

R. GUERCIO & SON, INC., ET AL. DOING BUSINESS
AS ROY'S BROKERAGE COMPANY

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

Docket C-508. Complaint, June 20, 1963—Decision, June 20, 1963

Consent order requiring a New Orleans family-owned corporate wholesale distributor of fruit and produce, purchasing from a large number of suppliers in many sections of the United States and with an annual volume of business well in excess of \$2 million, to cease violating Sec. 2(c) of the Clayton

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Act by receiving illegal brokerage in substantial amounts from suppliers and sellers through the son of its president operating as a fruit produce broker whose only account was respondent distributor and whose operations were managed by a full-time employee thereof.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, during the calendar year 1959 and to this time have been and are violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent R. Guercio & Son, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 200 North Peters Street, New Orleans, Louisiana. This organization is a closed corporation, the entire stock of which is owned by relatives and members of the same family.

Respondent R. Guercio & Son, Inc., has been and is engaged in business primarily as a wholesale distributor, buying, selling and distributing fruit and produce, hereinafter sometimes referred to as food products. This respondent purchases its food products from a large number of suppliers located in many sections of the United States and its volume of business in the purchase and sale of such products is substantial, estimated to be well in excess of \$2 million annually.

PAR. 2. In the course and conduct of its business for the past several years respondent R. Guercio & Son, Inc., has purchased and distributed, and is now purchasing and distributing, food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, from suppliers or sellers located in several states of the United States other than the State of Louisiana, in which respondent is located. Respondent transports or causes such food products, when purchased, to be transported from the places of business or packing plants of its suppliers located in various other States of the United States to respondent who is located in the State of Louisiana or to respondent's customers located in said State or elsewhere. Thus, there has been at all times mentioned herein a continuous course of trade in commerce in the purchase of said food products across state lines by the respondent and its respective suppliers of such food products.

PAR. 3. Respondent Roy A. Guercio is the son of Rosario Guercio, President of R. Guercio & Son, Inc., and for the past several years has ostensibly been operating as a fruit and produce broker, doing business under the name of Roy's Brokerage Company with his place

of business ostensibly at 210 Bienville Street, New Orleans, Louisiana.

PAR. 4. Respondent Roy A. Guercio, doing business as Roy's Brokerage Company, employs no full-time personnel, but is receiving assistance from one Frank J. Serio, who is employed on a full-time basis by R. Guercio & Son, Inc., is under the direct control of R. Guercio & Son, Inc., and who is, as well, managing the operations of Roy's Brokerage Company.

PAR. 5. The brokerage commissions received from sellers by Roy's Brokerage Company are substantial, amounting in the year 1960 to \$24,879.14 on sales made by suppliers and sellers of food products of R. Guercio & Son, Inc. R. Guercio & Son, Inc., has been the only account to which respondent Roy A. Guercio, doing business as Roy's Brokerage Company, has made sales.

PAR. 6. In view of the ownership and control described above, respondent Roy A. Guercio, doing business as Roy's Brokerage Company, in the conduct of his business has been acting for and in behalf of the buyer, respondent R. Guercio & Son, Inc., or has been subject to the direct or indirect control of the buyer, R. Guercio & Son, Inc.

PAR. 7. The acts and practices of respondents R. Guercio & Son, Inc., and Roy A. Guercio, an individual doing business as Roy's Brokerage Company, has been and are in violation of subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of subsection (c) of Section 2 of the Clayton Act, as amended, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent R. Guercio & Son, Inc., is a corporation organized,

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existing and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 200 North Peters Street, New Orleans, Louisiana.

Respondent Roy A. Guercio is an individual doing business as Roy's Brokerage Company with his office and principal place of business located at 210 Bienville Street, New Orleans, Louisiana.

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

ORDER

It is ordered, That respondent R. Guercio & Son, Inc., a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the purchase of food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of food products for respondent's own account, or on purchases made through Roy's Brokerage Company, or any other brokerage organization, where, and so long as, any relationship exists between the brokerage organization and the respondents named herein, either through ownership, control or management.

It is further ordered, That respondent Roy A. Guercio, an individual doing business as Roy's Brokerage Company, or under any other name, and his agents, representatives, and employees, directly or through any corporate, partnership, sole proprietorship or other device, in connection with the purchase or sale of food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of food products for his own account, or for the account of Roy's Brokerage Company, or for the account of R. Guercio & Son, Inc., so long as any relationship exists between the brokerage organization and the buyer organization, either through ownership, control or management, or where respondent Roy A. Guercio, or Roy's Brokerage Company, is the agent, representative or other intermediary acting for or

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in behalf, or is subject to the direct or indirect control, of any
buyer, including R. Guercio & Son, Inc.