1949.

9. While the original arrangement provided that purchases would be made from both Luria and Southwest, the bulk of the purchases were made from Luria, and Southwest was restricted to a minor role. Purchases from Southwest, which was acquired by Luria in February 1950, gradually declined and ceased altogether in 1954. Respondents Phoenix and Central do not attempt to buy from other brokers, have advised other brokers they are not in the market, have designated Luria as broker on Government scrap allocated to them, and have requested railroads and others to designate Luria as broker on scrap

allocated to them. The agreement, which was originally made by respondent Central and extended to respondent Phoenix, has been adopted by New Phoenix with which said respondents were merged in 1955.

10. It is concluded and found that respondents Central and Old Phoenix, and their successor, New Phoenix, have agreed with Luria that the latter shall be their exclusive broker and that they shall purchase substantially all of their scrap from Luria. It is contended that any agreement which exists with Luria is not of a fixed duration and may be cancelled at any time. While this may be true, it does not gainsay the existence of the arrangement or the likelihood of its indefinite continuance. It may be noted, in this connection, that the record reveals the making of substantial loans by Luria to Central, to Old Phoenix and to certain officials of Barium Steel. While some of the loans have been repaid, certain of them were still outstanding at the time of the taking of testimony in this proceeding. The close relationship thus revealed is an additional circumstance militating against the possibility of an early cancellation of the present exclusive arrangement.

(7) *Respondent Granite City*

1. Granite City Steel Company, sometimes referred to herein as Granite City, operates a steel mill at Granite City, Illinois, which is located across the Mississippi River from St. Louis, Missouri, and is within the St. Louis steel-producing and scrap-consuming market complex. It is the sixteenth largest integrated steel producer in the United States and is the largest in the St. Louis area. Only one other company in the St. Louis area approaches Granite City in the quantity of scrap which it purchases, viz, Laclede Steel Company.

2. Prior to 1950 Granite City purchased its scrap from a number of different scrap brokers and dealers in the St. Louis area. Luria, which had opened a brokerage office in St. Louis in 1945, was a negligible source of supply for Granite City up to 1950. In 1945, the first year for which there are any figures in the record, Luria supplied 3.4% of the scrap purchased by Granite City. In the succeeding years up to 1950 Luria's sales to Granite City were infinitesimal, being 0.1% in two of the intervening years and 0.3% in the other two years.

3. In 1950 a change occurred in Granite City's scrap buying policy, as a result of which Luria became Granite City's exclusive scrap broker and substantially exclusive supplier. The change began in April of that year and was fully implemented within about 5 months. For the year 1950 the proportion of Granite City's purchased scrap requirements supplied by Luria increased to 59.0%, as contrasted with

0.3% in the year 1949. In the years 1951 and 1952, Luria supplied 83.5% and 90.0%, respectively, of Granite City's scrap requirements, the balance being accounted for largely by scrap received under Government allocations. In 1953 Luria supplied 100.0% of Granite City's scrap requirements and in 1954 Luria's percentage was 97.7%, the balance in the latter year being obtained from nonbroker-dealer sources. It is conceded by Granite City in its answer filed to the complaint that it has pursued "a policy of obtaining, insofar as it was possible, all of its iron and steel scrap requirements" from Luria.

4. The change in Granite City's scrap buying policies was an outgrowth of a change in its top management, which occurred in August 1949 when John N. Marshall became the chairman of the board of Granite City and took over active management of the company. Later in 1949 Marshall entered into discussions with Mr. Jack Gordon, the head of Luria's St. Louis office (whom Marshall had previously known when he was in business in Pittsburgh), with a view to Luria's becoming Granite City's broker and exclusive supplier. Gordon advised Marshall that Luria was the supplier for a number of other steel companies, including CF&I, Lukens and U.S. Steel. Marshall sent two Granite City officials to CF&I to verify the facts with respect to Luria's performance for that company, and himself talked to a representative of Lukens. After further discussions in which representatives of Luria's top management participated, including its then president, Joel Claster, and its executive vice president, Ralph Ablon, agreement was reached in March 1950 on an arrangement under which Luria was to become Granite City's exclusive broker and undertake to supply the mill with its entire requirements of purchased scrap.

5. Thereafter, a notice dated April 5, 1950, was sent out to the trade by Granite City "Announcing the Appointment of Luria Brothers & Company, Inc. of Philadelphia, Pennsylvania, As Our Exclusive Scrap Broker" (CX 195). The announcement was similar to that sent out announcing the U.S. Steel (Geneva) exclusive with Luria and was identical with the one announcing Luria's appointment as CF&I's exclusive broker. The announcement caused considerable "furor" and "indignation" among the dealers and brokers in the area who had previously been direct suppliers of Granite City (R. 6192). Consequently Marshall, on September 28, 1950, called a meeting of the brokers and dealers in the area in an apparent effort to assuage their feelings and secure their cooperation. During the course of the meeting those assembled were advised that they could not expect to do business with Granite City directly, as they had formerly done, and were requested to continue to supply their scrap to Granite City by

selling it to Luria as the company's exclusive broker. Some of the brokers and dealers were unwilling to sell their scrap through Luria, but a number of others continued to supply scrap to Granite City by selling it to Luria.

6. The arrangement between Granite City and Luria involves daily contact between the two companies, with the mill keeping Luria advised of its scrap tonnage requirements for a constantly projected period or "lead time" of ninety days. Luria purchases Granite City's requirements for the 90-day projected period, with periodic modifications to accord with the mill's changing melt needs and the current market situation. The price to be paid for the scrap is agreed upon at 30-day intervals. The price is based on the cost of scrap to Luria, plus \$1.00 a ton commission to it. Where freight charges are involved, Granite City pays the freight.

7. Following the understanding reached in March 1950, a close and intimate relationship developed between Granite City and Luria, which precluded all possibility of other brokers and dealers selling directly to Luria, and in which Luria's position as Granite City's exclusive broker was constantly reinforced. Other brokers and dealers who periodically offered scrap to Granite City were advised that Luria was its exclusive broker, and were requested to contact Luria. In some instances written offers of scrap from others were turned over to Luria. During the period of Government allocations, Granite City sought to have Luria designated as broker on scrap allocated to it. On some occasions it declined scrap from a broker originally designated and sought to have Luria substituted. It also refused "free scrap", *i.e.*, nonallocated scrap, at a time when it was applying to the Government for allocations. During periods of shortage, it sought to persuade industrial fabricators to whom it sold steel, to ship their scrap back to it through Luria.

8. There is no real dispute as to Granite City's scrap buying policy, nor as to its practice in dealing with Luria. Indeed, in the face of the announcement made to the trade in April 1950, the statistical evidence of its scrap purchases since 1950, and the other evidence discussed above, there can be little dispute on this score. The only matters as to which there is any dispute are: (a) The legally binding nature of the relationship which now exists between Granite City and Luria, and (b) the reason for the change in Granite City's scrap buying policy. To a consideration of these matters the examiner now turns briefly.

9. In its answer to the complaint Granite City, while conceding that it has "announced and followed the policy of obtaining, insofar as it was possible, all of its iron and steel scrap requirements from

respondent Luria Brothers & Company, Inc.", asserts that it has done this "voluntarily and without agreement of any nature". In the memorandum filed in support of its motion to dismiss the complaint, Granite City contends that there is "no agreement binding either party to continue to deal with the other" and that the present "arrangement exists on an 'order-to-order' basis". Respondent Luria likewise characterizes the arrangement as being on "an order-to-order basis" (R. 674).

Respondents' argument appears to assume that absent a legally binding agreement to continue their relationship for a fixed period, it can only be regarded as a casual "order-to-order" arrangement. However, it is clear from the evidence as a whole, including the testimony of respondents' own officials, that the parties contemplated a stable, long-range relationship of a more than casual order-to-order nature, albeit the arrangement had no fixed duration and either party could withdraw at any time. Thus, according to Marshall's own testimony, Luria agreed at the time of entering into the arrangement that (R. 6191) :

They would guarantee to supply our requirements at the set price, and they would have it there no matter what. I said "In other words, we are hiring you to do a job that has to be done."

It also appears from Marshall's testimony that Luria at first undertook to assume this obligation only for a trial period, and that when this period was up it was decided to continue the arrangement for an indefinite period. This was obviously what Marshall contemplated in announcing the arrangement to the trade at the meeting of September 28, 1950, at the end of the trial period. Marshall told those assembled that Luria had agreed to guarantee his company's entire requirements and that it was in his opinion the only broker capable of doing this, and he requested the other brokers and dealers to thereafter make their offerings through Luria. A Luria official, while characterizing the arrangement as being on an order-to-order basis, also testified (R. 674) :

As long as we were willing to give them what they wanted they were *willing to continue* to give us new orders. [Emphasis supplied.]

It is significant that while Granite City officials endeavored in their testimony to stress the casual nature of the arrangement with Luria, in a statement submitted to the Commission several years earlier they stated (CX 720-A) :

In April of 1950 we gave Luria Brothers & Company, Inc., an agreement for the exclusive supplying of our scrap requirements.

It seems clear from the record that there is an understanding and agreement between Granite City and Luria, of unspecified duration,

to the general effect that Granite City will deal with Luria as its exclusive broker and that Luria will supply all or substantially all of Granite City's scrap requirements. While it may be that, as a matter of private contract law, either party could withdraw from the arrangement, there is no question as to the existence of the understanding and agreement. The fact is that it has persisted for almost 10 years, and that it will continue in effect indefinitely until rescinded by either party.

10. The other matter in dispute concerns Granite City's reason for entering into the arrangement with Luria. According to the Granite City witnesses, the company was dissatisfied with the performance of the brokers and dealers in the area because they periodically failed to fill their contracts, at the prices and within the times agreed upon, and because the scrap delivered failed to live up to specifications. This was denied by a number of the suppliers, who were called as witnesses in support of the complaint and who testified that Granite City had not indicated any dissatisfaction with their performance. They claimed that their deliveries and performance were in accordance with the usual practice in the industry. According to the testimony of these dealers, which the examiner credits, no reference was made, at the meeting of September 28, 1950, by the Granite City representative concerning the company's dissatisfaction with its former suppliers. They were merely requested to cooperate and ship their scrap to Granite City through Luria.

The examiner is not convinced that dissatisfaction with the performance of existing suppliers, as described by the Granite City representatives, was the basic reason for the change in Granite City's scrap buying policy. The same suppliers were requested by Granite City to continue to ship their scrap to it, except that they were requested to sell it through Luria. The record reveals that the performance by a broker depends largely on the capability of the dealers from whom the scrap is obtained to properly prepare it and ship it on time. It is also significant that a substantial proportion of the suppliers to Granite City were also suppliers to the other major consumers of scrap in the St. Louis market, and continued as direct suppliers to such mills even after the Granite City-Luria arrangement.⁴⁰ The testimony of representatives of these companies, in charge of scrap buying, reveals that the performance of the suppliers concerning whom Granite City complained was generally satisfactory and in accordance with

⁴⁰ The other major consumers of scrap in the St. Louis area include Laclede Steel Company, Scullin Steel Company, General Steel Castings Company and American Steel Foundries.

industry standards, both with respect to fulfilling their contracts and with respect to quality and time of delivery.⁴¹

In any event, aside from the dubious nature of the testimony of the Granite City officials regarding the performance of their other suppliers as the basic reason for the mill's selecting Luria as its exclusive broker, it is the opinion of the examiner that most of the testimony in this regard is of marginal relevance. The important issue in this proceeding, as will hereafter be more fully discussed, is not so much a mill's motive in selecting Luria as its exclusive broker, as it is whether the exclusive arrangement has or may be expected to have a substantial preclusive effect on competition in the market.

11. There can be little doubt as to the effect of the exclusive arrangement between Luria and Granite City on the St. Louis market. As will hereafter more fully appear, it resulted in boosting Luria to the position of the major supplier in the St. Louis market, with its sales accounting for almost half of the scrap purchased from brokers and dealers by the five major consumers of scrap in the area. It has resulted in a reduction in the price of scrap paid by Granite City due, in part at least, to the reduction of competition which occurred when former suppliers were precluded from selling scrap directly to Granite City. There can be no doubt that Luria, with its wide-spread, nationwide buying organization, is in a better position to bring pressure on recalcitrant dealers to sell at its price than would Granite City if it were buying directly from multiple brokers and dealers. The alternatives open to dealers who do not wish to sell to Luria for delivery to Granite City are relatively limited, first because Granite City is the largest consumer of scrap in the area, and secondly because it is the major consumer of No. 2 bundles. Dealers who produce No. 2 bundles prefer to deal with consumers, or brokers for consumers, who will buy all their scrap.

Following Luria's exclusive arrangement with Granite City, two of the brokers in the St. Louis area went out of business. These were Jack R. Forcheimer & Son and Hickman, Williams & Co. Inc. In June or July 1950, the Forcheimer operation was closed down and its principal officials went to work for Luria. While Forcheimer's sold considerably more scrap to Laclede Steel than it did to Granite City,

⁴¹ The largest suppliers to Granite City Steel included Bierman Iron & Metal Company, Gus Gillerman Iron & Metal Company, Hyman-Michaels Company, The Purdy Company, and Luria Steel & Trading Company. All of these were also among the main suppliers to Scullin Steel. All except LS&T were among the main suppliers to General Steel Castings, and all but Bierman were among the main suppliers to Laclede and American Steel Foundries. The Scullin Steel witness indicated that there was no difference between the performance of Luria, which is also a supplier to that company, and the company's other suppliers. The only substantial broker or dealer supplier to Granite City, who was not a large supplier to the other four large consumers of scrap, was Grossman Iron & Metal Company. The largest proportion of Grossman's scrap after 1950 was sold to Luria for shipment to Granite City.

the position Luria was able to achieve as a result of the exclusive with Granite City was undoubtedly a factor in the Forcheimer decision to liquidate.⁴² In the case of Hickman, Williams the Granite City exclusive with Luria "was a contributing factor" (R. 6879). While, as respondent Luria points out, the receipt of an excellent offer from another broker was also a "strong factor," the examiner entertains no doubt that it was considered to be "strong" because Hickman, Williams' future had become considerably less bright due to the Luria exclusive. Following the arrangement between Luria and Granite City, Hickman, Williams for a period of about 2 years sold scrap to Luria for Granite City, before going out of business. This experience undoubtedly played a part in Hickman, Williams' conclusion, in deciding to sell out, that the St. Louis district "had developed into a not too attractive market" (R. 6880).

In addition to playing a part in the departure of dealers or brokers from the market, the Luria-Granite City exclusive caused a decline in the sales of other firms. Thus The Purdy Company, which had been a substantial supplier to Granite City, experienced a drop in sales after 1950 from which it had still not recovered by 1955. While certain brokers and dealers experienced an increase in sales after 1949 or 1950, in only a few instances was it commensurate with the substantial increase in Luria's sales or in the over-all increase in scrap purchases during the Korean conflict, and in several instances the increases were accomplished at the expense of increased dependence on Luria.

Concluding Findings

12. In or about March 1950 Luria and Granite City entered into an agreement or understanding that Luria would be Granite City's exclusive broker, and that Granite City would purchase substantially all of its scrap requirements from Luria. A printed announcement of Luria's appointment as Granite City's exclusive broker was issued to the trade on April 5, 1950. At a meeting of many of the brokers and dealers in the area, called by Granite City in September 1950, as a result of dissatisfaction over the inability of the dealers and brokers to sell directly to Granite City, the latter's chief executive official advised those assembled that his company intended to continue using Luria as its exclusive broker and requested them to sell scrap, intended for Granite City, through Luria.

13. Since entering into the agreement with Luria in 1950, Granite City has continued to use Luria as its exclusive broker and has con-

⁴² A Forcheimer official testified (R. 6784):

I just thought the future with Luria Brothers was large enough that it would be a more personal gain for myself to be with Luria Brothers than continue our company.

tinued to purchase substantially all of its scrap requirements from Luria. While the agreement between Granite City and Luria has no fixed duration and either party has the right to withdraw, there is no reason to anticipate any early termination of the present arrangement.

14. The arrangement between Luria and Granite City has resulted in making Luria the major broker in the St. Louis market. It has resulted in a decrease in price competition among brokers and dealers in the market, and in the relative price paid for scrap by Granite City. Because Granite City is the largest consumer of scrap in the market and the main user of No. 2 bundles, its exclusive arrangement with Luria has permitted the latter to obtain a considerable degree of domination and control in the St. Louis scrap market.

(8) *Respondent Lukens*

1. Lukens Steel Company, sometimes referred to herein as Lukens, is a semi-integrated producer of steel. As of January 1, 1954, it had the twenty-fourth largest ingot capacity of the steel producing companies in the United States, and had the fourth largest capacity of the semi-integrated producers. It operates a plant at Coatesville, Pennsylvania. Lukens has no blast furnace for the production of pig iron and consequently uses no "hot metal" in producing steel. It is highly dependent on scrap in producing steel. Purchased pig iron represents 20 to 30% of its metallics charge, and the balance consists of scrap.

2. Prior to about 1929 or 1930, Lukens bought scrap from several different brokers and dealers. One of these was respondent Luria, which had opened a yard at nearby Modena, Pennsylvania, in 1922. Around 1929 or 1930, Lukens decided to buy its scrap through one broker, rather than from a number of different brokers. The explanation given by the Lukens official who was in charge of buying its scrap from 1929 to 1954 was that (R. 5156)—

* * * the scrap * * * was all coming from the same source, so rather than have a lot of people handle it we handled it through one. We picked out the best qualified.

Luria was chosen as Lukens exclusive broker because it was considered "the one best qualified", since it had a large yard near Coatesville and "had a very aggressive outfit on the road buying scrap".

3. Since 1929 or 1930, Luria has acted as Lukens' substantially exclusive broker. Lukens has regularly purchased relatively small quantities of scrap from a local dealer having a yard in Coatesville, and has periodically bought small amounts of scrap from a miscellany of other sources. During the period from 1945 to 1954, covered by the statistical evidence, Lukens' purchases from Luria constituted 85.9% to 90.7% of its scrap requirements. The major portion of the

balance of Lukens' purchases is accounted for by purchases from the local yard dealer in Coatesville with whom Lukens has continued to deal on a direct basis.

4. At the time that Lukens chose Luria as its exclusive broker, it notified other brokers that Luria had been so desingated. It has since become a generally accepted fact in the trade that Luria is Lukens' broker. Offers from other brokers are seldom received. Lukens' scrap purchasing agent for approximately 25 years explained this as follows (R. 5158):

Once in a while they would come in there, *but they knew the situation*. [Emphasis supplied.]

When other brokers did occasionally make offers, they were advised by Lukens: "We weren't in the market." Sometimes Lukens advised Luria of such offers or requested the offeror to communicate with Luria. Illustrative of such referrals is the following reply to an offer of scrap in October 1951 (CX 644):

Wish to advise that we are very much interested in scrap, but we handle our scrap through our brokers, Luria Brothers and Company, Inc., Lincoln Liberty Bldg., Philadelphia, Pa., and would suggest you contact them direct.

Lukens' purchasing agent explained such referrals on the ground that: "The thing has to work both ways. * * * If they are going to help us get scrap we have to help them too" (R. 5159).

During the period of scrap allocations, Lukens, at Luria's request, asked a number of railroads, including the Pennsylvania Railroad, The Reading Company, and the Baltimore & Ohio, to designate Luria as its broker on scrap allocated from these railroads. Industrial fabricators were also requested to designate Luria as broker on scrap generated by them which was allocated to Lukens. Where allocated scrap required in transit preparation, Lukens generally followed Luria's recommendation as to which dealer should prepare it.

5. There is no serious dispute that Luria is Lukens' substantially exclusive broker and has been such for a number of years. However, it is argued that this arrangement is not the subject of an agreement between the companies. Luria argues:

No agreement was made with Luria. Lukens just started buying from Luria and told Luria that it expected it to supply Lukens with scrap. Lukens could have stopped buying from Luria at any time.

Similarly, Lukens, while conceding that around 1929 it "decided to utilize one broker for the purchase of substantially all of its iron and steel scrap", argues that:

This corporate policy embodied day-to-day purchases on an at-will basis terminable in accordance with the normal purchase order procedure of doing business.

It is undoubtedly true that the record fails to establish any formal agreement of fixed duration between the parties. However, it is clear from the evidence that the arrangement between them is of more than a "day-to-day" nature but takes on the character of an informal agreement or understanding of an indefinite, but anticipatedly extended, duration. Thus Lukens' purchasing agent at the time the arrangement was made testified that (R. 5156): "There was no agreement or anything, *it was just an understanding*". [Emphasis supplied.] It is clear from the witness' testimony that his statement that there was "no agreement" was a mere conclusion on his part, based on the absence of a written agreement of fixed duration, which he interpreted as being synonymous with an agreement. However, he recognized that there was an "understanding" with Luria, and that Luria was probably advised: "From now on you got to furnish the scrap" (R. 5158). While asserting in this connection that, "we made no contract or any such agreement, *written agreement anyhow*", he conceded that: "*It may have been oral.*" [Emphasis supplied.]

From the course of dealings between them it is clear that both parties conducted their business on the basis of an implicit assumption that there existed a long-range understanding, with mutually reciprocal obligations, between them. Lukens expected Luria to keep it supplied with substantially all of its scrap requirements. Luria expected Lukens to deal with it as Lukens' exclusive broker, and to refer other offers of scrap to it in order to enable it to fulfill its obligations to Lukens. The arrangement was expected to "work both ways", as Lukens' scrap purchasing agent expressed it. While the arrangement had no fixed duration and there was no legal obligation to continue it, there was no expectation of its momentary or early discontinuance. The parties proceeded on the assumption that in the normal course of events the arrangement would continue indefinitely. The fact that the parties were at liberty, in the event either of them elected to do so, to discontinue the arrangement, does not metamorphize it into a casual, order-to-order, day-to-day relationship.

It is concluded and found that there exists an understanding or agreement between Lukens and Luria of indefinite duration, whereby Lukens has undertaken to deal with Luria as its exclusive broker and to purchase substantially all of its scrap from Luria. There is no reason to anticipate that there will be an early termination of this agreement or understanding, which has been in effect for almost 30 years.

(9) *Respondent Detroit Steel*

1. Respondent Detroit Steel Corporation, sometimes referred to as Detroit Steel, has been made a respondent in this proceeding because

of the activities of its Portsmouth Division, sometimes referred to herein as Portsmouth. Portsmouth operates a steel mill at Portsmouth, Ohio, and is Detroit Steel's only scrap consuming plant. Prior to January 1, 1950, the Portsmouth plant was owned and operated by Portsmouth Steel Corporation, which had acquired it from Wheeling Steel Corporation around July 1946. The physical assets of Portsmouth were acquired by Detroit Steel on January 1, 1950. Prior to that time, Detroit Steel was not a producer of basic steel or a consumer of scrap. As of January 1, 1954, Detroit Steel was the seventeenth largest integrated steel producer in the United States, in terms of annual steel ingot capacity.

2. During the period from July 1946 to the latter part of 1947, when the Portsmouth plant was owned and operated by Portsmouth Steel Corporation, it purchased its scrap from a number of different brokers and dealers, including respondent Luria. In late 1947 the company adopted a policy of buying all or substantially all of its scrap from a single broker, Columbia Iron & Metal Company of Cleveland, Ohio. This policy continued until the end of 1949, when the Portsmouth plant was purchased by Detroit Steel.

3. Following its acquisition of the Portsmouth plant on January 1, 1950, Detroit Steel made changes in the scrap purchasing policy of the plant, which led to respondent Southwest Steel Corporation's becoming the substantially exclusive broker for the plant. During November or December 1949, prior to the time title had actually passed, and again in January 1950, the president of Detroit Steel met with the President of Southwest and discussed the matter of scrap purchases. As a result of these meetings, it was agreed that Southwest would become the principal supplier of the Portsmouth plant, on a trial basis. During 1950 Detroit Steel purchased 88.4% of the scrap requirements of its Portsmouth plant from Southwest. During 1951 and 1952, as a result of the Government allocations program, there was some decline in the proportion of purchases from Southwest. In 1951 the proportion of its total scrap purchased from Southwest was 75.6%. However, Portsmouth also purchased some small quantities of scrap from Luria, which had obtained control of Southwest in February 1950. The combined purchases from the two broker respondents in 1951 represented 77.4% of Detroit Steel's total scrap purchases and 81.2% of its purchases from brokers and dealers. In 1952 the purchases of Detroit Steel from Southwest and Luria amounted to 77.4% of its total scrap purchases.

In the middle of 1953, following the end of the Korean conflict and the termination of controls, Detroit Steel decided to make Southwest its exclusive broker and to purchase all of its scrap requirements from

that respondent. During the year 1953, 91.1% of the total scrap purchases made for the Portsmouth plant were made from Southwest. In 1954, the first full year of the operation of the arrangement, 100% of Portsmouth's scrap requirements were supplied by Southwest.

4. Detroit Steel regularly discusses its scrap requirements with Southwest, which advises Detroit as to the availability of scrap in the various grades that are used in the Portsmouth plant. Tentative prices are agreed upon and Southwest endeavors to obtain the required amounts and grades of scrap at these prices. However, it is authorized and has purchased scrap for Detroit Steel at prices varying from the prices tentatively agreed upon. Upon receiving advice from Southwest as to the quantity and price of the scrap purchased for its account, Detroit Steel issues a confirming order to Southwest. The price of the scrap in the Detroit Steel purchase order includes the price which Southwest is committed to pay for the scrap, plus \$1.00 commission to Southwest.

5. There is no dispute as to the basic facts concerning the relationship between Southwest and Detroit Steel. After a trial period which began in 1950 and which, as a result of the controls' program incident to the Korean conflict, was extended to 1953, Detroit Steel has arranged to buy substantially all of the scrap requirements for its Portsmouth plant from Southwest. It regularly discusses its scrap requirements with Southwest, and Southwest is aware that it is supplying substantially all of Detroit Steel's scrap requirements. The fact that Southwest is Detroit Steel's exclusive broker and supplies it with substantially all its scrap requirements is well known in the trade.

The main point of contention, insofar as respondents Southwest and Detroit Steel are concerned, is that the present arrangement does not involve a legally binding agreement of a continuing nature. This position is similar to that already discussed in connection with the arrangements between Luria and a number of the other steel mills. However, while it may be that, as in the other instances previously discussed, there is no legally binding, formal agreement to continue the present exclusive relationship, it is clear that the existing arrangement between Southwest and Detroit Steel involves more than a casual day-to-day, order-to-order relationship.

It is concluded and found, from the evidence as a whole, that there exists an informal agreement or arrangement between Detroit Steel and Southwest that the latter will be the exclusive broker for the former's Portsmouth plant, that Detroit will order substantially all of the scrap requirements for the Portsmouth plant from Southwest and that the latter will undertake to supply the requirements of such plant. While the present agreement or arrangement may be termi-

nated by either party, it has been in effect for over seven years and there is no reason to anticipate its early termination.

(10) *Respondent McLouth*

1. Respondent McLouth Steel Corporation, sometimes referred to herein as McLouth, is engaged in the production and sale of iron and steel products. Prior to 1949 it was a nonintegrated mill, *i.e.*, it rolled and finished steel slabs purchased from others. However, in the latter part of 1948 it began operating a plant at Trenton, Michigan, which produces basic steel. As of April 1, 1949, McLouth was the nineteenth largest integrated steel producer in the United States.

2. The Trenton plant is McLouth's only scrap-consuming facility. When the plant originally opened it was entirely dependent on outside sources to supply it with the raw materials for making steel, since McLouth operated no blast furnace for the production of pig iron. In 1954 McLouth installed a blast furnace. However, it has continued to purchase substantial quantities of scrap for the Trenton plant.

3. When it became known that McLouth would be in the market for scrap in 1948 after the Trenton plant was erected, McLouth was approached by five or six different brokers, including respondent Luria. The Luria representatives advised McLouth that their company could supply it with substantially all of its scrap requirements. Several meetings were had at which there were discussed the quality and quantity of scrap required by McLouth, how price would be determined and what the brokerage commission would be. During the course of the negotiations the Luria representatives informed the McLouth representatives that Luria was supplying various plants of United States Steel, Weirton Steel, Bethlehem Steel and other steel mills. The reaction of the McLouth official in charge of buying scrap was that "if they [Luria] were good enough for those people, they were good enough for me" (R. 9687). McLouth, accordingly, decided to give Luria an opportunity to supply it with its scrap requirements.

4. During the years 1948 and 1949, the first 2 years of the arrangement between McLouth and Luria, McLouth purchased of all its scrap requirements from Luria. In 1950 McLouth purchased from Luria all of the scrap which it obtained from broker-dealer sources, but purchased about 5% from other sources. In the next few years there was some decline in the proportion of McLouth's purchases from Luria. This occurred mainly during the period of Government allocations, during which McLouth obtained substantial quantities of allocated scrap. However, Luria continued to supply approximately three-fourths of McLouth's scrap.

5. McLouth has admitted in its answer that: "Since the commencement of operations at its Trenton plant this respondent has purchased substantially all of its steel scrap requirements * * * from Luria Brothers & Company, Inc." It nevertheless contends that it has no agreement or understanding with Luria obligating it to purchase or to continue purchasing its scrap requirements from Luria, and that Luria is not obligated to supply or to continue supplying scrap to McLouth. Luria's position is substantially the same. Its vice president who testified in this proceeding acknowledged he was aware that his company was selling McLouth "substantially all of their scrap" (R. 801). However, he claimed that the relationship between them was on an "order-to-order basis" since there was no contract obligating McLouth to buy from his company.

6. While there may be no formal contract or agreement legally obligating either party, as a matter of private contract law, to deal with the other, the examiner entertains no doubt that there is an informal understanding or agreement between them, on the basis of which they have been conducting their dealings with one another for a number of years. Under this agreement or understanding McLouth looks to Luria to supply it with substantially all of its scrap requirements, and the latter understands it has the responsibility for fulfilling this expectation.

The arrangement was "sold" to McLouth by Luria on the basis that Luria would undertake to supply McLouth "with substantially all their scrap". As the Luria vice president familiar with the matter testified (R. 800):

Mr. Skinner [the Luria representative] sold them the idea that he can service them, he can supply them with substantially all their scrap, sold them the idea and he has been selling them ever since.

While the McLouth vice president in charge of scrap buying claimed in his testimony that "we don't buy anything [from Luria] except on a month-to-month basis, only if they have it for sale" (R. 9691), in a letter written to Luria in 1951, ante litem motam, the same official stated (CX 929):

As you know our scrap inventory position is very critical and *you have been charged with the responsibility of keeping this plant in operation. We are depending on you to continue to take care of our requirements.* [Emphasis supplied.]

It is concluded and found from the evidence as a whole that there is an informal agreement or understanding between McLouth and Luria whereby the latter acts as the former's exclusive broker and has undertaken to supply it with substantially all of its scrap requirements. While the agreement has no fixed duration and may be

terminated at any time, there is no reason to anticipate its early termination.

(11) *Respondent Baldwin*

1. Baldwin-Lima-Hamilton Corporation, sometimes referred to herein as Baldwin, operates a number of plants in various parts of the country, and ranked twentieth among the semi-integrated producers of steel in the United States as of January 1, 1954. It is primarily a fabricator of steel products. However, three of its plants are consumers of scrap. These are the Standard Steel Works Division, located at Burnham, Pennsylvania; the Eddystone Division located at Eddystone, Pennsylvania; and the Hamilton plant located at Hamilton, Ohio. Baldwin was made a respondent in this proceeding especially because of the activities of its Standard Steel Works Division, which is its only steel-producing plant and its largest consumer of scrap. The other two plants operate foundries and are relatively small users of scrap. In 1954 the Standard Steel Works purchased 55,000 tons of scrap compared to 2,400 tons at Eddystone and 4,000 tons at Hamilton.

Standard Steel Works Division

2. The Standard Steel Works Division, referred to herein as Standard, produces a number of steel specialty products, including steel wheels, steel castings, forgings, rings and springs. In connection therewith, it operates five acid open hearth furnaces, which require scrap with certain characteristics, foremost among which is that it be low in phosphorous and sulphur content.

3. Baldwin has purchased a substantial portion of the scrap for the Standard plant from Luria since at least 1930. During the early '30s consideration was given to buying scrap directly from producers thereof, but it was concluded that it would be more advantageous to continue buying through a broker. A decision was made to concentrate the company's purchases on a single broker as the best way to "establish a definite dependable and reliable source of scrap" which would be familiar with the company's requirements for selected grades of scrap (R. 5274). The explanation given for the choice of Luria as the exclusive broker was that it was the only large dealer which operated its own yards and maintained complete sorting facilities east of Pittsburgh, and because it was familiar with the grades of scrap used by respondent and was a dependable source of supply.

As has been previously suggested, the fact that respondent was motivated by what it considered to be good business reasons in selecting Luria as its exclusive broker is, in the opinion of the examiner, largely immaterial in determining the legality of the arrangement. It

may be observed, however, that the record discloses there are a number of other reliable brokers and dealers operating substantial yards with adequate facilities east of Pittsburgh, which are also able to properly service respondent Baldwin. The fact is that only a small percentage of the scrap supplied to respondent by Luria actually comes from its own yards. The bulk of it originates in the yards of other dealers or from industrial fabricators, and a substantial portion of the scrap is prepared in the yards of other dealers for Luria.

4. In any event, whatever may have been the reason therefor, there is no dispute as to the fact that Luria has been the substantially exclusive supplier for Baldwin's Standard plant at Burnham for a number of years. Baldwin admits in its answer that "for a number of years" it has purchased "substantially all of its steel scrap requirements" from Luria. The statistical evidence in the record, covering the period from 1945 to 1954, indicates that except for the period of Government allocations, the proportion of scrap purchased from Luria by the Burnham plant has exceeded 95% of its purchased scrap requirements, and in some years has exceeded 99%.

5. Except for the period of Government allocations, Luria has been the substantially exclusive broker for the Standard plant. The peak period of purchases from other brokers and dealers was 1951, when 10.7% of the scrap purchased for the plant was obtained from brokers and dealers other than Luria. The official in charge of scrap purchases for the Standard plant ascribed the increase in purchases from other brokers and dealers in 1951 mainly to the fact that it involved allocated scrap on which the seller had the right to select the broker or dealer to handle the transactions. However, even during this period Standard sought to induce railroads, industrial fabricators and other vendors of scrap to designate Luria as a broker on scrap allocated to it. Typical of such efforts is a letter written to the Baltimore and Ohio Railroad by Standard's scrap purchasing official on February 15, 1951, reading in part as follows (CX 659-A) :

* * * we would appreciate it if you would make the sale through Luria Brothers & Company, Lincoln Liberty Building, Philadelphia. They have been our brokers for a number of years and we have had excellent service from them and we prefer not to open up accounts with numerous other dealers.

6. Respondent Baldwin, while conceding that it has purchased substantially all of the scrap used by its Standard plant from Luria for a number of years, denies that there is any understanding or agreement pursuant to which Luria acts as the exclusive supplier or broker for Standard. It contends that: "The business dealings between Standard and Luria through the years were the result of the unilateral undertaking by Standard that Luria should act as its regu-

lar broker for the purchase of scrap." It further contends that each order placed with Luria involved an "independent exercise of its [Standard's] business judgment and was separately negotiated".

While it may be, as respondent Baldwin contends, that each order was separately negotiated, it is clear from the evidence that the relationship between the parties was on more than an order-to-order basis. The Standard official in charge of buying scrap conceded that he had made it clear to Luria that he expected it to supply his plant with its requirements of scrap and, further, that "when we get in a tight spot we don't mind telling them about it" (R. 5276). Luria is aware that it is the substantially exclusive supplier for the Standard plant, and that the plant looks to it to supply its scrap requirements.

7. It is concluded and found from the record as a whole that there exists an informal agreement or understanding between Baldwin and Luria pursuant to which Luria acts as the substantially exclusive broker for the Standard plant, and supplies the plant with substantially all of its scrap requirements. While the agreement or arrangement has no fixed duration and may be terminated at any time, there is no reason to anticipate its early termination.

Eddystone Division

8. Baldwin's Eddystone plant is primarily a fabricating plant which manufactures capital equipment, including presses and locomotives. In connection therewith it maintains an iron foundry for which it purchases specially prepared scrap for cupola charging. As previously indicated, the amount of scrap used at the Eddystone plant is relatively small compared to that consumed by the Burnham plant of the Standard Steel Works Division. In most years the scrap purchased by Eddystone has been less than 5% of that purchased for the Standard plant at Burnham.

9. Luria has been the principal supplier of scrap to Eddystone since the plant was acquired in the mid-1930s. During the period for which there are actual figures in the record, i.e., between 1948 and 1954, Luria supplied Eddystone with between 60% and 90% of its scrap, except for the year 1954 when Luria supplied 15.2% of the scrap. The scrap purchased from sources other than Luria is accounted for mainly by purchases from industrial fabricators and from dealers. Other than the period of Government allocations in 1951 and 1952, Eddystone purchased almost no scrap from any broker other than Luria.

10. The principal supplier other than Luria has been L. Blumberg's Son, Inc., a dealer in Philadelphia. Blumberg, as will be later noted in connection with another charge of the complaint, sells substantial quantities of its scrap to Luria and has purchased quantities of new steel from Luria in connection with a new steel warehouse which it

operates. In 1954 Blumberg replaced Luria as the principal supplier to Eddystone. The record contains no explanation of Blumberg's substitution for Luria, as Eddystone's principal supplier. The record does not indicate whether the decline in Luria's role in 1954 had anything to do with a gradual phasing out of the foundry at Eddystone, which occurred in 1956.

11. In addition to buying scrap from Luria, Eddystone also sells scrap to Luria which it generates in its fabricating operations, but which it is unable to use in its own foundry. Luria has been the principal purchaser of such scrap; the proportion of Eddystone's scrap purchased by it has exceeded 90% in most years, except for the year 1954 when it purchased 67% of the scrap. In 1954, 99.1% of Eddystone's scrap was sold to Luria.

12. It is clear that up to 1954 Luria was Eddystone's exclusive broker and principal supplier. It is also clear that there was a close business relationship between Luria and Eddystone, pursuant to which the plant sold substantially all of its own scrap to Luria and looked to Luria to supply it with the principal part of the scrap requirements for its iron foundry. Baldwin concedes in its proposed findings that: "Luria has generally been regarded as the regular scrap broker for Standard and Eddystone and has been so regarded for a number of years." However, counsel supporting the complaint have made no claim that the exclusive arrangement alleged in the complaint to exist at Standard also involves the Eddystone plant. In view of the conclusions reached with respect to the Standard plant and the lack of any charge with respect to the Eddystone plant, the examiner finds it unnecessary to determine whether there is an exclusive agreement or understanding applicable to the latter plant.

Hamilton Plant

13. The Hamilton plant at Hamilton, Ohio, operates an iron foundry. It is Baldwin's only other scrap consuming plant. The amount of scrap purchased by the plant is about 10%, or less, of that purchased by Baldwin's Standard plant. The Hamilton plant is located in the southwestern corner of Ohio, near Cincinnati, in an area somewhat removed from the area where Luria generally buys or supplies scrap. Hamilton has purchased scrap from Luria from time to time. In 1945, the first year for which there are any figures in the record, 44% of the scrap consumed at the plant was purchased from Luria. The proportion of purchases from Luria declined to 25% in 1946. Thereafter, purchases from Luria ceased entirely until 1951, when approximately 3% of the plant's scrap requirements was purchased from Luria. In 1952 Luria's percentage increased to 6%. No purchases were made from Luria in 1953 and 1954. The principal

supplier of the Hamilton plant has been a local company, Wolf & Company. The record fails to support any finding of an exclusive brokerage arrangement with Luria pertaining to the Hamilton plant, and no such claim is made by counsel supporting the complaint.

(12) *Respondent Bucyrus-Erie*

1. Respondent Bucyrus-Erie Company, sometimes referred to herein as Bucyrus-Erie, is a manufacturer of excavating equipment, shovels, cranes, drills and other products. In connection with its manufacturing operations it maintains three foundries for the production of castings. Two of these are located in Erie, Pennsylvania, and are known, respectively, as the Twelfth Street plant and the Raspberry Street plant. The third plant is located in South Milwaukee, Wisconsin. Bucyrus-Erie has been made a respondent in this proceeding because of the scrap buying activities of its two plants at Erie.

Twelfth Street Plant

2. The Twelfth Street plant is a cast iron foundry and for its scrap requirements uses mainly drop broken cast iron, with a sprinkling of steel scrap. Luria has been a supplier of scrap to the plant since the 1940's. During the period covered by the statistical evidence, 1947 to 1957, the plant's scrap requirements have been supplied almost entirely by two suppliers, respondent Luria and Joseph Chestner & Son, Inc. The latter is a local dealer operating a scrap yard in Erie. In 1947 Luria supplied only 4% of the scrap purchased by the Twelfth Street plant and Chestner supplied the balance. In 1948 the percentage of scrap supplied by Luria increased sharply to 54.1% and that supplied by Chestner declined proportionately. Luria's share of the scrap purchased by the Twelfth Street plant continued to increase until 1950, when it reached 84.7%. Following the imposition of Government controls in 1951, Luria's share declined somewhat, due in part to the purchase of allocated scrap and in part to an increase in purchases from Chestner. During the period from 1951 to 1954 purchases from Luria accounted for about two-thirds of the purchased scrap requirements of the Twelfth Street plant. In 1955 and 1956, following the issuance of the complaint in this proceeding, there was a sharp drop in purchases from Luria, the proportion of scrap purchased from Luria in these 2 years being approximately 31% and 16%, respectively. However, in 1957 the proportion of purchases from Luria again increased to approximately 56%.

3. The Bucyrus-Erie vice president who was in charge of scrap purchases until September 1954, explained the decline in purchases

from Chestner and the substantial increase in purchases from Luria after 1947, as being due to the fact that Chestner was unable to supply the needs of the Twelfth Street plant and that it was necessary to select a broker who had sources of supply outside of Erie. He claimed that his company was buying all of the scrap which Chestner could produce. His successor as director of purchases after September 1954 testified that the increase in purchases from Chestner was not due to any change of policy on the part of Bucyrus-Erie, but rather to the greater "availability" of scrap from Chestner (R. 6146).

A representative of Chestner, who testified in this proceeding, claimed that his company could have sold greater quantities of scrap to Bucyrus-Erie during the period after 1947. He also indicated that Luria had endeavored to purchase his company's scrap for shipment to Bucyrus-Erie, but that he had declined because he preferred to sell directly to the consumer. His testimony further reveals that after the change in purchasing officials at Bucyrus-Erie in September 1954, his company was able to increase its sales to Bucyrus-Erie substantially.

It is the conclusion and finding of the examiner that the decline in purchases from Chestner was not due to the latter's inability to furnish more scrap, but to a decision by Bucyrus-Erie to favor Luria in its purchases. It is significant that beginning in 1955, following the issuance of the complaint, purchases from Chestner increased three-fold, and the latter had no apparent difficulty in meeting the needs of the Twelfth Street plant.

Raspberry Street Plant

4. Until September 1951 the Raspberry Street plant was operated by the National Erie Corporation, sometimes referred to herein as National Erie. In September 1951, Bucyrus-Erie acquired the stock of National Erie and began to operate it as a subsidiary until February 1954, when National Erie was merged with Bucyrus-Erie. After Bucyrus-Erie acquired National Erie, the latter's plant became known as the Raspberry Street plant of Bucyrus-Erie, to distinguish it from the plant which it had operated for a number of years at Twelfth Street.

5. The Raspberry Street plant is a steel foundry, which has small acid open-hearth furnaces requiring a fine grade of low phosphorous, low sulphur scrap. Up to the time the plant was acquired by Bucyrus-Erie, it had been served by about four different brokers and dealers, the principal one of which was Republic Iron & Metal Company, a broker and dealer in Erie, Pennsylvania. Respondent Luria was also a substantial supplier to the plant. In 1948 it supplied 19.3% of the plant's requirements of purchased scrap. The percentage of scrap

supplied by Luria increased in the years 1949-1951 to about 40%.

6. After the plant was acquired by Bucyrus-Erie in September 1951, responsibility for purchasing the scrap requirements of the former National Erie plant was assigned to Bucyrus-Erie's vice president in charge of scrap purchasing for the other plants, with headquarters in Milwaukee. A decision was made to cease buying scrap from Republic Iron & Metal and from the other brokers and dealers who had been supplying the plant, and to buy all the plant's requirements through a single broker. Luria was selected as the broker.

7. Respondents suggest that Luria was chosen as the broker for the Raspberry Street plant, instead of Republic Iron & Metal, because the latter had failed to keep the plant sufficiently supplied with scrap at the time the plant was taken over by Bucyrus-Erie. Aside from the dubious nature of testimony on which this argument rests (being based on a hearsay report of what a Bucyrus-Erie official had been told by the plant's former manager), the examiner is satisfied that the failure to select Republic as a supplier had nothing to do with its alleged failure to keep the plant supplied with scrap. The evidence shows that in 1950-1951 Luria was supplying 40% of the plant's requirements, and if there was a shortage of scrap at the plant when Bucyrus-Erie took over, the fault, if there was any, lay with Luria as well as with Republic. Furthermore, the fact that Bucyrus-Erie later suggested to Republic that it sell its scrap to Luria for shipment to Bucyrus-Erie suggests that it had no basic lack of confidence in Republic's ability to deliver substantial quantities of scrap. Republic did, in fact, continue for some years thereafter to ship scrap to Bucyrus-Erie through Luria, when it was unable to sell directly. The true explanation for the choice of Luria as exclusive broker appears to lie not in any failure of performance by Republic, but in the decision reached by Bucyrus-Erie that it wished to use the strongest broker in the area as its exclusive broker. Luria was considered to be that broker because of its position in the nearby Cleveland area, and because it had recently acquired a yard in Erie.⁴³

8. After the decision to make Luria the exclusive broker for the Raspberry Street plant, there was a sharp increase in purchases from it. In 1952 and 1953, 96.4% of the plant's scrap was purchased from Luria, compared to 40% in the period from 1949 to 1951. In 1954

⁴³ After some testimony suggesting that Republic had been remiss in supplying the former management of the plant, the Bucyrus-Erie witness gave the following explanation of why Luria was selected as exclusive broker (R. 6136):

"We felt that we needed a broker and a supplier that was strong in the area in which the plants were located. And a broker and supplier who had a yard to give us that cushion that you need when the scrap is scarce. * * * Luria had facilities, good facilities at Cleveland for buying scrap, and had established recently a yard in Erie. So that they were the logical people * * *."

Luria supplied 94% of the plant's scrap. In 1955, after the issuance of the complaint in this proceeding, Bucyrus-Erie began to make some purchases from Chestner for the Raspberry Street plant, as well as the Twelfth Street plant. The purchases from Chestner in 1955 constituted approximately 8% of the total scrap purchases for the Raspberry Street plant in 1955, compared to approximately 90% purchased from Luria. In 1956 and 1957 there was a substantial increase in purchases from Chestner. In 1956 the scrap purchases of the plant were almost evenly divided between Luria and Chestner. In 1957, 62% of the plant's purchases were made from Luria, as compared to approximately 35% from Chestner.

Conclusions As To Erie Plants

9. The examiner is convinced and finds that at least until the issuance of the complaint in this proceeding there was an agreement or understanding between Bucyrus-Erie and Luria, pursuant to which Luria acted as the exclusive broker for both of Bucyrus-Erie's plants in Erie, Pennsylvania. At the Raspberry Street plant this resulted in Luria's supplying substantially all of that plant's scrap requirements from 1951 to 1954. While Chestner continued to act as a supplier to the Twelfth Street plant, it was on a sharply reduced basis. By 1950 Luria was supplying 85% of the scrap purchased by the plant and was attempting to get Chestner to sell its scrap through it, rather than directly to Bucyrus-Erie. It seems quite likely that but for the intervention of the Korean conflict, with the concomitant scrap shortage, Chestner might eventually have been eliminated as a direct supplier. In any event, purchases made from Chestner were strictly on a dealer basis and the scrap had to come from its own yard. The price paid to it was controlled by the price paid to Luria, which supplied between two-thirds to three-fourths of the plant's scrap requirements between 1951 and 1954.

10. There can be no doubt that Luria was considered by Bucyrus-Erie to be the exclusive broker for the Twelfth Street plant and, after its acquisition of National Erie in 1951, of the Raspberry Street plant. This was the result of a policy decision made by Bucyrus-Erie to buy through a single broker for the reason that it wished to avoid competing with itself. As the Bucyrus-Erie official responsible for the decision testified (R. 6118):

In a market such as Erie, a small market, where certain of the industries did produce a certain amount of scrap that they offered for bid, if you as a buyer of scrap had two or three people bidding for you, you were bidding against yourself in these industries. So we had decided that one strong broker and supplier was the thing for us to use at Erie. [Emphasis supplied.]

While the testimony related primarily to the Raspberry Street plant, there can be no doubt that the same policy was applied at the Twelfth Street, which is subject to the jurisdiction of the same official under the company's centralized buying organization. A similar policy is admittedly followed at the company's South Milwaukee plant, where substantially all of the plant's requirements of scrap are supplied by a Chicago brokerage firm.

11. Bucyrus-Erie has periodically advised other brokers and dealers who had offered it scrap for the Erie plants that its purchases are made from a single broker. Thus in November 1951, in confirming a conference and telephone conversation with a representative of Republic Iron & Metal, as a result of which it had been suggested that the latter offer its scrap through Luria, the Bucyrus-Erie vice president in charge of scrap purchases stated (CX 715) :

It is agreed that orders for scrap for our Erie operations will be placed by us with Luria Brothers in Cleveland who have told us that they are agreeable to obtaining part of the scrap against our orders from you on a continuing percentage basis with the understanding, of course, that the scrap is acceptable and to grade.

A broker from Buffalo who offered scrap to Bucyrus-Erie originating at the General Electric Company was advised by the same official (R. 6121) :

* * * we were not going to bid against ourselves, and that we had somebody bidding for us and we expected that they would take care of us and we weren't interested.

12. During the period of the Korean conflict Bucyrus-Erie sought to have Luria designated as broker on scrap which was allocated to its Erie plants from both railroads and industrial fabricators. Thus it advised one industrial fabricator in a letter, dated October 23, 1951, as follows (CX 716-A) :

While we fully appreciate that the choice of brokers is yours as seller, if convenient we would appreciate if in the future you would arrange your allocations in such a way that the allocations to us are made through Luria Brothers in Cleveland to whom we are looking to keep our Erie Plant in full operation insofar as scrap is concerned.

13. As in the case of other respondents, it is argued that there is no binding legal agreement between Luria and Bucyrus-Erie, that business between them is on an order-to-order basis, and that either is free at any time to discontinue the existing arrangement. While it may be true that there is no binding legal agreement between them, there is no question but that there exists an understanding or agreement of more than an order-to-order character. There can be no doubt that Bucyrus-Erie looks to Luria to keep its Erie plants supplied on a continuing, long-term basis, subject only to reaching agreement on the

price to be paid in monthly orders. The Bucyrus-Erie official in charge of scrap purchases, while denying that Luria was under any "legal or moral obligation" to supply the company, conceded that he considered it had "an obligation to accept orders from us as we needed scrap, in order to keep the plant going, and we worked very closely with them" (R. 6122). He further described the relationship as follows (R. 6115):

* * * it was our feeling that the company would be best served by making Luria Brothers responsible for seeing that that plant was kept well supplied with scrap and at the right prices and the proper quality * * *. So we told Luria that we expected them to keep that plant going. As long as they operated and supplied the proper scrap for us we would continue to give them orders and on a month to month basis.

Further evidence of the continuity of the relationship between the two companies may be found in the letter to Republic Iron & Metal, referred to above, dated in November 1951, in which Bucyrus-Erie's vice president acknowledged that his company had "agreed that orders for scrap for our Erie operations will be placed by us with Luria Brothers in Cleveland." A copy of this letter was sent to Luria's Cleveland office.

14. Since the institution of this proceeding and following the change of scrap-purchasing officials in September 1954, there has been some modification in Bucyrus-Erie's scrap buying policy, to the extent that the dealer Chestner has received a greater share of the Bucyrus-Erie business. It is not necessary to speculate whether this has been due to the impetus of this proceeding or the change in management, or both. The relationship must be judged on the basis of the factual situation which existed at the time of the issuance of the complaint. It may be noted, however, that while the proportion of purchases from Chestner increased in 1955, Luria continued to be the only broker from whom scrap was purchased for these plants.

(13) *Respondent Columbia*

1. Columbia Malleable Castings Corporation, sometimes referred to herein as Columbia, was a subsidiary of Grinnell Corporation until it was merged into Grinnell on December 31, 1955, as has heretofore been found. It has been stipulated that Grinnell may be substituted as a respondent in this proceeding in all respects for respondent Columbia. References hereinafter made to Columbia include Grinnell since the end of 1955.

2. Respondent Columbia operates a malleable iron foundry at Columbia, Pennsylvania, which produces malleable iron castings consisting of pipe fittings, pipe hangers, unions and kindred items. In connection therewith, it operates cupolas, air furnaces and other facili-

ties. In the course of its operations Columbia uses railroad scrap and other scrap low in phosphorus and as free as possible from chrome and nickel content.

3. From the time that Columbia began buying scrap around 1936, until the present time, it has purchased all of its scrap requirements from Luria, except for purchases from others amounting to less than 5% of its total scrap requirements in 1951 and 1952 and consisting of scrap allocated to it under Government orders.

4. The explanation given for Luria's exclusive position at Columbia is that Luria is the only large dealer which operates its own yards and maintains complete sorting facilities east of Pittsburgh, and is familiar with the selected grade of scrap required by Columbia. This explanation is identical to that given by respondent Baldwin for entering into a similar arrangement with Luria. However, as is the case with Baldwin there are a number of other dealers in the area who are capable of preparing scrap to Columbia's requirements and who have, in fact, done so. Some of the scrap shipped to Columbia by Luria originates in the yards of other dealers or is prepared in the yards of other dealers.

5. The trade generally understands that Luria is Columbia's exclusive broker. When Columbia receives offers from other brokers or dealers it gives no serious consideration to such offers. It is its conscious policy to buy only from Luria. During the period of the Korean conflict Columbia requested railroads and others to designate Luria as broker on scrap allocated to it.

6. As in the case of a number of the other respondents, Columbia concedes that it buys all of its scrap from Luria, but denies that it has any agreement with Luria requiring that it do so. It contends that the "dealings between the two are on an order-to-order basis and either is free to discontinue dealing with the other". While there may be no formal, binding agreement governing the existing relationship, the examiner is satisfied that the present relationship is of more than an ephemeral, order-to-order character. The Columbia scrap-purchasing official conceded that he relied on Luria to meet his scrap requirements, and felt that Luria had an obligation to keep the plant supplied. It is the conclusion and finding of the examiner that there is an informal agreement or understanding between Luria and Columbia, pursuant to which Luria acts as Columbia's exclusive broker and supplies it with all of its scrap requirements. While either party may be legally free to withdraw from the arrangement, there is no reason to anticipate an early termination thereof.

(14) *Nonrespondent Mills*

1. Counsel supporting the complaint contend that Luria has exclusive brokerage agreements with a number of other mills and foundries, in addition to those named in the complaint. Evidence in support of this contention was offered under the allegation of the complaint which charges that such agreements exist not only with the respondent mills, but with "other mills" not specifically named.

2. While the evidence cited by counsel supporting the complaint does establish that Luria is the exclusive or preponderant supplier of the mills in question, it is generally insufficient, with one exception, to support any finding of an arrangement which may be characterized as constituting an agreement or understanding. Since any order which may issue in this proceeding could not run against nonrespondents, and since an order issued against Luria would be sufficient to reach exclusive agreements with nonrespondents, the examiner deems it unnecessary to make detailed findings concerning Luria's arrangements with the nonrespondent mills. However, such arrangements are briefly hereinafter described, as bearing on Luria's position in certain market areas where it has exclusive agreements with the respondent mills.

Merritt-Chapman & Scott Corporation

3. Luria was the principal supplier of the plant at Milton, Pennsylvania, when it was acquired by Merritt-Chapman on October 31, 1953. The plant has continued to purchase 10 to 15% of its scrap from local dealers, and the balance from Luria.

4. When Merritt-Chapman acquired a steel plant at Newport, Kentucky from Newport Steel Corp. in March 1954, the plant was being supplied by David J. Joseph Company, a broker in Cincinnati, and several local dealers. Since the acquisition, Luria has supplanted Joseph and has been supplying about three-fourths of the plant's scrap requirements.

Electron Corporation

5. By letter-agreement dated July 14, 1950, Luria undertook to supply the requirements of the foundry operated by Electron at Littleton, Colorado. The agreement provides that Luria will supply the mill's "entire requirements of scrap" and that the mill will "refrain from making purchases from any other broker or dealer" (CX 958). The agreement was of no fixed duration.

Pacific States Cast Iron Pipe Company

6. Pacific States purchases all of its requirements of broker-dealer scrap from Luria. Local dealers who formerly shipped directly were required to ship through Luria. This change occurred at or about the time Luria became the exclusive broker for U.S. Steel's Geneva plant.

Ohio Area Foundries

7. Luria has been the exclusive, or principal, supplier of a number of different foundries in Ohio. The names of these foundries and the proportion of scrap supplied by Luria as of March 1951 is as follows:

- a. Buckeye Steel Castings Co., Columbus, Ohio; Luria major supplier.
- b. James B. Clew, Coshocton, Ohio; Luria supplied 95%.
- c. Dayton Steel Foundry, Dayton, Ohio; Luria exclusive supplier.
- d. Elyria Foundry Division, Elyria, Ohio; Luria exclusive supplier.
- e. Grabler Mfg. Co., Cleveland, Ohio; Luria supplied 95%.
- f. Lake City Malleable Co., Ceico, Ohio; Luria supplied major share.
- g. National Supply Co., Toledo, Ohio; Luria exclusive supplier.
- h. Superior Foundry Co., Cleveland, Ohio; Luria exclusive supplier.
- i. National Metal Abrasive Co., Cleveland, Ohio; Luria exclusive supplier.
- j. Ohio Ferro Alloys, Philo, Ohio; Luria exclusive supplier.
- k. Shenango Furnace, Sharpsville, Penna.; Luria exclusive supplier.
- l. Westinghouse Electric Co., Cleveland, Ohio; Luria exclusive supplier.

(15) *The Alleged Conspiracy Among the Mills With Luria*

1. As heretofore indicated, the complaint charges each of the mills not merely with entering into an exclusive agreement or understanding with Luria, but with doing so pursuant to an over-all agreement, understanding and conspiracy among themselves to use Luria as their exclusive broker. At the end of the case-in-chief the examiner ruled that the evidence failed to support a finding of any over-all agreement, conspiracy, understanding or combination among the mills to deal with Luria as their exclusive broker, and that appropriate provision for dismissal of this charge would be made in the initial decision to be issued at the close of the case.

2. In their proposed findings, counsel supporting the complaint re-assert their contention that there is an over-all combination among the mills with Luria, but fail to cite any evidence to support such a finding. This position is apparently taken for record purposes, in order to preserve a possible right of appeal from the examiner's ruling. It appears to the examiner that, for all practical purposes, counsel recognize that there is no serious basis for asserting the existence of an over-all combination among the mills. It is, therefore, considered unnecessary to discuss this charge in any detail. However, the following general observations may be made concerning the evidence relating to the charge.

3. Generally speaking, whatever agreements, arrangements or understandings were entered into by the mills with Luria, were entered into by each of the mills at different times and for different reasons, and were based on economic conditions prevailing in their own areas and the individual needs of the particular mills involved. The record

does indicate that in a few instances some of the mills knew that another mill, or other mills, had similar arrangements with Luria. However, in entering into their arrangement with Luria such mills did not do so because of any understanding or agreement with the other mill or mills involved. Generally speaking, their interest in the fact that other mills had a similar arrangement arose out of an inquiry as to Luria's ability to perform a similar function for them. In some instances little or no competition existed between the mills involved, in the acquisition of scrap. In other instances there is evidence that there was some competition between the mills for scrap and there is evidence that in entering into the agreement with Luria there was a desire not to compete with another mill. However, the record fails to support a finding that the mills involved conspired among themselves to use Luria as their exclusive broker. Generally speaking, Luria already had an arrangement with one of the mills when it entered into a similar arrangement with another mill in the area. While the latter mill may have been cognizant of the existence of the agreement between its competitor or competitors and Luria, and entered into a similar arrangement with Luria in order to lessen competition for scrap between itself and its competitor or competitors, the record fails to support a finding that it did so as a result of any agreement, understanding or conspiracy between itself and any other mill or mills.

C. Other Unfair Practices Charged Against Luria Separately, and in Cooperation with Respondent Mills

1. The complaint charges the respondent mills and Luria with engaging in a series of acts and practices in pursuance of, and in furtherance of, the exclusive arrangements discussed above. It also charges Luria independently with engaging in a series of acts and practices, separate and apart from any combination with the mills. In some instances the acts and practices charged against Luria, separately, parallel those charged against the mills and Luria acting in combination.

2. The evidence pertaining to these charges is considered below in connection with each of the charges concerning which proposed findings have been offered by counsel supporting the complaint. Before discussing each of the charges it may be noted that counsel supporting the complaint do not contend that any of the specific acts and practices charged are illegal "standing alone", but that such practices "in the aggregate" constitute violations of the Federal Trade Commission Act (R. 143).

(1) Pressure on Railroads

1. The complaint contains four separate charges in Count I involving the use of alleged pressure against railroads and other sources of supply to sell scrap to Luria. In Paragraph 9(h) it is alleged that the respondent mills and other mills requested railroads and other sources of supply to sell their iron and steel scrap to Luria, and that because of the substantial volume of business which the mills were in a position to divert, their request "had a strong and frequently coercive influence", and caused the railroads and other sources of scrap in many instances to divert scrap to Luria from competitors. Paragraph 9(i) is somewhat similar to Paragraph 9(h), except that it involves the period of Government controls and alleges that the mills requested railroads and other sources of scrap to designate Luria as broker in connection with scrap allocated to such mills under the Government allocations program, contrary to applicable Government regulations.

Paragraph 10(a) involves Luria alone, and charges it with threatening to divert and with diverting scrap tonnage from railroads which failed or refused to sell it substantial quantities of scrap. Paragraph 10(b) involves the period of allocations and charges that Luria engaged in conduct similar to that charged in 10(a), where railroads fail to designate it as broker for substantial quantities of allocated scrap.

The Charges Against the Mills

2. Aside from requests made with respect to allocated scrap during the period of Government controls (which will be separately discussed), counsel supporting the complaint have cited no evidence to support a finding that any of the respondent mills requested railroads or other sources of scrap to sell scrap to Luria, as alleged in Paragraph 9(h). There is no substantial, reliable or probative evidence in the record to support such a finding, or to support a finding that scrap originating from railroads and other sources of supply was diverted to Luria from its competitors as a result of requests made by the respondent mills. It is, accordingly, concluded that Paragraph 9(h) of the complaint has not been sustained.

3. The record does establish that during the period of Government controls (beginning on February 7, 1951) some of the respondent mills requested railroads and other sources of scrap to designate Luria as the broker, in connection with the sale of scrap allocated to such mills under Government order. Instances in which such requests were made have been referred to previously, in connection with consideration of the allegations of the complaint dealing with the alleged exclusive arrangements between Luria and various respondent mills. It may be noted at this point, however, that such evidence was not

offered with respect to each of the respondent mills, but only as to respondents CF&I, Central, Granite City, Lukens, Baldwin, Edgewater, Bucyrus-Erie, and Columbia.

While it does appear that certain of the mills did request railroads and other sources of supply to designate Luria as broker on scrap allocated to them under the Government allocations program, counsel supporting the complaint have failed to establish, (a) that the requests made by the mills "had a strong and frequently coercive influence" on the railroads or other sources of supply, or (b) that there was any substantial diversion of scrap from Luria's competitors as a result of such requests.

4. There is nothing about the requests themselves, most of which were in writing, to suggest that they were made in a strong or coercive manner or that they were calculated to have a coercive effect on the railroads. For the most part, the requests merely sought to enlist the cooperation of the railroads or other sources of supply in shipping scrap to the requesting mill through its regular broker. Typical of such requests is one made by respondent Baldwin stating (CX 585):

If it is your policy not to sell direct, and we understand it is, we would appreciate very much handling these sales through Luria as we do not wish to open up accounts with other brokers.

In the same vein is a request made by respondent CF&I's Claymont Division to a railroad stating (CX39):

If it is possible for you to do so, we would like to have this, and any other [allocations] you may get, go through our brokers, Luria * * *.

Requests sent by the other respondents above-named were similarly worded.

5. While the railroads and other sources of supply had a right to designate the broker on allocated scrap, the evidence indicates that it was not a matter of particular concern to them who the broker was, as long as he was reliable. The price of the scrap was fixed by Government regulations, and the railroad could not receive any more money by shipping it through one broker than through another. A number of the railroad witnesses testified that it was their general policy, even without any specific request, to ship scrap to a consumer through the broker or brokers from which the consumer generally bought, as revealed by the railroad's record of scrap sales during periods when there were no controls. The record fails to establish that the railroads or other sources of supply considered requests received from steel mill consumers to be coercive, or that such requests were uniformly or generally honored.

6. Counsel supporting the complaint urge that because of the fact that the mills are large shippers over the railroads in question, any

request made by them to have a particular broker designated would necessarily have a strong and coercive effect. Aside from the fact that the record does not establish the volume of shipments of the particular mills involved, over the indicated railroads, the examiner cannot infer from the fact of volume shipments alone that requests made by the mills would have any necessarily coercive effect. In fact, as above indicated, the record fails to establish that the requests made by the mills were necessarily or generally honored by the railroads. It is accordingly concluded that Paragraph 9(i) of the complaint has not been sustained.⁴⁴

The Charges Against Luria

7. The evidence likewise fails to sustain the charge contained in Paragraph 10(a) that Luria threatened to, and did divert, scrap shipments from railroads which failed or refused to sell it substantial quantities of scrap. Counsel supporting the complaint cite only two instances from the record which are even remotely suggestive of any threats against railroads. The first of these is an interoffice memorandum (CX 31) from Luria's Cleveland office to its Philadelphia office, dated December 23, 1948, indicating dissatisfaction with the amount of scrap which had been purchased from the Nickel Plate Railroad, and requesting information as to the amount of scrap shipped over the railroad by Luria, for use as "ammunition" by the Cleveland office in a conference with the railroad 5 days hence. There is nothing in the record to indicate that the proposed conference ever took place or, that if it did, Luria ever threatened the railroad with any diversion of shipments if the railroad failed to increase its scrap sales to Luria.

The only other evidence of any so-called threat is an interoffice memorandum written by Luria's St. Louis office to its Houston office, dated March 21, 1946, in which the St. Louis office representative indicated some reservations about making a certain shipment over The Missouri Pacific Railroad for the reason, as stated (CX 18) :

* * * I think we should have held off this routing a little while and make the Mo. Pac. sweat, in order to persuade them that we need a little more scrap here in St. Louis. * * * You might tell that to their traffic man down in Houston, and see if he cannot put a little pressure on them there as well as the pressure we are going to put on from here.

The record fails to establish that the Houston office did, in fact, discuss the matter with the Missouri Pacific's traffic manager in

⁴⁴ It may be noted that Paragraph 9(i) contains the allegation that the requests made by the respondent mills to the railroads were "contrary to the spirit and purpose" of the regulations of the OPS. In view of the general failure of proof with respect to the gravamen of this paragraph of the complaint, the examiner considers it unnecessary and inappropriate to determine whether the requests violated the spirit and purpose of another Government agency, now nonexistent.

Houston, or that any "pressure" was put on the railroad either in St. Louis or Houston. On the contrary, another interoffice memorandum in the record, sent to St. Louis by the traffic manager of the Philadelphia home office, dated March 25, 1946, indicates the lack of probability that this suggestion was ever carried out. The latter memorandum states (CX 17) :

Before you go out on the limb too far let me inform you that I have been working very hard with the Missouri-Pacific to get a better share of their scrap and I believe that our results with Mr. Mau are due in part to my efforts.

I have been working through their Vice President, and their Freight Traffic Manager, and their General Eastern Agent. It takes a little time, but I believe we will get a great deal further by not using too much pressure.

While the latter memorandum indicates that Luria was endeavoring to persuade the Missouri Pacific that it should get a better share of the scrap, it does not establish that it was doing this through threats or coercion, but rather that it was relying on normal business persuasion.

8. The manner in which most railroads sell their scrap would tend to preclude the possibility that threats or coercion are an effective method in obtaining their scrap business. Substantially all of the railroads whose representatives testified in this proceeding, sell their scrap on the basis of the highest bid received in response to periodic invitations to bid on the railroads' scrap. Where the highest bidder does not bid on the entire amount of scrap offered, other firms may be given an opportunity to purchase portions of the offering, but this is usually on the basis of matching the price offered by the highest bidder.

One of the few railroads which does not invite bids from dealers, brokers and consumers of scrap generally, is the Southern Pacific Railroad. This railroad follows the practice of receiving bids, on an informal basis, from a small group of interested firms. It, nevertheless, sells its scrap on the basis of the highest bid received, and where the entire amount offered is not bid for, it will make an award to the next highest bidder or bidders on the basis of the price offered by them. Luria has been a substantial purchaser of Southern Pacific scrap, particularly of No. 1 heavy melting steel. During the period from January 1949 to March 31, 1954, approximately half of the scrap sold by the Southern Pacific has been sold to Luria. According to the Southern Pacific scrap representative who testified, such sales were made on the basis of Luria being the highest bidder for the scrap it purchased. There is nothing in the testimony of the Southern Pacific representative or of any of the other railroad witnesses to suggest that there were any threats or pressure brought to bear upon them, either by Luria or by any of the respondent mills, to sell any of their scrap to Luria.

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9. Counsel supporting the complaint contend that because of the large quantities of scrap handled and shipped by Luria any requests made by it to the railroads would necessarily have a coercive effect. Counsel refer, in this connection, particularly to the fact that Luria periodically notified railroads of the amount of scrap which it shipped over their lines. While undoubtedly Luria wished the railroads to be aware of the large amounts of business which it gave them, the examiner cannot infer from this alone, or from the fact that Luria was a substantial shipper, that bids submitted by Luria had a necessarily coercive effect. Absent other evidence of a more direct and specific nature, it cannot be inferred that Luria "threatened to and did divert" scrap from railroads which failed to award it substantial quantities of scrap, merely because it let the railroads know it was a substantial shipper. This is particularly true where, as here, the record indicates that awards of scrap were generally made on the basis of the highest bid. It is accordingly concluded that Paragraph 10(a) of the complaint has not been sustained.

10. The charge in Paragraph 10(b) is similar to that in Paragraph 10(a), except that it involves threats against railroads which failed to designate Luria as the broker for substantial quantities of scrap allocated to various shippers, as distinguished from a failure to sell scrap directly to Luria. This charge apparently is the counterpart of Paragraph 9(i) of the complaint, involving requests made by the mills to the railroads, to designate Luria as broker during the period of Government controls. There is evidence in the record that Luria requested some of its mill customers to intercede with railroads to have it designated as broker on allocated scrap, and that a number of the mills did request railroads to designate Luria as broker on scrap allocated to them. There is no substantial evidence, however, that Luria threatened any railroads with a diversion of scrap for failure of the railroads to designate Luria as broker on such allocated scrap.

11. The only evidence referred to by counsel supporting the complaint as indicative of an effort by Luria "to pressure railroads into supplying it with scrap" during the period of controls, involves an interoffice memorandum from Luria's Cleveland office to its Philadelphia office, dated February 12, 1951, containing a draft of a letter that the former was contemplating sending to the Nickel Plate Railroad "in response to their [the railroad's] request * * * the names of our customers so that awards can be made to us for the consumers we deal with." It does not appear whether such a letter was actually sent to the railroad, requesting that Luria be designated as broker for the mills with which they dealt, but it is clear that if such a letter was sent by Luria, it did so at the request of the railroad. Furthermore, the reply

which was proposed by Luria, expressing the thought that "we would appreciate your giving us consideration for the companies listed", can hardly be considered as a threat to divert shipments from the railroad if the request was not complied with. Nor can such a threat be implied, as suggested by counsel supporting the complaint, merely from the fact that Luria was a substantial shipper over the railroad. It is, accordingly, concluded that the evidence fails to sustain Paragraph 10(b) of the complaint.

(2) *New Steel*

1. The complaint, in Count I, contains a series of three charges revolving about the alleged sale of finished and semifinished steel (which are referred to for convenience herein as "new steel"), on the condition that scrap resulting from the sale of the steel would be sold to Luria. In Paragraph 9(f) it is charged that, in furtherance of the exclusive arrangements between the mills and Luria, the respondent mills and other mills sold new steel to fabricators and others with the understanding that the scrap resulting from further fabrication, or other scrap produced, would be sold to Luria. In Paragraph 9(g) it is charged that the mills, in furtherance of their exclusive arrangements with Luria, sold new steel to Luria and that the latter sold such steel to fabricators or others on condition that the vendees would sell their scrap to it. Paragraph 10(c) is directed against Luria alone, and charges that it sold new steel to fabricators and others under the same exclusive dealing arrangements as alleged in Paragraphs 9(f) and (g).

New Steel Sales by Mills to Fabricators

2. Insofar as there is evidence in the record having to do with the alleged sale of new steel on condition that the vendee would sell scrap to Luria, it involves sales of new steel by Luria, and not sales directly by the mills. While the evidence does indicate that some of the new steel sold by Luria originated with certain of the respondent mills, there is no evidence of any direct sales by the mills to fabricators and others on condition that the scrap generated by the vendees would be sold to Luria.

Counsel supporting the complaint have proposed no findings that sales of new steel were made by the mills to fabricators under the challenged conditions. The only evidence purporting to show direct sales by mills to industrial fabricators, actually involves sales arranged by Luria (which received a commission thereon) where, due to Government control regulations, the mills could not sell the new steel directly to Luria and sold it to Luria's designees. Counsel supporting the

complaint have conceded that such sales represent sales made by Luria, rather than by the respondent mills.⁴⁵ In any event, there is no evidence in connection with such sales of any understanding between the mills and the fabricators involved that the latter would sell their scrap to Luria. It is, accordingly, concluded that Paragraph 9(f) of the complaint has not been sustained by the evidence.

New Steel Sales by Mills to Luria

3. There is evidence in the record that some of the mills sold new steel to Luria, a fact which the mills involved do not deny. The only issue with respect to such sales relates to the conditions, agreements or understandings under which such sales were made. The complaint alleges, in Paragraph 9(g), that the sales of new steel by the mills to Luria were, (a) made "in furtherance" of the understandings they had with Luria to act as their exclusive broker, and (b) that Luria sold such new steel to fabricators and others on the condition that the vendees would sell to it the scrap generated in their own operations.

While the complaint is not entirely unambiguous, it is apparently the position of counsel supporting the complaint that the sales of new steel were made on a "steel for scrap" basis, i.e., that the mills sold the new steel with the understanding that Luria would sell them scrap. It is not entirely clear whether the complaint also charges the mills with being privy to the understandings allegedly had between Luria and those to whom it resold the new steel, but apparently it is the position of counsel supporting the complaint that the steel was sold by the mills in contemplation of the fact that Luria would use it as a vehicle for acquiring scrap. It is the position of the mills who sold new steel to Luria that they did so in the normal course of business, and without any conditions attached such as that Luria would sell them scrap or would use the steel to obtain scrap from fabricators or others.

4. The only respondent mills as to whom evidence was offered in support of Paragraph 9(g) of the complaint are CF&I, Bethlehem, Central and Phoenix, Weirton, McLouth and Detroit. Evidence was also offered as to new steel sales to Luria by certain nonrespondent mills, including Copperweld Steel Co., Buckeye Steel Castings Co., and Erie Forge & Steel Corporation. The evidence pertaining to the respondent mills consists principally of statistical evidence as to their sales to Luria, and some limited testimony concerning the basis upon which such sales were made, from which counsel supporting the complaint seek to have the examiner infer that the sales made to Luria

⁴⁵ Counsel supporting the complaint stated in connection with an objection to such evidence (R. 2970):

It has particular relevance * * * to Paragraph 10(c). * * * That involves a sale by Luria of scrap to fabricators and others.

were on a "steel for scrap basis". The statistical evidence discloses a considerable increase in new steel sales to Luria by the respondent mills in question during the period of the Korean War. Counsel supporting the complaint seek to infer, largely from the lack of any substantial history of prior sales to Luria, that such sales were made pursuant to an understanding with Luria that the latter would sell the mills scrap. To a consideration of such evidence the examiner briefly turns.

CF&I

5. In 1951 and 1952 the Claymont plant of CF&I sold Luria 58,000 tons and 13,000 tons, respectively, of steel ingots. The plant had made no previous sales of ingots to Luria and further sales ceased in 1953 after the steel shortage had become less acute. While Claymont had sold no ingots to Luria prior to 1951, the former operators of the plant (prior to its acquisition by CF&I) had sold finished steel plate to Luria at least as far back as 1947. The explanation given by the Claymont witness for the sale of ingots to Luria was that after the Claymont plant was acquired by CF&I in March 1951, Claymont began to operate an additional furnace which resulted in an excess of ingot capacity in relation to the mill's capacity to roll the ingots into finished steel. This excess was further aggravated by a temporary shutdown of the rolling mill. Consequently, when Luria offered to purchase some of the excess ingots, Claymont was delighted. After this introduction into the ingot-selling business, Claymont began to sell ingots to others.

6. Sales of new steel to Luria by CF&I's Minnequa plant preceded the period of shortage incident to the Korean War. The plant sold 6,603 tons of semi-finished steel to Luria in 1948. Further sales of 23,868 tons and 59,871 tons were made in 1950 and 1951, respectively. In addition, Minnequa rolled 37,713 tons of ingots for Luria in 1951, some of which probably was part of the semi-finished steel theretofore sold to Luria. The explanation given by the Minnequa witness for the sales in 1950 and 1951 was that as a result of putting an additional blast furnace into operation in the latter part of 1950, it had an excess of ingots in relation to its orders for finished steel and therefore sold some to Luria.

7. The Buffalo plant of CF&I made sales of new steel to Luria in amounts ranging from about 700 tons in 1946 to 8,300 tons in 1951. No evidence was offered as to the circumstances of such sales.

Bethlehem

8. Between 1950 and 1954 Bethlehem sold approximately 48,000 tons of prime steel to Luria and 68,095 tons of rejected steel products.

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There is no evidence in the record concerning the circumstances of such sales to Luria or of any understanding had in connection therewith.

Central and Phoenix

9. The Harrisburg plant operated by Central sold new steel to Luria between 1947 and 1950 in amounts ranging from approximately 2,000 tons to 8,000 tons a year. Between 1948 and 1954 it also sold new steel to Southwest, amounting to approximately 6,000 tons a year, except for 1949 when the amount sold was approximately 4,000 tons. During the period between 1947 and 1951, Central also sold new steel to other brokers and dealers, in amounts ranging, in the aggregate, from 244 tons in 1948 to 2,500 tons in 1951.

10. Counsel supporting the complaint cite certain correspondence between Luria officials as establishing that Luria had a "steel for scrap" arrangement with Central. While the correspondence indicates some concern on the part of Luria over Central's failure to deliver new steel in the full amount of the orders previously placed, and expresses a hope that something can be done to get Central to complete the shipments, there is nothing in the correspondence to support a finding of any scrap for steel agreement or understanding between the companies.

11. The Phoenixville plant of respondent Phoenix likewise sold new steel to Luria. Its largest sale was 8,700 tons in 1949. Further sales were relatively small, amounting to less than 500 tons a year in most years and no steel in several years. Phoenix also sold 2,600 tons to Southwest in 1951. Sales were also made by it to other brokers and dealers, the peak being 3,800 tons in 1951. There is no evidence as to the circumstances of the new steel sales to Luria or Southwest.

Weirton

12. In the period between 1951 and 1955 Weirton shipped new steel to Luria in amounts ranging from approximately 1,000 tons to 4,000 tons per year, except for 1952 in which such shipments were approximately 9,000 tons. In 1956, long after the Korean emergency with which the argument of counsel supporting the complaint is largely concerned was over, Weirton's shipments of new steel to Luria increased sharply to approximately 43,000 tons. Most of Weirton's shipments to Luria did not involve actual sales of finished steel to Luria, but consisted of steel which Weirton had rolled or otherwise converted for Luria from ingots which the latter had supplied, and for which it paid Weirton a service charge for finishing. Weirton's explanation for these transactions was that the company's finishing capacity was greater than its ingot producing capacity and that it was

therefore agreeable to using the excess capacity to finishing the ingots which Luria supplied.

McLouth

13. McLouth sold approximately 1,000 tons of semi-finished steel (ingots) to Luria in 1949, and 7,000 tons in 1950. There is no evidence from which it may be inferred that such sales were made pursuant to a steel for scrap arrangement or any similar understanding between McLouth and Luria.

Detroit Steel

14. Detroit Steel sold approximately 3,400 tons of semi-finished steel to Luria's affiliate, Southwest, in 1951. The explanation given for such sale was that when Detroit Steel took over the steel plant at Portsmouth, Ohio in 1950, it had only limited finishing capacity, its only product then being semi-finished steel, which it was happy to sell to anyone. In addition to its sales to Southwest, Detroit Steel sold approximately 500 tons of semi-finished steel to the Hyman-Michaels Company, a Chicago broker which had not sold it any scrap.

Conclusions as to New Steel Sales to Luria

15. As indicated above, the evidence upon which counsel supporting the complaint rely is largely circumstantial in nature. There is a complete lack of any direct evidence that the sales of new steel by the mill respondents who sold new steel to Luria were made pursuant to any such understanding, agreement or arrangement as that suggested by counsel supporting the complaint. Counsel appear to recognize this in stating, in their proposed findings, that: "The exact terms by which Luria and [the six respondent mills] handled the sale and purchase of new steel were never supplied by any one of the witnesses."

Actually, a number of the mill witnesses did endeavor to explain the new steel sales as being normal business transactions. Counsel supporting the complaint have sought to question such explanations because of the lack of any history of prior sales in some instances, or for other reasons. Generally speaking, the testimony of the mill witnesses was such as to give the examiner no reason not to accept it, particularly in the absence of any countervailing evidence. However, even if such explanations are not accepted, no affirmative finding can be based on an absence of evidence explaining such sales.

16. Despite the admitted lack of direct evidence to sustain the position of counsel supporting the complaint with respect to the new steel sales of the mill respondents, counsel have endeavored to seek support for their position by relying on evidence involving nonrespondent mills. They argue that: "The essential terms of the agreements between Luria and the respondent mills * * * are indicated by an ex-

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amination of similar agreements with * * * non-respondent mills". Among the arrangements with nonrespondent mills cited, is one purporting to exist with Copperweld Steel Company. According to an interoffice memorandum from Luria's Cleveland office to its Buffalo office, dated November 22, 1950, Luria had an arrangement with Copperweld involving an "Ingot Conversion Deal", pursuant to which "for every ten tons of scrap shipped * * * we [Luria] will receive one ton of ingots" (CX 79). A Copperweld official who was called as a witness in support of the complaint explained the transaction as being one in which his company had the capacity available for additional ingot production, and was willing to sell a portion of such production to Luria provided the latter supplied it with a proportionate amount of the scrap required to produce the ingots.

This evidence is entirely irrelevant insofar as establishing the arrangement between Luria and any respondent mill. It was originally offered by counsel supporting the complaint under Paragraph 10(c) of the complaint, as establishing how Luria got the steel which it sold to fabricators (R. 8533). There is no claim made that understandings with nonrespondent mills reflect any general custom or practice in the industry. Indeed, no such claim can be made on the basis of the evidence in the record.

17. It seems probable that as a result of its exclusive brokerage arrangements with a number of the mills Luria had a close working relationship with such mills, and was in a position to know when certain of them had an excess of ingot capacity and others had an excess of finishing capacity. It was thus able to take advantage of such information to obtain ingots or finished steel which were in generally short supply. It may even be that because of their close working relationship with Luria certain of the mills tended to give it more favorable consideration in the sale of new steel than they would a complete outsider. However, this does not justify a finding that there existed an understanding or agreement between the respondent mills and Luria to supply Luria with new steel in return for scrap.

A number of the mills sold Luria no new steel despite the existence of an exclusive brokerage arrangement between them and Luria. In some instances the exclusive arrangement preceded, by a considerable period of time, the sale of new steel to Luria by a particular mill, and continued for a considerable period of time after the new steel sales ceased. There is, therefore, no necessary connection between the two. There is, moreover, no evidence to support a finding that the new steel sales were made in contemplation of the fact that Luria would use such steel to obtain scrap. It may be noted, in this connection, that Luria was in the new steel business for some years prior

to the period of steel shortage, 1951-1952, and has sold new steel as a regular part of its operations, and not merely as a vehicle for acquiring scrap.⁴⁶ It is concluded and found that the evidence fails to support the charge in Paragraph 9(g) of the complaint.

New Steel Sales by Luria to Fabricators and Others

18. Paragraph 10(c) charges Luria with having sold new steel to fabricators and others "under and subject to the condition, agreement or understanding" that the scrap resulting from further fabrication of the steel, or other scrap generated by the vendees, would be sold to Luria. The record establishes that Luria sold new steel to industrial fabricators, to scrap dealers, to steel merchants and to steel mills and foundries. During the period from 1950 to 1954 it sold new steel to approximately 250 different customers. Its new steel sales amounted to \$6,920,000 in 1950, \$32,168,000 in 1951, \$6,819,000 in 1952, \$3,918,000 in 1953 and \$462,200 in 1954.

19. The evidence offered by counsel supporting the complaint relates mainly to sales of new steel to certain industrial fabricators and scrap dealers from whom Luria purchased scrap. It is contended that the new steel was sold to such vendees on the condition, agreement or understanding that they would sell scrap resulting from their operations to Luria. As in the case of new steel sales by the mills to Luria, there is no direct evidence as to the conditions, agreements or understanding pursuant to which Luria sold new steel to the vendees in question. Counsel supporting the complaint concede that at least with respect to dealer-vendees:

The record contains no contract nor direct admission of an oral agreement to the effect that the yard dealers would sell their scrap to Luria because of the new steel.

However, counsel seek to infer such an agreement from the course of dealings and other evidence.

20. As in the case of the sale of new steel by certain of the respondent mills to Luria, counsel supporting the complaint seek to establish their claim of a "steel for scrap" agreement largely on the basis of the coincidence of the two events, i.e., that those to whom Luria sold new steel sold scrap to it. Additional support for such an inference is sought from the fact that the new steel sales were allegedly not made in the regular course of business, or from other circumstantial evidence. However, as will be more fully indicated below, the evidence fails to support any inference of agreement.

⁴⁶ In 1945, shortly after its separation from LS&T (which had formerly handled new steel for the Luria organization), Luria set up a new steel division, and began to deal actively in buying and selling new steel. New steel became and is a substantial part of its business.

21. The only direct evidence of any effort by Luria to obtain scrap in return for new steel involves a telegram sent by an official in Luria's new steel department to an employee in its Chicago office in which the former states he had been advised by a third person that the George D. Roper Company of Rockford, Illinois, had purchased some new plate from Luria, and the telegram continues:

If this is true we will be able to purchase their scrap. Please let me know on this at your earliest convenience.

The sender of the telegram testified that as far as he was aware the new steel division had not actually sold any new steel to Roper. An exhibit offered by counsel supporting the complaint, which purports to reflect new steel sales by Luria from 1950 to 1954, does not include Roper among the vendees. No evidence was offered to indicate that Luria ever actually attempted to obtain scrap from Roper in return for new steel.

In the opinion of the examiner that Luria may have attempted to obtain scrap from a particular fabricator to which it had sold new steel does not establish that other fabricators or vendees agreed to sell it scrap in return for new steel. The position of counsel supporting the complaint, in this respect, is similar to that previously discussed in which it was urged that because there was a "steel for scrap" agreement with a nonrespondent mill, Copperweld Steel Co., a similar agreement existed with the respondent mills. While the telegram may indicate that Luria tried to use the fact that it sold new steel to a particular fabricator as an entree for seeking to persuade him to sell it scrap, it does not follow that it invariably or generally pursued this practice or that fabricators invariably or generally agreed to sell their scrap to Luria in return for obtaining new steel from it.

22. As indicated above, the evidence upon which counsel supporting the complaint rely is largely circumstantial in nature. In the opinion of the examiner there is nothing about the pattern of sales of new steel and of scrap to support any finding that the new steel sales were made "under and subject to the condition, agreement or understanding" that the vendees would sell scrap to Luria. It may be noted, parenthetically, that the charge itself is ambiguous, since it is not clear whether it is charged that the vendees agreed to sell all their scrap or any definite portion thereof, or merely that they agreed to sell some scrap to Luria. In any event, the evidence fails to establish any agreement or understanding to sell scrap as a *quid pro quo* for new steel. Set forth below is a brief analysis of transactions with the fabricators and scrap dealers upon which the case of counsel supporting the complaint largely rests, as revealed by their proposed findings.

Dana Corporation

23. Dana manufactures automobile parts and assemblies, and has plants in various parts of the country. The evidence pertaining to it involves primarily its plants at Toledo, Ohio and Pottstown, Pennsylvania. The only new steel sold to Dana by Luria consists of 1,500 tons of ingots which it sold to the Toledo plant in May and June 1951. Prior to this sale Luria had been purchasing scrap for a number of years from Dana's Toledo plant and also from its plants at Fort Wayne, Indiana and Reading, Pennsylvania.

Sales of scrap by Dana's plants were handled separately by officials at each plant. Bids were received from a number of different dealers and brokers, and awards were made on the basis of the highest bid, with those submitting lower bids being given an opportunity to purchase portions of the scrap by meeting the price offered by the highest bidder.

In the fiscal year ending August 31, 1950, Luria purchased 24% of the scrap of the Toledo plant. In the year ending August 31, 1951, during which it purchased 1,500 tons of new steel from Luria, its sales of scrap to Luria increased to approximately 42%. In the following year, when Luria sold Dana no new steel, Luria purchased approximately 80% of the Toledo plant's scrap. Luria's scrap purchases in the years 1953 to 1955 amounted to 67%, 50% and 45%, respectively. There is nothing about the pattern of scrap sales from which it may be inferred that they were made as the *quid pro quo* for Luria's selling 1,500 tons of new steel to Dana in 1951.

The position of counsel supporting the complaint with respect to the Dana transaction is apparently based mainly on Luria's purported indirect purchase of scrap from the Pottstown plant, rather than on any sale of scrap at Toledo.⁴⁷ As previously noted in connection with the discussion of the Luria-Bethlehem exclusive arrangement (pp. 314, 315), Mayer Pollock, which had been purchasing scrap from the Dana plant at Pottstown, agreed to sell an equivalent tonnage to Luria after the latter had informed Pollock sometime in 1951 that Dana wished it to handle the Pottstown scrap because Luria had done Dana a "favor" at Toledo. In the opinion of the examiner this incident fails to support a finding that the sale of steel to Dana at Toledo was based on an agreement that Dana would sell Luria the scrap from its Pottstown plant.

⁴⁷ Counsel supporting the complaint do refer to the fact that Columbia Iron & Metal Co., a Cleveland broker, was unable to purchase scrap from Dana's Toledo plant in 1951. However, the Columbia witness made no effort to ascribe this to Luria. Columbia was not a large purchaser of Dana scrap. It purchased \$18,000 to \$22,000 worth of scrap from Dana in 1946 and 1947. Its purchases from Dana declined in 1948 to \$9,000 and ceased entirely in 1949, before Luria had sold any new steel to Dana. Further small purchases of \$11,000 and \$10,000 were made in 1950 and 1951.

In the first place, it is not entirely clear that the "favor" which Luria did for Dana was the sale of new steel. In the second place, it is not established that Luria's statement to Pollock that Dana wished Luria to handle the scrap at Pottstown was ever authorized by Dana. Pollock, admittedly, took no steps to verify the information and the matter was not brought to the attention of Dana, which continued to sell its Pottstown scrap to Pollock. The scrap sales at each plant, as previously noted, are made separately by an official at the plant. The most that the Toledo plant could have done was to offer to get Luria an entree to the Pottstown plan. While this subject was discussed, according to the official in charge of scrap at Toledo it was never "followed * * * through" (R. 9448). Even assuming that the Toledo official did promise to use his good offices to get Luria an entree at Pottstown, this is hardly the equivalent of a sale of new steel "under and subject to the condition, agreement or understanding" that Dana would sell scrap to Luria.

American Stamping Co.

24. Luria sold new steel to American Stamping Co. of Cleveland amounting to approximately \$146,000 in 1951 and \$2,700 in 1952. In addition, American Stamping purchased 2,100 tons of scrap from Moritz Steel Co., a steel wholesaler in Cleveland, which Moritz had obtained from Luria and sold to American Stamping in its own behalf or in a joint venture with Luria (the record being unclear how the transaction was handled). American Stamping Co. did not sell any scrap to Luria until 1954, and no claim is made that such sale was connected with the new steel it had obtained from Luria several years earlier.

However, counsel supporting the complaint seek to connect with Luria, scrap sales made by American Stamping to two Cleveland dealers, Paramount Steel & Supply Co. and Lederer Iron & Steel Co. The dealers are described by counsel as "captive" yards of Luria, since they had received loans from Luria and were required to offer their scrap to it on a first-refusal basis.

The record fails to support a finding that the sale of scrap by American Stamping to Paramount or Lederer was an outgrowth of any agreement made in connection with the sale of new steel by Luria. The sale of scrap to Lederer did not occur until 1953 (amounting to approximately \$13,000), a year after Luria's last sale to American Stamping (amounting to \$2,700). Paramount had been buying scrap from American Stamping at least as far back as 1948, which is several years prior to its financial obligation to Luria, and to the latter's sale of new steel to American Stamping. There was no significant change in the proportion of scrap sold to Paramount after Luria's sales of

new steel to American Stamping. Counsel supporting the complaint have suggested no reason why the sale of scrap to Paramount and Lederer should be considered as resulting from the sale of new steel by Luria to American Stamping.

Midland Steel Products Co.

25. Midland Steel Products Co. of Cleveland is a fabricator of metal products. Midland purchased ingots from Luria amounting to approximately \$330,000 in 1949 and \$135,000 in 1951. Midland also regularly sold scrap to Luria. During the period between 1949 and 1955, such sales amounted annually to between \$700,000 and \$1,500,000.

The only evidence cited by counsel supporting the complaint, outside of the coincidence of steel and scrap sales, is the hearsay testimony of the Cleveland broker, Columbia Iron & Metal Co., who has ceased buying scrap from Midland in 1951. Columbia apparently had no trouble buying scrap from Midland in 1949 and 1950, despite the fact that Luria had sold new steel to Midland in 1949 amounting to \$330,000. However, in 1951, according to the Columbia official, he was advised by his purchasing agent (who had talked to some unidentified person at Midland) that Midland was selling its scrap to "several people" from whom "they were getting ingots" (R. 8973). Luria was not specifically identified as being one of the "several people" involved.

Aside from the dubious reliability of the hearsay testimony of the Columbia witness, the record does not support a finding that Midland sold scrap to Luria because the latter sold it new steel and, conversely, that it refused to sell scrap to Columbia because Columbia did not sell it new steel. According to the credited testimony of a Midland official, his company's scrap sales were made on the basis of the highest price offered by a number of bidders, and his company's scrap was awarded largely to Luria and to Luntz Iron & Steel Co., another Cleveland broker, because they were the highest bidders. The Midland official specifically denied that the sale of scrap to Luria was connected with its purchase of new steel from Luria. It is significant that Midland sold scrap to Luntz despite the fact that the latter sold it no new steel.⁴⁸

Electric Auto-Lite Company

26. Electric Auto-Lite is a manufacturer of automotive electrical equipment, and operates a number of different plants. The evidence upon which counsel supporting the complaint rely relates mainly to the plant at Toledo, Ohio. Toledo handles the sale of scrap not only for

⁴⁸ The Midland official testified that Luria was the only scrap broker from which his company purchased new steel.

its own plant, but for three other plants of the company in Ohio. Luria sold 300 tons of ingots to Electric Auto-Lite in 1950 and 1,600 tons in 1951. In 1952 Luria was instrumental in obtaining 1,500 tons of ingots from Buckeye Steel Castings Co., which was sold to Electric Auto-Lite by Buckeye and on which transaction Luria received a commission or "finder's fee" of \$3.00 per ton. Luria had theretofore been a regular purchaser of scrap from a number of the Electric Auto-Lite plants, including the plant at Toledo.

There is nothing in the pattern of scrap sales by Electric Auto-Lite, from which it may be inferred that the sales to Luria were an outgrowth of, or were affected by, Luria's sales of new steel to it. While the earliest year for which counsel supporting the complaint offered statistical evidence of scrap sales to Luria is 1950, there is credible testimony in the record that Luria had been buying scrap from the Toledo plant of Electric Auto-Lite as far back as 1934. There was no significant change in the proportion of scrap sold to Luria by the Toledo plant during the period covered by the statistical evidence, so as to suggest that such sales were influenced by the sale of new steel.⁴⁹

The only evidence cited by counsel supporting the complaint as indicating some connection between Luria's sale of new steel and its purchase of scrap, is the fact that the Cleveland broker, Columbia Iron & Metal Co., was unable to buy any scrap from Electric Auto-Lite's Toledo plant. However, the Columbia witness made no effort to ascribe his company's lack of success to the fact that others had sold Electric Auto-Lite new steel. The lack of probability of any such connection is suggested by the fact that Columbia was unable to purchase any scrap from the Electric Auto-Lite at any time during the period from 1945 to 1949, which was prior to the earliest date when Luria had sold any new steel to that company, nor was it able to buy any scrap from the company between 1953 and 1956, after the sale of new steel by Luria had ceased.

According to the credible testimony of the Electric Auto-Lite witness, sales of scrap from Toledo were generally made on the basis of the highest bid received, with some of the smaller dealers being given an opportunity to buy a portion of the scrap if they were willing to meet the high bid. Since the Columbia witness conceded that at least some of the time "[o]ur price evidently was not high enough" (R. 8974), it seems likely that this was a factor in Columbia's not buying any of the Electric Auto-Lite scrap. In any event, there is no substantial evidence that its lack of success was due to Luria's sale of new steel.

⁴⁹ The proportion of scrap sold to Luria by the Toledo plant was as follows: 1950—66%, 1951—74%, 1952—72%, 1953—75%, 1954—74%, 1955—67%.

The Budd Company

27. The Budd Company, as has been previously noted (pp. 58-60), began selling the bulk of the scrap from its Hunting Park plant to Luria beginning around 1951. The evidence also discloses that Luria sold new steel to Budd as follows: 1,571 tons in 1950; 60,000 tons in 1951; and 15,714 tons in 1953. In addition, Luria was responsible for obtaining 26,499 tons of semi-finished steel for Budd from various mills in 1952, and Budd paid it a finder's fee for its assistance in arranging such sales.

It is apparently the position of counsel supporting the complaint that Luria was able to buy the Budd scrap because it had sold Budd new steel. However, elsewhere in their proposed findings counsel have suggested that the decision by Budd to sell the bulk of its scrap to Luria was an outgrowth of the Bethlehem-Luria exclusive arrangement, Budd having theretofore sold substantial portions of its scrap to Bethlehem. This, as the examiner has already found, is the root of the Budd decision, rather than any sale of new steel. Counsel supporting the complaint suggest no convincing reason why it must be inferred that because Luria bought scrap from a fabricator to whom it sold new steel, there is a causal connection between the two events.

Counsel devote considerable argument to the proposition that certain of the new steel transactions in which Luria engaged, including those in which it received a finder's fee for obtaining new steel for Budd, were in violation of the Government price and materials-control regulations. However, the evidence cited by counsel was offered and received in support of Paragraph 10(c) of the complaint, and not in support of any charge of a violation of OPS or NPA regulations.⁵⁰ The examiner considers it not only irrelevant to any issue in this proceeding, but entirely improper and inappropriate, to determine whether Luria or any respondent mill violated the regulations of other agencies now defunct.

Pennsylvania Forge Company

28. The only other user of new steel as to whom evidence was offered that Luria had sold new steel and purchased scrap was Pennsylvania Forge Company. No reference to this company is made by counsel supporting the complaint in their proposed findings. However, the record discloses that Luria sold to this company 9,700 tons of finished steel and ingots in 1951, and 8,200 tons in 1952. Pennsylvania Forge also sold scrap to Luria. There is no evidence from which it may be

⁵⁰ In offering evidence showing the receipt of finder's fees by Luria on shipments to fabricators, including Budd, counsel supporting the complaint offered such evidence as being relevant to Paragraph 10(c), stating (R. 2969):

[W]e * * * hope to show that the fabricators * * * sold scrap to Luria as part of the consideration.

inferred that there is any causal connection between these two events. Pennsylvania Forge had been selling scrap to Luria for about 25 years before it sold it any new steel. There was no significant change in the already substantial proportion of Pennsylvania Forge's scrap purchased by Luria when the latter began to sell it new steel in 1951.⁵¹

New Steel Sales to Scrap Dealers

29. Counsel supporting the complaint devote considerable attention to Luria's sales of new steel to a number of scrap dealers. Special emphasis is placed on sales to a group of dealers in the Philadelphia area. It is contended that the sales of new steel to these dealers were not bona fide sales, but that Luria had actually made all the arrangements to sell the new steel to third parties and had merely channeled the sales through one or another of these dealers so as to enable them to make a profit on the transaction, in return for a commitment to sell their scrap to Luria. The dealers involved in these transactions were Abrams Metal Co., S. D. Richman Sons, Inc., Alleghany Iron & Metal Co., Ace Iron & Metal Co., Giordano Waste Material Co. and Camden Iron & Metal Co.

30. Respondent Luria concedes in its proposed findings that it "pre-sold" some or all of the new steel which it ostensibly sold to these dealers and which they, in turn, purported to resell to third parties who were actually customers of Luria's. Luria concedes that, in effect, it split its profit on these sales with the dealers in question, they having had nothing to do with the actual resale except to do the necessary bookkeeping and take a small credit risk. However, it denies that it made any of the new steel sales on the condition that the dealers would sell their scrap to it.

31. As counsel supporting the complaint concede, the record contains no direct evidence in the form of a written agreement or any admission by the dealers that they agreed to sell their scrap to Luria in return for being permitted to share in Luria's profit on new steel sales, which the latter had actually arranged. However, they contend that such an agreement may be inferred from various facts and circumstances in the record, particularly from the fact that certain of the dealers conceded Luria had done them a "favor" in selling them new steel, and also from the irregularity of the transactions in which Luria purported to sell the steel to dealers who did not actually handle new steel, while having previously presold the steel to third parties. In connection with the latter circumstance, counsel contend that the

⁵¹ The proportion of Pennsylvania Forge's scrap sold to Luria during the period covered by the figures in evidence is as follows: 1948—66%, 1949—51%, 1950—61%, 1951—64%, 1952—64%, 1953—65%, 1954—53%, 1955—50%.

colorable sales to the dealers were part of a so-called "daisy chain" to circumvent Government control of regulations.

32. Luria concedes that it "did these dealers a favor in these transactions". While also conceding that it "hoped and expected" the dealers, all of whom had formerly been substantial suppliers of scrap to it, would continue to sell it scrap, Luria denies that the new steel sales were made on the condition or agreement that the dealers would sell their scrap to it. The dealers involved in the transaction denied that there was any understanding that they would sell their scrap to Luria in return for its sale of new steel to them.

33. The examiner cannot infer merely from the fact that Luria did a "favor" for certain of its dealer-suppliers, that it had an agreement or understanding with them to sell it scrap. As will hereafter more fully appear, the dealers had been substantial suppliers of scrap to Luria for years. Luria undertook to do them a favor during a period of steel and scrap shortage, no doubt in the hope of gaining their good will and keeping their patronage. However, this does not justify a finding that when Luria purported to sell them new steel it did so, as alleged in the complaint, "under and subject to the condition, agreement or understanding" that the dealers would sell their scrap to it.

The fact that the sales of new steel may have been in violation of Government regulations likewise does not support such a finding, but on the contrary is, as previously indicated in connection with the discussion of sales to fabricators, irrelevant to any issue in this proceeding. Counsel supporting the complaint suggest that the irregularity of the transactions establishes that they were not made "in the regular course of business", and is a factor to be taken into consideration in determining whether there was a *quid pro quo* for such sales. However, even assuming that the fact the sales were made in violation of Government regulations establishes they were not made in the regular course of business, it does not follow that they were made with the agreement or understanding that the dealers would sell their scrap to Luria.

34. There is nothing about the pattern of the scrap sales to Luria to suggest that they were the result of, or influenced by, the sale of new steel. All of the dealers had been substantial suppliers of scrap to Luria prior to their purported purchase of new steel and there was no significant change in their sales of scrap thereafter.

(a) *Abrams Metal Co.* bought new steel from Luria between April and November 1951 amounting to approximately \$26,000. During the fiscal year 1948-1949, the earliest year for which there are figures in evidence, Luria was the third largest purchaser of scrap from Abrams. There are no figures in evidence for the years 1949-

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1950 and 1950-1951. The figures for the next year, 1951-1952 disclose that Luria had become the largest purchaser of Abrams' scrap. It cannot be inferred, however, that the increase in scrap sales to Luria was due to the sale of new steel. The increase in sales to Luria appears to have resulted in large part from the fact that Charles Dreifus Co., another Philadelphia broker, which had been the largest purchaser of Abrams' scrap temporarily discontinued business from November 1949 to September 1954. When Dreifus resumed business it again became the largest purchaser of Abrams' scrap, both in 1954-1955 and 1955-1956. It may be noted that in the period 1952-1953 and 1954, before Dreifus' resumption of business, Luria was the largest purchaser of Abrams' scrap although it had made no new steel sales during this period.

(b) *S. D. Richman Sons, Inc.* had been selling scrap to Luria for 25 years before it bought any new steel from it in 1951. In 1950, the earliest year for which there are any figures in evidence, Luria was Richman's biggest customer and purchased 83% of the scrap sold by Richman. In 1951, the only year in which Luria sold it any scrap, the proportion of Richman's scrap sold to Luria declined to 67%.

(c) *Alleghany Iron & Metal Co.* had been doing business with Luria for 30 years before Luria sold it any new steel in 1951. In 1950, the earliest year for which there are any figures in evidence, Luria was the largest purchaser of scrap from Alleghany, its purchases accounting for 51% of Alleghany's sales. In 1951, the only year in which Luria sold it new steel, Alleghany sold 51% of its scrap to Luria. In the years 1952 and 1953 the proportion of scrap sold to Luria increased to over 60%.

(d) *Ace Iron & Metal Co.* has been selling scrap to Luria since 1937. In 1950, before any purchases of new steel from Luria, it sold approximately 52% of its scrap to Luria. In 1951, the only year in which it purchased new steel from Luria, the proportion of its sales to Luria declined to 37%. In the years 1952 and 1953 the proportion of its sales to Luria increased to 53% and 62%, respectively.

(e) *Giordano Waste Material Co.* has been selling scrap to Luria since approximately 1923. The only sales of new steel to Giordano by Luria were between April and November 1951. There are no figures in evidence of scrap sales by Giordano prior to 1952. It is therefore not possible to determine whether any significant change in its pattern of sales to Luria occurred during and after 1951. During the period from 1952 to 1955, the proportion of its scrap sold to Luria fluctuated between 43% and 63%.

(f) *Camden Iron & Metal Co.* has been selling scrap to Luria since

1929. In 1950, the earliest year for which there are figures in evidence, Camden sold approximately 56% of its scrap to Luria. In 1951, the only year in which it purchased new steel from Luria, the proportion of Camden's scrap sold to Luria declined to 44%. In the years 1952 and 1953, it increased to 61% and 57%, respectively.

(g) *L. Blumberg's Son, Inc.*, unlike the other Philadelphia area dealers referred to above, operates a steel warehouse for the sale of new steel in addition to being a scrap dealer. It purchased new steel from Luria, beginning in 1950, in the following approximate amounts: 1950—\$5,200; 1951—\$152,300; 1952—\$223,750; 1954—\$21,600. Unlike Luria's transactions with the other Philadelphia dealers, those with Blumberg involved actual sales and not pro forma transactions in which Luria had "presold" the steel to third parties. Blumberg sold substantial quantities of scrap to Luria from its two scrap yards. The record does not disclose how long the two companies had been doing business, 1950 being the earliest year for which there are any figures in evidence.

The figures of scrap sales to Luria fail to disclose any such pattern as to suggest they were influenced by Luria's sales of new steel. In 1950 Blumberg sold \$370,000 worth of scrap to Luria, representing approximately 11% of its total scrap sales. There is no reason to infer that such sales were an outgrowth of approximately \$5,000 worth of new steel purchased from Luria. In 1951, when Luria's sale of new steel to Blumberg increased to about \$150,000, the percentage of Blumberg's scrap purchased by it declined somewhat to approximately 10%. In the succeeding years the proportion of Blumberg's scrap purchased by Luria was: 1952—23%; 1953—10%; 1954—14%; and 1955—18%.

Other Dealers

35. The evidence pertaining to dealers in other areas is no more persuasive than that discussed above. Another scrap dealer whose dealings with Luria are the subject of extended discussion by counsel supporting the complaint is *Alpha Steel Company*, of Pittsburgh. Alpha bought new steel from Luria in 1951 and 1952, amounting to \$160,000 and \$71,000, respectively. It also bought new steel from respondent Southwest, amounting to \$24,000 in 1951 and \$4,600 in 1952. In addition, Alpha bought new steel from several of the Philadelphia area dealers in transactions in which Luria had actually presold the scrap to it. Alpha sold substantial quantities of its scrap to both Luria and Southwest.

There is nothing in the evidence or in the pattern of scrap sales to suggest that they were an outgrowth of Alpha's purchases of new steel from Luria and Southwest. In 1950, before any purchases of

new steel, Alpha sold 69% of its scrap to Luria and Southwest. In 1950, the first year in which it purchased new steel from these respondents, the proportion of its scrap sales to them declined to 35%. In the following year, when it again purchased new steel from the respondent brokers, the proportion of its scrap sales to them declined to 26%. Alpha bought new steel from other brokers to whom it sold no scrap. For example, Hyman-Michaels Co. of Chicago sold Alpha more new steel than Luria and Southwest combined in 1951, but Alpha sold it no scrap in 1951 or 1952. Conversely, it sold substantial quantities of scrap to two Pittsburgh brokers, M. W. Singer and Max Solomon, but purchased no new steel from them.

36. Another dealer to whom counsel supporting the complaint refers is *J. Kasle & Sons, Inc.*, of Indianapolis, to whom Luria sold new steel in 1951. This dealer had been selling scrap to the Cleveland broker, Columbia Iron & Metal Co. Columbia ceased purchasing scrap from Kasle in 1952, after having declined to sell it new steel. Counsel supporting the complaint fail to suggest any causal connection between the termination of scrap sales to Columbia in 1952 and Luria's sale of new steel to Kasle in 1951. Columbia's substantial business with Kasle had begun to decline sharply in 1950, before any sale of new steel to Kasle by Luria. Most importantly, the record fails to establish that Kasle ever sold any of its scrap to Luria.

37. Finally, counsel supporting the complaint make reference to a transaction involving *Steel Baling Company*, a St. Louis dealer. Steel Baling was the owner of some scrap which had been allocated to Granite City Steel Company under NPA regulations. Several St. Louis brokers had been promised by Steel Baling that they would be designated as broker on this scrap. One of them was later advised by Steel Baling that it was going to designate Luria as broker on the entire award because it was Granite City's broker, and Steel Baling did not wish to antagonize Granite City or Luria. Reference was also made to the fact that Luria had done a "favor" for Steel Baling's affiliate company in Toledo by selling it some new steel. Counsel supporting the complaint cite this incident as being a "dramatic example of Luria's use of new steel to implement an exclusive scrap arrangement".

It seems clear that Luria was designated as broker in this transaction because it was Granite City's exclusive broker and Steel Baling wished to accommodate Granite City, and not because Luria had done Steel Baling's affiliate a "favor". The latter was merely an incidental fact, and not in any true sense part of any agreement or understanding for Luria's designation as broker.

Conclusions as to New Steel Sales by Luria

38. The evidence discloses that Luria sold new steel to a number of industrial fabricators from whom it purchased scrap. The evidence offered by counsel supporting the complaint involves mainly the period of the Korean War when steel was in short supply. There is no direct evidence that Luria sold new steel "under and subject to the condition, agreement or understanding", as alleged in Paragraph 10(c) of the complaint, that the vendees would sell their scrap to Luria. Counsel supporting the complaint seek to infer such an agreement or understanding largely from the coincidence of the fact that certain vendees to whom Luria sold new steel also sold it scrap. In the case of a number of the dealers counsel rely on the fact that they admitted Luria had done them a "favor" in selling them new steel. Counsel also emphasize the fact that some of the sales were contrary to Government control regulations.

39. The evidence cited by counsel supporting the complaint fails to justify an inference of agreement between Luria and the vendees of new steel with respect to the sale of scrap. In almost every instance, the vendees had been selling scrap to Luria prior to the time Luria had sold them any new steel. There was no significant change in their pattern of sales of scrap to Luria after their purchase of new steel from it, so as to suggest that the former was caused or influenced by the latter.

40. The fact that Luria may have "favored" some of its suppliers of scrap, or have even violated Government regulations in so doing, does not, without more, require the drawing of an inference that it did so as the result of any agreement or understanding that the vendees would sell their scrap to it. Undoubtedly Luria hoped that in selling steel to certain of the vendees it would gain or retain their good will, and thus help protect its sources of scrap. It may also be that some of the vendees appreciated the good turn Luria had done them. However, this does not add up to an agreement or understanding to sell scrap in return for new steel. There is nothing about the course of dealings between Luria and its vendees of new steel to suggest the existence of any such agreement. In most instances the amount of steel sold by Luria was too small to even be a major influencing factor, particularly in the case of sales to fabricators. The sale of scrap to Luria was governed largely by the price it was willing to pay.

41. It is concluded and found that counsel supporting the complaint have failed to establish that Luria sold new steel to fabricators and others "under and subject to the condition, agreement or understanding" that the vendees would sell all or any part of their scrap to Luria.

(3) *Tie-In Purchases of Scrap by Luria*

1. Paragraph 10(d) of the complaint charges that Luria:

Purchased certain grades of iron and steel scrap under and subject to the condition, agreement or understanding that the dealer or other source of supply would sell to said respondent other grades of iron and steel scrap.

There is no direct evidence that any specific dealer or other source of supply ever actually agreed or was required to sell to Luria certain grades of iron and steel scrap in order to be able to sell other grades. The case of counsel supporting the complaint, insofar as this allegation is concerned, is based on a single piece of documentary evidence purporting to reflect a general policy on the part of Luria to engage in "tie-in" purchases, and on the contention that tie-in purchases are "implicit" from Luria's dominant position in certain markets. To a consideration of both these matters the examiner now turns.

The Documentary Evidence

2. Counsel supporting the complaint cite as "direct evidence that Luria insisted upon such tie-in purchases of various grades" the following memorandum, dated January 25, 1950, which was sent by Luria Vice President W. J. Luria to certain other Luria officials and employees:

On any purchases of Bundles for Phoenixville or Lukens we expect you to obtain an equal tonnage of No. 2 Steel.

W. J. Luria explained this memorandum as involving a situation where Luria had received purchase orders from Phoenixville (Phoenix Steel Company) and Lukens for specified amounts of No. 2 bundles and No. 2 steel, and in order to cover those orders it was necessary for the Luria people to buy proportionate amounts of No. 2 steel and of No. 2 bundles. Obviously, if they did follow a balanced buying program Luria would be unable to fill its customers' orders.

The fact that the memorandum in question calls the attention of the Luria officials involved to what their objective should be in trying to fill Phoenix's and Lukens' orders, does not establish that they refused to buy scrap from those dealers who offered them No. 2 bundles but not No. 2 steel, or purchased No. 2 bundles from dealers only on condition that they sell Luria No. 2 steel. Presumably, the Luria officials could buy substantial quantities of No. 2 bundles from one dealer who specialized in bundles, and little or no No. 2 steel from that dealer, while buying large quantities of No. 2 steel from another dealer and little or no bundles from the latter. While the memorandum reflects an over-all goal which the Luria officials would have to bear in mind in order to

meet their obligations to certain mills, it cannot be inferred, in the absence of further supporting evidence, that in meeting this objective Luria officials refused to buy bundles from certain dealers unless the dealer sold them No. 2 steel. Although counsel supporting the complaint called literally dozens of dealers who sold No. 2 bundles and other grades of scrap to Luria, not a single one testified that he was required to sell grades other than those which he was offering to Luria.

Market Position as Resulting in Tie-In Purchases

3. The rest of the argument of counsel supporting the complaint is based on Luria's alleged dominance in certain markets, particularly as an outlet for No. 2 bundles. Counsel argue that: "Luria's insistence upon such tie-in purchases of various grades of scrap is implicit in those areas where it had a monopoly at the mills which used No. 2 bundles." As an example of this situation counsel cite the Philadelphia area where the primary users of No. 2 bundles were Phoenix, Lukens and Claymont (CF&I), with which Luria had substantially exclusive brokerage arrangements. Other instances cited are the St. Louis area, where Luria was the exclusive broker for Granite City, the principal buyer of No. 2 bundles; the Intermountain area where Luria was the exclusive broker for CF&I and Geneva, the principal consumers of No. 2 bundles; and the Baltimore market, where Bethlehem's Sparrows Point plant was the principal consumer of No. 2 bundles.

In the opinion of the examiner, the facts cited by counsel supporting the complaint fail to establish the point for which they argue. While it may be that a number of dealers in these markets sold the bulk of their scrap to Luria, this condition resulted from Luria's dominant position in the market due to its exclusive arrangements with certain mills in the market, a matter which will be hereinafter discussed in greater detail, and not because of any tie-in policy or program which Luria pursued. The dealers sold most of their scrap to Luria not because Luria wouldn't buy part of it unless they sold the rest of it, but because it was not practical in many instances to ship their scrap elsewhere. In a number of the instances cited it was a case of the dealers wanting to sell all of their scrap through a single source, rather than split it up, and not a matter of Luria insisting that they do so.

It is concluded and found that counsel supporting the complaint have failed to establish that Luria purchased certain grades of scrap under and subject to the condition, agreement or understanding that the dealer or other source of supply would sell to Luria other grades of scrap.

(4) *Purchasing at Preclusive Prices*

1. Paragraph 10(e) charges that Luria:

In seeking to secure control of marketing areas in certain sections of the country, bid and paid for iron and steel scrap at prices so high that neither respondent nor its competitors could resell such scrap at existing price ceilings or at generally prevailing market prices except at financial loss.

The evidence upon which counsel supporting the complaint rely in support of this allegation involves mainly evidence that in some instances Luria sold scrap at prices below what it paid for it. Before discussing such evidence, certain preliminary observations should be made which are generally applicable to the evidence cited by counsel supporting the complaint.

The mere fact Luria incurred losses on scrap from time to time, a fact which it freely admits, does not necessarily establish the allegation of the complaint. What Paragraph 10(e) of the complaint is directed at is the pursuit by Luria of a conscious and deliberate policy, undertaken for the purpose of securing market control, of buying scrap at prices so out of line with prevailing prices that it knew, or should have known, that it would have to resell the scrap at a loss. Counsel supporting the complaint recognize in their proposed findings that an essential element of the charge is a showing that the losses were incurred "for the purpose and with the effect of lessening competition". The fact that Luria took losses on scrap, while relevant, does not necessarily establish that it did so as part of any policy to obtain market control, since it is common knowledge that any business may, from time to time, incur losses as a result of ordinary market risks. The evidence relied upon by counsel supporting the complaint is discussed below in the light of these general considerations, and in relation to each of the market areas where it is claimed Luria engaged in preclusive buying.

Cleveland-Youngstown Area
Leyava Incident

2. The only direct evidence of any effort by Luria to engage in preclusive buying involves the testimony of a single employee who was employed in Luria's Cleveland office from September 1, 1948, to October 12, 1948. The employee, Michael Leyava, had previously managed a yard in Erie, Pennsylvania, for a short time on a joint basis with Luria, and was transferred to Cleveland because of his dissatisfaction with the fact that the yard was not making money, allegedly because of interference from Luria and the high prices which Luria charged the yard for scrap which it shipped to it for prepara-

tion. Leyava was hired as a trader in the Cleveland office, it being part of his duties to purchase scrap from industrial fabricators.

3. According to Leyava, after he came to work in Cleveland, Carl Ablon, a Luria official stationed in Cleveland, instructed him to call upon the accounts of one scrap dealer in the area who was not selling enough scrap to Luria and to "hit his accounts and hit them hard" (R. 9192). Leyava was allegedly told that if necessary he could pay \$3.00 to \$5.00 over the market to take accounts away from the dealer. While testifying broadly on direct examination as to the instructions received by him to "hit" the accounts of the competing dealer and to "hit them hard", on cross-examination Leyava could "only remember one account that I was told to call on" (R. 9214). Despite the alleged offering of prices \$3.00 to \$5.00 over the market, Leyava was unable to wean a single account away from the competitor because, as he explained it (R. 9193):

If a man is doing a good job and people are satisfied with the type of service they are getting, why price isn't always of the essence.

Luria urges that no finding be made based on the testimony of "this disgruntled employee" and argues that, in any event, it fails to establish any "practice" on the part of Luria such as that alleged in the complaint.

4. There is no doubt that because of his animosity toward Luria (stemming from his feeling that he had been mistreated at Erie), Leyava tended to exaggerate somewhat in his testimony. However, since his testimony stands undenied by the Luria official involved and is not palpably incredible, it must be accepted as having a measure of truth. Nevertheless, when his testimony as a whole is reconciled, it boils down to the fact that in the fall of 1948 he was instructed to try to take a single account away from a single competitor by offering prices above the market, and that this effort failed because of the account's satisfaction with the service it was receiving from the competitor. In the opinion of the examiner, this single incident in 1948, by itself, hardly amounts to a "practice" such as that alleged in the complaint.

The Evidence Involving the Wilkoff Yard

5. The next incident cited by counsel supporting the complaint involves a period in 1951 when Luria allegedly bought unprepared scrap at prices above the market in the Youngstown area and resold some of it at a loss to The Wilkoff Company, a dealer in Youngstown, Ohio. This is alleged to have occurred in connection with Luria's efforts to become the principal supplier to the Youngstown plant of Youngstown Sheet & Tube Company.

6. In 1950 Luria became the largest supplier to the Youngstown plant of Youngstown Sheet & Tube Company. Prior thereto, it had been a sporadic and relatively small supplier. In order to be in a better position to serve the plant, Carl Ablon of Luria's Cleveland office decided that it would be desirable to have some dealer in the city of Youngstown prepare the scrap since it was uneconomical to have the scrap prepared outside of Youngstown and shipped into the mill. Rather than open a yard itself, Luria entered into an agreement with The Wilkoff Company, a dealer in Youngstown, to prepare the scrap. Since Wilkoff did not have a baling press for preparing bundled scrap, Luria arranged to finance the purchase of a press by Wilkoff. Because Wilkoff was dubious of its ability to obtain sufficient unprepared scrap to keep the press in operation, Luria agreed that it would deliver to Wilkoff sufficient unprepared scrap to keep the press operating at a rate sufficient to enable Wilkoff to make the payments due on the press.

7. The supplying of unprepared scrap by Luria to Wilkoff was handled in two ways. In some instances the scrap was shipped to Wilkoff, which was paid a fixed fee for preparing the scrap, and then it was shipped to the ultimate consumer, Youngstown Sheet & Tube, on Luria's order. In other instances, and apparently more usually, the transaction between Luria and Wilkoff was handled as if it involved a sale of scrap to Wilkoff, rather than the payment of a service fee for preparation. For bookkeeping purposes, Luria "sold" the scrap to Wilkoff and, after preparation by the latter, bought it back for resale to the ultimate consumer, Youngstown Sheet & Tube.

8. The contention of counsel supporting the complaint that Luria sustained losses in transactions with Wilkoff is based on the fact that in certain transactions the price paid by Luria for the unprepared scrap was somewhat higher than the price at which Luria "sold" the scrap to Wilkoff. Luria contends that while there was a bookkeeping loss on some transactions with Wilkoff, these were not true losses since, after the scrap was prepared by Wilkoff, Luria resold it at a profit to the ultimate consumer, Youngstown Sheet & Tube. Luria contends that the transactions involving Wilkoff must be considered as a whole, and a comparison made between what it paid for the unprepared scrap initially and what it got from Youngstown Sheet & Tube for the scrap in prepared form, after taking into account the preparation costs involved in the transactions with Wilkoff.

9. In the opinion of the examiner a more realistic view of the situation requires that a comparison be made of the entire transaction, from the purchase of the unprepared scrap to its ultimate sale by Luria to the mill, rather than on the fragmented basis urged by counsel

supporting the complaint. Luria bought the scrap in order to sell it to the mill. If it had prepared the scrap in its own yard, these costs would have been added to the cost of the scrap in order to determine whether it made a profit on the resale. The fact that it had the scrap prepared by another dealer and handled the transaction with the dealer as if it were a sale, should not hide the true nature of the situation. The difference between the price which Luria charged the dealer and the price at which it bought the scrap back from the dealer is, in effect, the fee which the dealer received for preparing the scrap. However, even if the view urged by counsel supporting the complaint be accepted, the evidence fails to establish that Luria took any significant losses in the sale of scrap to Wilkoff or that such losses as it did sustain were the result of any deliberate policy to secure control of the Youngstown market.

10. Counsel supporting the complaint cite certain interoffice correspondence between Luria's Philadelphia home office and the Cleveland office in January 1951, with regard to the alleged sale of scrap to Wilkoff at a loss, as purporting to reflect a practice of selling such scrap at a loss. Such evidence fails to sustain the position of counsel supporting the complaint. The memorandum from Luria's home office indicates that it was contrary to the policy of that office to permit the handling of material on a loss basis. The memorandum, which is dated January 16, 1951, after calling attention to an apparent loss on two carloads of scrap shipped to Wilkoff, states (CX 71) :

If this is the way material is going to be handled going into Wilkoff's Yard, this office is going to be extremely reluctant to order any material shipped there inasmuch as the material could be handled in this district for considerable profit. We would appreciate your explanation.

The memorandum from the Cleveland office which is also dated January 16, 1951, is apparently in reply to an earlier memorandum from the Philadelphia office, dated January 9, 1951, with regard to "losses on unprepared scrap going into the Wilkoff Company". The reply from the Cleveland office indicates that it was not the general policy of that office to incur losses on scrap sold to Wilkoff, stating (CX 72) :

As explained to you over the telephone, we sell Wilkoff at approximately our average cost plus one dollar, which would naturally mean that on certain cars we lose money. However, in the overall transaction a nominal profit would be realized.

The reply further emphasizes the fact that on the resale to Youngstown Sheet & Tube of scrap prepared by Wilkoff, the Cleveland office made a profit, and the memorandum cites a number of specific sales in which

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Luria made a profit of from \$1.00 to \$2.50 per ton on the resale to Youngstown Sheet & Tube of scrap prepared in the Wilkoff yard.⁵²

11. Counsel supporting the complaint refer to a specific transaction with Wilkoff purporting to exemplify the losses allegedly sustained by Luria. The evidence cited discloses that on March 19, 1951, Luria sold a carload of scrap to Wilkoff at \$38.25, which it had purchased earlier at \$41.00 a ton. However, counsel ignore four other transactions with Wilkoff on the same day, in which Luria sold scrap to Wilkoff at a profit. In two transactions it sold scrap to Wilkoff for \$38.25 per ton, which it had purchased at \$35.50, leaving a profit of \$2.75 per ton, and in two other transactions it sold scrap for \$38.25 per ton, which it purchased for \$37.25, yielding a profit of 97¢ per ton. Thus, while Luria sustained a loss of \$65.00 on the one transaction referred to by counsel supporting the complaint, it made a profit of \$110.99 on the other four transactions. Counsel supporting the complaint produced no evidence to establish that Luria took a loss on the resale of any of the scrap to Youngstown after preparation by Wilkoff. Such evidence as there is indicates that it was customarily resold at a profit.

12. As further evidence of preclusive buying by Luria in the Youngstown area counsel supporting the complaint cite the testimony of an official of Columbia Iron & Metal Co. of Cleveland, to the effect that when his company opened a yard in Youngstown in August 1951, "it seemed that the price of unprepared scrap was selling for the price of prepared, and we were unable to buy any tonnage at all and we were

⁵² Counsel supporting the complaint argue that the total profit on the 13,750 tons referred to in the memorandum was not \$24,250, as the memorandum suggests, but \$9,500, and that therefore Luria sustained a loss on some of the transactions totaling \$14,750. Counsel's argument is based on the fact that the memorandum contains a pencilled notation by the Philadelphia office, "\$9,500", which counsel interpret as being Luria's net profit on the resale of the scrap. Counsel cite in support of their argument the testimony of Carl Ablon purporting to explain the pencilled notation. Ablon, who testified in April 1957 regarding the significance of a notation made on the memorandum by someone in the Philadelphia office in January 1951, was obviously speculating with respect to the significance of the figure \$9,500. His testimony, that the figure "appears to indicate the overall profit on the shipment of 7,500 tons of scrap", was erroneous since there were 13,750 tons of scrap involved, not 7,500. Counsel supporting the complaint, while recognizing that Ablon was in error to the extent that he referred to 7,500 tons, claim that he merely misspoke himself with regard to the total quantity involved and really meant 13,750 tons, but that his testimony was correct insofar as he stated that it appeared that \$9,500 was the profit on the entire transaction. In the opinion of the examiner, the situation regarding the notation appearing on the memorandum of January 16, 1951, is so confused and unclear that no finding can be made based thereon. To accept the version of counsel supporting the complaint would mean that Luria had taken a loss on the bulk of the scrap shipped into the Wilkoff yard of such magnitude that even a profit of \$24,250 on the resale to Youngstown enabled it to recoup only about one-third of the loss. This, however, is contrary to the memorandum itself which indicates that on scrap going into the Wilkoff yard it was customary to make a profit of \$1.00 per ton. The testimony of Carl Ablon likewise indicates that Luria usually showed a profit on scrap shipped into the Wilkoff yard sufficient to balance out losses on some shipments. The evidence of specific transactions which is hereinafter discussed, also tends to show that a profit was customarily made on scrap shipped into the Wilkoff yard.

just practically out of business there for a while" (R. 8975). The Columbia witness identified Luria and Wilkoff as being the "big offenders" in the prices being paid dealers.

The examiner can make no findings, based on the testimony of the Columbia witness, that Luria was paying prices for unprepared scrap which were out of line with the prices being paid in the market. The testimony of the witness concerning the prices being paid by others to dealers in the area was a mixture of hearsay and speculation. He was unable to recall a single dealer who had informed him what prices were being offered by others. Recognizing that price control regulations would have limited the prices being paid dealers, the witness conceded that the situation could have involved refusals to sell scrap unless his company sold the dealer new steel, rather than refusals to accept his price offers. He finally opined that Luria couldn't have increased their volume in the area "the way they did if they didn't pass out something" (R. 8980). Absent independent evidence as to the prices being paid by Luria to dealers in the area, the examiner can make no finding that Columbia was unable to buy scrap because of the preclusive prices being paid by Luria.⁵³

The Evidence Involving Buckeye Steel Castings

13. Buckeye Steel Castings Co. of Columbus, Ohio is an account to which, as has been previously noted, Luria has been a major supplier of scrap and which has also sold Luria new steel. As further evidence of preclusive buying, counsel supporting the complaint cite correspondence between Luria's home office in Philadelphia and its Cleveland office in January 1951 pertaining to a loss of \$2,800 on scrap sold to Buckeye Steel Castings in the latter part of 1950 and early January 1951. The Philadelphia office apparently discussed the matter in a telephone conversation with the Cleveland office and was advised that the latter office expected to recoup such losses by making a profit on the sale of ingots which had been purchased from Buckeye. In an interoffice memorandum dated January 15, 1951, confirming the telephone conversation, William J. Luria of the Philadelphia office expressed concern to Jack Levand of the Cleveland office over the "tre-

⁵³ The examiner ruled during the course of the witness' testimony that no finding as to the prices being paid by Luria would be based on such testimony, and that it would be necessary for counsel supporting the complaint to introduce independent evidence of such prices, to which instruction counsel responded: "That is understood" (R. 8981). No such evidence has since been introduced. In an apparent effort to explain such failure, counsel state that Luria's records pertaining to the purchase and sale of scrap consigned to Wilkoff in 1951 have been destroyed. Such records were destroyed through inadvertence in 1957, some months prior to the usual time for their destruction. However, they were available for inspection by Commission personnel between 1952 and 1957. Furthermore, evidence of the prices which Luria had paid to dealers would presumably be available in the records of the dealers. In any event, no finding can be made on an absence of evidence, and no inference adverse to Luria can be drawn therefrom.

mendous losses", and raised the question whether it would be possible to recoup the losses by profits from the sale of new steel.

14. The evidence does unquestionably establish that Luria incurred losses on scrap sold to Buckeye. Counsel supporting the complaint suggest that such losses were deliberately incurred with the thought that they would be recouped from the sale of ingots purchased from Buckeye. However, according to the uncontradicted and credited testimony of Jack Levand, Luria had committed itself to sell the scrap in the latter part of 1950 at a price at which it expected to make a profit, but due to increases in scrap prices thereafter it could not buy the scrap at a price sufficiently low to yield a profit. Since price controls did not go into effect until February 1951, it is reasonable to assume that scrap prices were quite volatile during the latter part of 1950 and January 1951, and that Luria could have misjudged the market. The fact that it hoped to recoup the losses, after they became apparent, does not require a finding that the original sale was made in contemplation of such losses.

15. However, even if the contention of counsel supporting the complaint is accepted and it be assumed that Luria deliberately sold the scrap to Buckeye at too low a price in order to obtain ingots, this does not establish the charge in Paragraph 10(c). What that paragraph charges is not the *sale* of scrap at prices so low that Luria incurred losses, but the *purchase* of scrap at prices so high that it could only be sold at a loss. No evidence was introduced as to the prices which Luria paid for the scrap. According to Levand's version of the transaction, Luria bought the scrap at or about the market but was caught in the squeeze of an earlier commitment to Buckeye. There is nothing to show that Luria bought the scrap at prices above the market.

Other Evidence of Losses

16. The only other evidence of any losses in the sale of scrap in the Cleveland-Youngstown area involves the period of price controls when the Cleveland office had bought scrap below the OPS ceiling price but, because of the necessity for paying a loading fee, was unable to sell the scrap at a profit. This situation is referred to in an inter-office memorandum from Luria's Philadelphia office to its Cleveland office, dated July 3, 1951. The memorandum is critical of the Cleveland office for entering into such transactions.

17. There is nothing to show that the loss referred to in this transaction was typical, or that the Cleveland office engaged in any considerable number of transactions. The situation involved in the transaction is peculiar to a period of national emergency, when the imposition of price controls prevents the natural play of economic

forces which might otherwise have permitted the resale of the scrap at a profit.

New York Metropolitan Area

18. Counsel supporting the complaint contend that Luria, either directly or through its subsidiary Lipsett Steel Products, Inc., engaged in the buying of scrap at preclusive prices in the New York metropolitan area. The area as defined by counsel includes the city of New York and certain adjacent areas in northern New Jersey and southern Connecticut.

The Evidence Involving Lipsett

19. The Lipsett yard, which is located in Brooklyn, New York, was opened in 1950. It was equipped with dock facilities and equipment for cutting scrap, but had no bailing press for preparing bundles until 1956. Lipsett purchases scrap from other dealers in the area, and resells substantially all of it to Luria. Prior to the opening of the Lipsett yard, the only other wholesale scrap yard with dock facilities in Brooklyn was that operated by Schiavone-Bonomo. The volume handled by the Lipsett yard increased from approximately 44,000 tons in 1950 to 130,000 tons in 1953. Counsel supporting the complaint contend that the increase in Lipsett's volume was accomplished largely through the buying of scrap at preclusive prices.

20. Counsel supporting the complaint rely mainly on the testimony of an official of Schiavone-Bonomo, Lipsett's principal competitor, to establish their claim of preclusive buying by Lipsett. The testimony of the Schiavone-Bonomo official does not, however, sustain the position of counsel supporting the complaint. While it may be, as the Schiavone-Bonomo official testified, that his company found it "much more difficult" (R. 2602) to buy scrap after the opening of the Lipsett yard, this is by no means surprising in view of the fact that Schiavone had almost no competition in the area prior thereto. However, the examiner is not convinced that preclusive buying by Lipsett was a material factor in the situation.

The Schiavone witness sought to attribute the difficulty in buying to two factors, (1) difficulty in meeting Lipsett's prices, and (2) difficulty in accepting scrap of the same quality as Lipsett. The latter is not directly related to price, and the testimony of another dealer witness called by counsel supporting the complaint suggests that the fact Schiavone was overly particular in its quality requirements may have been a factor in its alleged difficulty in buying scrap.

Insofar as the alleged difficulty in meeting Lipsett's prices is concerned, the witness could give no specific instances where Lipsett had paid higher prices, to support his broadly-stated complaint. How-

ever, his testimony suggests that the fact Bethlehem paid Luria 50¢ to \$1.00 more for scrap than it paid Schiavone, may have been a factor in the alleged difficulty in buying scrap in competition with Lipsett. While this fact tends to support the position of counsel supporting the complaint concerning Luria's favored position with Bethlehem, which has previously been discussed, it does not support the preclusive buying charge. This charge involves the buying of scrap at prices so high it could not be resold at a profit, and not merely paying more for scrap than a competitor. The fact that a broker or dealer pays a little more for scrap because it has a more favorable price from a customer than a competitor is not, in the opinion of the examiner, preclusive buying within the meaning of the complaint.

In any event, it is by no means established that Lipsett did, in fact, pay 50¢ or \$1.00 more for scrap than Schiavone-Bonomo. No evidence was offered by counsel supporting the complaint to show that Lipsett's prices were usually higher than Schiavone-Bonomo's. On the contrary, an exhibit introduced by them pertaining to Willetts Point Scrap Iron & Baling Corp., which sold scrap to both Lipsett and Schiavone, discloses that the prices paid by both were largely comparable (CX 367). It may also be noted that despite the Schiavone-Bonomo witness' testimony regarding competitive difficulties with Lipsett, he conceded that there was no decline in the amount of scrap it was handling in its Brooklyn yard.

21. Counsel supporting the complaint refer to Lipsett's dealing with several scrap dealers in Brooklyn as corroborating the "competitive difficulties of Schiavone-Bonomo during the period 1950 through 1953, from the higher prices paid * * * by Luria and the Lipsett yard." One of the dealers referred to by counsel, Industrial Scrap Iron Co., had ceased dealing with Schiavone prior to the time it started selling to Lipsett. The Industrial witness testified that he stopped selling to Schiavone and began selling to another dealer, Boro Scrap Iron Co., because "during the war Schiavone was a little bit too particular with their scrap" (R. 2660). The witness also testified that he switched to Lipsett from Boro Scrap because "there was more money" (R. 2661).

22. The fact that Lipsett paid Industrial "more money" than Boro Scrap does not necessarily establish that its prices were out of line with the market. There is no indication of how much more Lipsett paid for scrap than Boro Scrap, or that the scrap was resold at a loss. Counsel supporting the complaint suggest that the scrap must have been resold at a loss because Lipsett was paying Industrial the OPS ceiling price for No. 2 steel (\$35.99) between 1951 and 1953. This, however, does not necessarily follow. The scrap was already prepared (R. 2658), and therefore Lipsett had no preparation costs. Under

OPS regulations it was entitled to charge \$1.25 a ton, in addition "to the actual transportation charges", for scrap shipped from its own dock (CPR 5, Sec. 6(b)). Conceivably Luria might have decided to handle the scrap at cost through Lipsett, and to make its profit out of its \$1.00 brokerage commission. That the price was not out of line with the market is suggested by the fact that another dealer, Willetts Point Iron & Scrap, was receiving the same price for No. 2 steel in January 1953 from Schiavone-Bonomo, as Industrial was from Lipsett, viz, \$35.99.

23. The other Brooklyn scrap dealer whose dealings with Lipsett are referred to by counsel supporting the complaint is Independent Scrap Iron Corporation. Independent sells its scrap to a number of brokers and dealers, including Lipsett, Luria and Schiavone-Bonomo. During the period from 1953 to 1955 it sold about 50% of its scrap to the Luria organization, either directly or through Lipsett. There is no indication of whether this represents an increase over any earlier period. Counsel supporting the complaint rely on the testimony of the Independent witness that "the Lipsett price would be the same or better than I could get on the open market" (R. 2496), and cite several transactions where Lipsett paid higher prices to Independent than a competitor.

24. The fact that Lipsett's prices were the same as, or even that they were sometimes better than, competitors' hardly establishes that it was engaged in preclusive buying. The Independent witness would not say that Lipsett's prices were generally, or even in a majority of instances, above that of competitors. The fact that it sold half of its scrap to other brokers would hardly seem to suggest that Lipsett was outbidding the market.

The specific transactions cited by counsel supporting the complaint likewise fail to support the preclusive buying charge. In the first group, Lipsett paid Independent \$4.00 more a ton for No. 2 bundles than did a competitor, and in the second, \$2.50 more. While each set of transactions occurred in the same month (the first in April 1953; the second in June 1953), they were entered into on different dates within the month, and took place after the removal of price controls at a time when the market was fluctuating rapidly. It is just as reasonable to ascribe the differences to normal market fluctuations, as it is to ascribe them to the fact that Lipsett outbid the market. Presumably Independent would have sold the scrap to Lipsett, rather than the other broker, if it had felt Lipsett would pay it a better price at the time it was considering the offer from the latter. In any event, there is nothing to indicate that the differentials revealed by these two sets of transactions are typical or that Lipsett resold the scrap at a loss.

25. While, as above indicated, counsel supporting the complaint failed to show in any of the transactions discussed that Lipsett resold any of the scrap at a loss, there is evidence in the record covering part of the period at issue, which indicates that Lipsett was conducting a profitable operation generally. Thus, statistical evidence for 1952, introduced by counsel supporting the complaint, establishes that on gross sales of \$4,390,000, Lipsett realized a gross profit of \$222,000, and a net profit before taxes of \$65,700.

The Evidence Involving Luria

26. In addition to the evidence involving the Lipsett operation, counsel supporting the complaint rely on evidence pertaining to Luria's own purchases from four dealers in the New York metropolitan area, as establishing their contention that Luria engaged in preclusive buying in that area. The dealers are located, respectively, in New Haven, Connecticut; Jamaica, New York; Brooklyn, New York; and Newark, New Jersey.

27. The most important of the dealers is M. Schiavone & Sons, of New Haven. For a number of years M. Schiavone had sold the bulk of its scrap to Schiavone-Bonomo, which had helped finance the opening of its first yard in 1937 and with whom there existed a family relationship. Beginning around 1950 there was a substantial decline in M. Schiavone's sales to Schiavone-Bonomo, and it began to do an increasing business with other brokers including respondents Luria and Southwest. Counsel cite the testimony of the Schiavone-Bonomo witness that "quotations from that yard [M. Schiavone's] were certainly dollars higher than we could afford to pay" (R. 2607), as establishing that prices paid by Luria and Southwest were responsible for the decline in business between M. Schiavone and Schiavone-Bonomo.

Aside from the fact that the testimony of the Schiavone-Bonomo witness was based on hearsay and opinion, the record does not support a finding that the payment of preclusive prices by Luria or Southwest was responsible for a decline in business between the two companies. A representative of M. Schiavone, who was also called as a witness by counsel supporting the complaint, testified that his company's business with Schiavone-Bonomo had begun falling off even prior to 1950 because it felt the latter was taking advantage of the family relationship in paying it prices below the market. He stated that his company had received better price quotations from "a lot of different people", not merely from Luria and Southwest, and that it continued to do business with Schiavone-Bonomo only "for old times sake" (R. 3956).

The statistical evidence offered by counsel supporting the complaint with respect to M. Schiavone's scrap sales would appear to belie the

claim that Luria was offering or paying M. Schiavone "dollars higher" than the market. The figures disclose that during the period from 1950 to 1953, with which most of the testimony was concerned, M. Schiavone was selling most of its scrap to dealers and brokers other than Luria.⁵⁴ Presumably if Luria were paying prices dollars above the market it would have been able to purchase more of M. Schiavone's scrap.

28. Another of the dealers referred to by counsel supporting the complaint is Special Steels Co. of Newark, which sold 80 to 90% of its scrap to Luria during the period from 1952 to 1955. The Special Steels representative gave as the reason for the high percentage of his company's sales to Luria: "A higher price, service and so forth" (R. 2535). The fact that Special Steels sold most of its scrap to Luria and that one reason was a "higher price" does not, in the opinion of the examiner, justify an inference that Luria was engaged in preclusive buying. Higher prices are not necessarily synonymous with preclusive prices. The record fails to establish that the prices paid Special Steels by Luria were so out of line with the market that the scrap was resold at a loss.

29. The third dealer referred to is Newton Iron & Steel Corporation of Jamaica, New York, which sold approximately 95% of its scrap to Luria since about 1949. The reason given by the Newton witness for selling so large a portion of his company's scrap to Luria was that, "we get the service we think we require to do business" (R. 2885). While the witness did not explain the type of "service" his company was getting, the record does indicate that it received loans from Luria periodically, which amounted to as much as \$100,000 in 1950.

Counsel supporting the complaint suggest that prices received from Luria were a factor because of the witness' testimony that the prices paid by Luria were the prices which Newton received from competitors "and perhaps a little better at times" (R. 2885). The fact that Luria's prices were sometimes better than competitors' hardly establishes the preclusive buying charge. There is nothing to show what such prices were or that they resulted in a resale of the Newton scrap at a loss.

30. The last of the dealers in the New York area referred to is Charles J. King, Inc. of Brooklyn. Counsel supporting the complaint cite the fact that in 1953 Luria paid King \$2.00 more a ton on certain

⁵⁴ In the fiscal year ending February 1950, prior to Luria's acquisition of Southwest, M. Schiavone sold to Luria only about 12% of the scrap sold to brokers and dealers. Southwest, which was then independently owned, purchased 42% of the scrap sold by M. Schiavone to brokers and dealers. In the fiscal years ending February 1951 and February 1952 (after Luria's acquisition of Southwest), M. Schiavone sold approximately two-thirds of its scrap to dealers and brokers other than Luria and Southwest. In the fiscal year ending February 1953, it sold approximately 58% to other dealers and brokers.

scrap than the latter had been offered by Schiavone-Bonomo. However, in the light of the fact that King never sold more than 5% of its scrap to Luria and never less than 85% to Schiavone-Bonomo, during the period at issue, it can hardly be inferred that Luria was engaging in predatory price tactics in buying from King.

New England Area

31. The case of counsel supporting the complaint, insofar as the New England area is concerned, is based on the claim that Luria paid better prices to certain dealers than did competitors, and that in the case of one dealer Luria increased its price to the dealer on several occasions, although not required to do so by contract. No evidence was offered that any of the scrap purchased from these dealers was resold at a loss.

32. One of the dealers referred to is Harcon Corporation of Boston, which has previously been mentioned in connection with the Luria-Bethlehem exclusive arrangement. During the period from 1950 to 1955 the proportion of Harcon's scrap sold to Luria increased from about 1% to 38%, and Harcon's direct sales to Bethlehem, which had constituted about 10% of its business, ceased. A large part of the scrap sold to Luria was shipped for export.

As evidence of the fact that Luria was paying Harcon preclusive prices, counsel supporting the complaint cite the testimony of a Harcon official that Luria had treated his company "more favorably" than did other brokers in the matter of price (R. 4567). In the absence of evidence showing that the extent to which Luria's prices were above those of competitors, and that they resulted in periodic losses upon the resale of the scrap, there is no basis for inferring that Luria bought scrap from Harcon at preclusive prices.

33. The second dealer whose testimony is referred to by counsel supporting the complaint is General Scrap Iron, Inc., of Providence, Rhode Island, which began selling most of its scrap to Luria around 1950, after having previously sold directly to consumers, principally to Bethlehem. The General Scrap witness testified that he could get "more money" by selling to Luria than by selling direct to Bethlehem (R. 4464). The examiner cannot infer from this that Luria paid General Scrap prices which were out of line with the market and which resulted in the resale of the scrap at a loss. The more likely explanation for the sales to Luria is not the latter's payment of preclusive prices, but the fact that Bethlehem ceased buying directly in New England when Luria became its exclusive broker.

34. The third dealer referred to by counsel supporting the complaint is South Boston Iron & Metal Co. of Boston. Prior to 1956, South Boston sold most of its scrap to LS&T. It also sold relatively

small amounts to others, including respondent Luria. Despite the fact that Luria was putatively paying high prices in the New England market since about 1950, it was generally able to purchase less than 20% of South Boston's scrap until late 1955, when it replaced LS&T as South Boston's largest purchaser. The first large transaction between the two companies occurred in December 1955 when South Boston sold Luria a substantial tonnage of scrap for shipment to a combine of European mills. Further dealings were had in 1956, also largely involving scrap for exports.

Counsel supporting the complaint emphasize the fact that Luria's price to South Boston was substantially higher than the price offer of LS&T to buy scrap from South Boston for export in December 1955, and was also higher than the price at which LS&T had unsuccessfully offered to sell scrap to the same European combine. Counsel also refer to the fact that the price which Luria paid South Boston was \$3.00 higher than the price originally agreed upon, due to the fact that Luria's customer had increased the price to it.

In the opinion of the examiner the evidence cited by counsel supporting the complaint fails to sustain the preclusive buying charge. It seems evident that the fact Luria had a better price from its customer than did LS&T enabled it to buy at a higher price than the latter. Whether the price paid by Luria was or was not out of line would depend upon the price at which it could resell the scrap. There is no claim made that it resold the scrap at a loss. The vice in the situation, if there was one, lay in the leverage which Luria had obtained by reason of its preferential position with the European combine rather than in preclusive buying. The former is the subject of another charge in the complaint and is hereafter separately considered.

West Coast (Southern Pacific Company)

35. The contention of counsel supporting the complaint that Luria paid preclusive prices on the west coast revolves largely about the prices which it paid to the Southern Pacific Railroad, particularly for No. 1 heavy melting steel. The Southern Pacific generates and sells large tonnages of railroad scrap, of which No. 1 heavy melting steel constitutes a substantial portion. It is the largest producer of railroad scrap in the California area.

36. In selling railroad scrap other than No. 1 heavy melting scrap, the Southern Pacific receives price quotations from a number of different brokers and dealers, and usually sells to the highest bidder. In the case of No. 1 heavy melting steel, which the railroad generates in large quantities and which must be disposed of monthly, it negotiates for the sale thereof with a limited number of dealers and brokers. The No. 1 heavy melting scrap is accumulated at various accumulation

points along the railroad such as El Paso, Los Angeles, San Francisco and Portland, and price quotations are obtained from brokers and dealers in the different areas, who usually bid on behalf of mill customers. It receives price quotations from Luria for the purchase of No. 1 heavy melting scrap at all of its accumulation points. In addition, it receives price quotations from a Dallas broker, Commercial Metals, for scrap accumulated at El Paso, and from a limited number of other dealers and brokers at Los Angeles, San Francisco and Portland.

37. The statistical evidence in the record discloses that between 1955 and 1957 Luria purchased the great bulk of Southern Pacific's No. 1 heavy melting scrap. In 1955 it purchased 57,750 tons out of 59,900 tons sold by Southern Pacific; in 1956 it purchased 43,435 tons out of 47,135 tons; and during the first 7 months of 1957 it purchased 19,600 tons out of 20,550 tons. In terms of Southern Pacific's total scrap sales, including obsolete locomotives, cars and other scrap, as well as heavy melting scrap, Luria's purchases represented 39% in 1955, 52% in 1956, and 45% in 1957. The record does not contain a breakdown of Luria's purchases, prior to 1955, as between No. 1 heavy melting scrap and other grades. However, it does appear that during the period from January 1, 1949 to March 31, 1954, Luria purchased 297,821 tons out of 603,625 tons of ferrous scrap sold by Southern Pacific, which is slightly less than half of the scrap sold. It may be assumed that a very substantial part of this consisted of No. 1 heavy melting steel.

38. It is the position of counsel supporting the complaint that the very heavy sales of No. 1 heavy melting steel to Luria have been due to the fact that Luria paid preclusive prices for the scrap. Counsel's argument is based largely on a comparison of the prices paid to Southern Pacific by Luria, at the Los Angeles and San Francisco shipping points, with the prices quoted for No. 1 heavy melting steel at these points in the trade publication "Iron Age". Respondent contends that a comparison with Iron Age prices is not the proper way to determine whether its prices were out of line with the market since Iron Age did not accurately reflect the true market prices, being below what other brokers as well as Luria paid to the Southern Pacific and below the prices paid by brokers to other railroads. Respondent further argues that, aside from other considerations, the failure to establish that any of the scrap bought by it from the Southern Pacific was resold at a loss is fatal to the position of counsel supporting the complaint.

39. The evidence of the prices paid by Luria for No. 1 heavy melting steel to the Southern Pacific between 1954 and July 1957 does establish, as contended by counsel supporting the complaint, that its

prices were generally higher than those quoted in Iron Age for the San Francisco and Los Angeles markets. The prices bid by Luria for scrap accumulated by the Southern Pacific at Los Angeles, San Francisco and Portland were always the same, although the Iron Age quotations for Los Angeles and San Francisco frequently differed. Indicative of the extent to which Luria's prices to Southern Pacific differed from those quoted in Iron Age are those for 1954 which, in San Francisco, ranged from as little as \$1.00 a ton above Iron Age prices in the month of June to as much as \$9.00 a ton above in November. The average differential per month from the Iron Age quotations for San Francisco during 1954 was \$4.25. The differential for Los Angeles ranged from a minimum of \$4.00 above Iron Age to \$9.00 above, with the average monthly differential for the year amounting to \$6.15. Only in April 1956 was Luria's price at San Francisco below the Iron Age quotation, viz, by \$2.50, but in Los Angeles it was \$4.50 above Iron Age.

40. However, as pointed out by Luria, the evidence discloses that other brokers and dealers likewise bid or paid to the Southern Pacific prices above those quoted in Iron Age for No. 1 heavy melting steel, although such prices in most instances were not as high as Luria's. Out of 33 price quotations from other brokers for West Coast accumulation points between 1954 and 1957, 25 were in excess of those quoted in Iron Age and 8 were as high or higher than those quoted by Luria to the Southern Pacific.

41. The record also supports Luria's contention that brokers were paying prices to other railroads operating on the West Coast which were above those quoted in Iron Age for No. 1 heavy melting steel, and in some instances above those paid to the Southern Pacific. Thus out of 28 sales made by the Atcheson, Topeka & Santa Fe Railroad and the Union Pacific Railroad between 1954 and 1957, from the same shipping points as those involved in the Southern Pacific's sales to Luria, 15 were made at prices higher than those received by the Southern Pacific from Luria. All but three of those sales were made to brokers and dealers other than Luria. Of the remaining 13 sales, 1 was at the same price as that received by the Southern Pacific from Luria and 6 were within \$1.00 of that price. All of the sales were made at prices above those quoted in Iron Age.

In addition to these transactions, respondent Luria cites a number of other transactions involving sales by the Union Pacific from its Seattle accumulation point, which Luria contends is comparable to Portland. In all but 6 of the 24 transactions involved between 1954 and 1956, the price paid to the Union Pacific was equal to or better than the price paid by Luria to Southern Pacific at Portland. All but 10 of the transactions were with vendees other than Luria. Counsel

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supporting the complaint question whether a comparison between prices at Portland and Seattle is proper. The record discloses that there is a significant amount of traffic in scrap between the two areas. The examiner also notes that the OPS price for No. 1 railroad heavy melting steel was the same at both Portland and Seattle. Under all the circumstances, it is the opinion of the examiner that the prices paid at Seattle may appropriately be compared with those paid at Portland in determining whether Luria's prices at the latter point were out of line with the market.

Counsel supporting the complaint contend that the evidence of prices paid to other railroads does not provide a "satisfactory basis of comparison", because of the insufficient number of transactions involving sales from areas comparable to those from which the Southern Pacific sold scrap to Luria. Since the Southern Pacific is the principal producer of railroad scrap in the California area, it is not surprising that it should be involved in a considerably larger number of transactions than the other railroads. However, the prices paid to the other railroads, to the extent they sell in competition with southern Pacific, has probative value in determining whether Luria's price to Southern Pacific was in line with the market, and particularly in determining whether the prices quoted in Iron Age for No. 1 railroad steel accurately reflected market prices. This is so whether prices paid at Seattle are included or not.

42. Considering the evidence as a whole, the examiner is not convinced that it has been established that Luria's prices to the Southern Pacific were out of line with the market. The case of counsel supporting the complaint rests on a comparison with the prices quoted in Iron Age for the Los Angeles and San Francisco markets. However, it has not been established that the Iron Age quotations, particularly for No. 1 railroad heavy melting steel in these two markets, were an accurate reflection of market prices. The evidence showing the prices paid to the Southern Pacific by other brokers as well as Luria, and the evidence of prices paid to other railroads at comparable shipping points indicate that the Iron Age prices are considerably below the prices actually being paid in a substantial number of transactions. Considering the fact that the Southern Pacific is the principal producer of No. 1 railroad heavy melting scrap in California, the wide variances between the prices paid to it and those quoted in Iron Age raises a very substantial doubt as to the reliability of Iron Age quotations as a reflector of market prices for No. 1 railroad scrap in Los Angeles and San Francisco during the period at issue. This doubt is reinforced by the testimony of a broker-dealer witness called in support of the complaint, who stated that the quotations were generally

under the market for the northern California area, frequently by as much as \$4.00 a ton (R. 11, 181).

43. In any event, without regard to the reliability of Iron Age prices, the record fails to establish that the No. 1 railroad scrap purchased by Luria from the Southern Pacific was resold at a loss. As previously noted, the charge is not merely that Luria's prices were above those of competitors, but that they were "so high" that it could not be resold "except at a financial loss."

Such evidence as there is in the record would appear to negate the probability that the scrap was resold at a loss. The testimony indicates that the largest potential consumers of such scrap are U.S. Steel's West Coast plants, Bethlehem Pacific, and Kaiser Steel. The latter actually purchases little of such scrap. As a result of a court decree in a Clayton Act proceeding, based on interlocking directorships, Southern Pacific is not permitted to do business with U.S. Steel in excess of \$50,000 a year without advertising for bids. This leaves Bethlehem Pacific as the largest potential user of Southern Pacific's scrap. For the most part the scrap purchased by Luria was resold to Bethlehem Pacific. There is no reason to believe that it did not generally receive its customary mark-up of \$1.00 a ton on such sales. The basic reason for Luria's purchase of such large quantities of Southern Pacific's scrap would appear to lie not in the fact that it was paying preclusive prices, but in the fact that, as Bethlehem Pacific's substantially exclusive broker, it had a home for large quantities of this desirable scrap.

Rheem Manufacturing Company

44. Counsel supporting the complaint contend that Luria's handling of the scrap of Rheem Manufacturing Company is an example of the buying of scrap at preclusive prices. As has previously been discussed (pp. 310-314), between 1952 and 1953 Luria took over the handling of the scrap of Rheem's plants located in six states. Prior to that time the scrap had been sold directly to the Bethlehem companies whose plants were located in the area of the Rheem plants, or to scrap dealers.

45. The Rheem scrap was generally unprepared and required preparation by yard dealers. In entering into the arrangement with Rheem, Luria had promised that, as far as possible, it would use the same dealers as had formerly done business with Rheem directly. While Luria could have arranged to pay these dealers a preparation fee and then resell the scrap to its mill customers, including Bethlehem, in most instances it arranged to sell the scrap to the dealers at a stipulated price and then bought back an equivalent tonnage of prepared scrap, which it sold to its mill customers.

46. The contention of counsel supporting the complaint that Luria bought the Rheem scrap at preclusive prices is based mainly on the fact that in some areas, particularly New Orleans, Houston and San Francisco, it sold the unprepared scrap to the dealers at the same price it had paid Rheem, and thus realized no profit on the sale to the dealer. Counsel supporting the complaint also rely on the fact that Luria was able to obtain the Rheem scrap by promising it higher prices than had been paid by the dealers who were formerly buying it directly.

47. Turning to the latter situation first, there is no dispute as to the fact that Luria undertook to obtain a higher price for Rheem on its scrap. When the initial arrangement with Rheem was made OPS price regulations were in effect, and one of the inducements which Luria offered to Rheem to handle its scrap was that it would endeavor to qualify the scrap for a higher OPS grade by better sorting and preparation. The fact that Luria was able to qualify the Rheem scrap for a higher OPS price grade cannot be regarded as preclusive buying, within the meaning of the complaint, in the absence of evidence that the scrap could not be resold "at existing price ceilings or at generally prevailing market prices except at a financial loss."

48. With regard to the contention that Luria resold the Rheem scrap to dealers at the same price it had paid Rheem for the scrap, there is no dispute as to the fact that it did occur in certain areas. The practice started during the OPS period when Luria, in keeping with its promise to Rheem, paid Rheem the highest permissible OPS price for the scrap, and then resold the scrap to a dealer at this price. The dealer, after preparation, resold the scrap to Luria at the OPS price for prepared scrap. Luria then resold the scrap to the mill at the OPS price for prepared scrap, plus the commission to which it was entitled under OPS regulations. It is not clear how long this situation continued. The "last nonprofit arrangement" involving the San Francisco area plant of Rheem occurred in the end of 1953 (CX 440), but apparently the practice continued in New Orleans as late as 1956 (R. 6583).

49. The position of counsel supporting the complaint with respect to Luria's failure to make a profit on the sale of the Rheem scrap to dealers suffers from the same infirmity as that involved in the case of the Wilkoff transactions in Youngstown, viz, that it is based on a fragmented view of the transactions. Luria did not buy the Rheem scrap to sell it to a dealer. It used the dealer essentially as an intermediate preparation agency. It could have paid the dealer a preparation fee and then resold the exact scrap to a mill, after adding the cost of preparation and its commission. Instead, and apparently as an ac-

commodation to Rheem and to the dealers who had previously been handling the Rheem scrap directly, it handled the transaction as a sale of the scrap and bought back from the dealer a tonnage equivalent to that of the Rheem scrap. So far as appears from the record, it made its normal profit on the resale of the scrap to the mill. The criticism of counsel supporting the complaint appears to be based on the fact that it did not also seek to make a profit on the initial sale to the dealer. During the period of OPS controls it is dubious that it could have done so. In any event, the fact that it was content to make one profit, instead of two, does not establish that it was engaged in preclusive buying.

Conclusions as to Preclusive Buying

50. The complaint charges Luria with having sought to "secure control of marketing areas in certain sections of the country" by buying scrap at preclusive prices, *i.e.*, at prices which were "so high that neither said respondent nor its competitors could resell said scrap at existing ceiling prices or at generally prevailing prices except at financial loss." Evidence in support of the charge was offered with respect to three market or geographic areas, viz, Cleveland-Youngstown, metropolitan New York and New England. Evidence was also offered as to Luria's buying practices with respect to two suppliers, viz, the Southern Pacific Railroad and Rheem Manufacturing Company.

51. To support the charge it must appear not only that Luria's prices were periodically above those of competitors and that it incurred losses from the resale of the scrap, but that such prices were paid and such losses were incurred in a deliberate effort to secure control of certain markets. The only direct evidence of any purposeful paying of higher prices involves a brief period in 1948, when Luria's Cleveland office endeavored to secure an industrial account or accounts from a competitor in Cleveland by offering prices above the market. The effort, which was unsuccessful, was directed at a particular competitor, and it cannot be said from the evidence that it involved an effort to secure control of the Cleveland market, or that it reflects a deliberate policy or practice by Luria to use preclusive prices as an instrument for market control.

52. Most of the evidence upon which counsel supporting the complaint rely purports to show that Luria lost money or did not make a profit in certain transactions, or that it paid prices which were higher than those of competitors. In most instances the evidence that Luria paid prices higher than competitors was of a general nature and did not establish the extent to which, or regularity with which, Luria's prices exceeded those of competitors, nor the fact that Luria sustained

a loss in the resale of the scrap. In some instances where evidence was offered purporting to show losses by Luria, e.g., the transactions involving Wilkoff and Rheem Manufacturing, the evidence involved an intermediate transaction in which the scrap was sold to a dealer for preparation purposes, and where there was no loss on the ultimate resale of the scrap by Luria. The one concentrated effort to show that Luria's prices were out of line with the market, viz, that involving the prices paid to the Southern Pacific for No. 1 heavy melting scrap, rests on a comparison with the prices quoted in a trade publication where the evidence does not establish that the quoted prices accurately reflect market prices, and where there is no showing that any of the scrap was resold at a loss.

53. Apparently mindful of the fact that in most instances where evidence was offered purporting to show that Luria paid higher prices than did competitors, there was no evidence that the scrap was resold at a loss, counsel supporting the complaint suggest that such evidence is not necessary. They argue that the fact the prices paid Luria "may not have resulted in actual or overall financial losses to Luria, does not alter its purpose nor lessen its competitive impact", and that Luria's ability to pay high prices "without financial loss" is due to its "position of market control and the effectiveness of its challenged arrangements with various respondent mills".

As has already been noted, the complaint alleges not merely that Luria paid prices above those of competitors, but that such prices were so high that the scrap could not be resold at generally prevailing prices "except at financial loss". The fact that Luria may have been able to bid strongly for scrap because of the fact that it had orders from the mills for which it was exclusive broker may reflect the competitive impact of the exclusive arrangements, but is not evidence of preclusive buying within the meaning of the complaint unless it were demonstrated that the prices which it was receiving from the mills did not reflect generally prevailing market prices. This the evidence offered by counsel supporting the complaint does not do. It seems clear, therefore, that a showing of actual or probable financial loss is an essential element of proof by counsel supporting the complaint in order to sustain the preclusive buying charge in the complaint.

54. The evidence offered by counsel supporting the complaint fails to establish that, to the extent Luria may have paid prices above the market, it did so "for the purpose of * * * lessening competition" in certain markets, as counsel supporting the complaint concede is required under Paragraph 10(e) of the complaint. There being no substantial direct evidence of any purpose or effort to secure market

control through the payment of preclusive prices, it is necessary to infer such a purpose in order to sustain this paragraph of the complaint. There is nothing about the pattern of prices paid or losses incurred, or any of the other evidence in the record from which it may be inferred that Luria deliberately paid prices above the market and incurred losses in order to secure market control. Such evidence as there is, suggests that top management of the company frowned upon the practice of buying scrap at prices which would not yield a profit.

55. It is concluded and found that counsel supporting the complaint have failed to sustain the preclusive buying charge in Paragraph 10(c) of the complaint by reliable, probative and substantial evidence.

(5) *Punitive Scrap Yards*

1. Paragraph 10(f) of the complaint charges that Luria threatened to open and did open competing scrap yards, and that it threatened to install and did install additional equipment in existing yards, in areas where additional yards or equipment were "economically undesirable", and that it did so "for the purpose and with the effect of harassing * * * scrap dealers in such areas who failed or refused to sell all or a substantial part of their scrap" to Luria. The essence of the charge is not merely that Luria opened additional yards or installed additional equipment in competition with others, but that (1) it did so in areas where this was "economically undesirable" and (2) for the purpose and with the effect of harassing existing dealers who failed to trade with Luria to the extent it sought.

2. The only evidence cited in support of the charge involves two scrap yards, one in Erie, Pennsylvania, and the other in Tiffin, Ohio. However, counsel supporting the complaint suggest that there would be more so-called punitive yards but for the fact that the considerable number of yards which Luria owns or to which it has given financial assistance "stand as a warning to independent scrap yards that Luria is able to reach the primary sources of supply if independent operators fail or refuse to sell scrap to Luria on a satisfactory basis." In addition to the implied threat to so-called independent yards, allegedly stemming from the mere existence of the yards which Luria owns or with which it has financial connections, counsel supporting the complaint contend that actual threats were made by Luria to dealers to open additional facilities, and that only in the two instances hereafter discussed have the threats failed to produce results by causing the dealers to sell additional scrap.

Before discussing the facts with respect to the two yards as to which evidence was offered, it may be noted that there is no substantial evidence in the record that the yards which Luria owns or to which it has

given financial assistance are regarded by other dealers as an implied threat which causes them to sell scrap to Luria, or that Luria has actually threatened to open additional yards or install additional facilities unless such dealers sell all or a substantial part of their scrap to Luria. The case of counsel supporting the complaint with respect to the establishment of so-called punitive yards by Luria must, therefore, stand or fall on the basis of the evidence offered with respect to the yards in Erie and Tiffin.

Erie Yard

3. Luria purchased the equipment and leased the property of an existing scrap yard in Erie, Pennsylvania, in July 1947. The purchase price for the equipment and scrap on hand amounted to approximately \$17,000. The yard had been operated for about 6 months or a year prior to its acquisition by Luria, after having been closed for a number of years, and was apparently not in good operating condition equipment-wise. Luria brought in additional equipment such as cranes, shears and later a hydraulic press, and made general improvements to the yard.

4. In December 1947 Luria organized a corporation known as Ajax Steel & Supply Co. Inc., to operate the Erie yard. It arranged to sell 49% of the stock to Michael Leyava, who became president of the newly formed corporation and manager of the Erie yard. Leyava remained with Ajax until August 1948, when he transferred to Luria's Cleveland office. For the first 9 months of 1948 the Erie yard operated at a loss of approximately \$11,000. There is no indication in the record as to whether this situation continued for the last 3 months of the year. In 1949 Luria took over the direct operation of the Erie yard and continued to operate it for approximately 6 years thereafter until 1954, when it was sold. The record contains no profit and loss figures after September 1948, but there is credible testimony that it was operated at a profit, albeit not a large one. During the first 9 months of 1948, while Ajax operated the yard, it sold 5,800 tons of scrap. In most of the remaining years the yard sold over 10,000 tons a year, the peak year being 1953 when it handled 15,000 tons.

5. It is the position of counsel supporting the complaint, based on Leyava's testimony, that the Erie yard could have been operated profitably during the first 9 months of 1948 except for the interference of Luria's Cleveland office, which required Leyava to handle scrap on an uneconomical basis. On the other hand, it was the testimony of a Luria official that the loss was due to Leyava's shortcomings, and that as a result he was transferred to Cleveland. The examiner finds it unnecessary to resolve this conflict since both sides

agree that the yard could have been operated profitably, as indeed it thereafter was.

6. This being so, it is difficult to comprehend the basis of the claim of counsel supporting the complaint that Luria's taking over of the yard involved its extension into an operation which was economically undesirable, particularly where it was taking over an existing operation rather than starting a new one. It is true that Luria built up the yard and installed a new press, but it cannot be inferred that this was economically undesirable. The fact that several other dealers in the area also subsequently installed presses would suggest that such equipment was needed when Luria put in its press. There is no evidence to show that other dealers in the area sustained a loss in volume or profits following Luria's expansion of the Erie yard, or any other evidence from which it can be inferred that Luria took over a yard in an area where it was uneconomical to do so.

7. Aside from the dubious nature of the evidence pertaining to the uneconomic nature of Luria's entry into the Erie area, the record fails to establish that it took over the yard for the purpose of harassing dealers who refused to sell it all or a substantial part of their scrap. So far as appears from the record Luria came into the Erie area for bona fide business reasons and not to harass competitors. It had been considering opening a yard in Erie soon after it opened its brokerage office in Buffalo, New York in 1942, so that it would be in a better position to service the numerous foundries in the area. By 1945 Luria had become the second largest supplier to Erie Forge & Steel Corporation, the largest consumer of scrap in the area. From 1946 to 1954 Luria was Erie Forge's largest single supplier. By 1947 Luria was doing business with respondent Bucyrus-Erie's Twelfth Street plant and within a year thereafter was supplying over half of that plant's scrap. In addition, Luria was supplying a number of other foundries in contiguous areas in New York, Pennsylvania and Ohio. Luria had a legitimate interest in establishing a yard in the area, not merely to supply its customers in Erie but in the nearby areas of Buffalo, Youngstown and Cleveland.

8. The contention of counsel supporting the complaint that Luria took over the Erie yard in order to harass competitors is based largely on the testimony of its former employee, Michael Leyava, and that of two dealers in the area. Leyava's testimony that, "I believe Luria had always encountered difficulty in buying scrap from the Erie boys" (R. 9187), was obviously of a conclusional nature, being based on conversations with a Luria employee as to which the witness had no recollection, and involved a period prior to his coming with the company. Also cited is the testimony of a representative of Liberty

Iron & Metal Co. to the effect that he had been told by a Luria employee that the company "did not feel that they were getting enough tonnage in the area and they had to go in there and open up their own yard" (R. 8814); and testimony of a representative of Republic Iron & Metal Co. that he had been told by a Luria employee that "Erie had a greater potential than Luria Brothers were getting and that it was obtainable in that territory" (R. 9236).

9. In the opinion of the examiner the testimony cited fails to establish that Luria used the threat of opening a yard as an instrument for pressuring dealers to sell it more scrap. None of the dealers indicated that they considered such remarks as a threat by Luria to open a yard if the dealers did not sell them more scrap, nor can such an inference be drawn from the testimony. The representatives of Liberty Iron & Metal testified that it was typical of brokers to try "to get as much tonnage as [they] possibly can" (R. 8815). Both of the dealer witnesses indicated that they had their own commitments to consider, and it is not surprising therefore that Luria should come to the conclusion that it would be desirable to have its own yard in the area, not as a threat to other dealers, but in order to meet its own commitments. The Republic Iron & Metal witness, in response to the question whether the Luria representative had made any statement concerning the reason for opening a yard, testified he was told that Luria regarded Erie as "a good foundry town and they believed they should have a yard there in order to represent the various customers" (R. 9235).

10. Paragraph 10(f) of the complaint does not challenge Luria's right to open additional yards where there is a bona fide need therefor to meet its commitments in a particular area. The gravamen of the charge is that Luria used the threat of opening a competitive yard as an instrument for forcing dealers to sell it more scrap, in an area where there was no economic need for another yard or additional facilities. The record fails to establish (a) that there was no economic need for Luria to take over and improve an existing yard because of the fact that the yard was already economically surplus in the area, and (b) that it did so "for the purpose and with the effect of harassing" dealers who had not sold it sufficient scrap.

Tiffin Yard

11. The situation in Tiffin, Ohio involves the opening of a yard by a third party who had received financial assistance from Luria, rather than the establishment of a yard by Luria. The yard was opened in July 1954 by Paul F. Sweeney, who had been employed until May 1954 as assistant sales manager by A. Rosenblatt, Inc., another dealer in the area. Up to July 1954 there were two substantial dealers in the

area (of whom Rosenblatt was one) and several smaller dealers. Following Sweeney's opening of a yard he became a third substantial factor in the Tiffin area.

12. Luria had purchased scrap from Rosenblatt since about 1951. In 1953, the first year for which there are figures in evidence, Luria purchased approximately 36% of Rosenblatt's scrap. Substantially all of this was purchased between January and August. In 1954 Rosenblatt sold scrap to Luria only between January and May, except for a negligible amount in August, and then business between the two companies ceased. Up to May, Luria had purchased approximately 23% of the scrap sold by Rosenblatt in 1954.

13. Paul Sweeney had been employed by Rosenblatt for about 3 years when he obtained a loan for \$10,000 from Luria in May 1954, through the good offices of Robert Schroeder, an employee in Luria's Cleveland office, who was a long-time friend of Sweeney's. With these funds, plus \$6,500 which he raised within his own family, Sweeney opened a yard in Tiffin in July 1954. Although there was no express agreement requiring Sweeney to sell his scrap to Luria, he did in fact sell all of his scrap to Luria. This continued even after the loan to Luria was paid off.

14. It is the contention of counsel supporting the complaint, (a) that Luria assisted Sweeney in opening the yard because Rosenblatt would not sell it sufficient scrap, and (b) that there was no economic need for an additional yard in the area. In the opinion of the examiner the evidence fails to sustain the position of counsel supporting the complaint on either of these issues.

15. It is true there were no sales to Luria by Rosenblatt for the last 4 months in 1953. However, the record contains no explanation for this. Furthermore, the evidence discloses that sales were resumed again in the first part of 1954, although on a somewhat reduced scale. Since the scrap sales had declined generally following the end of the Korean War in 1953, this may well account for Rosenblatt's decline in sales to Luria in the latter part of 1953 and early 1954. In any event, the record fails to establish that Rosenblatt had refused to sell scrap to Luria or had cut down on the amount of scrap it was willing to sell to Luria.

Counsel supporting the complaint make much of the statement by Rosenblatt in his testimony that Luria was "never satisfied, no matter how much scrap I sold them" (R. 9476). However, it seems clear, in the context of his testimony, that he was making the same general observation as the Erie dealer previously referred to, viz, that brokers are always trying to get more scrap, and are never completely satisfied with the amount sold to them. His testimony on cross-examination

indicates that he was selling Luria all the scrap it wanted to buy, leaving it up to his then employee, Sweeney, who had apparently convinced him that "we could get as much money so why not sell to Luria Brothers" (R. 9476).

16. The contention of counsel supporting the complaint that Luria was assisting in the establishment of a yard which was economically undesirable is based largely on the fact that the scrap business was in a state of recession in 1954, and that the sales of Luria's Cleveland office and Rosenblatt's scrap yard were both down substantially from 1953. In the opinion of the examiner the fact that scrap sales were off in 1954, compared to 1953, does not justify an inference that Luria was assisting in the establishment of a yard in an area where it was economically undesirable to do so. While Rosenblatt's sales in 1954 had declined to \$170,000, compared to \$303,000 in the peak year of 1953, they resumed their upward trend thereafter, amounting to \$215,000 in 1955 and \$277,000 in 1956. Sweeney also experienced a favorable trend in his sales, those in 1955, the first full year of operations, amounting to \$87,000, and those in 1956 to \$174,000. The evidence fails to establish that the Tiffin area could not absorb another dealer, although Sweeney's entrance into the market undoubtedly increased competition in the area.

17. So far as appears from the record, Luria had decided to assist Sweeney partly because of his close friendship with a Luria employee and partly in the expectation that he would give it first call on his scrap. However, there is nothing to show that it was having difficulty with Rosenblatt and that it went into the operation in order to punish him. Nor can it be inferred that it was assisting a dealer where it was uneconomical to do so, merely because the scrap business was in the doldrums. It may be noted, in this connection, that the very fact the scrap business was in a quiescent state would seem to negate the likelihood that Luria was trying to pressure Rosenblatt to sell it more scrap, as suggested by counsel supporting the complaint.

Conclusions as to Punitive Yards

18. In order to sustain the allegations of Paragraph 10(f) it must appear, (1) that any yard opened by Luria or any addition to an existing yard was located in an area where such yard or addition was economically undesirable, and (2) that the yard or addition was undertaken for the purpose and with the effect of harassing dealers in the area who had declined to sell sufficient scrap to Luria. The only evidence offered to sustain this charge involves the taking over and improving of an existing yard in Erie, Pennsylvania, and the rendering of financial assistance to a new dealer in Tiffin, Ohio.

19. The record fails to establish that in either of these instances was the additional yard or equipment in an economically undesirable area, or that Luria's opening or assistance in opening the yard or adding to the yard was motivated by a desire to harass dealers who failed to sell it sufficient scrap. Counsel supporting the complaint have, therefore, failed to establish the allegations of Paragraph 10(f) of the complaint.

(6) *Bogus Independents*

1. Paragraph 10(g) charges that Luria held out and continues to hold out, as being independent, certain corporations which were under Luria's direction and control, either through stock ownership or financial and contractual affiliation, and that Luria thereby diverted business to such companies from competitors which would not have been diverted if the facts were known. It is contended that the facts with respect to Luria's control of such companies were concealed from the trade until the issuance of the complaint in this proceeding.

2. Counsel supporting the complaint have reserved the discussion of this charge for that portion of their proposed finding dealing with the separate charge of Luria's domination and control of competitors. This appears to be an appropriate manner for handling the charge in view of the fact that it is tied up inextricably with the domination and control charge. Further consideration of the bogus independents charge will, accordingly, be reserved for that portion of this decision dealing with the charge of Luria's domination and control of competitors.

(7) *Employing Personnel of Competitors*

1. The complaint does not charge, as a trade-restraining activity by Luria, the hiring of employees of competitors. However, counsel supporting the complaint cite such activities by Luria, and contend that they are encompassed by the broad language of Paragraph 10 of the complaint, which charges Luria generally with engaging in activities in restraint of trade and alleges that the specific practices, previously discussed, were engaged in "among others". Luria has made no contention in its proposed findings that the activities referred to by counsel supporting the complaint are not covered by the complaint.

2. The activities of Luria having to do with the hiring of competitors' employees, of which counsel supporting the complaint complain, fall into two categories, (a) the complete elimination of competitors by employing their entire personnel and (b) the harassment of competitors by the hiring of important or key personnel. There is no dispute as to the fact that in two instances Luria hired employees of competitors who went out of business, and that in several instances

it hired important employees of competitors who remained in business. The only issue is whether it did this for the purpose of eliminating or impairing the efficiency of these competitors.

For the most part counsel supporting the complaint have proposed no findings as to Luria's purpose or intent in hiring the personnel in question. However, in at least one instance it is contended that it did so "for the clear and deliberate purpose of harassing an important competitor" (p. 255 Proposed Findings). It seems clear, whether it is charged or not, that the essence of the wrong, if there is one, is the purposeful hiring of employees as part of a deliberate plan to eliminate or injure competitors, and not the mere act of hiring. With these considerations in mind, the examiner turns to the various incidents cited by counsel supporting the complaint.

Livingston & Southard, Inc.

3. This company was in the import-export business handling a variety of products, including steel and plastics. The main part of its business consisted in the export of off-grade steel to the Far East. It also handled some scrap, but the extent thereof does not appear from the record.

4. In the middle of 1953 Benjamin Livingston, the head of Livingston & Southard, a man in his middle sixties, approached Luria with a view to selling his business. His former associate, Southard, had retired from the company and four or five of its key personnel had already left. The company was operating on a much smaller scale than in former years, but enjoyed a good reputation in the field of foreign trade.

5. After the severance of relations with Luria Steel & Trading in 1944, Luria had been relatively inactive in the import-export field. However, it was considering increasing its activity in the field due to the impending removal of the embargo of scrap shipments abroad. Since the individual about whom its plans were centered suddenly died, it was interested in Livingston's overtures.

6. However, instead of buying out the company as proposed, Luria agreed to hire Benjamin Livingston and his then remaining staff consisting of 10 to 12 people, and to form a new company of which Livingston would become an officer and director. On June 13, 1953, a new corporation was formed known as Luria International, Inc., of which Livingston became president and a director. On July 21, 1953, the name of the corporation was changed to Livingston & Southard, Inc., the name of Livingston's old company.

7. There is not a scintilla of evidence that Luria hired Livingston and the remainder of his employees for the purpose of eliminating a competitor. There is no evidence as to whether there was

any actual or potential competition between the two companies. The initiative for the transaction came from Livingston, not from Luria. So far as appears from the record, Luria's interest was not in eliminating a competitor, but in acquiring Livingston's know-how at a time when the man about whom its own plans had been centered died.

Jack R. Forcheimer & Son

8. The other company whom it is contended Luria sought to eliminate as a competitor by hiring its personnel was Jack R. Forcheimer & Son, a St. Louis brokerage firm consisting of a father and son. The firm, a partnership, went out of business in June or July of 1950, following which both partners went to work for Luria. Charles Forcheimer, the son, worked as a trader (scrap buyer) in Luria's St. Louis office for several months and was transferred to its Houston office where he became manager. The father worked as a trader in the St. Louis office for several years, and then was transferred to Houston, where he retired in 1956.

9. So far as appears from the record, the impetus for the Forcheimers' joining Luria came from Charles Forcheimer, who felt he would have a greater future with Luria than remaining with his own firm. The father, who was then 69, decided to go with Luria himself after his son's decision to leave their firm. There was relatively little competition between Luria and Forcheimer. The latter's main customer was Laclede Steel Company. In 1950 Laclede was buying only 5.7% of its broker-dealer scrap from Luria. By 1953 Laclede's purchases from Luria had declined to 1.3%. As previously noted, Luria's main customer was Granite City Steel, for whom it became exclusive broker in April 1950.

10. The record fails to support any finding that Luria hired the Forcheimers in order to eliminate them as a competitor. While it was able to obtain a few accounts, from which the Forcheimers had been purchasing scrap, its main interest appears to have been in obtaining their know-how, particularly that of the son who remained in St. Louis only for a short time and became the manager of Luria's Houston office. The Forcheimers' decision to go out of business may have been influenced by the position which Luria had been able to attain in the St. Louis market as a result of its exclusive arrangement with Granite City, but there is no evidence that it was the result of a deliberate effort by Luria to eliminate the firm as a competitor.

Employees of Export Competitors

11. As previously noted, in addition to charging that Luria tried to eliminate competitors by hiring their entire personnel, counsel

supporting the complaint contend that Luria engaged in the practice of "pirating" away individual employees of competitors. Two of the employees referred to were employed by import-export firms which, among other things, were engaged in handling scrap metals.

12. One of the employees is Ludwig Schnogg, who had been employed by Associated Metals & Minerals Corp., a brokerage and exporting firm, and was hired as vice president of Luria's subsidiary, Livingston & Southard. The record does not indicate in what capacity Schnogg had been employed by Associated, or any of the facts and circumstances of his employment by Luria, outside of the fact that he was hired. The other employee is C. E. Vallentin, who had been employed by Western Steel International Corp., an importer and exporter of scrap, and was hired as assistant to Schnogg in the Livingston & Southard organization. There is nothing to indicate that he was a key employee of Western Steel, nor as to what the facts and circumstances of his hiring by Luria's affiliate were. In neither instance is there any evidence from which it may be inferred that Luria "pirated" these employees away from their former employers for the purpose of impairing the competitive status of these firms.

Luria Steel & Trading Corp.

13. On December 8, 1955, Luria hired Murray I. Glickman, who had been employed for approximately 8 years as a trader in LS&T's Boston office. His duties involved contacting scrap dealers in the New England States and arranging to purchase their scrap. He performed the same duties for Luria after his employment by the latter, buying from substantially the same dealers as he had dealt with on behalf of LS&T.

14. The only evidence as to how Glickman came to work for Luria is his own testimony that he approached Luria after coming to the conclusion that his future would be jeopardized if he remained with LS&T. There had been no appreciable improvement in the latter's purchases in the New England area for some years, and it appeared to be diverting its activities into other channels of business. In 1958 LS&T did, in fact, close its Boston office. While Luria's competitive activities in New England may have been responsible for Glickman's reaching the conclusion that his and LS&T's future in the area were limited, the evidence fails to support a finding that Luria pirated him away from LS&T, for the purpose of undermining it as a competitor.

Luntz Iron & Steel Co.

15. At different times between 1953 and 1956 Luria hired five employees of Luntz, a Cleveland brokerage firm, with offices in Pitts-

burgh, Canton (Ohio), and Kokomo (Indiana). Three of the employees had been in charge of the Pittsburgh office, one was head of the Canton office, and the fifth was in charge of the Kokomo office.

16. The first of the Luntz employees hired was Jack Langer, who was manager of the Pittsburgh office. Langer had previously been employed by another Pittsburgh broker and was hired by Luntz around August 1952. Langer sought, unsuccessfully, to obtain some sort of a long-term contract from Luntz, but was advised it was contrary to the company's policy to give contracts to employees. Langer decided to leave Luntz early in 1953 and was employed by Luria to work in its Memphis office. Upon leaving Luntz' employment, Langer advised his former employer that Luria had offered him a "fantastic increase" (R. 8911). The record contains no information as to Langer's salary, either with Luria or with Luntz. The record is unclear as to whether Langer left because of Luntz' unwillingness to give him a contract or because of a better salary offer from Luria. It does appear, however, that Luntz had regarded Langer as "just mediocre" (R. 8910) and had so advised him.

17. The next Luntz employee to come to work for Luria was hired about 3 years later. He was Myron L. Chase, who had been a Luntz vice president in charge of its Canton, Ohio office. Chase was the son-in-law of Darwin Luntz, who was president of the Luntz company until his death in 1951. Chase's explanation for leaving the company was friction with his deceased father-in-law's brother, A. M. Luntz, who had succeeded to the presidency of the company and had several sons of his own. Chase considered his own future with the company limited. In June 1956, on a visit to New York, Chase called on Ralph Ablon, who had become Luria's president, and indicated his desire to work for Luria. After several meetings Chase went to work for Luria as assistant to Ablon. His duties were mainly concerned with the export end of Luria's business. He had been receiving a combined salary and bonus of \$35,000 from Luntz, and Luria agreed to make the same salary arrangement.

18. After deciding to leave Luntz, Chase called two other Luntz employees with whom he had been close personal friends and advised them of his decision. One was Herbert L. Aronoff, who had succeeded Langer as head of Luntz' Pittsburgh office. The other was Frank Kilcline, who was in charge of Luntz' Kokomo, Indiana office. After several further communications with these two employees, they too contacted Ralph Ablon and were hired by Luria. Aronoff, who had been receiving a salary of \$24,000 a year, plus a bonus, from Luntz, was hired at a salary of \$18,000, plus a bonus varying with the amount of business done. Aronoff was transferred to Houston by Luria. Kilcline, who had been receiving a salary of \$21,000,

plus a bonus ranging from \$7,000 to \$15,000 a year, was hired at a salary of \$24,000, plus a variable bonus, by Luria. Luria also agreed to hire Kilcline's 28-year-old son at a salary of \$12,000, plus bonus. Kilcline remained in Kokomo as head of Luria's new office there. He was required to give up his interest in a steel warehouse company, from which he had been receiving \$4,500 to \$20,000.

19. The last Luntz employee to be hired by Luria was William Ferguson, who had been employed by a Columbus, Ohio broker, and was engaged by Luntz in the latter part of 1956. Before actually reporting to work, Ferguson attended an industry convention in Miami at Luntz' expense. While there, he met Ralph Ablon who, not aware that Ferguson was scheduled to go to work for Luntz, hired him to work for Luria in its Birmingham, Alabama office.

20. It is contended by counsel supporting the complaint that the employment by Luria of Luntz personnel represents a "planned course of action by Luria for the clear and deliberate purpose of harassing an important competitor by interfering with its orderly operations". There are undoubtedly a number of suspicious circumstances in connection with Luria's hiring of Luntz personnel, particularly those surrounding the hiring of Chase, Aronoff and Kilcline. However, the examiner cannot find, on the basis of the evidence in the record, that Luria hired those employees as part of a planned course of action to harass Langer. Its paramount purpose appears to have been to obtain experienced personnel. In most instances they were transferred out of the area where they had formerly been employed. While Luria undoubtedly was aware that Luntz would be unhappy over their loss, it cannot be said from the evidence in the record that this was a significant motivating factor in Luria's action.

Conclusions As To Employing Personnel of Competitors

21. Luria did, admittedly, hire the employees of a number of its competitors. Its primary purpose in doing so was to obtain experienced personnel to fulfill its own needs and requirements. In some instances the loss of such personnel was a serious inconvenience to competitors, although the evidence does not establish, in any instance, that a competitor's operations were substantially affected thereby. Despite the fact that in some instances there are elements of suspicion surrounding the hiring of certain of the employees, the evidence in the record fails to support a finding that a material consideration in the hiring of such personnel by Luria was the desire or purpose of eliminating a competitor or interfering with the orderly operations of a competitor.

D. Domination and Control of Competitors

1. The charge that Luria acquired domination and control over competitors is alleged in the complaint both as a violation of Section 5 of the Federal Trade Commission Act and as a violation of Section 7 of the Clayton Act. The Federal Trade Commission Act violation is alleged in Paragraph 11 of Count I of the complaint, which charges that Luria acquired and exercised "substantial domination and control" over competitors by two methods: (a) By making "substantial advances or loans" to dealers; and (b) by acquiring all or a substantial part of the capital stock of certain specifically-named scrap dealers and brokers. In Count II of the complaint the same stock acquisitions are charged as a violation of the Clayton Act. The loan and stock-acquisition charges are each separately discussed below. Since the same stock acquisitions are involved under both the Federal Trade Commission Act and the Clayton Act, they are considered together.

(1) Loans and Advances

1. The complaint, in Paragraph 11, does not challenge the mere practice of making loans and advances to dealers, but rather the use of this practice in a context of exclusive dealing. It is alleged that many of the loans or advances are made subject to the express understanding that the dealers will sell all of their scrap to Luria during the period that the loan or advance is outstanding. It is further alleged that while other loans or advances are not made subject to this express understanding, they nevertheless "have the capacity and tendency to result and have actually resulted in tacit understandings" that the dealers accepting the loans or advances will sell all of their scrap to Luria.

2. There is no dispute as to the fact that Luria makes loans or advances to scrap dealers. Such loans or advances take three main forms, (a) loans to enable a dealer to purchase needed equipment such as baling presses, (b) loans or advances of funds for use generally by a dealer in financing the operation of his business, including the purchase of scrap, and (c) advances of funds against specific quantities of scrap which a dealer has committed himself to sell to Luria. Advances of the latter type involve scrap which the dealer has already purchased, and such scrap is either in the dealer's yard or is in transit to Luria or to Luria's designee. Frequently the advance is made against a bill of lading covering the shipment of scrap, but sometimes it is made prior to actual shipment and while the scrap is still in the dealer's yard but has already been sold to Luria. Advances against

scrap falling within either of these categories are not challenged by counsel supporting the complaint.⁵⁵ The attack of counsel supporting the complaint is directed, rather, against loans to finance the purchase of equipment, and loans or advances which may be used generally by the dealer in his business, including the purchase of scrap not yet owned.

3. In the case of the loans or advances of the type which the complaint challenges, it may be noted that some of them are secured by chattel mortgages on the equipment being financed or on other chattels or real estate of the dealer, while some are unsecured. Some of the loans bear interest and some do not. In some instances the documents covering the loan transaction contain an express provision that during the period the loan or advance is outstanding the dealer will sell his scrap exclusively to Luria, or that he will offer his scrap to Luria on a "first refusal" basis, *i.e.*, Luria will be given the first opportunity to buy it on the basis of the current market price or some other price formula. In other instances, there is no express requirement that the dealer sell or offer his scrap to Luria. However, counsel supporting the complaint have sought to show by the actual pattern of sales of the dealer or by other evidence that, in practice, such arrangements frequently result in exclusive dealing, despite the absence of any express agreement to do so.

4. While, as already noted, respondent Luria does not deny the making of loans or advances to dealers, it does deny that they necessarily result in exclusive dealing, or that they are made for the purpose or have the effect of suppressing competition or that they have resulted in Luria's domination or control of dealers to whom they have been made. It contends that the making of such loans or advances is in accordance with usual industry practice and fills a need on the part of the dealers for financial assistance, which banks and other normal channels of financing are unwilling to undertake. It is also contended that the evidence offered by counsel supporting the complaint, in terms of the number of dealers receiving financial assistance and the amounts of money and scrap involved, fails to establish the likelihood of competitive injury or of a lessening of competition in any market area. To a consideration of the evidence in the light of these conflicting contentions, the examiner now turns.

Extent of Luria's Loans and Advances

5. The record contains evidence purporting to show the extent of the loans and advances made by Luria to dealers. Such evidence consists

⁵⁵ Counsel supporting the complaint state in this connection (Reply Brief, p. 45):

Advances against bills of lading or against scrap on hand do not represent the type of advances which are challenged in this proceeding or which have the restraining competitive effects which are in issue.

of a series of tabulations prepared by Luria, at the request of counsel supporting the complaint, purporting to show the amounts of loans and advances made to dealers and others and the status of each account at six-month intervals from January 31, 1949, to December 31, 1954 (CX 134 A-M). The tabulation covers loans or advances in a number of stated categories. The main categories included in the tabulation are, (a) loans to finance the "purchase of equipment," and (b) so-called "Permanent Advances for Credit." In some instances the tabulation contains a further breakdown on the basis of whether the loans or advances were "Secured by Mortgage" or "Secured by Stock of Company" or "Unsecured," or were evidenced by "Notes." The nature of the loans or advance made to finance the "purchase of equipment" are self-evidence. Advances which were "permanent advances for credit" cover monies advanced to the dealer for the general operation of his business, as distinguished from advance payments against specific lots of scrap sold to Luria.

6. Before discussing the extent of such advances, it is well to consider at this point the contention of counsel supporting the complaint that the figures of loans and advances produced by Luria do not reflect all of the loans and advances made by Luria and, therefore, are not a precise measure of Luria's loan practices. Counsel supporting the complaint state that: "No precise measure of the extent of the use of this practice by Luria was attempted." In support of their contention that the tabulation of Luria loans and advances is incomplete, counsel supporting complaint cite, (a) the testimony of several dealers in the Los Angeles and New York areas who had received advances from Luria, but whose names are not included in the tabulations in evidence, and (b) documentary evidence in the nature of statements of accounts of various dealers who had received advances from Luria's New York office, some of which dealers are not included in the over-all tabulation of loans and advances received in evidence.

Respondent Luria contends that the testimony and other evidence upon which counsel supporting the complaint rely as establishing the incompleteness of the Luria loan figures do not involve loans or advances in the true sense of the word, but relate to advance payments against scrap sold or about to be sold to Luria. Luria contends that such prepayments for scrap are not properly includable in the loan figures, and that the failure to include such advances in the case of the dealers referred to by counsel supporting the complaint does not demonstrate any inaccuracy or incompleteness in the over-all loan figures.

7. In order to understand the conflicting contentions with respect to the advances in question, it should be noted that it is customary

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in the scrap industry for brokers to make advance payments to dealers prior to the actual delivery of their scrap. The mills to whom the scrap is ultimately shipped usually take 30 to 60 days, or even longer, to make payment to the broker. Many dealers are not in a financial position to wait for their money until the broker has been paid by the mill. It is therefore a common practice for brokers to advance 75%, and sometimes more, of the amount of the invoice to the dealer upon receipt of a copy of the bill of lading covering the shipment of the scrap by the dealer. Advances are also sometimes made by brokers even prior to the actual receipt of a bill of lading. Such advances may be made at the time the order is placed, or even in anticipation of an order or orders which are about to be placed by the broker.

Loans to finance the purchase of equipment and so-called permanent advances, which are in reality loans to enable the dealer to carry on his business generally, including the purchase of scrap, are usually evidenced by a note or other formal document requiring repayment of the obligation at stipulated monthly periods, in accordance with a fixed schedule of payments. Advances which are in the nature of advance payments for scrap sold or about to be sold to the broker, are usually not evidenced by a note or other indicia of debt, but are wiped out by the shipment of scrap against the advances rather than by fixed monetary payments.

8. The testimony and other evidence cited by counsel supporting the complaint as establishing the incompleteness of the Luria loan figures involve mainly advances in the nature of advance payments against scrap sold or about to be sold to Luria. The testimony of the dealers upon which counsel rely indicates that they were not referring to loans and advances of the so-called permanent type, but rather temporary advances which were worked off by the shipment of scrap.⁵⁶ The documentary evidence pertaining to advances made by Luria's New York office is merely a statement of the status of accounts of various dealers showing advances against scrap sales made by the dealers to Luria.⁵⁷

9. In determining whether advances intended as prepayment for scrap sold or about to be sold should be considered as belonging in the

⁵⁶ One of the California dealers cited by counsel supporting the complaint testified that he had received "advances on merchandise and worked it off and continued to get more, and kept working it down" (R. 11,765). Another of the West Coast dealers testified that the only financial assistance received from Luria was "advances on my inventory" (R. 11,874). A third California dealer testified that he had received advances from Luria on scrap which he was storing prior to its being baled for shipment to Luria (R. 11,935). The two New York area dealers cited also referred to advances which they had received against scrap shipments to Luria (R. 2663, 2922).

⁵⁷ The only testimony regarding this exhibit (CX 420A-Z27) was by a Luria official who testified that the dealers "must have made sales from which advances are made" (R. 3294). There is nothing in the record to show that this exhibit involves advances other than as thus indicated.

category of advances which should have been included in Luria's loan figures, it should be noted that at least some of such advances are not loans of the type which are being challenged by counsel supporting the complaint, viz: "Advances against bills of lading or against scrap on hand". Some of the advances involved in the evidence cited by counsel supporting the complaint were clearly advances falling in this noncontested category. It may also be that some of the advances were against scrap which the dealer did not yet have in his inventory, but which he hoped to acquire in order to fill an order from Luria. Presumably counsel supporting the complaint would challenge advances of the latter type as being more akin to general loans to enable the dealer to carry on his business. However, there is no way of determining from the evidence in the record to what extent the advances cited by counsel supporting the complaint involve advances against scrap which the dealer had not yet acquired. There is no way to determine whether the amounts involved in such advances were substantial or significant.

10. In evaluating the completeness and reliability of the statistical compilation of loans and advances made by Luria which is in the record, it should be noted that the documents on their face purport to be accurate and complete. They were offered by counsel supporting the complaint without any condition or limitation as to their accuracy or completeness. The testimony of the Luria witness through whom the compilation was offered indicates that it covers all loans and permanent-type advances made by Luria, including those to finance the purchase of equipment and those used in the general operation of the dealer's business, including the purchase of additional scrap. There is nothing in the other evidence or testimony referred to by counsel supporting the complaint to justify the hearing examiner in holding that it is not a substantially complete list of the loans, and advances in the nature of loans, made by Luria during the period in question.

Even assuming that there were some advances made by Luria against scrap which a dealer did not own, and that such advances should have been regarded as loans and included in the compilation, the extent or substantiality thereof, as previously noted, cannot be determined from the record. The only definite, quantitative measure of Luria's loans and advances is the compilation offered in evidence by counsel supporting the complaint, and any findings based on the substantiality of Luria's loan policy must be made on the basis of such compilation, there being no other definitive evidence on the extent of such policy in the record. To the extent that the figures may fail to support a finding as to the illegality of Luria's loan policy, the de-

ficiency cannot be supplied by the suggestion that there were additional loans of vague and unknown proportions.

11. The extent of Luria's loan program is revealed by the following table, which includes loans and advances to finance the purchase of equipment and all other types of advances covered by the tabulation of loans and advances offered in evidence by counsel supporting the complaint. Column (1) of the table reflects the number of dealers who received loans in each year from 1949 to 1954. Column (2) reflects the aggregate amount of the loans made in each year to the dealers in Column (1), and the total for the 6-year period. It should be noted that the set-up of this column differs from that in an equivalent column proposed by counsel supporting the complaint, which is expressed in terms of the "Amount Originally Advanced to the Dealers With Unpaid Balances". The latter method has not been used since it presents an exaggerated picture of the extent of Luria's loan program. Column (3) reflects the number of dealers with outstanding loans as of the end of each year, including not only those who received loans during the year but those with unpaid balances from previous years. Column (4) reveals the total amount of the unpaid balances, as of the end of each year, of the dealers in Column (3). Where the

Luria loans and advances to dealers

	Number of dealers receiving loans ⁵⁵	Total amount of loans ⁵⁵	Number of dealers with unpaid balances	Total amount of unpaid balances
	(1)	(2)	(3)	(4)
1949-----	6	\$253, 000	⁵⁹ 7	⁵⁹ \$185, 000
1950-----	11	407, 500	14	469, 658
1951-----	⁶⁰ 21	⁶⁰ 648, 785	26	763, 176
1952-----	⁶¹ 18	⁶¹ 572, 521	33	772, 205
1953-----	⁶² 16	⁶² 435, 034	⁶³ 25	⁶³ 529, 625
1954-----	⁶⁴ 11	⁶⁴ 170, 962	⁶⁵ 20	⁶⁵ 473, 202
Total-----		2, 487, 802		

⁵⁵ Includes additional loans made in refinancing the balances due from dealers who had received loans during an earlier period, and initial loans where a specific date during the year is not given in the compilation in evidence. Such loans are generally reflected in the record by the word "Various" in connection with the date of the loan, or by reference to an earlier and a later date, or by the addition of "Etc." after the date. Such loans will be hereafter specifically identified.

⁵⁹ As of June 30, 1949, there were 10 dealers with unpaid balances, the amount of such balances being \$204,670.

⁶⁰ Includes additional loans as follows: \$30,000 to Paramount Steel & Supply; \$25,000 to Lederer Iron & Steel; and \$50,000 to Wilkoff. The latter has been counted only once in computing the number of dealers, since it also received an earlier loan in March 1951.

⁶¹ Includes initial loans as follows: Boosters Iron & Metal \$55,000; Eastern Iron & Metal \$100,000; General Pipe \$10,000; Dittmas Scrap \$50,000; and Novak \$100,000; also the following additional loans: A-1 Iron & Metal \$50,000; Aronofsky \$3,000; Fisher Steel & Supply \$20,700; Rubinstein \$22,500. Aronofsky has been counted only once in computing the number of dealers, since he received an earlier loan in July 1952.

⁶² Includes additional or initial loans as follows: Aronofsky \$30,000; Dittmas \$41,634; Lederer \$20,500; A-1 \$38,000; East Bay Iron & Metal \$28,000. Aronofsky has been counted only once in computing the number of dealers, since he received another separate loan in September 1953.

⁶³ As of June 30, 1953, there were 35 dealers with unpaid balances, the amount of such balances being \$691,673.

⁶⁴ Includes additional or initial loans as follows: Lederer \$72,000; and Mayco Salvage \$10,000.

⁶⁵ As of June 30, 1954, there were 28 dealers with unpaid balances, the amount of such balances being \$547,029.

number of dealers with unpaid balances and the amount of such balances is greater as of June 30, than at the end of the year, this is indicated.

12. As is revealed by the above table, Luria's loans and advances to dealers in the 6-year period from 1949 to 1954 amounted to \$2,487,802.⁶⁶ If the column reflecting the number of dealers receiving loans were totaled, it would suggest that 83 leaders had received loans. However, since some of the dealers received loans in more than 1 year during this period, this total figure would not correctly reflect the number of different dealers assisted financially by Luria. Actually, there were only 60 different dealers who received financial assistance. The amounts of the individual loans varied from as little as \$1,690 to as much as \$198,500, the latter being a loan to Wilkoff to finance the purchase of a baling press. Only twelve of the dealers received loans in the order of magnitude of \$75,000 or more. The total of the loans to these 12 dealers over the 6-year period amounted to \$1,753,245, or 70% of the total of all loans made during the 6-year period covered by the figures in the record.⁶⁷ The geographical distribution of these 12 dealers is as follows: Three are located in the Cleveland-Youngstown area; four are located in the greater Los Angeles area; one is located in the San Francisco area; one in the Boston area; one in the Chicago area; and two in the Brooklyn, New York area.⁶⁸ The remaining dealers, for the most part, received individual loans at one time or

⁶⁶ The proposed findings of counsel supporting the complaint suggest that this figure is \$3,946,323. However, counsel's figure involves the duplication of earlier loans which were refinanced at a later period. For example, on August 25, 1950, a loan of \$99,000 was made to A-1 Iron & Metal Company. This loan was refinanced in January 1952 and brought up to \$149,000. It was refinanced again in the latter part of 1953 and the amount brought up to \$187,000. Instead of reflecting the original amount loaned, plus additional amounts involved in the refinancing in 1952 and 1953, the total figure used by counsel supporting the complaint apparently includes all three of the above total amounts.

⁶⁷ The total amount of money loaned to these 12 dealers is as follows:

Wilkoff.....	\$272,500
A-1 Iron & Metal.....	208,000
Novak.....	207,076
Lederer.....	201,500
Newton.....	170,000
Eastern Iron & Metal.....	140,000
Booster.....	123,000
Paramount.....	105,000
Ditmas.....	91,634
Aronofsky.....	85,500
Kingsbury Iron & Metal.....	75,000
East Bay.....	74,035

⁶⁸ The locations of the dealers are as follows:

Cleveland and Youngstown.....	Paramount, Lederer and Wilkoff.
Los Angeles.....	A-1, Novak, Eastern and Booster.
San Francisco.....	East Bay.
Boston.....	Aronofsky.
Chicago.....	Kingsbury.
Brooklyn.....	Newton and Ditmas.

another during the 6-year period covered by the figures, such loans generally ranging from about \$5,000 to \$25,000.

13. The substantiality of Luria's loan program and its potentialities for competitive injury cannot be determined merely from the fact that over a 6-year period it loaned approximately two and a half million dollars to 60 dealers. Substantiality is a relative, rather than a single-dimensional, concept. In the field of antitrust law the relationship is to some market. There are approximately 3,700 dealers in the United States. In the course of its operations Luria buys from between 1,200 to 1,800 dealers. Counsel supporting the complaint apparently make no claim that the likelihood of competitive injury can be inferred merely from the fact that Luria made loans and advances to approximately 60 of these dealers. Indeed, no such inference can be drawn therefrom in the absence of evidence as to the amount of scrap controlled by such loans and advances in relationship to some market.

14. The market in this instance, as has previously been noted, is primarily a regional rather than a national one. However, counsel supporting the complaint have made no effort to establish the substantiality of Luria's control over any particular scrap market by offering evidence as to the amount of scrap sold by dealers receiving financial assistance in comparison with the total amount of scrap sold in the market. Instead, counsel have offered evidence as to Luria's loans and advances to selected dealers in various market areas. Such evidence, counsel state, is "not exhaustive but simply representative". It was apparently offered not to establish the substantiality of Luria's control of any market, but "the nature and purpose of such loans and advances". The evidence relied upon is considered below in relationship to the various market areas discussed by counsel supporting the complaint.

Cleveland-Youngstown Area

15. Counsel supporting the complaint concede that "the extent to which the practice [of making loans] was used by Luria in that area is not disclosed" by the record. Their presentation was restricted largely to showing that the loans and advances as to which evidence was offered were expressly conditioned on exclusive or preferential dealing, or that they did in fact result in such dealing. No effort was made to establish the substantiality of Luria's control over the market by a comparison of the total amount of scrap purchased from financially-assisted dealers, with the total amount of scrap sold in the market. The following are the scrap dealers in the Cleveland-Youngstown area upon whose financial dealings with Luria the case of counsel supporting the complaint in that area rests.

Lederer Iron & Steel Company

16. Lederer, a Cleveland dealer, received a loan of \$50,000 on August 20, 1947, which is designated in the record as a "permanent advance for credit". During 1948 it also received advances totaling \$60,000 to finance the purchase of a baler. On December 11, 1950, it received an additional loan of \$75,000 to finance the purchase of a baler. On January 29, 1951, the latter amount was increased to \$100,000. During 1953 the balance due Luria was refinanced and the amount of the loan increased to \$129,000. In 1954 this amount was further increased to \$201,500.

The only evidence in the record of any exclusive dealing arrangement in connection with any of such loans or advances involves the loan of \$100,000 in the latter part of 1951. By formal agreement dated February 10, 1951, Lederer agreed that until the loan was repaid in full, it would sell all of its scrap to Luria (except for certain cast iron and heavy plate scrap, as to which it reserved the right to sell directly to foundries). The agreement permitted Lederer to sell its scrap to others where Luria refused, within 48 hours, to purchase it. This type of arrangement is sometimes referred to as affording the broker the exclusive right to the dealer's scrap on a "first refusal" basis. The record does not indicate whether this exclusive agreement was extended in 1953 and 1954 when the balance outstanding was refinanced.

Counsel supporting the complaint contend that even prior to the exclusive or preferential agreement of February 1951, Luria's loans to Lederer had had an adverse effect on competitors. Counsel cite the experience of the Cleveland broker-dealer, Columbia Iron & Metal, which in 1947 had purchased \$316,418 worth of scrap from Lederer, and in 1948 was able to purchase only \$26,000 worth from Lederer and thereafter was unable to purchase any. Apparently the first loan from Luria in August 1947 did not preclude Columbia from purchasing scrap from Lederer since its purchases in that year were the largest of any year in the record. However, it may be inferred that the additional financial assistance given to Lederer by Luria in 1948 and thereafter resulted in the loss of that account entirely by Columbia. Except for minor direct sales to its foundry accounts, Lederer sold substantially all of its scrap to Luria after 1948.

Paramount Steel & Supply Corporation

17. Paramount, a Cleveland dealer, received an interest-free loan of \$75,000 from Luria on May 29, 1950, for the purpose of buying out one of its stockholders. Paramount entered into an agreement, in connection with the loan, to sell its scrap to Luria on a "first refusal" basis until the loan was repaid or until September 30, 1954, whichever

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occurred later. Prior to the loan, in 1949, Paramount's sales of scrap amounting to \$300,000 had been fairly evenly distributed among Columbia, Luntz, Luria and M. Cohen. Following the agreement with Luria in 1950, substantially all of Paramount's sales of scrap were made to Luria until December 1953, when Paramount discontinued business as a separate entity and consolidated with Lederer.

Tuschman Steel Company

18. Tuschman, a Toledo dealer, received a loan of \$25,000 from Luria on January 5, 1949, to finance the purchase of a baler. The only other loan or advance to Tuschman, as to which there is any evidence in the record, is one for \$15,000 made on November 10, 1952. The record contains no evidence of any express agreement or understanding, entered into in connection with either of these loans or advances, that Tuschman would sell its scrap to Luria exclusively. However, counsel supporting the complaint contend that even without a written agreement requiring Tuschman to sell its scrap to Luria, the loans and advances "were effective in producing business" for Luria. Counsel base this argument on the amount of business done by Luria with Tuschman.

The examiner can draw no inference, from the figures in evidence, that Tuschman had agreed to sell its scrap to Luria, either exclusively or on a preferential basis. The earliest figures in the record of Tuschman's sales to Luria involve the year 1951 and, while the figures disclose substantial sales to Luria between 1951 and 1955, they also disclose substantial sales to other brokers.⁶⁹ There is nothing to show that the pattern of sales to Luria after 1951 differed from that prior to its receiving any loans from Luria. The record fails to establish that loans or advances from Luria resulted in Tuschman's selling all or substantially all of its scrap to Luria.

The Wilkoff Company

19. Wilkoff, a Youngstown dealer, received a loan of \$150,000 on December 7, 1950, from Luria to finance the installation of a baling press. A condition of the loan agreement was that Wilkoff would sell all of its scrap in the Youngstown area to Luria, except for some sales to foundry accounts of long standing. The amount of the loan was subsequently increased to approximately \$300,000. In 1949 Wilkoff's

⁶⁹ The following is the record of Tuschman's sales to Luria, to other customers (not including brokers) and to other brokers (CX 921):

Customer	1951	1952	1953	1954	1955
Luria	\$549,439	\$229,837	\$318,539	\$41,968	\$81,361
Other customers.....	262,484	14,587	188,960	40,352	102,384
Other brokers.....	275,785	254,320	314,300	137,613	401,698

sales to Luria amounted to about \$23,000 out of total sales of \$1,535,000. In 1950 its sales to Luria were \$310,000 out of total sales of \$2,785,000. In 1951, the first full year after the loan agreement of December 7, 1950, Wilkoff's sales to Luria were \$2,315,000 out of total sales of \$3,105,000. Its sales to Luria thereafter continued in substantially the same large proportions. It seems evident that Luria's loans to Wilkoff resulted in the latter's dealing with it on a substantially exclusive or highly preferential basis.

Wayne County Iron & Metal Co.

20. This dealer, located in Wooster, Ohio, received an interest-free loan of \$18,000 from Luria on May 8, 1954, to finance the purchase of a baler. The loan agreement provided that until the loan was repaid the dealer would sell to Luria, on a first refusal basis, all of the bundled scrap produced by the baler. There is no evidence in the record as to whether Wayne did, in fact, sell its scrap to Luria.

P. Sweeney, Inc.

21. This dealer, located in Tiffin, Ohio, received a loan of \$10,000 from Luria on May 18, 1954, to assist it in establishing a scrap yard. The loan bore interest at 3%. Although the agreement contained no provision obligating the dealer to sell its scrap to Luria, the dealer did in fact sell all of its scrap to Luria.

Conclusions as to Cleveland-Youngstown Area

22. Counsel supporting the complaint offered evidence as to loans made by Luria to six dealers in the northern Ohio area, between Toledo and Youngstown, which is served by Luria's Cleveland office. In several instances there was a written agreement requiring the dealer to sell its scrap to Luria exclusively or on a first refusal basis, until repayment of the loan. In several instances, even though there was no such express agreement, the dealers did in fact sell substantially all of their scrap to Luria. However, in at least one instance where there was no express exclusive or preferential agreement, the dealer did not sell all of its scrap to Luria and, while it sold substantial quantities of scrap to Luria, there is no evidence that it dealt with the latter on a preferential basis.

23. The examiner cannot determine from the evidence pertaining to the northern Ohio area whether Luria's loan program is calculated to result in substantial competitive injury in the area. It does appear that in a number of instances, but not in all instances, the recipients of financial assistance tend to deal with Luria exclusively or on a preferential basis during the period of assistance. In several instances this has resulted in the inability of other brokers and broker-dealers to buy scrap from the financially assisted dealers. However, it can-

not be inferred therefrom that substantial competitive injury is likely to result from Luria's loan program.

24. Exclusive or preferential dealing necessarily results in competitors being unable to sell freely to the party who is tied up by such an arrangement. However, such arrangements are not per se illegal. Their illegality generally depends on a showing as to the likelihood of substantial competitive injury resulting therefrom. Typically, such a showing involves evidence as to the substantiality of the share of the market foreclosed. No such evidence has been adduced in this instance. There is no evidence that the amount of scrap tied up by loans from Luria in the northern Ohio area, or any definable segment of the market, is substantial. While the illegality of such arrangements may also be established by evidence that they were undertaken as part of a deliberate program to obtain market control or for other predatory reasons, the record contains no such evidence with respect to the northern Ohio market or any of the other areas as to which evidence was offered.

* * * * *

25. The examiner considers it unnecessary to make further detailed findings, similar to those made above, with respect to the other areas to which proposed findings have been offered by counsel supporting the complaint. In most instances the evidence establishes merely the fact that selected dealers in these areas received financial assistance, and that this frequently resulted in the assisted dealers selling their scrap to Luria exclusively or on a preferential basis, during the period of financial assistance. However, there is no evidence as to the substantiality of the amount of scrap tied up, in relation to the market, nor any other facts from which the likelihood of substantial competitive injury can be inferred. In order that the record may be complete for possible appellate purposes, there is set forth below, in tabular form, an outline of the evidence of loans and advances in other areas on which counsel supporting the complaint rely.

New York Metropolitan Area

26. Set forth below is a list of loans in the New York area, together with an indication of whether there was any element of exclusivity involved in connection with such loans. [Page 483.]

27. The above table discloses that between 1947 and 1953 Luria made loans to nine dealers in the New York metropolitan area. In most instances, either by express agreement or in practice, the dealers were required to sell or sold all or substantially all of their scrap to Luria during the period of financial assistance. However, outside of the fact of the making of these loans there is no evidence from which it may be found that Luria's assistance to nine dealers at

various times over a 7-year period is calculated to result in substantial injury to Luria's competitors in the area. The assisted dealers represent a mere handful out of the hundreds of dealers in the area. There is nothing to show that they are key dealers in the area or that they control any significant portion of the scrap sold.

LURIA LOANS NEW YORK AREA

Dealer	Date	Amount	Exclusivity
George H. Nutman, Inc. ⁷⁰	Jan. 14, 1947	\$25,000	Agreement to sell Luria 10,000 tons of unprepared ship scrap.
Newton Iron & Metal Co.....	Jan. 14, 1949	20,000	Agreement to sell to Luria on a first refusal basis.
Do.....	Sept. 25, 1950	(70a)	Agreement to sell exclusively to Luria.
Paterson Iron & Metal Co.....	Feb. 17, 1947	23,820	Do.
Lieberman-Koren Corp.....	Sept. 25, 1947	45,000	Do.
Do.....	Jan. 25, 1950	28,000	No evidence of exclusivity.
A. Olinick & Sons.....	Oct. 19, 1948	10,000	No evidence of exclusive agreement.
Do.....	Sept. 26, 1951	5,000	Dealer did sell all its scrap to Luria in 1953 and 1954 and 90% in 1952.
Irvington Metals Co.....	Jan. 22, 1951	5,000	No evidence of exclusivity.
Do.....	Mar. 30, 1953	12,000	Agreement to sell to Luria on first refusal basis.
Newark Iron & Metal Co.....	June 15, 1951	15,000	Agreement to sell exclusively to Luria.
Patchogue Scrap Iron Co.....	Sept. 20, 1951	3,000	Do.
Steel Scrap Inc.....	Sept. 14, 1953	8,000	Agreement to sell to Luria on first refusal basis.

⁷⁰ In addition to the above loan to Nutman, counsel supporting the complaint refer to an advance of approximately \$100,000 on November 4, 1954. However, this was an advance payment against 9,000 tons of scrap sold to Luria, valued at \$265,000, rather than an advance in the nature of a loan.

^{70a} Amount of loan increased to \$100,000.

Pacific Coast Area

28. As previously noted, Luria did not begin to operate extensively on the West Coast until 1948, when it opened a brokerage office in San Francisco. In 1950, through its subsidiary Lipsett, it opened a scrap yard adjacent to the Bethlehem Pacific plant in the Los Angeles area. Set forth below is a table indicating the Luria loans in the San Francisco area, insofar as there is any specific evidence thereof in the record.

LURIA LOANS SAN FRANCISCO AREA

Dealer ⁷¹	Date	Amount	Exclusivity
Circosta Iron & Metal.....	Mar. 20, 1951.....	\$38,750	First refusal basis. However, dealer did not sell all of scrap to Luria. ⁷²
East Bay Iron & Metal.....	Jan. 2 and Mar. 6, 1951.	46,035	First refusal basis.
Do.....	1953.....	28,000	Do.
Mayco Salvage Co.....	June 1, 1953.....	14,490	
Do.....	1954.....	10,000	

⁷¹ In addition to the dealers listed above, counsel supporting the complaint contend that advances were made to Salco Iron & Metal Company. However, with one exception, such advances involved merely prepayments against scrap sold to Luria. The one exception involved the assumption by Salco of a loan made to a predecessor company. No scrap was sold to Luria by Salco while this loan was outstanding.

⁷² Despite the agreement to sell to Luria on a first refusal basis, Circosta did not sell all of its scrap to Luria during the period the loan was outstanding, viz, until December 31, 1954. In 1951, its sales to Luria were \$255,500 out of total sales of \$683,500; in 1952 they were \$451,000 out of \$835,000; in 1953 they were \$277,400 out of \$593,000; and in 1954 they were \$150,000 out of \$420,700.

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29. As is apparent from the above table, Luria made loans to three different dealers in the San Francisco area at various times between 1951 and 1954. The agreements executed in connection with such loans required the dealers to sell to Luria on a first refusal basis during the period the loans were outstanding. In at least one instance the dealer did not sell all or substantially all of its scrap to Luria. There is no evidence in the record that such arrangements resulted in the tying up of a substantial portion of the dealer scrap in the San Francisco area; nor that competition in the area was, or is likely to be, substantially injured.

30. Set forth below is a table of Luria's loans in the Los Angeles area, insofar as there is any specific evidence thereof in the record.

LURIA LOANS LOS ANGELES AREA

Dealer	Date	Amount	Exclusivity
Boosters Iron & Metal ⁷³	Dec. 20, 1949.....	\$35,000	First refusal basis.
Do.....	Mar. 19, 1952.....	55,000	No evidence of any agreement. However, dealer sold 95% of its scrap to Luria.
Ace Metal & Waste (San Diego).....	Various.....	(⁷⁴)	No evidence of any agreement. However, scrap was offered to Luria in an amount sufficient to cover any outstanding balances.
A-1 Iron & Metal.....	July 24, 1950.....	120,000	Agreement to sell exclusively to Luria.
Do.....	Jan. 30, 1952.....	50,000	No evidence. However, dealer sold between 70-90% of its scrap to Luria.
Do.....	Latter part of 1953.....	38,000	Same as above.
Industrial Salvage & Building Supply	1951-52.....	⁷⁵ 75,000	No agreement. However, dealer sold all its scrap to Luria in 1953 and 1954, and 82% in 1955 and 94% in 1956.
Eastern Iron & Metal.....	Feb. 18, 1952.....	100,000	First refusal basis.
Do.....	May 19, 1953.....	40,000	
Alex Novak & Sons (Ontario, Calif.)	June 19, 1952.....	⁷⁶ 100,000	Dealer refused to sign written agreement. However, it did sell to Luria on a first refusal basis.
Do.....	Mar. 2, 1953.....	107,076	Same as above.

⁷³ In addition to the two loan transactions set forth above, counsel supporting the complaint contend there were additional advances as high as \$90,000. The latter advances were made against orders placed at the beginning of the month by Luria. They never exceeded the amount of such orders.

⁷⁴ Ace did not receive any actual loans from Luria. It periodically received advances to enable it to buy scrap. Such advances amounted to \$5,000-\$10,000 every week or two. These reached a peak of \$60,000-\$70,000. Such advances were repaid out of scrap shipments.

⁷⁵ Dealer received no formal loans. However, during the period a baling press was being installed it received advances against future scrap shipments. Such advances were usually \$10,000 at a time. They were paid off by scrap shipments after the press was installed.

⁷⁶ Dealer had received advances on an open account since 1951. When he was unable to repay them out of scrap shipments a note and mortgage covering the outstanding balance were signed in 1952.

31. As is apparent from the foregoing table, four dealers in the southern California area received loans from Luria and two received advances against the purchases of scrap. In most of the instances cited, there was an agreement to sell scrap to Luria on an exclusive or a first refusal basis, or the course of dealings between the parties was such that Luria was able to buy all or substantially all of the dealers' scrap. However, the record is lacking in evidence that the scrap tied up by any of these arrangements constituted a substantial part of the dealer scrap in any relevant market area, whether the relevant market

be considered as the Los Angeles area alone, the San Diego area, or the whole southern California area; nor is there any other evidence from which it may be inferred that Luria's loan practices in the area have resulted, or are likely to result, in substantial competitive injury.

New England Area

32. Counsel supporting the complaint concede that they did not offer evidence "concerning the extent to which loans and advances were made by Luria through its Boston office or in the New England area". However, they cite Luria's loans and advances to three dealers in the area, as illustrative of "the purpose and effectiveness of the practice in that area".

33. Among the three dealers referred to is Bartlett Scrap Iron Company of East Providence, Rhode Island, which received loans in 1947 and 1948 totalling \$53,500 to finance the purchase of a baling press. There is no evidence that any exclusive dealing agreement was entered into in connection with such loans or that the loans resulted in Bartlett's dealing with Luria on an exclusive basis. Counsel supporting the complaint also cite the fact that Bartlett received advances up to 100% against scrap which it owned and had sold to Luria. However, since counsel supporting the complaint have conceded that "advances against bills of lading or against scrap on hand" are not being challenged in this proceeding, the fact that Luria was willing to prepay the entire amount before delivery of the scrap would appear to be of dubious materiality.

34. The second dealer referred to is M. Aronofsky & Sons of Boston, which received loans in amounts varying from \$3,000 to \$32,500 between 1949 and 1954. The total amount of such loans was \$65,000. None of the loan contracts contained a provision requiring Aronofsky to sell its scrap exclusively to Luria. However, substantially all of Aronofsky's scrap was sold to Luria, except for some sales made directly to foundries in the New England area.

35. The third dealer cited by counsel supporting the complaint is South Boston Iron & Metal Co., Inc., of Boston. South Boston actually received no loans from Luria. It did, however, receive an advance of \$225,000 in December 1955, against an order of scrap sold to Luria. This represented less than 75% of the amount of the order from Luria. South Boston had formerly sold its scrap to Luria Steel & Trading (LS&T), from which it had received similar advances. The record fails to establish that this dealer's switch from LS&T to Luria was in any way connected with the above advance.

36. There is no evidence that Luria's loans and advances have resulted in tying up any substantial part of the dealer scrap market in either Boston, Providence, or the New England area generally; nor is

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there any other evidence from which it may be inferred that Luria's loan practices in the area have resulted or are likely to result, in substantial competitive injury.

Other Areas

37. In addition to the loans and advances referred to above in specific geographic or market areas, counsel supporting the complaint cite a number of other loans and advances made to dealers in widely scattered sections of the country, without regard to market or geographic area. These are as follows:

LOANS TO OTHER DEALERS

Name and location of dealer	Date	Amount	Exclusivity
Giordano Waste Material, Camden, N.J.	June 28, 1946.....	\$50,000	Agreement to sell 85% of scrap to Luria until 6 months after repayment of loan.
Berman Bros., Grand Rapids, Mich.	Nov. 28, 1949.....	15,000	No evidence of agreement. However, in 1950 Luria was buying all of dealer's scrap.
Ypsilanti Iron & Metal, Ypsilanti, Mich.	Mar. 23, 1950.....	25,000	First refusal basis as to dealer's yard scrap.
Fisher Steel & Supply, Muskegan, Mich.	Aug. 2, 1951.....	⁷⁷ 40,700	Agreement to sell exclusively, except for foundry scrap.
Douglas Scrap Steel & Metal, Plattsburg, N.Y.	Mar. 20, 1952.....	13,000	First refusal basis.
Harry Gordon Scrap Materials, Lexington, Ky.	Oct. 30, 1952.....	15,000	Same as above.
United Iron & Metals, Caldwell, Idaho.	October 1955.....	6,000	No evidence of agreement. However, substantially all of dealer's scrap was sold to Luria between 1953 and 1956.
Miller Junk & Waste, Lancaster, Pa.	(⁷⁸)	(⁷⁸)	Dealer has sold all its scrap to Luria for 50 years without any agreement.

⁷⁷ Agreement provided for \$213,000 loan, in installments, for purpose of financing purchase and installation of equipment. However, dealer did not avail itself of entire loan because it purchased only part of the contemplated equipment.

⁷⁸ Dealer received advances at various times of \$50,000 and \$100,000. However, these were advances against scrap sold to Luria. Luria has also owed dealer as much as \$100,000 on open account.

38. As in the case of the dealers previously mentioned, the record fails to establish that any exclusive arrangement with the dealers referred to in the above table has resulted in tying up any substantial proportion of the scrap in the areas where these dealers operate. In fact, in a number of instances, it is not possible to determine what the relevant market area is since no evidence as to the confines or extent of such areas was offered for the record. Nor is there any other evidence in the record from which it may be inferred that Luria's loan practices in any of the above areas have resulted in, or are likely to result in, substantial competitive injury.

Use of the Practice by Others

39. Counsel supporting the complaint suggest that respondent Luria has been a leader in the practice of making loans and advances to dealers and that, while other brokers have engaged in the practice, they have done so "rarely and sparingly". The record does not sustain

counsel's position in this respect. The evidence discloses that brokers have made loans and advances to dealers for a great many years. The extent of Luria's loans and advances, insofar as they are of a formal nature requiring specified periodic repayment, has been indicated above. Its advances of an informal nature, consisting mainly of prepayment for scrap sold and, sometimes, general advances which will be worked off out of scrap to be sold, cannot be determined from the evidence in the record. In the case of its competitors, it is clear that many of them also made loans and advances of all types. However, there is no record basis for determining, with any degree of accuracy, the extent to which other brokers have engaged in the practice.

40. An official of Luria's competitor, The David J. Joseph Company, expressed the opinion that (RX 41) "[s]upplying financial help is a normal function of brokers". He indicated that such assistance took many forms, the most common being "the custom by which the broker pays a substantial percentage of the total value of a shipment" and that "[i]n addition to this normal financing function, brokers sometimes provide additional monetary help", such help involving the making "of loans to dealers for purchase of inventory, or longer term loans for purchase of equipment".

A representative of another substantial competitor, Schiavone-Bonomo, testified that whereas the practice of making advances against bills of lading was one of long standing, that of making loans or so-called advances to enable dealers to carry on their business generally originated during the period of the depression when it was necessary "to keep the processors [of scrap] going and pay their labor and the machinery and keep up to date" (R. 12,777). A representative of another Luria competitor in the Pacific Northwest area, Dulien Steel Products, Inc., indicated that his company made equipment loans to dealers to enable them to modernize their facilities and produce a better grade of material" (R. 10,534).

Substantially all of Luria's competitors as to whom there is any evidence in the record make advances in the form of prepayment for scrap, either against a bill of lading or against invoices. A number of them also make loans to finance the purchase of equipment and make general advances for use in the operation of the dealer's business. Among those whom the record indicates have made loans and advances in this category are: Hyman-Michaels of Chicago and St. Louis, Max Solomon Company of Pittsburgh, Tube City Iron & Metal Company of Pittsburgh, Luntz Iron & Steel Company of Cleveland, Columbia Iron & Metal Company of Cleveland, Commercial Metals Company of Dallas, Dulien Steel Products Co., Inc., of Seattle, The Purdy Company of Chicago, St. Louis and San Francisco,

Schiavone-Bonomo of Jersey City and Luria Steel & Trading Company of New York.

41. Counsel supporting the complaint contend that the financing operations of these other brokers are more limited than those of Luria. Since these brokers for the most part operate on a smaller scale than does Luria, it would not be surprising if the extent of their financial assistance to dealers was smaller than that of Luria. However, there is no definite evidence in the record from which any meaningful comparison can be made. Counsel supporting the complaint cite certain general statements by witnesses representing these brokers, as indicative of the limited nature of their financing operations. However, such testimony is generally too vague, nonspecific and unreliable to support any definite finding as to the extent of their engagement in the practice of assisting dealers financially.⁷⁹

Conclusions as to Loans and Advances

42. The complaint is not directed against the making of loans or advances generally. Counsel supporting the complaint concede that their attack is directed only against loans and advances which are made on the "express or implied condition that the dealers will sell scrap exclusively to Luria or will give Luria first call upon their scrap" (Reply Brief, p. 46). As has been previously noted, counsel also concede that they do not challenge advances which are made "against bills of lading or scrap on hand". It is clear, therefore, that what is challenged in this proceeding is the making of loans or advances for financing the purchase of equipment or for the operation of the dealer's business generally, other than for the prepayment of scrap which the dealer has on hand and has sold to the broker, where such loans or advances are made in a context of exclusive dealing.

⁷⁹ For example, counsel supporting the complaint refer to the testimony of the manager of LS&T's office in Pittsburgh, that his company made no loans in that area, and that its policy elsewhere was not to make loans and advances, except in unusual situations. However, it is apparent from the witness' testimony that he had no personal knowledge on the subject, except for the Pittsburgh office, the policy in this respect being set by the New York office. While the president and office manager of LS&T's New York office were also called as witnesses by counsel supporting the complaint, they were not interrogated generally on the subject of loans and advances. It does appear from the testimony of the office manager that South Boston Metals, a dealer-supplier of LS&T, received advances of as high as \$100,000, which were not made against specific orders. Counsel supporting the complaint also refer to the testimony of the manager of the Purdy Company office in San Francisco as to having made only two loans to dealers on the West Coast. However, the witness obviously was unfamiliar with the company's loan policy elsewhere. Although the president of this company was also called as a witness in support of the complaint, he was not interrogated on the subject of the company's policy with respect to loans and advances. Another witness whose testimony counsel supporting the complaint cite is the president of Columbia Iron & Metal, who testified that his company did "little of that, if any", i.e., making loans and advances to dealers. The precise extent of this company's financing of dealers does not appear from the record, although it does appear that it assisted at least one dealer in financing the purchase of a press. Columbia does, however, regularly advance to dealers 75% of the value of scrap sold, either upon an invoice or a bill of lading.

43. It is not disputed that respondent Luria has made loans, and advances in the nature of loans, to dealers for use in the purchase of equipment or in the general operation of the dealer's business, including the purchase of scrap. The extent of such loans and advances appears from the record. There is also no dispute as to the fact that Luria has made advances which are in the nature of prepayment for scrap sold or about to be sold by the dealer to Luria. Such advances are generally made against bills of lading or against invoices covering the sale of the scrap. Sometimes, however, the advances are made prior to invoice and are made in anticipation of the sale of scrap which the dealer has not yet acquired. The extent of advances made against scrap which the dealer does not have on hand does not appear from the record, and there is no way by which the examiner can determine, with any degree of accuracy, the quantitative extent or substantiality of such advances.

44. Many competitors of Luria likewise make loans and advances. In the case of advances which are in the nature of prepayment for scrap sold to brokers, it is commonplace for brokers to make such advances, and the practice is widely engaged in by brokers. In the case of loans, or advances in the nature of loans, to enable a dealer to purchase equipment or to generally conduct his business, the record discloses that a number of brokers also engage in such practice. However, the extent to which they do so cannot be determined with any degree of accuracy on the basis of the evidence in the record. The record fails to support a finding, such as that suggested by counsel supporting the complaint, that Luria initiated the practice of making loans and advances, or that it has engaged in such practice more extensively, in relation to its total business, or in a manner different from, that of its competitors.

45. The record establishes that in connection with a number of loans, and advances in the nature of loans, Luria has required dealers to agree to sell their scrap to it exclusively, or on a first refusal basis, during the period the loan or advance was outstanding. It further appears that in some instances, even in the absence of a specific agreement requiring them to do so, dealers who have received loans and advances have dealt exclusively or substantially exclusively with Luria. However, the record also discloses that in other instances dealers who have received financial assistance have sold substantial amounts of their scrap to other brokers, and have not dealt with Luria on an exclusive or substantially exclusive basis.

46. The record fails to establish that, during any particular period and with respect to any specific market area, the proportion of scrap tied up by Luria as a result of any exclusive or preferential agree-

ment or arrangement, express or implied, has been substantial in relation to the market as a whole; nor is there any other evidence from which it can be found or inferred that Luria's loan practices have had, or are likely to have, a substantial adverse competitive effect. It is concluded and found that counsel supporting the complaint have failed to establish by reliable, probative and substantial evidence that Luria has acquired substantial domination and control over competing dealers and brokers through the making of loans and advances, or that it has engaged in the practice of making loans and advances to dealers for the purpose or with the effect of substantially lessening and suppressing competition or creating a monopoly in any market area where it has engaged in such practice.

(2) Stock Acquisitions

1. The complaint charges Luria with having acquired all or a substantial part of the capital stock of six other corporations. It is alleged that these corporations are and were large brokers or dealers in ferrous scrap in their respective market areas, and have occupied an important position in such areas. Such acquisitions are challenged both as an unfair method of competition, in violation of Section 5 of the Federal Trade Commission Act, and as stock acquisitions in violation of Section 7 of the Clayton Act.

2. The challenged stock acquisitions occurred in the period between July 1946 and April 1951. During this period there was a substantial increase in Luria's market position, both nationally and in various regional markets, as will hereafter more fully appear. It is contended by counsel supporting the complaint that this growth was due in part to Luria's stock acquisitions in competitors. Set forth below are the facts with respect to each of the stock acquisitions which are challenged by the complaint.

Pueblo Compressed Steel Corporation

3. Pueblo Compressed Steel Corporation (referred to herein as PCS) is a scrap yard operation located in Pueblo, Colorado. The company was incorporated under the laws of the State of Colorado on August 3, 1942. It was and is engaged in interstate commerce.

4. On August 29, 1942, PCS entered into an agreement with The Colorado Fuel and Iron Corporation (CF&I) pursuant to which it undertook to have a baling press owned by it from St. Louis, Missouri, and to install it in a scrap yard on land leased to it by CF&I. The agreement provided that for a term of 5 years from the date of installation of the equipment in Pueblo, PCS would sell to CF&I, and the latter would buy, all bundled scrap compressed by PCS in its yard, and

all other scrap which PCS offered to CF&I. PCS had the right, under the agreement, to ship such scrap directly to CF&I or through brokers. CF&I agreed that all bundled scrap originating within a radius of 200 miles of Pueblo would be purchased only from PCS. The 5-year agreement went into effect in October 1942, after installation of the equipment was completed.

5. As has previously been found, in the spring of 1946, while the above agreement with CF&I and PCS was still in effect, Luria entered into an arrangement with CF&I to act as the exclusive broker for CF&I's Minnequa Works at Pueblo. The agreement between Luria and CF&I was originally limited to scrap of dealer-broker origin, but later was extended to cover all scrap. Formal announcement of this arrangement was made to the trade on June 1, 1946.

6. On July 3, 1946, Luria acquired 75 shares of the 150 issued and outstanding shares of stock of PCS. The stock was acquired in the name of Samuel Claster, brother of Joel Claster, who was then Luria's president, for \$25,000. Samuel Claster's shares in PCS were later transferred to Luria, and an additional five shares of the outstanding stock of PCS was acquired by Luria on August 31, 1947, giving it the controlling interest in PCS. The balance of the PCS stock was acquired by Luria on May 21, 1957. Luria's purpose in acquiring control of PCS was apparently twofold, (1) to assure itself that there would be no conflict between its exclusive brokerage arrangement with CF&I and the existing agreement between CF&I and PCS (which required CF&I to purchase all scrap offered to it by PCS and not to purchase bundled scrap within a radius of 200 miles from Pueblo from anyone other than PCS), and (2) to acquire PCS's facilities in Pueblo, including one of the few baling presses in the area, thereby placing Luria in a better position to fulfill its obligation to supply CF&I with dealer scrap and decrease the latter's reliance on the more expensive grades of railroad scrap.

7. In 1945, the year before Luria acquired an interest in PCS, the latter had not sold any of its scrap to Luria. In 1946, the year in which Luria acquired an interest in PCS, the latter sold 61% of its scrap to Luria. In the succeeding years for which there are figures in the record, 1947 to 1954, PCS sold substantially all of its scrap to Luria, except for the year 1948 when it sold 79% of its scrap to Luria. Its sales to Luria were made in the latter's capacity as a broker. Substantially all of the scrap sold by PCS to Luria was shipped to CF&I, except for minor amounts which Luria shipped to Anaconda Copper Company and a few small foundries.

8. In 1945 PCS sold directly to CF&I for its Minnequa Works approximately 6,500 net tons of scrap, out of 219,000 tons purchased

by the latter. This was approximately 3% of the scrap purchased by CF&I from all sources. However, since CF&I purchased most of its scrap from railroads and other nondealer sources in 1945, in terms of the approximately 53,000 tons which CF&I purchased from dealers and brokers in 1945, PCS supplied approximately 11% of CF&I's purchases of broker-dealer scrap. A substantial part of the scrap purchased by CF&I from PCS consisted of scrap bundles.⁸⁰

9. As has been previously noted in connection with the discussion of the exclusive brokerage arrangement between Luria and CF&I, in 1947, the first full year in which the exclusive agreement was in effect, Luria supplied all of the purchased scrap consumed by CF&I's Minnequa Works. During that year approximately 11% of the scrap supplied to CF&I by Luria came from PCS. The percentage of scrap supplied by PCS to Luria for shipment to CF&I in the succeeding years varied from a low of 5.6% in 1949 to a high of 19% in 1953.⁸¹

10. According to the Bureau of Mines' figures, as appearing in the Yearbook for 1946, there were 345,895 tons of purchased scrap consumed in Colorado in that year.⁸² PCS processed 27,782 gross tons of scrap in that year, or approximately 8% of the total purchased scrap consumed in Colorado. In most of the remaining years up to 1954, PCS's scrap sales represented between 4% and 8% of the total purchased scrap consumed in the State of Colorado.

11. In 1945 Luria made no sales of scrap in the Rocky Mountain area. In 1946, the first year of its exclusive arrangement with CF&I, its sales in that area were approximately 111,000 tons, or 89.9% of all scrap purchased by mills in the area. In the succeeding years, from 1947 to 1954, Luria's sales of scrap to consuming mills in the Rocky Mountain area have generally exceeded 90%, except for 1954 (when they were 87.2%), and have been as high as 99.3%.

12. At the time Luria acquired PCS there were four other dealers in the Pueblo area and a somewhat larger number in the Denver area. PCS had the only baling press in the Pueblo area, and a dealer in the Denver area, Compressed Steel Company, had the only press in the latter area. After Luria acquired PCS, the latter began to expand

⁸⁰ Several years prior to Luria's acquisition of PCS, CF&I had notified other dealers in the area that it would only purchase its scrap bundles from PCS and would discontinue the purchase of baling scrap from other dealers.

⁸¹ The above percentages are computed on the assumption that substantially all of the scrap sold to Luria by PCS was shipped to CF&I. The following are the percentages which the scrap sold to Luria by PCS represents of Luria's total scrap shipments to CF&I: 1947—11%; 1948—8.6%; 1949—5.6%; 1950—7.5%; 1951—7.0%; 1952—9.4%; 1953—19%; 1954—9.0%.

⁸² The Bureau of Mines' Yearbooks are not in evidence in this proceeding. The above figures have been cited by Luria in its proposed findings. No objection thereto has been raised by counsel supporting the complaint. As official figures published by an agency of the United States Government, and there being no objection thereto, the hearing examiner may appropriately take official notice of such figures.

its activities so as to process other heavier grades of scrap, as well as baling scrap. As a result, one of the Pueblo dealers, Pueblo Iron & Metal Company, which had handled mainly the heavier grades of scrap, went out of the scrap business in 1947 and remained out until 1955 because, among other things, it found itself unable to compete with PCS. A dealer in the Denver area who was considering installing a press was advised by a Luria representative not to install one since there was already one in the Denver area, and that since the latter dealer was staying out of the heavy scrap business, the dealer in question should "stay out of the press business" (R. 9874).

13. While there are about 15 dealers in the Denver-Pueblo area, most of them are small by eastern standards. The volume of even the larger dealers is generally under \$100,000 a year. PCS was among the largest of the dealers in the area when it was acquired by Luria. Its sales in 1945, the year before it was acquired by Luria, were \$256,724. In 1946, the year during which Luria made the acquisition of PCS's stock, its sales increased to \$379,621. In the succeeding two years, 1947 and 1948, there was a further increase to \$858,826, and \$1,201,663, respectively. While there was some decline in PCS's sales thereafter, its sales in most years were substantially higher than during the pre-Luria era. The only other dealer of comparable size, as to whom there is any evidence in the record, is National Iron & Metal Co. of Denver, whose sales were \$386,371 in 1956, as compared to \$141,632 in 1953.

14. CF&I is the largest single consumer of scrap in the Rocky Mountain area, particularly on the eastern slope. During most of the period from 1946 to 1954 it purchased over half of the purchased scrap consumed in the State of Colorado, and in several years its purchases amounted to almost two-thirds of the purchased scrap consumed in the state. Luria, as CF&I's exclusive broker, occupied a dominant position in the scrap industry in the Rocky Mountain area. Its position as exclusive supplier to CF&I was later fortified by its exclusive arrangements with other mills and foundries in the Intermountain Area, as has previously been noted. There can be no question that in this setting its acquisition of control in PCS was of material aid in augmenting its competitive position in the area.

15. Respondent Luria contends that its acquisition of control in PCS was of no material competitive significance because of (a) the lack of competition between the two companies at the time of the stock acquisitions and (b) PCS' relative insignificance as a competitive factor in the market. In the opinion of the examiner neither of these arguments has any merit. When Luria made its first purchase of PCS stock in July 1946 it was already supplying CF&I with scrap and had been doing so since the spring of that year. It was in actual and

potential competition with PCS, both in buying scrap in the area and in selling scrap to CF&I. In fact one of the reasons it acquired PCS was to eliminate a conflict which existed between its arrangement with CF&I and the latter's agreement with PCS.

While it is true that PCS was not a dominant supplier, and accounted for only 8% or less of the purchased scrap consumed in Colorado, it was nevertheless an important factor in the local scrap industry, and its importance increased when it came into the hands of the dominant factor in the industry. It supplied that factor with not insubstantial quantities of the scrap which the latter was supplying to CF&I, and helped it to decrease CF&I's reliance on railroad scrap. While PCS may have accounted for a relatively small fraction of the total scrap consumed in Colorado, it was nevertheless one of the largest factors in the market area, which was characterized by many small scrap suppliers. As the owner of one of the few baling presses in the area, it occupied a strategic position in the market.

It seems clear, therefore, and is so found, that Luria's acquisition of control of PCS was calculated to have a substantial competitive effect on the local scrap market, and to materially aid Luria in becoming the dominant factor in the market.

16. With respect to the charge that Luria held out PCS as being an independent company, the evidence discloses merely that Luria made no public announcement of its stock interest in PCS. There is no evidence as to whether dealers and others were under the impression that the two companies were unrelated after 1947. Furthermore, the record fails to establish that Luria was able to obtain an unfair competitive advantage in buying or selling scrap by reason of the fact that its stock interest in PCS was not known in the trade.

A. M. Wood and Company

17. A. M. Wood and Company, Inc. (referred to herein as Wood), was a Delaware corporation which operated as a scrap broker, with its office in Philadelphia, Pennsylvania. It did not own a scrap yard or any preparation facilities. The company, which was organized in 1913, was engaged in interstate commerce.

18. The authorized capital stock of the Wood Company consisted of 1,000 shares, of which 396 shares were issued and outstanding in 1947. The owners of the stock were A. M. Wood and Kate Wood. A. M. Wood was over 80 years of age in 1947 and was the broker for his company. On April 1, 1947, the Wood Company employed one Joseph D. Bardon to help conduct the brokerage activities of the company. Bardon was to receive a percentage of the gross profits and a monthly drawing account. The agreement pursuant to which Bardon

was hired gave him an option to purchase the total outstanding stock of the company, at book value plus \$4.00 a share.

19. In October 1947 Wood died and Bardon sought to exercise his option to purchase the Wood stock. Not having sufficient funds to pay for the stock, Bardon arranged to finance the purchase through George Stout, a Luria vice president, who was an old and close friend of Bardon. Stout induced the Luria organization to enter into an arrangement with Bardon, pursuant to which Luria agreed to advance the necessary funds to Bardon to pay for the stock, with the understanding that the latter would thereafter transfer his stock interest in the Wood Company to Luria.⁸³ Bardon did not transfer his stock interest in the company to Luria until October 30, 1947, but prior thereto, on October 10, 1947, an agreement was entered into between Luria (as the ostensible owner of the Wood stock) and Bardon, pursuant to which Luria hired Bardon to operate the Wood Company.

20. The sources from which the Wood Company purchased scrap are not disclosed by the record. However, the record of its sales to customers are disclosed in the statistics which are in evidence. The following table discloses the customers of the Wood Company during the period from 1945 to 1947:

Sales A. M. Wood, 1945-1947

[In gross tons]

	1945	1946	1947
Total sales.....	28, 709	20, 663	12, 745
CF&I (Claymont, Del.).....	8, 221	3, 904	1, 344
Alan Wood Steel Co. (Conshohocken, Pa.).....	1, 567	1, 573	130
Henry Disston & Son (Philadelphia, Pa.).....	586		
Unidentified customers.....	18, 335	15, 186	11, 271

Since the record identifies all of the steel mills and major foundries in the United States that purchased scrap from A. M. Wood during the period 1945 to 1947, it may be assumed that the unidentified customers were mainly small foundries.

21. The record does not reveal the extent to which A. M. Wood competed with Luria prior to the acquisition. However, it does appear that among the respondent mills Luria competed with Wood only in sales to CF&I's Claymont plant, which was actually owned by Worth Steel Co. until 1951. In 1945, 1946, and 1947, Luria sold 35.0%, 45.4%, and 64.9% of the scrap purchased by this plant.

⁸³ There is no indication in the record as to the amount actually paid for the Wood stock. Although Bardon's option agreement provided for payment of book value, plus \$4.00 a share, there is no indication of what the book value was and as to the actual consideration paid.

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Wood's sales to Claymont during this period amounted to 7.7%, 4.9%, and 0.9%, respectively. Since the record reveals no purchases from Wood by the other steel companies or major foundries, it may be inferred that Luria and Wood competed in the sale of scrap only with respect to Alan Wood Steel Co. and Henry Disston, among the nonrespondent steel companies and large foundries. Disston represented a minute consumer of scrap, and the Wood Company sold to it only in 1945, two years before its acquisition by Luria. Alan Wood was a more substantial consumer of scrap, its scrap purchases in 1945 amounting to 176,713 tons, compared to 4,331 tons purchased by Disston. Luria's sales to Alan Wood between 1945 and 1947 accounted for between one-quarter and one-half of the scrap purchased by the Conshohocken plant. A. M. Wood's sales to the plant during this period were 0.9%, 1.1%, and 0.07%, respectively. There is no indication of the extent to which Luria and Wood competed in sales to other customers.

22. The record contains no information as to the territory within which A. M. Wood bought or sold scrap, nor as to its relative standing in the market. Since its office was located in Philadelphia, and the partial information in the record concerning the location of some of its customers indicates that at least one-third of its sales was made in the eastern Pennsylvania and nearby Delaware area, it may be inferred that this was the primary area within which it operated.⁵⁴ While it is not possible to determine its precise standing in this market, such information as there is in the record indicates that it was microscopic in size when control of the company was acquired by Luria. Thus even if it were assumed that all of its sales were made in the eastern Pennsylvania market, this would represent only 0.78% of the scrap purchased by the steel mills and major foundries in the area in 1947.

23. The only significant change in the customers of A. M. Wood after its acquisition by Luria involved a substantial increase in its sales to Luria. Between 1945 and 1947 Wood's sales to Luria amounted to between \$2,300 and \$9,700. Beginning in 1948, its sales to Luria increased to approximately \$179,000 and thereafter continued to remain substantially larger than during the preacquisition period. The percentage of Wood's sales to Luria beginning in 1948 were as follows: 1948, 26%; 1949, 15%; 1950, 14%; 1951, 14%; 1952, 23%; 1953, 31%; and 1954, 22%. Outside of its sales to Luria, Wood continued to sell the balance of its scrap to the small foundries which had been its primary outlet for scrap prior to 1947.

⁵⁴ The record also indicates sales by several dealers in the Philadelphia-Camden area to Wood.

24. No public announcement of Luria's acquisition of A. M. Wood was made to the trade. Prior to the issuance of the complaint in this proceeding, dealers in the area who sold to both Luria and Wood were not aware of their common ownership.

25. In view of the lack of evidence as to the existence of substantial competition between Luria and Wood in the buying or selling of scrap in any relevant market, and in the light of the evidence concerning Wood's minuscule size and moribund state at the time its stock was acquired, there is no basis for any finding that Luria's acquisition of control of Wood was calculated to result in a substantial lessening of competition, or to restrain commerce in any section of the community, or to create a monopoly in any line of commerce. While it does appear that some dealers were not aware that Wood was controlled by Luria, the record fails to establish that Luria used its unpublicized control of Wood to gain any unfair competitive advantage in the buying or selling of scrap.

Lipsett, Inc., and Lipsett Steel Products, Inc.

26. Lipsett, Inc. (referred to herein as Lipsett), was incorporated under the laws of the State of New York on February 8, 1933. The record is not clear as to the nature of Lipsett's business prior to the acquisition of its stock by Luria in May 1948. It does appear that after such acquisition Lipsett engaged in demolition and construction work. However, whether it was engaged in these activities at the time Luria acquired control is not clear from the record. The fact that it sold scrap to Luria prior to its acquisition suggests that it was doing demolition work at that time. The fact that Lipsett formed a subsidiary company, Randall Iron & Steel Corporation, on June 1, 1946, to perform certain specific demolition contracts also suggests that it was in the demolition business prior to 1948. Lipsett is now engaged in interstate commerce. However, it does not appear from the record whether it was so engaged when its stock was acquired by Luria.

27. Lipsett Steel Products, Inc. (referred to herein as Lipsett Steel), was incorporated on January 13, 1948, under the laws of the State of New York. The corporation was apparently owned and controlled by the same interests as owned the stock of Lipsett. The record does not disclose the nature of the business of Lipsett Steel, if any, prior to its acquisition by Luria, which occurred less than 5 months after it was organized.

28. Luria acquired all of the outstanding stock of Lipsett, Lipsett Steel, and Randall on May 4, 1948, for a consideration of \$1,553,042. The consideration was apportioned as follows: \$1,377,180 to the stockholders of Lipsett, \$113,665 to the stockholders of Lipsett Steel, and

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\$62,196 to the stockholders of Randall. Simultaneously with the stock acquisitions, there was executed an agreement whereby Morris E. Lipsett, then "chief executive officer" and a principal stockholder of Lipsett, agreed to continue as general manager and as president of the company under Luria ownership and control.

29. Subsequent to the acquisition of its stock by Luria, Lipsett engaged in the demolition and construction business. Its subsidiary, Randall, did no further business and was dissolved on August 30, 1950. As a result of its demolition activities Lipsett generated various quantities of scrap metal which it sold either to Lipsett Steel or to Luria. The earliest year for which there is any statistical evidence in the record is 1951, during which Lipsett's sales to Luria amounted to \$422,971, out of total sales of \$730,318. Its sales to Luria in the following years were: 1952, \$387,969 (out of total sales of \$610,709); 1953, \$169,365 (out of total sales of \$751,325); and 1954, \$255,371 (out of total sales of \$633,233). Most of the scrap not sold to Luria directly was sold to Lipsett Steel.

30. About 2 years after its acquisition of the stock of Lipsett Steel, Luria began to operate the company as a scrap dealer. Lipsett Steel first acquired a scrap yard in Brooklyn, N.Y., along the waterfront in 1950. The yard had previously been occupied as a scrap yard by another dealer up to 1942, but had apparently not been active since that time. Its main value lay in the fact that it had a loading dock for loading scrap for shipment by barge. This is important since in order for scrap to be shipped to steel mills from Brooklyn it must go by water. The yard had cranes, shears, and other cutting equipment, but had no baling press until sometime subsequent to 1956. A competitive yard was operated about 3 miles away by Schiavone-Bonomo which, until Lipsett Steel came into the area, had the sole yard with facilities for loading scrap in the area.

31. Lipsett Steel also opened a yard in the Los Angeles area in the latter part of 1950 or early in 1951, as part of the agreement by which Luria became the broker for Bethlehem Pacific's Los Angeles mill. The Los Angeles yard is a substantial operation. The total cost of equipping the yard, as of the end of 1951, was \$309,513 and, by 1957, the cost had reached a total of \$861,431. In addition to the Brooklyn and Los Angeles yards, Lipsett Steel acquired a scrap yard in Chicago on January 1, 1957, from Max Schlossberg, a dealer in that city. During the first 6 months of 1957 the Chicago yard processed 9,000 gross tons of scrap per month. It has a capacity for handling 12,500 gross tons a month.

32. As previously noted, the record contains no information as to

what business, if any, Lipsett Steel was in prior to its acquisition by Luria or, particularly, whether and to what extent it bought or sold scrap prior to that time.⁸⁵ Since 1950, the earliest year for which there are any figures in the record, Lipsett Steel has sold to Luria substantially all of the scrap from the several yards which it opened beginning in 1950, except for the year 1953 when it sold approximately 90% of its scrap to Luria. Its sales to Luria have ranged from a low of \$1,280,536 in 1950 to a high of \$5,916,742 in 1954.

33. No public announcement was made of Luria's interest in the Lipsett companies. There is no evidence in the record as to whether dealers were or were not otherwise informed, or knew that Lipsett or Lipsett Steel were affiliated with the Luria organization.

34. The record fails to establish that there was any substantial competition between Luria and the Lipsett companies at the time Luria acquired control of the companies in 1948. While the record suggests that Lipsett was in the demolition business and that it generated scrap as a result thereof, some of which it sold to Luria, there is no evidence as to the extent of its scrap sales or as to its standing in any relevant market. Insofar as it sold scrap to Luria which resulted from its demolition business, it was a supplier to, and not a competitor of, Luria. There is no evidence that Luria competed with Lipsett in the demolition business or that, if it did, it was in substantial competition with Lipsett.

In the case of Lipsett Steel, there is no evidence as to what business it was engaged in up to 1950, when it opened its yard in Brooklyn. There is every indication that it was not much more than a corporate shell when it was acquired by Luria. The portion of the consideration paid which was allocated to Lipsett Steel, hardly suggests that it was a substantial operation, whatever its business. While Lipsett Steel did become a substantial scrap yard dealer beginning in 1950, there is nothing to show that it reached this status as a result of any special competitive value which it had at the time Luria acquired it. So far as appears from the record, Luria could just as well have established additional yards in its own name or in that of a newly formed subsidiary. The fact that it did so in the name of Lipsett Steel does not provide a basis for retroactively imputing adverse competitive implications to the initial acquisition, absent some showing that the

⁸⁵ Counsel supporting the complaint cite the testimony of a Luria official that his company had previously bought scrap from "the Lipsett companies" (R. 374), as indicating that both companies were in the scrap business at the time Luria acquired their stock. However, the witness' testimony indicates that Luria bought from only one of the companies, and the witness could not state "which one." The probabilities are that Luria bought demolition scrap from Lipsett, Inc., and did not buy from Lipsett Steel, since the latter was not organized until shortly before it was acquired by Luria.

original corporate shell had certain special characteristics which made it a natural or logical vehicle for Luria's subsequent plans.

It is concluded and found that the evidence fails to establish that Luria's acquisition of the controlling stock interest in the Lipsett companies was calculated to result in a substantial lessening of competition, or to restrain commerce in any section of the community, or to create a monopoly in any line of commerce. The record also fails to establish that Luria's failure to publicize its acquisition of control of the Lipsett companies gave it any substantial unfair competitive advantage in the buying or selling of scrap, by diverting scrap to said companies which would not otherwise have been diverted.

Southwest Steel Corporation

35. Southwest Steel Corporation (referred to herein as Southwest) is a scrap broker, with its office and principal place of business in Pittsburgh, Pa. The company was originally organized under the laws of the State of Arkansas in 1939, under the name of Southwest Compressed Tin Company. It underwent several name changes and, on July 17, 1947, was incorporated in the State of Pennsylvania under its present name. It was and is engaged in interstate commerce.

36. Southwest's original office was in Little Rock, Ark., where it operated a scrap yard, and it had two branch yards at Texarkana, Ark., and Monroe, La. In 1941 it opened a scrap yard in Memphis, Tenn., and a brokerage office in Pittsburgh, Pa. In 1943 it opened a scrap yard in Glassport, Pa., and in the same year acquired an existing yard in McKeesport, Pa., both communities being located within 10 miles of Pittsburgh.

37. In 1943 or 1944 Southwest developed a working arrangement with Continental Iron & Steel Corporation (referred to herein as Continental), a scrap broker located in New York City, whereby Continental purchased scrap for Southwest in the New York area. Pursuant to an agreement which had previously been made with the principal stockholder of Continental, one David Strauss, Southwest acquired a controlling interest in Continental on or about December 1, 1948, by purchasing the stock held by Strauss upon his death.

38. On February 1, 1950, Luria purchased all of the issued and outstanding stock of Southwest, pursuant to various agreements and negotiations which had begun in May 1949. Simultaneously with the execution of the agreement pursuant to which Luria acquired control of Southwest, it entered into agreements of employment with Leonard H. Krieger and Robert Amper, the stockholders and officers of Southwest, pursuant to which such individuals agreed to remain in the em-

ployment of Southwest and to perform such duties and hold such offices as Luria should determine. Krieger became president and a director of Southwest, and Amper became a vice president and a director after Luria acquired control of their company.

39. No public announcement was made of Luria's acquisition of control of Southwest. It was, however, widely rumored in the industry that Luria had obtained control of Southwest. Southwest did inform a number of its customers of the fact, including U.S. Steel, Jones & Laughlin, and Pittsburgh Steel. Luria advised its main customer, Bethlehem Steel. With the exception of Southern Scrap of New Orleans, which sold scrap to both Luria and Southwest, it does not appear that any dealer would have been reluctant to sell to Southwest if he had known it was controlled by Luria.

40. Following Southwest's acquisition by Luria, Southwest opened another brokerage office in Portsmouth, Ohio, later in 1950. In 1951 Southwest abandoned its yard at McKeesport. In 1954 Luria gave up its Pittsburgh yard and began using the facilities of Southwest's Glassport yard. In August 1955 Southwest turned over its yard in Memphis, Tenn., to Luria, which now operates it. Southwest acquired the balance of the outstanding stock of its affiliate, Continental, on July 20, 1953, and that company was dissolved on December 29, 1953, a number of its employees going to work for Luria which took over various Continental accounts.

41. Prior to the acquisition of Southwest's stock by Luria, the two companies had competed, both in the purchase and in the sale of scrap. A substantial part of Southwest's purchases were made in the South and Southwest, particularly from points along the Mississippi River where it had yards, such as Memphis, Tenn. While the record does not disclose the precise extent to which Luria purchased scrap from that area, the record is clear that the area was not an insignificant source of scrap for Luria. Since Luria's acquisition of Southwest it has, as above noted, taken over the Memphis yard of Southwest. Buying in that area is now done largely through Luria's Memphis yard. The two companies had formerly also competed for scrap in the Pittsburgh area, where both had yards. However, as noted above, Luria ceased to operate its Pittsburgh yard in 1954, and Southwest began to handle scrap for both companies from its Glassport yard. In the New York area both companies had likewise competed for scrap, Southwest making purchases through its affiliate, and later its subsidiary, Continental. Following the acquisition of control of Southwest by Luria, Continental's personnel were absorbed by Luria's office in

New York, and scrap from the area has since been obtained by Southwest through Luria. As a result of the acquisition of Southwest's stock by Luria, competition between the companies in the buying of scrap has been largely eliminated.

42. Although Southwest purchased scrap in a wide area of the United States, its sales of scrap have been made principally in the western Pennsylvania-eastern Ohio area, between Pittsburgh and Youngstown. This area is referred to in the record as the Pittsburgh-Youngstown district, and may appropriately be considered to be the relevant geographic or market area for purposes of determining the relative market positions of Southwest and Luria and the competitive impact of the former's acquisition.⁸⁶ In 1949, the year before Southwest was acquired by Luria, Southwest sold 220,666 tons of scrap to the mills and major foundries located in the area, as to which there are purchase figures in the record.⁸⁷ In terms of the total amount of scrap purchased by such mills and foundries from broker-dealer sources, Southwest's sales represent 5.9% of the market. This was somewhat smaller than Southwest's market shares in 1947 and 1948, which were 7.8% and 6.3%, respectively. Following Southwest's acquisition by Luria, its share of the broker-dealer market increased as follows: 1950, 14.3%; 1951, 11.9%; 1952, 14.3%; 1953, 13.3%; and 1954, 8.8%.

43. Luria's sales of scrap to the same group of mills and foundries (referred to for convenience as the reporting mills) were 987,317 tons

⁸⁶ Brokers and dealers with offices in the Pittsburgh area described this as being generally the area within which they sold scrap. Figures of scrap purchases by United States Steel, which are in the record, were maintained by that company on a unitary basis for all of its plants operating within this geographic area, which it designated as its Pittsburgh district. It may be that the area could be more narrowly drawn so as to include a smaller geographic area around Pittsburgh which would not extend into the Ohio area. However, such a delineation would not materially affect the market share information in the record. If anything, the geographic area used above tends to understate Southwest's market position, since it operated on a smaller scale in the extreme western part of Pennsylvania and in the eastern part of Ohio, than it did in the immediate Pittsburgh area. Respondent Luria also suggests a market area which is even wider than the Pittsburgh-Youngstown district, and would include all of western Pennsylvania, eastern Ohio, West Virginia, and Virginia. This, in the opinion of the hearing examiner, is not an appropriate market area for measuring the competitive impact of Luria's acquisition of Southwest.

⁸⁷ The record contains figures for substantially all of the steel mills in the area and for a number of foundries operated by industrial fabricators. Respondent Luria contends that the figures are not complete because they do not include the scrap purchases of certain of the smaller foundries in the area. However, the examiner is satisfied that such omission does not substantially affect the computations revealed above. There is no reason to believe that if the figures of these foundries were included, they would change the trend above indicated. On the contrary, since Southwest sold to "a great many small foundry accounts" (R. 9562), it seems probable that if the scrap purchases of these foundries were included they would, if anything, tend to increase Southwest's share of the market.

in 1949. This represented 26.2% of the scrap purchased by these customers from broker-dealer sources. In the succeeding years, from 1950 to 1954, Luria's share of the Pittsburgh-Youngstown broker-dealer market fluctuated from a low of 20.3% in 1951 to a high of 27.2% in 1954. The combined share of Luria and Southwest increased from 32% in 1949, the year before their merger, to 37.2% in the year 1950. While their combined share declined to 32.2% in 1951, in the succeeding three years it increased to 35.4%, 36.5%, and 36%, respectively.

44. It is contended by Luria that it is not proper to measure its, and Southwest's, share of the market in terms merely of the scrap purchased by the reporting mills from brokers and dealers, and that a proper reflection of their relative percentages should take into account all scrap purchased by these mills irrespective of the source. While the examiner considers it appropriate to measure market shares in terms of the broker-dealer segment of the market, it makes little practical difference which method is used in view of the fact that scrap of broker-dealer origin accounts for the great bulk of the scrap purchased by the mills. In 1949 Luria's share of the market was 24.2%, in terms of the scrap purchased by the reporting mills from all sources, as compared to its share of 26.2% when measured in terms of scrap purchased from broker-dealer sources. Southwest's share of the market in 1949 was 5.4% when measured in terms of total scrap purchased, as compared to 5.9% on the basis of broker-dealer scrap only. The figures in the succeeding years, on the basis of the method of computation urged by respondent Luria, similarly reflect a slightly smaller market share percentage for both Southwest and Luria. However, a computation on this basis does not significantly affect the conclusions which may be drawn from the figures in evidence. On either basis, it is the opinion of the examiner that respondents Luria and Southwest both occupied a significant position in the Pittsburgh-Youngstown market at the time Luria acquired control of Southwest.

45. It is further argued by respondent Luria that, irrespective of the percentage which each had of the market, actual competition between the two companies was on a very limited basis. Luria points out that Southwest and itself both made sales to only six plants (actually seven), plus the plants of U.S. Steel, out of the 39 reporting mills in the Pittsburgh-Youngstown district, and that in only three instances were there any substantial tonnages involved in the competition between the two companies. The record discloses sales by both Luria and Southwest to the same plants in 1949, as follows:

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Sales by Luria and Southwest to same mills in 1949

Company and plant	Southwest		Luria	
	Tonnage	Percent- age ⁸⁸	Tonnage	Percent- age ⁸⁸
United States Steel, Pittsburgh District ..	98,745	⁸⁹ 14.8	13,033	⁸⁹ 2.0
A. M. Beyers, Harmony, Pa.	2,491	35.2	185	2.8
Allegheny-Ludlum, Brackenridge, Pa.	88	0.1	37,886	31.5
Copperweld Steel, Warren, Ohio.	165	0.1	35,843	20.5
Jones & Laughlin, Pittsburgh, Pa.	86,089	81.9	1,423	1.4
Mesta Machine, W. Homestead, Pa.	2,130	13.4	3,240	20.4
Pittsburgh Steel, Monessen, Pa.	30,752	19.3	8,205	5.2
Sharon Steel, Farrell, Pa.	391	0.1	7,208	2.7

⁸⁸ The percentage figures are computed in terms of total purchases of scrap by each mill from dealer-broker sources.

⁸⁹ In terms of scrap purchases from all sources, which is the method suggested by Luria in its proposed findings, the above percentages for U.S. Steel would be reduced slightly, to 13.8% and 1.8%, respectively. The percentages for the other mills would likewise be somewhat smaller if this method were used.

46. The fact that substantial tonnages were involved only in sales to U.S. Steel, Pittsburgh Steel, and Jones & Laughlin does not, as Luria contends, mean that competition between Luria and Southwest was of a limited nature. Both respondents were active in the market and were in potential competition throughout the area. The fact that at any particular time they both made sales to only a few of the same mills in the area is not a true indicator of the competition, actual and potential, between them. For example, while only Luria sold to Armco Steel's plant at Butler, Pa., in 1949, supplying 79,078 tons, or 44.4% of its broker-dealer scrap, Southwest had been a supplier of that plant in 1945, 1946 and 1957. Its sales in 1946, for example, were 14,067 tons, or 9.4% of the scrap purchased by Armco from broker-dealer sources, compared to 50,247 tons, or 33.5%, purchased from Luria. While Southwest's sales to Allegheny-Ludlum's Brackenridge plant were negligible in 1949 (amounting to only 88 tons), in 1948 it had sold 4,000 tons to that company, constituting 3.1% of its broker-dealer scrap, compared to 64,000 tons, or 50%, sold by Luria. In 1949 Southwest sold Copperweld Steel only 165 tons of scrap. Prior to that, however, it had sold to Copperweld 6,150, 4,370, and 13,000 tons, in 1946, 1947, and 1948, respectively. It is apparent, therefore, that since the two companies sold substantial quantities of scrap within the same general area, they were actual and potential competitors throughout the area, even though at any particular time they did not sell to a substantial number of the same customers. Furthermore, the fact that both sold substantial quantities to the plants of U.S. Steel, Jones & Laughlin, and Pittsburgh Steel during most of the 1945-1949 period is itself sufficient to demonstrate that substantial competition existed between them. U.S. Steel, it should be noted, was the largest single purchaser of dealer-broker scrap in the Pittsburgh district, with

purchases of 665,000 tons in 1949. The next largest purchaser was National Steel's plant at Weirton, W. Va., to which Luria was the exclusive broker and to which Southwest made no effort to sell.

47. In addition to competing in the Pittsburgh-Youngstown area, Southwest and Luria also competed in the Harrisburg, Pennsylvania, area, where both sold scrap to the Harrisburg plant of respondent Phoenix Iron & Steel Company (formerly Central Iron & Steel). In 1948 and 1949 Southwest sold 41,100 tons and 24,880 tons, respectively, to this company as compared with 127,115 tons and 85,966 tons sold by Luria. Southwest's sales represented 17.4% and 21.7%, respectively, of the broker-dealer scrap purchased by the Harrisburg plant in these 2 years, compared with Luria's share of 53.8% and 74.9%, respectively. Next to Bethlehem Steel, the Harrisburg plant was the largest consumer of scrap in the eastern Pennsylvania area. Southwest's sales to that plant in 1949 constituted 2% of the scrap consumed by the reporting mills in the entire eastern Pennsylvania area. Luria's sales in the eastern Pennsylvania market in 1949 represented 49.9% of the scrap purchased by the reporting mills from all sources.

48. Southwest and Luria also competed in sales to the Borg-Warner plant at Franklin, Pa., north of the Pittsburgh-Youngstown district (Southwest's sales being made through its subsidiary, Continental Iron & Steel). Luria's sales to Borg-Warner in 1947, 1948, and 1949 were 6,440 tons, 6,810, and 800 tons, respectively, representing 20.7%, 16.5% and 4% of the plant's scrap purchases. Southwest's sales in these years were 4,279, 3,600, and 2,200 tons, respectively, representing 13.8%, 8.8%, and 10.8% of the plant's scrap purchases.

49. It is suggested by Luria that the existence of a large number of other brokers in the Pittsburgh-Youngstown area, in which Southwest conducts its primary operations, and the fact that the sales of many of these brokers have increased since 1949, militate against any finding that Luria's acquisition of Southwest could have had any significant effect on the market. Respondent Luria refers, in this connection, to the names of 14 brokers purporting to do business in the Pittsburgh area, and to the testimony of one broker who stated that: "I could rack my brain and think of dozens of brokers around here" (R. 8138).

If there are "dozens of brokers" in the Pittsburgh area, other than those specifically named in the record, there is no evidence as to who they are or that they are substantial factors in the market. So far as appears from the record, the brokers specifically referred to by the witnesses in the area, most of whom were called to testify by counsel supporting the complaint, constitute the principal competitors of Southwest and Luria in the Pittsburgh-Youngstown area. These

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are: Luria Steel & Trading, Tube City Iron & Metal Co., Max Solomon Co., Samuel G. Keywell Co., Inc., Columbia Iron & Metal Co., David J. Joseph Co., The M. N. Landy Company, Luntz Iron & Metal Co., and M. W. Singer & Company (Grant Steel Company, successor).⁹⁰

50. An analysis of the sales of these nine brokers reveals that none of them approaches Southwest Steel in size. Their combined sales in the Pittsburgh area in 1949 were in the approximate ratio of 3 to 2, to the sales of respondent Southwest alone. The latter's scrap sales in 1949 amounted to approximately \$22,000,000, consisting of 1,014,369 tons of scrap. The scrap sales of the nine brokers named above were approximately \$32,600,000, broken down as follows:

Luria Steel & Trading-----	⁹¹ \$10,762,422
Samuel Keywell-----	4,679,816
Tube City-----	4,388,388
Singer (Grant Steel)-----	⁹² 4,350,000
Max Solomon-----	4,026,364
M. N. Landy-----	2,130,490
Columbia Iron & Metal-----	⁹³ 990,382
David Joseph-----	⁹⁴ 919,793
Luntz-----	⁹⁵ 355,830

⁹⁰ In addition to the above companies, Luria refers to M. Glosser & Sons, Inc., M. Cohen & Sons Co., Rochester Iron & Metal Co., and several others as operating in the Pittsburgh area. In the case of Rochester Iron & Metal and M. Cohen, the only evidence in the record pertaining to these two companies indicates that they operate in the Buffalo, N.Y., area and Cleveland area, respectively (CX 126). As far as M. Glosser is concerned it is located in Johnstown, Pa., on the extreme eastern fringe of the Pittsburgh district, and its main customer has been Bethlehem's Johnstown plant. Most of Glosser's sales in the immediate Pittsburgh area have been to other brokers, including Southwest, Luria, Columbia, and Joseph. Southwest, to which Glosser made the bulk of its Pittsburgh area sales between 1948 and 1950, was more of a customer than a competitor of Glosser's in that area.

⁹¹ The LS&T sales figures are actually its 1951 sales, that being the earliest year for which figures were available. Since this involved a period of peak demand during the Korean War, based on the pattern of sales of other brokers over the same period it is reasonable to assume that the above figure is at least several million dollars higher than LS&T's actual sales in 1949. To this extent the figure of the total sales of Southwest's competitors is also somewhat inflated.

⁹² Singer's sales were approximately 150,000 tons. The record contains no information as to the total dollar sales of Singer in 1949. The above figure is a computed figure, based on an average price of \$29 a ton. The average price per ton sold by Southwest in 1949 was \$21.50 per ton. The average selling price of No. 1 heavy melting steel in the Pittsburgh market in 1949, as reported in Iron Age magazine, was \$29.08 (Annual Review, January 5, 1950, page 287). The \$29 multiple used by the examiner is undoubtedly somewhat high, since the price of No. 1 heavy melting is one of the highest prices paid for scrap. To this extent the above sales figures of Singer, and those of other competitors of Southwest where the same formula is used, are somewhat inflated.

⁹³ The Columbia Iron & Metal sales figures do not include sales of \$5,120,000 made in the Portsmouth, Ohio, area, which is served by Columbia's Pittsburgh office, but is outside the Pittsburgh-Youngstown district.

⁹⁴ The record does not contain any information as to Joseph's total dollar sales. Its tonnage sales amounted to 31,717 gross tons. Using the same \$29 per ton figure referred to above, the dollar sales figure has been computed for this broker.

⁹⁵ The record does not contain any information as to the total dollar sales made by Luntz in the Pittsburgh market. It does appear that it sold 12,270 gross tons in 1949. The above dollar sales figure has been computed on the basis of the \$29 per ton figure referred to above.

As will be observed from the above figures, Southwest was far and away the largest single factor in the Pittsburgh-Youngstown area in 1949, outside of Luria. The company which was next largest in terms of sales, LS&T, had only about one-half or less of the business of Southwest, and has since left the market. The next four largest brokers in the area, Keywell, Tube City, Solomon, and Singer, each had less than 20% of Southwest's sales. If LS&T were omitted, the combined sales of all the remaining brokers of any size in the area would be less than those of Southwest alone. It thus appears that in acquiring Southwest, Luria acquired the second largest broker in the Pittsburgh-Youngstown area, and that that broker was substantially larger than any of the other brokers operating in the area. It may be noted, in this connection, that while denying in its answer that it occupies a "dominant" position in any area, respondent Southwest admits "it is normally one of the leading scrap brokers in the Pittsburgh area".

51. Respondent Luria places considerable emphasis on the fact that, with the possible exception of M. N. Landy, all of the brokers whose figures are in evidence experienced an increase in sales in the years following Luria's acquisition of Southwest. Presumably Luria would infer from this a lack of probability that the acquisition had any substantial adverse competitive impact. It should be noted, in this connection, that the test of legality under the statute, as will hereafter be more fully discussed, is prospective rather than retrospective. The fact that competitors may have been able to ride out the effects of an acquisition does necessarily preclude a finding of probable adverse competitive impact. In any event, to the extent that events *ex post facto* are relevant to a determination of the probabilities of competitive injury, there is nothing about the figures cited by Luria to preclude an adverse finding with regard to the Southwest stock acquisition.

While it is true that a number of the brokers experienced an increase in sales during the period from 1950 to 1953, there can be no doubt that this was due in large part to the very marked increase in scrap consumption following the inception of the Korean war in mid-1950, and continuing until 1953. The year 1949 represented a low-water mark in steel production, scrap consumption, and scrap prices in the United States (CX 783-M and RX 92-A). In this setting, the acquisition by Luria, the largest broker operating in the Pittsburgh market, of the second largest competitor in that market obviously posed a serious threat to other smaller competitors in the area. The onset of the Korean war a few months later was providential, in that it created such a marked increase in the demand for scrap as to enable many of the competitors to weather the storm created by the acquisition of Southwest by Luria.

The ending of the Korean War and the return to a peacetime economy saw a marked decline in the sales of a number of the brokers in the Pittsburgh area. Some of them found their sales approaching the 1949 level and, in some instances, even going below 1949. Thus, Tube City, whose sales in the Pittsburgh market were \$4,388,388 in 1949, and which reached a peak of \$19,454,125 in 1952, saw its sales drastically reduced in 1954 when they were \$5,155,570. M. N. Landy, whose sales were \$2,130,490 in 1949 and increased modestly to \$2,942,882 in 1952, experienced a substantial decline by 1954 to \$1,765,443. The M. W. Singer Company which sold 149,895 tons in 1949 and experienced a slight increase in 1950 and 1951 to 165,531 tons and 153,764 tons, saw its sales decline to 125,319 tons in 1952. The sales of its successor, Grant Steel Company, reached a low of 86,003 tons in 1953, although its sales began to increase again thereafter. S. G. Keywell, whose sales were \$4,679,816 in 1949, experienced an increase to \$6,513,296 in 1953 and then a decline to \$3,857,730 in 1954.

At least three other companies which were in business in 1949 have left the Pittsburgh market since then, for reasons which cannot be determined from the record. Thus LS&T, whose sales in 1951 were \$10,762,422 and declined to a low of \$1,742,321 in 1954, only to increase again in 1955 to over \$7,000,000, went out of the market in April 1956.⁹⁶ A. Shaw, which had made only occasional sales in the Pittsburgh market prior to 1951, became active in the market between 1951 and 1955. However, since 1955 it has made only isolated sales in the area. N. B. Speer & Company, which is listed by Luria as one of its competitors in the Pittsburgh market, went out of the scrap business around 1953.

52. On the whole, the experience of Southwest and Luria in the Pittsburgh-Youngstown market has been better than that of most of their competitors during the same period. Southwest's sales increased from \$21,881,080 in 1949 to \$62,121,072 in 1952 and \$57,120,464 in 1953. In terms of its sales to the reporting mills in the area, Southwest's share of the broker-dealer scrap purchased by such mills increased from 5.9% in 1949 to 14.3% in 1952 and to 13.3% in 1953. Luria's sales to the same mills increased from 987,317 tons in 1949 to 1,290,125 tons in 1952 and 1,257,417 tons in 1953. While both companies experienced a decline in sales in the area in 1954, their share of the market still exceeded that in 1949. Southwest's share of the broker-dealer scrap purchased by the reporting mill was 8.8% in 1954,

⁹⁶ As had been previously noted (p. 300), at or about this time LS&T also closed its offices in Detroit, Cleveland, and Buffalo. Respondent Luria contends that LS&T gave up a number of its brokerage offices because it became more active in the construction business, while counsel supporting the complaint contend that competitive difficulties with Luria caused LS&T to look for other lines of endeavor. There is not sufficient evidence in the record to establish either contention.

as compared with 5.9% in 1949. Luria's share was 27.2% in 1954, as compared with 26.2% in 1949. Their combined share was 36.0% in 1954, compared to 32.0% in 1949.⁹⁷

53. From the evidence as a whole, including the substantial share of the market held, respectively, by Luria and Southwest when the acquisition occurred; the adverse conditions in the industry when the acquisition took place; the relative size and strength of Luria and Southwest in comparison with their competitors in the market; the substantial additional entree which the acquisition afforded Luria into the Pittsburgh district plants of U.S. Steel (the largest single purchaser of scrap in the market), as well as into the plants of other substantial customers, such as Jones & Laughlin and Pittsburgh Steel, to which Southwest was a substantial supplier; and from the other facts and circumstances discussed above indicative of the potentialities which the acquisition had for curtailing competition between the two respondent brokers both in the buying and selling of scrap, it is concluded and found that Luria's acquisition of the stock of Southwest was calculated to result in a substantial lessening of competition between the two companies, and to restrain commerce in the Pittsburgh-Youngstown market and other markets, and tended to create a monopoly in Luria in said market and other markets. The record fails to establish, however, that Luria's failure to publicize its acquisition of control of Southwest gave it any substantial unfair competitive advantage in the buying or selling of scrap.

Apex Steel and Supply Company

54. The last of the stock acquisitions challenged by the complaint involves Apex Steel and Supply Company (referred to herein as Apex), a scrap dealer in Chicago. It is alleged that in April 1951 Luria acquired one-half of the outstanding stock of this company and of an affiliate company, Cermack-Laffin Corporation (which owned the land on which Apex's yard was located), as security for a loan to Charles A. Mogilner, owner of an interest in Apex and Cermack-Laffin. It is alleged that as a result of such stock acquisition, as well as another loan made directly to Apex, Luria has obtained "substantial working control" of Apex.

55. The evidence discloses that by agreement dated April 27, 1951, Luria loaned Mogilner, who then owned half of the stock of Apex and Cermack-Laffin, the sum of \$272,500 for the purpose of enabling him to acquire the remaining one-half of the stock in these two companies. Under the agreement, Luria had the right to take title to

⁹⁷ Even on the basis of the method for measuring market shares urged by Luria (viz. purchases from all sources, rather than merely from broker-dealer sources), the combined share of Luria and Southwest increased from 29.6% in 1949 to 31.7% in 1954.

one-half of the stock in these companies in satisfaction of the loan, and Mogilner had the right to tender the stock in payment of his debt. In addition to the personal loan to Mogilner, Luria also loaned Apex \$272,500, which was evidenced by a note dated May 1, 1951, calling for repayment of the loan, with 3% interest, at the rate of \$25,000 a year or 50% of net profits, whichever is larger.

56. The loan made to Apex has since been repaid by periodic payments made from April 30, 1952, to April 30, 1954. In December 1954 Mogilner made a payment of \$125,000, on account of the personal loan to him. Since the making of the loan, Luria has advised Mogilner, the date of such advice not being revealed by the record, that it does not intend to exercise its option to take title to the stock in satisfaction of his debt.

57. Prior to the making of the loans to Mogilner and Apex, Luria was purchasing substantial quantities of scrap from Apex. In 1949 and 1950 such purchases ranged between \$100,000 and \$200,000. In the period from 1951 to 1953 such purchases were between \$900,000 and \$1,400,000. In 1954 they declined to \$490,000. There is nothing to indicate whether the increase after 1950 represented a proportionate increase in Apex's sales to Luria or merely reflected an overall increase in Apex's business during the Korean War. It does not appear that Apex sold Luria all or even the bulk of its scrap at any period.

58. When the assets of the old Luria were transferred to the new Luria in October 1955, old Luria repurchased certain of its assets, among which was the balance of \$147,500 due under the original promissory note executed by Mogilner. It is asserted by Luria that this balance has since been repaid. However, there is no evidence in the record to support this assertion.

59. It is not clear whether counsel supporting the complaint have abandoned the charge that Luria acquired control of Apex. They have not proposed any findings with respect thereto in that portion of their proposed findings dealing with the stock acquisitions of competitors. Their discussion of the Apex situation is restricted to that portion of their proposed findings dealing with new Luria's acquisition of the assets of another Chicago dealer, Max Schlossberg Company, allegedly in substitution of the interest in Apex which was retained by old Luria.

60. Whatever may be the position of counsel supporting the complaint concerning the alleged Apex stock acquisition, it is clear that the record is lacking in reliable, probative, and substantial evidence to sustain the allegations of the complaint with respect thereto. Luria never, in fact, owned any of Apex's stock. It had an option to buy

a half interest therein, as well as in that of the real estate company Cermack-Laffin, in order to satisfy Mogilner's debt. This option was never exercised and was subsequently given up by Luria. The record fails to establish that during the period it had such option Luria tried to, or did, exercise control over Apex. The mere fact that Apex's sales to Luria increased in 1951-1953 does not establish that Luria controlled Apex.

61. Insofar as the acquisition of the Schlossberg yard is concerned, which took place after the issuance of the complaint herein and was made by new Luria, there is not a scintilla of evidence in the record to support the assertion that it was made as a substitute for old Luria's alleged interest in the Apex yard. However, even assuming that it was, and overlooking the fact that the acquisition is not challenged in the complaint, there is not a scintilla of evidence to support any finding as to the illegality of this acquisition. Outside of the fact that Luria paid a consideration of \$675,000 for the yard and that the yard has a capacity for handling 12,500 tons of scrap a month, there is no evidence indicative of Schlossberg's standing in the Chicago market when its assets were acquired; nor is there any evidence of Luria's position in the market nor of competitive conditions in the area. There is, accordingly, no record basis for any finding as to the probable competitive impact of Luria's acquisition of Schlossberg's assets.

E. Conspiracies With Respect to Scrap Exports

1. The complaint, in Paragraph 12 of Count I, charges that respondent Luria and respondent Neu and others (unnamed) entered into certain understandings, agreements, combinations and conspiracies to restrain and suppress competition in the purchase and sale of scrap in interstate and foreign commerce. It is alleged that such arrangements tended to create a monopoly in these respondents "in the sale of scrap from the continental United States to customers located in other countries". The only agreement or combination specifically alleged in Paragraph 12 is one involving Luria, Neu and five Japanese mills. It is alleged that Neu and Luria agreed to become and did become the exclusive or substantially exclusive supplier, for these mills, of scrap from the continental United States.

2. While the complaint refers specifically only to an export conspiracy with the Japanese mills, counsel supporting the complaint during the course of the proceeding contended that there were other combinations and conspiracies relating to the exportation of scrap to other countries. The examiner, over objection of respondent Luria, permitted counsel supporting the complaint to offer evidence concerning other countries, in view of the fact that the Japanese conspiracy

was alleged as illustrative of the broad charge of combinations and agreements involving the export field. Evidence was offered pertaining to various European countries and Argentina. Such evidence involved only Luria, among the respondents, and not respondent Neu.

Agreement With the Japanese Mills

3. The complaint does not charge, nor does the evidence purport to show, any direct agreement between Luria and the Japanese mills. What is involved is an agreement between respondent Neu and certain Japanese mills, in which Luria later participated to the extent of supplying scrap under a separate arrangement with respondent Neu.

4. Respondent Neu, as has already been indicated, is engaged in the import-export business, involving principally metals. For several years prior to 1953 Neu had been selling scrap to the Japanese from Okinawa and Korea. No shipments had been made by Neu from the United States because, as previously noted, the export of scrap from continental United States was prohibited until October 16, 1953. In early 1953, when it began to appear that the scrap needs of domestic producers would taper off due to the cessation of hostilities in Korea, agitation began among brokers and dealers in the United States for the lifting of export controls. In anticipation of the eventual lifting of controls, Neu entered into negotiations with the representatives of various Japanese mills to supply them with scrap from the continental United States.

5. On July 3, 1953, in advance of the actual relaxation of export controls, Neu entered into a memorandum agreement to supply scrap from the continental United States to five Japanese mills. Two of the mills, Yawata Iron & Steel Company, Ltd., and Fuji Iron & Steel Company, Ltd., ranked among the three principal steel producers in Japan. The third company in the ranks of the big three, Nippon Kokon Steel Company, Ltd., was not a party to the agreement. The other steel companies who were parties to the agreement with Neu were Kawasaki Steel Corp., Kobe Steel Works Ltd., and Sumitomo Metal Industry Co., Ltd. The relative standing in the Japanese steel industry of the latter three companies does not appear from the record.

6. The agreement of July 3, 1953, provided for the purchase by the Japanese mills of "up to a total" of 150,000 tons of steel scrap, shipment of which was to be completed within 6 months after the granting of licenses by the United States Government which would permit Neu to ship scrap from the continental United States to Japan under the agreement. The agreement also contained the following provisions, which counsel supporting the complaint cite in support of their contention that the agreement was intended to "prevent the stimulation of competition in the American market," and as providing the

basis for counsel's claim that Luria became an indirect party to the agreement:

(1) It is agreed that in order to assure the orderly purchase of American scrap now and in the future for the use in Japan, the Steel Mills of Japan will purchase jointly in order to assure the purchasing to take place without disturbing the American scrap steel prices nor the supply position in the various areas.

(2) For this reason the Mills establish the Hugo Neu Corporation as an exclusive channel and agent for all negotiations and purchase of any kind of scrap steel originating from the Continental United States used by them. While this agreement is limited as to tonnage and time, it is the intention of both parties to negotiate about further extensions should both parties be satisfied with the results of this procedure.

* * * * *

(7) The Hugo Neu Corporation is authorized to cooperate in the performance of this agreement with other scrap dealers in the United States in any way which appears advisable.

7. After export controls were relaxed in October 1953, Neu endeavored to buy scrap in fulfillment of its contract with the Japanese mills. Neu's first efforts were directed to dealers on the West Coast, since this was the natural shipping point for scrap to Japan due to more favorable freight rates. However, Neu ran into difficulty in obtaining scrap, particularly in the southern California area where the dealers' association was reported to be united in their opposition to selling scrap to Neu for shipment to Japan. This opposition was apparently due, in part at least, to the dealers' desire to sell scrap directly to the Japanese mills, rather than through Neu.

8. In November 1953, after several earlier contacts between the two companies, Luria and Neu entered into an oral agreement whereby Luria was to supply scrap under Neu's agreement with the Japanese mills. Under the arrangement between Luria and Neu it was agreed that Luria would supply scrap to Neu and would share in the profits under the latter's contract with Japanese mills.⁹⁸ The agreement did not require Luria to supply any specific amount of tonnage, but gave Neu the right to call upon Luria for whatever tonnage it saw fit. The memorandum agreement of July 1953 between Neu and the Japanese mills was not shown to Luria, but Luria was advised as to the total tonnage called for under the agreement, the price to be paid for the scrap and the fact that delivery under the agreement had to be completed within 6 months after export controls were lifted.

⁹⁸ According to the Neu witness, Luria was to share only in the profits from scrap which Luria supplied. The Luria representative testified that it was his understanding that Luria was to share in the profits on the entire tonnage shipped under the agreement. No evidence was offered as to the actual basis on which the profits were, in fact, divided. In view of the confused state of the record, no finding can be made as to the basis on which profits were to be divided.

9. Luria supplied a total of 90,000 tons under its agreement with Neu, and the latter obtained the balance of 60,000 tons from other sources. In supplying scrap under its arrangement with Neu, Luria billed the scrap to Neu at cost, which in turn supplied the scrap to the Japanese mills. Luria's first shipment under the contract was made on February 7, 1954. Prior thereto, in the early part of November 1953, Neu had already purchased 16,000 tons of scrap from The Learner Company of San Francisco and 10,000 tons from Southern Scrap Materials Ltd. of New Orleans, for shipment under the contract. Luria made its last shipment of scrap under the Neu agreement on July 9, 1954. The scrap which Luria supplied was purchased by it in the San Francisco, Los Angeles, New York, and Norfolk areas. Neu obtained its portion of the scrap from San Francisco, New Orleans, and Florida.

10. The agreement between Neu and the Japanese mills was not extended or renewed after the last shipment thereunder was made in July 1954. The joint venture between Luria and Neu thereupon came to an end. While both later sold scrap to various Japanese mills, they did so separately and not as part of any joint venture or so-called partnership agreement.

11. In January or February 1955, Luria sent a representative to Japan to explore the possibilities of selling scrap to the Japanese mills on a long-term basis. There is no evidence as to what proposal, if any, the Luria representative made to the Japanese mills on this occasion, other than rumors which were reported in the newspapers and which do not furnish the basis for any finding of fact. Whatever proposal was made, it was not accepted. In April 1955 several Luria representatives again went to Japan and proposed to supply the Japanese steel industry with 500,000 tons of scrap over a 12-month period. A proposed contract covering the Luria offer was submitted to representatives of the Japanese steel industry. The proposed agreement did not contain any provision requiring the Japanese mills to purchase their scrap exclusively from Luria. The proposed contract was not accepted by the Japanese mills and was never entered into. Luria did, however, subsequently receive individual orders for cargoes of scrap from the central buying agency representing the Japanese mills, and did make shipments under the individual orders from time to time to various Japanese mills.

12. Counsel supporting the complaint contend that by agreeing to supply a portion of the scrap under Neu's agreement with the five Japanese mills and to share in the profits under the arrangement, Luria became, in effect, a partner to the agreement. It is further contended that while the agreement with the mills was not renewed, it

was not voluntarily abandoned by Luria but that Luria continued with its efforts to tie up the Japanese mills, albeit such efforts were not successful.

13. The examiner does not regard Luria's arrangement with Neu as making it a partner to the agreement between Neu and the mills. While Luria did share in the profits, this was as a result of a private arrangement between Luria and Neu, and did not make Luria privy to the agreement between Neu and the Japanese mills. The clause in the agreement between Neu and the mills, authorizing Neu "to cooperate * * * with other scrap dealers" in the performance of the contract does not, as suggested by counsel supporting the complaint, operate to make Luria a party to the agreement. The examiner interprets this clause not as authorizing Neu to enter into agreements with American dealers or brokers on behalf of the Japanese mills, but merely as authorizing Neu to obtain scrap in fulfillment of its agreement from other scrap dealers, under any arrangement it saw fit to make. This clause was apparently inserted at Neu's request in order to make it clear that it was not to be foreclosed from obtaining scrap from secondary sources, i.e., brokers and dealers, rather than merely from primary sources, such as industrial fabricators and railroads. In making shipments under the contract, Luria invoiced the scrap to Neu which, in turn, was designated as the shipper of the scrap to Japan. Luria was, in effect, another supplier of scrap to Neu, albeit a large one. The fact that Neu, in order to induce Luria to sell scrap to it, had agreed to cut Luria in on its profits, does not operate to make Luria a party to the agreement between Neu and the Japanese mills.

14. Statistical evidence in the record, based on U.S. Department of Commerce reports of ferrous scrap shipments from the United States in amounts exceeding \$500, discloses that in the last 3 months of 1953, there was exported to Japan from the United States approximately 23,750 tons of scrap. In 1954, the first full year after the lifting of controls, scrap exports to Japan amounted to approximately 278,000 tons, and in 1955 to 700,000 tons. Using these figures counsel supporting the complaint contend that shipments by Luria to Japan, under the contract with the Japanese mills, constituted 78.4% of all scrap exported to Japan (except for shipments under \$500) in the last 3 months of 1953, and 54.0% of the scrap exported to Japan in the first 7 months of 1954, during the period when Luria was still shipping under the Neu contract with the Japanese mills.

The percentage figures cited by counsel supporting the complaint do not correctly reflect Luria's participation in scrap shipments to the Japanese mills. During the last 3 months of 1953 it actually shipped no scrap to Japan. The shipments of 18,590 tons of scrap referred to

by counsel supporting the complaint were made entirely by Neu, since Luria did not make any shipments under its arrangement with Neu until February 1954. During the first 7 months of 1954 Luria shipped approximately 90,000 tons, rather than 130,437 tons, as contended by counsel supporting the complaint. The percentage of scrap shipped to Japan by it during this period was approximately 37%, rather than 54%. During 1955, when Luria was selling scrap to the Japanese mills pursuant to individual orders, Luria's share of Japanese scrap imports was approximately 18.9%. During the first 4 months of 1956, when it was likewise on individual orders, it shipped 24.1% of the scrap shipped to Japan.

15. The record contains no definitive evidence as to Neu's relative position in the scrap industry. The fact that it could not fulfill its contract with the Japanese mills for 150,000 tons of scrap without sharing some of its profits with Luria, would hardly appear to indicate that it was a dominant or major factor in the industry. There is no record basis for concluding that, insofar as Neu alone was concerned, its agreement with the Japanese mills had or was likely to have any adverse competitive effect, either on the domestic market or the export scrap market. Insofar as Luria is concerned, since it had no exclusive arrangement with the Japanese mills, there is no taint of illegality attached to the fact that it shipped substantial quantities of scrap under Neu's contract, during the first 7 months of 1954. There is no evidence that Neu entered into the original arrangement with the Japanese mills on Luria's behalf, or in contemplation of Luria's becoming a party to the agreement. The mere fact that Luria, at Neu's request, thereafter agreed to supply unspecified quantities of scrap and to share in the profits, does not make it a party to any exclusive arrangement. Moreover, in the light of the relative quantities of scrap involved and the limited duration of the arrangement, there is no basis for any finding that Luria's participation was calculated to restrain competition in any relevant market.

The OCCF Combination

16. In 1951 a number of nations in Western Europe banded together in order to coordinate their economic activities into what was intended to become a common market for Western Europe. This was known as the Schuman Plan. The first efforts at coordination revolved about the coal and steel industries of the participating nations, and in 1952 there was formed the European Coal and Steel Community, consisting of West Germany, France, Italy, and the Benelux Countries (Belgium, the Netherlands and Luxemburg). The coal and steel activities of these nations were placed under the overall supervision of a High

Authority, with representatives from the various nations comprising the community.

17. In late 1953 or early 1954 there was set up a central buying office to handle the buying of scrap for the steel mills associated with the European Coal and Steel Community. The office, called the Office Commun des Consommateurs de Ferraille (General Bureau of Scrap Consumers), and known by its initials as OCCF, had its headquarters in Brussels, Belgium. It had its own general manager, with advisors from the steel industry of each country, but was subject to the regulations of the High Authority.

18. During April 1954 the OCCF invited representatives of three American scrap companies to attend a meeting to discuss the matter of supplying scrap to the mills affiliated with it. The three companies were respondent Luria, Schiavone-Bonomo, and Western Steel International Corporation. The head of Western Steel had previously contacted various officials of steel mills in Germany and Italy, to which it had previously sold scrap originating from other parts of the world, and had discussed with them the possibility of his company becoming the sole agent to purchase scrap for the European Coal and Steel Community in the Western Hemisphere. He was advised by an Italian steel official, who was expected to be appointed general manager of the OCCF, that the OCCF had decided to select "two, three or four brokers in America" since it needed so much scrap that Western Steel could not do the job alone (R. 4153).

19. Discussions were had during the latter part of April 1954 and the early part of May 1954, between representatives of the OCCF and representatives of the three American companies, regarding the supplying of scrap by them to the OCCF. Each of the American companies was seeking to become the sole agent for the OCCF in buying scrap from the United States and the Western Hemisphere. Western Steel had made such an attempt earlier but, as has already been noted, it had been unsuccessful. The then Luria vice president, Ralph Ablon, discussed the matter in a separate conference with an OCCF official in an effort, as Ablon testified, "to see if there wasn't some way whereby I could get all the business" (R. 3091). However, he was advised that the situation was very complex because of the number of different countries involved and the fact that representatives of some of the countries had certain people in mind whom they wished to favor. Eventually agreement was reached among the interested parties that OCCF would purchase its requirements of scrap originating in the United States and certain contiguous areas jointly from Luria, Schiavone-Bonomo and Western Steel. Schiavone-Bonomo was apparently included in the triumvirate at the insistence of the Italian mills, and Western Steel at the urging of the German mills. Luria

was apparently included because of its reputation as one of the largest suppliers in the American market. The French mills apparently had urged the inclusion of a fourth company (whose identity was not established by the record), but the agreement was finally limited to the three companies mentioned.

20. A proposed contract was signed by the Luria group on May 4, 1954, and submitted to the OCCF, which did not sign it until July 14, 1954. The contract placed the joint obligation to supply scrap to the OCCF from the United States and certain nearby areas in Latin America upon the three suppliers. It was agreed that all scrap purchased by the OCCF within these areas would be purchased under the agreement. The amount of scrap covered by the contract was specified as being not less than 15,000 metric tons and not more than 250,000 metric tons, with individual orders to be issued periodically by the mills buying through OCCF. The term of the contract was expressed as covering material shipped on or before December 31, 1954. The grades of scrap were limited to No. 1 and No. 2 heavy melting steel, which were the grades generally preferred and used by the European mills. However, the agreement provided that if OCCF did purchase other grades from the area covered by the contract, it would purchase such scrap only from the group. The price to be paid for the scrap was to be either the cost of the scrap to the group or the composite price listed in the latest issue of "Iron Age", whichever was lower. To this was to be added loading and transportation costs, plus \$2.00 per ton as profit to the three suppliers.

21. Pending the signing of the contract by OCCF, an order was placed with the Luria group on May 31, 1954, calling for the delivery of two cargoes of scrap (18,000-20,000 tons). This purchase was made substantially in accordance with the terms of the agreement signed by the Luria group on May 4, 1954, except that the group was permitted to fill one-third of the order with No. 1 bundles, in addition to No. 1 and No. 2 heavy melting steel.

22. As the needs of the OCCF for scrap from the Western Hemisphere began to crystallize, it proposed to the Luria group that the latter undertake to deliver at least 15 cargoes of scrap, or if possible more, by September 30, 1954. The Luria group responded by requesting that the OCCF execute the contract which the Luria group had signed on May 4, 1954, and proposed that the OCCF agree to certain modifications of that contract of which the most important were, (a) that the Luria group be permitted to ship No. 2 bundles to the extent of one-third of each cargo, (b) that the price formula be based solely on their cost (rather than cost or the "Iron Age" composite, whichever was lower), except that in the case of No. 2 bundles the cost

was guaranteed not to exceed the Iron Age composite price, and (c) that Canada be included as within the area covered by the contract. The OCCF, by letter dated July 19, 1954, agreed to the modifications proposed, with the further modification that 4 of the 16 cargoes which it was then estimated would be shipped by September 1954, would contain no No. 2 bundles. It had also, in the meantime, on July 14, 1954, executed the original contract.

23. While the contract between the Luria group and OCCF was in writing, there was no written agreement between the three members of the group, providing for the manner in which they would participate in the contract and share in its profits. In actual operation, Western Steel shipped very little scrap, but acted mainly as agent for the other two participants in maintaining day-to-day contact with the OCCF and the participating mills. Scrap under the contract was shipped mainly by Luria and Schiavone-Bonomo, the record not disclosing the distribution of scrap shipments as between the latter two companies. Profits from the sales to OCCF were divided among the three participating companies on a substantially equal basis, with some adjustment being made for the additional expenses incurred by some of the participants in the performance of the agreement.

24. Although the contract with the OCCF estimated the quantity involved as being not less than 15,000 tons and not more than 250,000 tons, the Luria group actually shipped 543,000 tons of scrap during the balance of 1954. The shipments by the Luria group constituted 90.4% of the total amount of scrap shipped from the United States to OCCF countries in 1954, the total shipments to such countries from the United States amounting to approximately 601,000 tons. The record does not indicate who supplied the balance of approximately 58,000 tons in 1954. It may have consisted of scrap purchased by the OCCF prior to May 1954, when the first arrangements were made with the Luria group, and/or of alloyed steel scrap and other special grades which the mills purchased directly.

25. In anticipation of the expiration of the contract with OCCF on December 31, 1954, Luria wired OCCF on October 13, 1954, urging "extension of our present contract thru 1955" in order to be in a position to continue purchases and accumulations of scrap, and maintain port facilities for handling shipments. The OCCF responded by letter dated October 20, 1954, advising that in view of the fact continuation of joint buying by the European countries through OCCF had not been assured beyond March 21, 1955, it could not extend the existing contract beyond that date. The contract was, accordingly, extended until March 31, 1955, with the understanding that approximately 25 cargoes would be shipped before the end of

February, of which 6 were to be comprised entirely of heavy melting steel, without any bundles.

26. In December 1954 further meetings were held between members of the Luria group and the OCCF with regard to an extension of the existing arrangement beyond the first 3 months of 1955. The Luria group submitted a report of its accomplishments and urged an extension of the existing contract until the end of 1955. The report stressed the fact that the arrangement between OCCF and the Luria group had enabled the latter to purchase scrap "in a manner calculated not to disturb the American mill supply" and stated further (CX 396-B):

* * * it is unnecessary to point out how quickly this would change, both in relation to price and effect on American supply *were many buyers competing for the same scrap instead of our group*. From our knowledge of the American market and from our close association with American consumers, we are convinced that your *present method of buying is the only way to secure the quantity and quality which you desire without seriously and adversely affecting the price and without generating unnecessary opposition to export by American consumers*. We urge that our contract be extended for the balance of 1955. [Emphasis supplied.]

The report also discussed the matter of shipment of No. 2 bundles, which the OCCF members were somewhat reluctant to accept, and promised that in the last three quarters of 1955, the group would supply one cargo out of four without any bundles, with the other cargoes to average not over 20% bundles, which would result in an overall average of 15% No. 2 bundles. It also promised that the group would attempt to reduce even this percentage by seeking to obtain Canadian scrap without bundles. However, it was emphasized that:

This program can only be carried out with the requested extension of our contract, with the maintenance of our present accumulations, and *without the interference of other buyers for O.C.C.F.* [Emphasis supplied.]

27. Following a further meeting with the Luria group on December 16, 1954, at Dusseldorf, the OCCF by letter dated December 22, 1954, agreed to a three-month extension of the existing arrangement, from March 31, 1955 to June 30, 1955. It was indicated that the OCCF could not grant an extension beyond June 30 since the High Authority of the European Steel and Coal Community had not given it authorization to continue joint scrap buying beyond that date. However, it reserved the option to decide by February 28, 1955, whether it would extend the contract for the balance of 1955. The letter also contained certain modifications of the existing arrangement, a number of which had been requested by the Luria group. It is unnecessary at this time to allude to these modifications, except

to note that with respect to the matter of No. 2 bundles the agreement was that cargoes for the balance of the year would "not contain more than 10% of No. 2 bundles in the average" (CX 389-A).

28. In accordance with the option reserved in its letter of December 22, 1954, the OCCF, in February 1955, agreed to an extension of the contract with the Luria group for another 6 months, until December 31, 1955. During the year 1955, the Luria group shipped 1,970,000 tons to the OCCF countries. This constituted 95.3% out of total shipments to the OCCF countries of 2,065,000 tons.

29. Before discussing further developments in the arrangements between the OCCF and the Luria group beyond 1955, it is well at this point to consider the efforts of other American brokers to sell scrap to the OCCF, particularly in view of what appears to be the contention of Luria that other brokers were unwilling to sell scrap on an acceptable basis, and the suggestion implicit in Luria's argument that the OCCF had no alternative except to deal with the Luria group. The evidence discloses that at or about the time the Luria group became active in seeking business from the OCCF in the spring of 1954, and even prior thereto, other brokers and scrap metal exporters from the United States were seeking to obtain business from the OCCF. Among such firms were Luria Steel and Trading, Commercial Steel & Chemical Company and the Richard Nathan Corporation. The efforts of these and other firms to sell to OCCF are described below.

30. A representative of LS&T had communicated with OCCF officials as early as October 1953 and was advised that the OCCF, which was still in the organizational stage, was not yet prepared to come into the American market, but that when it did LS&T would be advised. In April 1954, at or about the time the Luria group had been invited to meet with the OCCF, LS&T was also requested to send a representative. An appointment, which was then arranged for LS&T, was later cancelled. In June 1954 LS&T, upon learning that OCCF was contemplating buying scrap in the United States, sent a cable requesting an opportunity to make an offer. The OCCF replied by letter dated June 19, 1954, in which it advised that its present needs for scrap were limited "to a few cargoes and this quantity has been placed". It further stated that it was "not yet in a position to discuss a longer term contract" (CX 350). The OCCF reference to a "few cargoes" was apparently to the order it had placed with the Luria group in May. However, its statement that it was "not yet in a position to discuss a longer term contract" does not square with the fact that it was about to sign a contract with the Luria group.

In June 1954 Commercial Steel & Chemical Corporation of New York, through its Italian agent, made a specific proposal to the OCCF

of 10,000 to 20,000 tons of scrap per month, with a minimum of 50% No. 1 heavy melting steel and the balance No. 2 heavy melting steel, at the average Iron Age composite price for the preceding month. This proposal was not accepted.

31. In the fall of 1954, when the contract with the Luria group was about to expire, a number of other brokers began to actively solicit the OCCF for business. During the first week of November 1954 a representative of LS&T conferred with officials of the OCCF in Brussels and offered to sell a minimum of 250,000 tons of scrap over the next 9 months. He was advised that the OCCF had an exclusive arrangement which could not be broken and that, in any event, they were not sure what their future requirements would be. Unknown to the LS&T representative, the OCCF, in October 1954, had already extended its arrangement with the Luria group for a 3-month period ending March 31, 1955. LS&T nevertheless confirmed in writing its offer to sell at least 250,000 tons of scrap, consisting of one-third each No. 1 steel (including No. 1 bundles), No. 2 steel and No. 2 bundles. The offer indicated that LS&T was prepared to increase the tonnage "to whatever extent is mutually agreed". The price quoted was "on the basis of your present form of contract [with the Luria group] except that we offer 60¢ per gross ton reduction for the No. 1 steel and the No. 2 steel and \$1.00 per gross ton reduction for the No. 2 bundles" (CX 338-A).

The OCCF replied by letter dated November 20, 1954 that "our present engagements cover our needs to the end of the first quarter of next year, beyond that, a decision from our committee is not to be expected for the next few days or weeks" (CX 339). The letter also noted that the LS&T offer was "not an improvement on our present commitments", but suggested that there might be a possibility of doing business on the basis of an offer of No. 1 and No. 2 steel and No. 1 bundles, without any No. 2 bundles. To this LS&T replied, both by cable and letter, pointing out that its price quotations were below that of the Luria group, and indicating that it was willing "to negotiate in regard to tonnage and grades provided we are treated equally on all conditions with other competitors" (CX 340).

Further correspondence between OCCF and LS&T ensued between November 29, 1954 and December 21, 1954, in which the OCCF stated that it was committed until the end of April 1955, but that it would be interested in offers thereafter which did not include No. 2 bundles, to which LS&T replied that if export shipments did not include any No. 2 bundles the American mills would ask for the reimposition of restrictions on exports, but nevertheless indicating a willingness to meet and negotiate the terms of a satisfactory contract with OCCF.

The final reply of OCCF on December 21, 1954, advised that in view of the fact that the High Authority had extended OCCF's operations only until June 30, 1955, OCCF had decided to extend the existing contract with the Luria group to that date. The letter also stated that the extension had been accomplished with the addition of an understanding, with the Luria group, that (CX 345)—

* * * * the dealers [i.e., the Luria group], as our agents, are willing to accept all quantities for us from other scrap dealers, if the offers meet our requirements as to quantity, grade, prices, etc.

32. Other brokers and scrap exporters from the United States had experiences similar to that of LS&T. This included Commercial Steel & Chemical Corporation, the Richard Nathan Corporation, Hugo Neu and the Harcon Company of Boston. Commercial Steel & Chemical which, as already noted, had made earlier unsuccessful efforts to sell to the OCCF, renewed its efforts in the early fall of 1954 only to be told that the OCCF could not accept material from the United States until after March 31, 1955, because of an existing agreement with a "dealer group" in the United States (R. 4006). Following this, Commercial Steel, Richard Nathan and Hugo Neu each received substantially similar letters from the OCCF in the latter part of November 1954, advising them that the OCCF was reconsidering its supply program in scrap from the United States for the last 9 months of 1955. The letters indicated that the OCCF was interested in filling its requirements with No. 1 and No. 2 steel, and No. 1 bundles, without any No. 2 bundles, and asked these brokers for their opinion as to whether any difficulties might be expected from the United States Government regarding scrap exports. The replies of the American brokers were somewhat similar, each indicating that it wished to supply scrap to the OCCF but that there might be some practical difficulties experienced if No. 2 bundles were to be excluded since it might result in pressure for the reinstatement of export controls. However, each expressed its willingness to negotiate the details of any offer with the OCCF. Commercial Steel specifically offered to supply the OCCF with 20,000 to 30,000 tons a month; Hugo Neu offered to ship four to six cargoes a month "without disturbing the [American] market"; and Richard Nathan offered to ship 50,000 tons monthly.

All of these offers met with a similar response. The brokers each received a letter from the OCCF dated December 21, 1954, which was substantially identical with the letter of the same date addressed to LS&T, previously referred to, viz, that the existing contract had been extended to the end of June 1955, but that the Luria group as "agents" of OCCF would be willing to receive offers from other dealers.

33. The characterization of the Luria group as "agents" for the OCCF is apparently based on the fact that when the original arrangement with the Luria group was extended, it was done with the specific understanding that the contract "has the character of a pure service contract" and that the group would "purchase for use [OCCF] in the future the quantities of scrap offered by all other dealers". Luria apparently regards this language as giving the aura of legitimacy to its arrangement with the OCCF. The evidence discloses that the impetus for the inclusion of this clause came from Luria, rather than the OCCF, it being suggested as one of the modifications in the existing arrangement by the Luria report of December 1954, referred to above. The idea was apparently conceived that the existing arrangement would be less subject to question as to its legality under the antitrust laws if it were called a service contract, rather than a supply contract, and if the Luria group were regarded as mere agents rather than suppliers of the OCCF. However, the change in terminology does not, in the opinion of the examiner, hide the true nature of the arrangement. The Luria group was acting as suppliers to the OCCF in the same way as Luria and other brokers act as suppliers to the domestic mills. Offering other brokers an opportunity to sell scrap to the OCCF through the Luria group did not place such brokers in a competitive position equal to that enjoyed by the Luria group.

34. Luria seeks to justify the decision of the OCCF not to buy scrap offered by brokers outside the group on the ground that the other brokers did not submit bids responsive to the specifications set by the OCCF, since their offers included No. 2 bundles. However, these offers were based upon the awareness by these brokers that the Luria group was shipping No. 2 bundles to the OCCF, and their conviction (shared also by the Luria group) that any effort to eliminate No. 2 bundles entirely would result in saturating the American market with this less desirable grade of scrap, which might result in pressure from the American mills for the reimposition of controls.⁹⁹ Furthermore, while suggesting the advisability and practical reasons for the inclusion of No. 2 bundles in their offers, the other brokers indicated a willingness to discuss and negotiate all points of difference. This they were not afforded an opportunity to do, since the OCCF had decided to continue its arrangement with the Luria group. The latter's offer likewise included No. 2 bundles, albeit the amount was to be cut from one-third to 15% and was later cut to 10% by the OCCF. It

⁹⁹ In negotiating the original contract Luria sought to have No. 2 bundles included because, among other things, it was seeking to "avoid the impression that deliveries to [OCCF] mills [were] especially selected to the detriment of American consuming mills" (CX 393). It had received word that the American mills were "concerned about export of [the] best grades without No. 2 bundles" (CX 394).

seems clear, therefore, that the OCCF decision to deal only with the Luria group was not based on the fact that other brokers had not offered to sell it substantial quantities of scrap on a competitive basis.

35. Returning to the chronology of the development of dealings between the OCCF and the Luria group, meetings were held in the early fall of 1955 to discuss an extension, through 1956, of the existing arrangement which was to expire December 31, 1955. These discussions finally culminated in the OCCF advising Luria that the existing arrangement would not be continued in 1956 because the High Authority had decided the OCCF should not award any exclusive contract.¹⁰⁰

36. The evidence indicates that prior to the action of the High Authority, some sort of agreement had been reached between the OCCF and Luria on extending the exclusive arrangement into 1956. However, by letter dated October 28, 1955, OCCF advised Luria that "the High Authorities have not backed up our Paris negotiations", but indicated that the OCCF would endeavor to confer further with the members of the High Authority in an effort to persuade it to the contrary (CX 1074). Responding to this letter on November 3, 1955, Luria noted its apprehension that "repercussions" from the discontinuance of the existing arrangement "could endanger the supply to the members of the OCCF", and expressed the hope that the OCCF would be successful in its efforts to convince the High Authority. The letter further stated that the three companies constituting the group would be willing, in the meantime, to continue purchasing scrap for the OCCF, but that the price provision to the effect that the billing price could not exceed the Iron Age composite would have to be modified if the existing arrangement were abandoned, since it might result in prices above the composite (CX 1073).

In its reply dated November 14, 1955, the OCCF advised the Luria group that (CX 1073)—

The OCCF is in principle entitled to purchase within the realms of commercial usage, without the High Authority releasing any purchasing restrictions. There does prevail, however, one restriction inasmuch as *we of the OCCF are not authorized to close any exclusive contracts, or contracts governing a certain percentage of our demands*, and furthermore, we have to accept and investigate each and every offer.

¹⁰⁰ Luria contends that this was due to political differences between the High Authority and the mills comprising the OCCF. Counsel supporting the complaint contend that the political differences, if any, arose out of the influence exerted by the U.S. Department of State, Congressional investigations and, possibly, the present proceeding. The examiner finds it unnecessary to resolve these differing contentions, although he regards it quite likely that the hue and cry created in the United States over the existing exclusive arrangement with the OCCF was a probable factor in the decision of the High Authority not to permit the purchase of scrap on an exclusive basis.

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Upon careful perusion of these regulations, you will note, gentlemen, that *they still leave a great leeway allowing us to pay tribute to the good relationship between us in the past*, as well as the mutual confidence in our purchasing and your supply ability. Thus, the deciding factor for future relations between you and us as the representatives of the OCCF will be the mutual trust, justified by past experiences, and I plead that you preserve this confidence in the future as much as you can be assured of our goodwill for further good cooperation. [Emphasis supplied.]

The letter concluded with a statement that if the group decided to continue to supply scrap "under the usual terms and conditions, i.e., cost price or composite plus commission" it would be necessary for the group to "guarantee the composite price to be the maximum in any case."

37. Following the expiration of the existing agreement in December 1955, the OCCF began placing orders with other brokers. However, the bulk of its orders were placed with the Luria group, and it followed a policy of preferring them wherever possible.¹⁰¹ It continued to place orders with the Luria group under substantially the same terms and conditions as had applied under the contract which had expired. The record contains no figures of scrap shipments to the OCCF countries beyond April 1956. However, the figures which are in evidence disclose that for the first 4 months of 1956 (during which the formal exclusive arrangement was no longer in effect) the Luria group shipped 638,000 tons, or 82.1% out of approximately 777,000 tons shipped to the OCCF countries.

38. The OCCF continued to deal with the Luria group on the same informal basis until October 30, 1956, when it entered into another agreement with Luria providing for the purchase of scrap from the United States, Canada and the Caribbean area. The agreement, which was in the form of a letter (CX 1070), provided for the issuance of individual orders by the mills affiliated with the OCCF, and contained no provision for maximum or minimum tonnages. It provided that the scrap supplied by Luria would consist of No. 1 and No. 2 steel, but that No. 2 bundles could be included by mutual consent. The price was to be the lower of cost or composite, plus loading and freight expenses, plus \$1.25 per ton commission. The agreement contained the further provisions that, "for good order's sake", the OCCF reserved the right to place orders with other suppliers. It also contained a provision that it could be cancelled upon

¹⁰¹ A letter dated January 14, 1956, from the OCCF to Luria indicates that the latter had advised OCCF 50,000 tons would be available for shipment from Canadian ports, and requested the OCCF not to place orders with others for such scrap. The OCCF stated that it could not decline other offers to purchase scrap and had actually received offers on the Canadian scrap. However, in requesting Luria to submit a detailed offer, it stated (CX 527): "We can assure you we shall always try to give you the preference". [Emphasis supplied.]

the giving of three months' notice. While the agreement was entered into with Luria alone, it was understood that the former members of the group would participate in its performance on an equal basis. Orders received under the agreement were apparently filled by each of the members of the group supplying a substantially equal portion of the scrap. The record does not disclose how much scrap was supplied to the OCCF under this arrangement.

39. On September 30, 1957, the OCCF gave notice that it elected to cancel the existing agreement, effective December 31, 1957, and the agreement came to an end on the latter date. In October 1957 the OCCF issued a public announcement of its intention to purchase scrap from the United States on the basis of sealed bids to be submitted by interested dealers, brokers and exporters in the United States. Approximately 75 bids were filed with the OCCF, including a joint bid by Luria and Western Steel. The latter were advised by letter dated November 25, 1957, that they had submitted the "best proposal" and would receive orders for "about 70%" of the OCCF's requirements of scrap from the United States during the first six months of 1958 (RX 96). Four other companies, which had submitted the next best bids, were given the opportunity to meet the Luria bid. These were Schiavone-Bonomo, Harcon, Associated Metals & Minerals, and Benjamin Schwartz Company. The record does not disclose in what manner the remaining 30% of the OCCF's requirements were distributed among the last-named companies.

40. The latest information in the record concerning the purchase of scrap by the OCCF is that on March 28, 1958, it again advertised for bids to sell scrap to it for the third quarter of 1958, with the possibility that any award made might be extended to December 31, 1958. The award under this invitation was to be made May 7, 1958. There is no evidence as to what the result of such invitation was.

41. There can be no question that until December 31, 1955, as a result of the exclusive arrangement with the OCCF, the Luria group had a tight monopoly on substantially all scrap exports to the OCCF countries from the United States and other areas in the Western Hemisphere. During these 2 years the shipments of the Luria group accounted for 90.4% and 95.3%, respectively, of all scrap shipped to the OCCF countries from the United States. Even after the contract had expired, and at least during the first 4 months of 1956, the OCCF in practice continued to favor the Luria group to the extent of 82.1% of the scrap imported from the United States.

42. Luria suggests that the concentration of OCCF purchases with the Luria group was not unlike that of purchases of scrap made by the United Kingdom from Luria Steel & Trading and a group of other

American firms which, during 1954, sold 162,000 tons to that country, while Luria sold nothing. However, unlike the Luria group, the other companies referred to did not act in combination and pursuant to any exclusive agreement with the United Kingdom, but each acted separately and, so far as appears from the record, in competition with one another in selling scrap to the United Kingdom and in purchasing such scrap in the United States. In any event, the fact that trade-restraining practices may have been used by others in another area is immaterial.

43. Respondent Luria also argues that the fact that OCCF did not purchase from others during 1954 and 1955, but limited its purchases substantially to the Luria group, was a matter of choice by the OCCF rather than something which Luria had sought. This, however, is not in accordance with the evidence. As already noted, the Luria vice president who handled the negotiations stated (R. 3091) :

I went the next day and met Dr. Rebua [the OCCF official in charge] privately and tried my best to see if there wasn't some way whereby I could get all the business.

The other participants in the Luria group were accepted by sufferance because certain of the OCCF mills with whom they had contacts insisted on their inclusion. Other brokers and exporters were never given an opportunity to compete on an equal basis.

As has been already noted, each time the arrangement came up for renewal Luria sought to induce the OCCF to limit its awards to the small tight group of which it was the obvious leader, pointing out to the OCCF the dire consequences which would follow if other firms were permitted to bid for scrap on behalf of the OCCF. It succeeded three times in obtaining extensions of the arrangement, first until the first quarter of 1955, then for the second quarter and finally for the balance of the year. When the formal arrangement finally came to an end, due in part at least to the pressure built up by the firms which had been excluded, Luria had so entrenched itself with the OCCF group that it managed to continue to obtain the lion's share of OCCF's business even without an exclusive contract.

44. The arrangement between the OCCF and Luria represented an alliance between two groups having similar economic interests. In coming into the American market the OCCF was aware that the purchase of the substantial quantities of scrap contemplated by it could, unless carefully controlled, have adverse repercussions in that market to its own disadvantage. It was understandably concerned that purchases made on its behalf might drive up the price of scrap in the Eastern United States, which was the natural area from which scrap for Europe would be drawn because of the more favorable freight

rates. This would result in it paying more for scrap and might also arouse the ire of American mills, causing the latter to clamor for the reimposition of export controls. One of the largest factors in purchasing scrap in the Eastern United States is respondent Bethlehem, whose substantially exclusive broker is respondent Luria. As broker for OCCF Luria would have a natural interest in not competing with itself as broker for respondent Bethlehem.

45. Indicative of Luria's efforts to minimize competition between itself as broker for OCCF and as broker for Bethlehem is the relatively small amount of its shipments out of the Port of Baltimore, which is the site of Bethlehem's Sparrows Point plant and is a major area from which Bethlehem draws its scrap for delivery to Sparrows Point. In 1954 Luria shipped only 7,800 tons from the port of Baltimore to the OCCF countries, which was the smallest amount it shipped from any port in the Eastern United States. This may be compared to shipments of 235,000 tons from the Port of New York and 56,000 tons from New England ports. In 1955 Luria shipped no scrap whatsoever out of Baltimore to the OCCF countries or to any other country.

46. While there is no direct evidence in the record that there was any understanding between the OCCF and Luria to minimize shipments out of Baltimore, there is evidence that the OCCF instructed at least two other brokers which were trying to sell it scrap after the expiration of the exclusive agreement with the Luria group, that it did not wish to disturb the mills in the Eastern United States. One of these brokers was specifically instructed in writing that the OCCF did not wish scrap which had been ordered from him "loaded in the Port of Baltimore" (CX 774), and was later advised orally by an OCCF official that the OCCF did not think it "politic to ship scrap out of Baltimore while you have a substantial steel operation, steel mill in the Port of Baltimore" (R. 7691).¹⁰² Luria itself, on at least one occasion, indicated that it was "concerned about [the] Bethlehem situation" in taking an order from a European customer to be filled on the East Coast (CX 395). It will also be recalled that in urging the OCCF to renew the exclusive arrangement, which was about to expire in December 1954, Luria stated to the OCCF that (CX 396-B) :

An important aspect of the OCCF method of buying is our purchasing for you in a manner calculated not to disturb the American mill supply.

While undoubtedly Luria did buy substantial quantities of scrap in the Eastern United States, as it points out in its proposed findings,

¹⁰² Counsel for Luria has suggested that there are certain inconsistencies and contradictions in the testimony of the above-mentioned broker witnesses and that their testimony should not be accepted. The examiner found these witnesses to be generally worthy of credit and there is nothing about the testimony referred to by Luria which would warrant not accepting their testimony.

this was inevitable since this was the natural area from which it had to supply the OCCF. However, it did so in such a manner as to cause the least possible repercussions among its mill customers in that area, particularly respondent Bethlehem.

47. It is argued by Luria that the failure of counsel supporting the complaint to introduce "price data" in evidence prevents the making of any finding that Luria had the power to control prices. Presumably it would have the examiner infer from this that the arrangement between the OCCF and the Luria group was without any effect, price-wise, on the American market. It is not entirely clear what price data Luria claims should have been adduced. Since a formal, exclusive arrangement between the OCCF and the Luria group was in effect for almost 2 years, and a preferential arrangement for a substantial period of time thereafter, it is difficult to speculate what would have happened to prices had such arrangements not been in operation.

48. While there is no precise basis for comparing what was and what might have been the situation, price-wise, there can be no doubt that the purpose of the arrangement was to restrict competition in the purchase of scrap for the OCCF so as to control, as far as possible, the price of scrap sold to the OCCF. The evaluation of its performance by the Luria group, after the arrangement had been in effect for approximately 6 months, would certainly indicate that a reasonable amount of success had been achieved in meeting the objective. Thus it was pointed out that by its being able to accumulate scrap for the OCCF under an extended arrangement "the composite price has dropped approx. 2 dollars within the past few months despite increased American scrap consumption and increased foreign buying" (CX 396-C). There was also the admonition that the situation would quickly change "both in relation to price and effect on American supply, were there many buyers competing for the same scrap instead of our group."

Luria contends that these statements were mere "salesmen's talk." The examiner does not see how they can be so regarded. Considering the substantial quantities of scrap involved, they impress the examiner as being an expression of the natural operation of fundamental economic laws. They were apparently taken seriously enough by the OCCF to warrant further extensions of the arrangement.

Conclusions as to OCCF

48. It is concluded and found that the agreement between the Luria group and the OCCF had the purpose and effect of restraining competition in the purchase of scrap in the United States for sale to the OCCF. Given Luria's position in the domestic market and the sub-

stantiality of the OCCF scrap program, the arrangement clearly tended to create a monopoly in Luria in the export of scrap.

It is argued by Luria that Schiavone-Bonomo would hardly have participated in such an arrangement if its purpose was "to create a monopoly in Luria." The short answer to this argument is that Schiavone-Bonomo had little choice in the matter. Unless it joined with Luria it could not have sold scrap to the OCCF. Not to have joined would not have prevented the augmentation of Luria's position. On the contrary, Luria would then have become practically the sole participant, since Western Steel supplied no scrap and was something of a satellite of Luria's. Schiavone-Bonomo accordingly made the best deal it could in a situation over which it had no control.

It is also argued that Luria itself had no choice in the matter since the OCCF made the decision as to whom it would deal with. However, as already noted, Luria initially sought an exclusive contract for itself alone, and all that the OCCF did was to expand the exclusive nature of its supply situation to include two additional parties. The OCCF decision relieved somewhat what would otherwise have been a starkly exclusive arrangement with Luria. However, the basic structure and purpose of the arrangement remained anti-competitive.

Exports to Other Countries

49. The record discloses that between 1954 and 1956, the period mainly involved in the evidence offered by counsel supporting the complaint, Luria shipped scrap to a number of other countries, in addition to Japan and the OCCF countries. The only transactions which counsel supporting the complaint cite as purporting to fall within the allegations of the complaint are those involving shipments to Argentina, Spain, and Yugoslavia. Before discussing the evidence relied upon by counsel supporting the complaint, it may be noted that it fails to establish any agreement between Luria and anyone else to restrain competition in the sale of scrap from the United States to any of these countries. In general, the evidence involves individual awards for the sale of scrap by these countries, on which Luria shipped some of the scrap, either as the successful bidder or as a joint venturer with another broker which was the successful bidder.

Argentina

50. The evidence pertaining to Argentina discloses that in the spring of 1954 both Luria (through its subsidiary Livingston & Southard) and a competitor, Associated Metals & Minerals Company, had submitted bids in response to an invitation for bids by the Argentine government for the sale of 50,000 metric tons of scrap from the United States. Luria was apparently the lowest bidder. However, certain

complications developed due to the fact that Argentina was not able to pay for the scrap in American dollars. Associated Minerals, through a subsidiary in Argentina, was in a position to handle the financial end of the award through a complicated series of transactions involving frozen pesos belonging to the American motion picture industry. While Luria's subsidiary was technically the lowest bidder, Associated could be considered as having submitted a more acceptable bid because of its ability to arrange for payment in a manner acceptable to the Argentine government. The dispute was finally resolved by Luria's agreeing to let Associated take the award, and the two companies agreed to enter into a joint venture in supplying scrap pursuant to the Argentine award. The bulk of the scrap was to be supplied by Luria, with Associated reserving the right to ship one cargo itself. The profits were to be divided among Livingston & Southard, Associated and the Richard Nathan Corporation, (the latter having previously made a separate contract with Associated to participate in the award). Four-fifths of the scrap was actually shipped by Luria, which received \$1.00 a ton profit above the cost of the scrap.

51. The record does not establish over what period of time scrap was shipped pursuant to the award made by the Argentine government. However, it does appear that Luria shipped approximately 35,500 gross tons to Argentina in 1954, accounting for 52.9% of the shipments to that country. In 1955 it shipped approximately 16,000 tons, accounting for 17.2% of shipments to that country. The evidence fails to establish that the agreement between Luria and Associated was entered into for the purpose of suppressing competition in the sale of scrap to Argentina. So far as appears, they had submitted the best bids in response to a bona fide invitation to bid, and had joined forces thereafter in order to facilitate payment under the award.

Spain

52. The evidence pertaining to Spain involves a single award made by the Spanish Government in 1954 for approximately 26,000 tons of scrap. The Spanish Government had originally issued a tender dated February 24, 1954, inviting bids for an award to be made of a quantity up to 39,000 tons. Luria submitted a bid pursuant to this tender on March 22, 1954. Western Steel International, which later became a joint venturer with Luria on the OCCF contract, had also submitted a bid pursuant to the Spanish tender. The tender was apparently later withdrawn and a new tender issued pursuant to which Luria (through Livingston & Southard) and Western Steel both again submitted bids. On May 10, 1954, an award for 26,423 metric tons was

made to Western Steel. On May 13, 1954, Western entered into a joint venture with Luria, which agreed to supply "approximately 26,000 tons" of scrap under the award made by the Spanish Government (CX 402).

53. Counsel supporting the complaint seek to have the examiner find that the withdrawal of the original tender and the subsequent award to Western Steel were part of a sub rosa arrangement between Western Steel and Luria with certain Spanish officials to eliminate bids by other competitors and to secure an award to Western Steel in which Luria would participate. In support of such a finding counsel rely on a letter written by a Western Steel agent to Ralph Ablon of Luria, relating certain efforts which the former was allegedly making to persuade the Spanish Government to alter the terms of its tender, and on a later letter written to Livingston & Southard by Western Steel stating that it had succeeded in having the original tender called off. Lacking any reliable evidence of a pre-existing agreement or understanding between Luria and Western Steel, at the time these letters were written, they have no probative value in establishing Luria's participation in the alleged efforts made by Western Steel. The record fails to establish that the efforts, if any, made by Western Steel to call off the original tender were made with the consent or agreement of Luria or as part of any over-all understanding between them to prevent competitors from receiving the award which was ultimately made.

54. The evidence discloses that in 1954 Luria shipped approximately 23,600 tons of scrap to Spain, constituting 48.6% of the scrap shipped to that country. In 1955 it shipped 13,300 tons, constituting 58.4% of the scrap shipped to Spain. It does not appear to what extent, if any, shipments in 1955 were made pursuant to the original award made to Western Steel in May 1954, in which Luria had become a joint venturer. The evidence does disclose that in January 1955 Luria had an order for 15,000 tons of scrap for shipment to Spain on which it had obtained an agreement from Schiavone-Bonomo to supply 50% of the scrap. Whether this involved an award from the Spanish Government directly to Luria, or its participation in a joint venture with Western Steel cannot be determined from the record.

Yugoslavia

55. The evidence pertaining to Yugoslavia involves two efforts to sell scrap to that country between February and April 1954. In both instances it is contended that Luria (through its subsidiary Liv-

ington & Southard) collaborated with a competitor in endeavoring to obtain an award from the Yugoslav Government. In the first instance, both Luria and Western Steel had submitted bids in response to an invitation from the central buying agency of Yugoslavia, with Luria's bid being somewhat higher than Western Steel's. It is contended that Luria's bid was collusive and nongenuine, and was made for the purpose of enabling Western Steel to get the award for which other American exporters were competing. Assuming that Luria did permit Western Steel to submit a lower bid, the evidence fails to establish how this could prevent other competitors from obtaining an award. The maneuver, if it occurred, was in fact unsuccessful since neither Luria nor Western Steel obtained an order.

56. The second transaction cited involves a joint venture between Luria, Richard Nathan and Associated Metals & Minerals Corporation to supply scrap to Yugoslavia. Richard Nathan had already secured an order for approximately 10,000 tons from Yugoslavia (on which it had a joint venture with Associated Metals), and had submitted a bid on an award for an additional 10,000 tons. Luria likewise had submitted a bid to supply the latter scrap. Pursuant to a joint venture agreement entered into in the latter part of April or early May 1954, Luria agreed to supply the scrap under the first award and that if Nathan was the successful bidder on the second award, it would supply scrap on substantially the same basis. Apparently the Nathan bid on the second order was 50¢ a ton lower than Luria's, and the latter upon being apprised of this fact when it entered into the joint venture agreement undertook not to modify its bid.

Counsel supporting the complaint cite the latter fact as evidence of collusive bidding. The examiner does not regard this evidence as relevant to the charge in the complaint. Since the parties were about to enter into a joint venture there was nothing improper in Luria's committing itself not to submit a lower bid after Nathan had confided to it the nature of its bid. In any event, there is nothing to show that Luria's agreement not to lower its bid was made for the purpose of preventing competitors from obtaining the award.

57. The evidence discloses that in 1954 Luria supplied 9,500 tons of scrap to Yugoslavia, constituting 24.2% of the scrap shipped to that country. In 1955 it shipped no scrap to Yugoslavia.

Conclusions as to Export Conspiracy Charge

58. Counsel supporting the complaint offered evidence in support of paragraph 12 of the complaint, purporting to show that Luria had entered into certain understandings, agreements, combinations and

conspiracies for the purpose and with the effect of restraining competition in the sale of scrap to various foreign countries, viz, Japan, the OCCF countries, Argentina, Spain and Yugoslavia. Only in the case of the agreements and combinations pertaining to the OCCF countries does the evidence support the charge in the complaint.

III. THE CHANGE IN LURIA'S MARKET POSITION

A. *The Domestic Market*

1. Counsel supporting the complaint offered statistical evidence purporting to show a very marked improvement in Luria's domestic market position between 1945 and 1954, both nationally and in various regional markets. Counsel seek to attribute this change, in large part, to the exclusive arrangements between Luria and the various respondent mills, and also to Luria's alleged use of the various trade-restraining practices previously discussed. Luria has challenged the reliability of the figures used by counsel supporting the complaint because of certain alleged omissions therefrom. Before discussing the statistical evidence and its implications, consideration will be given at this point to the soundness of the objections raised by Luria.

2. The argument of counsel supporting the complaint, insofar as it is based on the statistical evidence, involves basically a comparison of the proportion of scrap purchased from Luria by a number of steel mill consumers during the 10-year period from 1945 to 1954. Luria contends that the figures used by counsel supporting the complaint are unreliable and do not present an accurate picture of Luria's market position because, (a) they fail to take into account the mills' purchases of pig iron which, it is contended, is a competitive product to scrap, and (b) they are based on the scrap purchases mainly of steel mills and do not take into consideration scrap purchases of other categories of consumers.

3. Insofar as the contention of Luria is based upon the failure to take into consideration the purchase of pig iron by the mills, it is wholly without merit. As has previously been noted, pig iron and scrap each make up roughly one-half of the metal which is fed into the furnace in the making of steel, with scrap slightly exceeding pig iron in the proportion of use. The proportion of each which is used has remained relatively stable over the years. Set forth below is a table demonstrating the proportion of the metallics charge represented by scrap and pig iron consumed in the iron and steel industry during the years 1948 to 1954. In the case of scrap, the table reflects the pro-

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portion which is home scrap and the proportion which is purchased from outside sources:

Proportion of scrap and pig iron consumed in United States, 1948-54

[In percent]

	1948	1949	1950	1951	1952	1953	1954
Scrap:							
Home.....	25.9	27.0	26.6	26.2	26.7	26.8	27.6
Purchased.....	26.1	23.4	24.9	25.6	26.2	24.0	23.5
Total scrap.....	52.0	50.4	51.5	51.8	52.9	50.8	51.1
Pig iron.....	48.0	49.6	48.5	48.2	47.1	49.2	48.9

As is apparent from the above table, the proportion of scrap used in relation to pig iron has been quite stable over the years. The range has been only 2.5% over a period of 7 years. The smallest percentage of purchased scrap used was in the year 1949 when it was 23.4%, and the largest percentage was in 1952 when it was 26.2%. The average for the 7-year period was 24.8%.

4. While it is true that pig iron and scrap iron are to some extent substitutable, there are significant limitations on their substitution. Because scrap has already been refined by going through a furnace, it has less carbon and fewer other impurities than pig iron. It is therefore sought after for use in certain types of furnaces, such as electric furnaces, in preference to pig iron. In certain sections of the country, e.g., on the West Coast where few of the mills have blast furnaces, there are very limited amounts of pig iron available and transportation costs tend to minimize shipments from the East. In these cases a very high proportion of the melt used in making steel consists of scrap.¹⁰³

5. Aside from these factors, the fact that the proportion of scrap and pig iron has remained relatively stable over the years is itself evidence of the practical limitations on the substitutability of one for the other. It may be that unusually sharp price fluctuations in one or the other of these products could cause a greater use of one as against the other, but there is a considerable area within which each may fluctuate in price as a result of market conditions peculiar to it, without there being any significant repercussions in the market in

¹⁰³ When he testified in July 1957, the Bethlehem Pacific official in charge of scrap purchases indicated that the Seattle plant of Bethlehem Pacific, which was then using a substantial proportion of pig iron in its open hearth furnace, intended to install electric furnaces, which would result in its discontinuing the use of pig iron entirely and replacing it with scrap (R. 11,074). In the Los Angeles plant of Bethlehem Pacific, which has an electric furnace, the charge consists entirely of scrap. An official of the Iron and Steel Scrap Institute indicated that in electric furnaces "the charge is pretty much scrap" (R. 12,865).

which the other product sells. It may be noted, in this connection, that whereas scrap prices are subject to rapid and wide fluctuations, prices of pig iron are reasonably steady.

6. There can be no doubt that scrap has sufficiently distinct and peculiar characteristics, and that the scrap market is sufficiently different from the pig iron market, as to constitute each a different product for purposes of determining competitive influences in each market. While there is a certain amount of interchangeability, this does not gainsay the fact that each is sufficiently different and distinctive as to justify consideration of Luria's market position in terms of the scrap industry alone.

7. Turning to Luria's objections based upon the alleged incompleteness of the figures used by counsel supporting the complaint, these are based, (1) on the failure to include scrap purchases of all consumers of scrap, the most important of the omissions referred to being foundries, nonintegrated blast furnaces and other miscellaneous consumers and, (2) the incompleteness of the figures used by counsel supporting the complaint for certain years, particularly 1945 and 1946. Turning to the first of these objections, there is no doubt that the figures used by counsel supporting the complaint exclude from the total "universe" with which purchases made from Luria are compared, the purchases of most foundries, nonintegrated blast furnaces and other miscellaneous categories of scrap consumers. However, such omission does not, in the opinion of the examiner, significantly affect the market-share percentages reflected in the figures used by counsel supporting the complaint and, more importantly, does not affect the trend revealed by such figures. The reason for these conclusions will become apparent from the following discussion of the method used by counsel supporting the complaint in establishing Luria's relative market position.

8. It may be noted, preliminarily, that the simplest method for determining Luria's market position, at least on a national basis, would have been to secure figures of Luria's total ferrous scrap sales, and to compare these with the total amount of ferrous scrap purchased or consumed annually by scrap consumers, as revealed by the official figures of the United States Bureau of Mines. However, while the record contains figures on Luria's total sales, these figures do not reveal what proportion of its sales are accounted for by ferrous scrap. Since Luria is engaged in other activities, including the sale of new steel, used machinery and railroad equipment, and nonferrous scrap, its total sales figures are not useful in determining its market position in ferrous scrap. Furthermore, its figures are computed in terms of dollars, whereas the Bureau of Mines figures are in terms of tons of scrap. Luria officials indicated that it was not possible for them to supply

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figures from which there could be computed the proportion of their total sales which were accounted for by sales of ferrous scrap.

9. Accordingly, the method pursued by counsel supporting the complaint, in attempting to establish Luria's relative market position, was to obtain statistics from the principal consumers of scrap indicating the total amount of scrap purchased by them, the amount of such scrap which was purchased from brokers and dealers, and the amount purchased from Luria and its affiliates. Such information was obtained from all of the respondent mills and from 53 ingot producers in the United States, the latter constituting substantially all of the remaining ingot producers in the United States.¹⁰⁴ The mills which reported their scrap purchases, referred to in the record as the "reporting mills", represented between 97.8% (as of 1945) and 99.3% (as of 1954) of the total ingot capacity of the steel industry in the United States.

10. While purchase figures were obtained from some of the larger foundries, including those operated by respondents, the figures used by counsel supporting the complaint did not include any data from approximately 3,000 small foundries and nonintegrated blast furnaces, and certain other miscellaneous consumers of scrap, because of the prohibitive magnitude of the task of obtaining figures from these relatively small consumers. Counsel supporting the complaint and counsel for Luria are in agreement that the scrap consumers as to which there are no data in the record account for between one-fourth and one-third of the total scrap purchased by domestic consumers. It is contended by counsel supporting the complaint that the omission of figures from this segment of scrap consumers does not significantly affect the market-share percentages which are revealed by the record. It is the position of Luria that, in the absence of specific evidence to the contrary, it must be assumed that substantially all of the scrap purchased by the consumers whose figures are not accounted for was purchased from sources other than Luria, and that therefore Luria's share of the market is significantly less than that contended for by counsel supporting the complaint.

11. In the opinion of the examiner the position taken by Luria is without merit. While there is no detailed evidence in the record concerning Luria's sales to the over 3,000 foundries and other miscellaneous users at issue, there is sufficient evidence from which it may be inferred that Luria is a substantial supplier to this category of

¹⁰⁴ One of the few ingot producers from whom information was not obtained was Louis Berkman Co., the smallest integrated producer in the United States with an ingot capacity of 0.1% as of January 1, 1954. While information as to scrap purchases was requested from this producer, its records were incomplete and its plant had recently been sold.

consumers, particularly to some of the larger companies.¹⁰⁵ Furthermore, the sampling of its position which is in evidence, involving consumers who account for between two-thirds to three-fourths of the scrap purchased in the industry, is sufficiently large and balanced to afford a realistic basis for concluding that its position in the industry as a whole is not significantly different. Even if the proportion of scrap sold by Luria to the remaining segment of the industry was not quite as large as that revealed by the figures which are in evidence, the fact that the segment which is unaccounted for represents at most one-third of the industry, suggests that the market share percentages revealed by the evidence would at most be decreased by a few percentage points. In fact, even if it were assumed that Luria sold no scrap whatsoever to the remainder of the industry, its market position and the trend revealed by a computation made on this basis would still remain impressive, as will hereafter be noted.

12. The second objection raised by Luria, based on the alleged incompleteness of the figures in evidence, relates to the incompleteness of the figures for certain years, even in the case of the data obtained from the so-called "reporting mills", i.e., the 17 respondents and the 53 nonrespondent ingot producers. The most significant omission referred to involves respondent Bethlehem. While it was able to supply figures as to its total scrap purchases for the years 1945 to 1954, it was unable to indicate how much of its scrap was purchased from brokers and dealers and from respondent Luria in the years 1945 and 1946. Counsel supporting the complaint contend that such omission does not prejudice Luria since, in all instances where the figures supplied by a mill did not reveal what proportion was purchased from brokers and dealers, they treated such purchases as having all been made from brokers and dealers, thereby increasing the broker-dealer "universe" against which Luria's share of the market was measured, and thus tending to minimize Luria's share of the market.

13. While it may be, as counsel supporting the complaint have indicated, that the method used by them has tended to understate Luria's share of the market, this does not answer the objection raised by Luria. Where the omissions are concentrated in certain years, mainly 1945 and 1946, the method used by counsel supporting the complaint tends to show that the increase in Luria's share of the market in later years has been somewhat greater than it actually was. While this does not significantly affect the trend revealed by the figures as a whole, or the

¹⁰⁵ The record reveals that Luria has been a substantial supplier of scrap to at least the following foundries and other miscellaneous consumers of scrap: American Manganese Steel Division of American Brake Shoe, Pacific Coast States Cast Iron Pipe Company, Electron Corporation, American Locomotive Company (Alco Products Inc.), Erie Forge & Steel Corporation, American Steel Foundries, Scullin Steel Company, General Steel Castings Corporation, Buckeye Steel Castings Company and a number of other Ohio-area foundries (see p. 410). It opened its Erie yard to better serve foundries in that area.

market-share data on a national basis, it does tend to distort the figures for certain regional markets. For example, the method used by counsel supporting the complaint purports to show that Luria's share of the Eastern Pennsylvania market in 1945 and 1946 was approximately 33%, that it increased to 48.5% in 1947, and reached 83.3% in 1954. Since the largest consumer of scrap in this market is Bethlehem and since the figures submitted by it contained no breakdown of its purchases from brokers and dealers and no figures on purchases from Luria prior to 1947, it seems evident that the market-share percentages computed by counsel supporting the complaint for 1945 and 1946 are unrealistic. Luria has proposed that all market-share computations should start with the year 1947, since that is the earliest year for which the record contains substantially complete information for the reporting mills as to their purchases from brokers and dealers and from Luria. In the opinion of the examiner the objection raised by Luria is sound, and the method proposed by it of beginning the market-share computations with 1947 is the desirable method to be used.

14. Set forth below is a series of three tables which disclose Luria's position as a supplier to the reporting mills. As already noted, these mills include all of the respondent mills and 53 nonrespondent mills which, together, represent 97.8% to 99.3% of the ingot capacity of the United States and account for from two-thirds to three-fourths of all the scrap purchased domestically. The data obtained from such mills affords a reasonable and adequate basis for gauging Luria's relative market position. The first table reflects Luria's position as a supplier to all of the reporting mills, and the second and third tables contain a breakdown of this information as between respondent and nonrespondent mills. Luria's share of the market is shown both as a percentage of the scrap purchased from all sources and as a percentage of the scrap purchased from broker-dealer sources.

TABLE I.—Purchases of scrap by all reporting mills from (a) all sources, (b) brokers and dealers, and (c) Luria and subsidiaries, 1947-54

	(a) Total purchases— 1,000 gross tons	(b) From brokers and dealers		(c) From Luria and subsidiaries		
		1,000 gross tons	Percent of total	1,000 gross tons	Percentage of—	
					Total	Broker-dealer
1947----	17,224	15,931	92.5	2,730	15.8	17.1
1948----	18,741	17,319	92.4	3,258	17.4	18.8
1949----	14,173	12,756	90.0	2,848	20.1	22.3
1950----	19,791	18,235	92.1	5,369	27.1	29.5
1951----	20,444	18,232	89.2	5,719	28.0	31.4
1952----	22,367	20,620	92.2	6,875	30.7	33.3
1953----	21,897	19,935	91.0	7,281	33.3	36.5
1954----	15,807	14,099	89.2	4,751	30.1	33.7

TABLE II.—*Purchases of scrap by respondent bills¹⁰⁶ from (a) all sources, (b) brokers and dealers, and (c) Luria and subsidiaries, 1947-54*

	(a) Total purchases— 1,000 gross tons	(b) From brokers and dealers		(c) From Luria and subsidiaries		
		1,000 gross tons	Percent of total	1,000 gross tons	Percentage of—	
					Total	Broker-dealer
1947-----	5, 153	4, 829	93. 7	1, 736	33. 7	35. 9
1948-----	5, 150	4, 757	92. 4	1, 883	36. 6	39. 9
1949-----	4, 494	3, 802	84. 6	1, 866	41. 5	49. 1
1950-----	5, 742	5, 110	89. 0	3, 128	54. 5	61. 2
1951-----	6, 285	5, 665	90. 1	3, 837	61. 0	67. 7
1952-----	6, 786	6, 281	92. 6	4, 540	66. 9	72. 3
1953-----	7, 358	6, 531	88. 8	4, 963	67. 5	76. 0
1954-----	4, 784	4, 030	84. 3	3, 164	66. 1	78. 5

¹⁰⁶ In the case of respondents U.S. Steel and Bucyrus-Erie, the above figures include only the purchases of their respective plants at Geneva, Utah and Erie, Pa., since these are the only plants at which it is contended these respondents had an exclusive arrangement with Luria.

TABLE III.—*Purchases of scrap by nonrespondent reporting mills¹⁰⁷ from (a) all sources, (b) brokers and dealers, and (c) Luria and subsidiaries, 1947-54*

	(a) Total purchases— 1,000 gross tons	(b) From brokers and dealers		(c) From Luria and subsidiaries		
		1,000 gross tons	Percent of total	1,000 gross tons	Percentage of—	
					Total	Broker-dealer
1947-----	12, 071	11, 102	92. 0	994	8. 2	9. 0
1948-----	13, 590	12, 561	92. 4	1, 375	10. 9	10. 9
1949-----	9, 679	8, 954	92. 5	982	10. 1	11. 0
1950-----	14, 049	13, 125	93. 4	2, 242	16. 0	17. 1
1951-----	14, 159	12, 567	88. 8	1, 882	13. 3	15. 0
1952-----	15, 581	14, 339	92. 0	2, 335	15. 0	16. 3
1953-----	14, 539	13, 404	92. 2	2, 318	15. 9	17. 3
1954-----	11, 023	10, 068	91. 3	1, 588	14. 4	15. 8

¹⁰⁷ Purchases by respondents U.S. Steel and Bucyrus-Erie at plants other than Geneva, Utah and Erie, Pennsylvania, are reflected in the above table since, insofar as their other operations are concerned, they are in the position of nonrespondents.

15. Tables I to III above reveal the following facts of significance. Firstly and preliminarily, they indicate that both respondent and non-respondent mills in almost every year purchased at least 90% of their scrap from broker-dealer sources. This tends to establish that the broker-dealer segment of the market (as distinguished from direct suppliers, such as industrial fabricators and railroads) is the major factor in influencing market conditions, including price and supply. It is evident, therefore, that Luria's standing in this segment of the market is of paramount significance in determining its over-all market position. However, since scrap moving through the broker-dealer

segment of the market accounts for the great bulk of the scrap sold to the principal domestic steel mill consumers, it actually makes little practical difference whether Luria's position is measured in terms of its share of the total scrap market or the broker-dealer segment thereof.

Secondly, Table I reveals a significant rise in Luria's market position nationally, between 1947 and 1954, insofar as the mills accounting for between two-thirds to three-fourths of the scrap purchased domestically are concerned. Its share of this market doubled, irrespective of whether it is measured in terms of total scrap purchases or of purchases from dealers and brokers. By 1953 it had acquired a position of supplying roughly one-third of the scrap purchased by the principal domestic mills.¹⁰⁸ However, as Tables II and III reveal, the improvement in its position is accounted for largely by its heavy sales to the respondent mills, which account for less than one-third of the scrap purchased by all the reporting mills. While the proportion of scrap purchased from Luria by the non-respondent mills increased modestly, from somewhat under 10% in 1947 to around 15% in 1953-1954, the proportion of their scrap purchased from Luria by the respondent mills increased from approximately 33% in 1947 to 66% in 1954. In terms of scrap purchased from broker-dealer sources, the respondent mills by 1954 were purchasing over three-fourths of their scrap from Luria. The contrast between Luria's position with the respondent mills, vis-a-vis its position with the nonrespondent mills, strongly suggests that the exclusive brokerage arrangements which it has with the former have been a vital factor in Luria's achieving its present substantial market position.

Luria's Position in Regional Scrap Markets

16. The statistical evidence offered by counsel supporting the complaint affords a basis for analyzing the changes in Luria's market position not only on a national basis, as has already been done, but in various regional markets. These are: (a) the North Atlantic area, (b) the Eastern Pennsylvania area, which is a subdivision of the North Atlantic area, (c) the Rocky Mountain area, and (d) the Pacific Coast area. The record also contains statistical evidence with respect to Luria's market position in the Pittsburgh and St. Louis areas, each of which will hereafter be separately discussed.

17. Respondent Luria has criticized the use of the above geographic area by counsel supporting the complaint for purposes of measuring

¹⁰⁸ Even utilizing the method of computation urged by Luria, based on the purchases of all scrap consumers and the assumption that Luria sold no scrap to the nonreporting mills, it enjoyed a significant rise and had achieved a substantial market share by 1953-1954. From a position of supplying 10.4% of the scrap purchased by all consumers in 1947, it was supplying 24.3% and 20.6% by 1953 and 1954, respectively.

Luria's market position. While recognizing that these are the areas where Luria's mill customers are highly concentrated, Luria contends that its market position must be considered not merely in terms of the areas to which it supplies scrap, but also with reference to the areas from which it draws scrap. Luria points out, in this connection, that certain of the mills reach out beyond the above geographic areas to acquire portions of the scrap which they consume.

18. While it is true that there are significant movements of scrap across the geographic lines drawn by counsel supporting the complaint, they do, in the opinion of the examiner, represent realistic market areas against which to measure Luria's market position. For example, a number of the smaller respondent mills located in the Eastern Pennsylvania area acquire the greater portion of their scrap within this area. While some of the larger mills, particularly respondent Bethlehem, move up to the New York metropolitan area and to the New England area for substantial quantities of scrap which they consume, certainly the North Atlantic area as a whole supplies the overwhelming bulk of their scrap requirements on a regular basis. As has been previously noted, because freight costs are a significant item in the cost of scrap, steel mills tend to buy their scrap as close to home as possible. Only in times of peak capacity do they reach out for substantial quantities of scrap beyond the general geographic areas used by counsel supporting the complaint. The periodic importation of scrap from more remote areas does not obliterate the fact that the above-mentioned geographic areas are the basic areas from which the mills draw the bulk of their scrap year in and year out.

19. Before discussing in detail Luria's market position in each of the market areas involved, there is set forth below a table which portrays, graphically, Luria's comparative position in each market. The top column, "United States—Total", is merely a recapitulation of the information in Tables I to III, and is included so that a ready comparison may be made between the various regional markets and the United States as a whole. As in the case of Tables I to III, Luria's position is shown in terms of all the reporting mills as a group, and then in terms of respondent mills and nonrespondent mills, separately. Luria's position is measured in relationship to the purchases of scrap from all brokers and dealers. While this does not include purchases made from direct suppliers, such purchases, as has already been noted, account for approximately 10% or less of the scrap consumed by the mills. The exclusion of such purchases may tend to increase Luria's market share slightly, but does not detract from the over-all validity of the figures used or the trend which they reveal.

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IRON AND STEEL SCRAP
COMPARISON OF PURCHASES BY REPORTING MILLS FROM LURIA BROTHERS AND SUBSIDIARIES WITH TOTAL FROM ALL BROKERS AND DEALERS, BY DESIGNATED AREAS

Area	1947			1948			1949			1950		
	Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)	Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)	Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)	Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)
	1,000 gross tons	Percent-age age 100		1,000 gross tons	Percent-age		1,000 gross tons	Percent-age		1,000 gross tons	Percent-age	
United States, total	15,931	2,730	17.1	3,258	18.8	17,319	2,848	22.3	18,235	5,369	29.4	
Nonrespondents ¹⁰⁹	11,102	904	9.0	1,375	10.9	12,561	982	11.0	13,125	2,242	17.1	
Respondents	4,829	1,736	35.9	1,883	39.6	4,757	1,866	49.1	5,110	3,128	61.2	
Pacific Coast, total	1,005	2	.2	(*)	(**)	1,152	60	6.6	894	104	11.7	
Nonrespondents	603	2	.3	(*)	(**)	722	44	7.8	530	32	6.0	
Respondents	403					430	15	4.5	364	72	19.9	
Rocky Mountain, total	231	230	99.3	287	94.0	306	283	98.6	355	338	95.2	
Nonrespondents												
Respondents	231	230	99.3	287	94.0	306	283	98.6	355	338	95.2	
North Atlantic, total	3,229	1,103	34.1	1,187	38.1	3,119	931	46.8	2,713	1,480	54.6	
Nonrespondents	644	159	24.7	140	21.1	662	125	25.0	698	190	27.2	
Respondents	2,586	943	36.5	1,048	42.6	2,458	806	54.1	2,015	1,290	64.0	
Eastern Pennsylvania, total	1,620	786	48.5	842	51.8	1,626	592	58.3	1,323	958	72.4	
Nonrespondents	206	123	41.5	133	42.1	315	86	45.5	281	147	52.2	
Respondents	1,324	663	50.1	710	54.2	1,310	506	61.2	1,043	811	77.8	

See footnotes at end of table.

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Area	1951				1952				1953				1954			
	Total brokers and dealers (1,000 gross tons)		Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)		Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)		Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)		Luria Brothers and Subsidiaries	
	1,000 gross tons	Percent age	1,000 gross tons	Percent age	1,000 gross tons	Percent age	1,000 gross tons	Percent age	1,000 gross tons	Percent age	1,000 gross tons	Percent age	1,000 gross tons	Percent age	1,000 gross tons	Percent age
United States, total.....	18,232	5,719	31.4		20,620	6,875	33.3		19,935	7,281	36.5		14,099	4,751	33.7	
Nonrespondents ¹⁰⁹	12,567	1,882	15.0		14,339	2,335	16.3		13,404	2,318	17.3		10,068	1,588	15.8	
Respondents.....	5,665	3,837	67.7		6,281	4,540	72.3		6,531	4,963	76.0		4,030	3,164	78.5	
Pacific Coast, total.....	1,202	255	21.2		1,278	424	33.1		1,066	488	45.8		821	416	50.6	
Nonrespondents.....	686	59	8.6		713	109	15.3		517	74	14.4		421	94	22.3	
Respondents.....	516	196	37.9		565	315	55.7		549	414	75.4		400	322	80.4	
Rocky Mountain, total.....	450	393	87.2		357	323	90.6		222	212	95.5		214	211	98.9	
Nonrespondents.....																
Respondents.....	450	393	87.2		357	323	90.6		222	212	95.5		214	211	98.9	
North Atlantic, total.....	3,280	2,034	62.0		3,776	2,596	68.8		4,196	3,069	73.1		2,145	1,597	74.5	
Nonrespondents.....	771	299	27.1		896	257	31.1		866	219	25.3		426	99	23.2	
Respondents.....	2,509	1,826	72.7		2,880	2,339	79.3		3,331	2,850	85.6		1,719	1,498	87.1	
Eastern Pennsylvania, total.....	1,644	1,187	72.2		1,873	1,387	74.1		2,098	1,625	78.9		1,015	845	83.3	
Nonrespondents.....	330	181	54.7		400	224	56.0		425	194	45.6		162	86	53.1	
Respondents.....	1,314	1,006	76.6		1,473	1,153	79.0		1,673	1,431	87.6		853	759	89.0	

* Less than 500 gross tons.

** Less than 0.05 percent.

¹⁰⁹ Data shown for "nonrespondents" throughout table include purchases by the

United States Steel Corp., except its Columbia-Geneva Steel Division, Utah District, and by Bucyrus-Erie, except its plants located in Erie, Pa.

¹¹⁰ All percentage figures throughout table were calculated before tonnage figures were rounded to thousands.

North Atlantic Area

20. The North Atlantic area includes the six New England States, plus New York, New Jersey, Delaware, Maryland, the District of Columbia and Eastern Pennsylvania. It is one of the major scrap-producing and scrap-consuming areas in the United States. The respondent mills located in this area purchased between 15 to 20% of the total broker-dealer scrap purchased by the reporting mills throughout the country during the period from 1947-1954. The average for the 8-year period was somewhat in excess of 18%.

21. The respondent mills located in the North Atlantic area are: Baldwin-Lima-Hamilton, Phoenix and Central, Colorado Fuel & Iron (except for the plant at Pueblo, Colorado), Columbia Malleable Castings, Lukens Steel, Hanna Furnace, a subsidiary of National Steel, and Bethlehem Steel (except for the latter's plant at Johnstown, Pennsylvania). The nonrespondent reporting mills having plants located in the North Atlantic area are: Alan Wood Steel, Allegheny Ludlum, Armco Steel, Borg-Warner, Carpenter Steel, Crucible Steel, Eastern Stainless Steel, Harrisburg Steel, Henry Disston & Sons, International Harvester, Merritt-Chapman & Scott, Midvale Company, Northeastern Steel, Republic Steel, Washburn Wire, and United States Steel.

22. As revealed by the above table, Luria's position as a supplier to the reporting mills located in the North Atlantic area has increased substantially from 1947 to 1954. In 1947 it supplied 34.1% of the scrap purchased by such mills from broker-dealer sources, and by 1954 the proportion of scrap supplied by it had increased to 74.5%. Most of this improvement was due to the increase in its sales to the respondent mills, which account for approximately 80% of the scrap purchased by the reporting mills in the North Atlantic area. As indicated by the table, the percentage of scrap supplied to the nonrespondent mills by Luria remained fairly static during this period. It was 24.7% in 1947, reached a peak of 31.1% in 1952 and then declined to 23.2% in 1954. In contrast to this, the percentage purchased by the respondent mills, with whom Luria had exclusive brokerage arrangements, increased from 36.5% in 1947 to 87.1% in 1954. It is worthy of note that the most significant part of Luria's rise occurred during the period from about 1949 to 1951, when its relationship with Bethlehem was forming. Thus, whereas it was supplying 38.1% of the broker-dealer scrap purchased by the reporting mills in 1948, its share had increased to 54.6% by 1950 and to 62% by 1951.

23. As previously noted, Luria questions the figures used by counsel supporting the complaint because they are limited to scrap of broker-dealer origin. However, even if scrap purchases made from direct

sources were included, the results would not be significantly different. Thus, the computations suggested by Luria reveal that its share of purchases by the respondent mills from all sources in 1947 was 34%, which is not substantially lower than the figure used by counsel supporting the complaint, viz, 36.5%, and that its share increased to 72% in 1953, compared to the 85.6% figure used by counsel supporting the complaint. In 1954, as a result of increased purchases by the mills from direct sources, Luria's share of total purchases declined to 65%, compared to its share of broker-dealer purchases of 87.1% in the same year. However, on either basis it is apparent that Luria has obtained the lion's share of the market in the North Atlantic area and has experienced a phenomenal rise since 1947.

24. Luria also argues that, aside from the failure to include direct purchases, the above figures do not properly reflect its position because they do not include purchases by foundries and other consumers not covered by the survey made by counsel supporting the complaint. It is contended that such consumers accounted for 35% of the purchased scrap in the North Atlantic area in 1953 and 50% in 1954. Based on the assumption that such consumers purchased no scrap from Luria, it is contended that Luria's share of the market was 47% in 1953 and 37% in 1954. As previously noted, there is no basis for the assumption that Luria did not sell substantial quantities of scrap to the nonreporting mills and foundries. However, even accepting the figures used by Luria, its position in the North Atlantic area remains impressive, albeit not as overwhelming as the percentages reflected by the survey introduced in evidence by counsel supporting the complaint.

Eastern Pennsylvania Area

25. The Eastern Pennsylvania area is a subdivision of the larger North Atlantic area. It is the area where Luria originated, both as a dealer and as a broker, and where it has reached one of its strongest relative positions in the United States. The area includes one of the largest concentrations of steel mills and scrap consumers in the United States west of the Pittsburgh-Youngstown area. Geographically, it includes that part of Pennsylvania which is located east of the following counties: McKean, Cameron, Clearfield, Cambria and Somerset. Located within this area are the Bethlehem and Steelton plants of respondent Bethlehem, the Phoenixville and Harrisburg plants of Phoenix, the Burnham and Eddystone plants of Baldwin-Lima-Hamilton, the Coatesville plant of Lukens, CF&I's blast furnace at Birdsboro and the Columbia Malleable foundry at Columbia. Also located within the area are the plants of the following nonrespondent mills whose scrap figures are in evidence: Alan Wood, Carpenter,

Henry Disston, Harrisburg Steel, Merritt-Chapman & Scott, Midvale and U.S. Steel (Fairless Works).¹¹¹

26. Scrap purchases by the reporting mills located in the eastern Pennsylvania area represented approximately one-half of the purchases of broker-dealer scrap by the reporting mills in the North Atlantic area as a whole. The great bulk of such purchases was accounted for by the respondent mills. The purchases of the respondent mills located in the eastern Pennsylvania area represented from 78.6% to 84.0% of the purchases of all the reporting mills located in the area.

27. As the above table reveals, Luria's share of broker-dealer scrap purchases by the reporting mills in the eastern Pennsylvania area increased from 48.5% in 1947 to 83.3% in 1954. The major portion of this increase is accounted for by the increase in its sales to the respondent mills, particularly to Bethlehem and Phoenix. Its share of broker-dealer purchases by the respondent mills increased from 50.1% in 1947 to 89.0% in 1954, compared to its share of nonrespondent broker-dealer purchases of 41.5% in 1947 and 53.1% in 1954.

28. Even on the basis of scrap purchases by the reporting mills from all sources and not merely from brokers and dealers, the method of computation which respondent Luria proposes, the figures disclose that Luria has been able to achieve a dominant position in the eastern Pennsylvania area. Its share of total scrap purchases by the reporting mills increased from 47.9% in 1947 to 73% in 1954. Breaking the figures down as between respondent and nonrespondent mills, its share of the scrap business of the respondent mills increased from 48% in 1947 to 76% in 1954, compared to an increase from 41% to 52%, in the case of the nonrespondent mills, during the same period.

29. As previously noted, Luria also argues that the figures used by counsel supporting the complaint do not properly reflect its position because they do not account for the scrap purchases of foundries and other miscellaneous uses of scrap. In 1953 such consumers purchased 578,000 gross tons of scrap, as compared to 2,298,000 gross tons purchased by the reporting mills in the Eastern Pennsylvania area. In 1954 such consumers purchased 404,000 gross tons, as compared to 1,163,000 gross tons purchased by the reporting mills. The purchases by such consumers thus represented 20% of the total scrap purchased in the Eastern Pennsylvania area in 1953 and approximately 26% in 1954. Luria, as already noted, assumes that substantially all of such

¹¹¹ U.S. Steel's plant at Fairless, which is treated as a nonrespondent (as are all its other plants except for Geneva), did not begin to buy scrap until 1952 and, except for 1953, was not a large buyer of scrap. Its purchases were 51,000 gross tons in 1952; 193,000 in 1953; and 19,000 in 1954.

scrap was purchased from sources other than itself, a fact which is not supported by the record. However, even accepting Luria's position, arguendo, the figures used by it disclose that in 1953 it supplied 57% of the scrap purchased in the Eastern Pennsylvania area and in 1954 it supplied 54%, which still leaves it a major factor in the market. While no precise comparison can be made with the earlier years because the record contains no equivalent information for such years, if it be assumed that the purchases of the consumers which are unaccounted for were in substantially the same proportion to the reporting mills as during the 1953-1954 period, there can be no doubt that Luria's position in 1953-1954 was substantially above that of the earlier period.

Pacific Coast Area

30. The Pacific Coast area consists of the States of California, Oregon and Washington. The only respondent operating plants in the area is Bethlehem Pacific, which has plants in the Los Angeles and San Francisco areas, and in Seattle, Washington. It purchases more scrap than any other single scrap consumer in the area. In some years it has purchased almost as much or more scrap from brokers and dealers than all the rest of the reporting mills. Thus, in 1953 it purchased 549,000 gross tons compared to 517,000 gross tons by the non-respondent mills, and in 1954 it purchased 400,000 gross tons compared to 421,000 by the nonrespondent mills.

31. The nonrespondent mills include U.S. Steel, which operates plants at Torrance and Pittsburg in California. Other companies with mills in California are Kaiser Steel, Judson Steel, National Supply, and Pacific States Steel. The other nonrespondent reporting mills on the West Coast are Oregon Steel Mills of Portland, and Isaacson Iron Works and Northwest Rolling Mills of Seattle. The only nonrespondent mills which have purchased substantial quantities of scrap from Luria are Kaiser, U.S. Steel and Pacific States Steel.

32. As has been previously noted, Luria did not operate any offices or yards in the Pacific Coast area until 1948, when it opened a brokerage office in San Francisco. In late 1950 or early 1951, through its subsidiary Lipsett Steel Products, Inc., it opened a scrap yard at Vernon City, California, adjacent to the Los Angeles area plant of Bethlehem Pacific. In 1951 Luria opened additional brokerage offices in Los Angeles and Seattle.

33. Prior to 1949 Luria had sold only insignificant tonnages to the reporting mills. In 1949 it sold only 6.6% of the broker-dealer scrap purchased by the reporting mills. In that year its sales to the non-respondent mills amounted to 44,000 tons, compared to 15,000 tons sold to Bethlehem Pacific. Of the scrap sold to nonrespondent mills, 41,000 tons was accounted for by sales to Kaiser. By 1954 its sales

to the reporting mills had reached 50.6% of the scrap purchased by them from brokers and dealers. While there was a significant rise in its share of broker-dealer scrap purchased by the nonrespondent mills, from 7.8% in 1949 to 22.3% in 1954, there was an even sharper increase in its position as a supplier to respondent Bethlehem Pacific. Its share of the latter's purchases from brokers and dealers increased from 4.5% in 1949 to 80.4% in 1954.

34. Luria's rise from a negligible position to that of supplying approximately half of the broker-dealer scrap on the Pacific Coast was due primarily to its exclusive arrangement with Bethlehem Pacific. In 1951, the year immediately following the exclusive arrangement at Los Angeles, it supplied 37.9% of Bethlehem Pacific's scrap of broker-dealer origin. In the following 2 years, as the arrangement began to spread to Bethlehem Pacific's other plants, the percentage of scrap supplied by Luria increased to 55.7% and 75.4%. As it became entrenched on the Pacific Coast, buttressed by its arrangement with Bethlehem Pacific, Luria was in a better position to supply other large consumers, albeit not on an exclusive basis. This was particularly true of U.S. Steel's California plants and Kaiser Steel which, after Bethlehem Pacific, are the two largest purchasers of broker-dealer scrap on the west coast. From supplying 17.9% of Kaiser's broker-dealer scrap in 1951, Luria was supplying 52.9% by 1954; and from supplying 9.3% of U.S. Steel's Pacific Coast needs of broker-dealer scrap in 1951, Luria was supplying 36.7% by 1954. It was also able to improve its position as a supplier to Pacific States Steel, the third largest scrap purchaser, from 7.4% in 1951, to 17.3% in 1953 and 13.6% in 1954.

35. As in the case of the other areas discussed, Luria objects to the failure of counsel supporting the complaint to include purchases by consumers other than the reporting mills. Such consumers in the Pacific Coast area, account for 30% to 40% of purchased scrap consumed by scrap users. Overlooking the erroneous factual assumption by Luria previously adverted to, viz, that it sold no scrap to the other consumers, the computations made by Luria disclose that its share of scrap sold to all consumers increased from 5% in 1949 to almost 30% in 1954. While this increase is not as large as that indicated by the figures restricted to the reporting mills, it is, nevertheless, impressive.

Rocky Mountain Area

36. The Rocky Mountain area consists of the States of Arizona, Colorado, Utah, Idaho, Montana, and Wyoming. There are only two reporting mills operating within this area, both operated by respondents. These are the mill of CF&I at Pueblo, Colorado, and the mill of U.S. Steel at Geneva. There are also a number of foundries

operating within the area, the principal ones of which are operated by Kennecott Copper Company at Salt Lake City, Utah; Electron Corporation at Littleton, Colorado; and Pacific States Cast Iron Pipe Company at Provo, Utah.

37. As already noted, Luria became the exclusive broker for CF&I's Pueblo plant in 1946, when it opened a brokerage office in Pueblo and acquired the controlling interest in Pueblo Compressed Steel Company, which operated a scrap yard in Pueblo, Colorado. Likewise, as has been noted, Luria became the exclusive broker for the Geneva plant of U.S. Steel in October 1948. Geneva did not purchase any outside scrap until 1947, when it purchased only 1,710 gross tons, none of it from Luria. 1948 was Geneva's first year of substantial outside scrap purchases.

38. Prior to 1946 Luria was not a substantial supplier in the Rocky Mountain area. In 1946, when Luria was supplying only CF&I among the reporting mills, it supplied 89.9% of the broker-dealer scrap purchased by that mill. In 1949, the first full year after it had entered into the exclusive brokerage arrangement with Geneva, it supplied 98.6% of the broker-dealer scrap purchased by the two principal consumers of scrap in the Rocky Mountain area. In 1954, the last year for which there are figures in the record, Luria supplied 98.9% of the broker-dealer scrap purchased by these mills.

39. As in the other areas discussed, Luria contends that the figures received from the reporting mills cover only a portion of the scrap consumed in the area and therefore do not accurately portray Luria's market position. However, unlike some of the other areas discussed, there is specific affirmative evidence that Luria supplies a very substantial portion of the scrap purchased by a number of nonreporting mills. Thus the evidence discloses that Luria is the exclusive or substantially exclusive broker for Electron Corporation, Kennecott Copper, and Pacific States Cast Iron Pipe Company. These companies, together with CF&I and Geneva, constitute the largest consumers of scrap in the Rocky Mountain area.

Pittsburgh-Youngstown Area

40. The Pittsburgh-Youngstown area is a hexagon-shaped territory extending from Johnstown, Pennsylvania on the east, through Monessen and Washington, Pennsylvania (south of Pittsburgh); then northwest through Steubenville, Ohio, Weirton, West Virginia, and Youngstown, Ohio to Warren, Ohio; then east through Sharon, Pennsylvania, and back to Johnstown through Butler, Pennsylvania. The respondent mills located within the area are National, with a plant at Weirton, West Virginia; Edgewater, with a plant at Pittsburgh; and Bethlehem, with a plant at Johnstown. The largest scrap consumer in the

area is U.S. Steel, which is not considered a respondent with respect to its mills in this area. The second largest consumer is also a nonrespondent, Republic Steel. The third largest consumer of purchased scrap is respondent National. These three consumers, together, account for at least 42% of the broker-dealer scrap purchased by the reporting mills in the Pittsburgh-Youngstown area. Other substantial consumers among the nonrespondent reporting mills within the area are: Allegheny-Ludlum Steel, Armco Steel, Copperweld Steel, Crucible Steel, Jones & Laughlin, Pittsburgh Steel, Sharon Steel, Timken Roller Bearing, Wheeling Steel and Youngstown Sheet & Tube.

41. Respondent Luria has operated a brokerage office in Pittsburgh since 1910 and a scrap yard since 1920. As previously noted, respondent Southwest has also been active in the Pittsburgh area since 1941, and was acquired by Luria on February 1, 1950. Prior to its acquisition by Luria, Southwest had yards at both Glassport and McKeesport, Pennsylvania, near Pittsburgh.

42. Unlike the statistical data for some of the other sections of the country, the record contains reasonably reliable data of scrap purchases from Luria by the reporting mills in the Pittsburgh-Youngstown area, beginning in 1945, rather than in 1947. The only exception to this is the data of respondent Bethlehem's Johnstown plant, which does not show how much scrap was purchased from Luria prior to 1947. However, since the scrap purchases of this mill represent only about 5% or less of the scrap consumed by the reporting mills in the area, the inclusion of its figures would not significantly affect Luria's relative position in 1945 and 1946. A comparison may therefore be made of Luria's position in the Pittsburgh-Youngstown area beginning with 1945, rather than 1947.

43. In 1945 Luria supplied 15.2% of the scrap purchased by the reporting mills in the Pittsburgh-Youngstown area from broker-dealer sources. Between 1946 and 1948 its percentage of the broker-dealer scrap market fluctuated within a narrow range, between 20.4% and 20.9%. In 1949, the year in which negotiations for its acquisition of Southwest occurred, its share of the broker-dealer market had increased to 26.2%. During the period from 1945 to 1949 Southwest's share of the market fluctuated between 4.7% and 7.8%. In 1949 it sold 5.9% of the broker-dealer scrap in the area. Thus the combined sales of the two companies in 1949 represented 32.0% of the broker-dealer scrap market, as reflected by the purchases of the reporting mills in the area. By 1954 the combined percentage of the two companies had reached 36.0%, with Luria's share representing 27.2% and Southwest's 8.8%.

44. The improvement of Luria's position in the Pittsburgh-Youngstown area, while substantial, was not as great as in certain other areas for the simple reason that the mills with which it had exclusive brokerage arrangements accounted for a much smaller portion of the scrap consumed in the area, than in the areas previously discussed. Thus, in 1945 the combined purchases of respondents National, Edgewater and Bethlehem from broker-dealer sources represented only about 19% of the broker-dealer scrap purchased by the reporting mills in the area, and in 1954 about 17%. Nevertheless, the percentage increase achieved by Luria between 1945 and 1954 is not inconsequential. A growth of from approximately 15% to 36% cannot be considered *de minimis*. There can be no doubt that this growth was aided, in significant part, by the exclusive arrangement with the respondent mills in the area and by its acquisition of Southwest.

45. As in the case of the other areas discussed, Luria contends that the figures used do not accurately portray its position because they do not include data from foundries and other miscellaneous users. However, the examiner is satisfied from the record that Luria and its subsidiary Southwest are substantial suppliers to such other consumers of scrap. There is no reason to believe that if statistical data were available from such consumers it would significantly change the market-share data and trends revealed by the figures in the record. For example, the figures of the Alco Products, Inc. (American Locomotive Company), which operates a foundry at Latrobe, Pennsylvania, which are in evidence reveal that Luria supplied between 14% and 45% of the broker-dealer scrap purchased by this plant. The evidence also discloses that Luria serves a number of foundries in eastern Ohio and western Pennsylvania on an exclusive basis.

46. Luria also contends that a much wider geographic area should be used for measuring its market share. The area used by counsel supporting the complaint consists of most of western Pennsylvania, except for the area around Erie, and a portion of eastern Ohio between Steubenville and Warren, including Youngstown, Ohio and Weirton, West Virginia (the latter being across the Ohio river from Steubenville). Luria contends that the geographic market area should include not only all of western Pennsylvania and eastern Ohio, but all of West Virginia and Virginia.

In the opinion of the examiner there is no record basis for adopting the geographic market area proposed by Luria. Moreover, the method used by it for measuring its market share in this area is improper since it compares Luria's sales within the narrower Pittsburgh-Youngstown area with the scrap purchases made by all mills and other consumers in the broader four-state area. This assumes that Luria

made no sales in the broader area, a fact which is not supported by the record.

If anything, the area used by counsel supporting the complaint is somewhat too broad. It may be that an appropriate subdivision could have been made as between the Pittsburgh area and the Eastern Ohio area. This was not feasible because the figures of the largest consumer in the area, U.S. Steel, could not be broken down between the two areas. Its Pittsburgh district includes not only plants in western Pennsylvania but plants in eastern Ohio, and its purchase statistics are compiled for the district as a whole. However, there is no reason to believe that if the two areas were separated the figures would disclose any smaller market share by Luria. If anything, a separate compilation for western Pennsylvania would tend to show that its subsidiary Southwest's share was somewhat greater than the figures discussed above disclose, since that is the area in which its activities are concentrated and in which it serves a large number of foundries. As far as the Eastern Ohio area is concerned, the record discloses that it is served by Luria's Cleveland office, which is one of its most active offices, and that it serves on an exclusive or substantial basis a number of the foundries which operate extensively throughout the area.

St. Louis District

47. The St. Louis district includes the metropolitan area of St. Louis and the adjacent areas in Missouri and Illinois. The only respondent mill doing business in this area is Granite City Steel, which is located at Granite City, Illinois. It and Laclede Steel, which operates steel mills at Alton and Madison, Illinois, are by far the largest consumers of scrap in the area. There are also three large foundries in the area: American Steel Foundries Corporation with plants at Granite City and East St. Louis; Scullin Steel Company in St. Louis; and General Steel Castings Corporation of Granite City. Unlike most of the other areas, the record contains statistical evidence of the scrap purchases of these three foundries, as well as of the two ingot producers. There are also some 40 to 50 other scrap consumers in the area, but they are relatively small and, together, account for less than 20% of the broker-dealer scrap purchased in the area.¹¹²

48. Luria opened a brokerage office in St. Louis in 1945. At that time it was a relatively small supplier of scrap in the area. In 1945 it sold only 8,470 gross tons of scrap to Granite City, constituting 3.4% of

¹¹² Indicative of the relatively small size of the other consumers, which are mainly foundries, is the fact the largest of the foundries whose figures are in evidence purchased only 18,000 tons of scrap from brokers and dealers in 1954, while the smallest purchased only 8,000 tons. This may be compared with purchases by the two ingot producers of 275,000 tons and 313,000 in the same year.

that company's total scrap purchases. In the years from 1946 to 1949 its sales to Granite City were even smaller, constituting 0.3% or less of its scrap purchases. In 1946, the first year for which data is available, Luria supplied 4,775 gross tons of scrap to Laclede, constituting 2.5% of that company's scrap purchases. In the succeeding years, 1947-1949, Luria's sales to Laclede increased somewhat reaching a peak of 38,745 tons in 1949, which represented 16.4% of that company's total scrap purchases, and 16.7% of its purchases from brokers and dealers. The record does not contain any data as to the extent to which Luria was a supplier to the other scrap consumers in the area prior to 1949. However, from the fact that Granite City and Laclede together accounted for approximately 82% of the scrap purchased by the five largest consumers in the area from brokers and dealers in 1949, it may be assumed that up to 1949 Luria was a relatively small factor in the St. Louis market.

49. Set forth below is a table which reflects Luria's position as a supplier of scrap in the St. Louis area from 1949 to 1954 to the five largest consumers, Granite City Steel, Laclede Steel, American Steel Foundries, Scullin Steel and General Steel Castings. The computations are based on the purchases of such consumers from brokers and dealers.

SCRAP PURCHASES FROM BROKERS AND DEALERS BY FIVE MAJOR CONSUMERS,
ST. LOUIS DISTRICT, 1949-54

	1949	1950	1951	1952	1953	1954
Total all companies.....	603,716	909,178	920,549	889,268	796,188	630,272
Percent from Luria.....	16.5	31.0	51.7	42.5	51.6	45.4
Total Granite City.....	261,895	407,054	408,754	349,119	397,771	274,640
Percent from Luria.....	0.3	59.5	100.0	100.0	100.0	100.0
Total nonrespondents.....	341,821	502,124	511,795	540,149	398,417	355,632
Percent from Luria.....	28.7	7.9	11.1	5.4	3.3	3.1

50. As is evident from the above table, Luria has substantially increased its position as a supplier in the St. Louis district. Starting with 16.5% of the broker-dealer scrap purchased by the five largest consumers in 1949, it more than trebled its share of the market by 1950, reaching over 51% in both 1951 and 1953, before declining somewhat to 45.4% in 1954. Since substantially all of the scrap purchased by the two largest consumers, Granite City and Laclede, is purchased through brokers and dealers, it may be assumed that the percentages revealed in the above table substantially reflect Luria's position as a supplier of scrap from all sources in the market. As is also apparent from the table, the increase in Luria's position has been achieved entirely as a result of its exclusive arrangement with Granite City which, except for the year 1954, has been by far the largest consumer of scrap in the

area.¹¹³ In the case of the other major consumers, Luria's position as a supplier began to decline after 1950, when it became Granite City's exclusive broker. The decline was particularly acute in the case of Laclede and Scullin, to which Luria had supplied 16.7% and 65.0%, respectively, of their broker-dealer scrap in 1949.

51. Luria contends that the proper market area for measuring its market position is not the St. Louis district, but a broader seven-state area consisting of Missouri, Illinois, Iowa, Indiana, Arkansas, Kentucky and Tennessee. The record contains no substantial evidence to support a finding that this is a proper market area. The primary purpose of market share information in this instance is to provide a basis for determining the probable competitive impact of the Luria-Granite City exclusive. Granite City's principal competitors for scrap are the four other consumers located within the St. Louis district. It and the other consumers are or have been served principally by brokers and dealers located in the St. Louis district. While some of these suppliers periodically obtain scrap from certain of the areas referred to by Luria, the principal part of their requirements are obtained within the industrial complex known as the St. Louis district.

B. The Export Market

1. As has already been found, following the lifting of export controls on October 16, 1953, Luria became an exclusive supplier to the OCCF in a joint venture with Western Steel and Schiavone-Bonomo. In 1954 Luria, either alone or as a joint venturer, exported 751,813 gross tons of scrap, of which 543,219 gross tons were exported to the OCCF. In 1955 it exported 2,150,217 gross tons of scrap, of which 1,967,635 gross tons were exported to the OCCF countries.

2. In 1954 and 1955, largely as a result of the exclusive arrangement with the OCCF, Luria became the dominant exporter of scrap from the United States. In 1954 shipments by Luria and its joint venturers accounted for 60.4% of the 1,244,132 gross tons of scrap shipped to foreign countries, other than Canada and Mexico (which had not been included in the export embargo applicable up to October 1953). In 1955 shipments by the Luria group accounted for 54.4% out of total shipments of 3,952,047 gross tons to such countries. If Canada and Mexico are included, shipments by Luria represented 50.5% of total exports in 1954, and 47.1% in 1955.¹¹⁴

3. Shipments by the Luria group represented the major portion of shipments made from certain United States customs districts, as well

¹¹³ In 1954 Laclede purchased 312,797 gross tons from brokers and dealers, compared to 274,640 gross tons purchased by Granite City. In the remaining years Granite City's purchases were generally 30,000 to 100,000 tons greater than Laclede's.

¹¹⁴ The above computations do not include minor export shipments under \$500.00.

as the major portion nationally. Thus, in 1954 shipments by Luria from Custom District Ten (primarily the Port of New York) amounted to 78.3% of scrap shipments from that district, and in 1955 they represented 79.1% of the shipments. Shipments made from the Port of New York, in turn, accounted for 31.6% of the total scrap shipped from the United States in 1954 and 30.8% in 1955. Luria also shipped approximately half of the scrap shipped from the New England ports in 1954 and 1955, the proportion shipped in these years being 50.5% and 48.9%, respectively. Luria's shipments from the Port of Philadelphia represented 77.2% of the scrap exported from that port in 1954 and 47.5% in 1955.

4. While Luria's shipments to Japan have been found not to have been made pursuant to any exclusive agreement, it may be noted that in 1954 it shipped approximately 90,000 tons or 32% of the scrap exported to Japan (not including shipments by Hugo Neu), and in 1955 it shipped 132,467 tons or 18.9% of the scrap exported to Japan. It may also be noted, in considering Luria's position on the West Coast where it had an exclusive brokerage arrangement with Bethlehem Pacific, that it shipped 57,445 gross tons to Japan from California ports in 1954, constituting 39% of the scrap shipped to Japan from such ports. Its total export shipments from California ports in 1954 were 117,653 gross tons, constituting 50% of the scrap shipped from such ports. Its exports in 1955 from California ports were 124,888 gross tons, or 27.3% of the scrap shipped from such ports.

IV. CONCLUSIONS

A. *As to the Facts*

1. Up to the early 1940's Luria's operations were confined mainly to the Eastern United States. From a modest beginning around 1890 in the Eastern Pennsylvania area, the company gradually expanded its operations, first as a dealer and then as a broker, into other areas of the Eastern United States. By the 1930's it was doing business in certain of the adjacent Midwest areas, including Detroit, Chicago and Cleveland. However, the bulk of its scrap was obtained from, and sold in, the Eastern United States.

2. During the 1940's and particularly after World War II, Luria began to extend its operations into other areas of the country, including Houston, Texas; Birmingham, Alabama; St. Louis, Missouri; the Rocky Mountain States and California. In the 1950's it moved into other areas, including Seattle, Washington and Montreal, Canada, and began to do a very large export business. During this period it also acquired the stock of its largest competitor in the Pittsburgh area, respondent Southwest.

3. While Luria was a substantial factor in the scrap business around 1945, its influence was restricted largely to the Eastern United States. However, in the succeeding years it became a dominant factor in a number of other sections of the country, including the St. Louis area, the Rocky Mountain area, and the West Coast. Likewise, from being the major, but not necessarily dominant, factor in the Eastern United States, it began to out distance its competitors until by the middle 1950's, it was far and away the dominant factor in the scrap business in the eastern part of the United States.

4. Its sales to the steel mills comprising approximately 98% or more of the ingot capacity in the United States increased from approximately 2,700,000 gross tons in 1947 to a peak of over 7,000,000 gross tons by 1953, although they declined somewhat in 1954 to 4,750,000 gross tons, following the end of the Korean War. From a position of supplying approximately 17% of the scrap purchased by such mills from brokers and dealers in 1947, it reached the position of supplying over one-third of such scrap in both 1953 and 1954. While its sales to the nonrespondent mills increased somewhat during this period, it was mainly because of its sales to the respondent mills that Luria was able to substantially improve its over-all industry position.

5. The improvement in Luria's position was particularly pronounced in those sections of the country where the respondent mills are the principal or major factors in the use of scrap. For example, in the North Atlantic area Luria's position as a supplier of scrap to the major ingot producers whose scrap purchase figures are in evidence increased from 34.1% of the scrap purchased by these producers from brokers and dealers in 1947 to 74.5% in 1954. In other words, from a position of supplying approximately one-third of the broker-dealer scrap purchased by these mills in 1947 Luria, by 1954, was supplying almost three-fourths of such scrap. This increase was due mainly to the increase in Luria's sales to the respondent mills, whose purchases account for approximately 80% of the scrap purchases of the producers in question. In the Eastern Pennsylvania area, which lies geographically within the greater North Atlantic area, Luria increased its position from 48.5% of the broker-dealer scrap purchases of the principal mills in the area in 1947 to 83.3% in 1954. This increase, again, was accomplished mainly by the increase in its sales to the respondent mills, whose purchases account for between 79% and 84% of the scrap purchases of the principal mills in the area.

6. Other areas which saw major increases in Luria's position were the Pacific Coast, the Rocky Mountain and the St. Louis areas. From a position of less than one percent in 1947, Luria increased its share of the broker-dealer scrap purchased by the ingot producers on the

Pacific Coast to over 50% in 1954. This was due largely to the increase in its sales to respondent Bethlehem Pacific, the largest purchaser of scrap on the West Coast. In the Rocky Mountain area, where it had practically no sales in 1945, it increased its relative position to almost 90% of the broker-dealer scrap purchased by the ingot producers in 1946 and to almost 99% in 1954. This was the result of its sales to respondents CF&I and U.S. Steel. In the St. Louis area it increased its position as a supplier to the five principal scrap consumers from 16.5% of the broker-dealer scrap purchased by such consumers in 1949 to 45.4% in 1954. This improvement was due almost entirely to its sales to respondent Granite City.

7. The only area covered by the evidence which did not show as dramatic an increase as those indicated above was the Pittsburgh-Youngstown area, where Luria's position expanded from approximately 15.2% of the broker-dealer scrap purchased by the principal ingot producers in 1945 to 27.2% in 1954. This however, was augmented by an additional 8.8% representing the share of its subsidiary, Southwest Steel, which was acquired in 1950. One reason that Luria's rise in the Pittsburgh area was not as sharp as in some of the other areas discussed above is the fact that there are relatively few of the respondent mills located within this area. The respondent mills in the area account for approximately 17%-19% of the scrap purchased by the principal mills from broker-dealer sources.

8. In addition to the marked improvement in Luria's position as a supplier to the domestic mills, the recent years have also seen it become the largest exporter of scrap. In 1954, the first full year after the lifting of export controls, Luria shipped a total of 752,000 gross tons of scrap abroad, representing 50.5% of total export shipments amounting to 1,488,000 gross tons. In 1955 its exports amounted to 2,150,000 gross tons or 47.1% of total exports of 4,565,000 gross tons. In 1954, 72% of the scrap exported by Luria (including some exported by co-venturers) was exported to the countries affiliated with the European Coal and Steel Community buying through the common buying office known as OCCF. In 1955, 91% of the scrap shipped by Luria went to the so-called OCCF countries.

9. While the improvement in Luria's position has no doubt been due in part to the excellence of its management and to its good financial standing, the examiner is satisfied from the record as a whole that the principal factor in Luria's rise in recent years has been the series of exclusive arrangements which it has had with a number of the domestic mills. It is these arrangements at which the complaint is primarily directed, most of the other practices charged being an outgrowth thereof or having been made possible by the economic power resulting therefrom. Pursuant to these arrangements a number of the

mills have bought substantially all of their scrap from Luria and its subsidiaries, while others have bought from the Luria organization substantially all of their brokerage scrap, such scrap constituting the bulk of their scrap purchases in most instances.

10. Luria has been the exclusive scrap broker for several of the smaller of the respondent mills for a number of years. Thus, Luria has been the exclusive broker for respondent Lukens since about 1929 or 1930. It has been the exclusive broker for the Standard Steel Works Division of respondent Baldwin-Lima-Hamilton since the 1930's. It has been the sole broker and scrap supplier for respondent Columbia Malleable (now known as Grinnell Corporation) since 1936. In the case of a number of the other respondents, Luria was originally a substantial supplier and later became the exclusive supplier or exclusive broker to such mills. In the case of others of respondents, Luria was not originally a substantial supplier but during the late 1940's or early 1950's became an exclusive supplier or exclusive broker for such mills. Most of the exclusive arrangements were entered into during the period from 1946 to 1951.

11. The most important of the mills with which Luria has an exclusive arrangement is respondent Bethlehem, which is the largest purchaser of scrap in the Eastern United States. Its four plants in the North Atlantic area accounted for 54% of the scrap purchased by the principal scrap consumers in that area from brokers and dealers in 1953, and 44% in 1954. Its two plants in the Eastern Pennsylvania area accounted for 43% of the scrap purchased by the principal scrap consumers in that area from brokers and dealers in 1953, and 31% in 1954. Bethlehem has been a purchaser of scrap from Luria for a great many years. In 1947 Luria was Bethlehem's largest single supplier of scrap but Bethlehem also purchased substantial quantities of scrap from other brokers and dealers, as well as from direct suppliers of scrap, including industrial fabricators and railroads. In the following years, particularly between 1949 and 1951, Bethlehem substantially increased its purchases from Luria and reduced its purchases from others until, by about 1951, Luria had become Bethlehem's substantially exclusive scrap broker.

12. Around the latter part of 1950 Luria also entered into an arrangement to supply scrap to Bethlehem Pacific, the West Coast subsidiary of Bethlehem Steel Corporation, parent company of respondent Bethlehem. Prior thereto Luria had not been a substantial supplier to Bethlehem Pacific. While this arrangement was originally limited to the Los Angeles plant of Bethlehem Pacific, it was gradually extended to cover the other plants of the company on the West Coast, and Luria became the substantially exclusive broker for Bethlehem Pacific. Bethlehem Pacific is the largest consumer of scrap on the

Pacific Coast. Its purchases accounted for 51% of the scrap purchased from brokers and dealers by the principal scrap consumers in the area in 1953, and 49% in 1954. The evidence establishes that the arrangement between Bethlehem Pacific and Luria on the Pacific Coast was an outgrowth of the arrangement between Bethlehem and Luria on the East Coast, and was the result of a coordinated policy decision made at the top echelons of the Bethlehem companies, including the parent company, respondent Bethlehem Steel Corporation.

13. Another important consumer of scrap in the East with which Luria entered into an exclusive scrap arrangement is respondent Phoenix. This company, after Bethlehem, is the largest single user of scrap in the important Eastern Pennsylvania area. During the period from 1950 to 1954 Phoenix's scrap purchases generally accounted for around 20% or more of the scrap purchased from brokers and dealers by the principal scrap consumers in the area. Its predecessor, respondent Central, entered into an arrangement to buy its scrap requirements exclusively from Luria and Southwest in 1948, and the arrangement was later extended to the plant subsequently acquired by respondent Phoenix in 1949. After Luria acquired respondent Southwest in 1950, it became the sole supplier to the plants of Phoenix.

14. Luria entered the Rocky Mountain area for the first time in 1946, when it became the exclusive broker and exclusive supplier for respondent CF&I's plant at Pueblo, Colorado. This arrangement was later extended to other plants acquired by CF&I in the East. Luria's position in the Rocky Mountain area was further augmented when it became the substantially exclusive broker for the Geneva, Utah plant of respondent U.S. Steel in 1948. The plants of the two companies in the Rocky Mountain area, viz, at Pueblo and Geneva, are the principal consumers of scrap in the area.

15. Luria became the largest factor in the St. Louis market in 1950, when it became the exclusive broker for respondent Granite City. Prior to that time it had supplied scrap to several scrap consumers in the area, but was not a dominant factor in the market. In 1949 it supplied 16.5% of the broker-dealer scrap purchased by the five largest mills in the area. In 1951, the first year after it became Granite City's exclusive broker and substantially exclusive supplier, it sold 51.7% of the broker-dealer scrap purchased by the five major mills in the area. Its sales thereafter represented between 43% and 51% of the St. Louis broker-dealer market, as reflected in the purchases of the principal scrap consumers in the area.

16. Luria's most important customer in the Pittsburgh-Youngstown area is respondent Weirton, which is the third largest consumer

in the area. In 1954 its scrap purchases represented 14% of the purchases by the principal consumers in the area from brokers and dealers. Luria is Weirton's substantially exclusive broker and supplies Weirton with from approximately 65% to 84% of its total purchased scrap requirements. Luria is the largest scrap broker in the Pittsburgh-Youngstown area, and its subsidiary respondent Southwest is the second largest in the area.

17. As an incident to the exclusive brokerage charge, the complaint also charges that the respondent mills (a) notified other suppliers that Luria was their exclusive broker, (b) informed Luria of offers received from other suppliers and required such suppliers to offer their scrap through Luria, and (c) denied permission to other suppliers to sell to them except through Luria or on terms dictated by Luria. The evidence discloses that a number, but not all, of the respondents engaged in each of these practices. There is evidence that some of the respondents engaged in some of the practices charged, but not in all of them. To the extent there is evidence that any of the respondents engaged in such practices specific findings have already been heretofore made. However, it may be observed here that the examiner regards such practices primarily as evidentiary indicia of the existence of the exclusive brokerage arrangement and not as unfair practices in themselves. Any order which issues with respect to the exclusive arrangements will take care of these practices without including specific prohibitions as to these or other indicia of the exclusive arrangements.

18. The complaint also charges the respondent mills and Luria jointly, and Luria separately, with engaging in a series of miscellaneous practices generally in pursuance of the exclusive arrangements or as an outgrowth thereof. These charges, which have already been heretofore discussed in detail, involve such practices as coercing railroads to sell scrap to Luria, selling new steel on condition that scrap resulting therefrom will be sold to Luria, tie-in purchases of scrap, purchasing scrap at preclusive prices, operation of punitive scrap yards, holding out Luria-controlled companies as independent, elimination of competitors or pirating their key personnel, and making loans and advances to scrap dealers on condition that they will sell their scrap to Luria. Such charges have already been heretofore discussed in detail. In general, the evidence fails to support the charges. It may be observed, however, that while the charges have not been sustained, the evidence concerning certain of the practices discloses the economic power which the exclusive arrangements with the mills have conferred upon Luria, and the anticompetitive potentialities of the arrangements.

19. The evidence adduced in connection with the preclusive-buying

charge is indicative of the anticompetitive potentialities inherent in the exclusive arrangements. The theory of this charge is that in order to obtain control of certain market areas Luria sometimes paid prices for scrap so high that it could only be resold at a loss. There is evidence that Luria sometimes paid prices above those of competitors but the record fails to establish that such scrap was resold at a loss or that the payment of the higher prices in these instances was part of an effort to secure control of the particular markets involved. Nevertheless, the fact that Luria was able to outbid competitors is indicative of the economic power conferred on it by the exclusive arrangements. Since it was assured of a home for substantial quantities of scrap as a result of the exclusive arrangements with the mills, it was in a position, where necessary, to bid more strongly for scrap than competitors who were not similarly favored. While the evidence fails to establish that Luria actually used its economic power to overwhelm its competitors in any particular market, it cannot be gainsaid that the power to wage price warfare exists, and that it has an advantage by reason of the vast market available to it as a result of its exclusive brokerage arrangements.

20. Another example of the economic advantage conferred on Luria by its exclusive arrangements with the mills involves the sale of new steel. The complaint charges that the mills and Luria have used new steel to obtain commitments from industrial fabricators and others to sell their scrap to Luria. The evidence fails to establish that new steel was sold on a "steel for scrap" basis, as contended by counsel supporting the complaint. However, the fact that Luria was able to obtain new steel from certain of the respondent mills during a time of steel shortage bespeaks the close working relationship between these mills and Luria, and demonstrates the type of service which brokers and dealers not privy to such exclusive arrangements were unable to offer suppliers of scrap. While the evidence fails to establish that Luria resold the new steel subject to the conditions or understandings charged in the complaint, there can be no doubt that the "favours" which it thus admittedly did for those in need of new steel did not go unnoticed when the latter had scrap for sale.

21. Still another example of how the exclusive arrangements encouraged other practices of the type complained about, and tended to give Luria an economic advantage, involves the making of loans and advances. The complaint charges that Luria made loans to dealers, expressly or impliedly on condition that they sell all of their scrap to it, and that it did so for the purpose or with the effect of lessening or suppressing competition. There is no dispute as to the fact that Luria has made a number of loans and advances to dealers, some of the

loans being in very substantial amounts, and that in a number of instances such loans have been made expressly or impliedly on condition that the dealers would sell their scrap to it. However, as already noted, the record is lacking in evidence as to the substantiality of the scrap tied up by such understandings in any particular market, or in other evidence from which the likelihood of competitive injury can be inferred. Nevertheless, it seems clear that there is a definite relationship between the exclusive arrangements and the making of such loans and advances. To the extent that Luria is assured of a reasonably steady home with the respondent mills for substantial quantities of scrap, it is encouraged to offer inducements to dealers, in the form of loans and advances, in an effort to insure their selling their scrap to it. Brokers lacking such assurance must, perforce, be more conservative in their loan policy. While the evidence fails to establish any undue liberality on Luria's part, the potentiality exists of destroying competitors by the excessive use of loans and advances, so long as Luria is assured exclusive access to such a vast market.

22. Finally, there is the matter of tie-in purchases. It is charged that Luria purchased certain grades of scrap on condition that dealers sell it other grades. Here again the evidence fails to sustain the charge. What the evidence does disclose in this connection is that in certain markets Luria was able to buy all or most grades from dealers because it was the exclusive broker for a key mill or mills, and not because it insisted on any tie-in sales. Thus in St. Louis, respondent Granite City is the largest user of No. 2 bundles. Dealers who produce this grade generally sell it to Luria and they inevitably tend to sell it their other grades as well. Similarly in the Rocky Mountain area, CF&I is the largest user of dealer grades of scrap. Dealers in the Denver-Pueblo area generally sell such scrap to Luria, including also whatever heavy melting scrap they accumulate. Luria's position is further fortified by its arrangement with U.S. Steel's Geneva plant and with several of the foundries in the area. Another such situation exists in the case of dealers in the Baltimore area, where Bethlehem's Sparrows Point mill is the major consumer of bundles and other dealer grades. A number of dealers in the area tend to sell all or the major part of their scrap to Luria, mainly for shipment to Sparrows Point. Thus there is a situation akin to a tie-in, not because of any actual requirement by Luria, but because the economics of the situation arising out of Luria's exclusive relationship with the major mill or mills in the area make it inevitable that the dealers in such areas sell most of their grades to it.

23. Luria's exclusive arrangement with the OCCF in the export market is an example of an arrangement which was anticompetitive in

its own right and, at the same time was an outgrowth of the exclusive arrangements involving the domestic market and had its repercussions in the domestic market. In 1954 and 1955 Luria's exports (including some shipments by its two joint venturers) accounted for 50.5% and 47.1%, respectively, of total scrap exports. This strong position was made possible in large measure by its exclusive arrangement with the OCCF. The OCCF market is the largest scrap export market, accounting for 40.5% of total scrap exports in 1954 and 45.3% in 1955. Substantially exclusive access to this important market also gave Luria an entree into other export markets, albeit not on an exclusive basis.

24. Some idea of the order of magnitude of the scrap involved in the OCCF exclusive, in relationship to the domestic market, may be gained by comparing shipments to the OCCF with the purchases of the principal domestic mills with which it was competing for scrap. Approximately two-thirds of Luria's scrap exports to the OCCF were shipped from ports lying within the North Atlantic area of the United States. Presumably all but a small portion of such scrap originated within the North Atlantic area. In 1954 Luria's shipments to the OCCF, which did not begin until May of that year, amounted to 352,114 tons. This is the equivalent of 16.4% of the scrap purchased from brokers and dealers by the principal domestic consumers located in the North Atlantic. Purchases of such order of magnitude obviously are of substantial significance in the domestic market. No such comparison can be made for 1955, the first full year of the OCCF arrangement, since figures of purchases by the domestic mills in the area are not in evidence. However, since Luria's shipments to the OCCF from North Atlantic ports tripled in that year, while total purchases of all domestic mills increased by only about 55%, it may be inferred that Luria's shipments to the OCCF from North Atlantic ports in 1955 represented an even larger proportion of the scrap purchases of the domestic mills in the North Atlantic area in that year than in 1954.

25. Luria's access to European markets of the substantial size above indicated gave it considerable economic power in buying in the United States, particularly when coupled with similar arrangements with a number of important domestic mills. The two sets of arrangements were mutually reciprocal. As the major or dominant supplier to the mills in the Eastern United States, it was to Luria's interest to prevent any undue disturbance of the domestic supplies or prices of scrap. This fitted in with the needs of the OCCF, which was interested in buying in such a manner as not to upset the domestic mills, lest this result in a reimposition of export controls or an increase in the price of scrap

which it had to pay. An exclusive arrangement involving the buyer for the principal European consumers of domestic scrap and the broker acting as exclusive broker for many of the principal American mills, particularly those in the Eastern United States, could not help but further restrict competition in the domestic market.

26. The evidence establishes that aided in large measure by the exclusive arrangements which it has with the respondent mills Luria has become the most important single factor in the scrap industry in the United States, and the only company which is truly national in scope. In some sections of the country it enjoys monopoly or near monopoly power, and in others it is the dominant or major factor in the area. In certain sections, through its exclusive access to the principal mill or mills, it holds the power of life or death over the dealers operating within the area. It can reward or punish dealers, and deprive competing brokers of access to sources of scrap. The complaint charges that it abused its economic power in various specific ways. While there is some suggestion of abuse in connection with some of its activities, the evidence as a whole is not sufficiently substantial to sustain these charges. It may be noted, in this connection, that most of the period covered by the evidence was one of expanding demand and general well-being in the industry, during which it was to Luria's self-interest to deal fairly with its dealer suppliers. Whether it would conduct itself with the same degree of restraint in a period of a falling market is something as to which one can only speculate. In any event, the fact that it holds such tremendous power is something which cannot be ignored. It is also clear that the exclusive arrangement with the OCCF helped enhance Luria's already dominant position, and was calculated to restrain competition by virtue of its own operation.

27. In addition to the exclusive arrangements to which Luria is a party and the various miscellaneous unfair practices adverted to above, the complaint also charges Luria separately with having acquired control of various of its competitors. In only two instances, those involving Luria's acquisition of the stock of Pueblo Compressed Steel Corporation and respondent Southwest, does the evidence sustain the charge in the complaint. Pueblo Compressed Steel was one of the largest dealers in the Rocky Mountain area at the time its stock was acquired by Luria in 1946, and its acquisition was of material aid to Luria in carrying out its exclusive arrangement with CF&I's Pueblo plant and in becoming the dominant factor in the market. Southwest was the second largest factor in the Pittsburgh-Youngstown market in 1950 when its stock was acquired by Luria. Its acquisition has materially aided Luria, which was already the largest single factor in that market, in far outdistancing all its other competitors in the

market. From a position of supplying 26.2% of the broker-dealer scrap purchased by the principal mills in the area in 1949 Luria, as a result of its acquisition of Southwest, controlled 36% of the same market in 1954. The acquisition also strengthened Luria's position in the industry generally since the Pittsburgh-Youngstown market is one of the most important in the country, accounting for approximately one-fourth of the broker-dealer scrap purchased by the principal mills in the United States. Luria's acquisition of the stock of Pueblo Compressed Steel and Southwest Steel was calculated to result in a substantial lessening of competition between it and each of these two companies, and to restrain competition in the markets where it and they both did business, and tended to create a monopoly in Luria.

B. *As to the Questions of Law*

Exclusive Dealing

1. The basic legal question presented with respect to Count I of the complaint involves the exclusive arrangements between Luria and each of the respondent mills. These arrangements are challenged as unfair methods of competition within the meaning of Section 5 of the Federal Trade Commission Act. As Luria and most of the mill respondents recognize, Section 5 of the Federal Trade Commission Act "minimally * * * registers violations of the Clayton and Sherman Acts". *Times-Picayune Publishing Co. v. U.S.*, 345 U.S. 594, 609 (1953). However, the respondents contend that the arrangements between Luria and the various mills do not constitute a violation of either of these Acts. Before discussing these contentions further, it is well to underscore the word "minimally" in the *Times-Picayune* decision. Section 5 has been held to encompass not merely violations of the Clayton and Sherman Acts, but incipient violations of these Acts and of the common law. In addition, it covers acts and practices beyond these, which have not yet been specifically defined. In short, unfair methods of competition is a "flexible" concept, "to be defined with particularity by the myriad of cases from the field of business". *FTC v. Motion Picture Advertising Service Co.*, 344 U.S. 392, 394 [5 S.&D. 498, 500] (1953); see also *FTC v. Keppel & Bro.*, 291 U.S. 304, 310-312 [2 S.&D. 259, 262, 263] (1934).

2. Section 3 of the Clayton Act makes illegal a sale or contract for the sale of commodities "on the condition, agreement or understanding" that the purchaser will not use the goods of a competitor of the seller, where the effect thereof "may be to substantially lessen competition or tend to create a monopoly in any line of commerce". Respondents contend that the individual arrangements between each of the mills and Luria do not violate Section 3 because they do not constitute agree-

ments to deal exclusively with Luria and, further, because in a number of instances the evidence fails to disclose any probability of competitive injury.

3. The position of respondents that the arrangements with Luria do not constitute exclusive dealing agreements within the meaning of Section 3 of the Clayton Act is based on their contention that that section requires, as a *sine qua non* of violation, a showing that the arrangements involved constitute binding legal agreements prohibiting the mills from purchasing their scrap from competitors of Luria. It is argued that, absent any legal obligation by the mills to purchase their scrap exclusively from Luria, they are free to deal with whom-ever they choose even though, at any given time, some of them may happen to be purchasing all of their scrap from Luria or using Luria as their exclusive broker. Cited, in this connection is *U.S. v. Colgate*, 250 U.S. 300, 307 (1919) and other authorities, purporting to uphold the "long recognized" right of a person in business "freely to exercise his own independent discretion as to the parties with whom he will deal."

4. The position of counsel supporting the complaint is not entirely clear. They state on the one hand that "the exclusive dealings between respondent brokers and each of the respondent mills is based upon agreements," their argument implying that they are using the term "agreement" in the same sense as respondents, viz, a legally binding contract. However, their later contention that "[c]onspiracies seldom take the form of legally enforceable contracts" suggests that they concede the agreements, arrangements or understandings here involved do not fall into the category of binding legal agreements.

5. In any event, whatever may be counsel's position, there can be no doubt that, except for the contract involving the Los Angeles plant of Bethlehem Pacific and the cancelled CF&I contract, the exclusive agreements, arrangements or understandings between Luria and the mills cannot be classified as legally binding contracts. They do not, obviously, have a number of the basic features of a normal long-term supply contract, such as a stated term, a specification of the types of scrap involved, specific prices or a price formula provision, terms of payment, etc. The only binding contracts are the individual orders, after acceptance by Luria, and the terms of these may vary from order to order. However, as already found, the arrangements between Luria and the mills involve more than the casual, order-to-order buying of scrap. They are based on stable, long-range relationships in which the mills look to Luria as their exclusive broker (having in some instances announced this fact to the trade), and the latter understands that it has the responsibility for supplying the mills as their exclusive broker.

While the relationships are terminable at will, they have continued for many years, and there is no reason to anticipate their early voluntary termination. In the opinion of the examiner these relationships constitute agreements, understandings or arrangements which fall within the cognizance of the antitrust laws, for the reasons hereafter indicated.

6. It is asserted by respondent Luria (whose position is echoed by a number of respondent mills) that "[i]n every case in which relations between buyers and sellers have been held to violate Section 3 of the Clayton Act and Sections 1 and 2 of the Sherman Act, there have been agreements between the sellers and the buyers which *bound* the buyers not to buy from competitors of the sellers" (p. 533 Luria Proposed Findings). While it is true that in a number of the cases cited there were binding legal agreements involved, this feature was not present in all of these cases nor in others which have been decided. Thus, in *Harley-Davidson*, 50 F.T.C. 1047, and *Outboard Marine Mfg. Co.*, 52 F.T.C. 1553, cited by respondents, there was no legal agreement binding the dealers to purchase exclusively from the respondent, although the latter did in practice seek to pressure dealers into following such a policy. In the *Outboard Marine* case the respondent contended that its "single dealing" policy was "a unilateral policy of customer selection, without agreement, understanding or condition of sale" and was permissible under the *Colgate* case. To this argument the examiner, whose decision was affirmed by the Commission, stated (at 1564) that: "The words [in Section 3] 'condition, agreement or understanding' were designedly employed by Congress to prevent evasions on technical arguments as to whether *informal understandings rose to the dignity of formalized written commitments*" (emphasis supplied). More recently, the Commission in *The Timken Roller Bearing Co.*, Docket 6504, [58 F.T.C. 98, 103] January 24, 1961, stated that "express written agreements are not needed to prove exclusive dealing".

7. A number of the respondents seek support for their position, regarding the necessity for proving the existence of a binding legal agreement, in the observation made by Justice Frankfurter in the *Standard Stations* case (337 U.S. at 313-14), to the effect that if it was in fact as economically desirable as the defendant contended for gasoline service stations to confine their purchases to a single supplier, they would continue to do so "though not bound by contract". The examiner does not interpret this dicta in the *Standard Stations* case as tantamount to a holding that, absent a binding legal obligation to deal exclusively, there can be no violation of Section 3 of the Clayton Act.

Holdings in other antitrust cases make it abundantly clear that this is not the law.

8. Section 3 of the Clayton Act and Sections 1 and 2 of the Sherman Act are in pari materia, insofar as they involve the concept of agreement, contract, understanding, combination or conspiracy. Section 3 of the Clayton Act involves sales or contracts to sell "on the condition, agreement, or understanding" that the purchaser will not deal in competing goods. Section 1 of the Sherman Act prohibits "[e]very contract, combination * * *, or conspiracy in restraint of trade", while Section 2 thereof prohibits, among other things, combinations or conspiracies to monopolize trade. Section 3 of the Clayton Act involves the specific prohibition of a type of practice which has also been held to be actionable under the more generally phrased prohibitions of the Sherman Act on contracts, combinations or conspiracies in restraint of trade or to monopolize trade. Thus in *Times-Picayune Publishing Co. v. U.S.*, 345 U.S. 594; and *Northern Pac. R. Co. v. U.S.*, 356 U.S. 1, tying arrangements were challenged as contracts, combinations or conspiracies in restraint of trade in violation of Section 1 of the Sherman Act, while in *International Salt Co. v. U.S.*, 332 U.S. 392, and in the *Standard Stations* case (*Standard Oil Co. of California v. U.S.*, 337 U.S. 293) tying and exclusive dealing arrangements were challenged as violations of both Section 3 of the Clayton Act and Section 1 of the Sherman Act. While the Sherman Act has been held to be "the more stringent law", insofar as the degree of proof of competitive impact is concerned (*Times-Picayune Pub. Co. v. U.S.* at 610), there is no significant difference between it and Section 3 of the Clayton Act with respect to the nature of the agreement or combination which must be established.

9. As noted in paragraph 6 above, respondents appear to recognize that the terms "condition, agreement or understanding" as used in the Clayton Act, and "contract, combination * * *, or conspiracy" as used in the Sherman Act, are substantially synonymous. However, their position is that in both instances the terms connote binding legal agreements. This position is contrary to the weight of authority. As recently stated by one with long experience in the field of antitrust law:¹¹⁵

An agreement, in antitrust parlance is not the same as an agreement in the law of private contracts. A conspiracy or combination—an agreement, if you will—is present where there is joint action. [Emphasis supplied.]

10. The above-quoted comment was occasioned by an analysis of the Supreme Court's recent decision in *U.S. v. Parke, Davis and Co.*,

¹¹⁵ Handler, *Annual Review of Antitrust Developments*, THE RECORD of the Association of the Bar of the city of New York, Vol. 15, No. 7 Oct. 1960, p. 370.

362 U.S. 29. The holding in the *Parke, Davis* case is not only contrary to respondents' position concerning the necessity for proving the existence of a binding legal agreement in restraint of trade, but also sets at rest its complementary argument that absent such an agreement a businessman has the untrammelled right to trade or not to trade with whom he chooses. In that case the defendant was charged with combining with retail and wholesale druggists to maintain the prices of its products. The District Court held that a violation of the Sherman Act had not been established because "the actions of [Parke, Davis] were properly unilateral and sanctioned by law under the doctrine laid down in *U.S. v. Colgate & Co.*, 250 U.S. 300", 164 F. Supp., at 829. The District Court, in holding that Parke, Davis' actions were "unilateral", had apparently misinterpreted the Supreme Court's ruling in the *Colgate* case that there could be no Sherman Act violation without a charge of "unlawful agreement", as meaning that there had to be an actual, express agreement, written or oral. The Supreme Court in *Parke, Davis* held, in substance, that agreements or combinations which violate the Sherman Act are not limited to "contractual arrangements, express or implied" (at 41).

11. The language just quoted is based upon the Court's earlier decision in *FTC v. Beech-Nut Packing Co.*, 257 U.S. 441, [1 S. & D. 170] which the Court cited in *Parke, Davis* as indicating that its decision in *Colgate* had been misconstrued. The *Beech-Nut* case likewise involved a charge of illegal resale price maintenance, except that the practice was challenged as an unfair method of competition under the Federal Trade Commission Act, rather than as a combination in restraint of trade under Section 1 of the Sherman Act. The parties had stipulated that there was no contract between the company and its distributors whereby prices were maintained. The dissenting opinion by Mr. Justice McReynolds, relying on the *Colgate* case, held that there could be no finding of an illegal agreement "when the existence of the essential contracts is definitely excluded" by stipulation. The majority opinion in *Beech-Nut*, as interpreted in the *Parke, Davis* case (at 41),

* * * did not read *Colgate* as requiring such contracts; rather, the Court dispelled the confusion over whether a combination effected by contractual arrangements, express or implied, was necessary to a finding of Sherman Act violation * * *.

Also cited in *Parke, Davis*, was the Court's decision in *U.S. v. Bausch & Lomb Optical Co.*, 321 U.S. 707, which involved a charge of resale price maintenance in violation of the Sherman Act. The Court in *Bausch & Lomb*, citing its earlier holding in *Beech-Nut* that there

could be a combination in restraint of trade "without agreements", held that the company's combination with distributors and wholesalers was illegal, stating (at 723) :

Whether this conspiracy and combination was achieved *by agreement or by acquiescence* of the wholesalers coupled with assistance in effectuating its purpose is immaterial. * * * In other words, *an unlawful combination is not just such as arises from a price maintenance agreement, express or implied* * * *. [Emphasis supplied.]

12. Based on its analysis of its earlier holdings in *Beech-Nut* and *Bausch & Lomb* the Court, in *Parke, Davis*, concluded (at 44) :

The *Bausch & Lomb* and *Beech-Nut* decisions cannot be read as merely limited to particular fact complexes justifying the inference of an agreement in violation of the Sherman Act. Both cases teach that judicial inquiry is not to stop with a search of the record for evidence of purely contractual arrangements. * * * [W]hether an unlawful combination of conspiracy is proved is to be judged by what the parties actually did rather than by the words they used. [Emphasis supplied.]

13. It is true that *Parke, Davis* and the other cases discussed therein involved resale price maintenance arrangements. However, there is no reason why the logic of these decisions should not apply to exclusive dealing or tying arrangements, which are also cognizable under Section 1 of the Sherman as well as under Section 3 of the Clayton Act. Any doubt on this score was recently set at rest in *Osborn v. Sinclair Refining Co.*, CA 4, July 11, 1960, involving a charge that the defendant had required its dealers to purchase all of their requirements of tied-in tires, batteries and accessories from a source designated by it, in violation of Section 1 of the Sherman Act. The court, by Chief Judge Sobeloff, addressing itself to the question of whether there is a distinction between price fixing and tie-ins, insofar as the necessity for establishing that they are based on express agreement, observed that "it is no distinction to say that *Parke, Davis* was concerned with price fixing whereas here we have a tie-in."

Reversing the district court's dismissal of the complaint, based on the fact that the dealers were not required by express contractual provision to purchase their accessory requirements from defendant's designee, the circuit court, citing the Supreme Court's holding in *Parke, Davis* that "an unlawful combination is not just such as arises from a price maintenance agreement, express or implied", stated:

Although, standing alone, the above general findings do not, perhaps, disclose a tie-in accomplished by express agreement with dealers, *such an express contract is not necessary*. [Emphasis supplied.]

14. It seems clear, therefore, that in order to establish that Luria's sale of scrap to the mills was made "on the condition, agreement, or understanding" that the mills would purchase scrap from it exclu-

sively, within the meaning of the Clayton Act, or that the arrangements between Luria and the mills each constitute a "contract, combination * * * or conspiracy" within the meaning of the Sherman Act, it is not necessary to establish the existence of any binding contractual arrangement, express or implied, between them. It is also clear that the "essential agreement, combination or conspiracy may be implied from a course of dealings or other circumstances", as stated in *Frey & Son, Inc. v. Cudahy*, 256 U.S. 208, 210 (reversing the court of appeals' dismissal, which was based on the ground that "there was no formal written or oral agreement") or, as the Court expressed it in *Parke, Davis*, the agreement or combination may be proved "by what the parties actually did rather than by the words they used". See also *Osborn v. Sinclair*, *supra*, holding that a tying arrangement "may be inferred from a course of conduct".

Viewing the course of conduct and course of dealings between Luria and each of the mills, which have been heretofore discussed in detail, there is no question as to the existence of an agreement, understanding, or combination between each of the respondent mills and Luria pursuant to which each of the mills uses Luria as its substantially exclusive broker, and whereby a number of the mills buy from Luria substantially all of their scrap and the others buy from it substantially all of the scrap which they purchase on a brokerage basis.

15. In the foregoing discussion the question of the legality of the activities of Luria and the mills has been considered in the frame of reference of an agreement or combination, and as to the necessity for such agreement or combination to be of an express, binding nature. However, it may be noted that the conduct of the parties may also be subject to attack on grounds separate and apart from any agreement or other purposeful joint action. In the *Colgate* case itself the Court's pronouncement of the right of a trader "freely to exercise his own independent discretion as to the parties with whom he will deal" was subject to the qualification that this right existed: "In the absence of any purpose to create or maintain a monopoly" (at 307). This limitation on the right of a trader to choose the persons with whom he will deal was applied by the Court in *Lorain Journal Co. v. U.S.*, 342 U.S. 143, in which a newspaper publisher claimed the right to select its customers and to refuse to accept advertisements from whomever it pleased. The Court held that this "general right" was not "an unqualified one", and that (at 155):

The right claimed by the publisher is neither absolute nor exempt from regulation. Its exercise as a purposeful means of monopolizing interstate commerce is prohibited by the Sherman Act.

16. It is thus clear that the practices of Luria and the mills, insofar as they involve exclusive dealing, may also be subject to attack as attempts to monopolize within the purview of Section 2 of the Sherman Act, separate and apart from any agreement between them to deal exclusively. It may be noted, in this connection, that while the qualification on the right of a trader to deal freely appears to involve a subjective element, viz, an "intent" or "purpose" to create a monopoly, it has been generally accepted that: "The requisite intent * * * is not a 'specific' intent to monopolize, but rather a conclusion based on how the monopoly power was acquired, maintained or used". *Report of Attorney General's Committee to Study Antitrust Laws*, March 31, 1955, at 55. The courts have often inferred that a monopoly position has been "deliberately" maintained as a matter of "objective" rather than "subjective" intent, "relying on business practice to support the conclusion that men intend the natural consequences of their acts". *Id* at 56.

Line of Commerce

17. Before considering the legal questions raised concerning the nature of the competitive impact or restraint of trade which must be shown, it is well to discuss the preliminary question as to the line of commerce involved. As has been heretofore noted, respondents (particularly respondent Luria) contend that the line of commerce against which to weigh or consider the competitive impact or restraint of the arrangements between Luria and the mills should include pig iron as well as scrap, and that minimally it should include all scrap purchased by the mills, rather than merely that purchased from broker-dealer sources.

18. Respondents' position that pig iron as well as scrap should be included in the line of commerce is, of course, based on the "reasonable interchangeability" test established by the *Cellophane* case (*U.S. v. E. I. du Pont de Nemours & Co.*, 351 U.S. 377). However, it is now generally accepted that this test is limited to cases arising under the monopolization clause of Section 2 of the Sherman Act and does not apply to cases involving a charge of incipient, rather than actual, restraint or monopoly, such as those arising under Sections 3 and 7 of the Clayton Act, where the test applied is whether the product has "sufficient peculiar characteristics and uses to constitute [it] sufficiently distinct from all other [products] to make [it] a 'line of commerce' * * *". *U.S. v. E. I. du Pont de Nemours & Co.*, 353 U.S. 586, 593; *U.S. v. Brown Shoe Co.*, 179 F. Supp. 721; *U.S. v. Bethlehem Steel Corp.*, 168 F. Supp. 576; *Brillo Mfg. Co.*, 54 F.T.C. 1905; *Mytinger & Casselberry, Inc.*, Doc. 6962 [57 F.T.C. 717], September 28, 1960. It is open to question whether the rule in the *Cellophane* case applies even

in Section 2 Sherman Act cases, where the charge is an attempt to monopolize rather than actual monopolization. See *Cellophane* decision, footnote 23, at p. 395.

19. As has been heretofore found, scrap has sufficient peculiar characteristics and uses to constitute it a distinct product from pig iron for purposes of determining the appropriate line of commerce in this proceeding. See *Tampa Electric Co. v. Nashville Coal Co.*, 276 F. 2d 766 (CA6, 1960), reversed on other grounds, U.S. Sup. Ct., February 27, 1961, holding that coal and fuel oil were separate lines of commerce for purposes of Section 3 of the Clayton Act (29 LW 4237). In any event, even applying the reasonable interchangeability test of the *Cellophane* case, the evidence establishes that there are such significant limitations on the interchangeability of the two products, to constitute each a separate line of commerce.

20. The next question presented is whether scrap sold by all producers and vendors thereof should be considered the relevant line of commerce, as contended by respondent, or whether it should be limited to sales by brokers and dealers only, as contended by counsel supporting the complaint. It is suggested by respondents that it is improper to further subdivide a product or commodity market on the basis of the channels of distribution. This is precisely the position taken by the hearing examiner in *Mytinger & Casselberry, Inc., supra*, in which he overruled the contention that vitamin preparations sold by the house-to-house method constituted the line of commerce, and held that the line of commerce was determined by the product and not the method of distribution or sale. However, the Commission reversed, stating that "each of the foregoing commercial areas can be properly deemed a separate market or line of commerce within the meaning of Section 3". In *International Boxing Club of N.Y., Inc. v. U.S.*, 358 U.S. 242, involving a charge of violation of both Sections 1 and 2 of the Sherman Act, it was contended that the relevant market should be considered to be the entire field of professional boxing, rather than merely a segment thereof, viz, championship boxing contests. While purporting to apply the more rigorous reasonable interchangeability test, the Court nevertheless held championship boxing contests to be an appropriate line of commerce, based on the finding of the lower court that there existed "a separate, identifiable market" for championship boxing contests.

21. As has already been heretofore found, approximately 90% of all scrap sold to consumers moves through brokers and dealers. While direct sources, such as industrial fabricators and railroads, sell some scrap directly to consumers, scrap is merely a by-product of their business. The supply and price of scrap are influenced largely by broker-

dealer transactions. Under all the circumstances, it is the conclusion and finding of the examiner that the broker-dealer scrap market constitutes the relevant market or line of commerce for purposes of this proceeding. However, as has been already noted, in view of the fact that the vast preponderance of scrap moves to the consumer through brokers and dealers, it makes little real difference in most cases whether Luria's market share is measured solely by the broker-dealer market or by total scrap sales.

Competitive Impact

22. Luria's position, in essence, is that while it is the largest broker in the industry, it does not dominate the industry or have a monopoly therein, and that there is accordingly no basis for any inference that its arrangements with the various respondent mills will unduly restrain competition. It cites, in this connection, the decision of the hearing examiner in the *Scott Paper Company* case, Docket 6559 [57 F.T.C. 1415], that there is "a vast difference between leadership and dominance", and that dominance cannot exist without control over "raw materials, production, price, channels of distribution, or entry of new competitors". Also cited are the classic holdings that monopoly power means the power to exclude competitors or control prices (*American Tobacco Co. v. U.S.*, 328 U.S. 781, 811), and that it "involves something more than extraordinary commercial success", but involves "something like the use of means which made it impossible for other persons to engage in fair competition" (*U.S. v. du Pont*, 351 U.S. 377).

23. Factually, Luria's argument is not supported by the record since, as has already been found, it does possess monopoly power and is dominant in a number of markets. Likewise, its power has involved more than extraordinary commercial success, having been gained to a considerable extent through the anticompetitive arrangements with the mills. Aside from this, however, Luria's legal argument is largely irrelevant since this proceeding does not involve a charge of monopolization under Section 2 of the Sherman Act where proof of monopoly power is necessary. The holding of the examiner in the *Scott Paper* case as to the necessity of showing power to fix prices and exclude competitors and the other indicia of market control has since been reversed by the Commission with the comment that "[s]uch power and control would amount to monopoly condemned by the Sherman Act", and need not be shown in a Section 7 Clayton Act case.

It may be noted that even in cases brought under Section 2 of the Sherman Act, where the charge involves an attempt, combination or conspiracy to monopolize, rather than actual monopolization, no "showing [is] required that the desired end of monopoly power was

attained". *Report of Attorney General to Study Antitrust Laws*, at 61. See also *Lorain Journal v. U.S.*, 342 U.S. 143, 153, holding that "it was not necessary to show that success rewarded appellants' attempt to monopolize", and citing with approval the holding in *Swift & Co., v. U.S.*, 196 U.S. 375, 396 that:

[W]hen that intent [to monopolize] and the consequent dangerous probability exist, this statute [the Sherman Act], like many others and like the common law in some cases, *directs itself against that dangerous probability* as well as against the completed result. [Emphasis supplied.]

24. To the extent that the complaint herein is based on the exclusive arrangements between Luria and each of the mills, it is unnecessary to establish that they did in fact create a monopoly in Luria. It is well settled that in exclusive dealing and tying cases proof of a reasonable probability of substantial competitive injury in the relevant market or line of commerce involved is sufficient to establish the illegality of such arrangements, without proof of actual competitive injury or of resultant monopoly. In *Standard Stations* and subsequent decisions of the "reasonable probability" test was held to be satisfied by proof that an exclusive arrangement will result in the foreclosure of competition in a substantial share of the relevant market, even though the supplier does not enjoy a dominant position in the market. See, e.g., *Dictograph Products Inc. v. FTC*, 217 F. 2d 821, *cert. denied*, 349 U.S. 940 [5 S.&D. 707]; and *Tampa Electric Co. v. Nashville Coal Co.*, U.S. Sup. Ct., February 27, 1961. While the Supreme Court in *Tampa Electric* reversed the lower court, it did so because the *Standard Stations* test had been applied to too restricted a market area, and not because of any disagreement with the test itself. In fact it reemphasized the validity of the test, stating that "an exclusive dealing arrangement * * * does not violate the section [Section 3] unless the court believes it probable that performance of the contract will foreclose competition in a substantial share of the line of commerce affected", and that "the competition foreclosed by the contract must be found to constitute a substantial share of the relevant market." [Emphasis supplied.]

25. Respondent Bucyrus Erie argues that since the complaint here is brought under Section 5 of the Federal Trade Commission Act, rather than Section 3 of the Clayton Act, "the slide rule approach of *Standard Stations* and *Dictograph Products* is not applicable". Respondent's suggestion that additional proof is required in proceedings not brought under Section 3 of the Clayton Act, apparently is based on the holding of the Court in the *Times-Picayune* case that the standard of proof of competitive impact of a tying arrangement is more rigorous under Section 1 of the Sherman Act (which the Court characterized as "the more stringent law") than under Section 3 of the

Clayton Act. It may be questioned whether the difference in proof under the two statutes is as great as suggested in view of the Court's later holding in the *Northern Pacific* case (356 U.S. at 6), that a tying arrangement may be illegal under Section 1 of the Sherman Act where the seller had "sufficient economic power to impose an appreciable restraint on free competition in the tied product", without a showing of dominance or monopoly power.

26. In any event, whatever may be the difference between the degree of proof of competitive impact required in a Section 1 Sherman Act case and that in a Section 3 Clayton Act case, the examiner is satisfied that no such difference exists between the latter and a Section 5 Federal Trade Commission Act proceeding involving an exclusive dealing charge. As has already been noted, the Federal Trade Commission Act has been held to reach not only violations of the Sherman and Clayton Acts, but also incipient violations thereof. Accordingly, it can hardly be equated with the Sherman Act, insofar as the degree of proof of competitive impact which is required. It has even been suggested that the Federal Trade Commission Act may require a lesser showing of competitive impact than under the Clayton Act. This view has been challenged by those who point out that since "the Clayton Act itself embodies an incipency test of violation * * * the incipency doctrine is compounded if Section 5 is used to stop in its incipency violations of incipient Clayton Act". Oppenheim, *Antitrust Highlights*, at 21 (Reprinted from Vol. 17, *ABA Antitrust Section Reports*, pp. 215-259).

27. Whatever may be the correctness of the view that the test of violation under the Federal Trade Commission Act is more lenient, the examiner is satisfied that it is certainly no stricter, than that in a proceeding brought under Section 3 of the Clayton Act. The shares of the various relevant markets from which competitors have been foreclosed here, are so staggering in most instances, that there can be no question the test of establishing a probable substantial lessening of competition as a result of the exclusive arrangements has been met. Furthermore, to the extent that proof beyond the mere fact that a substantial portion of the relevant market has been tied up by the exclusive arrangements is required, there is adequate evidence in the record from which a finding of the probable adverse competitive impact of these arrangements can be made.

Liability of the Mills

28. Several of the respondent mills, particularly Bethlehem, CF&I and U.S. Steel, argue that whatever liability may attach to Luria under its arrangements with the mills, the mills themselves cannot be held to be liable since Section 3 is directed against the seller or lessor in an

exclusive dealing arrangement, and not the buyer or lessee. U.S. Steel points out that in *FTC v. Motion Picture Advertising Service Co. Inc.*, involving a proceeding brought under Section 5 of the Federal Trade Commission Act based on exclusive contracts for the supplying of advertising films to theatres, the theatre owners were not joined as respondents and only the supplier of the films was held liable.

29. In opposition to the contention of the respondent mills, counsel supporting the complaint cite the holding in *Anchor Serum Co. v. FTC*, 217 F. 2d 867, 870 [5 S. & D. 718, 723] that "there is nothing in the language of the Act [Section 3] from which it can be inferred that two classes of contracts were contemplated, depending on whether the contract was initiated by the seller or the buyer." The court indicated that it was "immaterial whether the contract was for the benefit of the seller or the buyer" since "the determining factor is whether the contract had the proscribed effect." The *Anchor Serum* case does not directly dispose of the point raised by respondents since it does not decide whether the buyers may be held liable, but merely that the seller cannot escape liability on the ground that the buyers were the initiators of, and presumably stood to benefit from, the exclusive contracts. The case is significant, however, insofar as it indicates that the legality of an exclusive contract is determined by the nature of the restraint which it imposes on competition, and not on basis of whether it was initiated by the seller or the buyer.

30. This same principle was applied in *Tampa Electric Co. v. Nashville Coal Co.*, 276 F. 2d 766 (CA6, 1960), involving an exclusive contract for the sale of coal to a single buyer. The seller had contended that "the statutory history of Section 3 shows that the Act was not intended to apply to consumers * * *. In other words, [that] Congress was concerned only with attempts by sellers, who were economically powerful, to restrain competition in the distributive process" (at 770). To this the court responded: "The statutory language is not so restrictive." It pointed out that the statute "condemns certain transactions" which have the proscribed effect on competition, and concluded that: "A single contract of sale of sufficient magnitude, with performance extending over an extended period of time, can cause this result", even "where the seller did not occupy a dominant economic position in the industry."

Tampa Electric involved a declaratory judgment action by the buyer against the seller to have its contract with the seller declared valid and enforceable, after the seller had refused to perform under the contract for the alleged reason that it was illegal under Section 3 of the Clayton Act and Sections 1 and 2 of the Sherman Act. The court held that the contract "was in violation of Section 3 of the Clayton Act [and] was therefore illegal and unenforceable" (at 768). While this is not a

direct holding that the buyer can be enjoined from participating in the contract in a proceeding brought under Section 3, it indicates that illegality attaches on the basis of the restraint which the contract imposes, and that such restraint may originate from a buyer's participation as well as a seller's. As indicated above, the holding of the court in *Tampa Electric* was recently reversed by the Supreme Court on the ground that the lower court had not used the proper relevant market in determining the probable competitive impact of the contract. The Supreme Court did not, however, overrule the opinion of the lower court that Section 3 was not limited to sellers, and may apply to a single contract of sufficient magnitude. It agreed that "a single contract between single traders may fall within the initial proscription of the section," but pointed out that the contract had to "work a substantial—not remote—lessening of competition in the relevant competitive market." 29 LW 4237, 4241.

31. The examiner finds it unnecessary to decide whether, under the language of Section 3 of the Clayton Act, making it illegal for "any person * * * to lease or make a sale or contract for sale" of the nature and with the competitive impact therein described, the buyer or lessee in the transaction can be joined as a party. The instant proceeding is brought under Section 5 of the Federal Trade Commission Act, which has been held to cover transactions involving the same types of restraint as those condemned by the Clayton Act, but which technically may not fall within that Act. See, for example, *FTC v. Motion Picture Advertising Service Co.*, *supra*, where the contracts did not involve a sale or lease of goods, but a service agreement, which is not technically covered by Section 3; see also *Report of Attorney General*, *supra*, at 148-149 and *Oppenheim*, *supra* at 28, to the effect that "the Commission is legitimately entitled to challenge under Section 5 conduct economically equivalent to the anticompetitive practices in Clayton Act provisions but not reachable thereunder due to lack of technical prerequisites" (*Oppenheim* at 28). Since the arrangements between Luria and the mills are of the type covered by Section 3 or are at least economically equivalent thereto, to the extent such arrangements have the proscribed effect the buyers may be held accountable under Section 5 of the Federal Trade Commission Act, even though their activities may not be reachable under Section 3 of the Clayton Act because of the technical wording thereof. There may be occasions where it would not be appropriate to join the buyers as parties, as where they were unwilling victims of the exclusive arrangements. Such considerations do not apply here, however, where the arrangements are the result of the mutual desires and interests of Luria and the mills.

32. Certain of the respondent mills have raised additional objections to their being held liable, viz, (a) that their arrangements with Luria do not cover their entire scrap requirements, and (b) that the proportion of the particular market foreclosed by their arrangements with Luria is too insubstantial to affect competition. Turning to the first of these objections, the evidence does disclose that while some of the mills have used Luria as their exclusive broker, they have not purchased all of their scrap from it since some of their requirements have been obtained from fabricators, railroads and other direct suppliers, as well as from a few local dealers. However, in each instance, as hereafter noted, Luria has supplied the bulk of the mill's requirements.

33. It has been admitted by Luria or the mills involved, or the evidence establishes, that Luria supplies substantially all of the requirements for purchased scrap of the following respondent mills: Baldwin-Lima-Hamilton (Standard Works Division plant at Burnham, Pennsylvania), Columbia Malleable Castings, Phoenix, Central, CF&I, Roebling, Granite City, Detroit Steel (Portsmouth, Ohio Division—supplied by Luria's subsidiary Southwest), Lukens, McLouth, Edgewater and Bucyrus-Erie (Raspberry Street plant at Erie, Pennsylvania). With respect to those mills or plants which use Luria as their exclusive broker, but which do not purchase substantially all of their scrap from it, the record establishes that they obtained the following percentages of their purchased scrap from it during the last two years covered by the evidence (the percentages being expressed both in terms of purchases from broker-dealer sources, and of purchases from all sources):

Percentage of purchases from Luria by certain mills (1953-54)

Mill	1953		1954	
	Percent broker-dealer scrap	Percent total scrap	Percent broker-dealer scrap	Percent total scrap
Bethlehem.....	81.2	64.0	80.9	50.9
Bethlehem Pacific.....	75.4	66.6	80.4	72.3
United States Steel (Geneva).....	89.5	77.1	93.9	61.0
Weirton.....	70.2	66.5	69.8	64.1
Bucyrus-Erie (12th St.).....	65.0	65.0	64.5	64.5

34. As will be noted from the table, most of the mills involved purchased approximately two-thirds of their scrap from Luria, except for Bethlehem which in 1954, following the issuance of the complaint herein, cut its purchases from Luria to approximately 51%. However, this continued to represent the great bulk of its purchases from

broker-dealer sources, amounting to approximately 81% of such purchases. Despite the fact that these mills did not purchase all of their scrap requirements from Luria, the proportions of scrap involved are so substantial as to constitute a foreclosure of competition only slightly less effective than would have been accomplished had they purchased all of their requirements from Luria. The foreclosure was particularly marked in the broker-dealer line of commerce, barring substantially all other brokers and all but a few dealers from access to these mills. Legally, the situation is not dissimilar to that in *Osborne v. Sinclair, supra*, where the tying arrangement involved the bulk, but not all, of the dealers' requirements, and the court held:

Nor do we think a tie-in escapes condemnation as an unreasonable per se restraint because the buyer is not obligated to obtain all of his requirements of the tied product from the seller. * * * If a substantial amount of commerce is restricted by such arrangements, the standard for illegality would seem to have been met. (1960 Trade Cases Par. 69,771.)

Certainly the rule is no stricter in this proceeding, brought under Section 5 of the Federal Trade Commission Act, than in a Section 1 Sherman Act case.

35. Certain of the smaller respondent mills contend that even if there was an exclusive arrangement between them and Luria, the proportion of the market affected by their individual purchases is so slight as to preclude any finding of substantial competitive injury as a result of their participation. The argument of these respondents is based on the assumption that in the absence of an agreement, conspiracy or combination among the mills, their liability should be determined on a mill-by-mill basis, rather than on the basis of the aggregate of the purchases of all of the mills in a market area who are parties to an exclusive arrangement with Luria.

36. In the opinion of the examiner, it is unnecessary that there be an agreement, combination or conspiracy among the various mills in order to justify aggregating the purchases of all of the mills who have exclusive arrangements with Luria in a given market area, in order to determine the proportion of the market which is foreclosed by such arrangements. This is certainly true as far as determining the likelihood of competitive injury from the point of view of assessing the liability of the seller, Luria. Typically, in an exclusive dealing case, the share of the market affected by exclusive dealing agreements between a seller and numerous buyers is measured by the sum total of the purchases of the buyers in the relevant market, without regard to whether there is any agreement or combination among the buyers. Where such arrangements, in the aggregate, are determined to have the proscribed effect, insofar as fixing the seller's liability, the buyers who have each contributed to the seller's power should not be permitted

to escape liability by the fragmentation of their individual purchases. While there may have been no agreement or combination among the mills, they were all generally aware of the relative size and status in the industry of the seller with whom they were dealing.

In *FTC v. Motion Picture Advertising Service Inc.*, *supra*, the Court took into account the fact that the respondent and three other companies, not parties to the proceeding and not in combination with it, had foreclosed three-fourths of the market. (See dissenting opinion that in the absence of a conspiracy it was not proper to aggregate the shares of the market of the companies other than respondent). If it is proper to consider the aggregate of the market shares of parties having no relationship to one another, then certainly it is appropriate to consider the aggregate of the market shares of parties related to one another through a common supplier to whose economic position they all contributed. The fact that certain of the mills account for a relatively small share of certain scrap markets may be a factor to be considered in determining the breadth of the prohibition to which they should be subjected, as will hereafter be noted, but not in determining their basic liability as parties to an illegal series of exclusive arrangements. Such arrangements cannot be effectively terminated unless the buyers, as well as the seller, are ordered to cease and desist therefrom.

37. Finally, certain of the respondents point out that exclusive dealing arrangements are not necessarily illegal, and have been upheld where they fulfill an important economic need in the industry and are of limited duration. Cited in support of this contention are such authorities as *FTC v. Motion Picture Advertising Service Co. Inc.*, *supra*, and *U.S. v. American Can Co.*, 87 F. Supp. 18, 31, in the former of which exclusive contracts, not in excess of one year, were found not to be an undue restraint upon competition in view of "the compelling business reasons for some exclusive arrangement" (at 396). The arrangements here involved do not, in the opinion of the examiner, fall within any of the exceptions cited by respondents. They have been of indefinite or extended duration, and no compelling economic need has been demonstrated for the use of such arrangements. The evidence discloses that a number of nonrespondent mills, both large and small, have been able to fulfill their scrap requirements through the use of multiple brokers and dealers. Furthermore, the arrangements here involved have been so destructive of competition that their continuance on any basis would not be in the public interest.

The Illegal Acquisitions

38. The only two acquisitions as to which it has been found that counsel supporting the complaint have sustained the burden of proof

are those involving Luria's acquisition of the controlling stock interest in Pueblo Compressed Steel Corporation and in respondent Southwest Steel Corporation. The principal legal contention advanced by respondent Luria concerning these two acquisitions arises out of the alleged lack of substantial competition between Luria and the two companies at the time their stock was acquired by it. In the case of Pueblo Compressed Steel it is pointed out that they were on different market levels, the former being a dealer and Luria being a broker.

39. It has heretofore been found, as a fact, that Luria was in actual and potential substantial competition with both of the companies whose stock it acquired, and that the acquisitions were calculated to result in a substantial lessening of competition between the acquired and acquiring companies. However, even if Luria and the acquired companies were not in substantial competition, the acquisitions would still be illegal since the lessening of competition between them is only one of the grounds on which a stock acquisition may be illegal under the version of Section 7 of the Clayton Act which was in effect when the acquisitions were made. As stated in *U.S. v. E. I. du Pont de Nemours & Co.*, 353 U.S. 586, at 592:

[A]ny acquisition by one corporation of all or any part of the stock of another corporation, *competitor or not*, is within the reach of the section whenever the reasonable likelihood appears that the acquisition will result in a restraint of commerce or in the creation of a monopoly of any line of commerce. [Emphasis supplied.]

In the *du Pont (General Motors)* case, du Pont's stock ownership in General Motors was held to be illegal under Section 7, although the two companies were not in competition (the former being a supplier of paints and fabrics to the latter), because of the anticipated substantial restraint on competition in the automobile finishes and fabrics markets in which du Pont was engaged.

40. As heretofore found, the Pueblo Compressed Steel Corporation and Southwest Steel Corporation acquisitions meet the statutory test not only because the effect thereof may reasonably be expected to result in a substantial lessening of competition between them and Luria in the markets where they operated, but because there is a reasonable likelihood that the acquisitions will substantially restrain commerce in such markets and tend to create a monopoly in Luria. Assuming, arguendo, that Luria and Pueblo Compressed Steel operate at different market levels, as Luria contends, Pueblo Compressed Steel at the very least occupies a position similar to that in the *du Pont* case as a supplier to Luria and, in addition, competes with other dealers in the area who are actual or potential suppliers to Luria. To this extent the acquisition may, and as has been found does, meet the statutory test concerning probable adverse competitive impact.

CONCLUSIONS OF LAW

1. It has been found that there exists a series of understandings, agreements, combinations and conspiracies between respondent Luria (including, in one instance, its subsidiary Southwest) and each of the respondent mills and other mills, whereby Luria (including, in one instance, its subsidiary Southwest) acts as the exclusive or substantially exclusive scrap broker for said mills, and whereby said mills purchase from Luria (or, in one instance, from its subsidiary Southwest) all or substantially all of the iron and steel scrap which they purchase, or all or substantially all of said scrap which they purchase from brokers. It has also been found that there exists or has existed an understanding, agreement, combination and conspiracy between a group of three scrap brokers or exporters of scrap, of which respondent Luria is the dominant member (said group being referred to herein as the Luria group), and an organization known as OCCF, which is the buying agency for a group of European steel mills affiliated with the European Coal and Steel Community, whereby the Luria group acts or has acted as the exclusive or substantially exclusive broker and supplier to the steel mills buying iron and steel scrap through the OCCF, of scrap originating in the United States and certain contiguous areas, and whereby the OCCF purchases or has purchased all or substantially all of such scrap through the Luria group.

2. It is concluded that the effect of the aforesaid understanding, agreements, combinations and conspiracies between respondent Luria (including its subsidiaries) and the respondent mills and other mills, and between the Luria group and the OCCF has been, is, or may be, substantially to lessen, hinder, restrain and suppress competition with respect to prices and otherwise in the purchase and sale of iron and steel scrap in interstate commerce and, in the case of the arrangement between the Luria group and the OCCF, also to lessen, hinder, restrain and suppress such competition in foreign commerce; unduly to burden the channels of free and open competition in the purchase and sale of iron and steel scrap in interstate commerce and, in the case of the arrangement between the Luria group and the OCCF, also to burden the channels of such competition in foreign commerce; to enable the respondents to dominate and manipulate various markets in which iron and steel scrap is purchased and sold; and to tend to create a monopoly in respondent Luria (including its subsidiaries) in the purchase and sale of iron and steel scrap in interstate and foreign commerce.

3. It is further concluded that the capacity, tendency and effect of the aforesaid understandings, agreements, combinations and con-

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spiracies have been, are, or may be, among other things to divert trade to respondent Luria (including its subsidiaries) from its competitors; to lessen competition between and among various of the respondent mills and other mills in the purchase of iron and steel scrap; to cause respondent mills and other mills to refrain from purchasing iron and steel scrap from competitors of respondent Luria; to prevent competitors of respondent Luria (including its subsidiaries) from selling to the principal consumers of iron and steel scrap in certain areas; unduly to hinder and prevent iron and steel scrap brokers and dealers from competing with respondent Luria (including its subsidiaries) in purchasing and selling such scrap in interstate and foreign commerce; to coerce or cause suppliers and prospective suppliers of iron and steel scrap to sell to respondent Luria (including its subsidiaries) without regard to the comparative services and facilities offered by respondent Luria and those offered by competitors of respondent Luria; and to prejudice and injure other brokers, dealers, producers of iron and steel scrap, the public and consumers.

4. The acts and practices of respondents, as above found, are all to the prejudice of competitors of respondent Luria (including its subsidiaries) and to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented competition in the purchase and sale of iron and steel scrap in commerce, within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in iron and steel scrap, and have a dangerous tendency to create a monopoly in respondent Luria in the purchase and sale of iron and steel scrap; and constitute unfair methods of competition and unfair acts and practices, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

5. It has been found that respondent Luria acquired all or a substantial part of the capital stock of Pueblo Compressed Steel Corporation and Southwest Steel Corporation. It is concluded that the effect of such acquisitions by respondent Luria, and of each of them, has been, is, or may be, to lessen, eliminate or suppress competition between said corporations; to lessen, eliminate, suppress and prevent competition with respect to prices and otherwise in the purchase and sale of iron and steel scrap in various sections of the United States; unduly to hinder and prevent iron and steel scrap dealers and brokers from competing with respondent Luria in purchasing and selling such scrap in interstate commerce; unduly to impede, hinder, and prevent sellers of iron and steel scrap in interstate commerce from choosing a customer other than respondent Luria or a company controlled by respondent Luria, and buyers of iron and steel scrap in interstate commerce from

choosing a supplier other than respondent Luria or a company controlled by respondent Luria; to tend to create in respondent Luria a monopoly in the purchase and sale of iron and steel scrap in various sections of the United States; and to prejudice and injure brokers, dealers, producers of scrap, the public and consumers.

6. The aforesaid stock acquisitions by respondent Luria, and each such acquisition, constitute violations of Section 7 of the Clayton Act as approved October 15, 1914.

7. The complaint charges that respondent Luria and respondent mills, acting separately and jointly, and respondents Luria and Hugo Neu acting jointly, engaged in other acts and practices in violation of Section 5 of the Federal Trade Commission Act, and that respondent Luria acquired all or a substantial part of the capital stock of various other corporations in violation of Section 7 of the Clayton Act as approved October 15, 1914, or of Section 7 of the Clayton Act, as amended and approved December 29, 1950. Except as otherwise hereinabove found, counsel supporting the complaint have failed to establish by reliable, probative and substantial evidence that said respondents have violated the law in the other respects charged in the complaint, and said charges will accordingly be dismissed.

8. Insofar as the charges in the complaint have been sustained, it is concluded that this proceeding is in the public interest.

9. All pending motions not herein specifically ruled upon are deemed to be without merit and are denied.

THE REMEDY

1. There are two questions which arise in connection with the order to cease and desist, as proposed by counsel supporting the complaint. The first is whether the order is too broad in certain of its prohibitions, insofar as it involves the smaller of the respondent mills. The second is whether the order goes far enough in endeavoring to restore competitive conditions in the industry. It is the opinion of the examiner that, for the reasons hereafter indicated, the proposed order is too broad in the former respect, and is not sufficiently broad or effective in the latter respect.

2. Counsel supporting the complaint propose that the mills not only cease agreeing to make all or substantially all of their scrap purchases from Luria, but that they also cease agreeing to make such purchases from "any other seller or supplier not a party hereto". In the opinion of the examiner such a broad prohibition would not be appropriate in the case of the smaller mills. While, as previously noted, such mills may properly be ordered to cease their exclusive arrangements with Luria because of the cumulative effect of their respective arrange-

ments with Luria, and in order to effectively terminate Luria's participation in such arrangements, the same considerations do not apply to arrangements which the mills may care to make with other suppliers. Where the restraint arises largely from a mill's relationship with a dominant supplier, rather than from its own dominant, major, or substantial position as a purchaser of scrap, it would not be proper to order it to cease entering into exclusive arrangements with other suppliers, concerning which there is no basis for any inference that a restraint similar to that involved in its arrangement with Luria will occur.

3. The mills who fall into this category and as to whom the order should be limited are the following:

a. *Edgewater Steel Company.* Edgewater is one of the smaller steel companies in the Pittsburgh-Youngstown area. Its annual scrap purchases from brokers and dealers between 1950 and 1954 ranged from 12,000 to 28,000 tons, and represented between .2% and .4% of the total scrap purchases from brokers and dealers by the steel mills in the area.

b. *Columbia Malleable Castings Corporation.* Columbia is one of the smaller mills in eastern Pennsylvania. Its annual scrap purchases from brokers and dealers between 1950 and 1954 ranged from 8,000 to 13,000 tons, and represented between .5% and 1.3% of the total scrap purchases from brokers and dealers by the steel mills in the area. If the North Atlantic area were considered the appropriate market area, the proportion of its scrap purchases would be even smaller, the maximum being .6% in 1954.

c. *Bucyrus-Erie Company.* Bucyrus-Erie's two plants involved in this proceeding are located at Erie, Pennsylvania. Erie is in the northwestern corner of Pennsylvania somewhat north of the Pittsburgh-Youngstown area, and is somewhat south of Buffalo which is in the North Atlantic area. The annual scrap purchases of its two Erie plants from brokers and dealers are approximately 9,000 tons. As related to the North Atlantic area this would represent .2% in 1953 and .4% in 1954 of the scrap purchased from brokers and dealers by the mills in that area. As related to the Pittsburgh-Youngstown area, it would represent .2% in 1953 and .3% in 1954 of the broker-dealer scrap purchases of the mills in that area.

d. *Baldwin-Lima-Hamilton Corporation.* Baldwin has been named as a respondent because of the activities of its Standard Steel Works in the Eastern Pennsylvania area. That plant's annual purchases from brokers and dealers between 1950 and 1954 ranged from 55,000 to 93,000 tons, and represented between 3.3% and 5.4% of the total broker-

dealer scrap purchases of the steel mills in the Eastern Pennsylvania area. In the broader North Atlantic area, Baldwin's purchases accounted for 2.1% in the peak year 1954.

e. *Detroit Steel Corporation*. The only scrap consuming plant of Detroit is its plant at Portsmouth, Ohio, which is supplied by respondent Southwest of Pittsburgh. The purchases of that plant from brokers and dealers have ranged from a peak of 286,000 in 1950 (the year it was acquired by Detroit), to a low of 55,000 tons in 1954, with the average annual purchases being about 200,000 tons. Although its purchases obviously are not insubstantial, there is no evidence as to what percentage they represent of the market area. In terms of the nearest area for which there are figures, viz, the Pittsburgh-Youngstown area, Portsmouth's purchases represent between 2 and 3% of the broker-dealer scrap purchased by the mills in that area.

f. *McLouth Steel Corporation*. McLouth, whose plant is located in Trenton, Michigan, has purchased between 225,000 tons and 385,000 tons annually from brokers and dealers during the period from 1950 to 1954. These tonnages are obviously not insubstantial. However, there is no evidence to show that it is a major or substantial consumer of scrap in the market in which it operates.

4. The examiner entertains no doubt that an order limiting the cessation of exclusive dealing by the mills to Luria only, should be entered with respect to respondents Edgewater, Columbia, Bucyrus-Erie, and Baldwin-Lima-Hamilton in view of their relatively insubstantial market positions as purchasers of scrap. The situation is not quite as clear in the case of respondents Detroit and McLouth, whose purchases are fairly substantial as compared to the mills in other areas. However, since the record is lacking in evidence that they are substantial factors in the particular market in which they operate or, indeed, as to the confines of such market, the examiner does not consider it appropriate to do more than order them to cease their relationship with Luria.

It has been suggested that even such an order is not justified as to the latter two mills in view of the lack of evidence that their arrangements with Luria have affected a substantial portion of the markets in which these mills operate. Such an argument might be valid if these were the only exclusive arrangements to which Luria was a party. However, in view of the fact that there is involved here "a seller with a dominant position" in the industry, and that it has also pre-empted the business of a number of other "outlets with substantial sales volume, coupled with an industry-wide practice of relying upon exclusive contracts" (*Tampa Electric Co. v. Nashville Coal Co.*, U.S. Sup. Ct., 29 Law Week at 4241), it is the opinion of the examiner that

the statutory test has been met as to the seller and that, in order to make the order effective, the buyers should also be placed under a restriction in dealing with the seller.

5. In the case of the remaining respondent mills, the volume of their scrap purchases and their market position are such that the broader order proposed by counsel supporting the complaint is justified. The position of these mills is as follows:

a. *Bethlehem Steel Company.* Bethlehem is the largest purchaser of scrap in the eastern part of the United States. Its scrap purchases from brokers and dealers during the postwar period have exceeded 2,000,000 tons in some years and have fallen below 1,000,000 tons only in 1949, when they were 933,000 tons. Its plants in the Eastern Pennsylvania area accounted for 43% of the total scrap purchased by the steel mills in the area from brokers and dealers in 1953, and 31% in 1954. The purchases of its plants in the broader North Atlantic area represented 54% of the purchases of broker-dealer scrap by the steel mills in that area in 1953, and 44% in 1954.

b. *Bethlehem Pacific Coast Steel Corporation.* Bethlehem Pacific is the largest purchaser of scrap on the Pacific Coast. Its purchases from brokers and dealers between 1950 and 1954 have ranged between 365,000 and 565,000 tons, and represented 51% of the total purchases from such sources by Pacific Coast mills in 1953, and 49% in 1954.

c. *Phoenix and Central Iron and Steel Companies.* Phoenix and Central, subsidiaries of Barium Steel Corporation, purchase between 200,000 and 400,000 tons of scrap annually from brokers and dealers. Their purchases have represented approximately 20% of the broker-dealer purchases of the steel mills in the Eastern Pennsylvania area in most years between 1950 to 1954. In 1954 their purchases represented 10.7% of the broker-dealer purchases by steel mills in the broader North Atlantic area.

d. *Lukens Steel Company.* Lukens is another substantial scrap purchaser in the Eastern Pennsylvania area. Its purchases from brokers and dealers have ranged between 200,000 and 350,000 tons annually, representing 25% of the total purchases of such scrap by the mills in the Eastern Pennsylvania area in 1954, and between 11% and 21% of such purchases in the other years from 1950 to 1953. Its purchases accounted for 12% of the broker-dealer scrap purchased by the mills in the broader North Atlantic area in 1954.

e. *Colorado Fuel and Iron Corporation and John A. Roebling's Sons Corporation.* CF&I is the largest purchaser of scrap in the Rocky Mountain area. Its Minnequa Works in Pueblo, Colorado purchased between 125,000 tons and 330,000 tons of scrap annually from 1950 to 1954, which represented between 57% and 82% of the total

scrap purchases from brokers and dealers by the steel mills in the Rocky Mountain area. CF&I's plants in the Eastern United States, including that of its subsidiary Roebling, purchased between 250,000 and 370,000 tons of scrap annually from brokers and dealers between 1950 and 1954. The purchases of these plants represented from 9% to 13% of the total broker-dealer scrap purchases of the steel mills in the North Atlantic area during this period.

f. *U.S. Steel Corporation.* U.S. Steel's plant at Geneva, Utah is the other large steel company in the Rocky Mountain area, in addition to CF&I's Minnequa Works. The purchases of the Geneva plant from brokers and dealers have ranged from 39,000 tons to 115,000 tons between 1950 and 1954, and represent the balance of the tonnage purchased by steel mills in the area not accounted for by those of CF&I's Minnequa Works. This would be between 18% and 43% of the total broker-dealer scrap of the steel mills in the area.

g. *Weirton Steel Company.* Weirton purchases between 450,000 and 715,000 tons of scrap annually from brokers and dealers. It is the third largest purchaser of scrap in the Pittsburgh-Youngstown area. Its purchases represented between 11% and 14% of the purchases from brokers and dealers by the steel mills in the area during the period from 1950 to 1954.

h. *Granite City Steel Company.* Granite City purchases between 275,000 and 400,000 tons of scrap annually. Except for the year 1954, it has been the largest purchaser of scrap in the St. Louis area. Its purchases account for between 40 and 50% of the purchases of broker-dealer scrap by the steel mills and principal foundries in the St. Louis area.

6. In addition to the provision that the steel mills cease agreeing to make all of their purchases from Luria or from any other supplier, counsel supporting the complaint have proposed that they be prohibited from "otherwise * * * follow[ing] a course of action * * * which may preclude sellers generally from competing for [their] business." An equivalent prohibition has been proposed with respect to respondent Luria, in addition to prohibiting it from agreeing to act as exclusive broker for the mills. The purpose of the generally phrased prohibition is apparently to prevent the use of restrictive arrangements other than those involving the exclusive purchase of scrap from Luria. In the opinion of the examiner this portion of the proposed order is too vague and indefinite to be enforceable. However, a provision prohibiting each mill not only from agreeing to buy all of its scrap from Luria, but from agreeing to use Luria as its exclusive broker or to otherwise prefer Luria in the placing of orders would be appropriate.

7. The most serious defect in the order proposed by counsel supporting the complaint is its ineffectiveness in restoring competitive conditions. In the opinion of the examiner the exclusive arrangements between Luria and the mills have so upset the competitive pattern in a number of the market areas covered by the evidence, that a mere prohibition on exclusive or preferential dealing by agreement or other joint action will not be effective in restoring normal competitive conditions in these markets. Luria has become so dominant in the industry and is so entrenched as a supplier to the respondent mills by virtue of its intimate familiarity with their scrap needs, policies and methods of doing business, that it will most likely continue to obtain the lion's share of their business even though there may be an ostensible termination of the agreements, understandings or arrangements which it has with them. Indeed, it may be difficult to determine whether the existing arrangements have been terminated, or have been merely modified somewhat to technically comply with the order in this proceeding.

Some inkling of the probable course of events can be obtained from observing what happened after the exclusive contract between the Luria group and the OCCF was terminated in December 1955. Despite such termination the Luria group, and later Luria alone, continued to supply the vast preponderance of the scrap purchased by the OCCF from the United States. During the period in 1956 for which statistical evidence is available the Luria group supplied 82% of such scrap. In 1957, when the OCCF began to purchase scrap from the United States pursuant to sealed bids, Luria received orders for approximately 70% of OCCF's requirements. Having become thoroughly familiar with the OCCF's requirements and policies, and having established sources of supply in this country, Luria continued to reap dividends from the earlier exclusive agreements even though they had ostensibly been terminated.

8. In the opinion of the examiner the momentum of the exclusive arrangements between Luria and the mills, which have been here found to be illegal, will continue to plague the industry and yield benefits to Luria, unless some remedy more drastic than that proposed by counsel supporting the complaint is adopted. What is required here is a provision which will induce the mills to place orders with other suppliers who submit offers comparable to Luria's. Merely prohibiting the mills from agreeing with Luria to use it as exclusive or preferential broker, or from agreeing to purchase all of their scrap from Luria will not accomplish this. By using one additional broker for a minor portion of their requirements the mills may find an avenue for the successful evasion of the order. Aside from any conscious effort to evade the order, there is a strong likelihood that they will

continue to favor Luria because of their confidence in it, born of the former illegal relationship. The only way to assure that Luria will not continue to benefit from its illegal exclusive arrangements, and to encourage the re-establishment of normal competitive conditions in the industry, is to prohibit the mills for a period of time from refusing to place orders for at least half of their purchased scrap requirements with other suppliers who submit offers comparable to those received from Luria, and from purchasing more than half of their scrap from Luria where comparable offers have been received from others.

9. Ample precedent exists for requiring a party or parties to an illegal combination to separately refrain from conduct which is related to that involved in the illegal combination, where such action is necessary to effectively restore competitive conditions which have been destroyed or seriously impaired by the combination. Thus in *FTC v. National Lead Co.*, 352 U.S. 419 [6 S. & D. 193, 199], the Commission was held to have the authority to prohibit the respondents not only from jointly fixing prices through the use of a zone delivered pricing system, but from individually using such system for a temporary but indefinite period, where it was found necessary to create "a breathing spell during which independent pricing might be established without the hang-over of the long-existing pattern of collusion" (at 425). See also the consent decree in *U.S. v. Republic Steel Co.*, 1953 CCH Trade Cases, par. 67,510, where the defendants were enjoined not only from jointly entering into exclusive dealing and other trade restraining agreements, but the defendant steel mill was individually required, for a period of 5 years, to make two-thirds of its production of the product in question available for sale to defendant fabricators and other fabricators without discrimination; and see the decree in *U.S. v. General Electric Co.*, 1952 CCH Trade Cases par. 67,291, where the defendants were not only enjoined from fixing prices and engaging in other trade restraining activities in concert, but one of them was separately enjoined from refusing to sell its products to distributors on nondiscriminatory terms for an indefinite period of time until it had "established to the satisfaction of this Court * * * that competitive conditions exist in the trade and commerce" of the product in question, and several defendants were each enjoined for a period of 3 years "in making purchases of [the products in question] from refusing to consider in good faith and on a non-discriminatory basis, having due regard for the circumstances of each case, solicitations for such purchases from all vendors".

10. It is the opinion and finding of the examiner that it is likewise necessary here to create a "breathing spell" during which normal competitive conditions can reassert themselves "without the hang-over

of the long-existing pattern" of the exclusive arrangements between Luria and the various respondent mills. Merely prohibiting the joint use of exclusive or substantially exclusive arrangements will not accomplish this. It is necessary, in addition, to make it incumbent on the mills, for a reasonable period of time, to give other suppliers an opportunity to compete with Luria on an equal basis.

11. In addition to the foregoing questions, which relate to the exclusive dealing charge, there is also presented a question involving the acquisition charge. Counsel supporting the complaint propose not merely that respondent Luria be required to divest itself of the stock and assets of the companies it acquired, but that it be enjoined from making any further acquisitions of competitors. In the opinion of the examiner the record fails to establish a pattern of acquisitions of such magnitude or nature as to justify a remedy as drastic as a perpetual injunction against further acquisitions, without regard to the size and competitive position of the company acquired, and the probable competitive impact of such acquisitions on particular markets. The need for such a broad prohibition requires a showing far stronger than is here present. See *Pillsbury Mills, Inc.*, Docket 6000 [57 F.T.C. 1274] (December 16, 1960), and *Scott Paper Company*, Docket 6559 [57 F.T.C. 1415] (December 16, 1960).

ORDER

1. *It is ordered*, That the respondent brokers, Luria Brothers & Company, Inc., and Southwest Steel Corporation, and the respondent mills, Bethlehem Steel Corporation, Bethlehem Steel Company, Bethlehem Pacific Coast Steel Corporation, United States Steel Corporation, National Steel Corporation, Weirton Steel Company, The Colorado Fuel and Iron Corporation, John A. Roebling's Sons Corporation, Central Iron & Steel Company (now known as Phoenix Iron & Steel Company), Phoenix Iron & Steel Company, Granite City Steel Company, Lukens Steel Company, Detroit Steel Corporation, McLouth Steel Corporation, Baldwin-Lima-Hamilton Corporation, Edgewater Steel Company, Bucyrus-Erie Company, and Columbia Malleable Castings Corporation (now known as Grinnell Corporation), their respective officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the purchase or sale of or the offer to purchase or sell iron and steel scrap in interstate commerce, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any express or implied understanding, agreement, combination or conspiracy between said respondent brokers, or either of them, and any one or more of

said respondent mills, or between any respondent and others not parties hereto, to do or perform any of the following things:

a. For respondent brokers, or either of them, to act as exclusive or substantially exclusive broker or supplier of iron and steel scrap for any plant or all plants of any respondent mill or of any other buyer of iron and steel scrap not a party hereto, or to otherwise receive a preferential status or preferred treatment as broker or supplier of iron and steel scrap for any respondent mill or any other buyer of iron and steel scrap;

b. For any respondent mill to make all or substantially all of the iron and steel scrap purchases at any or at all of its plants from or through respondent brokers, or either of them; or to use respondent brokers, or either of them, as exclusive or substantially exclusive broker or supplier of iron and steel scrap for any or all of its plants, or otherwise give a preferential status or preferred treatment to said brokers, or either of them, as broker or supplier of iron and steel scrap;

c. For any of the following respondent mills: Bethlehem Steel Corporation, Bethlehem Steel Company, Bethlehem Pacific Coast Steel Corporation, United States Steel Corporation, The Colorado Fuel and Iron Corporation, John A. Roebling's Sons Corporation, National Steel Corporation, Weirton Steel Company, Central Iron & Steel Company (now known as Phoenix Iron & Steel Company), Phoenix Iron & Steel Company, Granite City Steel Company and Lukens Steel Company, to make all or substantially all of the iron and steel scrap purchases at any or at all of its plants from or through any other broker or supplier not a party hereto; or to use any other broker or supplier as the exclusive or substantially exclusive broker or supplier of iron and steel scrap for any or all of its plants, or otherwise give a preferential status or preferred treatment to any broker or supplier as broker or supplier of iron and steel scrap.

2. *It is further ordered*, That the respondent mills, Bethlehem Steel Corporation, Bethlehem Steel Company, Bethlehem Pacific Coast Steel Corporation, United States Steel Corporation, National Steel Corporation, Weirton Steel Company, The Colorado Fuel and Iron Corporation, John A. Roebling's Sons Corporation, Central Iron & Steel Company (now known as Phoenix Iron & Steel Company), Phoenix Iron & Steel Company, Granite City Steel Company, Lukens Steel Company, Detroit Steel Corporation, McLouth Steel Corporation, Baldwin-Lima-Hamilton Corporation, Edgewater Steel Company, Bucyrus-Erie Company, and Columbia Malleable Castings Corporation (now known as Grinnell Corporation), their respective officers, agents,

representatives and employees, directly or through any corporate or other device, in or in connection with the purchase or offer to purchase iron and steel scrap by them in interstate commerce, do each forthwith, and for a period of five (5) years from the date this order shall become final, cease and desist from:

a. Refusing to consider in good faith, and on a nondiscriminatory basis, offers to sell iron and steel scrap by brokers, dealers and suppliers other than respondent brokers and, where said offers are comparable as to price, quality and other material terms and conditions of sale as those which may have been received from respondent brokers during a like period, to place orders with such of said other brokers, dealers and suppliers as each such mill shall select, for at least 50% of its annual requirements of purchased iron and steel scrap, except to the extent said other brokers, dealers and suppliers have failed to offer or deliver scrap in sufficient quantities to enable any such mill to obtain said percentage of its requirements from such other brokers, dealers and suppliers;

b. Purchasing from respondent brokers, or either of them, more than 50% of each such mill's annual requirements of purchased iron and steel scrap, except to the extent it shall be unable to obtain at least 50% of such requirements from other brokers, dealers and suppliers on the basis of offers comparable as to price, quality and other material terms and conditions of sale as those which may have been received from respondent brokers during a like period, or such other brokers, dealers and suppliers have failed to deliver at least 50% of such requirements pursuant to orders placed with them.

3. *It is further ordered*, That respondent Luria Brothers & Company, Inc., its officers, agents, representatives and employees, acting separately or in combination with anyone else, whether a party to this proceeding or not, directly or through any corporate or other device, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any express or implied understanding, agreement, combination or conspiracy with any steel producing company or group of steel producing companies beyond the continental limits of the United States, or any buying organization, agent or other buyer acting for or on behalf of such steel producing companies, to act as the exclusive or substantially exclusive broker or supplier for such company or companies, of iron and steel scrap obtained in the continental United States or within the territorial jurisdiction of the United States.

4. *It is further ordered*, That respondent Luria Brothers & Company, Inc., do forthwith divest itself absolutely, in good faith, of:

a. All stock or other share capital, and all control over or interest in all stock or other share capital, of Pueblo Compressed Steel Corporation and Southwest Steel Corporation; and

b. All assets, properties, rights and privileges, tangible and intangible, acquired from Pueblo Compressed Steel Corporation and Southwest Steel Corporation since December 29, 1950; together with any assets or other properties of whatever description that may have been added thereto since December 29, 1950, as may be necessary to restore each said corporation to at least the same operating condition that existed, and competitive position that it occupied, when its assets or properties were so acquired, so as to retain neither directly nor indirectly any of the fruits of such acquisitions.

It is further ordered, That in the divestitures hereinbefore mentioned, none of the stock, assets, properties, rights or privileges 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 is otherwise directly or indirectly connected with, or under the control or influence of, respondent Luria Brothers & Company, Inc., or of any of said respondent's subsidiary, affiliated or related companies.

5. *It is further ordered*, That the complaint be, and the same hereby is, dismissed as to respondent Hugo Neu Corporation, and as to those allegations or portions thereof as have been hereinabove found not to have been sustained by the evidence.

OPINION OF THE COMMISSION

NOVEMBER 15, 1962

By Anderson, *Commissioner*:

This matter is before the Commission for consideration of the cross-appeals of the parties from the hearing examiner's initial decision which in part dismissed and in part upheld the complaint.

The Commission's complaint herein was issued January 19, 1954. It was subsequently amended on July 13, 1954, and again on April 16, 1956. Hearings began January 12, 1955, and continued thereafter at intervals until May 14, 1958. During the 113 days of hearing, 250 witnesses testified, producing a transcript in excess of 14,000 pages. More than 1,300 exhibits, many having a multiple number of pages, were received in evidence.

Because of the extraordinary circumstances presented by this highly

complicated matter, the hearing examiner departed from the usual Commission procedure of requiring all parties to make simultaneous filing of their proposed findings, conclusions and order, and directed complaint counsel to file theirs on November 10, 1958, while respondents were not required to file until they had had the opportunity to examine complaint counsel's filing. The respondents submitted their proposed findings on various dates up to January 13, 1959; and thereafter, until March 20, 1959, the parties were permitted to file cross-replies. The hearing examiner then took the matter under advisement.

The hearing examiner's initial decision was filed on March 29, 1961. In its 359 pages, the facts of record are painstakingly analyzed and concluded upon. While all parties have appealed, it is significant that relatively few exceptions are taken to the purely factual findings. We have reviewed the record in the light of the arguments advanced in the briefs, and the oral argument heard on November 21, 1961; and it is our decision that with the exception of the modifications noted herein the initial decision of the hearing examiner should be, and is, adopted as the decision of the Commission.

The Respondents

Two of the respondents herein, Luria Brothers & Company, Inc. (hereinafter sometimes referred to as Luria), and its subsidiary, Southwest Steel Company (hereinafter sometimes referred to as Southwest), are primarily engaged in the business of buying iron and steel scrap and reselling it to consumers who melt it down to produce "new" iron or steel. Luria and Southwest and other companies performing a similar function are known and referred to in the steel industry as "brokers." It should be pointed out that the term "brokers" as applied in this industry is somewhat inaccurate since these brokers are actually jobbers or wholesalers, buying scrap for their own accounts from dealers, industrial plants, railroads and others, and reselling it at a profit.

In certain market areas Luria is also engaged as a scrap "dealer." The distinction between a dealer and a broker is, at best, a tenuous one. Brokers ordinarily do not take physical possession of the scrap they deal in and can, and frequently do, operate without facilities other than an office. Dealers, on the other hand, usually take physical possession of scrap and operate "yards" wherein scrap is sorted, processed and stored. The chain of commerce ordinarily finds dealers selling to brokers, but they also quite frequently sell directly to consumers and, thus, directly compete with brokers.

Respondent Hugo Neu Corporation is primarily engaged in the importing and exporting of metals. This matter is concerned with Neu's activities as a broker buying scrap in the United States and selling it abroad.

The remainder of the respondents herein are consumers of scrap, operating furnaces wherein scrap or a combination of scrap and pig iron is melted down to produce "new" steel or iron. This group of consuming respondents is frequently referred to herein as "respondent mills," although in a strictly technical sense not all of them are mills as that term is used in the steel industry.

Certain respondent mills—Bethlehem Steel Company, Central Iron & Steel Company (now known as Phoenix Iron & Steel Company), Colorado Fuel and Iron Corporation (an original respondent herein and successor by merger to respondent John A. Roebling's Sons Corporation), Detroit Steel Corporation, Granite City Steel Company, McLouth Steel Corporation, Phoenix Iron & Steel Company, United States Steel Corporation and Weirton Steel Company—are fully integrated steel companies, *i.e.*, they operate blast furnaces which produce pig iron (used in making steel) and also operate facilities for the production of semi-finished and finished steel from ingots. Other respondent mills—Bethlehem Pacific Coast Steel Corporation (now Pacific Coast Division of Bethlehem Steel Company), Edgewater Steel Company and Lukens Steel Company—are semi-integrated steel companies, which do not operate blast furnaces but do produce ingots and have finishing facilities. The remaining respondent mills—Baldwin-Lima-Hamilton Corporation, Bucyrus-Erie Company and Grinnell Corporation (formerly known as Columbia Malleable Castings Corporation)—operate iron or steel foundries to supply their own manufacturing or fabricating operations.

Bethlehem Steel Corporation and National Steel Corporation are not producers of iron and steel. The former's connection with this proceeding arises from its ownership of all the stock of Bethlehem Steel Company (and that of Bethlehem Pacific Coast Steel Corporation prior to its merger into Bethlehem Steel Company) while the latter's connection arises from its ownership and control of Weirton Steel Company.

While respondent mills account for a large percentage of the country's total iron and steel production, they do not include many significant integrated steel companies and a large number of small iron or steel foundries. It is estimated that the scrap purchases of respondent mills represent approximately 22% of the total scrap received by all domestic scrap consumers.

The Charges

The complaint is divided into two counts which contain no less than twenty separate charges of unfair practices. While all of the alleged unfair acts and practices are related in the sense that they allegedly unlawfully benefited Luria, they can be conveniently separated into four broad categories for the purpose of discussion.

The first group of charges is contained in Paragraph 9 of Count I. In subsections (a) and (b) thereof it is alleged that Luria and the mill respondents violated the Federal Trade Commission Act by entering agreements or understandings pursuant to which each mill purchased all or substantially all of its scrap requirements from Luria. Subsections (c) through (j) of Paragraph 9 charge as separate unfair practices eight acts or practices utilized by Luria or the mill respondents to effect and further their alleged agreements. Paragraph 9 contains all of the charges made against respondent mills.

A second series of allegations is contained in Paragraph 12 of Count I. In this section, respondents Luria and Neu are charged with having violated the Federal Trade Commission Act by conspiring among themselves and with others to restrain competition and create a monopoly in the export scrap market.

The third charge is found in subparagraph (b) of Paragraph 11 in Count I and in the whole of Count II. The charge here made is that Luria has effected a probable lessening of competition and tendency toward monopoly by acquiring all or a substantial part of the stock of certain corporations engaged in business as scrap brokers or dealers. The reason for the separation of the complaint into two counts is here apparent. Count II is brought under a different act, Section 7 of the Clayton Act (38 Stat. 731 and the amended section, 64 Stat. 1125), while Count I is entirely founded upon the Federal Trade Commission Act. Thus, the same acquisitions are charged as violative of two statutes.

A final group of charges is contained in Paragraph 10 and in subparagraph (a) of Paragraph 11 of Count I. In these sections, Luria is charged with a variety of alleged unfair acts or practices which are more or less independent of the charges made in other sections but which were pursued "for the purpose and with the effect" of reducing competition and creating a monopoly.

The Nature of the Violations Charged

At the outset it must be emphasized that this is a proceeding brought to arrest in their incipency acts and practices which, if allowed to continue, would eventually produce a monopoly in the respondent

Luria Brothers & Company, Inc. The complaint charges violations of the Federal Trade Commission Act and Section 7 of the amended Clayton Act. This latter statute, in contrast with Section 5 of the Federal Trade Commission Act, deals with a defined and limited type of unlawful practice, the acquisition of the stock or assets of other corporations with probable anticompetitive effects. Thus, while respondent Luria argues strenuously that its acquisitions do not violate the Clayton Act, there is no dispute as to the nature of the charge made in complaint Count II.

On the other hand, the widest possible dichotomy of views exists as to the nature of the charges made in complaint Count I, and this is particularly true of the charge made in Paragraph 9 of Count I. Respondents argue that the practices indicted by Paragraph 9 of the complaint are exclusive dealing arrangements of the type specifically covered by Section 3 of the Clayton Act¹ and that, therefore, it is incumbent upon complaint counsel to adduce evidence in support of this paragraph which would be sufficient to satisfy a burden coextensive with the burden created by Section 3. Their brief phrases the argument in these words: "In a case in which Section 5 of the Federal Trade Commission Act is invoked against a practice for which criteria of legality are specifically prescribed in the Clayton Act, legality must be determined under the standards of the particular section of the Clayton Act relating to such practice." This argument has two weaknesses.

In the first place, it is legally untenable since the Supreme Court has very clearly held that acts or practices which are not sufficiently mature to violate the Sherman or Clayton Acts may violate the Federal Trade Commission Act.² In support of their argument, respondents cite various antitrust writers and the *Report Of The Attorney General's Committee To Study The Antitrust Laws*.³ The fact is that the opinions expressed in these unofficial writings are in direct conflict with the legal precedents we are bound to follow.

The second defect in respondents' argument is in its major premise that the charge made in Paragraph 9 is basically an "exclusive dealing"

¹ This section provides:

"Sec. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

² *Federal Trade Commission v. Motion Picture Advertising Service Co., Inc.*, 344 U.S. 392 [5 S. & D. 498] (1953).

³ Transmitted to the Attorney General March 31, 1955.

charge of the type countenanced by Section 3. The complaint cannot be so narrowly confined. It is directed against a much broader target than the relatively concise restraint encompassed by Section 3. This proceeding was not brought under Section 5 of the Federal Trade Commission Act because of jurisdictional strictures of the Clayton Act, but rather because the practices and acts here involved bear only superficial resemblance to those within the aegis of the latter statute. The goal of the complaint as a whole, and Paragraph 9 in particular, is to raise a roadblock in the path of monopoly.

The potential monopolizer at which the complaint is primarily aimed is respondent Luria. The respondent mills are named in this proceeding because they allegedly conspired with and aided and abetted Luria and because an order to cease and desist which did not include the mill respondents would be ineffective.⁴

This proceeding was brought to arrest an incipient monopoly, to enjoin activity which, if undeterred, would violate Sections 1 and 2 of the Sherman Act.⁵ That Section 5 was specifically designed for this purpose is too well established for discussion.⁶

Monopolization violative of the Sherman Act exists when a single trader has intentionally acquired the power to control market prices or to exclude competitors. Such a condition is unlawful and there is no need to show that the power over prices or the market has, in fact, been exercised. *American Tobacco Co. v. United States*, 328 U.S. 781, 811 (1946).

At page 576 of the initial decision the hearing examiner correctly concludes: ". . . this proceeding does not involve a charge of monopolization under Section 2 of the Sherman Act . . ." We agree that such a charge is not made in the complaint and, of course, cannot be contemplated at this juncture. But "monopolization" is not the only practice made unlawful by Section 2. The section condemns with equal emphasis any "attempt to monopolize" or to "com-

⁴ The hearing examiner concluded: "Such arrangements cannot be effectively terminated unless the buyers, as well as the seller, are ordered to cease and desist therefrom." (Initial Decision at p. 583.)

⁵ "Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal:

"Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

⁶ *Fashion Originators Guild of America, Inc., et al. v. Federal Trade Commission*, 312 U.S. 457, 458 [3 S. & D. 345] (1941); *Federal Trade Commission v. Raladam Co.*, 283 U.S. 643, 647 [2 S. & D. 116] (1931); *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U.S. 441, 453 [1 S. & D. 170] (1922).

See also *Federal Trade Commission v. Gratz*, 253 U.S. 421, 434-435 [1 S. & D. 69] (1920). (Dissenting opinion of Justice Brandeis.)

bine or conspire . . . to monopolize." Thus, the act inveighs against monopoly and any deliberate conduct through which it may be accomplished. Such conduct is well within the purview of this complaint which charges that respondents entered "combinations, and conspiracies for the purpose and with the effect of lessening, . . . competition, and tending to create a monopoly"

An attempt to monopolize is established by proof that the respondent or defendant acted with deliberation and purpose, i.e., with "specific intent."⁷ The existence of "specific intent" is a conclusion based upon an examination of the business practices pursued by the potential monopolist.⁸ Some actions which clearly indicate deliberateness are the pursuit of acts and practices which violate other provisions of the antitrust laws such as entering agreements constituting restraints forbidden by Section 1 of the Sherman Act⁹ or making acquisitions violative of Section 7 of the Clayton Act.¹⁰ And it follows as a logical corollary that engaging in unfair or deceptive acts or practices within the scope of Section 5 of the Federal Trade Commission Act shows the existence of deliberateness. In this connection, Judge Wyzanski's language in *Union Leader Corp. v. Newspapers of New England, Inc., et al.*,¹¹ is particularly apt:

. . . to prove that a person has that type of exclusionary intent which is condemned in antitrust cases there must be evidence that the person who foresees a fight to the death intends to use or actually does use unfair weapons. Putting the same idea in another way, we may say that there is no sharp distinction between (a) the existence of an intent to exclude and (b) the use of unfair means.

While in Section 2 cases involving combinations or conspiracies to monopolize it is necessary to show intent, its proof merges into the proof of unlawful conspiracy. In *American Tobacco Co. v. United States*,¹² the Supreme Court, after stating that the existence of power to exclude competitors from a market is unlawful provided there exists the "intent and purpose to exercise that power," held:

Where the conspiracy is proved, as here, from the evidence of the action taken in concert by the parties to it, it is all the more convincing proof of an intent to exercise the power of exclusion acquired through that conspiracy.

From the *Tobacco* case we also learn that the distinction between a trade restraining conspiracy forbidden by Section 1 of the Sherman Act and a conspiracy to monopolize violative of Section 2 is dependent

⁷ *Swift & Co. v. United States*, 276 U.S. 311 (1928).

⁸ *Interstate Circuit, Inc. v. United States*, 306 U.S. 208 (1939).

⁹ *United States v. Yellow Cab Co.*, 338 U.S. 338 (1949).

¹⁰ *United States v. Columbia Steel Co.*, 334 U.S. 495, 532 (1948).

¹¹ 180 F. Supp. 125, 140 (D. Mass. 1959).

¹² 328 U.S. 781, 809 (1945).

upon the appetite of the conspirators. If their agreement "may stop short of monopoly" they violate only Section 1. If they are not "content with restraint short of monopoly" both sections are violated.¹³

Whether the charge be attempted monopolization or conspiracy to monopolize, it is necessary to determine with some exactness the market wherein the practices occurred. The criteria for the determination of the relevant market are essentially the same whether the case is brought under either the Sherman, Clayton, or Federal Trade Commission Acts. There are two principal facets to the concept of relevant market: the product involved and geographic area.¹⁴ The limits of each element must be determined with particularity since they together constitute both the battleground and the spoils in the battle of competition.

In summary, then, it is our view that proof of the violations charged by this complaint entails a showing: (1) that the respondents engaged in the various acts and practices described in the complaint; (2) for the purpose of restraining or monopolizing any part of trade or commerce; and (3) that respondents have either realized their objective or are likely to reach it if undeterred by an order to cease and desist.

The Alleged Unlawful Agreements Between Luria and the Mill Respondents

The central charge of the complaint is contained in Paragraph 9, and, in particular, in subsections (a) and (b) thereof. The charge there made reads as follows:

* * * Respondent brokers and respondent mills and other mills have entered into express and implied understandings, agreements, combinations, and conspiracies for the purpose and with the effect of lessening, hindering, restraining and suppressing competition, and tending to create a monopoly in respondent brokers in the interstate purchase and sale of iron and steel scrap. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, respondent brokers and respondent mills and other mills have acted and continue to act in concert and in cooperation in doing and performing the following methods, acts, and practices:

(a) Respondent brokers entered into understandings, agreements, and conspiracies with respondent mills and other mills to act as exclusive or substantially exclusive scrap brokers for said mills.

(b) Respondent mills and other mills agreed to and did make all or substantially all of their iron and steel scrap purchases from respondent brokers.

¹³ *Id.* at 788.

¹⁴ The statute writers use different terms to describe the relevant market. In Section 7 of the Clayton Act it is described as "any line of commerce in any section of the country." In Section 2 of the Sherman Act the authors succinctly refer to it as "any part of the trade or commerce among the several States, or with foreign nations."

Paragraph 9 contains eight additional subparagraphs lettered (c) through (j). These additional paragraphs charge as separate unfair trade practices the various steps and procedures which the respondents allegedly pursued to effect the agreements described in subparagraphs (a) and (b). The hearing examiner disposed of these additional charges in two different manners. With respect to subparagraphs (c), (d) and (e), he found that some, but not all, of the mill respondents had, in fact, engaged in these practices.¹⁵ However, the examiner entered no prohibition against these practices in his order to cease and desist because, even though proven, he did not regard them "as unfair practices in themselves." He considered them as "evidentiary indicia" of the existence of the type of agreements charged as unlawful in subparagraphs (a) and (b). He concluded, therefore, that an order directed against the practices described in subparagraphs (a) and (b) would insure the discontinuance of these practices. We agree with this analysis and decision.

The hearing examiner gave detailed consideration to the charges made in subparagraphs (f) through (j) of Paragraph 9 and concluded that the charges made therein had not been sustained. Our review of the evidence adduced in support of these allegations revealed no error in the hearing examiner's disposition of them. We affirm and adopt his findings and conclusions with respect thereto.

In addition, it would appear that the charges made in subparagraphs (i) and (j) are substantially moot since they deal with practices which took place when scrap was in short supply and regulated and allocated by the Office of Price Stabilization and the National Production Authority. Since the unlawful acts there charged depend upon the existence of such regulations and there is no present reason to believe that they will soon be reinstituted, there is no demonstrated need for an order to cease and desist.

As the initial decision points out, the complaint is susceptible of being interpreted as charging a conspiracy or agreement between the mill respondents to appoint Luria as their exclusive broker. We concur with the hearing examiner's conclusion that the record lacks reliable and substantial evidence to support such a charge. The most that can be said of the evidence is that it indicates that several of the respondent mills were aware, at the time that they entered exclusive agreements with Luria, that other mill respondents had similar agreements with Luria. The evidence is summarized by complaint counsel

¹⁵ The hearing examiner in error treated subparagraph (e) as if it contained a charge against respondent mills, when, in fact, it is directed only against respondent Luria.

at page 100 of their brief. After admitting that there is no overt or direct evidence of conspiracy between the mills, the brief states:

There is direct evidence, however, that certain of the respondent mills selected Luria as their exclusive broker because Luria was also the exclusive broker for certain of their competitors, and that they did so for the purpose of lessening competition in the purchase of scrap. There is also evidence from which it must be inferred that all of the other respondent mills knew that Luria was the exclusive broker for the respondent mills, and other mills, with which they competed in the purchase of scrap, and that they continued their exclusive dealing agreements with Luria largely for the purpose of lessening competition in the purchase of scrap. These circumstances are sufficient to warrant a finding of conspiracy among the respondent mills to use Luria as their common exclusive broker for the purpose and with the effect of lessening competition.

Even taking the brief's description of the facts at full face value we cannot agree that the related circumstances are sufficient to warrant a finding of conspiracy among the respondent mills. There is no substantial evidence to support an inference that the mill respondents ever came to an expressed or tacit meeting of the minds or understanding as to purchasing from Luria. The fact that they may have been identically motivated with respect to Luria is an insufficient basis for a finding of conspiracy.

As stated above, we consider the charges made in subparagraphs (a) and (b) of complaint Paragraph 9 as directed against incipient Sherman Act violations. We do not view this proceeding as one which, except for obvious jurisdictional difficulties, would ordinarily be brought under Section 3 of the Clayton Act. It will be noted that the preamble paragraph of Paragraph 9 charges intent, that the agreements were entered "for the purpose and with the effect" of restraining competition and tending to create a monopoly in respondent Luria. Purpose or intent is an element foreign to the Clayton Act, and among the antitrust laws is found only in the Sherman Act.¹⁶

The hearing examiner does not make his position crystal-clear as to the theory of these charges. He finds that Luria's contention that it does not possess monopoly power is "largely irrelevant since this proceeding does not involve a charge of monopolization under Section 2 of the Sherman Act where proof of monopoly power is necessary." He does not, however, clearly eliminate the incipient Sherman Act theory since he points out that Section 3 of the Clayton Act and Sections 1 and 2 of the Sherman Act are *in pari materia* insofar as they involve the concept of agreements or conspiracy. He also discusses the fact that in cases brought under Section 2 of the Sherman Act where the

¹⁶ "Purpose of destroying competition or eliminating a competitor" is an element of a violation of Section 3 of the Robinson-Patman Act, but it is not an antitrust law. *Nashville Milk Co. v. Carnation Co.*, 355 U.S. 373 (1958).

charge involves an attempt to monopolize or a combination or conspiracy to monopolize rather than actual monopolization there is no necessity to show that actual monopoly power was acquired.

However, on balance, it would appear that the hearing examiner relies in the main upon a Section 3 theory. He discusses at some length the possible liability of buyers under Section 3, concluding "Since the arrangements between Luria and the mills are of the type covered by Section 3 or are at least economically equivalent thereto, to the extent such arrangements have the proscribed effect the buyers may be held accountable under Section 5 of the Federal Trade Commission Act, even though their activities may not be reachable under Section 3 of the Clayton Act because of the technical wording thereof"¹⁷ A principal clue to the examiner's theory is found in his failure to make the necessary finding in a Section 2 Sherman Act type proceeding that the acts and practices of the respondent were pursued deliberately with the intent to effect a monopoly.

Actually the difference between our view and that of the hearing examiner is not as great as may at first appear. As he pointed out, Section 3 of the Clayton Act and Sections 1 and 2 of the Sherman Act can be, and frequently are, brought to bear in exclusive dealing situations. In other words, an exclusive dealing arrangement has with frequency been held to be a conspiracy in restraint of trade violative of Section 1 of the Sherman Act or a conspiracy or attempt to monopolize trade violative of Section 2. Of course, a somewhat different burden of proof is required dependent upon which Act is charged.¹⁸

While our view of the applicable law is somewhat divergent from that held by the hearing examiner, we are in full agreement with his findings and conclusions as to the facts concerning this charge of unlawful agreement between Luria and the respondent mills. He found that while Luria had been a substantial factor in the scrap business in 1945, its principal strength was confined to the Eastern United States. In ten years time it extended its operations and became a dominant factor in other sections of the country, including the St. Louis area, the Rocky Mountain area and the West Coast. During this period it progressed from being a major factor in the Eastern United States to being "far and away" the dominant factor in the scrap business in that section. Its remarkable rise in each of these areas was due, for the most part, to the series of exclusive supply arrangements which it had with the respondent mills and other large scrap consumers.

¹⁷ Initial decision at p. 580.

¹⁸ *Times-Picayune Publishing Co. v. United States*, 345 U.S. 594 (1953).

With several exceptions, there are no formal contracts between Luria and the respondent mills requiring the mills to deal exclusively with Luria. Bethlehem Pacific Steel Corporation and United States Steel Corporation did enter written exclusive dealing contracts. The answer of Colorado Fuel and Iron Corporation "... admits that on or about June 1, 1946, it entered into an oral understanding with respondent Luria, pursuant to which said Luria was to act as exclusive scrap broker solely for respondent Colorado's mill at Pueblo, Colorado, and ... said oral understanding continues in effect" Respondent Granite City Steel Company advised the Commission in writing: "In April 1950 we gave Luria Brothers & Company, Inc., an agreement for the exclusive supplying of our scrap requirements."

For the most part, however, the existence of the exclusive agreements or understandings is established by the testimony and documents of record. There is ample evidence to show that the respondent mills looked to Luria and considered Luria obligated to keep their mills supplied with scrap and that Luria understands and accepts this obligation. For example, the vice president in charge of scrap buying of McLouth Steel Corporation stated in a letter to Luria: "As you know our scrap inventory position is very critical and you have been charged with the responsibility of keeping this plant in operation. We are depending on you to continue to take care of our requirements." The scrap buyer for the Standard Steel Works Division of respondent Baldwin-Lima-Hamilton Corporation testified that he expected Luria to supply the grades and quantities of scrap which he required and that Luria understood what was expected of them. The man who was purchasing agent for Lukens Steel Company in 1929, when it commenced buying exclusively from Luria, testified: "... we made no contract or any such agreement; written agreement anyhow. It may have been oral."

Although respondent Bethlehem Steel Company insists it has no agreement with Luria, the record shows instructions by the Bethlehem official responsible for scrap policy to his scrap buyer to "... write Pappas [a Rheem Manufacturing Company official] that Sp. Pt. [Rheem plant at Sparrows Point, Maryland] will be included in *overall scrap deal with Luria*." [Emphasis supplied.]

At one time or another, practically all of the mill respondents have notified other brokers and dealers, Government agencies and scrap producers, such as railroads and factories, that Luria was the mills' exclusive broker. The mill respondents consistently refused to accept offers of scrap from brokers competing with Luria although, in some cases, the turned-down brokers had been significant suppliers. On occasions, the mill respondents notified Luria of offers received from

other brokers or referred the offering brokers to Luria. Respondent Bethlehem once turned down an offer of 500 tons of scrap at \$42.50 per ton. The day following the offer Luria called the offering broker and agreed to purchase the scrap for \$43.50 per ton. The scrap was then shipped to Bethlehem.

The statistical evidence strongly indicates the existence of agreements between Luria and each mill respondent. Luria has been the almost exclusive supplier of mill respondents Lukens Steel Company, Grinnell Corporation, and Standard Steel Works Division of Baldwin-Lima-Hamilton since the 1930's. It is difficult to believe that the almost 100% exclusive dealing practiced by these respondents for such a long period of time is not the result of an agreement or understanding. And with those mill respondents whose substantially exclusive dealing with Luria is of less duration, the evidence shows a sudden supplanting of many former suppliers with the single supplier Luria. Such a massive change in an entire method of doing business would hardly be undertaken without some advance understanding.

The hearing examiner gave lengthy and detailed treatment to this aspect of the proceeding and the Commission endorses and adopts his findings and conclusions with respect thereto as they appear in Section II-B, 1 through 13, of the initial decision. We are also satisfied that he correctly analyzed the applicable legal authorities dealing with this question and see no reason for embellishing his discussion found in Section IV-B-1 of the initial decision. We are satisfied that there exists between Luria and each mill respondent an agreement, understanding, combination and conspiracy pursuant to which Luria supplies each of the mills with all or substantially all of its needs of scrap. The effect of these arrangements is to exclude competing scrap sellers from a substantial market and thus each of the agreements constitutes an unlawful conspiracy.¹⁹

We turn now to consideration of the effect which these agreements have had upon the relevant market and the respondents' purpose or intent in executing and performing them.

The Relevant Market

The concept of the relevant market has over-all application to this complaint; that is, it is of equal importance to both the Federal Trade Commission Act and Clayton Act charges. None of the activities allegedly pursued by the respondent are charged in the complaint as unlawful *per se*, and, therefore, each of them must be considered in the light of its probable effect upon the relevant market. As stated

¹⁹ *United States v. Paramount Pictures, Inc., et al.*, 334 U.S. 131, 160 (1948).

above, the relevant market concept breaks down into two principal divisions, that of product and that of area. We first consider the product involved.

The Product Involved

This matter is entirely concerned with iron and steel scrap, generated as a by-product of industry or as a result of the discard of items which have for some reason or other outlived their usefulness. The importance of scrap to the iron and steel producing industry can hardly be overstated. Approximately one-half of every pound of new steel produced in the United States is composed of scrap. The proportion of scrap used in relation to pig iron has been remarkably stable over the years. During the period from 1948 to 1954, the variation range was only 2.5%. This stability of proportionate use is all the more remarkable in view of the fact that the proportionate use by individual mills varies widely from the national norm. Integrated mills, that is, mills with facilities to produce their own pig iron, use a greater percentage of pig iron than nonintegrated mills. Mills operating electric furnaces prefer scrap to pig iron since it has less carbon and fewer other impurities. In some electric furnaces the charge consists entirely of scrap.

The respondents contend that pig iron is directly competitive with scrap, and the relevant product market here involved should consist of both products. Respondents argue that, for the most part, the two products are interchangeable and that the Supreme Court in *United States v. E. I. duPont de Nemours & Co.*²⁰ (*The Cellophane Case*) held that reasonably interchangeable products must be considered as a single line of commerce. Complaint counsel admit that pig iron and scrap "are to a large extent substitutable for each other."

The hearing examiner rejected the "reasonable interchangeability" test of *The Cellophane Case*, concluding that "it is now generally accepted that this test is limited to cases arising under the monopolization clause of Section 2 of the Sherman Act and does not apply to cases involving a charge of incipient, rather than actual, restraint or monopoly."²¹ The hearing examiner utilizes and relies upon what he and many of the writers believe to be the less stringent test of the *duPont-General Motors* case (*United States v. E. I. duPont de Nemours & Co.*²²). The test as announced there is whether the product has "sufficient peculiar characteristics and uses to constitute [it] sufficiently distinct from all other [products]." The hearing exam-

²⁰ 351 U.S. 377 (1956).

²¹ Initial decision at p. 574.

²² 353 U.S. 586 (1957).

iner then found as a fact that scrap has sufficient peculiar characteristics and uses to constitute it a distinct product from pig iron for the purposes of determining the appropriate line of commerce. He also held that there were sufficient limitations on the interchangeability of the two products to satisfy *The Cellophane Case* rule.

While the hearing examiner did not have the advantage of the Supreme Court's views on this point as set out in its recent opinion in *Brown Shoe Co. v. United States*,²³ he nevertheless arrived at the correct ultimate conclusion. In *Brown*, the Court explained that the "... outer boundaries of a product market are determined by the reasonable interchangeability ..." test while within the broad market contained within such "outer boundaries" "... well defined submarkets may exist, which in themselves, constitute product markets for anti-trust purposes." Among the criteria or indicia to be considered in drawing the boundaries of such a sub-market are "... the product's peculiar characteristics and uses."

Thus the Supreme Court has laid to rest the apparent disharmony between the rules of the *Cellophane* and *duPont-General Motors* cases by the simple and eminently logical expedient of blending one into the other. In addition to the "peculiar characteristics and uses" criteria, the Court opines that "industry or public recognition of the submarket as a separate economic entity, ... unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors" are to be considered as important indicia. It is apparent that application of these indicia to this matter clearly establishes the existence of a completely separate market for scrap. As we pointed out above, the demand for scrap has remained constant in relation to the demand for pig iron. This is probably due to the "peculiar characteristics" of scrap as found by the hearing examiner. There is little cross-elasticity of demand between scrap and pig iron. The price of scrap is extremely volatile, while the price of pig iron remains fairly stable. Scrap is produced and marketed in an entirely different fashion and for the most part by an entirely different group of competitors. Thus, as we view it, the practices engaged in by the respondents herein must be measured against a market composed of scrap alone.

The Relevant Geographic Markets

The hearing examiner measured the competitive effects of the various practices engaged in by the respondents in a market com-

²³ 370 U.S. 294 (1962).

posed of the entire Nation and in certain lesser geographical areas as follows:

North Atlantic area—The six New England States, plus New York, New Jersey, Delaware, Maryland, District of Columbia and eastern Pennsylvania.

Eastern Pennsylvania area—That part of Pennsylvania located east of McKean, Cameron, Clearfield, Cambria, and Somerset Counties.

Pacific Coast area—California, Oregon and Washington.

Rocky Mountain area—Arizona, Colorado, Utah, Idaho, Montana and Wyoming.

Pittsburgh-Youngstown area—An area extending from Johnstown, Pennsylvania, through Monessen and Washington, Pennsylvania; then northwest through Steubenville, Ohio, Weirton, West Virginia, and Youngstown, Ohio, to Warren, Ohio; then east through Sharon, Pennsylvania, and back to Johnstown through Butler, Pennsylvania.

St. Louis district—The metropolitan area of St. Louis and immediately contiguous areas in Missouri and Illinois.

The hearing examiner found that these “are the basic areas from which the mills draw the bulk of their scrap year in and year out.” Respondent Luria disputes the accuracy of this finding and charges that the examiner has, in fact, made contradictory findings. It points out, for example, that the hearing examiner found that certain areas do not produce sufficient scrap to satisfy the consumers located therein, and that as a result, dealers and brokers operating in these areas must reach out into other areas to obtain the additional quantities of scrap required. In the first place, we do not agree that the two findings are contradictory. The evidence clearly shows that steel mills are forced by freight costs to buy as much of their scrap as possible in areas contiguous to the point of consumption. This is true of all mills in all areas. The hearing examiner agrees that there were, and are, significant movements of scrap across the geographic market lines set out. It is our view that this finding is not inconsistent or incompatible with a finding that the mills draw the bulk of their scrap from the areas defined.

Secondly, we are not convinced of the merit of the proposition that the market to be considered is the entire area from which the mills draw scrap. Respondents contend that the examiner’s approach of limiting analysis to consuming areas was rejected outright in *Tampa Electric Co. v. Nashville Coal Co.*²⁴ Assuming the applicability of the *Tampa Electric* case as a precedent here, we cannot agree that it holds that the relevant market must be determined in relation to the sources

²⁴ 365 U.S. 320 (1961).

of the product involved. In *Tampa Electric* the court held that the relevant market consists of the area in which the seller and its competitors "effectively compete."²⁵ The court adopted the petitioning electric company's definition of the market as the area in which the 700 coal producers operating in the Appalachian coal area "... were willing to compete for the consumer potential."²⁶ As we see it, the court was simply reiterating the established view that the market is a sales area. In effect, all that *Tampa* holds is that the "pie" may not be sliced too thinly, i.e., there must be a demonstrable reason for the market boundaries drawn. The court could find no basis for the selection of "Peninsular Florida" as a separate market area and held it, therefore, an inadequate segment within which to measure the impact of the parties' restrictive contract. In this proceeding, the market lines were drawn to include the areas where most of the principal buyers are located and where the bulk of all scrap is consumed.

Moreover, there is, to our mind, a very significant difference between the factual situation presented in the *Tampa* case and in the instant matter. Here the product does not, like coal, originate in a relatively confined geographic area but springs from every single hamlet, farm and place of human abode in the country. From this myriad number of sources it flows to a relatively confined and limited number of purchasers—the mills and foundries. While the smaller foundries are rather widely scattered throughout the country, the customers taking the bulk of the scrap (from two-thirds to three-quarters of all scrap consumed domestically), that is to say, the huge steel mills, are concentrated within relatively confined geographic areas. And in our view it is this area, that is, the area wherein the purchases are made, that comprises the relevant geographic market. In the *Tampa* case the opposite was true. The product originated in a relatively confined area and was sold to a myriad number of users located throughout the country. The coal producers' market was ubiquitous, while the scrap sellers' market is highly concentrated. In its *Tampa* opinion the Supreme Court points out that the states of Florida and Georgia combined purchased only 2,304,000 tons of the 290,567,000 tons of coal sold in 1954 by the 700 coal producers (*id.* at 332). Thus the area, could not be considered an "appreciable segment" and was, in fact, a relatively insignificant market area. In contrast, here the areas chosen absorb the bulk of all scrap domestically consumed.

In essence, the market and supply picture with respect to scrap is that each individual consumer attempts to buy scrap from sources located in its immediate vicinity. When these sources become inade-

²⁵ *Id.* at 332.

²⁶ *Id.* at 331.

quate, the search is expanded in ever widening circles until the needs are supplied. Thus, to a great extent, the boundaries of the relevant geographic market are dependent upon the law of supply and demand. The areas are confined during periods of full supply and expanded during periods of scarcity of scrap. Of course, during both periods the mills tend to purchase the "bulk" of their supplies of scrap within an area of close proximity to the point of consumption. The hearing examiner found that the areas outlined in the initial decision reasonably coincide with the mills' natural and normal purchase areas, and respondent Luria has not convinced us that this finding is in error. Thus, it is our view that the regional markets described above represent areas of effective competition wherein the effect of the activities and practices engaged in by all of the respondents can properly be measured. The drawing of geographic market lines is definitely not an exact science. The most that can be accomplished along these lines is to attempt to define with reasonable accuracy and particularity the principal areas of effective competition. In our opinion this has been done.

The Amount of Commerce Controlled

Luria's position, that is, its share of the total commerce in iron and steel scrap in both the Nation and in four principal regional markets is revealed by the table attached as Appendix A. [pp. 639-640 herein]. The data contained in this tabulation are vigorously attacked by respondents, but it is our view that the statistics produced are the best and most accurate which can reasonably be obtained.

Luria principally objects to the failure to include within the tabulation the purchases of some 3,000 small scrap consumers who absorb between one-fourth and one-third of all domestically consumed scrap. The figures in evidence were secured by means of a survey addressed to the 70 principal iron and steel scrap consumers, who together represent approximately 99% of the country's total ingot capacity. The 3,000 scrap consumers not included in the survey are mostly small foundries. Because of their large number and relatively small individual needs it was deemed impractical to survey this entire group. It is Luria's contention that because this group was not surveyed it must be assumed that Luria sold no scrap whatsoever to them. However, this proposed conclusion is directly contradicted by the evidence of record. The hearing examiner concluded, on the basis of reliable evidence, that Luria is a substantial supplier to the nonsurveyed consumers and that their inclusion in the survey would not have produced a significant change in the result.

The tabulation covers only the purchases made by the surveyed mills from brokers and dealers and excludes from the total "universe" the purchases made by the mills directly from scrap producers such as railroads and industrial plants. It is indisputable that the "universe" includes all purchased scrap and not only broker and dealer scrap, but, as the hearing examiner points out, the exclusion of scrap purchased from direct suppliers does not affect the validity of the figures contained in the tabulation. The only effect of including the figures showing scrap purchased from direct suppliers would be to reduce slightly Luria's percentage of the universe.²⁷

Respondent Luria objects to the manner in which the purchases of two of the respondent mills, United States Steel and Bucyrus-Erie, are presented in the tabulation. While each of these mill respondents operate more than one scrap consuming facility, the tabulation includes within the respondents' purchases category the figures for only the one United States Steel plant located at Geneva, Utah, and the single Bucyrus-Erie plant located at Erie, Pennsylvania. The balance of the scrap purchases made by these respondents at all of their other plants is included in the figure showing purchases by nonrespondent mills. The reason for this division is reasonable and logical. Luria dealt with these two respondents on a plant-by-plant basis and with the other respondents on a company-wide basis. The complaint charges that United States Steel and Bucyrus-Erie are involved in this proceeding "especially because" Luria is the exclusive or substantially exclusive supplier to their single plants as named. The tabulation is, therefore, in complete harmony with the complaint and the facts as they exist.

It will be noted that Appendix A [pp. 639-640] compares Luria's

²⁷ The effect is illustrated by the following table which compares Luria's position in a national market consisting of the total purchases of the reporting mills with its position in a national market composed of the reporting mills' purchases from brokers and dealers:

PURCHASES OF SCRAP BY ALL REPORTING MILLS FROM (A) ALL SOURCES, (B) BROKERS AND DEALERS, AND (C) LURIA AND SUBSIDIARIES, 1947-1954

	(a) Total purchases, 1,000 gross tons	(b) From brokers and dealers		(c) From Luria and subsidiaries		
		1,000 gross tons	Percent of total	1,000 gross tons	Percentage of—	
					Total	Broker-dealer
1947.....	17,224	15,931	92.5	2,730	15.8	17.1
1948.....	18,741	17,319	92.4	3,258	17.4	18.8
1949.....	14,173	12,756	90.0	2,848	20.1	22.3
1950.....	19,791	18,235	92.1	5,369	27.1	29.5
1951.....	20,444	18,232	89.2	5,719	28.0	31.4
1952.....	22,367	20,620	92.2	6,875	30.7	33.3
1953.....	21,897	19,935	91.0	7,281	33.3	36.5
1954.....	15,807	14,099	89.2	4,751	30.1	33.7

position as a supplier to the respondent mills with its position as a supplier to nonrespondent mills. This comparison points up the part which Luria's dealings with the respondent mills played in securing for Luria its relative position in the market surveyed.

The remarkable rise in Luria's position in the national market is graphically illustrated in Appendix A [pp. 639-640]. During the eight-year period covered by the tabulation, Luria's percentage of the total scrap sales by all brokers and dealers in the United States rose from 17.1% to 33.7%. That this was due, for the most part, to the arrangements with the mill respondents is indicated by the fact that Luria's share of their purchases totaled only 35.9% in 1947 and rose to 78.5% in 1954. Luria's position with all surveyed nonrespondent consumers showed an increase of only approximately 7%, from 9% to 15.8%.

The substantial impact of the combined activities of Luria and the mill respondents is even more marked in the various regional markets covered by the tabulation. In the Pacific Coast area, Luria's percentage of the market increased from .2% in 1947 to 50.6% in 1954. This was due to the fact that Luria was, by 1954, supplying 80.4% of the mill respondents' scrap needs in that area. The other regional markets present a similar picture. In the North Atlantic market, Luria, by 1954, had amassed to itself 74.5% of the total broker and dealer scrap sales. This represented an increase of more than 100% over its market share in 1947 of 34.1%. That this was due to the deals with the respondent mills is shown by the fact that Luria's share of the purchases of nonrespondents remained substantially the same over this period while its share of the purchases made by respondents increased from 36.5% to 87.1%.

In 1954, Luria was supplying 83.3% of the scrap consumed by the reporting mills in eastern Pennsylvania. This represented an increase over 1947 of almost 100% and was accounted for, in the main, by the fact that Luria's share of the respondent mills' purchases increased from its 1947 figure of 50.1% to 89%.

Luria's position in the Rocky Mountain area did not show any improvement over the period from 1947 to 1954, for the simple reason that it had a virtual monopoly in this area during the entire period. Its smallest share of this market was 87.2% realized in 1951. In 1947 and 1954, Luria's share reached the startling figure of approximately 99%.

A market not covered by Appendix A [pp. 639-640] is the so-called St. Louis district. This market area contains only two large scrap consumers, the respondent Granite City and the Laclede Steel Company. Next in size are three large open hearth steel foundries,

American Steel Foundries, Scullin Steel Company, and General Steel Casting Corporation. The hearing examiner found that there were, in addition, some 40 to 50 scrap consumers in the area but that all of them together accounted for less than 20% of the broker-dealer scrap purchased. Respondent states that there are no statistics in the record to support this 20% figure. While the 20% figure is admittedly an estimate, we believe it to be founded upon sufficient facts to satisfy the substantial evidence requirement. This evidence includes the testimony and sales statistics of five of the largest brokers located in this market and the purchase figures of the largest foundries.

It is important and significant that the ingot producers, Granite City and Laclede, constitute the only market in this area for certain grades of scrap such as No. 2 bundles.

It is the Commission's view, and we so find, that the tabulation below, taken from the hearing examiner's initial decision, adequately and validly portrays Luria's position in the St. Louis district or market. Since the primary purpose of this tabulation is to depict the part played by the full-supply arrangement between respondents Granite City and Luria, the purchasers of Granite City are depicted separately.

SCRAP PURCHASES FROM BROKERS AND DEALERS BY FIVE MAJOR CONSUMERS,
ST. LOUIS DISTRICT, 1949-54

	1949	1950	1951	1952	1953	1954
Total all companies.....	603,716	909,178	920,549	889,268	796,188	630,272
Percent from Luria.....	16.5	31.0	51.7	42.5	51.6	45.4
Total Granite City.....	261,895	407,054	408,754	349,119	397,771	274,640
Percent from Luria.....	0.3	59.5	100.0	100.0	100.0	100.0
Total nonrespondents.....	341,821	502,124	511,795	540,149	398,417	355,632
Percent from Luria.....	28.7	7.9	11.1	5.4	3.3	3.1

The tabulation reveals that Luria increased its position in the St. Louis market during the period 1949 to 1954 from 16.5% of the broker-dealer scrap purchased by the five largest consumers to 51% in 1951 and 1953, declining to 45.4% in 1954. Here again the increase in Luria's share of the market was achieved entirely as a result of its exclusive arrangement with respondent Granite City.

The described statistical evidence reveals that Luria has achieved a monopolistic or near monopolistic position in several important scrap markets. In the national market and in the regional markets where it is dominant but not yet in control, the record shows a rapid increase in Luria's market share leading to the conclusion that monopoly or near monopoly may be in the offing. All in all the picture is not one of competitive health and vigor but one of market foreclosure and monopoly. We must now determine whether the condition was purposely effected, *i.e.*, did the respondents act with intent?

The Respondents' Purpose

It is our conclusion that the hearing examiner erred in not finding that the respondents together possess monopoly power over the scrap market. The most concrete example of this is found in the Rocky Mountain area where the only significant consumers appointed Luria as their exclusive supplier. All dealers in this market must sell to Luria and on such terms as Luria sees fit to impose. Luria may refuse to purchase from particular dealers and thereby cause their demise since scrap cannot be economically shipped long distances to other markets.

In all the other markets, and in the Nation as a whole, it would appear that the inevitable consequence of a continuation and extension of these full supply agreements would be to grant Luria monopoly power. Respondents argue that Luria can never achieve absolute monopoly power since its position is maintained at the mill respondents' sufferance. They point out that at any time they can terminate their arrangement with Luria, thereby rendering it powerless. While this may be true, it does not render Luria as a monopolist or potential monopolist more legally palatable. The record clearly shows that these full supply arrangements give Luria absolute power over all of the brokers and dealers who desire to or, in some instances, must, as an economic necessity, sell to the mill respondents. Luria has the power to control the prices which such brokers and dealers will receive for their scrap and has the power to exclude such competitors from the market which the mill respondents constitute. While this monopoly power may exist, as the mill respondents contend, at their sufferance, it is nonetheless monopoly power and unlawful.

It is unimportant that this power may never be used to actually control prices for it is unlawful *per se* when deliberately attained.²⁸ And since monopoly power was the necessary consequence or result of the full supply agreements, it must be found that the respondents purposefully and deliberately created it.²⁹

Several of the respondents admit that they deal with Luria exclusively, or nearly so, to prevent competition among brokers buying scrap for them. They argue that if several different brokers are attempting to obtain scrap to supply their needs, the brokers will bid against each other and thereby drive up the price of scrap. We fail to see how this argument aids respondents. In the first place, scrap brokers are not agents sent forth by the mill to buy scrap at whatever price they are able to negotiate with dealers or other suppliers. Scrap brokers are wholesalers who sell scrap to the mills at a price

²⁸ E.g., *American Tobacco Co. v. United States*, 328 U.S. 781, 810 (1946).

²⁹ *United States v. Griffith*, 334 U.S. 100, 108 (1948).

agreed upon when an order is placed. When a broker accepts an order he may already have the scrap on hand or he may have to secure it in the market at the best price he can obtain, but, in either case, the price to the mill is fixed at the time the order is placed. The broker, not the mill, takes the risk of a subsequent market price rise. As the initial decision points out at I-B-16: "Because of market fluctuations and varying competitive conditions in various markets, the buying and selling of scrap by brokers is largely a speculative operation."

Moreover, if respondents' premise that dealing with a multiple number of brokers enhances prices had merit, we would expect that all significant consumers would be buying from only one broker. But this record reveals that many of the large steel mills are content to deal with several brokers, and one, Youngstown Sheet & Tube Company, does so "primarily" in order to be assured that it is getting the best price. It seems to us that the practice of requesting competing bids from competing brokers is more likely to produce lower prices than granting an exclusive deal to a single broker.

However, the practice of dealing with a single broker can very definitely have an effect upon prices if all of the significant consumers in the market, unilaterally or otherwise, decide to deal exclusively with the same broker. The danger here is clear, for the broker then would have absolute control over the prices paid to dealers and other suppliers since he represents the only entree to the consuming mills. And in a very real sense, that is what this case is about. In several markets Luria has acquired, or is well on the road to acquiring, monopoly power over the scrap industry. The source of this power is the mill respondents, and the vehicle used to bring it into being is the exclusive supply arrangements. It is of no consequence that the record does not establish that the exclusive use of Luria is the product of an agreement among the respondent mills for we are concerned here with effects rather than means. The effect of the exclusive arrangements here existing is, and has been, to exclude competing brokers from substantial markets, to grant monopoly power to Luria and to create a monopoly in Luria.

Viewed as attempts to stabilize prices for scrap and to eliminate competition, the agreements between Luria and the mill respondents constitute unreasonable restraints on trade, which would violate Section 1 of the Sherman Act. And it is our view that they likewise are conspiracies to monopolize within the meaning of Section 2 of the Sherman Act.

In addition to the statistical evidence of market foreclosure, there is much additional specific evidence of the adverse competitive effects of these exclusive supply arrangements. Dealers and brokers who

were formerly substantial suppliers to the mill respondents saw their sales to this market diminish to insignificance. While on occasion the mill respondents continued to purchase from these former suppliers, they placed them under severe limitations as to the points from which scrap could be shipped and on occasion required them to sell at prices as much as a dollar less per ton than the prices the same mill respondents were affording to Luria. These discriminatory practices are likewise unlawful restraints of the type condemned by the Sherman Act.³⁰

In our deliberations on this complaint, we have given weight to the substantial disparity in size and strength between Luria and its broker and dealer competitors.³¹ Luria is the only broker-dealer doing a substantially national business. All of the other brokers and dealers confine their operations to one or two of the regional markets and must of necessity operate profitably in that market or markets or perish.

Thus, it is our conclusion that this record demonstrates quite conclusively that the respondents have attempted to monopolize and have, in fact, monopolized significant parts of commerce and that, unless deterred, will eventually produce in respondent Luria a complete monopoly in most of the major markets for iron and steel scrap.

The Exclusivity Order

We have made extensive changes in Paragraph 1 of the order proposed by the hearing examiner. In the first place, we do not feel that the record will support an order of this type against respondent Southwest Steel Corporation. Standing alone, separated from Luria by an order of divestiture, Southwest is not a dominant factor in any market and the probable effects of an exclusive agreement between it and a mill or mills have not been explored.

We have also redrafted the prohibitions of the order to shift the emphasis from the conspiratorial aspects of the exclusive agreements to the acts or practices engaged in pursuant to the agreements. It seemed to us that the hearing examiner's order prohibited the mills and Luria from dealing exclusively pursuant to an agreement or conspiracy. Such an order may be interpreted as permitting a continuation of the exclusive dealing between the parties sans agreement. Such an order would be a hollow shell devoid of effect upon the practices found to be injurious to competition.

A principal objection raised by the mill respondents to the hearing examiner's order and one which applies equally to the order as redrafted by us is that it would prohibit a mill from purchasing "substantially all" of its scrap from Luria even though no other supplier

³⁰ *United States v. Crescent Amusement Co.*, 323 U.S. 173, 182-183 (1944).

³¹ *United States v. Griffith*, 334 U.S. 100, 107 (1948).

was available. Certainly we do not intend any such harsh result and in the unlikely event that the prospects of hardship of this type should arise we will not hesitate to grant hasty relief upon a showing properly made.

In subparagraph (c) of Paragraph 1 of his order, the hearing examiner directs all of the larger mill respondents³² to refrain from making all or substantially all of their scrap purchases from any broker or supplier not a party to this proceeding. We find ourselves in agreement with the mill respondents' contention that there is no record evidence to support a prohibition of this type. From this record there is no way to anticipate what the probable effect of a full supply contract between any plant belonging to these respondents and any other unknown broker or supplier may be. The full supply arrangements between Luria and the mill respondents are unlawful because of their dangerous tendency and because of the fact that they have, to a certain extent, created a monopoly in Luria. Full supply arrangements are not unlawful *per se*, but only insofar as they restrain, or have the tendency to restrain, competition. Whether a full supply agreement between the plants of these respondents and another broker or supplier of scrap unknown to us may have these effects must await another proceeding brought specifically to examine such an arrangement. In conformity with these views, we are striking subparagraph (c) of paragraph 1 of the hearing examiner's order in its entirety.

All of the respondents reserve their heaviest attack for the prohibitions contained in Paragraph 2 of the hearing examiner's order. This paragraph of the order is directed against all of the respondent mills and prohibits them from purchasing in excess of 50% of their requirements of scrap from respondent Luria for the next five years except to the extent that other suppliers have failed to offer or deliver scrap in sufficient quantities. That this is a novel prohibition in Federal Trade Commission orders cannot be denied, but its newness does not militate against its acceptance. Since the term "unfair trade practices" was left without exact definition in the Federal Trade Commission Act, so that the Commission would be empowered to deal with each new device or practice which competitors could devise, it would seem that new orders specially drafted to fit each new factual complex are to be desired rather than avoided.

We reject respondents' contention that this paragraph of the order is beyond the Commission's power to promulgate since it requires affirmative conduct. Any prohibition of specified conduct usually

³² Respondents Edgewater Steel Company, Columbia Malleable Castings Corporation, Bucyrus-Erie Company, Baldwin-Lima-Hamilton Corporation, Detroit Steel Corporation, and McLouth Steel Corporation are exempted from this prohibition because of their relatively small scrap purchases.

requires as its necessary counterpart that the respondent take affirmative action of a type not prohibited by the order. Moreover, even when viewed as requiring affirmative action, the Commission's power in this respect is clear.³³

Respondents next argue that the order is arbitrary. They point out that the competitive patterns differ widely from market to market and that, therefore, this "blanket order" is not related to the practices in any particular market area. The respondents ask, "What are the basic facts which led the Hearing Examiner to choose 50% for 5 years? Why not 30% for 2 years, or 10% for 1 year?"

It was apparent that the intendment of the hearing examiner was to restore to the area of free competition a reasonable segment of the market now foreclosed by these unlawful arrangements. His order is based upon his observation of this industry over a period of several years. The order is not unduly harsh since Luria is permitted to retain up to 50% of the volume of any plant. By freeing the remaining 50% to Luria's competitors, the hearing examiner intended to provide a "breathing spell" of five years, during which competition could be restored. Since the mill respondents are ordered to buy from suppliers other than Luria only when such other suppliers offer scrap, adequate in quantity and quality, on terms substantially similar to those offered by Luria, they are not subjected to an economic penalty nor need they ever be in a short supply situation.

We see very little substance to the argument that compliance with the provision is impossible because scrap needs vary from month to month and a mill cannot determine in advance its total annual needs. Future scrap needs are susceptible of reasonably accurate predictions and all that is required here is for the respondents to exercise good faith in making their estimate.

It is our opinion, and we find, that the basic prohibition of Paragraph 2 of the order promulgated by the hearing examiner is reasonable under the circumstances and is responsive to the factual situation found. We endorse and adopt the views of the hearing examiner expressed at page 592 of the initial decision:

In the opinion of the examiner the momentum of the exclusive arrangements between Luria and the mills, which have been here found to be illegal, will continue to plague the industry and yield benefits to Luria, unless some remedy more drastic than that proposed by counsel supporting the complaint is adopted. What is required here is a provision which will induce the mills to place orders with other suppliers who submit offers comparable to Luria's. Merely prohibiting the mills from agreeing with Luria to use it as exclusive or preferential broker, or from agreeing to purchase all of their scrap from Luria will not ac-

³³ E.g., *Federal Trade Commission v. National Lead Co.*, 352 U.S. 419, 430 [6 S. & D. 193] (1957); *Bantam Books, Inc. v. Federal Trade Commission*, 275 F. 2d 680 [6 S. & D. 744] (2nd Cir. 1960), cert. denied 364 U.S. 819 (1960).

comply with this. By using one additional broker for a minor portion of their requirements the mills may find an avenue for the successful evasion of the order. Aside from any conscious effort to evade the order, there is a strong likelihood that they will continue to favor Luria because of their confidence in it, born of the former illegal relationship. The only way to assure that Luria will not continue to benefit from its illegal exclusive arrangements, and to encourage the re-establishment of normal competitive conditions in the industry, is to prohibit the mills for a period of time from refusing to place orders for at least half of their purchased scrap requirements with other suppliers who submit offers comparable to those received from Luria, and from purchasing more than half of their scrap from Luria where comparable offers have been received from others.

In an effort to simplify and clarify this part of the hearing examiner's order, we have made extensive modifications therein. We have replaced his subparagraphs (a) and (b) with a single paragraph (a). We have also corrected what would appear to have been an inadvertent error. The hearing examiner's order as drafted would have required each mill respondent to place 50% of its annual requirements with suppliers other than Luria. Thus, the order would have been inoperative with respect to such mill respondents as United States Steel since more than 50% of its total corporate requirements are satisfied by other suppliers. As modified by us, the order now requires that 50% of each plant's requirements be placed with suppliers other than Luria.

The Export Trade Agreements

In Paragraph 12 of the complaint, it is charged that Luria entered agreements and conspiracies with respondent Hugo Neu Corporation and other unnamed parties for the purpose and with the effect of restraining competition "in interstate and foreign commerce, and tending to create a monopoly in said respondents in the sale of iron and steel scrap from the continental United States to customers located in other countries." The complaint then specifies in some detail an alleged agreement between respondent Neu and five of the leading steel producing companies of Japan, pursuant to which Neu was to act as their exclusive supplier for scrap exported from the United States. The complaint charges that Luria became a party to this agreement by means of a second agreement negotiated between it and Neu, pursuant to which Luria would supply part of the iron and steel scrap to be shipped to the Japanese combination.

While this arrangement with the Japanese mills is the only specific conspiracy with respect to export operations charged in the complaint, the examiner received a good deal of additional evidence pertaining to alleged conspiracies or unlawful practices engaged in by Luria with respect to export shipment to various European countries and Ar-

gentina. This additional evidence, however, did not involve respondent Neu. The evidence with respect to the other alleged unlawful activity was admitted under the theory that the complaint specified the Japanese conspiracy only as an example or illustration of a broad charge of combination and agreement involving the exporting of scrap.

The hearing examiner found that the charge of unlawful conspiracy growing out of the arrangement with the Japanese mills had not been sustained. We are in complete agreement with this conclusion. The facts of this situation are relatively simple. In July of 1953, respondent Hugo Neu Corporation entered a contract with a cooperative group of Japanese mills which called for the delivery of a maximum of 150,000 tons of steel scrap. The shipment was to be completed within six months after the lifting of United States export controls. The export restrictions were relaxed in October of 1953, and the full 150,000 tons of scrap was delivered during the next six months.

Luria came into the picture when Neu was unable to obtain the necessary scrap to fulfill its contract. In November 1953, Neu entered into an oral agreement whereby Luria undertook to supply scrap to Neu at Luria's cost for transshipment to the Japanese mills. In return Luria was to receive a portion of the profit of the resale to the Japanese. Of the 150,000 tons supplied to the Japanese under contract, 90,000 were actually obtained from Luria. After Neu's contract with the Japanese had been satisfied, the arrangement between Luria and Neu terminated.

In dismissing the complaint as to the respondent Neu, the hearing examiner pointed out that the record contained no definitive evidence as to Neu's position or strength in the scrap industry. He reasoned that the fact that Neu was unable to fulfill a contract for 150,000 tons of scrap without calling on Luria showed that it was not a dominant or major factor.

Insofar as Luria is concerned, he concluded that it participated in the arrangement between Neu and the Japanese mills as merely another supplier, albeit a large one. It was not a party to the original agreement, and Neu did not enter the agreement with the Japanese mills in the expectation that Luria would become a party. Thus, he concluded that Luria's participation in this arrangement was not unlawful.

It is the Commission's viewpoint that arrangements of the type here described may constitute unlawful restraints on trade if greater shares of commerce are involved and the contract persists for a more extended period. The evidence here clearly shows that the contract in question was never renewed nor was any similar contract ever executed. The contract had a relatively short life, and there is no present likelihood

that it will be reinstated. Under these circumstances, there is no reason or justification for an order against respondent Neu, and we affirm its dismissal from this proceeding.

The respondent Luria, however, was ordered by the hearing examiner to cease and desist from singly or in combination with others entering any agreements or combinations with foreign steel consumers pursuant to which Luria acts as the exclusive or substantially exclusive broker or supplier of scrap exported from the United States. This order of the hearing examiner is not founded upon Luria's activities with respect to the Japanese mills, but is based in its entirety upon certain agreements entered with a group of European steel mills.

In the early 1950's, the countries of West Germany, France, Italy, Belgium, the Netherlands, and Luxembourg, as a part of the common market or Schuman Plan, formed the European Coal and Steel Community. This cooperative authority was given power and supervision over the coal and steel industries of these countries. A central buying office was formed to purchase the scrap needed by the mills of the various countries. The central buying office, named Office Commun des Consommateurs de Ferraille, is commonly referred to by its initials OCCF.

In early 1954, OCCF invited three American scrap companies to its office in Brussels to discuss arrangements for its purchase of United States scrap. Each of the three American scrap companies was desirous of acquiring the exclusive right to supply OCCF. That Luria was so motivated is evidenced by the testimony of its vice president, Ralph Ablon, who arranged a separate conference with an OCCF official "to see if there wasn't some way whereby I could get all the business". However, instead of appointing one of the three applicants, OCCF advised them that all three had been selected.

Some time later, OCCF presented to the three companies a draft of a contract which it had prepared. The contract placed upon the three suppliers the joint obligation to supply OCCF's scrap needs from scrap obtained in the United States, Panama, Cuba, Puerto Rico, Aruba, Curacao, and Trinidad. This contract was signed by the representatives of the three companies on May 4, 1954, but was not approved by OCCF until July 14, 1954. The contract called for the shipment of an indefinite amount of scrap to OCCF in a range between 15,000 and 250,000 tons. The price was fixed at the lower of cost or the *Iron Age*³⁴ composite price, plus shipping expense, plus \$2.00 per ton commission. While the facts are not absolutely clear, it would appear that the contract was primarily awarded to Luria and that Schiavone-Bonomo Corporation had been included in the

³⁴ A trade publication which lists the prices paid for scrap by mills in the various markets.

group at the insistence of the Italian mills, and Western Steel International Corporation had been included at the instance of the German mills.

The three companies agreed to share equally in the venture. Western was to be responsible for the administration of all details abroad and Schiavone-Bonomo and Luria were responsible for the purchase and shipment of the scrap. This exclusive contract was operative through the year 1954 and was extended for two three-month periods and a six-month period to the end of 1955.

Almost before it became operative, the contract was, at Luria's request, amended in certain important particulars. The original contract called for the shipment of only No. 1 and No. 2 Heavy Melting Steel. It was modified to the extent that the Luria group was permitted to ship No. 2 Bundles to the extent of one-third of each cargo. The price formula was altered so that the ultimate price was based entirely on cost rather than the lower of costs or the *Iron Age* listed price. In addition, Canada was included within the area covered by the contract.

The total shipments under the contract far exceeded the maximum limit of 250,000 tons specified. During the year 1954, shipments by the Luria group totaled 543,000 tons. This amount was equal to 90.4% of the total amount of scrap shipped from the United States to OCCF countries in 1954. During the year 1955, the Luria group shipped 1,970,000 tons to the OCCF countries, which was equal to 95.3% of the total United States shipment to those countries.

At the end of 1955, for reasons which are not entirely clear, the OCCF advised Luria that the existing exclusive contract could not any longer be extended. However, there is documentary and other evidence to indicate that despite the absence of a binding contract it was OCCF's intention to continue to favor the Luria group with the majority of its United States purchases. The record contains no record of 1956 scrap shipments by the Luria group to OCCF beyond April. During that four-month period, the Luria group shipped 638,000 tons, or 82.1% of the total United States scrap shipped to the OCCF countries. In October 1956, OCCF entered another contract with Luria which specified that OCCF reserved the right to place orders with other suppliers. While the contract was entered with Luria alone, it was understood that the other two members of the group would participate in its performance on an equal basis. The record does not disclose the amount of scrap shipped pursuant to this contract.

The original OCCF contract contributed in a large measure to Luria's dominant position in the market consisting of that portion of

the scrap needs of foreign consumers which is satisfied by United States exports. Complete statistics are available for only the years 1954 and 1955.

In 1954, a total of 1,487,440 gross tons of scrap were exported from the United States. Of this total, Luria was responsible for 751,813 tons, or 50.5%. Luria's shipments equalled approximately 70% of the total United States shipments to the countries to which Luria shipped.

In 1955, United States exports of scrap totaled 4,566,346 tons. Luria was responsible for 2,150,217 tons, or 47.1% of the United States total. Its percentage of the total shipped to the countries with which it did business was approximately 55%.

As the hearing examiner pointed out, there can be no question but that the effect of the aforesaid exclusive dealing contract was to give the Luria group a monopoly on substantially all scrap exports to the OCCF countries from the United States and other areas in the Western Hemisphere. It seems equally clear to us that the purpose and intent of the contract was to grant such monopoly power and to take advantage of the near monopoly power Luria had in the purchase of scrap in the Eastern United States by reason of its exclusive arrangement with the respondent mills and others. Luria, and Luria alone, had sufficient market power to purchase the amounts of scrap needed by OCCF in the Eastern United States' market without causing a market price increase. In a report to OCCF urging the extension of the exclusive dealing contract, the Luria group advised:

An important aspect of the O.C.C.F. method of buying is our purchasing for you in a manner calculated not to disturb the American mills' supply. We are certain that it is unnecessary to point out how quickly this situation would change, both in relation to price and effect on American supply, were there many buyers competing for the same scrap instead of our group.

At a later point, this report boasts that the group's method of buying has been instrumental in lowering the price of scrap in spite of increased demand. It states:

We must also point out that, largely due to these accumulations, [large inventories maintained at ports] the composite price has dropped approx. 2 dollars within the past months despite increased American scrap consumption and increased foreign buying.

The report advised that such good results could not be expected in the future unless the group could operate "without the interference of other buyers for O.C.C.F."

While the hearing examiner found on the basis of the testimony of Luria's vice president that each of the three American exporters shared more or less equally in the effort and profit of the venture, there is evidence to indicate that Luria was the dominant party. For example, the group recommended to OCCF that in the future, cargo allocations

be split 50% to Luria Brothers, 25% to Western Steel International Corporation and 25% to Schiavone-Bonomo Corporation.

Luria argues that the appointment of the Luria group as the exclusive supplier to OCCF was entirely the decision of OCCF, and that it had made a decision to select 2, 3, or 4 brokers before Luria was ever contacted. While the evidence on this point is, in our opinion, equivocal, we accept respondents' contentions as facts since complaint counsel does not contest them. But as we view it, these facts are not controlling. No matter how the restraining agreement originally came into being, evidence clearly shows that respondent Luria eagerly embraced it and, moreover, did everything in its power to assure the continuation and extension of the exclusive dealing provision. One is not absolved of complicity in a contract which restrains trade simply because he did not originate the idea. This agreement had the effect of excluding competing United States scrap suppliers from an appreciable market. It is this effect which makes the contract unlawful. Moreover, the restrictive agreement cannot be divorced from Luria's other activities in the domestic scrap market. The agreement and the subsequent attempts to have it renewed and extended constitute clear evidence of an attempt to monopolize a significant part of commerce.

The hearing examiner's order dealing with this violation is appropriate and we adopt it without change.

The Acquisitions of Other Companies

Paragraph 11 of Count I of the complaint charges, *inter alia*, that Luria violated Section 5 of the Federal Trade Commission Act by acquiring all or a substantial part of the capital stock of certain scrap broker or dealer corporations "for the purpose and with the effect of thereby lessening or eliminating, suppressing, and preventing competition with said respondent by such dealers and brokers in the buying and selling of iron and steel scrap, of lessening and suppressing competition generally in the buying and selling of iron and steel scrap, and of creating and maintaining a monopoly in said respondent." Count II of the complaint charges the same acquisitions constitute violations of Section 7 of the Clayton Act.³⁵

While the two charges are founded upon what are basically identical facts, the charges are distinguishable. Under the Section 5 charge,

³⁵ With the exception of an abandoned charge dealing with the alleged acquisition of a stock interest in Apex Steel and Supply Company, the questioned acquisitions were all made prior to December 29, 1950, the effective date of the Clayton Act amendment which forbids the purchase of the "assets" of corporations where the effect may be deleterious to competition (64 Stat. 1125). Thus we are here only concerned with the Act as originally approved on October 15, 1914 (38 Stat. 731).

it must be shown that Luria's purpose in making the acquisitions was to injure competition or create a monopoly. Thus this charge is, in effect, a charge of attempted monopolization. Under the Section 7 count, it must be shown that the effect of the acquisitions may be to injure competition or to create a tendency toward monopoly without regard for Luria's purpose. Complaint counsel proposed to the hearing examiner a two-part order which would have (1) required Luria to divest itself of its entire interest in five acquired companies, and (2) enjoined it from acquiring any future control in any company engaged in the business of buying and selling iron and steel scrap as a broker or dealer.

The hearing examiner found that only two of the acquisitions, Pueblo Compressed Steel Corporation and Southwest Steel Corporation, were made in violation of Section 7 of the Clayton Act and ordered Luria to divest itself of the stock of these corporations. He dismissed the Section 5 charge as unproven.

The complaint charges that Luria acquired all, or a substantial part, of the capital stock of six corporations which were allegedly engaged as brokers or dealers in scrap. Four of the acquisitions were found to be not unlawful and the hearing examiner's order would permit their retention. Complaint counsel have appealed the hearing examiner's refusal to order divestiture of three of the companies acquired, A. M. Wood & Company, Lipsett, Inc., and Lipsett Steel Products, Inc. We first consider this appeal.

The Acquisition of A. M. Wood & Company

The A. M. Wood Company was a small, family-owned scrap brokerage corporation operating in the eastern Pennsylvania market, with its office in Philadelphia, Pennsylvania. It was acquired by Luria in 1947. A. M. Wood's sales in the eastern Pennsylvania market in 1947 represented less than 1% of the scrap purchased by the steel mills and major foundries in that market. Its total sales in 1947 equalled only 12,745 gross tons.

Luria continued to operate A. M. Wood as a separate brokerage concern after the acquisition and made no public announcement of its ownership. Thus, some dealers were unaware of the fact that Wood was owned by Luria, but there is no evidence that Luria secured an unfair advantage because of its unpublicized control.

The hearing examiner found that Luria and Wood had not been in "substantial competition" prior to the acquisition; that Wood was of "minuscule size" and in a "moribund state" at the time of acquisition and concluded that the acquisition did not have the requisite injurious tendency. The Commission is in full agreement with these findings

and conclusion and the appeal of complaint counsel must, therefore, be denied.

The Acquisition of the Lipsett Companies

On May 4, 1948, Luria acquired all of the outstanding stock of Lipsett, Inc., and Lipsett Steel Products, Inc. There is no record evidence to indicate that either of these companies were, prior to the acquisition, engaged as scrap brokers or dealers, as alleged in the complaint. As a matter of fact, the record is not clear as to just exactly what business they were engaged in. It would appear that Lipsett Steel Products, Inc., was nothing but a corporate shell at the time of acquisition since it had been organized for only about five months. The record indicates that Lipsett, Inc., was engaged to an unknown extent in demolition and construction work and that as a part of its demolition business, it generated scrap of which some was sold to Luria. The record is silent, however, as to the extent of such scrap sales or as to the acquired companies' standing in any relevant market. Lipsett, Inc., continued to operate after the acquisition in the demolition and construction business.

After the acquisition, Luria operated Lipsett Steel Products, Inc., as a scrap dealer. A scrap yard was acquired in Brooklyn, New York, in 1950, and another in Los Angeles in 1951. After 1950, Lipsett Steel Products, Inc., became a substantial scrapyard dealer, but it appears that its success was primarily due to the efforts of Luria and was not the result of any special intrinsic qualities it possessed at the time of acquisition. In the words of the hearing examiner:

So far as appears from the record, Luria could just as well have established additional yards in its own name or in that of a newly-formed subsidiary. The fact that it did so in the name of Lipsett Steel does not provide a basis for retroactively imputing adverse competitive implications to the initial acquisition, * * *.³⁸

Complaint counsel do not seriously dispute the foregoing factual findings and conclusions. They admit the record "does not contain pre-acquisition statistics" and does not indicate "the extent of its business activities before it was acquired by Luria"; or "what business it was engaged in up to 1950"; and that with respect to the relevant market, the record shows only "The Lipsett companies were located in New York City and presumably operated essentially in that market." Certainly this is an inadequate basis for a requested order of

³⁸ Initial decision, at p. 499.

divestiture. The hearing examiner's conclusion that Luria's acquisition of these corporations did not violate Section 7 of the Clayton Act is correct and must be affirmed.

The hearing examiner found that two of the acquisitions made by Luria violated Section 7 of the Clayton Act, and he issued an order requiring divestiture. We consider now Luria's appeal of this finding and order.

The Acquisition of Pueblo Compressed Steel Corporation

Pueblo Compressed Steel Corporation was incorporated in the State of Colorado on August 3, 1942, and since that time has been engaged as a scrap dealer. Its only yard is located in Pueblo, Colorado, where it is convenient to the Pueblo plant of Colorado Fuel & Iron Corporation (CF&I).

During the same month in which it was incorporated, Pueblo Compressed Steel Corporation entered into an agreement with CF&I, pursuant to which CF&I agreed to purchase all of the scrap offered to it by Pueblo, including all bundled scrap compressed or baled in the Pueblo yard, and to refrain from purchasing from others bundled scrap which had been converted at any place within a radius within 200 miles in all directions from Pueblo. The agreement went into effect in October 1942, and was to continue for a period of five years.

In the spring of 1946, Luria and CF&I entered an agreement pursuant to which Luria was to act as the exclusive broker for CF&I's plant at Pueblo. Shortly after this exclusive arrangement was announced to the trade, Luria, through an intermediary, acquired 50% of the outstanding shares of Pueblo. This first acquisition was made July 3, 1946. Approximately a year later, on August 31, 1947, it acquired an additional five shares, giving it the controlling interest. The balance of the outstanding Pueblo stock was acquired ten years later on May 21, 1957.

The hearing examiner found that Luria's purpose in acquiring control of Pueblo was to resolve the conflict between its exclusive brokerage arrangement with CF&I and the above-described supply agreement between Pueblo and CF&I. After the acquisition, Pueblo sold most of its scrap to Luria, who in turn sold it to CF&I.

Prior to entering into the contract with Pueblo in 1942, CF&I had been buying most of its scrap from direct scrap producers such as railroads. In 1945, it purchased only 53,000 tons from dealers and brokers. Pueblo supplied approximately 11% of this total. In 1945, Luria had not yet entered the Rocky Mountain area.

In 1946, the year of Luria's acquisition, Pueblo processed 27,782 gross tons of scrap, which was equal to 8% of the total purchased scrap consumed in Colorado. This market is characterized by many small scrap suppliers and dealers. The volume of even the larger dealers is generally under \$100,000.00 per year. Pueblo, at the time of acquisition, was one of the largest dealers with total sales in 1946 of \$379,621.00. In the succeeding two years after the acquisition, 1947 and 1948, the sales volume increased to \$858,826.00 and \$1,201,663.00, respectively. These sales figures placed Pueblo far in the lead of all other dealer-competitors. Thus, it would appear that Luria's acquisition of Pueblo achieved the elimination of a sizeable competitor and materially augmented its competitive position and ability to dominate the scrap industry in the Rocky Mountain area. The acquisition's effect, therefore, "may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

While the hearing examiner found, and we are in agreement, that the acquisition does have the requisite competitive effects prescribed by Section 7, the order of divestiture cannot stand, for the record fails to support the mandatory finding that Pueblo was, at the time of the acquisition, engaged in commerce. The initial decision does not disclose the facts upon which the conclusion of commerce is based. Complaint counsel's answering brief relies entirely on the fact that CF&I had agreed to refrain from buying bundled scrap converted within 200 miles of Pueblo, and that area included States other than Colorado. Respondent, however, argues with telling effect that, although this radius does include other States, there is absolutely no evidence that Pueblo ever made any purchases in States other than Colorado. As a matter of fact, there is some evidence that Pueblo did not operate in its full 200-mile allotted territory. Further, it is incorrect to characterize the contract between Pueblo and CF&I as giving Pueblo the right to buy scrap for CF&I in a 200-mile area. CF&I merely agreed to refrain from buying bundled scrap which had been processed within 200 miles of Pueblo. Thus, the agreement need not be construed as allotting a buying area to Pueblo, and lacking some record showing as to how the contract operated, we cannot assume that Pueblo extended its operations to the full periphery of this 200-mile area.

While the failure of the record to establish that Pueblo was at the

time of acquisition in interstate commerce bars a Section 7 violation, it has no effect whatsoever upon the attempted monopoly charge made in Paragraph 11 of the complaint. As we pointed out above, Luria does have a monopoly position in the Rocky Mountain area. It acquired Pueblo for the purpose and with the effect of forging the last link of a complete monopoly. However, this situation will be remedied by the order prohibiting the continuation of exclusive dealing between Luria and the two mill respondents found in this market.³⁷

The Acquisition of Southwest Steel Corporation

On February 1, 1950, Luria purchased all of the outstanding stock of Southwest Steel Corporation, a scrap broker-dealer engaged in interstate commerce, having its principal office and place of business in Pittsburgh, Pennsylvania. At the time of the acquisition, Southwest had yard or branch offices in various places in the Eastern United States, including Memphis, Tennessee; McKeesport, Glassport and Pittsburgh, Pennsylvania. In the year of the acquisition, 1950, Southwest opened a new brokerage office in Portsmouth, Ohio. The McKeesport yard was closed approximately a year after the acquisition. The Memphis yard was "transferred" to Luria who continued to operate it. At the time of the acquisition, Southwest owned a controlling interest in Continental Iron & Steel Corporation, a scrap broker operating in the New York area.

The hearing examiner found that prior to the acquisition, Luria and Southwest had competed substantially in both the purchase and sale of scrap. It would appear, however, that the record does not supply figures to disclose the precise extent to which they competed in the purchase of scrap. The most that can be found with respect to this element is that they did compete. Both companies had yards in Pittsburgh; both companies purchased scrap in the New York area; and both purchased, to a certain extent, along the Mississippi River.

The picture is much clearer with respect to competition in the sale of scrap to consumers. The evidence indicates that Southwest and Luria were in substantial and direct competition in the sale of scrap to consumers in the Pittsburgh-Youngstown area. The augmentation of Luria's position in this market as a result of its 1950 acquisition of Southwest is illustrated by the following tabulation:

³⁷ The Geneva, Utah, plant of United States Steel Company and the Pueblo, Colorado, plant of Colorado Fuel and Iron Corporation are the only significant scrap consuming units in the Rocky Mountain area.

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*Purchases by all major consumers in the Pittsburgh-Youngstown market*³⁸

[Gross tons]

	Total purchases from brokers and dealers	Total purchases from Luria ³⁹ Brothers	Luria Brothers percentage ³⁹
1945.....	3, 636, 772	551, 052	15. 2
1946.....	3, 242, 309	677, 568	20. 9
1947.....	4, 637, 205	947, 892	20. 4
1948.....	5, 167, 085	1, 062, 837	20. 6
1949.....	3, 771, 057	987, 317	26. 2
1950.....	5, 902, 631	2, 198, 293	37. 2
1951.....	5, 376, 487	1, 729, 935	32. 2
1952.....	6, 134, 485	2, 169, 547	35. 4
1953.....	5, 417, 524	1, 979, 401	36. 5
1954.....	3, 172, 631	1, 142, 953	36. 0

³⁸ Luria's challenge to the validity of this tabulation is similar to the charges it levels against Appendix A [pp. 639-640]. It complains that the tabulation should list Luria's share of the total purchases of the reporting mills rather than merely its share of the reporting mills broker and dealer purchases. As we view it, acceptance of this proposal would not materially change the picture which the figures present. For example, Luria's percentage of the market in 1945 would be 13.49% rather than the 15.2% indicated by the tabulation above. Its 1950 postmerger share would be 34.9% rather than 37.2%. Luria also objects to the failure of the survey upon which the tabulation is based to include the purchases by the smaller consumers and foundries located in this area. The hearing examiner concluded, and we agree, that the inclusion of these additional small consumers in the survey would not have materially altered its results since it is reasonable to find, and the record supports, a finding that Luria serves as great a percentage of this unsurveyed group as it does the reporting mills.

³⁹ 1950 through 1954 figures include purchases from subsidiary Southwest Steel Corporation.

In 1949, the year prior to the acquisition, Southwest sold 220,666 tons of scrap to the major consumers located in this area. The table shows Luria's sales during that year to the same group of consumers totaled 987,317 tons. Southwest's sales represented 5.9% of the total purchases made by said major consumers from broker-dealer sources. Luria's percentage of this market in 1949 was 26.2% of the total purchases. Luria's share of the market during the 5-year period prior to the acquisition averaged approximately 20%. During the first five postmerger years, it averaged 35%. Almost all of this increase was contributed by Southwest. Its separate share of the broker-dealer market after the acquisition was: 1950—14.3%, 1951—11.9%, 1952—14.3%, 1953—13.3%, 1954—8.8%.

The hearing examiner extensively examined the relative strength of the other brokers competing with Southwest and Luria in the Pittsburgh-Youngstown market. He concluded on the basis of reliable and probative evidence that Southwest was, next to Luria, "far and away the largest single factor" in the market in 1949. The sales of the next largest company were only about one-half or less of the sales of Southwest. The respondent Luria contests the validity of these findings, primarily challenging the accuracy of the sales figures and market statistics upon which they are founded. We have carefully examined this contention and conclude that the record is adequate to support

the findings made. While it is true that in certain instances the figures used were arrived at by calculation or presumption, there is nothing invalid about such an approach when the exact figures are either not available or can only be produced through the expenditure of an unreasonable amount of time and expense. Respondent has utterly failed to demonstrate the inaccuracy of any of the figures used and did not offer different figures of its own.

As a result of our review of all of the record facts pertaining to this acquisition, we are satisfied that the hearing examiner's ultimate findings and conclusions are correct, reasonable and, indeed, the only findings possible under these circumstances. In particular we endorse Finding 53 of the initial decision, which reads as follows:

53. From the evidence as a whole, including the substantial share of the market held, respectively, by Luria and Southwest when the acquisition occurred; the adverse conditions in the industry when the acquisition took place; the relative size and strength of Luria and Southwest in comparison with their competitors in the market; the substantial additional entree which the acquisition afforded Luria into the Pittsburgh district plants of U.S. Steel (the largest single purchaser of scrap in the market), as well as into the plants of other substantial customers, such as Jones & Laughlin and Pittsburgh Steel, to which Southwest was a substantial supplier; and from the other facts and circumstances discussed above indicative of the potentialities which the acquisition had for curtailing competition between the two respondent brokers both in the buying and selling of scrap, it is concluded and found that Luria's acquisition of the stock of Southwest was calculated to result in a substantial lessening of competition between the two companies, and to restrain commerce in the Pittsburgh-Youngstown market and other markets, and tended to create a monopoly in Luria in said market and other markets. The record fails to establish, however, that Luria's failure to publicize its acquisition of control of Southwest gave it any substantial unfair competitive advantage in the buying or selling of scrap.

Thus, we are satisfied that Luria's acquisition of Southwest violates Section 7 of the Clayton Act. And we are equally sure that effective and lively competition in the Pittsburgh-Youngstown market requires that the two major brokers in the area be competitors, unaffiliated with each other.

Moreover, in harmony with the hearing examiner's finding that the acquisition was "calculated" to lessen competition, we find that the acquisition was a deliberate and purposeful step toward an eventual monopoly. Luria consciously acquired the largest and most effective competitor in the market thereby eliminating its competition and augmenting Luria's own position of dominance.

The Acquisition Order

As we pointed out above, complaint counsel requested the hearing examiner to enjoin Luria from making any future acquisitions of

competitors. The hearing examiner denied this request, saying at page 594 of the initial decision:

In the opinion of the examiner, the record fails to establish a pattern of acquisitions of such magnitude or nature as to justify a remedy as drastic as a perpetual injunction against further acquisitions, without regard to the size and competitive position of the company acquired, and the probable competitive impact of such acquisitions on particular markets. The need for such a broad prohibition requires a showing far stronger than is here present.

Considered as a matter of law, we find ourselves at odds with this conclusion. It is apparent that the hearing examiner considered the acquisition or merger aspects of this proceeding as separate and divorced from all of the other charges in the complaint. He relies solely on his finding that the record " * * * fails to establish a pattern of acquisitions of such magnitude or nature as to justify * * *" the remedy of enjoining future acquisitions. In our view the necessity for a remedy prohibiting future acquisitions is not determined solely by the respondent's past pattern of acquisitions but by a review of many factors, including the character of past violations of all kinds, the market position or degree of dominance achieved and the probability that future acquisitions will violate the law. In *United States v. W. T. Grant Co.*,⁴⁰ the Supreme Court stated:

The purpose of an injunction is to prevent future violations, *Swift & Co. v. United States*, 276 U.S. 311, 326 (1928) and, of course, it can be utilized even without a showing of past wrongs. But the moving party must satisfy the court that relief is needed. The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive.

An order prohibiting future acquisitions unless they are shown to be without adverse competitive effects is, in our opinion, less harsh than an order of divestment. The latter order may require a massive disruption of the corporate organization and is, in effect, to require a forced sale which may conceivably result in a considerable loss. The hearing examiner's view that stronger evidence is required to support an injunction is at odds with that of the courts, which have found evidence to be insufficient to justify divestiture, but adequate to entitle the Government to injunctive relief against future acquisitions.⁴¹

The hearing examiner's decision would afford the public no pro-

⁴⁰ 345 U.S. 629 (1953).

⁴¹ *United States v. Jerrold Electronics Corp., et al.*, 187 Fed. Supp. 545 (D.C. Pa. 1960); affirmed *per curiam* 365 U.S. 567 (1961).

tection against the 100% monopolization of markets already dominated except the tedious and lengthy procedure of a new complaint and trial for each acquisition. It would then be faced with the usual problem of attempting to unscramble assets and restore as healthy competitors companies which may possibly have been completely demolished and their assets scattered to the four winds. While this is a burden incident to any Section 7 proceeding, it should not be assumed when it is so clearly unnecessary.

This record shows that Luria has acquired a near monopoly position in several appreciable markets throughout the Nation. For example, in 1954, in the eastern Pennsylvania market, Luria had 83.3% of the total broker-dealer scrap sales. In that year, it had 74.5% of the total broker-dealer sales in the North Atlantic market. Given these statistics, it seems to us apparent that any future acquisitions of scrap brokers' or dealers' companies by Luria in these markets will, of necessity, further diminish competition and unlawfully increase Luria's near monopoly position. The same situation is present in other markets, albeit to a lesser extent.

The hearing examiner does not describe the "far stronger" evidence which he deemed necessary to justify an injunctive remedy of this type but he apparently gave no weight to the facts showing that Luria's near monopoly position has been acquired by resort to acts violative of the antitrust laws. This was error. In considering the need for an injunction against future acquisitions in *United States v. Crescent Amusement Co.*,⁴² the Supreme Court stated:

The growth of this combine has been the result of predatory practices condemned by the Sherman Act. The object of the conspiracy was the destruction or absorption of competitors. It was successful in that endeavor. The pattern of past conduct is not usually forsaken. Where the proclivity for unlawful activity has been as manifest as here, the decree should operate as an effective deterrent to a repetition of the unlawful conduct and yet not stand as a barrier to healthy growth on a competitive basis. The acquisition of a competing theatre terminates at once its competition. Punishment for contempt does not restore the competition which has been eliminated. And where businesses have been merged or purchased and closed out it is commonly impossible to turn back the clock.

In that case, the court held that what was needed was an order which would not flatly prohibit all future acquisitions but which would re-

⁴² 323 U.S. 173, 186 (1944).

strain them lacking an affirmative showing that such acquisitions would not unreasonably restrain competition. It is our view that this is an appropriate remedy in this matter. However, in the expectation that our order directed against continuation of exclusive dealing between Luria and the mills will effect a substantial relief of the anticompetitive conditions existing in the markets, it is our belief that a perpetual injunction against future acquisitions is not required. A five-year period of enforced abstinence from acquisitions should accomplish the desired end of providing a "breathing space" within which competition may be restored.

To prevent the possibility of the injunction having unintended harsh results, we deem it best that an escape clause be contained therein which will permit Luria to make such acquisitions as it can affirmatively show will not have adverse competitive effects. We are willing to assume the burden of scrutinizing Luria's proposed acquisitions for the five-year period since it is certain to prove less onerous than the alternative presented by the hearing examiner's approach of bringing a new and separate action with each future acquisition. An appropriate order drawn along these lines will issue.

The Remaining Charges

In Paragraphs 10 and 11(a), Luria is charged with having purposefully injured competition and created a tendency toward monopoly by utilizing various unfair practices. The hearing examiner dismissed all of these charges either as unproved or as lacking in competitive effect. Complaint counsel's appeal takes exception to each of the dismissals.

Our review of the extensive evidence adduced in support of these charges disclosed no error in the hearing examiner's disposition of them. These peripheral charges consumed trial time out of proportion to their importance and an extensive discussion here would serve no useful purpose. We are satisfied with the hearing examiner's decision on these charges and adopt his findings and conclusions with respect thereto as our own.

The various appeals by respondents and complaint counsel are granted to the extent heretofore indicated.

Commissioner Elman dissented to the decision in this matter, and Commissioners MacIntyre and Higginbotham did not participate.

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APPENDIX A

IRON AND STEEL SCRAP

COMPARISON OF PURCHASES BY REPORTING MILLS FROM LURIA BROTHERS AND SUBSIDIARIES WITH TOTAL FROM ALL BROKERS AND DEALERS, BY DESIGNATED AREAS

Area	1947			1948			1949			1950		
	Total brokers and dealers (1,000 gross tons)	Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)	Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)	Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)	Luria Brothers and Subsidiaries	
		1,000 gross tons	Percent- age ¹		1,000 gross tons	Percent- age		1,000 gross tons	Percent- age		1,000 gross tons	Percent- age
United States, total.....	15,931	2,730	17.1	17,319	3,258	18.8	12,756	2,848	22.3	18,235	5,369	29.4
Nonrespondents ²	11,102	994	9.0	12,561	1,375	10.9	8,954	982	11.0	13,125	2,242	17.1
Respondents.....	4,829	1,736	35.9	4,757	1,883	39.6	3,802	1,866	49.1	5,110	3,128	61.2
Pacific Coast, total.....	1,005	2	.2	1,152	(³)	(⁴)	906	60	6.6	894	104	11.7
Nonrespondents.....	603	2	.3	722	(³)	(⁴)	566	44	7.8	550	32	6.0
Respondents.....	403			430			340	15	4.5	344	72	19.9
Rocky Mountain, total.....	231	230	99.3	306	287	94.0	287	283	98.6	355	338	95.2
Nonrespondents.....												
Respondents.....	231	230	99.3	306	287	94.0	287	283	98.6	355	338	95.2
North Atlantic, total.....	3,229	1,103	34.1	3,119	1,187	38.1	1,988	931	46.8	2,713	1,480	54.6
Nonrespondents.....	644	159	24.7	662	140	21.1	499	125	25.0	698	190	27.2
Respondents.....	2,586	943	36.5	2,458	1,048	42.6	1,490	803	54.1	2,015	1,290	64.0
Eastern Pennsylvania, total.....	1,620	786	48.5	1,626	842	51.8	1,015	592	58.3	1,323	958	72.4
Nonrespondents.....	296	123	41.5	315	133	42.1	189	86	45.5	281	147	52.2
Respondents.....	1,324	663	50.1	1,310	710	54.2	826	506	61.2	1,043	811	77.8

See footnotes at end of table.

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Area	1951			1952			1953			1954		
	Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)	Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)	Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)	Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)
	(1,000 gross tons)	Percent-age		(1,000 gross tons)	Percent-age		(1,000 gross tons)	Percent-age		(1,000 gross tons)	Percent-age	
United States, total.....	18,232	5,719	31.4	20,620	6,875	33.3	19,935	7,281	36.5	14,099	4,751	33.7
Nonrespondents ²	12,567	1,892	15.0	14,339	2,335	16.3	13,404	2,318	17.3	10,068	1,588	15.8
Respondents.....	5,665	3,827	67.7	6,281	4,540	72.3	6,531	4,963	76.0	4,030	3,164	78.5
Pacific Coast, total.....	1,202	255	21.2	1,278	424	33.1	1,066	488	45.8	821	416	50.6
Nonrespondents.....	686	59	8.6	713	109	15.3	517	74	14.4	421	94	22.3
Respondents.....	516	196	37.9	566	315	55.7	549	414	75.4	400	322	80.4
Rocky Mountain, total.....	450	393	87.2	357	323	90.6	222	212	95.5	214	211	98.9
Nonrespondents.....	450	393	87.2	357	323	90.6	222	212	95.5	214	211	98.9
Respondents.....	3,280	2,034	62.0	3,776	2,596	68.8	4,196	3,069	73.1	2,145	1,597	74.5
North Atlantic, total.....	771	209	27.1	826	257	31.1	866	219	25.3	426	99	23.2
Nonrespondents.....	2,509	1,826	72.7	2,950	2,339	79.3	3,331	2,850	85.6	1,719	1,498	87.1
Respondents.....	1,644	1,187	72.2	1,873	1,387	74.1	2,058	1,625	78.9	1,015	845	83.3
Eastern Pennsylvania, total.....	330	181	54.7	400	224	56.0	425	194	45.6	162	86	53.1
Nonrespondents.....	1,314	1,006	76.6	1,473	1,163	79.0	1,633	1,431	87.5	833	759	89.0
Respondents.....												

¹ All percentage figures throughout table were calculated before tonnage figures were rounded to thousands.

² Data shown for "nonrespondents" throughout table include purchases by the

United States Steel Corp., except its Columbia-Geneva Steel Division, Utah District, and by Bucyrus-Erie, except its plants located in Erie, Pa.

* Less than 500 gross tons.

† Less than 0.05 percent.

DISSENTING OPINION

NOVEMBER 15, 1962

By Elman, *Commissioner*:

Begun almost a decade ago, this case has already produced a mountain of words, and I am reluctant to add some of my own. But the difficulties I find in the Commission's disposition of the case may also be encountered by others, including a reviewing court. It may be worthwhile, therefore, to outline the reasons why I cannot join the majority opinion.

Broadly described, the facts of the case are quite simple: The period covered by the complaint was the Korean conflict, when steel and scrap were in extremely short supply. In the space of a few years the scrap market became concentrated to a striking degree in the hands of a single company. Luria was able to achieve this dominant position because many of the Nation's largest steel mills purchased all or substantially all their scrap requirements from it. As a result, many of these mills' previous suppliers of scrap were squeezed out competitively.

In such a factual situation, there are at least four theories which, either separately or together, might conceivably support a conclusion of illegality. I shall discuss below each of these theories and its relevance to this proceeding on the basis of the record now before the Commission. As will appear, the fourth of these theories is the one that seems to underlie the Commission's decision. A preliminary *caveat* must, however, be sounded.

A major problem with the majority opinion, as I read it, is that one cannot be sure of the precise theory on which the case is being decided. Like the complaint, the opinion is liberally sprinkled with references to "agreements", "understandings", "combinations", "conspiracies", "unfair practices", "incipient monopoly", "exclusive dealing arrangements", and other familiar antitrust war-horses. But—and it may be that this is a subjective reaction that will not be shared by others—in the majority opinion these old and faithful warriors seem not to be marching progressively in a straight and unwavering line towards a clearly defined objective but to be rambling over the field, moving uncertainly in several loosely drawn lines and in various different directions at the same time. As a result, one cannot speak with absolute assurance of *the* theory of the majority opinion. At all events, in order that my own position may be made clear, I shall proceed now to examine each of the four possible theories of decision that might be applicable to the factual situation here.

(1) The examiner in his initial decision focused upon the arrangements between Luria and each of the mills whereby the latter bought

its scrap requirements from Luria. He found these arrangements to be "equivalent" to exclusive dealing agreements prohibited by Section 3 of the Clayton Act, and therefore in violation of Section 5 of the Federal Trade Commission Act. As the majority opinion points out (p. 607), however, the examiner did *not* find that these arrangements "were pursued deliberately with the intent to effect a monopoly."

The difficulty with the examiner's theory is that the record does not show that each mill's practice of purchasing exclusively from Luria was not equally consistent with the hypothesis that, in this period of short supply, it considered that Luria was the supplier best able to furnish scrap of the kind needed, at the time needed, and in the quantities needed. The arrangements between Luria and the mills were not exclusive in the sense that they tied the mills to a single source of supply. Like a housewife who buys milk for her family regularly and exclusively from a single dairy, a mill buying scrap from Luria remained free to stop doing so at any time and for any reason. The so-called exclusive supply arrangements neither restrained the mills' freedom to buy from other suppliers nor foreclosed Luria's rival suppliers from the opportunity to sell to the mills. If, like the housewife, a mill's patronage of Luria was not an exclusive dealing arrangement in the Section-3-of-the-Clayton-Act sense, was not tainted by an anticompetitive motive or purpose, and was not part of an illegal conspiracy or concert of action with others, the examiner's theory would not support a conclusion of illegality.

(2) A second possible theory of violation would be that the mills conspired or agreed that each would use Luria as its exclusive buying agent for the purpose of restraining competition in the purchase of scrap. But, although alleged in the complaint, this was not proved. At the close of the case-in-chief, the examiner dismissed the complaint to the extent that it charged such a conspiracy or agreement among the mills. So that, on the present record, the majority could not, and do not, find violation on any theory of "horizontal" conspiracy or agreement among the mills.

(3) A third possible theory of violation, which might have provided a plausible basis for a conclusion of illegal conduct by the mills, was neither alleged nor proved. As the majority opinion states (p. 602), "The potential monopolizer at which the complaint is primarily aimed is respondent Luria." The complaint might, however, have been predicated on the theory (1) that it was the mills, not Luria, which held the dominant economic power in the market for scrap; (2) that, in the sellers' market which prevailed during the Korean conflict, it was in the self-interest of the mills to avoid competition among themselves in obtaining scrap; and (3) that in this situation each mill considered

that, if it purchased scrap directly or through its own broker, competition among the mills in procuring scrap would result in bidding up the price, whereas if they all bought their scrap requirements from a single central broker, the price would be kept down since a supplier of scrap, being compelled to deal with one broker representing all buyers, could not play off one buyer against another.

On such a theory, it might have been shown that, without a conspiracy or agreement among them, each mill used Luria as its exclusive broker for the purpose of restraining competition in the market for scrap, knowing that each of the other mills was following the same practice for the same purpose and with the same knowledge. Had it been alleged and proved, this theory of violation might have supported an order prohibiting each of the mills from using Luria, or any other broker, to accomplish monopolistic or other anticompetitive objectives. But the present record was not made on any such theory, and the majority neither rely upon nor refer to it.

(4) I come, finally, to the theory of violation on which the majority do seem to base their decision. As already indicated, I am not altogether sure that my understanding of the majority opinion is correct. At the risk of misstating it, therefore, I would express the theory accepted by the majority as follows: (1) Luria deliberately attempted to monopolize the scrap market; (2) each of the mills conspired with Luria to achieve such a monopoly, deliberately aiding and abetting it in its monopolistic attempt; (3) the proof of such attempt and conspiracy to monopolize, and of the existence of a deliberate monopolistic purpose and intent, both as to Luria and the mills, is found in the *unlawful* exclusive dealing agreements or understandings between Luria and each mill; (4) those agreements or understandings were unlawful because of their effects on competition, and the purpose with which they were entered is therefore immaterial; and (5) nonetheless, being unlawful, the agreements or understandings establish the requisite "specific intent" to monopolize, both in Luria and the mills.

The majority opinion proceeds on the premise (p. 603) that

An attempt to monopolize is established by proof that the respondent or defendant acted with deliberation and purpose, i.e., with "specific intent." The existence of "specific intent" is a conclusion based upon an examination of the business practices pursued by the potential monopolist. Some actions which clearly indicate deliberateness are the pursuit of acts and practices which violate other provisions of the antitrust laws * * *. (Footnotes omitted.)

And where in this record do the majority find the illegal acts and practices "which clearly indicate deliberateness"? In the so-called exclusive dealing arrangements between the mills and Luria. On the majority's theory of the case, the illegality of each mill's patronage of Luria is the linchpin of decision, upon which depends the crucial

finding of attempted monopolization and conspiracy to monopolize.

Thus, although the opinion purports to reject the examiner's theory that the mills' practice of buying scrap from Luria constituted exclusive dealing agreements in violation of Section 3 of the Clayton Act, the majority nevertheless are driven to embrace his conclusion that these arrangements were "exclusive" and hence unlawful.

The majority opinion, reflecting the difficulties involved in simultaneously both rejecting and accepting the examiner's Section 3 theory, states (pp. 606-607) that the examiner's theory of the case is not "crystal clear", that "on balance, it would appear that the hearing examiner relies in the main upon a Section 3 [of the Clayton Act] theory", and that "Actually, the difference between our view and that of the hearing examiner is not as great as may at first appear."

Later on in the majority opinion, in the part specifically devoted to "The Respondents' Purpose" (pp. 618-620), a general finding is made of a purpose to monopolize, on the part of both Luria and the mill respondents. But this finding is expressly and entirely based upon the illegality of the "exclusive" dealing agreements between Luria and each mill. No other factual support is cited. To overcome the absence from this record of express indications of "deliberateness" or "specific intent", the Commission states "that there exists between Luria and each mill respondent an agreement, understanding, combination and conspiracy pursuant to which Luria supplies each of the mills with all or substantially all of its needs of scrap. The effect of these arrangements is to exclude competing scrap sellers from a substantial market and thus each of the agreements constitutes an unlawful conspiracy." (Majority opinion, p. 609.) "It is of no consequence", the opinion further states (p. 619), "that the record does not establish that the exclusive use of Luria is the product of an agreement among the respondent mills for we are concerned here with effects rather than means."

The majority opinion thus puts all its eggs in one basket. Everything is made to depend on the *illegality* of the exclusive patronage of Luria by each of the mill respondents. If that drops out, the rest of the basket falls with it.

As I have already pointed out in discussing the examiner's theory of violation, the practice whereby each mill bought its scrap requirements from Luria cannot be held illegal merely on the basis of its effects on Luria's competitors. Each mill was not "tied" exclusively to Luria in its purchases of scrap, and its practice of buying exclusively from Luria was as consistent with a purpose of assuring itself a dependable source of supply as with an unlawful monopolistic or anti-competitive purpose. The examiner, as I have also pointed out, did

not find any such unlawful purpose, and the majority opinion (p. 607) expressly notes but does not disturb his initial decision in that regard.

If, as I believe, the record fails to establish that each mill's patronage of Luria was "exclusive" in the Section-3-of-the-Clayton-Act sense, or was part of an unlawful conspiracy or agreement, or was accompanied by a monopolistic or anticompetitive purpose, such buying practices by the mills cannot be characterized as "unlawful" in order to dispense with the need for adducing adequate proof of a "specific intent" to monopolize.

Moreover, even if the mills' use of Luria as their exclusive scrap broker could be relied on to show a monopolistic purpose on their part, that would not suffice to show that Luria, against which the order here is primarily directed, had a like monopolistic purpose. Assuming that, so far as the mills were concerned, they deliberately set out to create a monopoly in the scrap market for Luria, it would still be necessary to prove that Luria attempted to obtain such a monopoly for itself or acquired it through illegal means. If there be such proof in the record, the majority opinion does not refer to it.

Finally, my difficulties with the Commission's disposition of this case are not limited to those which emerge from a reading of the majority opinion.

Reflecting its emphasis upon the role of Luria and upon the alleged exclusivity of the arrangements between it and the mills, the Commission's order is directed primarily against Luria. But, if the danger to competition derives as much from the mills as from Luria, the latter's elimination as a "monopolist" broker in scrap would in itself accomplish only part of the necessary relief. Nothing in the order would prevent the mills from establishing some other broker as a monopolist and using it for the purpose of eliminating competition in the purchase of scrap—assuming, of course, that the record showed that Luria had been so used.

Moreover, the Commission's order, based as it is upon events of nearly a decade ago, has little relevance to present conditions in the scrap market. As already noted, the period covered by the complaint was a sellers' market in which the mills had a clear interest in purchasing through a single broker. It is common knowledge that in recent years, however, the steel industry has been characterized by production falling far short of capacity. Whether, and how, this has affected the competitive situation today in the market for scrap is something on which the record sheds no light.¹ And, similarly, the

¹ The 1962 Institute of Scrap Iron & Steel Yearbook, in discussing the market for scrap during 1961, states that "With steel production for the year hovering around 70 per cent of capacity, only a spurt during the Spring brought scrap demand up to expectations. Domestic consumption of purchased scrap was 22.6 million gross tons compared with the

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extent to which the elimination of Luria's "monopolistic" position (assuming it still exists today) in the scrap business will have practical benefits for the public is a matter for conjecture.

In this posture of the case, with so much time, money, and energy having been expended in this drawn-out proceeding, it is not necessary to conclude that the complaint should be dismissed. The Commission has another alternative: to bring the record up-to-date by conducting a broad economic investigation into present-day conditions in the scrap business, and, on the basis of such an inquiry, to determine what corrective administrative action, if any, is required to maintain or reestablish healthy competition. If illegal practices be found, they should be promptly corrected. But, to accomplish that objective, the Commission should be able to find ways and means more effective than the action which the two members of the Commission, who in this case comprise a majority, are taking today.

ORDER PROVIDING FOR THE FILING OF EXCEPTIONS TO PROPOSED FINAL
ORDER

NOVEMBER 15, 1962

The Commission having rendered its decision in part adopting and in part modifying the initial decision and the order to cease and desist contained therein and having determined that pursuant to § 4.22(c) of the Commission's Rules of Practice respondents should be afforded the opportunity to file exceptions to certain paragraphs of the Commission's Proposed Final Order:

It is ordered, That respondents may, within twenty (20) days after service upon them of this order and attached Opinion Of The Commission, file with the Commission their exceptions to any provisions of numbered paragraphs 1, 2, and 4 of the hereinafter set out Proposed Final Order, a statement of their reasons in support thereof, and a proposed alternative form of order appropriate to the Commission's decision; and that counsel supporting the complaint may, within ten (10) days after service of respondents' exceptions, file a statement in reply thereto supporting the proposed order.

It is further ordered, That if no exceptions to the Commission's Proposed Final Order are filed within twenty (20) days, the said

previous year's 23.6 million and 1959's 25.7 million," and that "The factors creating this decline in the scrap industry have been present for several years with varying impact" (pp. 5-6). It also indicates that monthly consumption of purchased scrap has declined from about three million gross tons in January 1953, to less than two million tons in December 1961, while scrap inventories at consumers' plants increased from six million to nearly eight million tons.

Proposed Final Order shall then become the final order of the Commission.

PROPOSED FINAL ORDER

1. *It is ordered*, That the respondent broker, Luria Brothers & Company, Inc., its officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the sale of iron and steel scrap in commerce, do forthwith cease and desist from:

Contracting or agreeing to act or acting as exclusive or substantially exclusive broker or supplier of iron and steel scrap for any plant or plants of any respondent mill or of any other buyer of iron and steel scrap not a party hereto, and from inducing or receiving preferential status or favored treatment of any nature as broker or supplier of iron and steel scrap for any respondent mill or any other buyer of iron and steel scrap.

2. *It is further ordered*, That the respondent mills, Bethlehem Steel Corporation, Bethlehem Steel Company, Bethlehem Pacific Coast Steel Corporation, United States Steel Corporation, National Steel Corporation, Weirton Steel Company, The Colorado Fuel and Iron Corporation, John A. Roebling's Sons Corporation, Phoenix Iron & Steel Company, Granite City Steel Company, Lukens Steel Company, Detroit Steel Corporation, McLouth Steel Corporation, Baldwin-Lima-Hamilton Corporation, Edgewater Steel Company, Bucyrus-Erie Company, and Grinnell Corporation, their respective officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the purchase of iron and steel scrap in commerce, do each forthwith cease and desist from:

(a) Purchasing, or contracting or agreeing to purchase, all or substantially all of the iron and steel scrap requirements of any plant or plants from or through respondent Luria Brothers & Company, Inc., and from giving preferential status or favored treatment of any nature to said broker, as broker or supplier of iron and steel scrap.

(b) During a period of five (5) years from the date this order shall become final, purchasing in excess of 50% of the annual requirements of purchased iron and steel scrap of any plant or plants from respondent Luria Brothers & Company, Inc., except to the extent that iron and steel scrap, adequate in quantity and quality, is not available from other suppliers on terms which are substantially similar and competitive with the terms offered by respondent Luria Brothers & Company, Inc.

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3. *It is further ordered*, That respondent Luria Brothers & Company, Inc., its officers, agents, representatives and employees, acting separately or in combination with anyone else, whether a party to this proceeding or not, directly or through any corporate or other device, do forthwith cease and desist from:

Entering into, continuing, cooperating in, or carrying out any express or implied understanding, agreement, combination or conspiracy with any steel producing company or group of steel producing companies beyond the continental limits of the United States, or any buying organization, agent or other buyer acting for or on behalf of such steel producing companies, to act as the exclusive or substantially exclusive broker or supplier for such company or companies, of iron and steel scrap obtained in the continental United States or within the territorial jurisdiction of the United States.

4. *It is further ordered*, That respondent Luria Brothers & Company, Inc., do forthwith cease and desist from:

During a period of five (5) years from the date this order shall become final, acquiring, directly or indirectly, through subsidiaries or in any other manner, the assets, stocks, share capital, or any other interest in any business, corporate or otherwise, which is engaged in the business of buying or selling iron and steel scrap as a broker or dealer, unless and until the Commission, upon application and proper showing in support thereof, shall first find that the planned acquisition will not unduly restrain competition.

5. *It is further ordered*, That respondent Luria Brothers & Company, Inc., do forthwith divest itself absolutely, in good faith, of:

(a) All stock or other share capital, and all control over or interest in all stock or other share capital of Southwest Steel Corporation; and

(b) All assets, properties, rights and privileges, tangible and intangible, acquired from Southwest Steel Corporation since December 29, 1950; together with any assets or other properties of whatever description that may have been added thereto since December 29, 1950, as may be necessary to restore said corporation to at least the same operating condition that existed, and competitive position that it occupied, when its assets or properties were so acquired, so as to retain neither directly nor indirectly any of the fruits of such acquisition.

It is further ordered, That in the divestiture hereinbefore mentioned, none of the stock, assets, properties, rights or privileges 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 is otherwise directly or indirectly connected with, or under the control or influence of, respondent Luria Brothers & Company, Inc., or of any of said respondent's subsidiary, affiliated or related companies.

6. *It is further ordered*, That the complaint be, and the same hereby is, dismissed as to respondents Southwest Steel Corporation and Hugo Neu Corporation, and as to those allegations or portions thereof as have been found not to have been sustained by the evidence.

It is further ordered, That respondents shall, within ninety (90) days from the date of service upon them of this order, submit in writing for the consideration and approval of the Federal Trade Commission their plans for compliance with this order, including the date within which compliance can be effected.

It is further ordered, That the hearing examiner's initial decision as modified and supplemented by the accompanying opinion and this order be, and it hereby is, adopted as the decision of the Commission.

Commissioner Elman dissenting and Commissioners MacIntyre and Higginbotham not participating.

ON RESPONDENTS' EXCEPTIONS TO THE PROPOSED FINAL ORDER

FEBRUARY 13, 1963

By the Commission:

Pursuant to § 4.22(c) of the Commission's Rules of Practice, the respondent Luria and each of the mill respondents have filed exceptions to the proposed order to cease and desist issued by the Commission on November 15, 1962. An answer opposing allowance of said exceptions has been filed by counsel supporting the complaint. The Commission has carefully considered the exceptions and opposition thereto and in this memorandum states its conclusions and announces its decision thereon.

Several of the exceptions filed by the respondents are merely reiterations of previously ruled-upon questions and others constitute little more than disagreement with the Commission's decision to issue an order to cease and desist. Comment here on such exceptions would be repetitious and unproductive. On the other hand, several of the exceptions are properly directed to revised portions of the order and to these exceptions we now direct our attention.

The respondent Luria points out that Paragraph 1 of the order "* * * does not make it clear that what is involved is the total scrap supplied to each plant." As we view it, this exception would equally apply to Paragraph 2 of the order. The hearing examiner's initial

decision, which was adopted by the Commission, points out that a consuming steel mill receives, or may receive, its scrap from three different sources. Most of the mills, and in particular those which are forwardly integrated, produce large amounts of scrap as a by-product of their operations. This so-called "home scrap" is, of course, reused by the mills and not infrequently makes up a substantial part of their total scrap requirements. "Home scrap" is only incidentally involved in this proceeding and when the order speaks of a mill's "requirements", as it does in Paragraph 2(a) or forbids Luria to act as the "exclusive or substantially exclusive" supplier to any mill, it refers to a mill's need for scrap from outside sources, i.e., from direct suppliers and from brokers or dealers. Scrap from these sources is collectively referred to throughout this case as "purchased scrap" and we have used this term in Paragraph 2(b) of the order. In the interests of clarity and consistency, we will order that Paragraphs 1 and 2(a) be amended to make it manifest that a mill's requirements of "purchased scrap" is the subject thereof.

Both respondent Luria and the mill respondents plead that the order is vague and indefinite in that terms such as "substantially all," "preferential status," and "favored treatment" are incapable of exact definition and do not inform the respondents of precisely what is prohibited. Respondents had previously raised this objection with respect to similar words appearing in the hearing examiner's proposed order. Since we did not specifically deal with this in our opinion, it is appropriate that we comment on it here. By forbidding the mills to purchase, or Luria to supply, "all or substantially all" of the mills' requirements of "purchased scrap," we, of course, contemplate situations of the type disclosed by this record. We are concerned that an order which merely forbids the purchase or supply of "all" of a mill's requirements could be easily evaded by the receipt of a miniscule single shipment from a competing broker or dealer. By adding the words "substantially all" to the order, we hope to guard against this deficiency and to plainly indicate that compliance with this order can only be effected by the mill respondents purchasing a substantial portion of their requirements of "purchased scrap" from suppliers other than Luria.

As for the terms "preferential status" and "favored treatment," the order plainly envisions the type of conduct practiced by the respondents as revealed in this record. Certainly, minimally, the respondents may not receive or grant any of the types of discriminations which would violate the Robinson-Patman Act. Brokers dealing with the mill respondents must receive like pay for like goods and services and they cannot be restricted to limited shipping points while Luria

is granted the right to ship from all points. To comply fully with this provision, all that is required is for the mill respondents to make sure that Luria is not granted any discriminatory competitive advantages over its competitors in supplying scrap to the mill respondents and for Luria to refrain from the inducement or receipt of such advantages.

Perhaps the most serious exception raised by respondent Luria is that Paragraph 1 fails to take into consideration the fact that Luria may not be in a position to know whether it is the exclusive or substantially exclusive supplier to any mill or whether the mill is giving it preferential status or favored treatment. Luria asks that the paragraph be amended by insertion of the word "knowingly" before the word "acting" and before the words "inducing or receiving preferential status." Complaint counsel's opposition to this exception avers that "It is idle for it [Luria] to say it may not be in a position to know * * *." We are not so sure. Certainly this record reveals that in many instances Luria was not only aware of its exclusive position but knowingly induced it and did everything in its power to maintain the position. But this order is operative against Luria's activities with all customers, present and future, and it is not reasonable to expect that Luria will be completely familiar with the exact scrap requirements of all customers. It seems to us that basic justice decrees that Luria should not be held to account or made subject to penalties for conduct violative of this order unless it can be shown that it knew, or should have known, that it was supplying substantially a customer's full requirements. Thus we shall adopt the respondent's suggestion and insert the word "knowingly" in Paragraph 1 as suggested, with the understanding, of course, that the term "knowingly" encompasses constructive, as well as actual, knowledge.

The mill respondents raise the point that Paragraph 2(a) does not specify any period of time in respect of which the terms "all" and "substantially all" are to be applied. In response to this exception we shall amend Paragraph 2(a) of the order to make it clear that a plant's annual requirements of purchased scrap are dealt with therein.

The respondent United States Steel Corporation objects to the order's application to its Geneva, Utah, plant. It alleges that only respondent Luria is capable of supplying this plant with the scrap it needs and that the practical effect of the paragraph as now drafted would make it necessary for this respondent to purchase scrap from West Coast and Chicago suppliers. It is pointed out that the higher freight rates accruing on shipments from these suppliers would impose higher material costs on the Geneva plant and adversely affect its competitive situation. This objection was previously made to the

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order of the hearing examiner by the other respondents and we briefly discuss it at page 620 of our opinion. Certainly we do not expect any of the respondent mills to operate under the economic handicap of higher scrap prices stemming from the application of this order. We believe that the record clearly indicates that additional suppliers of scrap are ready and anxious to do business with United States Steel Corporation's Geneva plant. The record reveals that brokers who offered to sell scrap to the Geneva plant were turned down and that the plant then purchased the identical scrap through respondent Luria.

Several of the mill respondents object to the application of the order to plants owned by them or their subsidiaries where the record does not contain evidence as to the buying practices of said plants. It is argued that the restrictive effect of the order should be confined to plants located in geographic markets where anticompetitive conditions have been found to exist. These objections overlook the fact that the Commission has found a tendency to monopoly in a market consisting of the entire country, as well as in the lesser geographic areas defined. The record reveals that Luria's share of the national broker-dealer scrap market increased from 17 percent in 1947 to almost 34 percent in 1954. It is the Commission's view that this trend cannot be inhibited unless the order has broad application to Luria's activities wherever and with whomever practiced.

FINAL ORDER

FEBRUARY 13, 1963

Respondents having filed exceptions to the proposed final order and the Commission having determined for the reasons set out in the accompanying memorandum that certain of said exceptions should be allowed and the proposed final order modified in certain respects:

It is ordered, That the proposed final order be modified to read as follows and that as modified it be, and hereby is, entered and adopted as the final order of the Commission:

1. *It is ordered*, That the respondent broker, Luria Brothers & Company, Inc., its officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the sale of iron and steel scrap in commerce, do forthwith cease and desist from:

Contracting or agreeing to act or knowingly acting as exclusive or substantially exclusive broker or supplier of purchased iron and steel scrap for any plant or plants of any respondent mill or of any other buyer of iron and steel scrap not a party hereto, and from knowingly inducing or receiving preferential status or

favored treatment of any nature as broker or supplier of purchased iron and steel scrap for any respondent mill or any other buyer of iron and steel scrap.

2. *It is further ordered*, That the respondent mills, Bethlehem Steel Corporation, Bethlehem Steel Company, Bethlehem Pacific Coast Steel Corporation, United States Steel Corporation, National Steel Corporation, Weirton Steel Company, The Colorado Fuel and Iron Corporation, John A. Roebling's Sons Corporation, Phoenix Iron & Steel Company, Granite City Steel Company, Lukens Steel Company, Detroit Steel Corporation, McLouth Steel Corporation, Baldwin-Lima-Hamilton Corporation, Edgewater Steel Company, Bucyrus-Erie Company, and Grinnell Corporation, their respective officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the purchase of iron and steel scrap in commerce, do each forthwith cease and desist from:

(a) Purchasing, or contracting or agreeing to purchase, all or substantially all of the annual requirements of purchased iron and steel scrap of any plant or plants from or through respondent Luria Brothers & Company, Inc., and from giving preferential status or favored treatment of any nature to said broker, as broker or supplier of iron and steel scrap.

(b) During a period of five (5) years from the date this order shall become final, purchasing in excess of 50% of the annual requirements of purchased iron and steel scrap of any plant or plants from respondent Luria Brothers & Company, Inc., except to the extent that iron and steel scrap, adequate in quantity and quality, is not available from other suppliers on terms which are substantially similar and competitive with the terms offered by respondent Luria Brothers & Company, Inc.

3. *It is further ordered*, That respondent Luria Brothers & Company, Inc., its officers, agents, representatives and employees, acting separately or in combination with anyone else, whether a party to this proceeding or not, directly or through any corporate or other device, do forthwith cease and desist from:

Entering into, continuing, cooperating in, or carrying out any express or implied understanding, agreement, combination or conspiracy with any steel producing company or group of steel producing companies beyond the continental limits of the United States, or any buying organization, agent or other buyer acting for or on behalf of such steel producing companies, to act as the exclusive or substantially exclusive broker or supplier for such company or companies, of iron and steel scrap obtained in the

continental United States or within the territorial jurisdiction of the United States.

4. *It is further ordered*, That respondent Luria Brothers & Company, Inc., do forthwith cease and desist from:

During a period of five (5) years from the date this order shall become final, acquiring, directly or indirectly, through subsidiaries or in any other manner, the assets, stocks, share capital, or any other interest in any business, corporate or otherwise, which is engaged in the business of buying or selling iron and steel scrap as a broker or dealer, unless and until the Commission, upon application and proper showing in support thereof, shall first find that the planned acquisition will not unduly restrain competition.

5. *It is further ordered*, That respondent Luria Brothers & Company, Inc., do forthwith divest itself absolutely, in good faith, of:

(a) All stock or other share capital, and all control over or interest in all stock or other share capital of Southwest Steel Corporation; and

(b) All assets, properties, rights and privileges, tangible and intangible, acquired from Southwest Steel Corporation since December 29, 1950; together with any assets or other properties of whatever description that may have been added thereto since December 29, 1950, as may be necessary to restore said corporation to at least the same operating condition that existed, and competitive position that it occupied, when its assets or properties were so acquired, so as to retain neither directly nor indirectly any of the fruits of such acquisition.

It is further ordered, That in the divestiture hereinbefore mentioned, none of the stock, assets, properties, rights or privileges 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 is otherwise directly or indirectly connected with, or under the control or influence of, respondent Luria Brothers & Company, Inc., or of any of said respondent's subsidiary, affiliated or related companies.

6. *It is further ordered*, That the complaint be, and the same hereby is, dismissed as to respondents Southwest Steel Corporation and Hugo Neu Corporation, and as to those allegations or portions thereof as have been found not to have been sustained by the evidence.

It is further ordered, That respondents shall, within ninety (90) days from the date of service upon them of this order, submit in writing for the consideration and approval of the Federal Trade

