
IN THE MATTER OF
ABC VENDING CORPORATION ET AL.*

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

Docket 7652. Complaint, Nov. 4, 1959—Decision, Oct. 22, 1964

Consent order requiring a large theater confectionery concessionaire headquartered in Long Island City, N.Y., to divest within a year certain concession rights and not to acquire other such rights for a period of 10 years without Commission approval; and also to cease inducing discriminatory prices and allowances from suppliers.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents 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 (U.S.C., Title 15, Section 18) as amended and approved December 29, 1950, and the provisions of Section 5 of the Federal Trade Commission Act

*Now known as ABC Consolidated Corporation et al.

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(U.S.C., Title 15, Section 45) and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, hereby issues its complaint pursuant to its authority thereunder and charging as follows:

COUNT I

Charging violation of Section 7 of the Clayton Act, the Commission alleges:

PARAGRAPH 1. (a) Respondent, ABC Vending Corporation, hereinafter sometimes referred to as ABC, is a corporation organized in January 1947, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 50-01 Northern Boulevard, Long Island City, New York.

(b) ABC was originally organized as the American Vending Corporation for the purpose of acquiring all of the capital stock of two groups of vending companies, Berlo Vending Company, named as a respondent herein, and Sanitary Automatic Candy Corporation. Such acquisitions were consummated by the exchange of 439,841 shares of ABC's stock for the capital stock of Berlo Vending Company, and 217,798 shares of ABC's stock for the capital stock of Sanitary Automatic Candy Corporation. By such acquisitions, ABC thereby obtained the business and assets of a number of long established, operating vending companies, most of which were wholly owned, and several of which were partly owned, by these acquired companies. On August 20, 1947, ABC's present corporate name, ABC Vending Corporation, was adopted. In later years, ABC acquired the remaining interest in several of the subsidiary companies in which it had obtained a partial interest through the original acquisition. In 1950, by an exchange of 89,240 shares of its stock, ABC acquired the remaining 25% interest in the Apex Beverage Corporation, and the remaining 50% interest in the Allied Beverage Company, both of which are now operated as divisions of ABC. In 1951, ABC acquired the remaining 25% interest in Northwest Automatic Candy Corporation, which was merged into ABC in 1954.

(c) Prior to October 28, 1957, ABC was both an operating company and a holding company, having approximately twenty-two active subsidiaries and affiliated companies, including respondent Berlo Vending Company. Eighteen of these companies were wholly owned, one 75% owned, one 66 $\frac{2}{3}$ % owned, and two 50% owned.

(d) Respondent ABC, directly and through its subsidiaries and affiliated companies, including respondent Berlo Vending Company, is

engaged in the business of acquiring space for, maintaining, and otherwise operating vending concessions, consisting of attended confectionary stands and vending machines, in motion picture theatres and at other locations, through which candy, gum, other confections, popcorn, soft drinks, ice cream, and other foods, tobacco products, newspapers, magazines, novelties, and other merchandise are sold. Said products and merchandise, many of which are purchased by ABC, or by its subsidiaries and affiliated companies, by direct negotiations with a large number of manufacturers and other suppliers, are hereinafter sometimes referred to as concessionary products. Vending concessions belonging to ABC, its subsidiaries and affiliated companies, are located principally in indoor and outdoor (drive-in) motion picture theatres. Other such concessions are located in legitimate theatres, supermarkets, fairs, turnpikes, public transportation terminals and stations, sports arenas, hotels, industrial sites, government and military installations, and other places of amusement or public gathering. ABC, directly and through its subsidiaries and affiliated companies, acquires, maintains, and otherwise operates said vending concessions in many States of the United States and in the District of Columbia. In the course and conduct of its business, respondent ABC is engaged in commerce, as "commerce" is defined in the Clayton Act.

(e) Prior to October 28, 1957, respondent ABC, including operations of its subsidiaries and affiliates, was the largest commercial concessionaire operating in the motion picture theatre concession field in the United States. In addition, ABC, directly and through certain subsidiaries, was the largest manufacturer and distributor of popcorn in the United States; it was one of the leading dispensers of soft drinks through vending machines; and it was a significant and growing concern in the public transportation terminal concession field.

PAR. 2. (a) Respondent, Berlo Vending Company, hereinafter sometimes referred to as Berlo, a wholly owned subsidiary of respondent ABC, is a corporation organized and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 333 South Broad Street, Philadelphia, Pennsylvania.

(b) Respondent, Berlo Vending Company, is engaged in the business of acquiring, maintaining, and otherwise operating vending concessions, principally in motion picture theatres and also in other places of public gathering, such as amusement parks, restaurants, swimming pools, ball parks, municipal auditoriums, and race tracks. Berlo operates and does business in the States of Pennsylvania, New York, Maryland, Virginia, West Virginia, North Carolina, Florida, Louisi-

ana, Ohio, Michigan, and New Jersey, and in the District of Columbia. In the course and conduct of its business, respondent Berlo is engaged in commerce, as "commerce" is defined in the Clayton Act.

PAR. 3. (a) Prior to October 28, 1957, Confection Cabinet Corp., hereinafter sometimes referred to as Confection Cabinet, was a corporation organized in 1930, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 240 South Harrison Street, East Orange, New Jersey.

(b) The operations of Confection Cabinet were divided into five divisions with offices in East Orange, New Jersey, Chicago, Illinois, Detroit, Michigan, St. Louis, Missouri, and Los Angeles, California. Confection Cabinet's operations were conducted through thirty wholly owned subsidiaries, two subsidiaries in which Confection Cabinet had a 75% and 66 $\frac{2}{3}$ % interest respectively, three subsidiaries in which Confection Cabinet held a 50% interest in each, and five affiliated corporations and partnerships which were owned wholly or in part by the principal stockholders of Confection Cabinet.

(c) Confection Cabinet, its subsidiaries, and affiliate companies were engaged in the business of acquiring space for, maintaining, and otherwise operating vending concessions consisting of attended confectionary stands and vending machines in motion picture theatres and at other locations, through which candy, gum, other confections, popcorn, soft drinks, ice cream, tobacco products, novelties, and other merchandise were sold. Substantially all of Confection Cabinet's vending concessions were located in indoor and outdoor motion picture theatres. In the course and conduct of its business, Confection Cabinet was engaged in commerce, as "commerce" is defined in the Clayton Act.

(d) Prior to October 28, 1957, Confection Cabinet was the second largest commercial concessionaire operating in the motion picture theatre concession field in the United States and it was the only commercial concessionaire in the country that competed with respondent ABC on other than a local basis.

PAR. 4. (a) Prior to about December 5, 1957, Charles Sweets Company, hereinafter sometimes referred to as Charles Sweets, was a corporation organized in 1951, under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 429-33 South 61st Street, Philadelphia, Pennsylvania.

(b) Charles Sweets was engaged in the business of acquiring space for, maintaining, and otherwise operating vending concessions consisting of attended confectionary stands and vending machines in motion picture theatres and at other locations, through which candy,

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gum, other confections, popcorn, soft drinks, ice cream, tobacco products, novelties, and other merchandise were sold. The vending concessions of Charles Sweets were located in some 44 indoor and outdoor motion picture theatres in and around, and within a 50 mile radius of, Philadelphia, Pennsylvania, including southern New Jersey. Charles Sweets also operated a concession under contract with the Montgomeryville Merchandise Mart at Montgomeryville, Pennsylvania. In the course and conduct of its business, Charles Sweets was engaged in commerce, as "commerce" is defined in the Clayton Act.

(c) Prior to about December 5, 1957, Charles Sweets Concession Company, hereinafter sometimes referred to as Sweets Concession, was a corporation organized in 1956, under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 429-33 South 61st Street, Philadelphia, Pennsylvania.

(d) Sweets Concession was engaged in the business of acquiring, maintaining, and otherwise operating concession space through which it sold a general line of concessionary products at the Pensauken Merchandise Mart, Pensauken, New Jersey, and at the Parkside Golf Range, 52d Street and Parkside Avenue, Philadelphia, Pennsylvania. In the course and conduct of its business, Sweets Concession was engaged in commerce, as "commerce" is defined in the Clayton Act.

(e) Prior to December 5, 1957, both the Charles Sweets Company and the Charles Sweets Concession Company were wholly owned and operated by Charles Amsterdam. The combined operation of these two companies by Charles Amsterdam was the largest commercial concessionaire competitor of ABC and Berlo in the greater metropolitan area of Philadelphia, including southern New Jersey.

PAR. 5. (a) Sales derived from confectionary and refreshment stands and vending machines located in indoor and outdoor (drive-in) motion picture theatres in the United States constitute a substantial business. For example, during 1956, sales of all products through such locations averaged approximately \$7 million weekly. Also during 1956, annual sales through such locations of popcorn totaled approximately \$126 million, candy approximately \$98 million, soft drinks approximately \$34 million and ice cream approximately \$24 million.

(b) Confectionary and refreshment stands and vending machines located in indoor and outdoor motion picture theatres in the United States are operated by two distinct non-competing groups of individuals and corporations, namely:

(1) Owners and operators of motion picture theatres who, as an incident to their motion picture exhibiting business, purchase concession-

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ary products from suppliers thereof and resell such products through their own stands or machines located in their own theatres;

(2) Commercial concessionaires who lease space or otherwise acquire, maintain, and operate vending concessions in indoor and outdoor motion picture theatres belonging to other individuals, partnerships, or corporations.

(c) The term "concessionaire" as used in this complaint is intended to include only commercial or professional concessionaires whose principal business activities are such as have been described in subsection (2) of subparagraph (b) of this Paragraph Five.

(d) In the normal course of their business, concessionaires usually procure the right to place their vending equipment and fixtures and to operate their concessions at locations by agreeing to pay the owner of the theatre a certain rate of commission based on the volume of sales of the various products sold through the concession. The concessionaire usually provides personnel to operate attended stands, supplies and services any vending machines placed at the location, and also stocks and supplies products sold at the stands. The arrangement between the concessionaire and owner or proprietor of the theatre may be either verbal or written, and may be terminated upon short notice by either party, or may be an arrangement covering a specified term of months or years.

(e) There is no significant competition from any source outside a motion picture theatre in the retail sale of products and merchandise sold through attended stands and vending machines inside the theatre, because such vending, in substantially all cases, is conducted on an exclusive basis, either by the theatre owner, or by a commercial concessionaire, and because theatre patrons, who buy substantially all of the merchandise sold through such stands and machines, are a captive customer group.

Substantial competition does exist, however, among commercial concessionaires in their striving and vying with and against each other to acquire, maintain, and operate vending concessions in motion picture theatres, and between commercial concessionaires and others who by arrangement or contract with theatre owners or operators sell concessionary products and merchandise to such theatre owners or operators for resale through confectionary and refreshment stands and vending machines.

(f) The business of acquiring and operating concessions in motion picture theatres in certain parts of the United States is difficult, if not impossible, for new concessionaires to enter. Entry into such business is restricted and limited by the heavy capital outlays required to pur-

chase inventories and to place, replace, or modernize confectionary and refreshment stands, vending machines, and other equipment; by the decreasing number of motion picture theatres doing business in the country; by the unusually high degree of concentration of operating facilities and financial resources held by respondent ABC directly and through its subsidiaries and affiliated companies; by respondent ABC's direct use or indirect use through its subsidiaries and affiliated companies of its financial power to inhibit, restrict, and eliminate competition; and by the dominant and monopolistic position held by respondent ABC in the business of operating, directly and through its subsidiaries and affiliates, concessions in motion picture theatres in certain sections of the United States and various parts thereof.

PAR. 6. (a) Prior to October 28, 1957, substantial competition and substantial potential competition existed between ABC, directly and through its subsidiaries or affiliates, including respondent Berlo, and Confection Cabinet in the acquiring and operating of concessions for confectionary and refreshment stands and vending machines in both indoor and outdoor motion picture theatres in the United States, especially in the States of New York and New Jersey and various parts thereof, particularly the greater metropolitan area of New York, New York, including northern New Jersey.

(b) As of October 28, 1957, ABC, directly and through its subsidiaries and affiliates, including respondent Berlo, operated vending concessions in 3,557 locations in 35 States, and the District of Columbia, of which approximately 2,755, or 77 percent, were located in indoor and outdoor motion picture theatres. Prior to October 28, 1957, Confection Cabinet operated vending concessions in 446 locations in 26 States and the District of Columbia, of which 439 or 98 percent were located in indoor and outdoor motion picture theatres. ABC, directly and through subsidiary corporations and affiliated companies, was engaged in the concessionary business in motion picture theatres in every State in which Confection Cabinet was engaged in such business, except for two States, Arizona and Wisconsin.

(c) As of October 28, 1957, Confection Cabinet had vending concessions in more motion picture theatres in the greater metropolitan area of New York, New York, including northern New Jersey, than it had in any other area in which it operated and did business. As of this same time, the largest concentration of vending concessions operated by ABC, directly and through its subsidiaries and affiliates, in motion picture theatres was in the greater metropolitan area of New York, New York, including northern New Jersey.

(d) In 1957, there were approximately 963 indoor motion picture theatres doing business in the State of New York and 349 such theatres in the State of New Jersey. Prior to October 28, 1957, ABC, directly and through its subsidiaries and affiliates, operated vending concessions located in 402, or about 42 percent, of the indoor motion picture theatres in the State of New York and operated vending concessions located in 252, or about 72 percent, of the indoor motion picture theatres in the State of New Jersey. Prior to October 28, 1957, Confection Cabinet operated vending concessions located in 97, or about 10 percent, of the indoor motion picture theatres in the State of New York and operated vending concessions located in 72, or about 21 percent, of the indoor motion picture theatres in the State of New Jersey.

(e) Prior to December 5, 1957, substantial competition, and substantial potential competition existed between ABC, directly and through its subsidiaries and affiliates, especially through respondent Berlo, and Charles Sweets and Sweets Concession in the acquiring and operation of vending concessions in both indoor and outdoor motion picture theatres and in other locations. Next to the greater metropolitan area of New York, New York, respondents' heaviest concentration of vending concessions in motion picture theatres was in the area in which Charles Sweets and Sweets Concession operated, namely, in eastern Pennsylvania, including the greater metropolitan area of Philadelphia, Pennsylvania, and southern New Jersey.

(f) Prior to December 5, 1957, ABC, directly and through its subsidiaries and affiliates, operated 544 vending concessions in the State of Pennsylvania, of which 479 were located in indoor, and 65 in outdoor, motion picture theatres. At this time, ABC, directly and through its subsidiaries and affiliates, operated 351 vending concessions in the State of New Jersey, of which 324 were located in indoor, and 27 in outdoor, motion picture theatres. Prior to December 5, 1957, Charles Sweets operated vending concessions in 44 motion picture theatres in parts of eastern Pennsylvania and southern New Jersey but primarily in the greater metropolitan area of Philadelphia, Pennsylvania. In this area, Charles Sweets as of this time was ABC's and Berlo's largest competitor in the operation of vending concessions in motion picture theatres.

PAR. 7. (a) On or about September 28, 1957, ABC entered into an agreement with Confection Cabinet and certain of its shareholders to purchase or acquire substantially all of the assets, concessions, and business of Confection Cabinet and its operating companies in exchange for 116,667 shares of ABC's common stock and \$65,665 in cash. Pursuant to said agreement ABC acquired all of the capital stock,

assets, concessions, and business of 34 wholly owned subsidiaries of Confection Cabinet, the capital stock interests owned by Confection Cabinet in 4 other affiliated corporations, and the equity interests owned by Confection Cabinet in two partnerships, plus other assets and properties owned by Confection Cabinet, including its corporate name, Confection Cabinet Corp. By said agreement, this acquisition was effective as of September 30, 1957, on which date the value of the 116,667 shares of ABC's common stock was \$14 per share, or \$1,633,338 in the aggregate. The net value of the assets, stock and other interests of the subsidiaries acquired by ABC from Confection Cabinet for the 116,667 shares of stock aggregated \$1,636,069 as of September 30, 1957. By said acquisition agreement, which was consummated on October 28, 1957, ABC acquired and integrated into its operations, the assets, concessions, and business of the following named wholly owned subsidiaries of Confection Cabinet:

1. Arizona Confection Cabinet Corp.
2. Calumet Refreshments, Inc.
3. Central Confection Cabinet Corp.
4. Concab Realty Co.
5. Florida Confection Cabinet Corporation
6. Fresh Pack Candies, Inc.
7. LeJeune Concessions, Inc.
8. Louisiana Confection Cabinet Corp.
9. Michigan Confection Cabinet Corporation
10. Mississippi Confection Cabinet Corp.
11. St. Clair Drive-In Refreshments, Inc.
12. Speedway Refreshments, Inc.
13. Tennessee Confection Cabinet Corp.
14. Texas Confection Cabinet Corp.
15. New York Toasted Nut House, Inc.
16. Ohio Confection Cabinet Corporation
17. Quincy Drive-In Refreshments, Inc.
18. Riverdale Refreshments, Inc.
19. Niles Drive-In Refreshments, Inc.
20. Bay Drive-In Refreshments, Inc.
21. Fraser Drive-In Refreshments, Inc.
22. Pontiac Drive-In Refreshments, Inc.
23. Drive-In Refreshments, Inc.
24. Asbury Drive-In Refreshments, Inc.
25. Morris Plains Drive-In Refreshments, Inc.
26. Union Drive-In Refreshments, Inc.

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27. New Brunswick Drive-In Refreshments, Inc.
28. Illinois Refreshments, Inc.
29. Outdoor Refreshments, Inc.
30. Super Popcorn Company
31. Custardland, Inc.
32. Superior Beverage Corp.
33. Cafeterias, Inc.
34. Confection Cabinet Corp., a Delaware corporation

Pursuant to said agreement Confection Cabinet's 50 percent capital stock interest in two other affiliated corporations, Supurmatic Vendors, Inc., and Merchandising Corporation, and Merchandising Corporation's wholly owned subsidiary, Supurdisplay, Incorporated, were also acquired by ABC.

Pursuant to said agreement of September 28, 1957, ABC also acquired for \$65,665 in cash the capital stock interests of the principal stockholders of Confection Cabinet in two other corporations and the principal shareholders' equity interests in two partnerships as follows:

	<i>Percent</i>
New York Popcorn, Inc., a New York Corporation-----	50
Refreshment Service, Inc., a Wisconsin Corporation-----	30
C & S Candy Co., a partnership-----	88.2
Stein, Smerling & Stern, a partnership-----	(1)

¹ Interest unknown.

(b) On or about September 20, 1957, respondent Berlo entered into an agreement with Charles Sweets and Charles Amsterdam to purchase or acquire the stock, assets, concessions, and business of Charles Sweets and Sweets Concession for approximately \$229,000. Said agreement provided that Berlo could take title in its own name or in the name of an affiliate. When said agreement was consummated on December 5, 1957, title to the stock and assets of Charles Sweets and Sweets Concession was taken partly by respondent ABC and partly by Vending Concessions, Inc., a newly formed wholly owned subsidiary of ABC. By virtue of said agreement, ABC acquired and integrated into its overall operations the stock, assets, concessions, and business of Charles Sweets and Sweets Concession.

PAR. 8. The effect of the aforesaid acquisitions by the respondents named herein may be substantially to lessen competition or to tend to create a monopoly in the lines of commerce in which said respondents and Confection Cabinet, Charles Sweets, and Sweets Concession were engaged.

More specifically, the aforesaid effects include the actual or poten-

tial lessening of competition or a tendency to create a monopoly in the following ways, among others:

(a) Actual and potential competition between respondents and Confection Cabinet has been and will be eliminated in the business of acquiring, maintaining, and otherwise operating vending concessions in indoor and outdoor motion picture theatres in every State or area in which they competed, especially in the States of New York and New Jersey, and in various parts thereof, and particularly in the greater metropolitan area of New York, New York, including northern New Jersey.

(b) Actual and potential competition between respondents and Charles Sweets and Sweets Concession has been and will be eliminated in the business of acquiring, maintaining, and otherwise operating vending concessions in motion picture theatres in every State or area in which they competed, especially in the States of Pennsylvania and New Jersey and in various parts thereof, and particularly in the greater metropolitan area of Philadelphia, Pennsylvania.

(c) The aforesaid acquisitions have increased substantially ABC's overall position in the vending concession business in indoor and outdoor motion picture theatres by increasing substantially the number of such theatre concessions operated or controlled by ABC, directly and through its subsidiaries and affiliates, to the detriment of actual or potential competition.

(d) By its acquisition of Confection Cabinet, ABC, the largest operator of vending concessions in motion picture theatres in the United States, has eliminated its largest and principal competitor in the operation of vending concessions in motion picture theatres in certain sections of the country, especially in the States of New York and New Jersey, and in various parts thereof, and particularly in the greater metropolitan area of New York, New York, including northern New Jersey.

(e) By its acquisition of the stock, assets, and business of Charles Sweets and Sweets Concession through respondent Berlo, ABC, the largest operator of vending concessions in motion picture theatres in the United States, has eliminated its and Berlo's largest and principal competitors in the operation of vending concessions in motion picture theatres in the greater metropolitan area of Philadelphia, Pennsylvania.

(f) By reason of the aforesaid acquisitions, and the dominant and controlling position ABC occupied in the motion picture theatre concession business prior to these acquisitions, ABC has been placed in a monopolistic position in the operation of vending concessions in

motion picture theatres in certain sections of the country, especially in the States of New York, New Jersey, and Pennsylvania, and particularly in the greater metropolitan area of New York, New York, including northern New Jersey, and in the greater metropolitan area of Philadelphia, Pennsylvania.

(g) By reason of the aforesaid acquisitions, and the dominant position ABC occupied in the theatre concession field prior to these acquisitions, ABC, directly and through its subsidiaries and affiliates, is now one of the few concessionaires, and sometimes the only one, with whom motion picture theatre owners, in certain sections of the country, may contract and do business in arranging for the placement of vending concessions in their theatres.

(h) The aforesaid acquisitions have further substantially increased the dominant position which ABC enjoyed prior to these acquisitions, with the result that ABC, directly and through its subsidiaries and affiliates, now has, or may have, a decisive competitive advantage over its competitors in the acquisition, maintenance, and operation of vending concessions in motion picture theatres.

(i) The aforesaid acquisitions have substantially increased the purchase requirements of ABC, its subsidiaries, and affiliates, to such an extent that ABC, its subsidiaries, and affiliates, now have a decisive competitive advantage over competitors in the purchase of vended products and vending fixtures and equipment.

(j) Entry of prospective concessionaires into the business of operating vending concessions in motion picture theatres has been, or may be, discouraged because of the substantial number of theatre concessions operated or controlled by ABC, directly and through its subsidiaries and affiliates, and because of the dominant position, financial resources, and economic power of ABC in the areas in which it operates, especially in the States of New York, New Jersey, and Pennsylvania, and in various parts thereof, particularly in the greater metropolitan area of New York, New York, including northern New Jersey, and in the greater metropolitan area of Philadelphia, Pennsylvania.

(k) Concentration generally in the theatre concession field has been further greatly increased in that ABC, which was the largest concessionaire doing business in motion picture theatres prior to the acquisition, has increased substantially the number of motion picture theatre concessions which it controls or operates, directly and through its subsidiaries and affiliates; has increased substantially its capital, resources, operating facilities, and economic power; has eliminated from the concession field ABC's largest competitor and the only re-

maintaining concessionaire which competed with it on other than a local basis; and in the area of Philadelphia, Pennsylvania, has removed from the concession field its and Berlo's largest competitors.

(1) Actual and potential competition generally in the business of acquiring, maintaining, and otherwise operating vending concessions in motion picture theatres has been, or may be, further substantially lessened and the tendency toward monopoly in said business has been, or may be, further accelerated by the aforesaid acquisitions.

PAR. 9. The foregoing acquisitions, acts, and practices of respondents, as hereinbefore alleged and set forth, constitute violations of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18) as amended and approved December 29, 1950.

COUNT II

Charging violation of Section 5 of the Federal Trade Commission Act, the Commission alleges:

PARAGRAPH 1. Paragraphs One through Eight of Count I are incorporated herein by reference and made a part of the allegations of this Count II of the complaint as if set forth in full text herein. In the course and conduct of their business, respondents, ABC Vending Corporation and Berlo Vending Company, are engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 2. The acquisitions by respondent ABC, directly and through respondent Berlo, of the stock, business, assets, or facilities of other firms, engaged in the business of acquiring, maintaining, and otherwise operating vending concessions in motion picture theatres, or of other firms engaged in supplying merchandise to vendors of concessionary products in motion picture theatres, have been, are, or may be to the prejudice and injury of the public, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, and any future similar acquisitions by ABC, its subsidiaries, affiliates, officers, employees, or agents, or by Berlo, will further increase respondents' dominant and monopolistic position in said industry.

PAR. 3. Respondent ABC, operating directly and through its subsidiaries, as the largest operator of vending concessions in motion picture theatres in the industry, has been, and is now, able to exercise an actual and potential monopoly power both to frustrate the growth and business potential of its competitors and to eliminate their opportunities for business survival. In the course and conduct of its business, ABC, operating directly and through its subsidiaries, including Berlo, has used its dominant position and economic power to engage in, and

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is now continuing to engage in, certain methods, acts, and practices which have the capacity, tendency, and effect of unduly hindering, lessening, restricting, or eliminating competition and unfairly diverting business to ABC, its subsidiaries, and affiliates, and away from their competitors who are in the business of acquiring, maintaining, and otherwise operating vending concessions in motion picture theatres, or who supply merchandise to vendors of concessionary products in motion picture theatres. Such methods, acts, and practices include the following, among others:

(a) Offering and making preclusive and unwarranted advances of funds, loans, or periodic commission payments to motion picture theatre owners or operators in such substantial amounts as to foreclose competition, in order to exclude competitors from effectively competing with ABC, its subsidiaries, and affiliates, for concessionary rights in motion picture theatres.

(b) Offering and extending additional substantial advances of funds, loans, or periodic commission payments to motion picture theatre owners or operators already indebted to ABC, its subsidiaries, and affiliates, to perpetuate, or further extend for unreasonable periods of time, the exclusive right to continue to operate vending concessions at such theatres.

(c) Offering and furnishing to motion picture theatre owners or operators preclusive inducements, such as new or remodeled vending facilities, fixtures and equipment, or other inducements, of such substantial value as to foreclose competition, in order to exclude competitors from effectively competing with ABC, its subsidiaries, and affiliates, for concessionary rights in motion picture theatres.

(d) Foreclosing and precluding competitors from an opportunity to compete with ABC, its subsidiaries, and affiliates, for concessionary rights in motion picture theatres, by negotiating, entering into, and renewing long term contracts or other arrangements with motion picture theatre owners or operators for the exclusive right to maintain and operate vending concessions in such theatres for unreasonable periods of time.

(e) Utilizing its dominant position and economic power as the largest operator of vending concessions in motion picture theatres in the industry:

(1) To command and receive for ABC, its subsidiaries, and affiliates, favored treatment from manufacturers and suppliers in the purchase of merchandise sold through their vending concessions. For example, ABC and Berlo have purchased, and do purchase, certain

candy products, such as special size bars and packages, on an exclusive or substantially exclusive basis, and have obtained, and do obtain, special terms, conditions, prices, and other favored treatment from certain manufacturer-suppliers.

(2) To influence, persuade, or coerce certain manufacturers or suppliers of concessionary products to refrain from selling their products, or certain of their products, to competitors of respondents.

PAR. 4. The effect of the methods, acts, and practices hereinbefore described and alleged in Paragraph Three, and things done pursuant to them, have been, are or may be, to divert to respondent ABC, its subsidiaries and affiliates, including respondent Berlo, and away from their competitors a substantial share of the available concessionary business in motion picture theatres in the United States, especially in the States of New York, New Jersey, and Pennsylvania; to discourage and tend to foreclose the entry of new competitors into the concessionary field in motion picture theatres; to lessen, hinder, restrain, and suppress competition from competitors in the acquiring of supply arrangements or concessionary rights in motion picture theatres; to cause theatre owners to refrain from granting concessionary rights or supply arrangements to competitors; to foreclose competitors from acquiring concessionary rights or supply arrangements from the owners of the principal theatre circuits and larger theatres in many sections of the country; to cause suppliers of vended products, especially certain candy manufacturers, to sell special size packages and bars of candy to ABC, its subsidiaries, and affiliates, on an exclusive basis and to refrain from selling such special candy products to competitors; to cause suppliers of vended products, especially candy suppliers, to sell their products to ABC, its subsidiaries, and affiliates, at prices and on terms and conditions which are more favorable than the prices, terms, and conditions accorded competitors; to enable ABC, directly and through its subsidiaries, including Berlo, to foreclose competition for concessionary rights in motion picture theatres by offering and furnishing such terms, commissions, and inducements as to preclude competitors from effectively competing for such locations; to enable respondent ABC, directly and through its subsidiaries and affiliates, including respondent Berlo, to dominate the concessionary business in motion picture theatres to such an extent that in certain sections of the country ABC, its subsidiaries, and affiliates, are the only concessionaires with whom theatre owners may do business; and to tend to create a monopoly in respondent ABC, in the concessionary business in motion picture theatres in certain sections of the country.

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PAR. 5. The foregoing acquisitions, acts, and practices of respondents as herein alleged in this COUNT II are all to the prejudice of competitors and to the prejudice of the public; have a tendency to hinder and prevent, and have actually hindered and prevented, competition in the concessionary business in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in the concessionary business and have a tendency to create in ABC a monopoly in the concessionary business; and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act.

Mr. William J. Boyd, Jr., and Mr. Peter Jeffrey for the Commission.
Schnader, Harrison, Segal & Lewis, by *Mr. Edward W. Mullinix*
and *Mr. Kimber E. Vought*, Philadelphia, Pa., for the respondents.

DECISION AND ORDER

The complaint in this proceeding which issued on November 4, 1959, having charged respondents with violation of the Federal Trade Commission Act and Section 7 of the Clayton Act, as amended, and an agreement having been entered into which agreement contains, *inter alia*, an order to cease and desist and to divest, an admission by the respondents of all the jurisdictional facts set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having determined that it should waive and hereby having waived the timely filing of notice of intent to enter into a consent agreement as prescribed by the Commission's Notice of July 14, 1961; and

The Commission, having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent ABC Consolidated Corporation, whose name prior to May 1, 1964, was ABC Vending Corporation, is a corporation organized and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 50-01 Northern Boulevard, Long Island City, New York.

Respondent Berlo Vending Company is a wholly-owned subsidiary of respondent ABC Consolidated Corporation and is a corporation or-

ganized and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 333 South Broad Street, Philadelphia, Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I

It is ordered, That respondent ABC Consolidated Corporation, including respondent Berlo Vending Company, and their officers, directors, agents, representatives and employees, within twelve (12) months from the date of service of this Order, shall divest themselves absolutely, in good faith, to a purchaser or purchasers, approved by the Federal Trade Commission, of motion picture theater concessions and contract rights for the operation of motion picture theater concessions in the continental United States having aggregate concessionary sales of not less than \$4,000,000 of which not less than \$3,500,000 shall be in the New York and Philadelphia film exchange areas (defined later herein). Drive-in theater concessions included in the divestiture shall be not less than ten (10) in number, nor more than $\frac{1}{6}$ of the total number of motion picture theater concessions to be divested in the New York and Philadelphia film exchange areas. Said theater concession and contract rights to be divested under this Order shall include all the assets, properties, rights and privileges, tangible and intangible, including, but not limited to, concession rights, vending machines, concession stands, fixtures, and other equipment required by the purchaser to operate the divested motion picture theater concessions.

II

It is further ordered, That the assets required to be divested under Section I of this Order shall not be sold or transferred, directly or indirectly, to anyone who at the time of the divestiture is a stockholder, officer, director, employee, or agent of, or otherwise directly or indirectly connected with, or under the control or influence of, respondents, or any of respondents' subsidiary or affiliated companies.

III

As used in this Order, the New York and Philadelphia film exchange area comprises the following listed counties in the States of New York, New Jersey, Pennsylvania, and Delaware:

New York Film Exchange Area

New York Counties

Bronx	Orange	Suffolk
Dutchess	Putnam	Ulster
Kings	Queens	Westchester
Nassau	Richmond	
New York	Rockland	

New Jersey Counties

Bergen	Middlesex	Somerset
Essex	Monmouth	Sussex
Hudson	Morris	Union
Hunterdon	Passaic	Warren

Philadelphia Film Exchange Area

Pennsylvania Counties

Adams	Lackawanna	Philadelphia
Berks	Lancaster	Pike
Bradford	Lebanon	Schuylkill
Bucks	Lehigh	Snyder
Carbon	Luzerne	Sullivan
Chester	Lycóming	Susquehanna
Columbia	Monroe	Tioga
Cumberland	Montgomery	Union
Dauphine	Montour	Wayne
Delaware	Northampton	Wyoming
Franklin	Northumberland	York
Juniata	Perry	

New Jersey Counties

Atlantic	Cape May	Mercer
Burlington	Cumberland	Ocean
Camden	Gloucester	Salem

Delaware Counties

Kent	New Castle	Sussex
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IV

As used in this Order, the term "concessionary sales" means the sales of all products sold at indoor or drive-in motion picture theater concessions.

V

As used in this Order, the term "concessionary products" refers collectively to products suitable for resale in concessions located in indoor or drive-in motion picture theaters, including, but not limited to, candy, popcorn, nuts, soft drinks, beverage syrups, ice cream, cigarettes and other related products.

VI

It is further ordered, That for a period of three (3) years from the date of divestiture, but only so long as a divested motion picture theater concession location is served by the purchaser which was approved by the Commission and which purchased from respondents pursuant to said approval, respondents shall not solicit, acquire or operate, directly or indirectly, any such theater concession divested pursuant to this Order.

VII

It is further ordered, That, for a period of ten (10) years from the date of service of this Order, respondents shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, any assets, stock, or other share capital, or any other interest, in any other business, corporate or otherwise, which is engaged in the operation of concessions in motion picture theaters in the United States, without the prior approval of the Federal Trade Commission.

VIII

It is further ordered, That respondent, ABC Consolidated Corporation, its subsidiaries and affiliates, including respondent Berlo Vending Company, and their respective officers, directors, representatives, agents and employees, directly or through any corporate or other device, in, or in connection with, the business of supplying or operating concessions in motion picture theaters in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Contracting, or offering to enter into contracts with owners or operators of motion picture theaters (exhibitors) for exclusive concessionary rights at such theaters for periods of time greater than five (5) years; provided, however, that any such contract covering indoor motion picture theater concessions shall be terminable by the exhibitor at any time following the expiration of thirty-six (36) months from the date of such contract, and any such contract covering drive-in motion picture theaters shall

be terminable by the exhibitor at any time following the expiration of forty-eight (48) months from the date of such contract; provided further that in the event of any such termination prior to the expiration of five (5) years, the exhibitor may be obligated to repay any outstanding loans or advances and any unamortized cost of equipment depreciated over a maximum amortization period of not more than five (5) years.

IX

It is further ordered, That respondent ABC Consolidated Corporation, and its subsidiaries and affiliates, including respondent Berlo Vending Company, and their respective officers, directors, representatives, agents and employees, directly, or through any corporate or other device, in, or in connection with, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act (15 U.S.C. 45), of products suitable for resale by respondents in motion picture theater concessions, or in connection with any other transaction between respondents and their various suppliers, involving or pertaining to the regular business of respondents, in distributing and selling motion picture theater concessionary products in the course of commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith with cease and desist from:

Inducing and receiving or receiving any price, allowance, term, exclusive package, or any other consideration or thing of value from any manufacturer or other supplier of concessionary products, when, in either inducing and receiving or receiving, respondents know or should know that such price, allowance, term, exclusive package, or other consideration or thing of value is not affirmatively offered and made available on proportionally equal terms to all other customers of such manufacturer or supplier competing with respondents for the operation of concessions in motion picture theaters.

X

It is further ordered, That respondent ABC Consolidated Corporation shall, within ninety (90) days from the date of service of this Order, notify each manufacturer or other supplier of concessionary products from which respondent ABC Consolidated Corporation, its subsidiaries and affiliates, including respondent Berlo Vending Company, made any purchase in commerce, or in the course of commerce, for resale in motion picture theater concessions, during a period of six (6) months prior to the date of service of this Order that the

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Complaint

Federal Trade Commission has ordered ABC Consolidated Corporation, its subsidiaries and affiliates, including respondent Berlo Vending Company, and their respective officers, directors, representatives, agents and employees, directly or through any corporate or other device, forthwith to cease and desist from inducing and receiving or receiving any price, allowance, term, exclusive package, or other consideration, or thing of value, when, in either inducing and receiving or receiving, respondents know or should know that such price, allowance, term, exclusive package, or other consideration or thing of value is not affirmatively offered and made available on proportionally equal terms to all of respondents' competitors operating concessions in motion picture theaters.

XI

Respondents shall periodically, within sixty (60) days from the date of service of this Order 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.