

a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

WALLACE TOBACCO BOARD OF TRADE, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 8132. Complaint, Sept. 30, 1960—Decision, Feb. 25, 1963

Order requiring the Tobacco Board of Trade of Wallace, N.C., and its tobacco auction warehousemen members, dealing in leaf tobacco, to cease excluding new competition from the Wallace tobacco market through such practices as misuse of its "Floor Space System" whereby they allocated selling time to an excessive number of purported warehouses—including "sheds" and "poultry houses" with dirt floors—many of which were unsuitable and not available for the auction sale of tobacco, with the result that during the 1957-1960 selling seasons, 54.38 percent of the total number of square feet of floor space allocated by the Board were not used in the auction sale of tobacco.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that each and all of the parties named in the caption hereof, and hereinafter more particularly described, designated and referred to as respondents, have violated

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and are violating the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The following is a description of the respondents:

(1) Respondent Wallace Tobacco Board of Trade, Inc., hereinafter referred to as respondent Board, is a corporation duly organized under the laws of the State of North Carolina, with its principal office and place of business located in the town of Wallace, State of North Carolina. The membership of respondent Board is composed of corporations, partnerships and individuals, including warehousemen, who are generally engaged in either selling, buying, rehandling or otherwise dealing in leaf tobacco.

The following named individuals are now, or have been during the time mentioned herein, officers of said respondent Board and as such and individually are named as respondents herein, and in such capacity have dominated, controlled and directed, and are now dominating, controlling and directing, the affairs of said respondent Board, including the policies and practices as set forth herein:

William L. Hussey, Jr.—President

Granville L. Sheffield—Vice President

Hugh M. Morrison—Secretary-Treasurer

Although respondent Board was organized and chartered with the announced and stated purpose of associating together those persons, firms and corporations interested in the buying, selling and handling of leaf tobacco on the Wallace tobacco market, and its tobacco trade territory, and for the purpose of adopting and maintaining such reasonable rules, regulations and requirements as are necessary to promote the honest and efficient conduct of said tobacco business and build up the tobacco market and protect the interest of growers, planters, buyers and handlers of leaf tobacco on the Wallace tobacco market, including the allocation of selling time to each tobacco auction warehouse operating on said market, it is now and has been for a number of years last past a mere instrumentality or vehicle through which respondent members place into effect and carry out the illegal policies and practices as hereinafter set forth.

(2) Respondents William L. Hussey, Jr., and John H. Sheffield are copartners trading under the name and style of Sheffield's Warehouse, a partnership, engaged in the business of operating a tobacco auction warehouse, with their principal office and place of business located in or near the town of Wallace, State of North Carolina, and as such and individually are named as respondents herein. Said

respondents are members of respondent Wallace Tobacco Board of Trade, Inc.

(3) Respondent Blanchard & Farrior Warehouse, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located in the town of Wallace, State of North Carolina, and engaged in operating a tobacco auction warehouse. Respondent Blanchard & Farrior Warehouse, Inc., is a member of respondent Wallace Tobacco Board of Trade, Inc.

The following named individuals are now, and have been during the time mentioned herein, officers of said respondent Blanchard & Farrior Warehouse, Inc., and as such and individually are named as respondents herein:

O. C. Blanchard, Sr.—President

Tyson Lanier—Vice President

O. C. Blanchard, Jr.—Secretary-Treasurer

(4) Respondents Joseph D. Bryant, Joseph H. Bryant, Granville L. Sheffield and William L. Hussey, Sr., are copartners trading under the name and style of Hussey's Warehouse, a partnership, engaged in operating a tobacco auction warehouse, with their principal office and place of business located in or near the town of Wallace, State of North Carolina, and as such and individually are named as respondents herein. Said respondents are members of respondent Wallace Tobacco Board of Trade, Inc.

(5) The membership of respondent Wallace Tobacco Board of Trade, Inc., includes, in addition to those warehouse members hereinabove described, other members whose names are not known at this time to the Federal Trade Commission but who may possess or own interests in one or more of the different warehouses operating on the Wallace tobacco market and thus be eligible under respondent Board's Constitution and Bylaws to vote on matters pertaining to the allocation of selling time to said warehouses operating on the Wallace market. Furthermore, such membership of said respondent Board is, or may be, changed from time to time by the addition and withdrawal of such members. For these reasons, all of such members of said respondent Board at any given time cannot be properly described and set forth herein for the purpose of naming them as respondents without considerable inconvenience and delay. Wherefore, the respondents hereinbefore named as respondents, as such officers and warehouse members, are also made respondents as generally and fairly representative of and as representing all of the warehouse members of said respondent Board, including those not herein specifically named and described.

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PAR. 2. Tobacco produced in the States of North Carolina and South Carolina is brought by the growers thereof to the tobacco auction warehouses, operated and controlled by different members of respondent Board where it is sold at auction to purchasers or agents or representatives thereof, who are also members of said respondent Board and who are, in a great many instances, engaged in the export tobacco trade or in the domestic manufacture of tobacco products in States other than North Carolina. Said tobacco is shipped or otherwise transported by such purchasers from said State of North Carolina to other States within the United States and the District of Columbia and foreign countries. There has been, and now is, a constant current and course of trade in commerce in said tobacco and tobacco products between and among the several States of the United States and the District of Columbia and with foreign countries.

PAR. 3. The State of North Carolina is one of the largest, if not the largest, producer of flue-cured tobacco. According to the area of production flue-cured tobacco is classified as follows:

Type 11: Old Belt and Middle Belt flue-cured, produced in the Piedmont sections of Virginia and North Carolina;

Type 12: Eastern North Carolina flue-cured, produced in the coastal sections of North Carolina, north of the South River;

Type 13: South Carolina and Border North Carolina flue-cured, produced in the coastal sections of South Carolina and the southeastern sections of North Carolina, south of the South River;

Type 14: Georgia and Florida flue-cured, produced in southern Georgia and northern Florida.

The flue-cured tobacco farmer plants his tobacco seeds early in the winter in sheltered, specially treated and well tended plant beds. They are covered with a very thin porous cotton cloth. Some three months later the individual plants, then about finger size, are taken from the plant beds and are set out in the growing field in even, well spaced rows. The field growing season is about 6 to 8 weeks. The leaves ripen from the bottom of the stalk progressively upward. The "lugs" or bottom leaves ripen first and the "tips" or top leaves ripen last. Each ripe leaf is plucked by hand. Those plucked leaves, still green in color and heavy in weight but having indications of ripeness plain to an expert "cropper," are taken to a curing barn where they are strung on sticks. The sticks are placed on racks so that there is ample space and free ventilation between each stick. The barn is then closed and heat is applied.

Flue-cured tobacco is commonly referred to as bright tobacco and derives its name from the curing process, the distinctive feature of which is that the barn in which the curing takes place is provided with a system of large pipes, or flues, that carry off the fuel gases and rad-

iate heat. Smoke does not come into contact with the tobacco. Furnaces suited to the fuel being burned are employed and while a barn temperature only a few degrees above the temperature prevailing outside is used at the beginning, a temperature of 170° F. or more is reached at the end of the process. One of the principal factors controlling the value of the leaf cured by this method is the color. In flue-curing, as well as air-curing, the main changes in composition must be brought about before the leaf is killed. Flue-cured tobacco at time of harvesting is riper than most tobaccos cured without use of heat. Partly on this account and also because of the character of the soil on which it is grown, this type of leaf is richer in starchy matter and poorer in coloring. Flue-curing consists of speeding up and shortening the first stage in air-curing which is the yellowing. Unlike the air-curing process, which goes through a second stage to develop the brown or red color of the leaf, the flue-cured process stops with the yellowing.

At this time the tobacco leaves are a light yellow or gold or lemon in color and are very dry and brittle. If handled in that condition, they would crumble and their value would be destroyed. To get the tobacco in condition for handling, the curing barn doors are opened and the tobacco absorbs moisture from the night and early morning air. When so moistened it can be moved from the curing barn to the pack barn and placed in storage, still on its curing sticks, and the barn doors and windows closed. In that closed barn, the tobacco again dries out and becomes brittle. This is important because if moisture remains in the tobacco long, the tobacco will spoil. After putting the tobacco in the pack barn, the farmer goes out and gathers the additional tobacco which has ripened in the field during the past week. Then he cures another barn. An average barn will cure about one thousand pounds of tobacco, cured weight. The harvesting of a field of tobacco, the progressive ripening and plucking of the leaves and the curing of those leaves will cover a period of approximately 6 weeks. Tobacco can be left in a pack barn almost indefinitely if the barn is in sound condition.

When the farmer is ready to market his tobacco, he must then get the tobacco from the storage barn into the pack house. At this time the tobacco leaf is very brittle and it must be gotten into a pliant condition in which it may be handled without crumbling. Tobacco is hygroscopic in nature. In normal weather pliancy may be accomplished by opening the storage barn doors and windows and allowing the damp night and early morning air to come in. In very hot, dry weather it sometimes happens that a farmer will have to wait several days until the arrival of a moist evening or morning. Tobacco is

ready for handling when it is pliant enough to fold by closing the hand on the leaf without breaking the stem or leaf. Getting the tobacco ready for the market is an operation of the entire family and in the industry it is called the "family machine." At this time, the family or such employees as the farmer may hire, sit down and grade the tobacco into different lots or grades and tie it into hands with 15 or 20 leaves. As a rule, the different primings are handled separately and only a few lots are made of each. Six to ten different grades will usually be all that is made of the entire crop. On the farm, the leaf from the early priming may be separated in lots commonly called trash lugs, sand lugs and good lugs. Lots from later primings are usually known as best leaf, second leaf, tips and green tips. The separation is based mainly on the position of the leaf on the stalk, color and extent of injury. Also, such other leaf characters as thickness, elasticity and texture are highly important in the established market system of classification and are considered. After the tobacco is graded and tied into hands, a pile is made of each grade up to a weight of 300 pounds and it is then ready to be loaded for conveyance to the market.

In eastern North Carolina, tobacco is raised on farms with tobacco acreage allotments ranging from 3 to 4 acres or to over 100 acres. The farms in and around Wallace in Duplin County, North Carolina, are mostly small farms.

The Secretary of Agriculture under the provisions of the Tobacco Inspection Act of 1935 is empowered to designate an auction market where tobacco is offered for sale at auction as a mandatory market where two-thirds of the growers voting in the referendum for that particular market favor the designation of such market. All tobacco offered for sale at auction on such a designated market shall be certificated and inspected by representatives of the Secretary of Agriculture. Thus, every mandatory or designated market has a number of graders assigned to it for the purpose of grading the tobacco prior to its sale at auction. The auction market at Wallace, North Carolina, is a designated market. Flue-cured tobacco is classified on the market into six groups, which are determined mainly by the character of the leaf. Beginning at the lower part of the plant, the normal groups are lugs, cutters and leaf. Another group, known as wrappers, consists of leaves that are almost perfect, selected from the leaf and cutter group. Finally, two subgroups are made—primings in the lugs group and smoking leaf in the leaf group. The groups are further separated into three to six qualities, and each quality is again divided into colors. The most desirable colors, in order of preference, are lemon, orange, red, dark red and green. The system of classifica-

tion provides for a large number of possible grades and permits close grading of all lots marketed. The tobacco of the different groups is used for different purposes. In general that from the lower part of the plant is used in cigarettes, while that from the upper part is used in smoking and chewing tobacco. The prices obtained on the market are greatly influenced by the care and skill used in grading.

All auction tobacco warehouses operating in the five belts, with a few exceptions, are members of the Bright Belt Warehouse Association. This association was organized under the laws of North Carolina in June, 1945. It is a nonstock, nonprofit membership organization. It is a trade organization designed to provide a code of ethics and a pattern of performance for the organized tobacco auction warehousemen. Membership in the Bright Belt Warehouse Association is obtained by the local warehouses operating on a market through their belt association. For example, the warehousemen in Wallace, North Carolina, are members of the Eastern Carolina Warehouse Association. The Eastern Carolina Warehouse Association is a member of the Bright Belt Warehouse Association. Therefore, Eastern Carolina Warehouse Association members are members of the Bright Belt Warehouse Association. The Bright Belt Warehouse Association adopts various regulations for the conduct of the warehouses' operation on the auction market in the five belts, excluding the allocation of selling time to individual warehouses in each market. The Wallace Tobacco Board of Trade accedes to and adheres to the regulations promulgated by the Bright Belt Warehouse Association.

The tobacco is brought to market in hands or bundles strung on sticks about 4 feet long which have been used to pack the tobacco down. When the farmer drives into the auction warehouse with a load of tobacco, he is assigned laborers to pack the tobacco as he hands it off his truck. Those sticks are handed off to the laborers. The tobacco is then taken off the sticks and it is packed as neatly as can be in a basket, one grade to a basket, until such time as the farmer indicates that he has handed off the last stick of a particular grade of tobacco, which he made at the time he graded it back on the farm.

The tobacco is then trucked to the scales to be weighed by a licensed weighmaster. At that time a printed cardboard-backed ticket consisting of three duplicate originals is filled out by the weighmaster, containing the weighmaster's number, his identification mark as a weigher, and the name and initials of the grower. There is also a blank on this form for the poundage as well as a space for the grade, or whichever it may be, to be inserted by an inspector of the U.S. Department of Agriculture under the Tobacco Inspection Act. This card is placed in the end of a cleft stick, which is pointed on the bot-

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tom, and, after the weight of the tobacco is indicated thereon, the ticket is then handed to an employee who inserts the cardboard form into the cleft end of the stick and the stick stuck into the pile of tobacco in an upright position of what will eventually be the farmer's bill.

The weighmaster continues to list those piles as they are unloaded and brought across to the scales until the farmer indicates that he has brought to the scales all of the tobacco he desires to sell on that particular bill. The piles of tobacco are then rolled out on the warehouse floor and placed on the floor in accordance with the specifications set up in the warehouse's contract with the Stabilization Corporation and the rules and regulations of the Bright Belt Warehouse Association. The Bright Belt Warehouse Association's regulations prescribe that baskets of tobacco displayed for sale on auction warehouse floors shall have a minimum space of 18 inches between rows and a minimum space of 24 inches at each end of the row between the basket and the wall, provided, however, where any warehouseman shall mark his rows and the widths of his baskets plus 26 inches for the aisle between rows and shall place his baskets in accordance with those markings, he shall be deemed to be in compliance with this provision. The warehousemen are required to exercise every reasonable effort to insure that there shall be a space of not less than 6 inches in the row between butts at the nearest point and that the butts shall not touch at any point.

In the event the tobacco is placed on the warehouse floor in the afternoon and must lie over that night prior to sale, the warehouse generally furnishes a cover to keep it from fading out or to protect it from the sunlight or to keep it from acquiring an undue amount of moisture if the weather is hot and humid. The next morning, prior to the time the tobacco will be sold, the warehouseman uncovers the tobacco, straightens up the row and gets it ready for sale. Before the sale, the government grading service comes into the warehouse and grades each pile of tobacco, beginning with the first pile on the first row and grades right down the row and back up the next row until all of the tobacco is graded that may be sold by that particular warehouse that day, according to the selling time allotted that warehouse. The government grader indicates on the ticket the particular government grade assigned each pile of tobacco. That is taken from a sheet which is furnished daily by the government, which also indicates the support price for that grade and the average selling price such grade has been bringing in the market. This sheet is a government-printed document, furnished by the government, and is distrib-

uted by the warehouse to the farmer for his information in selling his crop.

After the tobacco has been inspected and a grade placed on the tobacco by the United States grader, the warehouse forms a sale at the beginning of the first row or first pile. The sales group is composed on one side of the row of a man representing the warehouse who walks just ahead of the auctioneer and starts the bid on each pile of tobacco. This man is known as the "starter." The first bid is not a "firm" bid. Following the auctioneer is another representative of the warehouse called the "man in the hole." Actually, he is the sales manager of the warehouse who carries the bidding on up after the starting bid has been put on by the starter. Behind him there are other buyers representing the various tobacco companies. A ticket marker is also in this group to mark the ticket when the tobacco is sold with the price it brought, the name of the purchaser and the company grade which the purchaser calls out to him. The company buyer has a symbol that represents the grade of tobacco that he is buying. On the other side of the row, there are buyers from the various other buying companies who follow the sales and such speculators as elect to attend the sale and bid on the tobacco. After the opening bid is put on the first pile of tobacco by the "starter" representing the warehouse, the auctioneer takes this figure up and begins to call or chant the bid and to accept bids from buyers on either side of the row or from the warehouse's "man in the hole." Some of the buying companies have particular spots that the buyer prefers to be in at the time the sale is progressing. Sometimes the bids by the buyers are made vocally, sometimes by a nod of the head or wink of an eye and, frequently, by the buyer continuing to look at the auctioneer so long as the auctioneer continues to cry the bid, and, when he drops his eye, the auctioneer knows he is no longer bidding and will cease taking bids from him. There are many ways that the buyers use to indicate their desire to bid and the amount they want to bid. After the sale of each pile of tobacco, the ticket marker inserts the price the tobacco brought at the sale in the blank space provided on a ticket. This ticket also has the name of the warehouse, the name of the company buyer and company grade. After the ticket marker makes these notations on the ticket, he drops it back on the pile of tobacco. If a farmer is dissatisfied with the last bid received for his tobacco, he then has the privilege of "turning the ticket," which is rejection of the bid. This is done, ordinarily, by tearing off the name of the buyer or by folding the ticket or by just tearing the bottom part of it.

Records are kept by the warehouse on what are known as floor

sheets. This is a permanent record of the warehouse of all tobacco received from individual farmers, showing the date it is received, the lot number and the weight of each individual pile of tobacco. This sheet is made out by the weighmaster at the time the tobacco is weighed. The number of items on the floor sheet correspond to the warehouse tickets placed on the different piles of tobacco. At the time of sale the floor sheets are delivered to the office where a clerk copies off this information onto what is known as a farmer's bill. The floor sheet and the farmer's bill are then placed on clip boards which are kept in numerical order. The farmer's bill is retained in the office. The floor sheet is turned over to what is known as a book man who follows the sale. The book man takes this floor sheet and, as the sale progresses, he inserts on the floor sheet the price at which the tobacco sold, its grade and the name of the buyer. When the bill is completed, he adds the totals and hands these bills to what is called a bill carrier. They are then turned in to the billing room where they are verified to see that the figures are correct and to indicate on the farmer's bill any piles of tobacco that are delivered to the government. The farmer's bill is then turned over to a clerk who figures the warehouse charge. The farmer's bill has space thereon for warehouse charges, auction fees and commissions. After the sale, the farmer presents a claim check which corresponds to the number on the bill and also presents his allotment book. If the sale of the farmer's tobacco is within his allotment or quota, the clerk deducts from the amount due the farmer 10 cents per acre as a fee for "Tobacco Associates." At the same time, the clerk also determines whether any cash loans are outstanding and whether there are any outstanding government loans to be collected. After this operation is completed, if there is no Stabilization tobacco on the bill, it is then turned over to a clerk representing the federal government who fills out the government warrants on the tobacco. The government clerk then returns the bills to the warehouse clerk at which time checks are written and delivered to the farmer for the amount of tobacco sold minus the auction fees and warehouse charges and such other deductions as may be proper. The check, with the farmer's bill and allotment card, is then turned over to the farmer.

One of the primary functions of the warehouse in its relation to the farmer is to try and obtain the best possible price for his tobacco. For that reason, the "man in the hole" who represents the warehouse and who is an expert judge of the grade of tobacco, will do everything possible to keep the bidding lively so as to get the top dollar for the producer's tobacco. In attempting to do this, it is not infrequent that a pile of tobacco is "knocked down" or sold to the warehouse. This

is charged to the warehouse's leaf account which is operated mainly for this purpose.

The auction tobacco market openings normally follow the seasons. The auction markets open about the time the tobacco in a belt is ready for sale. That means, usually, opening in the Florida-Georgia Belt a little after mid-July, opening in the South Carolina Border Belt later in July or about August 1st, opening in the Eastern Carolina Belt about mid-August, opening in the Middle Belt about the first of September, and opening in the Old Belt in middle or late September. As the openings move northward, the flow of tobacco over the auction floors to buyers and to their redriers increases. Eastern North Carolina markets, with the huge eastern North Carolina crop to sell, will be in full swing at the same time that at least two other belts are also in operation. First, eastern North Carolina will operate at the same time that the South Carolina and Middle Belts are operating. Later, as the South Carolina Belt closes, eastern North Carolina will be in operation with the Middle Belt and the Old Belt. The simultaneous operation of auction warehouses in the three belts result in the movement of huge quantities of tobacco each day. This means that in the 91 flue-cured tobacco auction markets, a great number are being operated simultaneously. The presence of buyers at these sales, representing the major tobacco manufacturing companies and independent buying companies, as well as speculators, is essential to the success of the auction sale. It is sometimes the practice to suspend operations of a market where the full set or quota of buyers are not present. Each auction market generally has from one to five sets of buyers purchasing on the market. A set of buyers consists of one buyer from each purchasing company.

The number of "sets of buyers" purchasing tobacco on any given market, including the Wallace Tobacco Market, is determined solely by the number of buyers that each individual buying company chooses to send to that market. Since the buying companies send one buyer to the Wallace Tobacco Market, that market has one set of buyers and is referred to as a "one set" market.

The sale of every pile of tobacco by means of the auction system is encouraged. That is necessary so that there be competition in the bidding by the buyers for the producers' tobacco. It is the competition in bidding among the buyers that determines the price received by the farmer for his tobacco. The contract entered into between the Stabilization Corporation and the warehouse discourages the selling of tobacco at private sales and contains provisions for suspension of the warehouse's contract where this practice is engaged in. The Wallace market is allotted 2,200 baskets or piles daily for a 5 hour selling

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day. The rate of speed of a sale is 400 baskets minimum per hour per set of buyers. This is determined and set by the Bright Belt Warehouse Association.

After the tobacco is purchased at the auction, it is removed from the warehouse floor and shipped to the redrying plants of the purchaser in its green state or hauled to local redrying plants and subsequent shipment to the tobacco manufacturing plant for further processing.

Tobacco, being a perishable commodity, must be heat treated (referred to in the trade as redrying) within a short period of time after purchase and removal from the warehouse floors. The aggregate facilities of the tobacco buying companies and dealers for the redrying of producers' tobacco in the flue-cured area have a maximum capacity of 120,000,000 pounds weekly. The limit of this capacity is such that the volume of tobacco sold at auction in any one week must be regulated in order to prevent tobacco from deteriorating before it can be processed. In the final analysis, the precise amount of tobacco which can be sold on any market in any one day is controlled by the number of sets of buyers on the market. The number of sets of buyers assigned to a market is determined exclusively by the buying companies and the Bright Belt Warehouse Association has nothing to do with the assignment of buyers to a market. Thus, if the buying companies choose to send another set of buyers to a particular market, that market would automatically be able to auction more tobacco per day.

The maximum combined redrying capacity of the buying companies being approximately 120,000,000 pounds weekly, sales on the markets must be geared to such capacity because there are redrying facilities on some markets and not on others resulting in a cross movement of tobacco between markets for processing. The sales committee of the Bright Belt Warehouse Association obtains a daily report from the United States Department of Agriculture of the total pounds sold on all markets on the preceding day and in this way keeps a check on tonnage flow of tobacco to see that it does not exceed maximum processing capacity. Also, a particular buying company may notify the sales committee that their purchases have been so heavy that their redrying facilities cannot handle the tobacco and may request a curtailment of sales hours for a period of time. The sales committee gives serious consideration to such a request because it is to the interest of the farmers and the auction market system as a whole that buyers of a particular company not be withdrawn from the market because of the inability of that company to process its purchases. When in the considered judgment of the sales com-

mittee the public interest requires a temporary curtailment of the volume of tobacco flowing through the warehouses to the processing plants, it takes remedial action by either reducing sales hours or suspension of all sales until processing can catch up. The authority for this action by the Association derives from the consent of its membership and the farmers and industry generally. There is no statutory authority. The Association takes no action with respect to the internal allocations of selling time among warehouses on any market.

PAR. 4. The Wallace tobacco market is located in the southeastern neck of the State of North Carolina, being one of the nearest flue-cured markets to the South Carolina and border North Carolina flue-cured area. The Wallace market is permitted to sell 2,200 baskets or piles of tobacco daily in accordance with an allotment of 5½ hours of daily selling time by the Bright Belt Warehouse Association, calculated at the rate of 400 piles or baskets per hour.

Wallace is one of the 15 North Carolina flue-cured markets producing what is known as "type 12" flue-cured tobacco. The producers' sales, as well as dealers and warehouse resales on the Wallace tobacco market beginning with the 1954 crop were as follows:

Year	Producer sales (pounds)	Dealer resales (pounds)	Warehouse resales (pounds)	Gross sales (pounds)
1954-----	14, 906, 000	579, 511	1, 363, 560	16, 848, 656
1955-----	15, 557, 000	262, 682	928, 550	16, 838, 652
1956-----	15, 279, 000	344, 922	499, 890	16, 123, 244
1957-----	11, 529, 000	274, 804	744, 966	12, 548, 256
1958-----	12, 225, 000	216, 562	578, 026	13, 074, 910

PAR. 5. Said respondent Board acting under and through the direction, control and authority of its officers and directors, as well as its warehouse members, has in the past and now continues to conduct and exercise control over the operations of the Wallace tobacco auction market under certain bylaws, rules and regulations, prescribed, approved and promulgated by said respondent Board, and, among other things, allots, apportions, regulates and adjusts the selling time among the said auction warehouses, passes upon applications for membership in said respondent Board, imposes fines and penalties for violations of its bylaws, rules and regulations, and at all times herein mentioned, the Wallace tobacco market has been dominated and controlled and is now under the domination and control of respondent Board and its warehouse members.

The authority of said respondent Board is respected, accepted and adhered to by the buyers, agents and representatives of the principal

tobacco manufacturing companies and by independent buyers whose presence is necessary for a successful tobacco auction sale so that it is virtually impossible for any person, firm or corporation to engage in the tobacco auction warehouse business, in the Wallace market, without first having been admitted into membership in respondent Board and becoming obligated to adhere to the bylaws, rules and regulations promulgated and prescribed by said respondent Board.

Membership in respondent Board is open to any person, firm or corporation that is engaged or about to engage at the time of application for membership in either the selling, buying, rehandling or otherwise dealing in tobacco on the Wallace tobacco market. However, no member of respondent Board, except those owning warehouses or interests in warehouses operating on the Wallace tobacco market, is permitted, under said respondent Board's Constitution and Bylaws, to vote on matters pertaining to the allocation of selling time to warehouses. Each warehouse firm or corporation is entitled to one vote on all matters that may arise. No person, firm or corporation may purchase tobacco or operate a tobacco auction warehouse on the Wallace tobacco market who is not a member in good standing of respondent Board.

The successful operation of a tobacco auction warehouse is dependent upon receiving a portion of the total selling time allocated to a tobacco auction market. Under the regulations in effect in this market, the allotted selling time to each warehouse is based on what is known as the floor space system. Under such system the percentage of the total selling time allocated to the market is in turn allocated to each warehouse according to the percentage of floor space such warehouse bears to the entire warehouse floor space on the market.

The warehouse members of respondent Board constitute the controlling voting majority of said Board. As a result thereof, respondent Board has been and is now under the domination and control of said members and has been and is now an instrumentality or medium for effectuating and carrying out the designs and purposes of those respondents who own, control or operate tobacco auction warehouses in this market, and who through the exercise of their influence and voting privileges possess the means and ability to formulate, adopt, put into effect, execute and carry out any rule, regulation, system, plan or scheme which they may decide to pursue, including the unlawful acts and practices hereinafter set forth.

PAR. 6. Said respondent warehouse members are in competition with each other in the purchase, sale and handling of tobacco through

the facilities owned or operated by them for the purpose of conducting auction sales of the tobacco brought to the market and placed on the auction warehouse floors for sale by the growers as described herein, and in the buying and selling of such tobacco for export to foreign countries or for domestic use in the manufacture of cigarettes and other tobacco products for sale and distribution in the various States of the United States and in the District of Columbia except insofar as their said competition has been hindered, lessened or restrained, or potential competition among them, and with others, forestalled, prevented, hindered and suppressed by the unfair acts, practices, methods and policies of said respondents as hereinafter set forth.

PAR. 7. Respondent warehouse members acting between and among themselves and also through and by means of respondent Board for a number of years last past, and particularly since about 1955, and continuing to the present time, have, by means of agreements and understandings between and among themselves and by other means and methods, conspired and combined, together and with others, and have united in and pursued a planned common course of action and course of dealing, to adopt, carry out and maintain, and have adopted, carried out and maintained, in commerce between and among the several States of the United States and in the District of Columbia and with foreign countries, an undue and unreasonable hindrance, restriction, suppression and prevention of the establishment and operation of market facilities and market opportunities and competition in the purchase and sale of leaf tobacco on the Wallace tobacco market.

PAR. 8. Pursuant to, and in furtherance and effectuation of, the aforesaid agreements and planned common course of action and course of dealing, respondent warehouse members have done and performed the following things:

(1) Caused to be included as a basis for the allocation of selling time on this market under the provisions of the floor space system of allocating selling time various buildings which are not available for use in any capacity in connection with the sale of tobacco at auction on this market except as a basis for the allocation of additional selling time to those persons, firms or corporations who own, lease, rent or otherwise control such buildings.

(2) Caused a percentage of the total selling time available to this tobacco market to be allocated to persons, firms and corporations operating tobacco auction warehouses on said market who own, lease, rent or otherwise control buildings not available in any capacity

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in connection with the sale of tobacco at auction on this market except as a basis for the allocation of additional selling time.

(3) Adopted and used a policy and practice of restricting, preventing and foreclosing persons, firms and corporations from engaging in the business of buying and selling tobacco on the Wallace market.

(4) Adopted a policy to discourage and prevent, and acted thereunder for the purpose and with the effect of discouraging and preventing, persons, firms and corporations from erecting, building or operating any new auction warehouse in or near the Wallace tobacco market area.

(5) Adopted a policy to discourage and prevent, and acted thereunder for the purpose and with the effect of discouraging and preventing persons, firms and corporations from expanding their present tobacco auction warehouse facilities in the Wallace tobacco market.

PAR. 9. Each of the respondent warehouse members herein has directly or indirectly participated in, approved or adopted the aforesaid agreements, understanding and planned common course of action and the acts and practices done in furtherance of and pursuant thereto.

PAR. 10. The aforesaid agreements, combination, conspiracy, planned common course of action, policies, acts and practices of the respondent warehouse members and respondent Board, as hereinbefore alleged, each and all operated to prevent a substantial volume of tobacco from being sold or purchased by persons, firms and corporations who sought to compete in the market operations of the Wallace tobacco market, and thereby unduly and unreasonably hindered, restricted, suppressed and prevented competition in the sale and purchase of tobacco on the Wallace tobacco market. Among the specific effects in that respect are the following:

(1) Persons, firms and corporations seeking to erect, expand and use tobacco warehouse facilities in market operations on the Wallace tobacco market were and are now being prevented from doing so.

(2) Persons, firms and corporations as potential competitors of respondent warehouse members have been discouraged, persuaded and prevented from further consideration of engaging in competition with respondents on the Wallace tobacco market in the purchase and sale of tobacco.

(3) Farmers have been restricted, obstructed and prevented from selling their tobacco at the warehouse of their choice on the Wallace tobacco auction market.

(4) Respondent warehouse members have acquired control of such nature and to such an extent over the purchase and sale of tobacco on the Wallace tobacco market that it has created or tends to create, and

threatens to perpetuate, in them a monopoly in the business of buying and selling tobacco on that market.

PAR. 11. The agreements, combination, conspiracy and planned common course of action and course of dealing and the acts and practices carried out pursuant thereto, as hereinbefore alleged, all and singularly are contrary to public policy because they have a dangerous tendency unduly to hinder competition and create a monopoly and because they have in fact hindered, restricted, suppressed and prevented the entrance of new warehouse competitors and the expansion and establishment of other warehouse facilities, market opportunities and competition in the sale and purchase of tobacco on the Wallace tobacco market in commerce, as "commerce" is defined in the Federal Trade Commission Act, and are therefore to the prejudice and injury of the public and constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

PAR. 12. The acts and practices of said respondents, and the things done and performed by them as herein alleged, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent and have actually hindered and prevented competition and restrained trade between and among said respondents and others in the sale, purchase, manufacture and distribution of tobacco and tobacco products in commerce within the intent and meaning of the Federal Trade Commission Act; and have placed in respondents the power to control and enhance prices and other terms and conditions in connection with the sale, purchase, manufacture and distribution of the said tobacco and tobacco products; have a dangerous tendency to create in said respondents a monopoly in the auction sale of tobacco, in said commerce; have unreasonably restrained such commerce in the said tobacco and tobacco products 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.

Mr. Rufus E. Wilson and *Mr. Americo M. Minotti* for the Commission.

Mr. Jesse A. Jones, of Kinston, North Carolina, for respondents: Wallace Tobacco Board of Trade, William L. Hussey, Jr., Granville L. Sheffield, Hugh M. Morrison, Joseph D. Bryant, Joseph H. Bryant, and William L. Hussey, Sr.

Mrs. Winifred T. Wells, of Wallace, North Carolina, for respondents: Blanchard & Farrior Warehouse, Inc., O. C. Blanchard, Sr., Tyson Lanier, and O. C. Blanchard, Jr.

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INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

DECEMBER 4, 1961*

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The Federal Trade Commission issued its complaint against the above-named respondents on September 30, 1960, charging them with violating Section 5 of the Federal Trade Commission Act.

THE ALLEGED CHARGES

The crux of the alleged charges is set forth in Paragraph 7 through 11 of the complaint, which are as follows:

Respondent warehouse members¹ acting between and among themselves and also through and by means of respondent Board for a number of years last past, and particularly since about 1955, and continuing to the present time, have, by means of agreements and understandings between and among themselves and by other means and methods, conspired and combined, together and with others, and have united in and pursued a planned common course of action and course of dealing, to adopt, carry out and maintain, and have adopted, carried out and maintained, in commerce between and among the several States of the United States and in the District of Columbia and with foreign countries, an undue and unreasonable hindrance, restriction, suppression and prevention of the establishment and operation of market facilities and market opportunities and competition in the purchase and sale of leaf tobacco on the Wallace tobacco market.

*Reported as supplemented August 22, 1962.

¹ Members of the Wallace Tobacco Board of Trade, Inc., a respondent herein.

Pursuant to, and in furtherance and effectuation of, the aforesaid agreements and planned common course of action and course of dealing, respondent warehouse members have done and performed the following things:

(1) Caused to be included as a basis for the allocation of selling time on this market, under the provisions of the floor space system of allocating selling time, various buildings which are not available for use in any capacity in connection with the sale of tobacco at auction on this market except as a basis for the allocation of additional selling time to those persons, firms or corporations who own, lease, rent or otherwise control such buildings.

(2) Caused a percentage of the total selling time available to this tobacco market to be allocated to persons, firms and corporations operating tobacco auction warehouses on said market who own, lease, rent or otherwise control buildings not available in any capacity in connection with the sale of tobacco at auction on this market except as a basis for the allocation of additional selling time.

(3) Adopted and used a policy and practice of restricting, preventing and foreclosing persons, firms and corporations from engaging in the business of buying and selling tobacco on the Wallace market.

(4) Adopted a policy to discourage and prevent, and acted thereunder for the purpose and with the effect of discouraging and preventing, persons, firms and corporations from erecting, building or operating any new auction warehouse in or near the Wallace tobacco market area.

(5) Adopted a policy to discourage and prevent, and acted thereunder for the purpose and with the effect of discouraging and preventing persons, firms and corporations from expanding their present tobacco auction warehouse facilities in the Wallace tobacco market.

Each of the respondent warehouse members herein has directly or indirectly participated in, approved or adopted the aforesaid agreements, understanding and planned common course of action and the acts and practices done in furtherance of and pursuant thereto.

The aforesaid agreements, combination, conspiracy, planned common course of action, policies, acts and practices of the respondent warehouse members and respondent Board, as hereinbefore alleged, each and all operated to prevent a substantial volume of tobacco from being sold or purchased by persons, firms and corporations who sought to compete in the market operations of the Wallace tobacco market, and thereby unduly and unreasonably hindered, restricted, suppressed and prevented competition in the sale and purchase of tobacco on the Wallace tobacco market. Among the specific effects in that respect are the following:

(1) Persons, firms and corporations seeking to erect, expand and use tobacco warehouse facilities in market operations on the Wallace tobacco market were and are now being prevented from doing so.

(2) Persons, firms and corporations as potential competitors of respondent warehouse members have been discouraged, persuaded and prevented from further consideration of engaging in competition with respondents on the Wallace tobacco market in the purchase and sale of tobacco.

(3) Farmers have been restricted, obstructed and prevented from selling their tobacco at the warehouse of their choice on the Wallace tobacco auction market.

(4) Respondent warehouse members have acquired control of such nature and to such an extent over the purchase and sale of tobacco on the Wallace tobacco market that it has created or tends to create, and threatens to perpetuate, in them a monopoly in the business of buying and selling tobacco on that market.

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The agreements, combination, conspiracy and planned common course of action and course of dealing and the acts and practices carried out pursuant thereto, as hereinbefore alleged, all and singularly are contrary to public policy because they have a dangerous tendency unduly to hinder competition and create a monopoly and because they have in fact hindered, restricted, suppressed and prevented the entrance of new warehouse competitors and the expansion and establishment of other warehouse facilities, market opportunities and competition in the sale and purchase of tobacco on the Wallace tobacco market in commerce, as "commerce" is defined in the Federal Trade Commission Act, and are therefore to the prejudice and injury of the public and constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

RESPONDENTS' POSITIONS

Respondents, Blanchard & Farrior Warehouse, Inc., O. C. Blanchard, Sr., O. C. Blanchard, Jr., Tyson Lanier estate, and R. H. Lanier, individually, as administrator of Tyson Lanier estate, all individually or as members of the Wallace Tobacco Board of Trade, Inc., appear to concede the existence of a conspiracy restricting competition but claim they have not at any time during the period covered by the complaint been parties to any conspiracy, agreements, or acts, in violation of the Federal Trade Commission Act, as amended, which had as its purpose the lessening, restraining, or elimination of competition on the Wallace tobacco market.

The position of the other respondents against whom charges have been filed by the Commission as aforesaid, is stated as follows:

(1) The allocation of sales time among warehouses engaged in the auction sale of leaf tobacco upon the Wallace, North Carolina tobacco market by the respondent Board of Trade, through its committees and members in accordance with its reasonable rules and regulations, is not an act or acts "in" interstate commerce within the terms and provisions of the Federal Trade Commission Act.

The Federal Trade Commission Act (15 USCA 41, et seq.) is limited to acts "in" interstate commerce and does not extend to acts "affecting interstate commerce."

(2) This action should be dismissed because of the absence of specific and substantial public interest therein, and because it involves private interests only. The existence of a "specific and substantial public interest" is a jurisdictional prerequisite for the Commission. *Federal Trade Commission v. Klesner*, 280 U.S. 19.

The burden is upon counsel in support of the complaint to establish the existence of public interest. This is a fundamental rule first enunciated in the *Klesner* case, *supra*, and has been recently reaffirmed by the United States Supreme Court in *American Air Lines v. North American Air Lines*, 351 U.S. 79.

(3) This case should be dismissed upon the respondents' motions made at the close of the Commission's evidence and renewed at the close of all the evidence, for the reason that the evidence adduced at the hearing is not sufficient to affirmatively establish that the respondents, or either of them have committed any act

or acts individually or collectively constituting unfair methods of competition in commerce, or unfair or deceptive acts or practices in commerce.

There is no evidence in this case that the respondents, or either of them, committed any act or acts by means of agreements and understandings between themselves or planned or pursued a common course of action to unduly or unreasonably hinder, restrict, suppress or prevent the establishment and operation of market facilities and market opportunities and competition in the purchase and sale of leaf tobacco on the Wallace Tobacco Market in any of the manners and respects alleged in the complaint filed in this case.

(4) That the order of the hearing examiner denying the motion of the respondents Board of Trade, et al., to strike portions of the answer of the respondents, Blanchard & Farrior Warehouse, Inc., et al., should be reversed, and the said motion sustained.

A person who deems himself aggrieved by the use of an unfair method of competition has no right to institute proceedings before the Federal Trade Commission. He may bring the matter to the attention of the Commission and request it to file a complaint. He does not become a party to the proceeding by such a request or have any control over it. This position is sustained in *52 AM. JUR., Para. 212, page 668*, in which it is further held that a stockholder of a corporation against which a proceeding was instituted for the purpose of obtaining a cease and desist order, could not properly be joined as a defendant "even though he (stockholder) originated such advertising (subject of attack) and holds practically all of the stock of the corporation which took over the business in which the advertising was used."

To the same effect is the holding of the U.S. Supreme Court in the case of *Federal Trade Commission v. Alfred Klesner*, 280 U.S. 19, in which the Court stated:

"Section 5 of the Federal Trade Commission Act does not provide private persons with an administrative remedy for private wrongs. The formal complaint is brought in the Commission's name; the prosecution is wholly that of the government; and it bears the entire expense of the prosecution. A person who deems himself aggrieved by the use of an unfair method of competition is not given the right to institute before the Commission a complaint against the alleged wrongdoer. Nor may the Commission authorize him to do so. He may, of course, bring the matter to the Commission's attention and request it to file a complaint. But a denial of his request is final. And if the request is granted and a proceeding is instituted, he does not become a party to it or have any control over it."

The respondents Blanchard & Farrior Warehouse, Inc., a corporation, and O. C. Blanchard, Sr., O. C. Blanchard, Jr., (R. H. Lanier, individually, and R. H. Lanier, Administrator of the estate of Tyson Lanier), individually and as officers of said corporation, filed answer in this case taking issue with the other respondents, and undertaking to prejudice, through their said pleading, the rights of the other respondents in the defense of the said action. They actively participated in the hearing of the said cause before the hearing examiner; all of which was and is in furtherance of their private purpose and interest; and all of which is in violation of the terms and provisions of the Federal Trade Commission Act, its rules and regulations, and the holdings of the Court in the authorities cited.

Proposed findings of fact and conclusions of law have been timely filed by counsel in support of the complaint and counsel for the re-

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spondents on or before October 16, 1961. The hearing examiner has carefully reviewed and considered same. Proposed findings and conclusions which are not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters.

Upon the entire record in the case the hearing examiner makes the following:

FINDINGS OF FACT

1. Description of Respondents

a. Respondent Wallace Tobacco Board of Trade, Inc., hereinafter referred to as respondent Board, is a corporation duly organized under the laws of the State of North Carolina, on June 22, 1955, with its principal office and place of business located in the town of Wallace, State of North Carolina.

b. The membership of respondent Board is composed of corporations, partnerships and individuals, including warehousemen, who are generally engaged in either selling, buying, rehandling or otherwise dealing in leaf tobacco.

c. The following named individual respondents were at the time of the institution of this proceeding, or are now, officers of respondent Board, and in such capacity have directed, or are now directing, the affairs of said respondent Board, including the wishes of the controlling voting members of said respondent Board as hereinafter referred to and set forth:

William L. Hussey, Jr., President;
Granville L. Sheffield, Vice President;
Hugh M. Morrison, Secretary-Treasurer.

d. Respondents William L. Hussey, Jr., and John H. Sheffield are copartners trading under the name and style of Sheffield's Warehouse, a partnership, engaged in the business of operating a tobacco auction warehouse, with their principal office and place of business located in or near the town of Wallace, State of North Carolina, and as such and individually are named as respondents herein. Said respondents are members of respondent Wallace Tobacco Board of Trade, Inc.

e. Respondent Blanchard & Farrior Warehouse, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located in the town of Wallace, State of North Carolina, and engaged in operating a tobacco auction warehouse. Respondent Blanchard & Farrior Warehouse, Inc., is a member of respondent Wallace Tobacco Board of Trade, Inc.

f. The following named individuals are now, and have been during the time mentioned herein, officers of said respondent Blanchard & Farrior Warehouse, Inc.,² and as such and individually are named as respondents herein:

O. C. Blanchard, Sr., President;
O. C. Blanchard, Jr., Secretary-Treasurer.

g. Respondents Joseph D. Bryant, Joseph H. Bryant, Granville L. Sheffield and William L. Hussey, Sr., are copartners trading under the name and style of Hussey's Warehouse, a partnership, engaged in operating a tobacco auction warehouse, with their principal office and place of business located in or near the town of Wallace, State of North Carolina, and as such and individually are named as respondents herein. Said respondents are members of respondent Wallace Tobacco Board of Trade, Inc.

2. Interstate Commerce

Tobacco produced in the States of North Carolina and South Carolina is brought by the growers thereof to the tobacco auction warehouses, operated and controlled by different members of respondent Board where it is sold at auction to purchasers or agents or representatives thereof, who are also members of said respondent Board and who are, in a great many instances, engaged in the export tobacco trade or in the domestic manufacture of tobacco products in States other than North Carolina. Said tobacco is shipped or otherwise transported by such purchasers from said State of North Carolina to other States within the United States and the District of Columbia and foreign countries. There has been, and now is a constant current and course of trade in commerce in said tobacco and tobacco products between and among the several States of the United States and the District of Columbia and with foreign countries.

3. Tobacco Production and Marketing

a. Factors in the Production and Marketing of Flue-Cured Tobacco.

² Tyson Lanier, former vice president of respondent Blanchard & Farrior Warehouse, Inc., was named originally in the complaint as a party respondent, both individually and as an officer. In the answer to the complaint it was alleged by respondents that Mr. Tyson Lanier had since died. At the pre-trial conference, held on July 25, 1961, Mrs. Winifred T. Wells appeared as counsel for Blanchard & Farrior, Inc., O. C. Blanchard, Sr., O. C. Blanchard, Jr., and Tyson Lanier's Estate and the pleadings were corrected accordingly. Mr. Tyson Lanier's successor, R. H. Lanier, was substituted as a party respondent by consent.

(1) *Planting and Curing*

The State of North Carolina is one of the largest, if not the largest, producer of flue-cured tobacco. According to the area of production flue-cured tobacco is classified as follows:

Type 11: Old Belt and Middle Belt flue-cured, produced in the Piedmont sections of Virginia and North Carolina;

Type 12: Eastern North Carolina flue-cured, produced in the coastal sections of North Carolina, north of the South River;

Type 13: South Carolina and Border North Carolina flue-cured, produced in the coastal sections of South Carolina and in the southeastern sections of North Carolina, south of the South River;

Type 14: Georgia and Florida flue-cured, produced in southern Georgia and northern Florida.

The flue-cured tobacco farmer plants his tobacco seeds early in the winter in sheltered, specially treated and well tended plant beds. They are covered with a very thin porous cotton cloth. Some three months later the individual beds are set out in the growing field in even, well spaced rows. The field growing season is about 6 to 8 weeks. The leaves ripen from the bottom of the stalk progressively upward. The "lugs" or bottom leaves ripen first and the "tips" or top leaves ripen last. Each ripe leaf is plucked by hand. Those plucked leaves, still green in color and heavy in weight but having indications of ripeness plain to an expert "cropper," are taken to a curing barn where they are strung on sticks. The sticks are placed on racks so that there is ample space and free ventilation between each stick. The barn is then closed and heat is applied.

Flue-cured tobacco is commonly referred to as bright tobacco and derives its name from the curing process, the distinctive feature of which is that the barn in which the curing takes place is provided with a system of large pipes, or flues, that carry off the fuel gases and radiate heat. Smoke does not come into contact with the tobacco. Furnaces suited to the fuel being burned are employed and while a barn temperature only a few degrees above the temperature prevailing outside is used at the beginning, a temperature of 170° F. or more is reached at the end of the process. One of the principal factors controlling the value of the leaf cured by this method is the color. In flue-curing, as well as air-curing, the main changes in composition must be brought about before the leaf is killed. Flue-cured tobacco at time of harvesting is riper than most tobacco cured without use of heat. Partly on this account and also because of the character of the soil in which it is grown, this type of leaf is richer in starchy matter and poorer in coloring. Flue-curing consists of speeding up and shortening the first stage in air-curing which is the yellowing. Unlike the air-curing process, which goes through a second stage to

develop the brown or red color of the leaf, the flue-cured process stops with the yellowing.

At this time the tobacco leaves are a light yellow or gold or lemon in color and are very dry and brittle. If handled in that condition, they would crumble and their value would be destroyed. To get the tobacco in condition for handling, the curing barn doors are opened and the tobacco absorbs moisture from the night and early morning air. When so moistened it can be moved from the curing barn to the pack barn and placed in storage, still on its curing sticks, and the barn doors and windows closed. In that closed barn, the tobacco again dries out and becomes brittle. This is important because if moisture remains in the tobacco long, the tobacco will spoil. After putting the tobacco in the pack barn, the farmer goes out and gathers the additional tobacco which has ripened in the field during the past week. Then he cures another barn. An average barn will cure about one thousand pounds of tobacco, cured weight. The harvesting of a field of tobacco, the progressive ripening and plucking of the leaves and the curing of those leaves will cover a period of approximately 6 weeks. Tobacco can be left in a pack barn almost indefinitely if the barn is in sound condition.

When the farmer is ready to market his tobacco, he must then get the tobacco from the storage barn into the pack house. At this time the tobacco leaf is very brittle and it must be gotten into a pliant condition in which it may be handled without crumbling. Tobacco is hygroscopic in nature. In normal weather pliance may be accomplished by opening the storage barn doors and windows and allowing the damp night and early morning air to come in. In very hot, dry weather it sometimes happens that a farmer will have to wait several days until the arrival of a moist evening or morning. Tobacco is ready for handling when it is pliant enough to fold by closing the hand on the leaf without breaking the stem or leaf. Getting the tobacco ready for the market is an operation of the entire family and in the industry it is called the "family machine." At this time, the family or such employees as the farmer may hire, sit down and grade the tobacco into different lots or grades and tie it into hands with 15 or 20 leaves. As a rule, the different primings are handled separately and only a few lots are made of each. Six to ten different grades will usually be all that is made of the entire crop. On the farm, the leaf from the early priming may be separated in lots commonly called trash lugs, sand lugs, and good lugs. Lots from later priming are usually known as best leaf, second leaf tips and green tips. The separation is based mainly on the position of the leaf on the stalk, color and extent of injury. Also, such other leaf characters as thickness, elasticity

and texture are highly important in the established market system of classification and are considered. After the tobacco is graded and tied into hands, a pile is made of each grade up to a weight of 300 pounds and it is then ready to be loaded for conveyance to the market.

In eastern North Carolina, tobacco is raised on farms with tobacco acreage allotments ranging from 3 to 4 acres or to over 100 acres. The farms in and around Wallace in Duplin County, North Carolina, are mostly small farms.

(2) Designated Markets and Grading

The Secretary of Agriculture under the provisions of the Tobacco Inspection Act of 1935 is empowered to designate an auction market where tobacco is offered for sale at auction as a mandatory market where two-thirds of the growers voting in the referendum for that particular market favor the designation of such market. All tobacco offered for sale at auction on such a designated market shall be certificated and inspected by representatives of the Secretary of Agriculture. Thus, every mandatory or designated market has a number of graders assigned to it for the purpose of grading the tobacco prior to its sale at auction. The auction market at Wallace, North Carolina, is a designated market. Flue-cured tobacco is classified on the market into six groups, which are determined mainly by the character of the leaf. Beginning at the lower part of the plant, the normal groups are lugs, cutters and leaf. Another group, known as wrappers, consists of leaves that are almost perfect, selected from the leaf and cutter group. Finally, two subgroups are made—primings in the lugs group and smoking leaf in the leaf group. The groups are further separated into three to six qualities, and each quality is again divided into colors. The most desirable colors, in order of preference, are lemon, orange, red, dark red, and green. The system of classification provides for a large number of possible grades and permits close grading of all lots marketed. The tobacco of the different groups is used for different purposes. In general that from the lower part of the plant is used in cigarettes, while that from the upper part is used in smoking and chewing tobacco. The prices obtained on the market are greatly influenced by the care and skill used in grading.

(3) Role of the Auction Warehouse and the Mechanics of its Operation

The tobacco is brought to market in hands or bundles strung on sticks about 4 feet long which have been used to pack the tobacco down. When the farmer drives into the auction warehouse with a load of tobacco, he is assigned laborers to pack the tobacco as he hands it off his truck. Those sticks are handed off to the laborers. The tobacco is then taken off the sticks and it is packed as neatly as can be in a

basket, one grade to a basket, until such time as the farmer indicates that he has handed off the last stick of a particular grade of tobacco, which he made at the time he graded it back on the farm.

The tobacco is then trucked to the scales to be weighed by a licensed weighmaster. At that time a printed cardboard-backed ticket consisting of three duplicate originals is filled out by the weighmaster, containing the weighmaster's number, his identification mark as a weigher, and the name and initials of the grower. There is also a blank on this form for the poundage as well as a space for the grade, or whichever it may be, to be inserted by an inspector of the U.S. Department of Agriculture under the Tobacco Inspection Act. This card is placed in the end of a cleft stick, which is pointed on the bottom, and, after the weight of the tobacco is indicated thereon, the ticket is then handed to an employee who inserts the cardboard form into the cleft end of the stick and the stick stuck into the pile of tobacco in an upright position of what will eventually be the farmer's bill.

The weighmaster continues to list those piles as they are unloaded and brought across to the scales until the farmer indicates that he has brought to the scales all of the tobacco he desires to sell on that particular bill. The piles of tobacco are then rolled out on the warehouse floor and placed on the floor in accordance with the specifications set up in the warehouse's contract with the Stabilization Corporation and the rules and regulations of the Bright Belt Warehouse Association. The Bright Belt Warehouse Association's regulations prescribe that baskets of tobacco displayed for sale on auction warehouse floors shall have a minimum space of 18 inches between rows and a minimum space of 24 inches at each end of the row between the basket and the wall, provided, however, where any warehouseman shall mark his rows and the widths of his baskets plus 26 inches for the aisle between rows and shall place his baskets in accordance with those markings, he shall be deemed to be in compliance with this provision. The warehousemen are required to exercise every reasonable effort to insure that there shall be a space of not less than 6 inches in the row between butts at the nearest point and that the butts shall not touch at any point.

In the event the tobacco is placed on the warehouse floor in the afternoon and must lie over that night prior to sale, the warehouse generally furnishes a cover to keep it from fading out or to protect it from the sunlight or to keep it from acquiring an undue amount of moisture if the weather is hot and humid. The next morning, prior to the time the tobacco will be sold, the warehouseman uncovers the tobacco, straightens up the row and gets it ready for sale. Before the sale, the government grading service comes into the warehouse and grades

each pile of tobacco, beginning with the first pile on the first row and grades right down the row and back up the next row until all of the tobacco is graded that may be sold by that particular warehouse that day, according to the selling time allotted that warehouse. The government grader indicates on the ticket of the particular government grade assigned each pile of tobacco. That is taken from a sheet which is furnished daily by the government, which also indicates the support price for that grade and the average selling price such grade has been bringing in the market. This sheet is a government-printed document, furnished by the government, and is distributed by the warehouse to the farmer for his information in selling his crop.

After the tobacco has been inspected and a grade placed on the tobacco by the United States grader, the warehouse forms a sale at the beginning of the first row or first pile. The sales group is composed on one side of the row of a man representing the warehouse who walks just ahead of the auctioneer and starts the bid on each pile of tobacco. This man is known as the "starter." The first bid is not a "firm" bid. Following the auctioneer is another representative of the warehouse called the "man in the hole." Actually, he is the sales manager of the warehouse who carries the bidding on up after the starting bid has been put on by the starter. Behind him there are other buyers representing the various tobacco companies. A ticket marker is also in this group to mark the ticket when the tobacco is sold with the price it brought, the name of the purchaser and the company grade which the purchaser calls out to him. The company buyer has a symbol that represents the grade of tobacco that he is buying. On the other side of the row, there are buyers from the various other buying companies who follow the sales and such speculators as elect to attend the sale and bid on the tobacco. After the opening bid is put on the first pile of tobacco by the "starter" representing the warehouse, the auctioneer takes this figure up and begins to call or chant the bid and to accept bids from buyers on either side of the row or from the warehouse's "man in the hole." Some of the buying companies have particular spots that the buyer prefers to be in at the time the sale is progressing. Sometimes the bids by the buyers are made vocally, sometimes by a nod of the head or wink of an eye and, frequently, by the buyer continuing to look at the auctioneer so long as the auctioneer continues to cry the bid, and when he drops his eye, the auctioneer knows he is no longer bidding and will cease taking bids from him. There are many ways that the buyers use to indicate their desire to bid and the amount they want to bid. After the sale of each pile of tobacco, the ticket marker inserts the price the tobacco brought at the sale in the blank space provided on a ticket. This ticket also has the name of the warehouse, the name of the company

buyer and company grade. After the ticket marker makes these notations on the ticket, he drops it back on the pile of tobacco. If a farmer is dissatisfied with the last bid received for his tobacco, he then has the privilege of "turning the ticket," which is rejection of the bid. This is done, ordinarily, by tearing off the name of the buyer or by folding the ticket or by just tearing the bottom part of it.

Records are kept by the warehouse on what are known as floor sheets. This is a permanent record of the warehouse of all tobacco received from individual farmers, showing the date it is received, the lot number and the weight of each individual pile of tobacco. This sheet is made out by the weighmaster at the time the tobacco is weighed. The number of items on the floor sheet correspond to the warehouse tickets placed on the different piles of tobacco. At the time of the sale the floor sheets are delivered to the office where a clerk copies off this information onto what is known as a farmer's bill. The floor sheet and the farmer's bill are then placed on clip boards which are kept in numerical order. The farmer's bill is retained in the office. The floor sheet is turned over to what is known as a book man who follows the sale. The book man takes this floor sheet and, as the sale progresses, he inserts on the floor sheet the price at which the tobacco sold, its grade and the name of the buyer. When the bill is completed, he adds the totals and hands these bills to what is called a bill carrier. They are then turned in to the billing room where they are verified to see that the figures are correct and to indicate on the farmer's bill any piles of tobacco that are delivered to the government. The farmer's bill is then turned over to a clerk who figures the warehouse charge. The farmer's bill has space thereon for warehouse charges, auction fees and commissions. After the sale, the farmer presents a claim check which corresponds to the number on the bill and also presents his allotment book. If the sale of the farmer's tobacco is within his allotment or quota, the clerk deducts from the amount due the farmer 10 cents per acre as a fee for "Tobacco Associates." At the same time, the clerk also determines whether any cash loans are outstanding and whether there are any outstanding government loans to be collected. After this operation is completed, if there is no Stabilization tobacco on the bill, it is then turned over to a clerk representing the federal government who fills out the government warrants on the tobacco. The government clerk then returns the bills to the warehouse clerk at which time checks are written and delivered to the farmer for the amount of tobacco sold minus the auction fees and warehouse charges and such other deductions as may be proper. The check, with the farmer's bill and allotment card, is then turned over to the farmer.

One of the primary functions of the warehouse in its relation to the farmer is to try and obtain the best possible price for his tobacco. For that reason, the "man in the hole" who represents the warehouse and who is an expert judge of the grade of tobacco, will do everything possible to keep the bidding lively so as to get the top dollar for the producer's tobacco. In attempting to do this, it is not infrequent that a pile of tobacco is "knocked down" or sold to the warehouse. This is charged to the warehouse's leaf account which is operated mainly for this purpose.

(4) *The Role of the Buyer*

The auction tobacco market openings normally follow the seasons. The auction markets open about the time the tobacco in a belt is ready for sale. That means, usually, opening in the Florida-Georgia Belt a little after mid-July, opening in the South Carolina Border Belt later in July or about August 1st, opening in the Eastern Carolina Belt about mid-August, opening in the Middle Belt about the first of September, and opening in the Old Belt in middle or late September. As the openings move northward, the flow of tobacco over the auction floors to buyers and to their redriers increases. Eastern North Carolina markets, with the huge Eastern North Carolina crop to sell, will be in full swing at the same time that at least two other belts are also in operation. First, Eastern North Carolina will operate at the same time that the South Carolina and Middle Belts are operating. Later, as the South Carolina Belt closes, Eastern North Carolina will be in operation with the Middle Belt and the Old Belt. The simultaneous operation of auction warehouses in the three belts result in the movement of huge quantities of tobacco each day. This means that in the 91 flue-cured tobacco auction markets, a great number are being operated simultaneously. The presence of buyers at these sales, representing the major tobacco manufacturing companies and independent buying companies, as well as speculators, is essential to the success of the auction sale. It is sometimes the practice to suspend operations of a market where the full set or quota of buyers is not present. Each auction market generally has from one to five sets of buyers purchasing on the market. A set of buyers consists of one buyer from each purchasing company.

The number of "sets of buyers" purchasing tobacco on any given market, including the Wallace Tobacco Market, is determined solely by the number of buyers that each individual buying company chooses to send to that market. Since each buying company sends one buyer to represent them in the Wallace Tobacco Market, this market has only one set of buyers. Thus Wallace is referred to and known as a "one set" market.

The sale of every pile of tobacco by means of the auction system is encouraged. That is necessary so that there be competition in the bidding by the buyers for the producers' tobacco. It is the competition in bidding among the buyers that determines the price received by the farmer for his tobacco. The contract entered into between the Stabilization Corporation and the warehouse discourages the selling of tobacco at private sales and contains provisions for suspension of the warehouse's contract where this practice is engaged in.

After the tobacco is purchased at the auction, it is removed from the warehouse floor and shipped to the redrying plants of the purchaser in its green state or hauled to local redrying plants and subsequent shipment to the tobacco manufacturing plants for further processing.

Tobacco, being a perishable commodity, must be heat treated (referred to in the trade as redrying) within a short period of time after purchase and removal from the warehouse floors. The aggregate facilities of the tobacco buying companies and dealers for the redrying of producers' tobacco in the flue-cured area have a maximum capacity of 120,000,000 pounds weekly. The limit of this capacity is such that the volume of tobacco sold at auction in any one week must be regulated in order to prevent tobacco from deteriorating before it can be processed. In the final analysis, the precise amount of tobacco which can be sold on any market in any one day is controlled by the number of sets of buyers on the market. The number of sets of buyers assigned to a market is determined exclusively by the buying companies and the Bright Belt Warehouse Association has nothing to do with the assignment of buyers to a market. Thus, if the buying companies choose to send another set of buyers to a particular market, that market would automatically be able to auction more tobacco per day.

The maximum combined redrying capacity of the buying companies being approximately 120,000,000 pounds weekly, sales on the markets must be geared to such capacity because there are redrying facilities on some markets and not on others resulting in a cross movement of tobacco between markets for processing. The sales committee of the Bright Belt Warehouse Association obtains a daily report from the United States Department of Agriculture of the total pounds sold on all markets on the preceding day and in this way keeps a check on tonnage flow of tobacco to see that it does not exceed maximum processing capacity. Also, a particular buying company may notify the sales committee that their purchases have been so heavy that their redrying facilities cannot handle the tobacco and may request a curtailment of sales hours for a period of time. The sales

committee gives serious consideration to such a request because it is to the interest of the farmers and the auction market system as a whole that buyers of a particular company not be withdrawn from the market because of the inability of that company to process its purchases. When in the considered judgment of the sales committee the public interest requires a temporary curtailment of the volume of tobacco flowing through the warehouses to the processing plants, it takes remedial action by either reducing sales hours or suspension of all sales until processing can catch up. The authority for this action by the Association derives from the consent of its membership and industry generally. There is no statutory authority. The Association takes no action with respect to the internal allocations of selling time among warehouses on any market.

All auction tobacco warehouses operating in the five belts, with a few exceptions, are members of the Bright Belt Warehouse Association. This association was organized under the laws of North Carolina in June 1945. It is a nonstock, nonprofit membership organization. It is a trade organization designed to provide a code of ethics and a pattern of performance for the organized tobacco auction warehousemen. Membership in the Bright Belt Warehouse Association is obtained by the local warehouses operating on a market through their belt association. For example, the warehousemen in Wallace, North Carolina, are members of the Eastern Carolina Warehouse Association. The Eastern Carolina Warehouse Association is a member of the Bright Belt Warehouse Association. Therefore, Eastern Carolina Warehouse Association members are members of the Bright Belt Warehouse Association. The Bright Belt Warehouse Association adopts various regulations for the conduct of the warehouses' operation on the auction market in the five belts, excluding the allocation of selling time to individual warehouses in each market.

(5) *Allotment of Selling Time*

The allotment of selling time originates through the Bright Belt Warehouse Association. This association allocates selling time to the various markets which, in turn, is allocated by the local boards of trade to the auction warehouses operating on those markets.

The Wallace Tobacco Board of Trade accedes to and adheres to the regulations promulgated by the Bright Belt Warehouse Association, insofar as selling time allotted to the market is concerned.

The Wallace tobacco market is located in the southeastern neck of the State of North Carolina, being one of the nearest flue-cured markets to the South Carolina and border North Carolina flue-cured area. The Wallace market is permitted to sell 2,200 baskets or piles of tobacco daily in accordance with an allotment of 5½ hours of daily

selling time by the Bright Belt Warehouse Association, calculated at the rate of 400 piles or baskets per hour.

Wallace is one of the 15 North Carolina flue-cured markets producing what is known as "type 12" flue-cured tobacco. The producers' sales, as well as dealers and warehouse resales and gross dollar sales by each of the said three warehouses on the Wallace tobacco market beginning with the 1955 crop were as follows:

Year	Warehouse	Producer sales (pounds)	Dealer resales (pounds)	Warehouse resales (pounds)	Gross sales (pounds)	Gross dollars
1955	Hussey No. 1	8,548,928	223,292	546,962	9,319,182	4,666,660
	Sheffield	3,416,334	22,168	246,874	3,685,376	1,873,933
	Blanchard & Farrior	3,592,158	7,222	134,714	3,734,094	1,915,629
	Total	15,557,000	262,682	928,550	16,838,652	8,456,222
1956	Hussey No. 1	8,223,214	290,942	260,830	8,774,986	4,711,231
	Sheffield	3,400,994	25,244	184,292	3,610,530	1,935,115
	Blanchard & Farrior	3,654,584	28,736	54,768	3,737,728	2,032,490
	Total	15,278,792	344,922	499,890	16,123,244	8,678,836
1957	Hussey No. 1	6,222,108	247,786	395,298	6,865,192	3,840,459
	Sheffield	2,747,738	15,742	271,206	3,034,686	1,719,149
	Blanchard & Farrior	2,558,640	11,276	78,462	2,648,378	1,506,012
	Total	11,528,486	274,804	744,966	12,548,256	7,066,220
1958	Hussey No. 1 and No. 2	6,630,640	210,118	262,006	7,102,764	4,121,984
	Sheffield	2,811,020	55,112	234,714	3,100,846	1,779,669
	Blanchard & Farrior	2,783,550	6,444	81,306	2,871,300	1,705,542
	Total	12,225,210	216,562	578,026	13,074,910	7,607,195

4. The Wallace Tobacco Board of Trade

a. The respondent Board acting under and through the direction, control and authority of its officers and directors, as well as committees composed of its warehouse members, has in the past and now continues to conduct and exercise control over the operations of the Wallace tobacco auction market under certain bylaws, rules and regulations, prescribed, approved and promulgated by said respondent Board, and, among other things, allots, apportions, regulates and adjusts the selling time among the said auction warehouses, passes upon applications for membership in said respondent Board, imposes fines and penalties for violations of its bylaws, rules and regulations, advertises for the selling season, and at all times herein mentioned, the Wallace tobacco market has been dominated and controlled and is now under the domination and control of respondent Board and its warehouse members.

b. The authority of said respondent Board is respected, accepted and adhered to by the buyers, agents and representatives of the principal tobacco manufacturing companies and by independent buyers whose presence is necessary for a successful tobacco auction sale so

that it is virtually impossible for any person, firm or corporation to engage in the tobacco auction warehouse business, in the Wallace market, without first having been admitted into membership in respondent Board and becoming obligated to adhere to the bylaws, rules and regulations promulgated and prescribed by said respondent Board.

c. Membership in respondent Board is open to any person, firm or corporation that is engaged or about to engage at the time of application for membership in either the selling, buying, rehandling or otherwise dealing in tobacco on the Wallace tobacco market. No person, firm or corporation may purchase tobacco or operate a tobacco auction warehouse on the Wallace tobacco market who is not a member in good standing of respondent Board.

d. Each warehouse firm or corporation is entitled to one vote on all matters that may arise. However, no member of respondent Board, except those owning warehouses or interests in warehouses operating on the Wallace tobacco market, is eligible to vote on matters pertaining to the allocation of selling time to warehouses.

5. Allocation of Selling Time Under Floor Space System

a. Upon incorporation of the respondent Board on June 22, 1955, "Constitution and Bylaws" governing the operation of the Wallace tobacco market were duly adopted. Section 1 of Article VII of the Constitution provides:

Allocation of selling time for warehouses on the Wallace Tobacco market shall be based on the "Floor Space System", and each warehouse shall receive its allocation according to the available space it contains as provided in the Bylaws and regulations of the Wallace Tobacco Board of Trade, Incorporated.

Section 1 of Article II of the Bylaws and Regulations provides:

Section 1: The method now in use on the Wallace tobacco market for allocation of selling time and known as the "Floor Space System" shall be continued in use on the Wallace tobacco market. Such system and method may be modified and changed from year to year as the Board of Trade may deem necessary and expedient for the efficient marketing of leaf tobacco and the best interest of the Wallace tobacco market. Each warehouse shall receive its allocation of selling time according to its available space as hereinafter provided.

Under such system the percentage of the total selling time allocated to the market is in turn allocated to each warehouse according to the percentage of floor space such warehouse bears to the entire warehouse floor space on the market.

b. There is a generally understood meaning of the term "available space" among respondent warehousemen as well as throughout the tobacco trade as a whole. It applies in connection with the "Floor

Space System" as it relates to warehouse space which is not only available if required for the auction sale of leaf tobacco, but available for use in connection with the tobacco market during the marketing season in which selling time is allocated to such space. It must be at the same time, space which is *suitable* and thus "*available*" for auction sale of leaf tobacco or for use directly connected with the tobacco market during the marketing season in which selling time is allocated to that space.

c. Following a precedent set by its predecessor the unincorporated board of trade, through agreements by and between the then owner-members of the several warehouses engaged in the auction sale of leaf tobacco upon the said Wallace tobacco market, and the then operators of the several warehouses and under rules and regulations of the former unincorporated Board of Trade, respondent Board adopted and followed the method, policy and practice of including warehouse space as a basis for the allocation of selling time which was not being actually used in the auction sale of leaf tobacco in said market.

6. The Combination and Conspiracy

a. The warehouse members of respondent Board constitute the controlling voting majority of said Board. As a result thereof, respondent Board has been and is now under the domination and control of said members and has been and is now merely an instrumentality or medium for effectuating and carrying out the designs and purposes of those respondents who own, control or operate tobacco auction warehouses in this market, and who through the exercise of their influence and voting privileges possess the means and ability to formulate, adopt, put into effect, execute and carry out any rule, regulation, system, plan or scheme which they may decide to pursue.

b. The respondent warehouse members are in competition with each other in the purchase, sale and handling of tobacco through the facilities owned or operated by them for the purpose of conducting auction sales of the tobacco brought to the market and placed on the auction warehouse floors for sale by the growers as described herein, and in the buying and selling of such tobacco for export to foreign countries or for domestic use in the manufacture of cigarettes and other tobacco products for sale and distribution in the various States of the United States and in the District of Columbia except insofar as their said competition has been hindered, lessened or restrained, or potential competition among them, and with others forestalled, prevented, hindered and suppressed by the unfair acts, practices, methods and policies of respondent Board hereinafter referred to and set forth.

c. Respondent warehouse members acting between and among themselves and also through and by means of respondent Board for a number of years last past, and particularly since about 1955, and continuing to the present time, have, by means of agreements and understandings between and among themselves and by other means and methods, conspired and combined, together and with others, and have united in and pursued a planned common course of action and course of dealing, to adopt, carry out and maintain, and have adopted, carried out and maintained, in commerce between and among the several States of the United States and in the District of Columbia and with foreign countries, an undue and unreasonable hindrance, restriction, suppression and prevention of the establishment and operation of market facilities and market opportunities and competition in the purchase and sale of leaf tobacco on the Wallace tobacco market, and that pursuant thereto and in furtherance and effectuation of the aforesaid agreements and planned common course of action and course of dealing, respondent warehouse members have done and performed the following things:

(1) Caused to be included as a basis for the allocation of selling time on this market under the provisions of the floor space system of allocating selling time various buildings which are not available for use in any capacity in connection with the sale of tobacco at auction on this market except as a basis for the allocation of additional selling time to those persons, firms or corporations who own, lease, rent or otherwise control such buildings.

(2) Caused a percentage of the total selling time available to this tobacco market to be allocated to persons, firms and corporations operating tobacco auction warehouses on said market who own, lease, rent or otherwise control buildings not available in any capacity in connection with the sale of tobacco at auction on this market except as a basis for the allocation of additional selling time.

(3) Adopted and used a policy and practice of restricting, preventing and foreclosing persons, firms and corporations from engaging in the business of buying and selling tobacco on the Wallace market.

(4) Adopted a policy to discourage and prevent, and acted thereunder for the purpose and with the effect of discouraging and preventing, persons, firms and corporations from erecting, building or operating any new auction warehouse in or near the Wallace tobacco market area.

(5) Adopted a policy to discourage and prevent and acted thereunder for the purpose and with the effect of discouraging and preventing persons, firms and corporations from expanding their present tobacco auction warehouse facilities in the Wallace tobacco market.

(6)* Also, in consummation of the foregoing combination and conspiracy and in the furtherance thereof, some of the respondents herein, as hereinafter named, entered into a written agreement on April 11, 1957, corroborative of the policy of the respondents hereinbefore enunciated. This agreement is as follows:

This agreement made and entered into this the 11th day of April, 1957, by and between the parties, hereafter referred to as Hussey's Warehouse, Joe Bryant Warehouse, Inc., Wallace Strawberry Exchange, Inc., H. G. Perry Warehouse, Inc., Mrs. Joseph H. Bryant Warehouse, Inc., and Sheffield's Warehouse.

Whereas all parties herein agree the following measurements be used in determining the available sales space for the sale of leaf tobacco at auction beginning with the 1957 Sales season and running consecutively for each season through December 1, 1962:

Hussey's Warehouse—374,915 sq. ft.

Joe Bryant Warehouse, Inc.—131,102 sq. ft.

Wallace Strawberry Exchange, Inc.—75,900 sq. ft.

H. G. Perry Warehouse, Inc.—93,000 sq. ft.

Mrs. Joseph H. Bryant Warehouse, Inc.—135,000 sq. ft.

Sheffield's Warehouse—330,991 sq. ft.

It is agreed by all parties herein that Sheffield's new houses consisting of 135,744 sq. ft. will be counted as Sales space for leaf tobacco without any floors other than the ground as floors. It is further agreed that any of the warehouses now being constructed and herein referred to by the parties herein have the same option as to flooring as outlined for Sheffield's new houses.

It is further agreed by the parties herein that any space herein referred to may be used for any purpose so desired by the owners thereof without affecting the Sales time allotted each of the said houses for the duration of this agreement. (See Commission's Exhibit 84)

d. Each of the respondent warehouse members herein has directly or indirectly participated in, approved or adopted the aforesaid agreements, understanding and planned common course of action and the acts and practices done in furtherance of and pursuant thereto, and the aforesaid agreements, combination, conspiracy, planned common course of action, policies, acts and practices of the respondent warehouse members and respondent Board, as hereinbefore alleged, each and all operated to prevent a substantial volume of tobacco from being sold or purchased by persons, firms and corporations who sought to compete in the market operations of the Wallace tobacco market, has thereby unduly and unreasonably hindered, restricted, suppressed and prevented competition in the sale and purchase of tobacco in the Wallace tobacco market. Among the specific effects in that respect are the following:

(1) Persons, firms and corporations seeking to erect, expand and use tobacco warehouse facilities in market operations on the Wallace tobacco market were and are now being prevented from doing so.

*Supplemental Findings of Fact of August 22, 1962.

(2) Persons, firms and corporations as potential competitors of respondent warehouse members have been discouraged, persuaded and prevented from further consideration of engaging in competition with respondents on the Wallace tobacco market in the purchase and sale of tobacco.

(3) Farmers have been restricted, obstructed and prevented from selling their tobacco at the warehouse of their choice on the Wallace tobacco auction market.

(4) Respondent warehouse members have acquired control of such nature and to such an extent over the purchase and sale of tobacco on the Wallace tobacco market that it has created or tends to create, and threatens to perpetuate, in them a monopoly in the business of buying and selling tobacco on that market.

7. The Floor Space System Inhibitive of Competition

The system of allocating selling time to the tobacco auction warehouses on the Wallace tobacco market, commonly known and referred to as the "Floor Space System", is, in and of itself, an unreasonable basis or method of allocating selling time among the various warehouses on the Wallace tobacco market, and is in part conducive to the restrictive practices inhibiting competition hereinbefore cited.

DISCUSSION OF EVIDENCE AND APPLICABLE LAW

1. Interstate Commerce

Contrary to the position taken by some of the respondents, the interstate commerce jurisdiction of the Commission appears to have been thoroughly established under the interstate movement of goods concept involving the flow of tobacco products in interstate commerce. Interstate sales are also involved. As stated by the Supreme Court of the United States, in *Currin v. Wallace, Secretary of Agriculture*, 306 U.S. 1 (1939), sales consummated on the flue-cured tobacco auction market at Oxford, North Carolina, are "Predominately sales in interstate and foreign commerce." In this connection the Court further indicates "the principal purchasers are few in number and in the main are engaged in the export trade and are in the manufacture of tobacco products in other states. It appears that in a given week, shortly before the beginning of this suit approximately 2 million pounds of tobacco were sold on the Oxford market, only 15.3 percent of which were definitely destined for manufacture in North Carolina. About 14 percent were in part for manufacture in North Carolina and in part for other States, and about 62 percent moved directly into foreign commerce. The fact that the growers are not bound to

accept bids, and in certain instances reject them, does not remove the auction from its immediate relation to the sales that are consummated upon the offers that the growers do accept. The auction in such cases is manifestly a part of the transaction of sale. So far as the sales are for shipment to other States or to foreign countries, it is idle to contend that they are not sales in interstate or foreign commerce and subject to congressional regulations. Where goods are purchased in one State for transportation to another the commerce includes the purchase quite as much as it does the transportation." *Swift & Co. v. United States*, 196 U.S. 375, 398 and 399; *Dahnke-Walker Milling Company v. Bondurant* 257 U.S. 282, 290, 291; *Lemke v. Farmers Grain Company* 258 U.S. 50, 54; *Stafford v. Wallace* 258 U.S. 495, 519; *Flanagan v. Federal Coal Company* 267 U.S. 222 to 225; *Shafer v. Farmers Grain Company* 268 U.S. 189, 198; *Foster-Fountain Packing Company v. Haydel* 278 U.S. 1, 10. In the case of *Welton v. Missouri* 91 U.S. 275, 278: "Commerce is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including the transportation, purchase, sale and exchange of commodities."

The movement of the stream of commerce begins its flow when the tobacco farmer packs his tobacco on his truck or other means of conveyance and transports it to the auction warehouse located in Wallace, North Carolina for sale. Here it is purchased at auction by the major domestic and foreign tobacco manufacturing companies and, after purchase, shipped, hauled or transported from the auction warehouses to the purchasers' places of manufacture, including the redrying or processing plants from which, in finished form cigarettes or other tobacco products are produced or manufactured and transported to the various States of the United States, the District of Columbia, and to foreign countries. The Commission in the *Wilson Tobacco Board of Trade* case (Docket 6262) [53 F.T.C. 141] and the *Asheville Tobacco Board of Trade* case (Docket 6490) [54 F.T.C. 1043] decided that the acts and practices questioned by the complaints in those cases were "in commerce." This finding was upheld by the Fourth Circuit in *Asheville Tobacco Board of Trade, Inc. v. FTC*, 263 F.2d 502, 508, 509 [6 S.&D. 507] (1959).

In cases involving trade associations, the Commission has ruled that it does have jurisdiction and such rulings have been given approval by the Courts. In *Chamber of Commerce of Minneapolis v. Federal Trade Commission*, 13 F.2d 691 [1 S.&D. 502, 520] (1926), for example, it was contended that the Chamber was not engaged in interstate commerce. In rejecting this contention the Court stated (page 691): "The Federal Trade Commission Act was enacted under

the power of Congress to regulate interstate and foreign commerce and by its express terms (Sec. 4) deals only with such commerce. Although the Chamber is not itself engaged in any commerce in the sense of being a trader or shipper, yet it is an instrumentality in the current of interstate commerce which directly affects such commerce and is within the regulatory power of Congress."

2. The Public Interest Issue

Respondent Board was incorporated as a nonstock corporation by respondent Warehousemen Granville L. Sheffield, W. L. Hussey and O. C. Blanchard, Sr., under the provisions of Section 465, Chapter 106, of the General Statutes of North Carolina, and its members are warehousemen and purchasers of leaf tobacco at auction of the Wallace Market. Respondent Board is authorized by statute "to make reasonable rules and regulations for the economic and efficient handling of the sale of leaf tobacco at auction on the warehouse floors", of Wallace, but it is not authorized to make rules and regulations "In Restraint of Trade."

In this connection, even before the enactment of the above statute, the Supreme Court of North Carolina upheld the principle that the business of operating warehouses for the public marketing of tobacco is one affected with a public interest, and subject to reasonable, public regulations. The Court so held in *Gray v. Central Warehouse Co.*, 181 N.C., 166, 106 S.E. 657, 659 (1921).

In the *Gray* case, *supra*, Clark, C. J., in writing the main opinion, quotes this principle: "The sale of tobacco at auction at tobacco warehouses is a business affected with a public interest, and those carrying it on are under the duties and obligations by common law to carry it on in a way that is reasonable and beneficial to the tobacco trade . . ." And Hoke, J., in a concurring opinion in the *Gray* case, *supra*, states: "Subject to such reasonable rules and regulations as may be established by the public agencies, and when not interfering with same, the authorities in control and management of those warehouses have the power to establish for themselves such reasonable rules and regulations as may be required to promote business efficiency and insure fair and honest dealing in the transactions occurring."

3. Board of Trade Administration of Floor Space System

The purpose for which respondent Board was created, as stated in its Articles of Incorporation are as follows:

To create an organization of individuals, firms and corporations interested in the buying, selling, and handling of tobacco in the Town of Wallace, State of North Carolina, and its tobacco trade territory, whereby proper and uniform

rules, regulations, and requirements may be stipulated, adopted, and maintained in order to promote the efficient conduct of said tobacco business, and to build up the tobacco market for the said Town of Wallace and its tobacco trade territory.

To maintain an organization for the purpose of promoting, developing, and enlarging the sale, buying, and handling of leaf tobaccos on the market of the Town of Wallace, and elsewhere in its tobacco trade territory, and to provide a uniform system of rules, regulations and requirements related and pertaining thereto so as to promote and protect the interest of the growers, sellers, buyers, and handlers of leaf tobacco in the Town of Wallace, State of North Carolina, and its tobacco trade territory.

In this connection, it was stipulated between counsel in this proceeding, that respondent Board succeeded an unincorporated tobacco board of trade through which persons, firms and corporations engaged in the tobacco industry conducted a tobacco auction sale market in Wallace, North Carolina, for at least 30 years prior to June 22, 1955, in accordance with rules and regulations considered reasonable and duly adopted by the said unincorporated board of trade. Said rules and regulations included rules and regulations for the allocation of selling time between the several warehouses operated as a part of the said tobacco auction sale market on the basis of the floor space. Hence, upon its incorporation on June 22, 1955, respondent Board did, as reflected by Section 1 of Article I of the Bylaws (Rules and Regulations) continue the method known as the "Floor Space System" then in use on the Wallace tobacco market for allocation of selling time. In this same connection, following a precedent set by its predecessor unincorporated Board of Trade through its use of the "Floor Space System", respondent Board adopted and followed the method, policy and practice of allocating selling time to warehouse space not used in the auction sale of leaf tobacco upon said market.

Under the "Floor Space System" in effect in this market, the warehouseman is permitted to sell a certain number of baskets of tobacco per day. The number of baskets allotted to him, in relation to the total number of baskets allotted to the entire market, is in the same ratio as the number of square feet of floor space in the warehouse or warehouses, owned, leased and controlled by him, bears to the total number of square feet of floor space in all of the warehouses on the market. For example, if he owns, leases and controls 10 percent of the warehouse floor space on the market, he receives 10 percent of the total daily basket allotment for the market.

As previously stated, respondent Board is a member of the Bright Belt Tobacco Warehouse Association. Said Association prescribes rules and regulations governing the auction sales of tobacco on all flue-cured tobacco markets, including the Wallace Market. The Wallace Market is known as a "One-Set Market", that is, for its selling

season it has only one set of buyers. This market is permitted to sell 2,200 baskets or piles of tobacco in a 5½ hour day, five days per week, during the selling season. In 1955 the market was opened on August 25 on a five and one-half (5½) hour selling time. After a few days the selling time was reduced by the Association to three and one-half (3½) hours, and the selling time was kept on this basis for most of the season. This shorter selling time reduced considerably the number of pounds of tobacco that this market would have sold had it been allowed the longer or regular hours, selling time. The same allocation of 2,200 baskets or piles of tobacco on the basis of a five and one-half (5½) hour sale per day and five days per week was made by the Association to the Wallace Market from 1956 to 1961, inclusive.

4. The Combination and Conspiracy.

According to the testimony and documentary evidence contained in the record the conspiracy or course of dealing between and among these respondents as charged in the complaint actually had its origin with the beginning of the 1955 selling season as a result of the respondent Board allocating selling time to two structures described in the record as the "Strawberry Exchange" (sometimes also called the "Shed") and the "Joseph H. Bryant Warehouse" (sometimes also called the Bryant-Blanchard Warehouse). Prior to the incorporation of respondent Board in 1955, there was on the Wallace tobacco market an unincorporated tobacco Board of Trade which was then using the "Floor Space System" of allocating selling time to warehouse space on the market which was available but not used in the actual sale of tobacco or for other purposes in connection with the sale of tobacco at auction. The existence of more available space than is needed for auction sale of the tobacco crop is evident in all of the markets using the "Floor Space System" of allocating selling time and not in Wallace only. Hence, upon incorporation respondent Board, following the precedent set by its predecessor, adopted and placed in effect the system of allocating selling time to the warehouses there on the market known as the "Floor Space System" and with it the method, policy and practice of allocating selling time to warehouse space which *was available* but not needed and therefore not used in connection with the sale of leaf tobacco at auction. However, beginning with the incorporation of respondent Board in June 1955, respondent warehouse members acting between and among themselves and through respondent Board, departed from the practice of allocating selling time to warehouses that had floor space *actually available* for the sale of tobacco at auction and instituted the practice of allocating selling time to warehouses whose floor space was unsuitable and unavailable for the sale of tobacco

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at auction or for other purposes in connection with the sale of tobacco at auction. A meeting of the respondent Board's Sales Committee was held in June 1955. Present at the meeting were respondents W. L. Hussey, Sr., O. C. Blanchard, Sr., and G. L. Sheffield. It was agreed by respondent Board through its Sales Committee at this time that sales time would be allotted on floor space using outside measurements and each warehouse would be surveyed and plotted with the Joe Bryant Warehouse, commonly referred to as Bryant No. 2, the Strawberry Exchange, or the "Shed", owned jointly by respondent Joseph H. Bryant and respondent Blanchard & Farrior Warehouse to be shown separately on the plot. It was also agreed that the sales card would be prepared by the secretary using the floor space shown on the surveyor's report and fixing the selling time each house would have, and furnishing one to each warehouse. Such a survey of the floor space of each warehouse of each respondent warehouseman was carried out as agreed. As a result of this agreement, the selling time allocated to each of the above respondent warehousemen (i.e., firms) and the warehouses for the selling season of 1955 is as follows:

Firm and name of warehouse	Number of square feet	Percentage of floor and time allocated	Date of construction	Number of baskets for each warehouse based on 400 baskets per hour, per day
Hussey's:				
Hussey's No. 1.....	244,572	-----	Prior to 1955..	
Hussey's No. 2.....	43,531	-----	do.....	
Hussey's No. 3.....	59,320	-----	do.....	
Hussey's No. 4.....	27,492	-----	do.....	
Joe Bryant No. 1 (a/k/a Bryant-Blanchard)...	131,102	-----	do.....	
74.28% of Strawberry Exchange (a/k/a Joe Bryant No. 2 and the "Shed").	56,325	-----	1955.....	
Total.....	562,342	59.1272	-----	1,300.8
Blanchard & Farrior:				
Blanchard & Farrior No. 1.....	112,384	-----	Prior to 1955..	
Blanchard & Farrior No. 2.....	61,524	-----	do.....	
25.72% of Strawberry Exchange (a/k/a Joe Bryant No. 2 and the "Shed").	19,575	-----	1955.....	
Total.....	193,483	20.343	-----	447.5
Sheffield's:				
Sheffield's No. 1.....	108,847	-----	Prior to 1955..	
Sheffield's No. 2.....	86,400	-----	do.....	
Total.....	195,247	20.529	-----	451.7

Market totals 951.072 equals 100.0000%—2200.0.

Thus, beginning with the 1955 selling season respondent warehousemen acting through respondent Board, and pursuant to agreement among them, caused selling time to be allocated to the owners and/or operators of the Strawberry Exchange (Shed). Under the established criteria requiring a warehouse to be suitable and thus available for the auction sale of leaf tobacco, the Strawberry Exchange, containing

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75,900 square feet, was during the 1955 tobacco selling season *not* "available" since it was *not* suitable for the actual sale of leaf tobacco at auction or for any use connected with the Wallace tobacco market because it had no walls. Notwithstanding this fact respondent Board, at the instance of respondent warehousemen members, proceeded to allocate selling time to this structure. In this connection respondent warehouseman Joseph H. Bryant testified as follows:³

By Mr. Jones:

Q. Did you attend any of the meetings in which Mr. O. C. Blanchard, Sr., was present—

A. Yes, sir.

Q. Before the agreement to which you have referred and between 1955 and 1957, when the question of considering the unwall-in Strawberry Exchange as floor space in allocating sales time was voted on in the meeting of the Board of Trade?

A. Yes, sir.

Q. Which way did he vote?

A. I voted to count it.

Q. I said, which way did Mr. Blanchard vote?

A. He voted to count it.

Furthermore, the record shows that this structure, although eventually walled in 1957, has never been used for the sale of leaf tobacco at auction or for any use whatsoever connected with the Wallace tobacco market except as a basis for allocating additional selling time to the owners thereof. In 1957, this same structure was leased to J. P. Stevens Co., Inc., for the storage of textile products.

Commencing with the 1955 selling season, selling time was also allocated to the Joseph H. Bryant Warehouse (also known as the Bryant-Blanchard Warehouse). The evidence shows that respondent warehouseman Joseph H. Bryant and wife, Thelma A. Bryant leased the Joseph Bryant Warehouse (Blanchard-Bryant) on July 26, 1955, containing 131,102 square feet of floor space to J. P. Stevens & Co., Inc., which is used for the year-round storage of textile products. Hence, this warehouse has *not been* "available" for the selling of tobacco since 1955, nor is said warehouse available now for the sale of tobacco at auction or for any other purpose connected with the sale of tobacco at auction. Notwithstanding its unavailability, the respondent Board, pursuant to the votes of its respondent warehouse members has continued to allocate selling time to its owners on the basis of the 131,102 square feet of floor space therein.

Of the total floor space on the market (i.e. 951,072 square feet) for the selling season 1955, only 744,070 square feet of such space was suitable and/or available for the purpose of selling tobacco at auction

³ Transcript of record, page 987.

or for other utilization in connection with the actual operations of the Wallace tobacco market other than to serve as a basis for the allocation of selling time.

At the annual meeting of the respondent Board on May 19, 1956, respondent Warehouseman G. L. Sheffield, who had originally objected to the inclusion of the Strawberry Exchange as a part of the floor space on the market for which selling time could properly be allocated for the reason that it "was not walled in", requested respondent Board to "go on record allowing Sheffield's Warehouse (known as Sheffield's No. 2) to count as floor space, the building then used for chicken raising." Respondent Board "voted unanimously to allow the Sheffield Warehouse to continue to use this warehouse for chicken raising and still count this as floor space for selling tobacco for the 1956 Selling Season." The allocation to G. L. Sheffield of additional selling time based on the floor space contained in this structure of 86,400 square feet together with the allocation of selling time by respondent Board to respondent warehouseman Joseph H. Bryant on the basis of floor space contained in the Strawberry Exchange and Joseph Bryant Warehouse, both being unsuitable and unavailable under respondent Board's Rules and Regulations decreased the allotment of selling time to the other respondent warehousemen in this market.

On November 12, 1956, a special meeting of the respondent Board of Trade was held. On this occasion, a resolution was presented by respondent Board to Granville L. Sheffield, calling on respondent Board to rigidly enforce the rules and regulations pertaining to the allocation of selling time on the basis of "available" floor space. Voting for the adoption of the resolution were: Blanchard & Farrior, Inc., and Sheffield's Warehouse; voting against the adoption of the resolution were Hussey's Warehouse, Joseph Bryant Warehouse (leased to J. P. Stevens & Co.) and the *Strawberry Exchange* (unsuitable). Pursuant to this vote, unavailable structures were used, contrary to respondent Board's own Rules and Regulations as a basis for allocating selling time. Furthermore, contrary to respondent Board's Rules and Regulations these structures served to give the Hussey or Bryant group two additional votes on matters coming before respondent Board. Respondent Warehousemen G. L. Sheffield and O. C. Blanchard, Jr., protested the vote of these two structures at this time.

Respondent Board's Rules and Regulations provide that only warehouses operating on the market are eligible to vote on matters pertaining to the allocation of selling time. The Joseph Bryant Warehouse was not an operating warehouse since it was leased to J. P. Stevens & Co., and therefore not "available." Although ineligible it improperly cast a vote. The Strawberry Exchange and Sheffield No. 2 also were

not operating warehouses in that they were not only "unsuitable" for the sale of tobacco at auction but also not "available" as required by respondent Board's Rules and Regulations. Thus both of these structures were ineligible to be used as a basis for voting but were so used because of the domination and control of respondent Board by the majority vote of respondent warehousemen.

At the November 21, 1956, meeting, respondent warehouseman Joseph H. Bryant filed with respondent Board notice of intention to build two new warehouses of 85,000 square feet each; one in the name of H. G. Perry, his nephew, and another in the name of Joseph D. Bryant, his son. This precipitated a building war between Hussey and Sheffield groups. Although Blanchard & Farrior's Nos. 1 and 2 had given notice at the May 19, 1956, meeting of its intention to construct an additional 100,000 square feet, it did not carry out the threat to do so and, in fact, has at this time only such warehouse floor space as it had in 1955.

In July 1957, the Hussey Group included Hussey's Nos. 1, 2, 3 and 4, containing 374,915 square feet. The Joseph H. Bryant Warehouse (also known and referred to as Bryant-Blanchard Warehouse) contained 131,102 square feet, the H. G. Perry Warehouse contained 90,339 square feet and a new warehouse which in 1959 became known as the Thelma D. Bryant Warehouse contained 162,942 square feet. At the same time, John H. Sheffield and Granville L. Sheffield, owners and operators of Sheffield Nos. 1 and 2, were well under way in the building of four additional structures, each containing 33,888½ square feet, or a total of 135,354 square feet.

Prior to the completion of the foregoing structures, respondent warehouseman G. L. Sheffield, brother of John H. Sheffield, and respondent warehouseman Joseph H. Bryant entered into a verbal agreement and understanding whereby each would cease construction of these structures.

At the annual meeting of respondent Board on May 14, 1957, after considerable discussion, the following motion was made by respondent warehouseman Joseph H. Bryant, representing Hussey's Group, seconded by respondent warehouseman G. L. Sheffield, and approved by respondent Board:

That present floor space as allocated be used and new buildings constructed or under process of construction be accepted as floor space.

As a result of the approval of this motion, an additional 388,635 square feet of floor space was added to the Wallace tobacco market, to be considered in the allocation of selling time. (i.e. Perry's Warehouse, 90,339 square feet; Thelma D. Bryant's Warehouse, 162,942

square feet; and four structures by Sheffield containing 135,354 square feet.) It appears that five of the total buildings and/or structures on which selling time was allocated to their respective owners as a result of the approval of this motion are "unsuitable" as tobacco auction warehouses and therefore are not available for any purpose connected with the sale of leaf tobacco at auction. These five buildings and/or structures described as the Perry's Warehouse, are used for the raising of chickens. The four structures built by the Sheffields are also used for the raising of chickens. According to the evidence, Perry's warehouse had dirt floors until just a few days before the hearings began in Wallace on August 21, 1961, at which time, paving was begun. The four structures of Sheffield's also have dirt floors and are therefore likewise "unsuitable" and not available for the sale of leaf tobacco at auction. Respondent warehouseman John H. Sheffield testified that the only reason he built these structures was to secure additional selling time.

The evidence also indicates other buildings and/or structures presently on the Wallace tobacco market are being counted in the allocation of selling time that have, since the incorporation of respondent Board, become unsuitable and thus not "available" for the sale of tobacco at auction. However justified the allocation of selling time to these buildings may have been several years ago, their condition for the last several tobacco selling seasons has not justified allocation. For example, the building known and described as Hussey's Warehouse No. 2, known and described in the record as such, containing 243,531 square feet; Hussey's No. 3 (old Carter Warehouse), containing 59,320 square feet and Hussey's No. 4 (Prize House), containing 27,492 square feet appears to have been for several years last past, totally "unsuitable" for selling tobacco at auction or for any other utilization, in connection with operation of the tobacco market, due to their bad state of repair.

This pattern of allocating selling time to "sheds", "poultry houses" and other structures totally unfit for the sale of tobacco at auction or for any other useful purpose in connection with the sale of tobacco at auction continued, according to the evidence, until August 21, 1961, the date of the commencement of hearings herein.

From 1957 through 1961, selling time was computed on the floor space of several additional warehouses and/or structures making total floor space of 1,339,707 square feet on the market owned or controlled by the same three warehousing groups. The percentage of selling time and number of baskets actually allocated to each of the three operating groups and the warehouses and/or structures (floor space)

that were the basis of this allocation for each year of the period 1957 through 1961 are as follows:

Operating group and name of warehouse and/or structures	Number of square feet in each	Percentage of space and time allotted to each operating group	Number of baskets
Hussey's:			
Hussey's No. 1.....	244,572	60.8808	1,340
Hussey's No. 2.....	43,531		
Hussey's No. 3.....	59,320		
Hussey's No. 4.....	27,492		
Bryant No. 1.....	131,102		
Strawberry Exchange.....	56,325		
Thelma Bryant.....	162,942		
Horace G. Perry.....	90,339		
Total.....	815,623		
Blanchard & Farrior:			
Blanchard No. 1 & Farrior.....	112,384	14.4421	317
Blanchard & Farrior.....	61,524		
Strawberry Exchange (25.79%).....	19,575		
Total.....	193,483		
Sheffield's:			
Sheffield's No. 1.....	108,847	24.6771	543
Sheffield's No. 2.....	86,400		
4 structures.....	135,354		
Total.....	330,601		
Grand total.....	1,339,707	100	2,200

It would therefore appear that the acts and practices of these respondents in allocating selling time to warehouses and/or structures which are "unsuitable" and thus not available for the sale of tobacco at auction, or use for any other purpose connected with the sale of tobacco at auction other than for the mere purpose of securing additional selling time calculated upon the floor space contained in such warehouses and/or structures is an unreasonable and improper exercise of the power and authority of the respondent Board, and thus constitutes a conspiracy, planned course of action and course of dealing to unduly hinder, restrict, suppress and prevent the establishment and operation of market facilities and market opportunities and competition in the purchase and sale of tobacco in the Wallace tobacco market.

5. The Effects and Illegality of the Conspiracy.

The evidence suggests that because of the importance of selling time to the successful operation of a tobacco auction warehouse there is present in the tobacco markets a reluctance to have new competition enter the market or for a warehouseman already in the market to expand his present floor space. The apparent reason for this is that any new warehouse coming into the market or any expansion of an existing warehouse cuts into the selling time previously enjoyed by

the other warehouse operators. Loss of selling time means loss of profit to a warehouse operator when the market is full. This is understandable when one considers that tobacco is sold at the rate of 400 piles or baskets per hour and that the warehouseman received $3\frac{1}{2}$ cents commission for every pound sold; auction fees of 25 cents on all piles or baskets in excess of 100 pounds, of 15 cents on all piles of 100 pounds or less; weighing and handling fees of 10 cents per pile on all piles of 100 pounds or less and 10 cents for each additional 100 pounds. In addition, the warehouse charges an auctioneer's fee of 25 cents per pile on all piles over 100 pounds. This is also charged to the farmer. Thus, one extra minute of selling time can, over a few years operation, mean hundreds of dollars to the warehouseman who gets the extra minute and has the tobacco on his floor for sale.

As in *American Federation of Tobacco Growers v. Neal*, 183 F. 2d. 869 (1950), *Marlboro* (Docket 5857) [48 F.T.C. 269], *Wilson* (Docket 6262) [53 F.T.C. 141] and *Asheville* (Docket 6490) [54 F.T.C. 1043], the reluctance on the part of the warehousemen then operating in the market to preserve their status quo and efforts to prevent new competition from entering the market or prevent operators from expanding their already existing floor space, sometimes manifests itself through the use of various practices by the warehouse members of the Board of Trade, acting through and by authority of the power reposed in said Board.

On other occasions, warehouse operators resort to various practices that have the effect of increasing their own respective selling time in a given market which, at the same time, act as a deterrent to potential new competition that may desire to enter the market as well as to expansion of warehouse facilities by other operators already in the market. In this instance respondent Board, pursuant to the votes of respondent warehouse members, has allocated selling time to various so-called warehouses and/or structures owned and/or operated or controlled by members of respondent Board which are unsuitable and unavailable for the sale of tobacco at auction, or for any other use in connection with the sale of tobacco at auction.

The result of the operation of this practice is to effectively foreclose the market to new tobacco warehouse competition. Experienced tobacco marketers testified that in order to sell one pile of tobacco on the Wallace tobacco market under the conditions as they exist in this market it would be necessary to construct a warehouse of approximately 600 square feet. This is an absurd result emanating from the "floor space system." Costs of warehouse construction, according to testimony in this case, would be well over \$1.25 per square foot. The new entrant, under the floor space system of allocating selling time is

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also faced with the ever present threat of the owners or operators of old warehouses on the market building additional floor space in order to preserve their own selling time. In a market that has annual sales averaging around 13,000,000 pounds with 1,339,707 square feet already on the market this is anything but a good risk. The reverse would be true if selling time was allocated to the warehouses *actually* available and operating as tobacco warehouses on this market.

Tobacco warehouseman Carl B. Renfro, Wilson, North Carolina, corroborated the testimony of Mr. Deans in this respect as follows:

By Mr. Wilson:

Q. Would you as a warehouseman enter the Wallace Market as an operator of a tobacco auction warehouse under the facts as outlined to you?

Mr. Jones: Objection.

Hearing Examiner Buttle: If those facts are sufficient to enable you to render an opinion. Are they?

The Witness: Your Honor, am I permitted to elaborate and say what I would do?

Hearing Examiner: Yes.

The Witness: I certainly would hate to put good hard-earned money in a spot where you had 1,300,000 square feet of floor space with one set of buyers under the system.

By Mr. Wilson:

Q. Would it be a factor for considering a change in your opinion if the floor space to which selling time was allocated in the Wallace Market was reduced from 1,320,000 to around 700,000 square feet?

Mr. Jones: Objection.

Hearing Examiner Buttle: Overruled.

The Witness: I would consider it.⁴

The practice at issue also forecloses entrants already in the market from venturing sufficient capital to expand and even modernize the already existing warehouses. For example, as a result of the addition of the 388,635 square feet of space to the Wallace market by the Hussey's and Sheffield's Groups, the selling time of the Blanchard & Farrior Group was reduced from 20.343% or 447.5 piles of tobacco to 14.4421% or 318 piles of tobacco. In this connection, the testimony of O. C. Blanchard, Jr., is revealing:

Q. Mr. Blanchard, Mr. Jones asked yesterday, I believe, if you had considered expanding or why you hadn't expanded on the market if you had the same opportunity that the other warehouses had in expanding. Will you explain to the Court what your position is along that line?

A. If we were to expand we would have to build warehouses complete and we are also faced with the fact that we have only one vote on the Board of Trade and anyone having more, that could outvote us, could count anything

⁴ At pages 611 and 612 of the transcript, it was stipulated by counsel that if called as witnesses, Mr. W. B. Clark, Sr., and Mr. W. B. Clark, Jr., would testify substantially in all respects similar to the testimony of Mr. Renfro.

for floor space and would make our warehouse, if we were to build it, impractical.

Mr. Jones: Motion to strike the answer.

Hearing Examiner Buttle: Well, strike the "impractical." You mean it would increase your operating expense with the possibility that you wouldn't receive adequate return for the additional expense; is that right?

The Witness: We are faced with building——

Hearing Examiner Buttle: Well, is that it?

The Witness: Yes, sir.

Mr. Jones: We object, your Honor.

Hearing Examiner Buttle: Overruled.

The Witness: We would be faced with building a complete warehouse, whereas the fellow who had more votes than we had, he could build anything and call it a warehouse and would offset ours——

Hearing Examiner Buttle: Well, this is argument.

By Mrs. Wells:

Q. I will ask you if the practice on the Wallace Tobacco Board of Trade has been to count warehouses that were not available and were not suitable?

A. Yes it has.

Q. Have you determined how much additional warehouse space it would take on the Wallace tobacco market to give you 450 piles of tobacco for selling time? I believe that was what you testified yesterday it would take to operate, in your opinion, a warehouse.

A. I haven't determined it, but 200,000 feet would only give you 286 piles. But now I would have to do some mathematics to figure 450.

The eventual result of the foregoing practices restrictive of competition is monopoly. It not only imposes competitive injury upon the warehousemen but is also injurious to the farmers who take their tobacco to the Wallace market in that it deprives them of the competition that should exist between warehouses and limits their choice as to where they can sell their tobacco to the best advantage.

The allocation of selling time to the buildings which are unsuitable and unavailable for the sale of tobacco at auction is a device which has so constricted the Wallace tobacco market for the benefit of a few that it falls within the prohibition of the Sherman Act and is therefore an "unfair method of competition" within the meaning of Section 5(a) of the Federal Trade Commission Act. See *F.T.C. v. Motion Picture Advertising Service Co.*, 344 U.S. 392, 394 [5 S. & D. 498, 500] (1953).

Section 5 of the Federal Trade Commission Act was intended to reach a broad scope of restraints of an anticompetitive nature. Thus, in *F.T.C. v. Motion Picture Advertising Service Company*, 344 U.S. 392, 394 [5 S. & D. 498, 500] (1953), the Supreme Court said:

The unfair methods of competition, which are condemned by section 5(a) of the Act, are not confined to those that were illegal at common law or that were condemned by the Sherman Act, *Federal Trade Commission v. Keppel & Bro.*, 291 U.S. 304. Congress advisedly left the concept flexible to be defined with particularity by the myriad of cases from the field of business. *Id.* pp. 310-312. It is also clear that the Federal Trade Commission was designed to supplement

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and bolster the Sherman Act and the Clayton Act (see *Federal Trade Commission v. Beech-Nut Co.*, 257 U.S. 441, 453)—to stop in their incipency acts and practices which, when full blown would violate those Acts (see *Fashion Guild v. Federal Trade Commission*, 312 U.S. 457, 463, 466) as well as to condemn as unfair methods of competition existing violations of them. See *Federal Trade Commission v. Cement Institute*, 333 U.S. 683, 691.

The *Motion Picture* case suggests that the concept of Section 5 was to reach practices that not only violate the Sherman Act, but those that offend its policy, as well as incipient practices which if allowed to mature would do so.

The legislative history of the Federal Trade Commission Act reveals:

"An abiding purpose" to vest the Commission "with adequate powers to hit at every trade practice then existing or thereafter contrived, which restrained competition or might lead to such restraint if not stopped in its incipient state. *FTC v. Cement Institute*, 333 U.S. 683, 693 [4 S. & D. 676, 685] (1948).

The effect of the acts of respondents in combination is to exclude actual or potential competitors from the relevant area of competition and thereby to dominate the market. See *American Tobacco Company v. United States*, 328 U.S. 781, 786, 809 (1946); *United States v. Aluminum Company of America*, 148 F. 2d 416 (1945); *Fashion Originator's Guild v. F.T.C.*, 312 U.S. 457 [3 S. & D. 345] (1941).

It is well settled that no formal agreement is necessary to bring into existence an unlawful conspiracy and that a combination prohibited by law may, and often must be, found in a course of dealing or other circumstances in the absence of any exchange of words (*United States Malsters Association v. Federal Trade Commission*, 152 F. 2d 161 [4 S. & D. 428]; *Milk and Ice Cream Institute v. Federal Trade Commission*, 152 F. 2d 479 [4 S. & D. 440]; *United States v. Parke, Davis & Co.*, 362 U.S. 29 (1960); *F.T.C. v. Beech-Nut Packing Co.*, 257 U.S. 441 [1 S. & D. 170] (1922).)

In the within case there was no formal agreement but there was agreement evidenced by the Board's adoption of a plan and acts in furtherance of a plan to unreasonably employ a method of allocating floor space which had a tendency to lessen competition and create a monopoly in the Wallace market, the benefits of which the members accepted. In this connection, the Court of Appeals for the Seventh Circuit in the case of *Eugene Dietzgen Co. v. Federal Trade Commission*, 142 F. 2d 321, 332 [4 S. & D. 117, 132] said, "The rule stated in *Interstate Circuit v. United States*, 306 U.S. 227, and *U.S. v. Masonite*, 316 U.S. 265, applies here:

"Acceptance by competitors, without previous agreement, of an invitation to participate in a plan, the necessary consequence of which if carried out, is restraint of interstate commerce is sufficient to establish unlawful conspiracy.

It is also sufficient to establish unfair methods of competition under the Federal Trade Commission Act."

Judge Learned Hand, in *United States v. Associated Press*, 52 Fed. Supp. 362, 369 (1943) states:

If a combination effectively excludes, or tries to exclude, outsiders from the business altogether, it is a monopoly or an incipient monopoly, and it is unconditionally unlawful.

In this case before the hearing examiner, the acts of respondent warehousemen in unreasonably causing respondent Board its instrumentality to allocate selling time to an excessive number of purported warehouses, many of which were unsuitable and not available in connection with the auction sale of tobacco, was tantamount to the exclusion of new competition from this market. The Commission is not required to establish actual exclusion of a particular competitor from the market. *American Tobacco Company* 328 U.S. 781 (1946).

The status of the respondent Board is somewhat analogous to the Guild combination, as enunciated in the case of *Fashion Originators Guild v. F.T.C.* 312 U.S. 457, 465 [3 S. & D. 345, 350] (1941). The Supreme Court states therein as follows:

... the combination is in reality an extra-governmental agency, which prescribes rules for the regulation and restraint of interstate commerce ...

6. Restrictive Effect of the Floor Space System as a Method of Allocating Selling Time.

Not only have the unlawful acts and practices of the respondents inhibited competition as the result of a misuse of the "Floor Space System", but the "Floor Space System" is in and of itself an unreasonable method for allocating selling time as demonstrated in the Wallace tobacco market because the facility with which it may be misused has a deleterious effect on competition.

Counsel in support of the complaint correctly contends that there is an overexpansion of floor space on the Wallace tobacco market brought about through use of the "Floor Space System" in allocating selling time. In this connection, it appears the system itself is conducive to excessive construction of unusable floor space. Fred S. Royster testified that this is not only true in the Wallace market but also in all of the tobacco markets located in the flue-cured tobacco area.

The evidence indicates that the total number of square feet on which selling time was allocated by respondent Board for the 1957-1960 selling seasons was 1,339,707. It is further shown that 728,563 square feet, or 54.38% of such total number of square feet of floor space on the Wallace tobacco market during the 1957-1960 selling seasons consisted of floor space not used in the auction sale of tobacco. It was

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stipulated between counsel in this proceeding that typical of the floor space which has not been used in the auction sale of leaf tobacco in the Wallace tobacco market during this time but which was and is now included in the allocation of selling time is the floor space contained in the following described buildings and/or structures.

(a) A structure known and described as Sheffield's #2, consisting of 86,400 square feet.

(b) A building known and described as Bryant's Warehouse, containing 131,102 square feet.

(c) A building known and described as Hussey's Warehouse #2, containing 43,531 square feet.

(d) A structure known and described as Perry's Warehouse, containing 90,339 square feet.

(e) A building known and described as the Strawberry Exchange, containing 78,895 square feet.

(f) A building known and described as Thelma and Joe D. Bryant Warehouse, containing 162,942 square feet.

(g) Four structures, each containing 33,838½ square feet, or a total of 135,354 square feet.

The question of unnecessary floor space was considered by the Fourth Circuit recently in *Asheville Tobacco Board of Trade, Inc. v. Federal Trade Commission* 294 F. 2d 619 [7 S. & D. 220, 229] (4th Cir. 1961). In recognizing the unreasonably restrictive nature and effects of the "Floor Space System", this Court adopted the opinion of the Commission by quoting the Commission as follows:

We emphasize that we do not intend by our order to foster or in any manner encourage overbuilding or uneconomic building of warehouses on the Asheville market. On the contrary, the Commission recognizes, as shown by its opinion in the Wilson case, that the addition of unnecessary warehouse facilities to a market is economically unsound and wholly undesirable.

The entry of *new* competition in a tobacco market has benefited the market and the farmers selling therein. *Asheville Tobacco Board of Trade, Inc.*, Docket No. 6490. The Fourth Circuit of Appeals in its recent decision on petition to review the order issued by the Commission in this case approvingly quoted the Commission as follows:

... there is substantial and reliable evidence that the new warehouse in 1954 benefited the farmers and the market as a whole. Not only did new competition result in better and more efficient service to the farmers by the established warehousemen but respondent Adams conceded that the new competition had benefited the market generally. *Asheville Tobacco Board of Trade, Inc. v. F.T.C.*, 294 F. 2d 619 [7 S. & D. 220, 227] (4th Cir. 1961).

The evidence is unequivocally clear that if the Wallace market is foreclosed to new competition from without and growth from within by the continued acts of the respondent Board, induced by a system⁵

⁵ The Floor Space System.

easily susceptible of misuse, in allocating selling time to buildings *neither suitable nor available* as tobacco auction warehouses, the market will remain competitively and otherwise stagnant as it now appears to be.

7. Invalidity of Respondents' Motion to Strike Portions of the Answer of Respondents Blanchard & Farrior Warehouse, Inc., et al.

There appears to be no merit whatsoever to the position taken by counsel for the Wallace Tobacco Board of Trade and others that Blanchard & Farrior Warehouse, Inc., et al., have instituted the within proceeding before the Federal Trade Commission against other respondents, or that their answer conceding a combination and conspiracy to which they claim no part in filing their answer is tantamount to the institution of such an action and should be stricken in part. However, counsel for the Board is quite correct in asserting that Section 5 of the Federal Trade Commission Act does not provide private persons with an administrative remedy for private wrong.

In resolving the issues in this case, the hearing examiner has not concerned himself with the aggrievement of Blanchard & Farrior Warehouse, Inc., or its officers who are also respondents. As stated in the case of *Federal Trade Commission v. Alfred Klesner, supra*:⁶

A person who deems himself aggrieved by the use of an unfair method of competition is not given the right to institute before the Commission a complaint against the alleged wrongdoer. Nor may the Commission authorize him to do so. He may, however, bring the matter to the Commission's attention and request it to file a complaint.

The court also in this case points out that if the request is granted and a proceeding is instituted, the aggrieved person does not become a party to it or have any control over it.

In the within case respondents Blanchard & Farrior Warehouse, Inc., et al., cited by counsel for the Wallace Tobacco Board of Trade, Inc., have had no control whatsoever over the proceedings. They have been named as respondents because the within case involves a combination and a conspiracy of which respondents Blanchard & Farrior Warehouse, Inc., and certain firm representatives, were a part in view of their continued participating membership in the Wallace Tobacco Board of Trade and partial participation in voting for some of the malpractices charged. Blanchard & Farrior have in no sense been made, theoretically or otherwise, a plaintiff or prosecuting party. They are a defending party and as alleged coconspirators may in their answer admit any facts or deny any acts with which they are charged. Such admissions are not unqualifiedly binding

⁶ 280 U.S. 19.

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upon other coconspirators. Only declarations of a coconspirator in the furtherance of the conspiracy are admissible against all upon proof of the conspiracy.⁷ Such answer, therefore, even if it admits some of the charges that other respondents deny in no way prejudices the other respondents unless the concession made is with regard to a declaration of the answering coconspirator (i.e., Blanchard & Farrior). In the within case, the hearing examiner finds the respondent Blanchard & Farrior Warehouse, Inc., as well as its officers to be equally responsible with the other respondents for the combination and conspiracy in restraint of commerce regardless of their claimed nonparticipation in the acts of the conspiracy. The fact is that Blanchard & Farrior continued its membership and participated in the affairs of the Board even though at times they may have voiced opposition to its tenets as contravening the public interest as well as their own interests.

CONCLUSIONS

For the reasons hereinbefore set forth, the hearing examiner concludes that all respondents have violated Section 5 of the Federal Trade Commission Act, as amended.

Respondents' agreements, combination, conspiracy and planned common course of action and course of dealings and, their acts, and practices carried out pursuant thereto, all and singularly are contrary to public policy because they have a dangerous tendency unduly to hinder competition and create a monopoly and because they have in fact hindered, restricted, suppressed and prevented competition and restrained trade between and among said respondents and others in the sale, purchase and distribution of tobacco in commerce within the intent and meaning of the Federal Trade Commission Act, as amended.

It is further concluded that the Federal Trade Commission has jurisdiction of the acts and practices of the respondents in this proceeding, that this proceeding is in the public interest, and that the following order shall issue:

ORDER

It is ordered, That R. H. Lanier appearing in this proceeding as successor to respondent Tyson Lanier, now deceased, is substituted as a party respondent herein, and that the complaint is dismissed as to Tyson Lanier because of his demise and, it is

Further ordered, That respondents Wallace Tobacco Board of Trade, Inc., a corporation, and William L. Hussey, Jr., Granville L. Sheffield, and Hugh M. Morrison, individually and as officers of said

⁷ *U.S. v. Kessel*, 218 U.S. 601; *U.S. v. Gypsum*, 333 U.S. 364, 393.

corporation; Joseph D. Bryant, Joseph H. Bryant, Granville L. Sheffield, and William L. Hussey, Sr., copartners trading under the name and style of Hussey's Warehouse; William L. Hussey, Jr., and John H. Sheffield, copartners trading under the name and style of Sheffield's Warehouse; Blanchard & Farrior Warehouse, Inc., a corporation, and O. C. Blanchard, Sr., R. H. Lanier, and O. C. Blanchard, Jr., individually and as officers of said corporation; and all of the above-named persons as members and as representatives of all of the warehouse members of Wallace Tobacco Board of Trade, Inc., individually and as officers, directly or through any corporate or other device, in connection with procuring, purchasing, offering to purchase or selling or offering for sale, leaf tobacco, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, participating, continuing, cooperating in, or carrying out, or directing or instigating any planned common course of action, course of dealing, understanding, plan, combination, or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto to do or perform any of the following acts and practices:

1. Allocate or cause to be allocated any selling time to tobacco auction warehouses operating on the Wallace tobacco market on the basis of the Floor Space System or any other system, plan, method, policy or practice for the purpose or with the effect of restricting, hindering, limiting, preventing or interfering with or foreclosing any person, firm or corporation from engaging in the tobacco business on the Wallace tobacco market either as a warehouse owner or operator, buyer, speculator, broker or rehandler of tobacco.

2. Allocate or cause to be allocated any selling time pursuant to any system or method of allocating selling time which includes floor space that is not suitable or available during the selling season for the sale of tobacco at auction in the Wallace tobacco market.

3. Adopt and place into effect or cause to be adopted and placed into effect any rule, regulation or bylaw that prohibits, or denies any person, firm or corporation who is now a member or may in the future become a member of the Wallace Tobacco Board of Trade from voting on any matter coming before the said Board including the allocation of selling time.

4. Adopting, using, adhering to or maintaining or attempting to adopt, use, adhere to or maintain any plan, system, method, policy or practice that restricts, hinders, limits, prevents or forecloses any person, firm or corporation from engaging in the to-

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bacco business on the Wallace tobacco market either as a warehouse owner or operator, buyer, speculator, broker or rehandler of tobacco.

5. Engaging in any act or practice or entering into any arrangement, agreement or understanding with the purpose or effect of foreclosing, preventing or hindering the entrance of a new tobacco warehouse on the Wallace tobacco market or any other tobacco warehouse already doing business on the Wallace tobacco market.

6. Engaging in any act or practice or entering into any arrangement, agreement or understanding with any respondent named herein or with any other person, firm or corporation with the purpose or effect of preventing, hindering, limiting or suppressing competition between and among the tobacco warehouses engaged in doing business on the Wallace tobacco market.

7. Engaging in any act or practice, the purpose or effect of which is to effectuate any understanding, agreement or combination prohibited herein.

8. Placing in effect or carrying out any act, practice, policy or method, prohibited by any provision or part of this order, through respondent Board or any other instrumentality, agent, agency, medium or representative.

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The Commission granted review of the initial decision in this matter on January 19, 1962. On May 10, 1962, the case was remanded to the hearing examiner for the purpose of ruling on an offer of additional evidence by complaint counsel and for making such revisions in the initial decision as may be appropriate. Accordingly, the examiner, on August 22, 1962, issued a supplemental decision containing additional findings of fact and otherwise reaffirming his initial decision. On October 25, 1962, the Commission issued an order providing for supplemental briefs and oral argument on respondents' appeal from the initial decision as supplemented.

On December 18, 1962, at the commencement of the scheduled oral argument, upon the request of counsel for the respondents, the Commission granted counsel for the respondents and complaint counsel thirty days in which to settle this case. It was provided that if the settlement was not reached within thirty days or if the settlement was not acceptable to the Commission, the Commission would forthwith decide the matter on the briefs and the record as submitted, without oral argument.

Within the period allotted, an agreement containing a consent order to cease and desist was entered into by counsel on both sides. The

Commission has considered this agreement and has determined that it is not an acceptable basis on which to dispose of this matter because it does not provide for the making of findings of fact and conclusions of law on the issues raised by the complaint. The agreement is not acceptable to the Commission, as a basis for disposing of the case in its present posture, for the further reason that it contains a provision that the agreement is for settlement purposes only and does not constitute an admission by respondents as to the matters set forth in the complaint. Accordingly, the Commission has proceeded to consider and decide this case on the briefs and the record.

The Commission has reviewed the initial decision of the hearing examiner as supplemented, the supporting evidence and the exceptions and the brief in support thereof filed by the respondents. The Commission has concluded that the findings of fact and the conclusions of law contained in the examiner's decision are supported by the evidence, and provide an adequate basis for the entry of the order contained in the examiner's decision with a minor revision incorporated below.

The decision of the examiner issued December 4, 1961, as thus amended, is hereby adopted as the decision of the Commission.

It is ordered, That R. H. Lanier appearing in this proceeding as successor to respondent Tyson Lanier, now deceased, is substituted as a party respondent herein, and that the complaint is dismissed as to Tyson Lanier because of his demise, and

It is further ordered, That respondents Wallace Tobacco Board of Trade, Inc., a corporation, and William L. Hussey, Jr., Granville L. Sheffield, and Hugh M. Morrison, individually and as officers of said corporation; Joseph D. Bryant, Joseph H. Bryant, Granville L. Sheffield, and William L. Hussey, Sr., copartners trading under the name and style of Hussey's Warehouse; William L. Hussey, Jr., and John H. Sheffield, copartners trading under the name and style of Sheffield's Warehouse; Blanchard & Farrior Warehouse, Inc., a corporation, and O. C. Blanchard Sr., R. H. Lanier, and O. C. Blanchard, Jr., individually and as officers of said corporation; and all of the above-named persons as members and as representatives of all of the warehouse members of Wallace Tobacco Board of Trade, Inc., individually and as officers, directly or through any corporate or other device, in connection with procuring, purchasing, offering to purchase or selling or offering for sale, leaf tobacco, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, participating, continuing, cooperating in, or carrying out, or directing or instigating any planned common course of action, course of dealing, understanding, plan, combi-

nation, or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto to do or perform any of the following acts and practices:

1. Allocate or cause to be allocated any selling time to tobacco auction warehouses operating on the Wallace tobacco market on the basis of any system, plan, method, policy or practice for the purpose or with the effect of restricting, hindering, limiting, preventing or interfering with or foreclosing any person, firm or corporation from engaging in the tobacco business on the Wallace tobacco market either as a warehouse owner or operator, buyer, speculator, broker or rehandler of tobacco.

2. Allocate or cause to be allocated any selling time pursuant to any system or method of allocating selling time which includes floor space that is not suitable and available during the selling season for the sale of tobacco at auction in the Wallace tobacco market.

3. Adopt and place into effect or cause to be adopted and placed into effect any rule, regulation or bylaw that prohibits, or denies any person, firm or corporation who is now a member or may in the future become a member of the Wallace Tobacco Board of Trade from voting on any matter coming before the said Board including the allocation of selling time.

4. Adopting, using, adhering to or maintaining or attempting to adopt, use, adhere to or maintain any plan, system, method, policy or practice that restricts, hinders, limits, prevents or forecloses any person, firm or corporation from engaging in the tobacco business on the Wallace tobacco market either as a warehouse owner or operator, buyer, speculator, broker or rehandler of tobacco.

5. Engaging in any act or practice or entering into any arrangement, agreement or understanding with the purpose or effect of foreclosing, preventing or hindering the entrance of a new tobacco warehouse on the Wallace tobacco market or any other tobacco warehouse already doing business on the Wallace tobacco market.

6. Engaging in any act or practice or entering into any arrangement, agreement or understanding with any respondent named herein or with any other person, firm or corporation with the purpose or effect of preventing, hindering, limiting or suppressing competition between and among the tobacco warehouses engaged in doing business on the Wallace tobacco market.

7. Engaging in any act or practice, the purpose or effect of which is to effectuate any understanding, agreement or combination prohibited herein.

8. Placing in effect or carrying out any act, practice, policy or method, prohibited by any provision or part of this order, through respondent Board or any other instrumentality, agent, agency, medium of representative.

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