

IN THE MATTER OF
INLAND CONTAINER CORPORATION ET AL.

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

Docket 7993. Complaint, June 24, 1960—Decision, July 31, 1964

Order requiring one of the Nation's largest producers of corrugated boxes and its wholly owned subsidiary to divest themselves of the Louisville, Ky., corrugator shipping container plant of the General Box Co. which they acquired in June 1958.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties named in the caption hereof and hereinafter more particularly designated and described, have violated and are now violating the provisions of Section 7 of the Clayton Act (15 U.S.C., Sec. 18), hereby issues its complaint pursuant to Section 11 of the aforesaid Act (15 U.S.C., Sec. 21) charging as follows:

PARAGRAPH 1. Respondent, the parent Inland Container Corporation, is a corporation organized in 1930 under the laws of the State of Indiana and existing under those laws, with its office and principal place of business in Indianapolis, Indiana. Its mailing address is Post Office Box 1054, Indianapolis, Indiana.

PAR. 2. Respondent, the subsidiary Inland Container Corporation, is a corporation organized in 1944 under the laws of the State of Indiana and existing under those laws, with its office and principal place of business in Indianapolis, Indiana. Its mailing address is Post Office Box 1054, Indianapolis, Indiana.

PAR. 3. Inland Container Corporation (1930) owns all, or substantially all, of the stock of Inland Container Corporation (1944), and directs and controls the acts and policies of that corporation. Inland Container Corporation (1944) has acted for and on behalf of Inland

Container Corporation (1930) as well as for itself and on its own behalf in doing and performing all acts and practices hereinafter alleged. References hereinafter to "Inland" are intended to include each corporation and both corporations and all matters hereinafter alleged are specifically alleged with respect to each, and with respect to both.

PAR. 4. Inland is engaged in the manufacture and sale of corrugated shipping containers and related corrugated fibre products in commerce, as "commerce" is defined in the Clayton Act. These products constituted approximately 85% of Inland's consolidated gross sales for the fiscal year ended December 27, 1959. In 1959, Inland was the third largest shipper of corrugated shipping containers in the United States.

Inland also sells kraft liner board, produces and sells folding cartons and specialty paperboard products, and purchases and sells fruit and vegetable packaging products, hatchery supplies and poultry equipment.

PAR. 5. The manufacture for sale of corrugated shipping containers is a line of commerce of rapidly growing importance and increasing integration. In less than twenty years, total shipments of corrugated shipping containers have increased approximately threefold. Production is generally to the order and specifications of each individual customer. The cost of freight and the requirements of customer service generally necessitate the location of manufacturing facilities relatively close to customers.

PAR. 6. Inland operates 18 manufacturing plants in the United States with a total estimated annual capacity to produce 8,300 million square feet of corrugated shipping containers. Its sales are principally in the area east of the Mississippi River where 16 of its 18 plants are located.

Inland's percentage of total United States shipments of corrugated shipping containers has increased steadily in each of the five past years. That increase is due, at least in part, to the acquisition of plants at Biglerville, Pennsylvania, in 1955, at Baltimore, Maryland, and Philadelphia, Pennsylvania, in 1957, and at Louisville, Kentucky, in 1958, for an aggregate acquisition cost of approximately \$5,743,000.

PAR. 7. The General Box Company, hereinafter referred to as "General", is a corporation organized and existing under the laws of the State of Delaware. Its principal offices are located at 1825 Miner Street, Des Plaines, Illinois. General presently is engaged in, and for a number of years has been engaged in, the manufacture and sale of

various types of boxes and containers in commerce, as "commerce" is defined in the Clayton Act.

In 1954 General built a modern plant in Louisville, Kentucky, for the manufacture of corrugated shipping containers. Immediately thereafter, and at other times during the following four years, Inland expressed to General the desire to purchase General's newly constructed corrugated shipping container plant at Louisville. General rejected these offers. During the same period Inland commenced to acquire capital stock of General. The capital shares of General are listed securities, traded on the Midwest Stock Exchange, Chicago, Illinois. By May 27, 1958, Inland had acquired in excess of 50% of the outstanding capital stock of General.

PAR. 8. On June 30, 1958, Inland acquired from General, in exchange for 1,084,000 shares of General stock owned by Inland, certain assets of General consisting of the Louisville, Kentucky, corrugated shipping container plant, including 19.46 acres of land, together with the buildings and fixtures located thereon, and certain other assets and items of property owned by General and used in connection with the operation of the Louisville plant. The total acquired assets are hereinafter referred to as the "plant".

The acquisition of the aforementioned plant was in accordance with an agreement between Inland and General made on June 27, 1958. The cost to Inland of the General stock which it exchanged for the plant was in excess of \$3,000,000.

PAR. 9. Prior to the acquisition alleged in Paragraph Eight hereof, the plant of General was an important factor in the manufacture and sale of corrugated shipping containers in the Louisville, Kentucky, area as well as the more widespread marketing areas which that plant served. General's plant was one of six corrugated shipping container plants located within a ten-mile radius of Louisville. In 1957, the year prior to the acquisition, the total consumption of corrugated shipping containers in the Louisville area was 678 million square feet. Of this amount General supplied 99.5 million square feet, representing 14.7%, and Inland, which maintained a warehouse in Louisville and was a substantial factor in that area, supplied 81 million square feet, representing 11.9%.

PAR. 10. The effects of the acquisition alleged in Paragraph Eight hereof, and of the things done in furtherance thereof, were and are, or may be, substantially to lessen competition, or to tend to create a monopoly, in the manufacture for sale of corrugated shipping containers in the Louisville area and elsewhere, in the following ways, among others:

1. General's plant has been foreclosed as an actual or potential independent source of supply;
2. Each and every form of actual competition between Inland and General's Louisville plant has been eliminated;
3. Each and every form of potential competition between Inland and General's Louisville plant has been eliminated;
4. The actual competitive power of Inland has been enhanced to the detriment of actual and potential competition;
5. The potential competitive power of Inland has been enhanced to the detriment of actual and potential competition; and
6. Concentration of market share and market power has been increased generally and has been increased substantially in Inland.

PAR. 11. The foregoing acquisition, acts and practices of Inland, as hereinbefore alleged and set forth, constitute a violation of Section 7 of the Clayton Act (15 U.S.C. Sec. 18), as amended and approved December 29, 1950.

Mr. Mark E. Richardson, Mr. Ronald A. Kronowitz, Mr. Lars Janson and Mr. David McKean for the Commission.

Barnes, Hickam, Pantzer & Boyd by *Mr. Alan W. Boyd* and *Mr. Louis A. Highmark*, Indianapolis, Ind., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

DECEMBER 17, 1962

The respondents on June 30, 1958, acquired from the General Box Company a corrugated box plant located at Louisville, Kentucky, including 19.46 acres of land, together with the buildings and fixtures located thereon and certain other assets and items of property used in connection with the operation of the plant. On June 24, 1960, the Federal Trade Commission filed a complaint against the respondents, charging that such acquisition violated Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

The respondents in their answer filed on August 3, 1960, admit the acquisition, but deny that the effects of the acquisition may be substantially to lessen competition or tend to create a monopoly in the manufacture for sale of corrugated shipping containers in the Louisville area or elsewhere as specified in the complaint.

On July 21, 1960, the Hearing Examiner met informally with counsel for the parties, at which time they outlined a program whereby they agreed to the exchange of information and to explore areas of stipulation which would expedite the proceeding. Thereafter counsel

met from time to time and progress reports were made to the Hearing Examiner. A stenographically reported prehearing conference was held on January 6, 1961, at which time complaint counsel reported that he had been supplied a substantial amount of material, in fact, all that he had requested, by the respondents. Counsel agreed to certain procedures to be employed in connection with hearings. Thereafter hearings were held in Washington, D.C., and Louisville, Kentucky, at which 52 witnesses were called for the Commission and two were called for the respondents. Of the witnesses called by the Commission, 4 were officers or employees of Inland, 41 were from companies which purchased and used the product involved, 6 were from companies which manufactured and sold the product, and one was a banker who, on behalf of Inland, purchased some General Box stock. Complaint counsel also offered in evidence the depositions of six persons, which had been taken in an independent action, relating to the purchase of General Box Company stock by Inland. The depositions were received in evidence by agreement of counsel with the understanding that the same were to be treated as the testimony of such individuals as if given in this proceeding. Approximately 900 exhibits were received in evidence.

After both parties had completed their case on April 17, 1962, the Hearing Examiner asked counsel if it would serve any purpose, before they proceeded to prepare proposed findings, for counsel to prepare a stipulation as to the matters where there is an area of agreement. The Hearing Examiner expressed the opinion that such a procedure would help counsel in submitting the proposed findings and point out the real controversy that existed between the parties, and furthermore it would be helpful to the Hearing Examiners and to the Commission or anyone else who may be called upon to consider the record in the case. Counsel welcomed the opportunity to work out something of that sort and the hearing was adjourned to a later date. A hearing was held on July 31, 1962, at which time there was offered and received in evidence a stipulation which had been entered into by the parties. The same will be hereinafter set forth in the findings. The record was closed for the receipt of evidence and a time was fixed for the filing of proposed findings. Proposed findings of fact, conclusions of law and order, and briefs in support thereof were filed by counsel for the parties, and on October 11, 1962, they orally argued their contentions before the Hearing Examiner.

The Hearing Examiner has given consideration to the proposed findings filed by the parties hereto, and all findings of fact and conclusions not hereinafter specifically found or concluded are herewith

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rejected. Upon consideration of the entire record herein, the Hearing Examiner makes the following findings of fact and conclusions:

The respondent, the parent Inland Container Corporation, is a corporation organized in 1930 under the laws of the State of Indiana and existing under those laws, with its office and principal place of business in Indianapolis, Indiana. Its mailing address is Post Office Box 1054, Indianapolis, Indiana.

The respondent, the subsidiary Inland Container Corporation, is a corporation organized in 1944 under the laws of the State of Indiana and existing under those laws with its office and principal place of business in Indianapolis, Indiana. Its mailing address is Post Office Box 1054, Indianapolis, Indiana.

The parent Inland Container Corporation owns all the stock of the subsidiary Inland Container Corporation. The parent corporation directs and controls the acts and policies of the subsidiary corporation. The subsidiary corporation has acted for and on behalf of the parent corporation as well as for itself and on its own behalf in doing and performing all the acts and practices alleged in the complaint.

For the purposes of these findings, except as otherwise clearly indicated, references hereinafter to "Inland" include each and both corporations and all matters found with respect to one are found with respect to the other.

Inland is engaged in the manufacture and sale of corrugated shipping containers and related corrugated fibre products in commerce, as "commerce" is defined in the Clayton Act.

The stipulation by and between counsel supporting the complaint and counsel for respondents, hereinbefore referred to, reads:

A. Definitions

1. The terms listed below are used herein in the sense defined unless otherwise indicated by their context.

(a) *Corrugated shipping container*. A container or box consisting of a combination of liner board material with a fluted inner material which is formed into sheets on a corrugator machine and finished into containers or boxes by processes commonly referred to as scoring, slitting, printing and closure of the joint. Containers are shipped by the manufacturer to the user in a knocked down or flat position. The users of such containers are manufacturers and producers of products which are shipped in such containers for distribution or use.

(b) *Containerboard*. Paperboard used for the manufacture of corrugated shipping containers.

(c) *Liner*. The outer smooth members of a corrugated fibreboard.

(d) *Corrugating medium*. A term applied to the paperboard used for the fluted or corrugated component of corrugated fibreboard. Corrugated medium may be either semi-chemical, which is made from virgin pulpwood, or "bogus", which is made from waste.

- (e) *Kraft*. Virgin pulp used for the manufacture of liner board.
- (f) *Jute*. A containerboard used in the manufacture of fibreboard boxes made of wood pulp and waste paper.
- (g) *Corrugator*. A machine which combines linerboard with corrugating medium to form corrugated sheets.
- (h) *Corrugator plant*. A plant for the manufacture of corrugated shipping containers which is equipped with one or more corrugators.
- (i) *Mill-site plant*. A corrugated plant located adjacent to a mill manufacturing containerboard which supplies it with its requirements.
- (j) *Corrugated sheet*. The sheet material comprised of the liner board and fluted material which is cut and formed into corrugated boxes.
- (k) *Sheet plant*. A plant which performs the same functions as a corrugator plant in the manufacture of corrugated shipping containers except that it does not manufacture, but purchases corrugated sheets.
- (l) *MM Sq. Ft.* Million square feet.
- (m) *M Sq. Ft.* Thousand square feet.

B. The Industry

2. (a) Prior to 1914 the railroads refused to accept products shipped in corrugated shipping containers at rates comparable to products shipped in wood and other types of shipping containers. Comparable rates were established in 1914. In 1923 total shipments of corrugated shipping containers in the United States amounted to approximately 6,600,000 M square feet with a dollar volume of \$83,960,000. In 1959 total shipments amounted to 108,743,000 M square feet with a dollar volume of \$1,749,612,800. In 1960 total shipments amounted to 107,280,000 M square feet, for a value of \$1,738,286,000.

(b) Initially the use of corrugated containers for shipping was limited to light weight articles. At the present time there are few items that cannot be so shipped and present end uses include food and kindred products, beverages, paper products, tobaccos, textiles, carpets, rugs, and other floor covering, apparel, lumber and lumber products, stone, clay, and glass products, primary and fabricated metal products, machinery, electric appliances, motor vehicles, and equipment, as well as other miscellaneous manufacturing.

3. The customers for corrugated shipping containers are manufacturers and producers of products which ship their products to wholesalers, retailers, distributors and consumers. Corrugated shipping containers are of varying degrees of complexity and are not generally stockpiled or sold off the shelf, but are individually designed and tailored to fit the requirements of each particular customer. An important factor in the selling of corrugated shipping containers is the service rendered by the manufacturer in designing containers suitable for the particular uses of the customer.

4. In 1925 approximately 50 companies and 125 plants were engaged in the manufacture of corrugated shipping containers in the United States. At the end of 1960 approximately 425 companies and 812 plants were so engaged. In the period 1952-1960, 120 new companies entered the industry and 283 new plants were established.

C. Inland Container Corporation

5. Inland Container Corporation as used herein means the respondent corporations unless the context shows otherwise.

6. The original Inland Container Corporation was organized by Herman C.

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Krannert in 1925 with a corrugator plant at Indianapolis, Indiana. In 1930 Inland acquired a second plant at Middletown, Ohio, and the respondent Inland Container Corporation (1930) succeeded the original corporation. Subsequently Inland established plants at Milwaukee, Wisconsin (1933), Evansville, Indiana (1938), Macon, Georgia (millsite plant, 1947), Orlando, Florida (sheet, 1954), Rome, Georgia (millsite plant, 1955), Dallas, Texas (sheet, 1957), Chicago, Illinois (1958), Omaha, Nebraska (sheet, 1958), and South Haven, Michigan (sheet, 1960), and acquired plants at Detroit, Michigan (1944), Ashtabula, Ohio and Erie, Pennsylvania (1952), Biglerville, Pennsylvania (1955), Baltimore, Maryland and Philadelphia, Pennsylvania (1957), and Louisville, Kentucky (1958).

Inland has a half interest in two mills manufacturing containerboard, built jointly by Inland and Mead. The first was built at Macon, Georgia in 1945, and the second at Rome, Georgia in 1954. Inland's share of the production of said mills was sufficient to supply more than 50% of its containerboard requirements since 1955.

7. The major companies in the industry, including Container Corporation, Weyerhaeuser, St. Regis, Crown-Zellerbach, International Paper, Owens-Illinois, West Virginia, Mead, Union Bag, Continental Can, Packaging Corporation of America, Hankins, Hoerner, Stone, Alton, St. Joe Paper Co. and Olin-Mathieson, own their own mills supplying their corrugator plants with containerboard.

D. Louisville Area Plants Prior to the Acquisition

8. The term Louisville area as used herein means the area within a ten-mile radius of the city limits of Louisville, Kentucky.

(a) The Mengel Company established the first corrugator plant at Louisville in 1911 and for many years was the only manufacturer of corrugated shipping containers in Louisville. The plant at Louisville has an area of approximately 263,000 square feet and a capacity of approximately 40,000,000 square feet per month. In 1954 Container Corporation of America purchased a controlling interest in the stock of the Mengel Company and subsequently purchased the balance of said stock. Mengel was operated as a separate company until 1960 when it became a division of Container Corporation. The name Mengel has been retained because Container Corporation considers it an advantage in the Louisville area. Prior to the acquisition, Container Corporation plants closest to Louisville were at Cincinnati, Ohio, and Anderson, Indiana.

(b) The second plant established in the Louisville area for the manufacture of corrugated shipping containers was that of General Box Company. General Box Company was originally and primarily a manufacturer of wirebound boxes and was a leading company in that field in the United States. Its original corrugator plant was established in a part of its wirebound plant at Louisville prior to 1947. In 1953 the corrugator plant was destroyed by fire, and in the fall of 1954 General Box completed a new corrugator plant in the Louisville area with an area of approximately 115,000 square feet and a capacity of approximately 300,000,000 square feet per year.

(c) Midwest Box Company, a sheet plant, was established in the Louisville area in 1948 and has since been and is engaged in the manufacture of corrugated shipping containers in said area.

(d) Miller Container Company, a sheet plant, was established in Louisville in 1954. On July 1, 1958, it was acquired by the Mead Corporation. In 1958, Mead was the eleventh largest manufacturer of corrugated shipping containers in the

United States with 2.33% of the total national shipments, and in all years since has been one of the six or seven largest companies.

(e) Embry Container Company, a sheet plant, was established in Louisville in 1955. In 1957 it was acquired by Alton Box Board Company, which was the nineteenth largest shipper of corrugated shipping containers in the United States in 1958 and 1959, and the seventeenth largest by 1960.

(f) In 1954, Boone Box Company, a sheet plant, was established in Louisville. Boone manufactures corrugated shipping containers, but has specialized in interior packaging and finished containers have constituted less than a fourth of its business. It is affiliated with Union Bag-Camp, which since 1959 has been one of the ten largest manufacturers of corrugated shipping containers in the United States.

E. The Acquisition

9. Prior to the acquisition of the Louisville plant of General Box involved in this proceeding, Inland had no plant in Louisville for the manufacture of corrugated shipping containers. Its nearest plants to Louisville were at Evansville, Indiana, Indianapolis, Indiana, and Middletown, Ohio, each of which is approximately 125 miles from Louisville. For a number of years prior to 1954, Inland supplied certain accounts in Louisville from its plants at Evansville, Indiana and Indianapolis, Indiana, and its millsite plant at Macon, Georgia. Prior to 1954, it employed a salesman who covered the Louisville area as a part of a larger sales area, including parts of southern Indiana, and part of Kentucky south of Louisville extending almost to the Tennessee border, and maintained no facility of any character at Louisville.

10. Prior to 1954, the refrigerator plant of General Electric at Erie, Pennsylvania, was a major customer of Inland's plant at Erie, Pennsylvania. In 1953 General Electric Company announced that it would move all of its principal appliance plants to Louisville, Kentucky. As a result, Inland began to consider the establishment of a Louisville plant because of the belief that it would afford a better opportunity to retain its General Electric business, and obtain additional General Electric business, as well as other new business which might be attracted to the Louisville area as a result of the General Electric move. In 1953 Inland began investigating plant sites in Louisville and in August 1954 selected a site which it purchased in the latter part of 1954.

11. In October 1954, Inland had discussions with William C. Embry, a vice-president and director of General Box Company and general manager of its Louisville plant, regarding the possibility of acquiring that plant. Discussions took place between Embry and officials of Inland in the latter part of 1954 and the early part of 1955, but never reached a final agreement.

12. As a result of learning of the possibility of acquiring stock in General Box Company, Inland delayed proceeding with its new plant and in the latter part of 1954 rented 800 square feet of storage space in a public warehouse at Louisville which was used only for the purpose of storing corrugated shipping containers for General Electric shipped to Louisville from Inland plants.

13. In the Spring of 1955, Embry resigned from General Box Company and established the sheet plant in Louisville previously referred to herein under the name of Embry Container. Inland resumed going forward with plans for the construction of a sheet plant and warehouse, but in June 1955 it developed that adequate water facilities which the seller had agreed to provide, had not been

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provided. The water difficulty continued until January 1957 when construction of an adequate water line by the seller was finally completed.

14. Following Embry's retirement from General Box Company, he and certain other members of his family sold their General Box stock to Inland in the Fall of 1955. The purchase was handled by Earl R. Muir, a Louisville banker. Subsequently, additional stock was purchased for Inland by Muir, and by April 1957 Inland had acquired 194,000 shares, or about 9% of the General Box stock, all of which had been transferred into the name of Robert Carrier, a resident of Louisville selected by Muir. Inland was aware of the fact that Container Corporation had acquired a controlling interest in Mengel by stock purchases in 1954, and that as soon as Container's interest in Mengel became known the cost of acquiring the stock had increased substantially, and believed that the price of the General Box stock would be similarly affected if its interest became known.

15. Inland had a continuing interest in acquiring the General Box Louisville plant, and made such purchases with the hope that a deal of some character with General Box would develop where the ownership of such stock would be helpful. Continuing purchases of General Box stock were made for the same purpose.

16. After suitable water facilities for the property purchased by Inland for a plant site had been completed in early 1957, Inland officials decided to explore further the possibility of a General Box deal before proceeding with construction plans. In negotiations which followed in the Spring of 1957, Inland offered to purchase for cash either the Louisville plant alone, or that plant together with General Box sheet plants at Kansas City, Missouri and Houston, Texas. Its offers were refused by the General Box management.

17. Approximately 138,000 additional shares of General Box stock were purchased for Inland's benefit through Muir in the late Spring and early Summer of 1957, with funds supplied through Herman C. Krannert, Chairman of the Board of Directors of Inland Container Corporation, after the failure of the 1957 negotiations with the General Box officials. In July 1957, Krannert contacted one Walter Koch and discussed with him the acceptance of an assignment to act for Inland in investigating and evaluating the entire General Box operation, including its wirebound box business, with a view to an ultimate direct offer to the General Box stockholders to purchase all of their stock. Koch had been president of International Steel Company at Evansville, Indiana, prior to his resignation in the Spring of 1957. He accepted the assignment and as a part of the program purchased with his own funds 24,000 shares of General Box stock. During the Fall of 1957 all of the stock which had been purchased either by Inland or for its benefit was put in Koch's name and together with the stock purchased by Koch amounted to approximately 17% of the total outstanding stock. Koch visited the General Box officials several times and discussed its operation and business and also visited certain of its plants and interviewed employees. After each visit he reported to officials of Inland the information which he received, together with his own evaluations of the operation and personnel. The General Box officials were not advised of any interest of Inland in the stock in Koch's name during these visits.

18. In the early part of 1958, Koch obtained a list of the names and addresses of all General Box stockholders and thereafter presented to General Box officials an offer by Inland Container Corporation to be made to the stockholders to purchase all of the stock of General Box, and solicited their support of the offer. The latter refused to present the offer to the stockholders and said offer was made direct by Inland on April 19, 1958.

19. At the expiration of the offer on May 26, 1958, Inland had obtained in all 1,084,000 shares or approximately 52% of the outstanding General Box stock. On June 12, 1958, an agreement was reached under which Inland exchanged 975,000 shares of General Box stock for the land, buildings, machinery, supplies and other equipment, valued at \$2,540,000, and inventory, net accounts receivable, and prepaid expenses, valued at \$385,000. General Box agreed to purchase the remaining 109,000 shares held by Inland at \$3.00 per share with a substantial down payment and notes in equal installments extending over a five-year period in payment of the balance. The agreement was carried out and on June 30, 1958, Inland acquired the Louisville plant, which is the subject of this proceeding.

Competitive Facts

*Total Louisville Usage and Amounts Supplied by Inland and General Box
1955-1960*

20. 1955 was the first full year of operation of the new General Electric appliance plants in Louisville. The following tabulation shows the approximate total of corrugated shipping container usage of General Electric and of all customers in the Louisville area in each of the years 1955 through 1960, and the amounts supplied by Inland and General Box, respectively:

MM Sq. Ft.

	Total usage	Inland shipments	General Box shipments
1955:			
G.E.	207	74	33.5
Total	654.3	123.2	68.1
1956:			
G.E.	260	62	53
Total	743.7	116.9	86.8
1957:			
G.E.	241	20.5	40.5
Total	784.8	79.8	109.3
1958:			
G.E.	184	37	115
Total	780.8	126.7	155.7
1959:			
G.E.	289	65	-----
Total	906.2	215.5	-----
1960:			
G.E.	285	55.5	-----
Total	905	196.7	-----

¹ General Box figures represent first six months in 1958.

Although the recited stipulation does not cover all the facts shown by the record, there is little, if any, dispute between the parties as to all of the facts involved for a determination of the issues. The primary controversy arises as to conclusions to be drawn therefrom.

The Act involved provides in pertinent part:

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

The record herein establishes, all of which is admitted, that Inland, a corporation subject to the jurisdiction of the Federal Trade Commission, acquired part of the assets of General Box Company, a corporation engaged in commerce, and that corrugated shipping containers constitute the line of commerce. The remaining issues are (1) what is the appropriate section of the country, and (2) whether the effect of the acquisition may be substantially to lessen competition, or to tend to create a monopoly.

With reference to the first issue, it is the position of complaint counsel that the primary geographic market is Louisville, Kentucky, and the surrounding territory within a ten mile radius, while respondents contend that the area to gauge the impact on competition is an area within at least one hundred and fifty miles of Louisville.

In the brief filed on behalf of the respondents in support of their position, it is said in part:

The undisputed evidence in this case establishes that in Louisville and elsewhere, the Louisville plants have always been, and still are, in competition with plants outside the Louisville area at distances up to 150 and even 300 miles. Prior to the acquisition, the Respondent competed for Louisville business with plants located at Evansville, Indiana, Indianapolis, Indiana, and Rome and Macon, Georgia. The first two are more than 100 miles from Louisville and the Georgia millsite plants are several hundred miles distant. Since the acquisition, General Box Company has continued to compete in Louisville with a plant located at Nashville, Tennessee, and has established a warehouse in Louisville in order to serve Louisville customers. The evidence shows that Gaylord is a major supplier of the Louisville market. Gaylord maintains a warehouse at Louisville as do the other major suppliers, but its nearest plants are at St. Louis, Missouri and Chicago, Illinois. International Paper Company formerly competed from St. Louis, but now has a plant in the Cincinnati area. All of the Cincinnati plants, except those owned by Container Corporation and Mead, which have Louisville plants, compete in Louisville. Other companies with outside plants competing in Louisville will hereinafter be identified. Under the undisputed evidence all of these manufacturers are not only willing to, but do in fact, compete for business in the Louisville area. Louisville purchasers not only can practically turn to any of such plants for supplies, but have repeatedly done so, and continue to do so.

The foregoing quote accurately reflects the facts herein, but the record would seem to require the acceptance of the Louisville area suggested by complaint counsel as the relevant market. This is where General Box made the great bulk of the sales from its Louisville plant. It is in this area that a determination will have to be made of the effect of the elimination of General Box as a market factor. In 1957, the last full year in which General Box operated the Louisville plant, its total sales of corrugated shipping containers from said plant were 153 million square feet, of which 109 million square feet, or ap-

proximately 71% was to the Louisville area. The record shows that General Box made sales in 1957 outside of the Louisville area in cities located in the States of Kentucky, Illinois, Indiana, Missouri, Wisconsin, Tennessee, New York and New Hampshire but there is nothing to indicate that General Box was a market factor in such places. It is therefore found that the appropriate section of the country is Louisville, Kentucky, and the surrounding territory within a ten-mile radius.

The second issue to be resolved is whether the effect of the acquisition may be substantially to lessen competition, or to tend to create a monopoly.

There was no attempt on the part of complaint counsel to show, nor is there any evidence in the record to show, that the acquisition had any vertical effect. The sole question relates to the horizontal effect.

In *Brown Shoe Co. v. United States* (1962), 370 U.S. 294, 321, 322, the court said:

* * * Congress indicated plainly that a merger had to be functionally viewed, in the context of its particular industry. That is, whether the consolidation was to take place in an industry that was fragmented rather than concentrated, that had seen a recent trend toward domination by a few leaders or had remained fairly consistent in its distribution of market shares among the participating companies, that had experienced easy access to markets by suppliers and easy access to suppliers by buyers or had witnessed foreclosure of business, that had witnessed the ready entry of new competition or the erection of barriers to prospective entrants, all were aspects, varying in importance with the merger under consideration, which would properly be taken into account.

Certain data with respect to the twenty largest manufacturers of corrugated shipping containers in the United States, including shipments in millions of square feet of such product by these manufacturers, the percentage of these shipments to total U.S. industry shipments, the dollar value of such shipments by each such manufacturer, the percentage of these shipments to the total dollar sales of all products manufactured by these twenty companies, and the total dollar sales of all products manufactured by each of these companies, for the years 1950, 1957, 1958, 1959, 1960 and 1961 are set forth in Appendix A through F attached hereto.

It will be noted from the tables that in 1950 Inland's sales of corrugated containers were 42 million dollars. From there its sales progressively increased to \$71 million in 1957, to \$74 million in 1958, to \$85 million in 1959, and dropped to \$83 million in 1960.

During the period since 1950 the total national sales of corrugated containers have risen from \$995,454,100 to \$1,542,931,400 in 1957, this

decreased to \$1,537,633,800 in 1958, rose to \$1,749,612,800 in 1959 and dropped to \$1,738,286,000 in 1960.

In 1950 Inland had approximately 4.15% of the corrugated container market. Its market share went to 4.9% in 1957, 5.12% in 1958, 5.19% in 1959, 5.08% in 1960 and 5.03% in 1961.

The ranking of Inland in the industry with respect to total corrugated shipments is illusory with respect to its relative economic strength. While it has been in the first four since 1950 with respect to corrugated containers it ranks far below many of its competitors both in total product sales and total assets. In 1950 six of the fourteen companies whose figures were available, had larger total product sales and larger total assets than Inland. In 1960, twelve of the first twenty companies had larger sales and total assets than Inland. (No figures are shown as to 3 of 20 companies.) This statement, however, does not adequately describe the relative economic positions of the companies. In 1960 the twelve companies with larger sales and larger assets had an average total sales of \$489,000,000 as compared with \$93,000,000 for Inland and average total assets of \$412,000,000 as compared with \$88,000,000 for Inland.

During the years prior to the acquisition the acquired Louisville plant total shipments never exceeded .17% of the national total and since the acquisition it has not exceeded .19% of such total, an obvious de minimus, so there can be no serious contention that the acquisition significantly affected Inland's national position in the industry.

In general, two types of plants manufacture corrugated shipping containers. These are corrugator plants and sheet plants. A sheet plant is one which has a limited amount of finishing equipment principally a slitter, printer and closing equipment, but no corrugating machine. It purchases corrugated sheets ordinarily cut to particular sizes and specifications from a corrugator plant which often manufactures sheets for sheet plants and for its own use in producing finished containers. Some corrugator plants are known as millsite plants because located in the immediate vicinity of a mill which supplies them with board. These are usually multi-corrugator plants. Because of economies arising out of the fact that they are so located, millsite plants can compete effectively with corrugator plants not so located, as to volume business, over an area of up to 1000 miles as compared with a range of 200 to 300 miles of such plants generally.

The number of companies and plants engaged in the manufacture of corrugated shipping containers in the United States for the period of 1940 to 1960 is revealed in Appendix G. At the end of 1960, 425 com-

panies and 812 plants were so engaged as compared to 234 and 355, respectively, in 1940.

In the period from 1940 to the end of 1952 there were decreases in the number of companies during seven of the years, but since 1952 there has been no year in which an increase has not occurred. From 1952 to the end of 1960, 129 new companies entered the industry and 283 new plants were constructed.

There are no longer any patents on corrugated boxes, although there are certain patents on special features and designs. All patents on boxes expired in the 1920's and were not renewed.

In the stipulated facts heretofore set forth, the names of seventeen major companies in the industry who own their own mill supplying their corrugator plants with container board is given. There are 30 to 40 companies in the country owning kraft mills. One witness testified he thought that an integrated operation was an advantage to a box operation "because they have all of the facilities at their command and are not strained to go out on a market basis and purchase at whatever it might be at that time." However, there is no evidence in the record that lack of integration is a significant disadvantage. It could be so only if the market price for board was not effectively controlled by competition and there is not the slightest evidence that that situation has ever existed or is reasonably likely to exist. The uncontradicted evidence is that there are approximately 140 mills in the United States making all kinds of container board and paperboard. A company is classified as integrated only when it manufactures as much as 50% of the board which it uses. All but fully integrated companies are required to buy the portion of board requirements which they do not manufacture. The evidence with respect to Inland's status as an integrated company is that it has supplied more than 50% of its board requirement since 1955. It had no mill facilities at all prior to the completion of the Macon Mill in 1948, in which year its percentage of the total national shipments was 4.13%. In 1949, the first year after its first mill was finished, its percentage was 4.28% and dropped to 4.15% in 1950. In 1955 the first year in which it could be classified as an integrated company, its national percentage was 4.56%. The subsequent net increase to 1961 even with the acquisitions of Biglerville and Philadelphia and Baltimore and Louisville, the building of new corrugator plants at Chicago and Evansville in 1958, has been less than .5%. Obviously no inference can be drawn that any significant increase has resulted because of integration. General Box Company had no mill facilities and purchased all of its paperboard used in its Louisville corrugator plant. In 1955, William C. Embry, who at the time was Vice-President of General Box

and manager of the Louisville plant, made a report to the director of his company, wherein it is said: "There is somewhere between 20 and 25% more papermaking capacity today than there is demand."

The record includes the story of developments in the Cincinnati area during the period involved here which is also very enlightening as to what happened with respect to a new entrant. Counsel for the complaint called as a witness, T. C. Thompson. Thompson started as a sales representative of General Box on January 1, 1954, and continued with Inland for one year after its Louisville acquisition to June 30, 1959. While a representative of General Box, he solicited in the Cincinnati Area, and when he left Inland established a sheet plant of his own in Cincinnati where he is in business under the name of Thompson Container Corporation. When Thompson began selling in Cincinnati in 1954, there were four corrugator plants and no sheet plants operating there. The corrugator plants were Container Corporation of America, Mead, Nivison-Weiskoff and River Raisin, now a Union Bag plant, but then new in Cincinnati. In 1958 Olin Mathieson established a Cincinnati plant. International Paper Company established a plant in the area the same year. St. Joe Paper Company established a new plant there in 1959. Hinde and Dauch (West Virginia) also established a new plant 30 to 40 miles north of Cincinnati in 1957. All of these plants are competitors for Louisville business. Substantially all of the Cincinnati plants were selling in the Louisville area when Thompson was working for General Box and Inland, although Container Corporation competed in that area from its Louisville, rather than its Cincinnati plant, and Mead presumably has done the same thing since it established its Louisville corrugator plant. Likewise just about all the outside companies compete in the Cincinnati area just as they do in Louisville. Mr. Thompson testified that notwithstanding the four new plants at Cincinnati since 1957, the results of his own sheet plant operation had been satisfactory, and that he felt that he was benefited by mergers as long as his business remained small because he sold personalized service and bigger organizations tend to become impersonal. He also testified that he purchased corrugated sheets from three sources, namely Owens-Illinois, International Paper and River Raisin, and he did not have any difficulty getting as much sheet as he needed from those plants or from others.

The foregoing facts give a picture of the industry involved on a national basis. In the production of corrugated shipping containers in the United States, there is a large number of competing sellers to which the buyers may look for such products, a lack of obstacles restraining new entrants into the business and a want of domination by a few sellers. There are more strong companies today than there have ever

been and the number of companies in the business has steadily increased. This is obviously not an industry that has seen a recent trend toward domination by a few leaders.

There were three plants in Louisville before 1954, Mengel, General Box and Midwest, a sheet plant. In that year two additional sheet plants, Miller Container Company and Boone Box Company, were established and in the following year, still another sheet plant, Embry Container Company commenced business. Details of the six companies are set forth heretofore in the stipulated facts. In late 1957 or early 1958, following the acquisition of Embry Container by Alton, a new corrugator was installed, increasing its capacity from that of a sheet plant (3,500 to 4,500 M sq. ft. per month) to 30,000 M sq. ft. per month. Therefore, at the time of acquisition, the Louisville manufacturers consisted of three corrugator plants and three sheet plants. At the beginning of 1959, following the acquisition of Miller Container by Mead, Mead purchased a building with an area of approximately 350,000 square feet and installed a new corrugator. The capacity of the Mead plant is 30,000,000 to 40,000,000 square feet per month since such purchase. Boone Box Company built a new plant at Louisville in 1960, with an area of 100,000 square feet, which is used in part to warehouse corrugated shipping containers manufactured by Union Bag-Camp, of which Boone is an affiliate, and shipped to Louisville for the General Electric Louisville plants. In November 1961, a new sheet plant was established in the Louisville area under the name of Independent Box Makers, Inc.

The total corrugated container shipments and Louisville area shipments of all Louisville plants for the years 1955-1961 so far as shown by the record is set forth in Appendix H through N attached hereto.

The combined capacity of Mengel, Mead, Alton and Inland is considerably in excess of Louisville usage. The square feet per year capacity of Mengel is 480 million, Mead is 360 to 480 million, Alton is 360 million and Inland is 300 million. Assuming the minimum Mead figure, the total capacity of the four named plants is 1,500 million square feet per year. The total estimated Louisville usage in 1958 was approximately 780 million square feet and reached a high in 1959, 1960 and 1961 of approximately 900 million square feet, or about 60% of the present capacity of the four Louisville corrugator plants.

In 1955, Inland supplied 123,000 M out of an estimated total usage of 654,300 M square feet in the Louisville area or approximately 19%, from plants, located at Evansville, Indiana, Indianapolis, Indiana, Middletown, Ohio, and Macon and Rome, Georgia. In 1956 and 1957, Inland supplied 116,900 M square feet, or 16%, and 78,900 M square feet, or 10%, respectively, in the Louisville area. For the same three

years the percentages General Box supplied in the Louisville area were approximately 10.5% in 1955, 11.5% in 1956, and 14% in 1957. For the three years prior to the acquisition, the combined percentage of Louisville business of Inland and General Box was 29½% in 1955, 27½% in 1956, and 24% in 1957. For the two years following the acquisition, the percentage of Inland's business in Louisville was 24% in 1959 and 22% in 1960.

Representatives of the five companies with plants located in the Louisville area which compete with Inland were called as witnesses by counsel supporting the complaint and there was no testimony by them that their companies had suffered any adverse effect as a result of acquisition. Plainly the uncontradicted evidence with respect to Louisville competitors of Inland discloses neither any lessening of competition of any character in that area as a result of Inland's acquisition of the Louisville plant nor any indication of the likelihood of any substantial future lessening. On the contrary, it discloses without dispute an abundance of capacity and of steadily increasing competition. Inland has been able to obtain no greater proportion of the Louisville business than the combined proportion of Inland and General Box at the time of the acquisition. Actually, it is slightly less.

The effect, if any, of the acquisition on the buyers of corrugated shipping containers located in the Louisville area will now be given consideration. As the respondents stated in their brief which accompanied their proposed findings, "It is unlikely that there has been any case previously before the Commission in which it was possible to present a customer-by-customer analysis of the character contained in the record in this case. The obvious reason why it is possible here is that the total number of customers available for manufacturers of corrugated shipping container plants is relatively small, and that this case involves only a single plant, which sells substantially all of its output in a single metropolitan area the size of Louisville." Evidence was introduced by counsel supporting the complaint with respect to corrugated shipping container purchases of 36 customers in the Louisville area. All but two witnesses furnished exhibits which were introduced in evidence. In general, figures were supplied for the years 1955-1960 and showed the annual dollar purchases and the suppliers of each purchaser.

The record shows in great detail the large number of manufacturers of corrugated shipping containers with no plant in the Louisville area which compete in such market. Such companies with plants within a

150 mile radius of Louisville, which have supplied Louisville area customers during the years 1955-1960, include:

Company:	Location of plant
Owens-Illinois (National Container Co.).	Aurora, Ind.
St. Joe (Ft. Wayne)-----	Hartford City, Ind., and Cincinnati, Ohio
Packaging Corp. of America (Pomeroy, Ohio Box Board).	Vincennes, Ind., and Middletown, Ohio
Union Bag (River Raisin)-----	Cincinnati, Ohio
International Paper Co.-----	Mason, Ohio
West Virginia (Hinde & Dauch)-----	Eaton, Ohio
Olin-Mathieson -----	Cincinnati, Ohio
Wabash Fibre Box-----	Terre Haute, Ind.
Flintkote (Hankins)-----	Marion, Ind.
Belle Fibre Box-----	Do.
U.S. Corrugated-----	Indianapolis, Ind., and Dayton, Ohio
Diamond Gardner (Hoosier Container).	Newcastle, Ind.

Owens-Illinois, International Paper Company, Union Bag and West Virginia are among the ten largest manufacturers of shipping containers in the United States, Packaging Corporation was included in the first ten in 1958, and is currently the twelfth largest manufacturer in the United States. Flintkote (Hankins) is the fourteenth largest shipper of corrugated containers in the United States. Both St. Joe and Olin-Mathieson are large companies and their figures, which are not included in the Fibre Box Association Reports, may qualify them for inclusion in the twenty largest suppliers. Prior to its acquisition by St. Joe in 1959, Fort Wayne was the eighteenth largest shipper in 1958 and 1959, the most recent years for which its figures are available. The Wabash plant at Terre Haute, Indiana, a division of Weston Paper Co., had total annual shipments averaging approximately 440,000 M sq. ft. in the years 1957-1960.

Companies without a plant within the 150-mile Louisville radius, but having a plant or plants within a 300-mile Louisville radius, which have supplied Louisville area customers during the years 1955-1960 are:

Company:	Location of plant
Gaylord (Division of Crown-Zellerbach).	St. Louis, Mo., Chicago, Ill., Bogalusa, La.
Weyerhaeuser Co.-----	Belleville, Ill., Mount Vernon, Ohio, Three Rivers, Mich.
General Box Co.-----	Nashville, Tenn.
Continental Can (Gair Division)-----	Chicago, Ill.

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Gaylord (Div. of Crown-Zellerbach) has been one of the six largest manufacturers of corrugated shipping containers in the United States for many years and since 1957 has supplied all of the refrigerator requirements of General Electric which constitute approximately half of the total corrugated shipping container purchases of General Electric, principally from its millsite plant at Bogalusa, Louisiana. Weyerhaeuser Company (Kieckhefer-Eddy) has been one of the three largest manufacturers of shipping containers in the United States for many years and is a large supplier of the Louisville area plant of Colgate-Palmolive. General Box Company maintains a warehouse at Louisville and solicits and supplies Louisville area business from its Nashville, Tennessee plant since the acquisition of its Louisville plant by Inland. Continental Can (Gair) is the eleventh largest manufacturer of corrugated shipping containers in the United States and has been included in the first twelve for many years.

Companies with no plant within a 300-mile Louisville radius, which have supplied Louisville area customers during the years 1955-1960 are:

Company:	Location of plant
Krafco -----	Monroe, La.
Interstate Container Co.-----	Long Island, N.Y., Reading, Pa.
Highland Container Co. (Union Bag) -	Jamestown, N.C.
Kohlman Box Co.-----	New Orleans, La.
Fairbanks Container Co.-----	Not shown.
Downing Box Co.-----	Milwaukee, Wis.
Star Corrugated Box Co.-----	Long Island, N.Y.
Lehigh Container Co.-----	New Hyde Park, N.Y.
Rock City Box Co.-----	Norcross, Ga.

Interstate Container Company has been the largest supplier of P. Lorillard since 1956 and has been included in the twenty largest manufacturers of corrugated shipping containers in the United States since 1959. In 1961 it was the eighteenth largest company.

The extent of the purchases of the four largest users of corrugated shipping containers in the Louisville area from outside sources for the year immediately preceding and the year after the acquisition is of particular interest as reflected in the following tabulations:

Purchaser	Total purchases	Purchases from outside suppliers	
		Dollar value	Percent
1957			
General Electric.....	\$2,650,594	\$2,051,559	77.4
Colgate-Palmolive.....	841,000	429,751	51.1
Brown & Williamson.....	536,778	155,128	28.9
P. Lorillard Co.....	408,259	330,731	81.5
Total.....	4,436,631	2,967,169	-----
1959			
General Electric.....	3,530,215	2,421,727	68.6
Colgate-Palmolive.....	957,000	253,605	26.5
Brown & Williamson.....	567,611	81,735	14.4
P. Lorillard Co.....	451,984	256,726	56.8
Total.....	5,506,810	3,013,793	-----

The record shows that Louisville users of corrugated shipping containers have bought and do now buy substantial amounts of such products from sellers having plants outside the Louisville area and such users have more than an adequate number of sources to assure the most vigorous competition. The competition of outside sellers affects the prices which Louisville manufacturers can charge for their product and the service they are required to render customers in order to obtain business. In the period since the acquisition, competition in the Louisville area has brought about lower prices and increased services by sellers to customers in that area.

The evidence establishes that General Box has never ceased to compete for Louisville business. The record shows that it continues to supply some of its former customers and serve Louisville buyers that it did not previously supply. The full extent of its current Louisville business is not shown, but it does maintain a warehouse at Louisville. Even if the effect of the acquisition had been to eliminate General Box completely as a factor in the Louisville market, the number and strength of the remaining competitors, including both local plants and outside plants, preclude any reasonable inference that the vigor of competition could have been adversely affected.

CONCLUSION

The Hearing Examiner concludes that the evidence has failed to establish that the effect of the acquisition in question may be sub-

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stantially to lessen competition or tend to create a monopoly in the production and sale of corrugated shipping containers in the Louisville area or in any section of the country. The respondents have not violated Section 7 of the Clayton Act.

ORDER

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

APPENDIX A

U.S. Fibre Box Industry Total Assets and Net Sales of Top 20 Companies Based on 1950 Shipments

Company	1950 U.S. fibre box shipments				1950 total sales, MM ^c	1950 total assets, MM ^c
	MM sq. ft.		MM			
	(^a)	Percent U.S. industry	(^b)	Percent total company sales		
1. Container Corporation.....	4,999	6.38	\$65	42	\$155	\$74
2. Kieckhefer-Eddy (Weyerhaeuser, 1957).....	3,564	4.55	46	NA	NA	NA
3. International Paper.....	3,419	4.36	44	9	498	409
4. Inland Container.....	3,254	4.15	42	100	42	31
5. Gaylord Container (Crown Zeller- bach, 1955).....	3,158	4.03	41	66	62	47
6. National Container (Owens-Illinois, 1956).....	2,810	3.58	37	79	47	44
7. Hinde & Dauch (West Virginia, 1953).....	2,719	3.47	35	90	39	24
8. Gair (Continental Can, 1956).....	1,756	2.24	23	40	57	36
9. Union Bag.....	1,412	1.80	18	23	80	59
10. Ft. Wayne (Continental Can-St. Joe, 1959).....	1,196	1.53	15	100	15	11
11. Stone.....	1,064	1.36	14	82	17	10
12. Kress (St. Regis, 1958).....	1,064	1.36	14	NA	NA	NA
13. Hankins (Flintkote, 1958).....	1,015	1.29	13	NA	NA	NA
14. Hoerner.....	905	1.15	11	100	11	NA
15. River Raisin (Union Bag, 1960).....	819	1.04	11	78	14	9
16. General Container (St. Regis, 1955).....	805	1.03	10	NA	NA	8
17. Mengel (Container Corp., 1954-56).....	805	1.03	10	24	42	22
18. Seaboard (National, 1954; Owens- Ill., 1956).....	777	.99	10	100	10	7
19. Fairfield (Gaylord, 1951; Crown Zellerbach, 1955).....	738	.94	9	NA	NA	NA
20. Ohio Boxboard (Packaging Corp. America, 1959).....	645	.82	8	NA	NA	NA
Subtotal, 1-20.....	36,924	47.10				
All other.....	41,469	52.90				
U.S. total.....	78,393	100.00				

^a Source—Fibre Box Association National Shipment Summary.

^b Estimated at \$13.00 M sq. ft. average price.

^c Source—Company annual reports.

NA—Not available. (Company privately owned.)

NOTE.—The names in parentheses indicate those companies which have subsequently acquired the named company and the date of acquisition.

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APPENDIX B

U.S. Fibre Box Industry, Total Assets and Net Sales of Top 20 Companies Based on 1957 MM sq. ft. Shipments

1957 U.S. fibre box shipments						
Company	MMsq. ft.		MM		1957 total sales, MM ^c	1957 total assets, MM ^c
	(a)	Percent U.S. industry	(b)	Percent total company sales		
1. Container Corporation (Incl. Mengel).....	7,449	7.70	\$112	44	\$256	\$180
2. Weyerhaeuser (Kieckhefer-Eddy)....	4,958	5.13	74	18	421	521
3. Inland Container Corporation.....	4,736	4.90	71	97	73	62
4. Owens Illinois (National).....	4,338	4.49	65	13	511	617
5. Crown Zellerbach (Gaylord).....	4,025	4.17	60	13	461	537
6. International Paper.....	3,845	3.98	58	6	940	802
7. West Virginia (Hinde & Dauch).....	2,959	3.06	44	23	191	186
8. Continental Can (Gair).....	2,802	2.90	42	4	1,046	664
9. Fibreboard.....	2,131	2.23	32	25	126	125
10. St. Regis (Incl. Pollock).....	1,899	1.97	28	8	361	376
11. Mead.....	1,773	1.84	27	14	193	184
12. Longview.....	1,717	1.78	26	43	60	70
13. Union Bag-Camp.....	1,654	1.71	25	15	161	165
14. Hoerner.....	1,536	1.59	23	86	26	14
15. Stone.....	1,490	1.54	22	61	36	17
16. Hankins.....	1,427	1.48	21	-----	NA	NA
17. Ft. Wayne.....	1,419	1.47	21	88	24	15
18. Ohio Box Board.....	1,137	1.18	17	-----	NA	NA
19. Central Fibre.....	1,092	1.13	16	40	60	36
20. F. J. Kress.....	1,078	1.12	16	-----	NA	NA
Subtotal, 1-20.....	53,485	55.37	-----	-----	-----	-----
All other (362 Cos.).....	43,152	44.63	-----	-----	-----	-----
U.S. total (382 Cos.).....	96,637	100.00	-----	-----	-----	-----
General Box.....	232	.24	3	15	20	18

^a Source—1957 National Co. Shipment Summary of Fibre Box Association (Issued 1-15-58).

^b Estimated at \$15.00 M sq. ft. average price.

^c Source—Company Annual Reports for 1957 year.

NA—Not available.

NOTE.—The names in parentheses are of companies which the named company has acquired.

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APPENDIX C

U.S. Fibre Box Industry, Total Assets and Net Sales of Top 20 Companies Based on 1958 MM sq. ft. Shipments

Company	1958 fibre box shipments				1958 total sales, MM ^b	1958 total assets, MM ^c
	MM\		MM sq. ft.			
	(^a)	Percent U.S. total	(^b)	Percent total company sales		
1. Container Corporation (Incl. Mengel).....	7,448	7.69	\$112	43	\$259	\$195
2. Inland Container Corp. (Incl. Penn-Mar).....	4,961	5.12	74	96	77	66
3. Weyerhaeuser (Kieckhefer).....	4,883	5.04	73	18	410	538
4. St. Regis (Incl. Growers and Kress).....	4,492	4.63	67	18	377	392
5. Owens-Illinois (National).....	4,320	4.46	65	13	508	455
6. Crown-Zellerbach (Gaylord).....	4,317	4.45	65	14	469	548
7. International Paper.....	3,763	3.88	56	6	915	844
8. American Packaging Corp. (pro-forma).....	3,278	3.38	49	42	118	111
9. West Virginia (H&D).....	3,107	3.21	47	23	208	238
10. Continental Can (Gair).....	2,836	2.93	43	4	1,080	688
11. Mead (Incl. Mead-Atlanta).....	2,261	2.33	34	13	256	215
12. Union Bag-Camp (Incl. Allied and Highland).....	2,239	2.31	34	22	157	187
13. Fibreboard.....	2,148	2.22	32	28	115	130
14. Longview.....	1,982	2.04	30	52	58	73
15. Flintkote (Incl. Hankins).....	1,842	1.90	28	18	156	127
16. Hoerner.....	1,535	1.58	23	89	26	16
17. Stone.....	1,475	1.52	22	61	36	18
18. Ft. Wayne (Sold in 1959).....	1,245	1.28	19	90	21	15
19. Alton.....	1,094	1.13	16	-----	NA	NA
20. River Raisin.....	867	.89	13	72	18	11
Subtotal, 1-20.....	60,093	61.99	-----	-----	-----	-----
All other (380 Cos.).....	36,828	38.01	-----	-----	-----	-----
U.S. total (400 Cos.).....	96,921	100.00	-----	-----	-----	-----

• Source—1958 National Shipment Summary of Fibre Box Association (Issued 1-21-59).

• Estimated at \$15.00 M sq. ft. average price.

• Source—Company Annual Reports for 1958.

NA—Not available.

NOTE.—The names in parentheses are of companies which the named company has acquired.

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APPENDIX D

U.S. Fibre Box Industry Total Assets and Net Sales of Top 20 Companies Based on 1959 MM sq. ft. Shipments

Company	1959 fibre box shipments				1959 total sales, MM *	1959 total assets, MM *
	MM sq. ft.		MM			
	(*)	Percent U.S. total	(*)	Percent total com- pany sales		
1. Container Corporation (Incl. Men- gel).....	8,113	7.40	\$122	38	\$322	\$226
2. Inland Container Corporation.....	5,694	5.19	85	91	93	84
3. Weyerhaeuser (Kieckhefer).....	5,374	4.90	81	18	458	568
4. Crown-Zellerbach (Gaylord).....	4,878	4.45	73	14	527	568
5. Mead (Incl. York & Evert).....	4,832	4.41	72	22	324	244
6. St. Regis ¹	4,828	4.40	72	15	474	450
7. Owens-Illinois (National).....	4,695	4.28	70	13	553	492
8. International Paper.....	4,344	3.96	65	6	1,030	901
9. Union Bag-Camp (Incl. Allied, Eastern & River Raisin).....	3,831	3.49	57	31	181	215
10. Continental Can (Gair).....	3,666	3.34	55	5	1,147	751
11. Packaging Corp. America.....	3,656	3.33	55	46	120	111
12. West Virginia (H&D).....	3,650	3.33	55	24	233	260
13. Fibreboard.....	2,207	2.01	33	28	120	134
14. Flintkote (Incl. Hankins).....	2,085	1.90	31	14	221	179
15. Longview (Incl. General).....	1,953	1.78	29	49	59	75
16. Hoerner.....	1,772	1.62	27	93	29	24
17. Stone.....	1,653	1.51	25	60	42	21
18. St. Joe.....	1,616	1.47	24	-----	NA	NA
19. Alton.....	1,333	1.22	20	-----	NA	NA
20. Interstate (Incl. Allcraft).....	1,205	1.10	18	-----	NA	NA
Subtotal, 1-20.....	71,385	65.09	-----	-----	-----	-----
All other.....	38,242	34.91	-----	-----	-----	-----
U.S. total.....	109,637	100.00	-----	-----	-----	-----

¹ Includes Pollock, Kress, Cornell, Rathborne & Birmingham.

* Source—1959 National Shipment Summary of Fibre Box Association (Issued 1-29-60).

* Estimated at \$15.00 M sq. ft. average price.

* Source—Company Annual Reports or 1959.

NA—Not available.

NOTE.—The names in parentheses are of companies which the named company has acquired.

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APPENDIX E

U.S. Fibre Box Industry Total Assets and Net Sales of Top 20 Companies Based on 1960 MM sq. ft. Shipments

Company	1960 U.S. fibre box shipments				1960 total sales, MM ^c	1960 total assets, MM ^c
	MM sq. ft.		MM			
	(a)	Percent U.S. total	(b)	Percent total company sales		
1. Container Corp. (Incl. Mengel).....	7,870	7.25	\$119	36	\$327	\$240
2. Inland Container.....	5,514	5.08	83	89	93	88
3. Weyerhaeuser (Kieckhefer-Eddy)...	5,286	4.88	80	17	458	578
4. St. Regis ¹	5,137	4.73	77	14	536	563
5. Owens-Illinois (National).....	4,705	4.33	71	13	561	492
6. Crown-Zellerbach (Gaylord).....	4,684	4.30	71	13	554	575
7. Mead (Incl. York & Evert).....	4,509	4.15	68	20	339	251
8. International Paper.....	4,368	4.02	66	6	1,013	930
9. West Virginia (H&D).....	3,740	3.44	57	23	250	271
10. Union Bag-Camp (Incl. Allied, Eastern & River Raisin).....	3,728	3.43	56	26	213	235
11. Continental Can (Gair).....	3,598	3.31	54	5	1,117	767
12. Packaging Corp. of America.....	3,509	3.23	53	38	138	112
13. Longview (Incl. General & Down- ing).....	2,598	2.39	39	54	72	82
14. Flintkote (Incl. Hankins).....	2,013	1.85	30	12	252	230
15. Hoerner.....	1,765	1.62	27	93	29	23
16. Stone.....	1,670	1.54	26	68	45	24
17. Alton.....	1,331	1.23	20	-----	NA	NA
18. Interstate (Incl. Allcraft).....	1,164	1.07	18	-----	NA	NA
19. Connelly.....	857	.79	12	100	12	4
20. Weston Paper-Wabash.....	817	.75	12	-----	NA	NA
Subtotal, 1-20.....	68,863	63.39	-----	-----	-----	-----
All other ²	39,668	36.61	-----	-----	-----	-----
U.S. total.....	108,531	100.00	-----	-----	-----	-----

¹ Includes Cornell, Federal, Growers, Kress, National Kraft, Nifty, Pollock, Rathborne and Sherman.
² Includes non-members such as Olin-Mathieson, Fibreboard and St. Joe, whose shipments may qualify them for inclusion in Top 20 of industry.

(a) Source—National Shipment Summary of Fibre Box Association; adjusted to include shipments by subsidiaries, affiliates and acquisitions.

(b) Estimated at \$16.00 M sq. ft. average price.

(c) Source—Company annual reports for 1960.

NA—Not available.

APPENDIX F

U.S. Fibre Box Industry Net Sales of Top 20 Companies Based on 1961 MM sq. ft. Shipments

Company	1961 fibre box shipments				1961 total sales, MM c.
	MM sq. ft.		MM		
	(a)	Percent U.S. total	(b)	Percent total company sales	
1. Container Corp. (Incl. Mengel).....	8,187	7.16	\$123	37	\$330
2. Inland Container.....	5,745	5.03	86	87	99
3. Weyerhaeuser (Kieckhefer-Eddy).....	5,715	5.00	86	17	492
4. St. Regis ¹	5,467	4.78	83	15	565
5. Crown-Zellerbach (Gaylord).....	5,060	4.43	77	14	563
6. Mead (Incl. York & Evert).....	5,014	4.39	75	18	407
7. Owens-Illinois (National).....	5,003	4.38	75	13	596
8. International Paper.....	4,831	4.23	72	6	1,045
9. West Virginia (H & D).....	4,034	3.53	60	24	252
10. Union Bag-Camp ²	3,943	3.45	59	26	228
11. Continental Can (Gair).....	3,776	3.30	57	5	1,153
12. Packaging Corp. of America.....	3,708	3.24	56	43	129
13. Longview (Incl. General & Downing).....	2,687	2.35	41	56	73
14. Flintkote (Incl. Haskins).....	2,081	1.82	32	13	249
15. Hoerner Boxes, Inc.....	1,897	1.66	29	93	31
16. Stone Container.....	1,760	1.54	27	57	47
17. Alton Box.....	1,423	1.24	21	-----	NA
18. Interstate Cont. (Incl. Allcraft).....	1,191	1.04	18	-----	NA
19. Western Kraft.....	874	.76	14	-----	NA
20. Georgia Pacific.....	864	.76	14	6	238
Subtotal, 1-20.....	73,260	64.09	-----	-----	-----
All others ³	41,050	35.91	-----	-----	-----
U.S. total.....	114,310	100.00	-----	-----	-----

¹ Includes Cornell, Kress, National Kraft, Nifty, Pollock & Sherman.² Includes Allied Container, Eastern Box and River Raisin.³ Includes non-members such as Olin-Mathieson, Fibreboard and St. Joe, whose shipments may qualify them for inclusion in the top 20 companies.⁴ Source—National Shipment Summary of Fibre Box Association; adjusted to include shipments by subsidiaries, affiliates and acquisitions.⁵ Estimated at \$15.00 MM sq. ft. average price.⁶ Source—Company Annual Reports for 1961.

NA—Not available.

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APPENDIX G

Companies and Plants Manufacturing Corrugated Shipping Containers

Companies			Plants					
Year	Num- ber	In- crease ¹	Total		Corrugator		Sheet	
			Num- ber	In- crease ¹	Num- ber	Increase	Num- ber	In- crease ¹
1960.....	425	9	812	47	428	27	384	20
1959.....	416	16	765	53	401	9	364	44
1958.....	400	18	712	36	392	14	320	22
1957.....	382	6	676	37	378	14	298	23
1956.....	376	27	639	43	364	8	275	35
1955.....	349	27	596	33	356	22	240	11
1954.....	322	13	563	37	334	14	229	23
1953.....	309	13	526	(3)	320	2	206	(5)
1952.....	296	(12)	529	29	318	11	211	18
1951.....	308	(1)	500	19	307	3	193	16
1950.....	309	21	481	8	304	59	177	59
1949.....	288	(8)	473	(7)				
1948.....	296	(19)	480	63				
1947.....	315	49						
1946.....	256	14	417	29				
1945.....	242	16	388	25				
1944.....	226	(4)	363	8	245	3	118	5
1943.....	230	(3)	355		242		113	
1942.....	233	3						
1941.....	230	(4)						
1940.....	234		355					

¹ Figures in parenthesis denote Decrease.

Source: Fibre Box Association.

APPENDIX H

1955

Companies	Total M sq. ft.	Dollars	Louisville area only	
			M sq. ft.	Dollars
Mengel.....	345,652	5,506,575.00	¹ 225,000	² 3,579,273.00
General Box.....	165,000	Not shown	68,100	Not shown
Alton (Embry).....	9,393	160,923.18	4,998	\$5,171.46
Miller.....	Not shown	Not shown	Not shown	Not shown
Midwest ³	Not shown	Not shown	Not shown	Not shown
Boone Box.....	Not shown	105,866.57	Not shown	105,066.57

¹ Mengel's Louisville shipments were not shown separately until 1958 when they amounted to approximately 65% of the total. The evidence was that the proportion in 1955-1957 was substantially the same.² Estimated.³ Midwest's shipments amounted to \$300,000 in 1954, and increased each year thereafter. In 1953, the total was \$541,000. There is no evidence as to the exact increase in the years 1955-1957. 95% of its sales were in the Louisville area.

NOTE.—Total Louisville area usage: 654,300 M sq. ft.

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APPENDIX I

1956

Companies	Total M sq. ft.	Dollars	Louisville area only	
			M sq. ft.	Dollars
Mengel.....	350,476	5,748,691	¹ 228,000	¹ 3,736,649
General Box.....	153,000	Not shown	86,800	Not shown
Alton (Embry).....	36,466	701,440	32,334	621,992
Miller.....	30,000	Not shown	Not shown	Not shown
Midwest.....	Not shown	Not shown	Not shown	Not shown
Boone Box.....	Not shown	188,758	Not shown	188,758

¹ Estimated.

NOTE.—Total Louisville area usage: 743,700 M sq. ft.

APPENDIX J

1957

Companies	Total M sq. ft.	Dollars	Louisville area only	
			M sq. ft.	Dollars
Mengel ¹	322,026	5,123,541.00	² 209,000	² 3,303,301
General Box.....	153,000	2,537,925.80	109,300	Not shown
Alton (Embry).....	51,181	884,166.00	36,755	634,530
Miller.....	50,000	Not shown	Not shown	Not shown
Midwest.....	Not shown	Not shown	Not shown	Not shown
Boone Box ³	50,000	140,344.00	Not shown	140,344

¹ Mengel total shipments include sheet furnished to its Lexington plant sales in the amount of approximately 17,000 M sq. ft.² Estimated.³ Boone M sq. ft. includes inner packaging. Corrugated shipping containers represented by dollar figure were less than 25% of its total business.

NOTE.—Total Louisville area usage: 784,800 M sq. ft.

APPENDIX K

1958

Companies	Total M sq. ft.	Dollars	Louisville area only	
			M sq. ft.	Dollars
Mengel ¹	348,670	5,471,656	226,056	3,837,220
General Box ²	167,000	1,191,686	55,700	Not shown
Inland ³	144,443	1,419,834	126,000	Not shown
Alton ⁴	68,000	1,879,676	104,706	1,276,688
Mead (Miller) ⁵	50,000	641,078	Not shown	486,529
Midwest.....	50,000	541,000	Not shown	514,000
Boone Box ⁶	80,000	118,437	Not shown	118,437

¹ Mengel total shipments include sheet furnished to its Lexington plant in the approximate amount of 42,000 M sq. ft. Mengel Louisville sales include General Electric 7,742 M sq. ft.² General Box plant total square footage for 1st 6 months of 1958 included in Inland plant total.³ Total shipments consist of total General Box 1st 6 months, total Inland 2d 6 months, Inland Louisville area sales include 1st 6 months shipments from other Inland plants. Dollar sales for 2d 6 months only.⁴ Alton Louisville sales include General Electric 19,527 M sq. ft.⁵ Mead (Miller) dollar figures are for 2d 6 months only. 1st 6 months not shown.⁶ Boone square footage includes inner packaging. Dollar figure represents shipping containers only.

NOTE.—Total Louisville area usage: 780,800 M sq. ft.

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APPENDIX L

1959

Companies	Total M sq. ft.	Dollars	Louisville area only	
			M sq. ft.	Dollars
Mengel ¹	347,000	5,493,830	283,700	4,546,317
Inland.....	209,000	Not shown	215,500	Not shown
Alton ²	193,145	2,901,982	116,600	1,631,254
Mead ³	106,600	1,652,361	85,400	1,290,447
Midwest.....	50,000	560,000	Not shown	532,000
Boone Box ⁴	100,000	125,202	Not shown	125,202

¹ Mengel total shipments include sheet furnished to Lexington plant. Mengel Louisville sales include General Electric 6,529 M sq. ft.

² Alton Louisville sales include General Electric 10,700 M sq. ft.

³ Mead Louisville sales include General Electric 3,864 M sq. ft.

⁴ Boone square footage includes inner packaging. Dollar figures include only shipping containers.

NOTE.—Total Louisville area usage: 906,200 M sq. ft.

APPENDIX M

1960

Companies	Total M sq. ft.	Dollars	Louisville area only	
			M sq. ft.	Dollars
Mengel ¹	347,000	5,653,514	272,000	4,446,481
Inland.....	191,000	Not shown	196,700	Not shown
Alton ²	163,100	2,671,911	73,390	1,445,759
Mead ³	120,000	1,932,485	98,415	1,541,863
Midwest.....	50,000	642,000	Not shown	610,900
Boone Box ⁴	120,000	203,313	Not shown	Not shown

¹ Mengel total shipments include sheet furnished to Lexington plant. Mengel Louisville sales include General Electric 7,350 M sq. ft.

² Alton Louisville sales include General Electric 3,495 M sq. ft.

³ Mead Louisville sales include General Electric 4,437 M sq. ft.

⁴ Boone Box square footage figure includes inner packaging. Dollar figure represents shipping containers only.

NOTE.—Total Louisville area usage: 905,500 M sq. ft.

APPENDIX N

1961¹

Companies:

	Total M sq. ft.
Mengel ²	305,000
Inland.....	217,000
Alton.....	176,000
Mead.....	189,000
Midwest.....	45,000
Boone ³	125,000
Independent Box Makers, Inc. ⁴	Not shown

¹ There are no complete figures in the record with respect to 1961 Louisville sales of each Louisville plant except as to Inland's square footage.

² Excludes sheet shipped to Lexington plant.

³ Includes inner packaging. Shipping containers less than 25%.

⁴ Commenced business November 1961.

NOTE.—Total Louisville area usage: 900,800 M sq. ft.

OPINION OF THE COMMISSION

JULY 31, 1964

By DIXON, *Commissioner*:

Respondents, Inland Container Corporation and its wholly owned subsidiary of the same name, are charged with having violated Section 7 of the Clayton Act, as amended, in their acquisition of the Louisville, Kentucky, corrugator shipping container plant of General Box Company on June 30, 1958. The hearing examiner held that the evidence failed to establish the required adverse competitive effect and ordered that the complaint be dismissed. Counsel supporting the complaint have appealed.

The hearing examiner found, and there is no dispute on this appeal, that corrugated shipping containers constitute the proper line of commerce (relevant product market) in this proceeding.¹ Inland was, and has been for the past several years, one of the largest producers in this industry. It ranked fourth in industry shipments in 1950, with 4.15% of the national total, third in 1957 with 4.9% and second in 1958 with 5.12%. Most of its customers are located east of the Mississippi River where sixteen of its eighteen manufacturing plants are located. Prior to its acquisition of the Louisville plant of General Box Company, Inland did not have a plant in Louisville for the manufacture of corrugated shipping containers. Its nearest plants to Louisville were in Evansville, Indiana, Indianapolis, Indiana, and Middletown, Ohio, each of which is about 125 miles from Louisville. In 1957, the year prior to the acquisition of General Box, Inland supplied 10.1% of the total usage of corrugated shipping containers in the Louisville area from its Evansville and Indianapolis plants and a millsite² plant at Macon, Georgia.

The acquired company, General Box, manufactures and sells various types of wirebound and wood boxes as well as corrugated shipping containers. In 1955, it operated nine wirebound and wood box plants, the one corrugator plant in Louisville and two plants in which corru-

¹ A corrugated shipping container as aptly defined in the initial decision is a container or box consisting of a combination of liner board material with a fluted inner material which is formed into sheets on a corrugator machine and finished into containers or boxes by processes commonly referred to as scoring, slitting, printing and closure of the joint. Containers are shipped by the manufacturer to the user in a knocked down or flat position. The users of such containers are manufacturers and producers of products which are shipped in such container for distribution or use.

² A millsite plant is a plant for the manufacture of corrugated shipping containers which is located adjacent to a mill which manufactures and supplies the corrugator plant with paperboard.

gated sheets were fabricated into corrugated boxes.³ These last two were located in Houston, Texas, and Kansas City, Missouri. General Box was not among the largest producers in the corrugated box industry, accounting for only .23% of industry shipments in 1951, .23% in 1953, .26% in 1955 and .17% in 1957. In this latter year, which was just prior to the acquisition, General Box accounted for 13.9% of the corrugated box shipments in the Louisville area.

Prior to considering the specific aspects of Inland's acquisition of General Box, we deem it important to briefly review the industry setting in which this acquisition took place.

During the past four decades the physical volume of shipments of corrugated boxes has witnessed a sixteen-fold increase and the dollar value of the industry shipments has risen twenty-fold. During slightly over a decade, between 1950 and 1961, concentration in the largest shippers of corrugated boxes increased substantially on a nationwide basis as shown below:

Changes in Concentration of U.S. Shipments of Corrugated Boxes, 1950-61

Largest companies in each year	Percent of total shipments		Percent increase in concentration ratios
	1950	1961	
4 largest.....	19.44	21.97	13.0
8 largest.....	32.76	39.40	20.3
12 largest.....	38.81	52.92	36.4
2 (largest).....	47.10	64.09	36.1

The effect of the merger movement in this industry is shown by the fact that of the twenty largest box makers in 1950, only six remain on the list, the other fourteen having been merged with or acquired by other companies since that time. Moreover, the fact that mergers contributed in no small part to the increase in concentration in 1961 is revealed by the fact that all of the top twenty corrugated box companies in that year except four (the eighth, sixteenth, nineteenth and twentieth) have acquired other box companies since 1950.

Another significant change in the corrugated box industry has been the trend to integration. The industry classifies an integrated company

³ These two plants are known as sheet plants. Whereas the corrugator plant fabricates the liner board and fluted material into three-ply sheets, the sheet plant must obtain its corrugated sheets from other sources. It performs only the finishing process of scoring, slitting, printing and closure of the joints. The sheet plant's investment in equipment is considerably less than that of the corrugator plant as the machine for fabricating corrugated sheets is by far the largest and most expensive piece of equipment in the standard corrugated box factory. Sheet plants, while numerous (almost half of all firms manufacturing corrugated boxes are sheet plants) accounted for only 9.0% of the total corrugated box shipments in 1959.

as one owning a paper mill which supplies 50% or more of the container board for its box plant. Using this definition, the record reveals that of the top twenty corrugated box companies in 1961 all but one, the eighteenth, was integrated. In 1960, integrated companies accounted for 67.4% of the total shipments of corrugated boxes, whereas in 1940 integrated companies made only 42.4% of such shipments.

We turn next to a consideration of the setting in the Louisville area in which the acquired corrugator box plant of General Box Company is located.

The most significant development with respect to this area occurred several years prior to this acquisition when, in 1953, the General Electric Company announced that it would move all of its principal appliance plants from Erie, Pennsylvania, to Louisville. At the time of this announcement, General Electric was a major customer of Inland, being supplied by Inland plants located in Erie and in Astabula, Ohio. Inland had acquired these two plants in 1952 to serve General Electric in Erie.

Although Inland was doing business in Louisville at the time, it had no intention of either building or acquiring a plant in that area until the General Electric decision. However, as a result of the General Electric move, it began to consider establishing a plant in Louisville in the belief that this would afford a better opportunity to retain its General Electric business and also to obtain any additional business both from General Electric and any other businesses that might be attracted to Louisville by the General Electric move.

In the latter part of 1954, Inland purchased land in Louisville with the evident intention of building a sheet plant. At about the same time, Inland became interested in buying General Box's corrugator plant. This was a new plant just going into production, having replaced General's previous plant which was destroyed by fire in 1953. Inland delayed construction of its plant for several months until it appeared that there was no prospect of acquiring the General Box plant. When it decided to go forward with its own construction, adequate water facilities had not been provided.

Inland acquired some General Box stock in 1955. When an adequate water supply became available in 1957, it again decided to explore the possibility of a General Box deal before beginning construction. Its offers to purchase were refused by the General Box management. Inland then proceeded with its purchase of General Box stock until it had obtained about 52% of the outstanding shares in May 1958. It then reached an agreement with General Box whereby it exchanged a substantial portion of the stock for the Louisville plant and sold the

remaining stock to General Box. The agreement was carried out on June 30, 1958.

The evidence discloses that, prior to the acquisition, Inland's sales of corrugated boxes in the Louisville area were decreasing whereas those of General Box were on the increase. Thus, in 1955, out of a total of 654.3 million square feet sold in the Louisville area, Inland supplied 123.2 million square feet and General Box 68.1 million. In 1957, Inland's share of a total of 784.8 million square feet was 79.8 million while General Box supplied 109.3 million.

In 1954, in addition to General Box, there were two other companies engaged in the manufacture of corrugated boxes in the Louisville area. The oldest of these was The Mengel Company, which established a corrugator plant in 1911, and had at all times been the largest producer of corrugated boxes in Louisville. In 1954, a controlling interest in the stock of this company was purchased by Container Corporation of America, an integrated company which ranks as one of the largest manufacturers of corrugated boxes in the country.

The other company in existence in Louisville in 1954 was Midwest Box Company, a sheet plant which was established in 1948.

In 1954 two new sheet plants were established in Louisville. One, Miller Container Company, was acquired by The Mead Corporation in 1958. In that year, Mead, an integrated company, was the eleventh largest manufacturer of corrugated boxes in the country. After the acquisition, Mead installed a corrugator machine. Boone Box Company, a sheet plant established in 1954, became affiliated in 1959 with Union Bag-Camp Paper Corporation, an integrated company which since 1959 has ranked among the top ten manufacturers of corrugated boxes in the country.

In the following year, 1955, Embry Container Company, a sheet plant, was established in Louisville. In 1957, it was acquired by Alton Board Company, another integrated company which was the nineteenth largest shipper of corrugated boxes in 1958 and 1959. Finally, in 1961, Independent Box Makers, Inc., a sheet plant, was established in Louisville. The record contains little information with respect to its operation.

The hearing examiner held that Louisville and the surrounding territory within a ten mile radius constitutes the relevant geographic market. He based this ruling principally on the fact that General Box made the great bulk of its sales in that area, pointing out that the year before the acquisition, 71% of the General Box sales were in the Louisville area. Inland argued before the hearing examiner and still contends in its brief in answer to complaint counsel's appeal, that

the area in which the principal shipments of the acquired plant are made is not the proper test to determine the relevant geographic market. In support of its position that, in determining this market, the examiner should have given consideration to the area to which purchasers in the Louisville area could practically turn for supplies, Inland relies on the *Tampa Electric* case ⁴ and the following language in the *Philadelphia Bank* case ⁵ which was decided subsequent to the filing of the initial decision herein:

* * * The proper question to be asked in this case is not where the parties to the merger do business or even where they compete, but where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate. See Bock, *Mergers and Markets* (1960), 42. This depends upon "the geographic structure of supplier-customer relations."

There is no dispute that the Louisville area was an "area of competitive overlap" between Inland and General Box. The anomaly here is that the test urged by Inland is the basis for the examiner's finding of no likelihood of competitive injury as a result of the acquisition. However, as we recognized in our recent decision in *Permanente Cement* case,⁶ the position taken by Inland is correct and we will give consideration to sources of supply for Louisville purchasers in delimiting the geographic market.

As noted by the Supreme Court in the *Philadelphia Bank* case, convenience of location is essential to effective competition in most service industries. The corrugated box industry is "very much a service business." "Corrugated boxes are custom made and promptness of delivery is 'vitally important.'"⁷ The importance of this service is best summed up in the testimony of Inland's president that:

* * * our services today are not on a matter of weeks or days. Because of the advent of the trucks instead of rail sidings, many customers do not have rail sidings. they get delivery by trucks and they did not build their truck docks adequate to handle the movement in and out and there are delays there. In many cases the customer will say he wants his boxes between ten and four o'clock, and that is the only time he will accept them for delivery and he wants them on his dock at seven o'clock in the morning, not eight o'clock in the morning because his production line will be starting at that time and if it is not there his line will be down.⁸

An even clearer picture of the present market conditions in the sale of corrugated boxes is given in the testimony of Inland's Louisville

⁴ *Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. 320 (1961).

⁵ *United States v. Philadelphia National Bank*, 374 U.S. 321, 357 (1963).

⁶ *In the Matter of Permanente Cement Co.*, Docket No. 7939, April 24, 1964 [65 F.T.C. 410].

⁷ Testimony of Inland's president, tr. 205.

⁸ Tr. 224.

⁹ Tr. 224-225.

plant manager, Mr. J. T. McClamrock, that: "Whereas eight or nine years ago our customers' demands were such that it was possible to ship in from an area of a hundred or 150 miles away, since that time, today's market, the demands of our customers are much greater."¹⁰ He further testified that customers were cutting down their inventories in an effort to reduce overhead and were requesting box plants to run orders on shorter lead time so that today, having a local plant is "a much more important factor." Additionally delivery service is one of the things emphasized by Inland in its promotional literature.

The facts testified to by the Inland representatives are borne out by the events which have taken place in the Louisville area. In the first place, Inland found it advisable to move into Louisville rather than try to service the area from 125 miles away. This move was prompted at least in part on advice by General Electric that it would favor Inland having a local facility to provide storage and service. Second, two other large companies, Container Corporation of America and Mead, which had been servicing Louisville from plants located a short distance away in Cincinnati, acquired box plants in Louisville within the eight or nine year period referred to by Mr. McClamrock.

The initial decision contains a tabulation showing purchases of the four largest users of corrugated boxes in the Louisville area from outside sources in 1957 and 1959. While in these years, these four did make substantial purchases from outside sources, the tabulation shows that the extent of outside purchases of all four declined in 1959 and, with respect to three of these purchasers, the decline was substantial—roughly 40%. The record discloses that this decline continued in 1960. Additionally, the record discloses that out of a total Louisville usage of 784.8 million square feet in 1957, outside plants supplied 47.8%. In 1960, purchases from outside plants had dropped to 29.7% of an expanding Louisville usage of 905.5 million square feet.

The record establishes a positive correlation between the size of the customer and the extent to which outside sources are employed. The large users, such as those in the hearing examiner's tabulation, have extensive plant facilities which enable them to maintain an inventory of boxes and purchase in large quantities. However, there are numerous other purchasers in the Louisville area who maintain little or no inventory. It is obvious from the above-quoted testimony of Inland's president and from the testimony of numerous Louisville users¹¹ that

¹⁰ Tr. 600.

¹¹ Tr. 559, 618, 646, 673-4, 699, 716, 723, 762, 795, 862, 990-2, 1043, 1049, 1108, 1150. Also the statements of Inland's Louisville plant manager are supported by the testimony of the Mead representative (tr. 1203-4).

box companies outside of Louisville are no longer regarded as a practical source of supply for these purchasers.

The Supreme Court in the *Philadelphia Bank* case pointed out that large borrowers may find it practical to do a large part of their banking business outside their home community whereas very small borrowers may be confined to banks in their immediate neighborhood. It reached its decision as to the relevant geographic market by selecting an area in which customers that are neither very large nor very small find it practical to do their business.

The facts of this case, *i.e.*, the importance of prompt delivery, the change in consumer demands to avoid expensive inventories, the dramatic decline in purchases from outside sources, and the movement by box manufacturers with plants nearby into the Louisville area clearly establish that with the possible exception of the very largest buyers, the practical source of supply for Louisville purchasers of corrugated boxes is the Louisville area. Accordingly, we hold that Louisville and the surrounding territory within a ten mile radius constitutes the relevant geographic market within which to measure the effect of this acquisition.

In measuring the effect of this conventional horizontal merger on competition in the Louisville area, we are guided by the holding of the Supreme Court in the *Philadelphia Bank* case that:

This intense congressional concern with the trend toward concentration warrants dispensing, in certain cases, with elaborate proof of market structure, market behavior, or probable anticompetitive effects. Specifically, we think that a merger which produces a firm controlling an undue percentage share of the relevant market, and results in a significant increase in the concentration of firms in that market, is so inherently likely to lessen competition substantially that it must be enjoined in the absence of evidence clearly showing that the merger is not likely to have such anticompetitive effects. 374 U.S. at 363.

In that case, the acquiring firm as a result of a proposed merger would have controlled 30% of the business in the relevant geographic area and together with the largest firm, would have controlled 59% of the business. In this case, by its acquisition of the General Box plant, Inland increased its market share in Louisville by well over 100%. As we have previously noted, Inland's share of the corrugated box market in Louisville in 1957 was 10.1%. In 1959, the year after the merger, its market share was 23.7%. Whereas, in 1957 the combined share of the two largest box manufacturers in Louisville (The Mengel Company and General Box) was 40.5%, the combined share of the two largest in 1959 (The Mengel Company and Inland) increased to 55.1%.

In the context of the competitive situation existing in the sale of corrugated boxes in the Louisville area, we are of the opinion that the market share percentage resulting from Inland's acquisition of General Box threatens undue concentration and meets the test of presumptive illegality as declared in the *Philadelphia Bank* case. In holding that the combined market share in that case met the test, the Supreme Court made reference to the "prima facie unlawfulness" theory of several economists and expressly relied upon certain decisions interpreting other sections of the Clayton Act in which the same language as to competitive effects is employed. In the opinion of the economists and in two of the three cases relied upon, the percentage of the market illegally foreclosed was about the same or less than the combined market shares of Inland and General Box. Moreover, as the court pointed out, integration by merger is more suspect than integration by contract (as in the cases upon which it relied), because of the permanence of the former. We conclude, therefore, that this concentration in the Louisville area resulting from the merger of the second and third largest firms in that area, as reflected in the market share of the combined companies and the combined shares of the two largest companies, creates an inference that the effect of the merger may be substantially to lessen competition.

This inference can be rebutted only by evidence "clearly showing" that the merger is not likely to have such anticompetitive effects. Such evidence is lacking in this record.

In our findings as to the relevant geographic market, we have rejected the examiner's conclusion concerning the significance of competition by outside suppliers in the Louisville area. The recent change in the needs and demands of the customers in this area, as reflected in the drastic decline in purchases from outside sources and the movement of nearby companies into Louisville clearly establish that the effect on competition of outside plants can be of significance only to the few largest buyers in Louisville.

In considering the evidence with respect to probable competitive effects, we note that a new sheet plant was established in Louisville in 1961. There is no evidence in the record as to its sales and the hearing examiner placed no reliance on this entry. The mere entry of one sheet plant in a five-year period in which the total usage of corrugated boxes in Louisville rose from 654,300 million square feet to 905,500 million square feet falls far short of the clear showing required to rebut the anticompetitive effects of the merger. In fact, the entry of only one new plant in this vastly expanded market strongly sug-

gests the absence of competitive opportunities for potential competitors.

Significantly, Inland's own potential, planned competition was eliminated as a result of its acquisition of General Box. Thus, prior to this acquisition, it became obvious to Inland management that to protect its declining share of the Louisville market and to obtain additional business, it would have to establish a plant in that area. Moreover, it appears that such a move was further necessitated by the fact that Inland's shipments to the Louisville area were needed elsewhere.¹² However, Inland abandoned its intention to build which, as previously mentioned, had been implemented to the extent of purchasing the land, and acquired General Box.¹³ By so doing, Inland not only protected its market share, it more than doubled its share at the expense of an independent company. Moreover, General Box was a company which, with a recently completed plant, was competing vigorously in the Louisville area as reflected in its steadily increasing market shares from 10.4% in 1955 to 13.9% in 1957. Additionally, this elimination of a well-established company took place in a market which itself was expanding with a corresponding availability for more competitors.

General Box was replaced in the Louisville area by a company which was the third largest corrugated box producer in the United States the year before the acquisition. In 1958, the year it acquired General Box, Inland became the second largest producer. This follows a regular increase in Inland's growth from fourth place in the industry in 1950—growth which was accomplished in part by internal expansion and in significant part by other acquisitions. Also, the acquisition followed a pattern which had already been established in Louisville—the replacement of independents by the giant integrated companies of the industry. In this regard, we must reject the hearing examiner's holding that there is no significant advantage in integration in the corrugated

¹² In a letter of October 14, 1955, to Mr. George B. Elliott, president of Inland, recommending immediate completion of a corrugator plant in Louisville, Mr. C. F. Smith, in charge of Inland's sales and marketing and vice-president of the company, stated: "Our experience during the past several months indicates that the full capacity of our Indianapolis, Evansville, and Middletown plants is required to service the respective marketing areas and our growing volume in the south is taking a larger share of our Macon production." CX 103.

¹³ In commenting on a company's decision to acquire rather than build, the Supreme Court in the *Brown Shoe* case has stated that:

"* * * Internal expansion is more likely to be the result of increased demand for the company's products and is more likely to provide increased investment in plants, more jobs and greater output. Conversely, expansion through merger is more likely to reduce available consumer choice while providing no increase in industry capacity, jobs or output. It was for these reasons, among others, Congress expressed its disapproval of successive acquisitions. Section 7 was enacted to prevent even small mergers that added to concentration in an industry." *Brown Shoe Co. v. United States*, 370 U.S. 294, 345, n. 72 (1962).

box industry. There is direct testimony by competing box manufacturers as to the importance of box companies owning their own sources of supply of paperboard. Inland itself has recognized the significance of integration in its statement that "Inland believes that the integration which has permitted it to acquire Kraft linerboard from its 50%-owned corporations has resulted in *substantial* advantages to it."¹⁴

That an integrated company may possess competitive advantages over non-integrated rivals is a well-recognized fact of economic life. In addition to the integrated company's capacity to control quality and to enjoy certain cost advantages over the independent box manufacturers, the integrated firm is insured a steady supply of raw materials in times of shortage. The non-integrated box manufacturer, on the other hand, is subject to the problems of any independent firm facing competitors acting in a dual role—that is, competitors who are also sources of supply. In short, the non-integrated firm is usually forced to buy its raw materials from an integrated competitor.

In dismissing the importance of integration, the examiner found that the supply of containerboard is and has been plentiful and held that it is not "reasonably likely" that the market price for containerboard will not be controlled by competition. This holding loses sight of the fact that the percentage of corrugated box sales by integrated companies in this country rose from 42.4% in 1940 to 67.4% in 1960. Considering this trend toward a substantial segment of the containerboard industry supplying its own box plants, we are of the opinion that the examiner's forecast is not well grounded.

We have in this decision outlined the changes taking place in structure of the corrugated box suppliers in the Louisville area as a result of acquisitions. Specifically, the Louisville market is being transformed from one of small independent suppliers into a market dominated by the integrated giants of the industry. Viewed against the background of this change in market structure, it is our opinion that this acquisition falls squarely within the holding of the Supreme Court that: "Preservation of Rome [General Box], rather than its absorption by one of the giants, will keep it 'as an important competitive factor,' to use the words of S. Rep. No. 1775, p. 3. Rome [General Box] seems to us the prototype of the small independent that Congress aimed to preserve by § 7." *United States v. Aluminum Co. of America*, — U.S. — (1964). See also *The Procter & Gamble Company*, Docket No. 6901 (decided November 26, 1963), p. 56 [63 F.T.C. 1465, 1573]; *Foremost Dairies, Inc.*, Docket No. 6495 (decided April 30, 1962), p. 50.

¹⁴ CX 11, p. 8 (emphasis supplied).

Under the foregoing circumstances, we conclude that the hearing examiner erred in holding that the acquisition of the General Box plant by Inland does not violate Section 7. Accordingly, the initial decision will be modified and an appropriate order of divestiture will be entered. By so ordering, of course, we do not preclude Inland from the Louisville area. The record clearly establishes that Inland has the know-how, resources and, prior to acquiring General Box, the definite intention to establish a plant in Louisville. Should Inland determine that the expanded Louisville usage warrants, there is no bar to entering by way of internal expansion.

Commissioner Reilly did not participate for the reason that he did not hear oral argument.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of counsel supporting the complaint from the hearing examiner's initial decision and upon briefs and oral argument in support of and in opposition to said appeal; and

The Commission having determined for the reasons stated in the accompanying opinion that the appeal of counsel supporting the complaint should be granted and that the hearing examiner's initial decision should be modified to conform to the views expressed in said opinion:

It is ordered, That the initial decision be modified by striking the findings and conclusion beginning on page 340 thereof with the words "With reference to the first issue" and ending on page 350 with the words "Clayton Act" and substituting therefor the findings and conclusions in the accompanying opinion beginning on page 363 with the words "There is no dispute" and ending on page 369 with the words "will be entered."

It is further ordered, That the initial decision be modified by striking the order on page 350 and substituting therefor the following:

It is ordered, That:

I

Respondents, Inland Container Corporation and its wholly owned subsidiary also known as Inland Container Corporation, and their officers, directors, agents, representatives and employees shall within one (1) year from the date this order becomes final, divest themselves absolutely and in good faith, of all stock, assets, properties, rights and privileges, tangible or intangible, including

Final Order

66 F.T.C.

but not limited to all contract rights, properties, plants, machinery, equipment, trade names, trademarks and good will acquired by said respondents as a result of their acquisition of the stock of General Box Company and the subsequent acquisition of the assets of the Louisville, Kentucky, corrugated plant of General Box Company, together with such plants, machinery, buildings, improvements, equipment and other property of whatever description that has been added to or placed on the premises of said corrugator plant, as may be necessary to restore that plant as a going concern and effective competitor in the manufacture and sale of corrugated shipping containers.

II

Pending divestiture, respondents shall not make any changes in the plant, machinery, buildings, equipment, or other property of whatever description, which might impair the present capacity for the production of its respective corrugated box products, or its market value, unless such capacity or value is restored prior to divestiture.

III

By such divestiture, none of the stock, assets, properties, rights or privileges, described in paragraph I of this order, shall be sold or transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee, or agent of, or under the control or direction of respondents or any of respondents' subsidiary or affiliated corporations, or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of common stock of Inland Container Corporation, or to any purchaser who is not approved in advance by the Federal Trade Commission.

IV

If respondents divest the assets, properties, rights and privileges, described in paragraph I of this order, to a new corporation, the stock of which is wholly owned by respondents, and if respondents then distribute all of the stock in said corporation to the stockholders of respondents in proportion to their holdings of respondents' stock, then paragraph III of this order shall be inapplicable, and the following paragraphs V and VI shall take force and effect in its stead.

V

No person who is an officer, director or executive employee of respondents, or who owns or controls, directly or indirectly, more

than one (1) percent of the stock of respondents, shall be an officer, director or executive employee of any new corporation described in paragraph IV, or shall own or control, directly or indirectly, more than one (1) percent of the stock of any new corporation described in paragraph IV.

VI

Any person who must sell or dispose of a stock interest in respondents or the new corporation described in paragraph IV in order to comply with paragraph V of this order may do so within six (6) months after the date on which distribution of the stock of the said corporation is made to stockholders of respondents.

VII

As used in this order, the word "person" shall include all members of the immediate family of the individual specified and shall include corporations, partnerships, associations and other legal entities as well as natural persons.

VIII

Respondents shall periodically, within sixty (60) days from the date this order becomes final and every ninety (90) days thereafter until divestiture is fully effected, submit to the Commission a detailed written report of their actions, plans, and progress in complying with the provisions of this order and fulfilling its objectives.

It is further ordered, That the initial decision as supplemented by the accompanying opinion and as modified herein be, and it hereby is, adopted as the decision of the Commission.

Commissioner Reilly not participating for the reason that he did not hear oral argument.

IN THE MATTER OF
SEARS, ROEBUCK AND CO.

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

Docket 8069. Complaint, Aug. 4, 1960—Decision, July 31, 1964

Order dismissing—following findings in the companion Section 2(a) case, Uni-