

Docket C-2370. Complaint, Mar. 26, 1973—Decision, Mar. 26, 1973.

Consent order requiring one of the nation's largest publicly held industrial corporations, headquartered in Chicago, Illinois, among other things, to take immediate steps to create a viable new entrant into the business of manufacturing automobile brake friction materials for passenger automobile disc brakes by either divesting necessary equipment or providing the new entrant with sufficient financial aid and technical assistance to buy equipment elsewhere; to grant to the new firm a

Complaint

82 F.T.C.

nonexclusive, royalty-free right to use all United States patents held by ICI relating to the manufacture of passenger automotive brake friction materials; the acquired company to contract, at the option of the new company, to purchase for five years up to 75 percent of its requirements of passenger automobile disc brake pads for resale, and in addition 75 percent of its requirements of its automobile brake friction materials in the event the new firm undertakes to expand into the manufacture of these products.

Further, order prohibits the acquired company from selling or purchasing, except in emergency situations, either flashers manufactured or distributed by ICI or certain items which contain automotive brake friction materials manufactured or distributed by ICI; the acquisition by the respondent and the acquired company for a five-year period of any domestic franchised Midas Muffler Shop, except in distress situations; reciprocal purchase or sale arrangements; exchange of statistical data to ascertain or further any reciprocal relationship; and requires the destruction of certain statistical data and the divestiture of the Signal Stat flasher facilities within a maximum of two years.

COMPLAINT

The Federal Trade Commission having reason to believe that Illinois Central Industries, Inc., a corporation subject to the jurisdiction of the Commission, has acquired the stock of Midas-International Corporation, a corporation, in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. Section 18), and Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45 (a) (1)), hereby issues this complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. Section 21) and Section 5 of the Federal Trade Commission Act (15 U.S.C. Section 45 (a) (6) (b)), stating its charges in that respect as follows:

I. DEFINITIONS

1. For the purpose of this complaint, the following definitions shall apply:

(a) "Automotive brake friction materials" are blocks, strips, rolled and disc brake materials and pads composed of non-sintered materials and used to retard or stop motion of passenger cars, trucks, trailers and any self-propelled land vehicle, excluding railway equipment.

(b) "Flashers" are switches used in automobiles, trucks and buses to actuate turn signal or hazard warning indicators.

(c) The term "domestic" shall refer to operations or sales made within the United States.

II. ILLINOIS CENTRAL INDUSTRIES, INC.

2. Respondent, Illinois Central Industries, Inc., (hereinafter

"ICI"), is now, and was at the time of the acquisition a Delaware corporation with its principal office and place of business located at 135 East Eleventh Place, Chicago, Illinois.

3. In 1970 ICI had sales of \$712.0 million and assets of \$1,627.2 million. In that year, it was the 161st largest publicly held industrial corporation in the nation in total sales.

4. As of November 16, 1971, ICI owned and operated one of the nation's largest railroads; manufactured friction materials, wear control products and fluid power controls; and was one of the largest bottlers of soft drinks.

5. ICI's subsidiary, Abex Corporation (hereinafter "ICI-Abex"), is the nation's third largest producer of automotive brake friction materials. In 1970 ICI-Abex's domestic shipments of such automotive brake friction materials were \$13.8 million, and in 1971, \$15.9 million, accounting for 13 percent of the domestic automotive friction materials market. In 1971 ICI-Abex's domestic shipments of automotive brake friction materials for use in original equipment production were \$6.8 million, or 17.9 percent of that domestic market; and its shipments for domestic replacement use were \$9.2 million, or 10.7 percent of that domestic market.

6. In the United States, ICI-Abex produces complete replacement disc brake pads and replacement automotive friction materials in the form of blocks and lining for automotive brake shoes or disc brake pads. ICI-Abex currently produces replacement automotive brake shoes in Canada and has attempted to sell such brake shoes in the United States to various customers, including respondent, Midas-International Corporation. The replacement disc brake pads produced by ICI-Abex are being sold directly to wholesalers and repair shops. In recent years, ICI-Abex has encouraged the direct sale of its domestic replacement automotive brake friction materials to wholesalers and repair shops.

7. In 1970 ICI-Abex's primary customers for domestic replacement automotive brake friction materials were Wagner Electric Corporation, Genuine Parts Company and other brake shoe rebonders.

8. ICI-Abex projects a rapid increase in its sales of domestic automotive brake friction materials; and by 1976, it projects sales of such materials of \$35.4 million, accounting for 16 percent of the projected market of such materials. ICI-Abex projects its 1976 domestic sales of replacement automotive brake friction

materials as \$27.3 million, accounting for 17 percent of the projected domestic replacement market of such materials.

9. ICI-Abex, through its acquisition of Signal-Stat Corporation on August 27, 1971, is the nation's leading manufacturer and seller of flashers. In 1970 its sales of such flashers were \$3.0 million, representing 40 percent of domestic flashers sales.

10. At all times relevant herein, ICI and ICI-Abex sold and shipped their products throughout the United States and were and are now engaged in commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

III. MIDAS-INTERNATIONAL CORPORATION

11. Prior to its acquisition by ICI on January 25, 1972, Midas-International Corporation (hereinafter "Midas") was a Delaware corporation with its principal office and place of business located at 105 West Adams Street, Chicago, Illinois.

12. In 1970 Midas had sales of \$66.8 million and assets of \$42.1 million.

13. Midas' business is almost entirely in two categories, the sale of replacement automotive parts and the manufacture and sale of recreational vehicles. In 1970 the sale of replacement automotive parts by Midas was \$44.1 million, or 66 percent of its entire sales. Midas' replacement automotive exhaust system parts sales were \$38.4 million in 1970, or 87 percent of its automotive parts sales. The sale of recreational vehicles and their parts by Midas in 1970 was \$22.7 million, or 34 percent of Midas' total sales.

14. Midas possesses a marketing organization designed to sell replacement automotive parts to two different types of customers: (1) independent wholesalers and retailers, and (2) Midas' franchised dealers. Midas operates eight domestic warehouses in connection with its marketing of replacement automotive parts.

15. In 1970 Midas was the fourth largest domestic supplier of replacement automotive exhaust system products, accounting for 11 percent of replacement automotive exhaust system product sales. In that year, five firms accounted for more than 80 percent of domestic replacement exhaust system product sales, including sales made to vehicle producers for resale to their dealers. As of November 16, 1971, Midas sold replacement automotive exhaust system parts and PCV valves to its independent wholesaler and retailer customers. At that time, Midas was selling and continues

to sell to its franchised dealers, not just automotive exhaust system parts and PCV valves, but also brake shoes and disc brake pads, brake parts, shock absorbers, front end parts and transmission parts. Although Midas does not currently sell automotive brake shoes and disc brake pads through its independent wholesaler and retailer marketing organization, this marketing organization is one of a few such marketers which could effectively market such products.

16. Midas is the nation's largest franchiser of specialized automotive repair facilities. The number of Midas' domestic franchisees has increased continuously, from 404 in 1966 to 612 as of September 30, 1971. Midas projects an increase in the number of its domestic franchisees to over 700 in 1972.

17. As of September 30, 1971, Midas had franchised 375 of its domestic outlets for the sale of its automotive brake shoes and disc brake pads. Midas first entered the sale of automotive brake shoes and disc brake pads through its franchisees in 1966, but did not stress this product line until 1970.

18. During 1972, Midas plans to stress increasingly the sale of automotive brake shoes and disc brake pads in its franchised outlets as the most important area of growth for the company. Midas intends to become as significant a supplier of automotive brake shoes and disc brake pads as it is a supplier of exhaust systems.

19. In 1971 Midas was one of the nation's largest purchasers of automotive brake shoes and disc brake pads. By 1973 Midas has projected that its purchases of automotive brake shoes and disc brake pads will increase substantially over its 1971 purchase of such products.

20. In 1972 Midas plans to begin the sale of ignition parts, such as flashers, to its franchisees. By virtue of its position as the leading domestic franchised distributor of automotive parts to specialized repair shops and its entry into the sale of ignition parts, Midas should become a substantial purchaser of flashers by 1973.

21. In 1970 Midas was the second largest domestic producer of recreational travel trailers. Midas is also a substantial seller of replacement parts for recreational travel trailers in the United States. In 1970 it sold \$7.3 million of such parts to more than 4,000 retail dealers throughout the United States.

22. Midas is a substantial purchaser of components containing

automotive brake friction materials for use in manufacturing recreational vehicles, such as travel trailers, and resale of parts for recreational vehicles. In 1970 its purchases of such components containing automotive brake friction materials were \$575,000.

23. At all times relevant herein, Midas sold and shipped its products throughout the United States and was and is now engaged in commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

IV. THE ACQUISITION

24. On November 5, 1971 ICI and Midas-International Corporation entered into an agreement providing for the acquisition of Midas by ICI through the conversion of Midas stock into ICI common shares. On January 25, 1972, ICI acquired all the stock of Midas-International Corporation.

V. TRADE AND COMMERCE

25. The relevant geographic market involved in this complaint is the United States as a whole. The relevant product markets are:

(a) Manufacture, distribution and sale of automotive brake friction materials, within which the relevant product submarkets are:

(i) Automotive brake friction materials for original equipment production;

(ii) Automotive brake friction materials for replacement use; and

(b) Manufacture, distribution and sale of automotive flashers.

A. Automotive Brake Friction Materials

26. The domestic market for automotive brake friction materials was \$79.3 million in 1970. Of this amount, \$26 million was used in original equipment production and \$53 million was for replacement use.

27. Concentration in the manufacture of automotive brake friction materials is high, with the top five firms accounting for over 60 percent of total domestic sales in 1970. Likewise, concentration is high in the two submarkets for automotive brake friction materials with the top four firms accounting for 57 percent of domestic sales for use in original equipment production and the top four firms accounting for 48 percent of domestic sales for replacement use.

28. Since 1968, entry into the manufacture and sale of automotive brake friction materials for replacement use has become more difficult. The type of replacement automotive brake friction materials used on late model vehicles requires a greater degree of expertise to manufacture than did the replacement automotive brake friction materials used in the early 1960's. Also, the United States government has established stringent standards which all replacement automotive brake lining must meet if such lining is to be sold in the United States.

29. In 1971 only one of the five largest producers of replacement automotive brake friction materials produced both new and rebonded automotive brake shoes. Each of the other four leading producers of replacement automotive brake friction materials sells primarily to rebonders, who purchase automotive brake lining to bond or rivet onto used automotive brake shoe cores. However, each of these leading producers of replacement automotive brake friction materials produced complete disc brake pads, many of which are reboxed by automotive brake shoe rebonders and sold under the trade names of such rebonders.

30. The structure of the domestic replacement automotive brake friction materials market has been altered by the advent of the disc brake. Although used for many years on certain imported cars, disc brakes did not account for a significant share of equipment on domestically produced cars prior to 1968. Since 1968, disc brakes have enjoyed an explosive increase in popularity. More than one-half of all 1971 model automobiles sold in the United States were equipped with front wheel disc brakes. Moreover, the automobile industry predicts that by 1975-1976, almost all automobiles sold in the United States will be equipped with disc brakes on all four wheels. Since each leading producer of replacement automotive brake friction materials produces complete disc brake pads, these producers now can sell their replacement automotive brake friction materials direct to wholesalers and retailers instead of the former pattern of selling to rebonders who in turn sell to wholesalers or retailers.

31. The pattern of the type of retail outlet selling replacement automotive brake shoes and disc brake pads has undergone a change in the last 15 years. Formerly automobile dealers and independent garages performed most brake repair work. However, there has been a significant trend for the shifting of brake repair work from automobile dealers and repair shops to service stations

and mass merchandisers, including specialized franchised repair shops.

32. By virtue of Midas' substantial present and future purchases of automotive brake shoes and disc brake pads, Midas could require its suppliers of these items to purchase some or all of their requirements of replacement automotive brake friction materials from ICI-Abex. By so doing, Midas could secure for ICI-Abex additional sales of replacement automotive brake friction materials to firms such as Wagner Electric Corporation and Genuine Parts Company, who each represent 10 percent or more of the domestic purchases of replacement automotive brake friction materials. The combined ICI-Abex and Midas organization would be the only existing producer of replacement automotive brake friction materials which owns or controls a substantial purchaser of automotive brake shoes and disc brake pads. Further, rebonders of brake shoes may purchase their requirements of replacement automotive brake friction materials from ICI-Abex in hopes of securing the reciprocal patronage of Midas for purchases of their automotive brake shoes and disc brake pads.

33. By virtue of Midas' substantial present and future purchases of recreational vehicle components containing automotive brake friction materials, Midas could require its suppliers of such components to purchase their entire requirements of automotive brake friction materials from ICI-Abex. By so doing, Midas could secure substantial additional sales of automotive brake friction materials for ICI-Abex and relieve ICI-Abex of the pressure of price competition on such sales. Further, suppliers of recreational vehicle components containing automotive brake friction material may purchase their requirements of such friction material from ICI-Abex in hopes of securing the reciprocal patronage of Midas for purchases of their recreational vehicle components.

34. By virtue of the proposed acquisition, the substantial present and future purchases by Midas of automotive brake shoes, disc brake pads and automotive friction materials could be foreclosed to any supplier except ICI-Abex itself or other suppliers selected by ICI-Abex by reason of such suppliers' reciprocal purchases from ICI-Abex.

35. By virtue of its substantial present and future purchases of automotive brake shoes and disc brake pads, its reputation as

a leading seller of under-car parts to wholesalers and retailers and its extensive automotive parts distribution facilities, Midas is one of the most likely entrants into the domestic manufacture of automotive brake friction materials for replacement use.

B. Flashers

36. The domestic market for flashers was \$7.6 million in 1970. Four manufacturers accounted for over 90 percent of domestic flasher production in that year.

VI. EFFECTS OF THE ACQUISITION

37. The effects of the acquisition of Midas by ICI may be substantially to lessen competition, or to tend to create a monopoly in the manufacture, distribution and sale of automotive brake friction materials and flashers throughout the United States in violation of Section 7 of the Clayton Act, in that:

(a) The sale by ICI-Abex of automotive brake friction materials for OEM use and replacement use may be increased by reciprocal purchases, and ICI-Abex's position in these oligopolistic markets strengthened;

(b) The sale by ICI-Abex of automotive brake friction materials for replacement use may be increased through, and competitive suppliers of such materials foreclosed from, the actual and potential purchases of Midas, and ICI-Abex's position in that oligopolistic market strengthened;

(c) The sale of flashers by the Signal-Stat Division of ICI-Abex may be increased through, and other suppliers foreclosed from, the potential purchases of Midas, and Signal-Stat's dominant position enhanced and entrenched;

(d) Midas may be eliminated as a likely potential competitor in the manufacture of automotive brake friction material for replacement use.

38. The acquisition of Midas by ICI constitutes an unfair method of competition in commerce and an unfair act and practice in commerce within the meaning of Section 5 of the Federal Trade Commission Act.

VII. THE VIOLATION CHARGED

39. The acquisition of respondent, Midas, by respondent, ICI, constitutes violations of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Illinois Central Industries, Inc., is a corporation organized, existing 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 135 East Eleventh Place, in the city of Chicago, State of Illinois.
2. Respondent Midas-International Corporation is a corporation organized, existing 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 222 South Riverside Plaza, in the city of Chicago, State of Illinois.
3. 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

For the purposes of this order, the following definitions shall apply:

"Automotive brake friction materials" are blocks, strips, rolled and disc brake materials and pads composed of non-sintered materials and used to retard or stop motion of passenger cars, trucks, trailers and any self-propelled land vehicle, excluding railway equipment.

"Flashers" are switches used in automobiles, trucks and buses to actuate turn signal or hazard warning indicators.

"Automotive brake parts" are components of brakes, and entire brake units, used to retard or stop motion of passenger cars, trucks, trailers and any self-propelled land vehicle, excluding railway equipment.

The term "domestic" shall refer to operations or sales made within the United States.

"Company" refers to any business entity.

"Eligible Firm" is any company other than a company engaged in the manufacture of passenger automobiles or the manufacture or distribution of automotive brake friction materials for passenger automobiles or automotive brake parts for passenger automobiles, or any subsidiary or affiliate of any such company, and which agrees not to transfer by sale, merger or other means the assets acquired pursuant to Paragraphs I and II of this order to other than an eligible firm without the consent of the Commission.

"Purchase" and "purchases" refer to any receipt of products, services, or raw materials from another company in exchange for money, products, services, or raw materials.

"Sell" and "sales" refer to any conveyance of products or raw materials to, or any performance of services for another company in exchange for money, products, services, or raw materials.

"Commission" means the Federal Trade Commission.

"Illinois Central Industries" includes Illinois Central Industries, Inc., and any domestic subsidiary or domestic affiliate thereof including Midas-International, and any of their successors and assigns.

"Midas" includes Midas-International Corporation and any do-

mestic subsidiary or domestic affiliate thereof, and any of their successors and assigns.

"Midas Muffler Shops" include all automotive service shops authorized by Midas to utilize the "Midas" trademark, whether franchised or owned by Midas.

I

It is ordered, That respondent Illinois Central Industries shall, immediately after service upon it of this order, take steps as are provided in this order to enable an eligible firm approved by the Commission (hereinafter referred to as the Firm), to enter into business capable of producing annually approximately one million five hundred thousand dollars (\$1,500,000) (as referenced to manufacturer's sale prices current at the date of service upon Illinois Central Industries of this order) of automotive brake friction materials, and bonding thereof (to the extent performed by Illinois Central Industries at any time during the year preceding the date of service upon it of this order), for passenger automobile disc brakes. The creation of a viable new entrant into the business of manufacturing of automotive brake friction materials for passenger automobile disc brakes, as required by this order, shall be accomplished as soon as possible and in any event no later than two (2) years after service upon Illinois Central Industries of this order.

II

It is further ordered, That the requirements of Paragraph I shall be accomplished in the following manner:

A. Respondent Illinois Central Industries shall, at its option, either (1) divest to the Firm or (2) provide financial and technical assistance to enable the Firm to purchase, lease or otherwise obtain such machinery, equipment and other property (other than real property) as may be necessary to initiate a viable business engaged in manufacturing automotive brake friction materials for passenger automobile disc brakes, and bonding thereof (to the extent performed by Illinois Central Industries at any time during the year preceding the date of service upon it of this order). In the event respondent Illinois Central Industries provides financial and technical assistance to the Firm to obtain some or all of such machinery, equipment and other property,

referred to in the preceding sentence, respondent Illinois Central Industries shall assist the Firm to identify and obtain such machinery, equipment and other property. *Provided, however,* That in no event shall the Firm be required to accept machinery, equipment or other property which it deems unsuitable.

B. For a period of eighteen (18) months after the date of the closing of the divestiture required by Subparagraph II.

A. respondent Illinois Central Industries shall make available to the Firm, on terms and conditions approved by the Commission, including a final maturity on repayment not exceeding ten (10) years, financial assistance as necessary, but not to exceed in the aggregate the sum of two million dollars (\$2,000,000), for the purpose of enabling the Firm to obtain such machinery, equipment and other property referred to in Subparagraph II.A. and to provide working capital for the Firm's passenger automobile disc brake manufacturing business. Such financial assistance shall be provided to the Firm on terms and conditions approved by the Commission, at an interest rate not to exceed eight and one-half (8 1/2 percent) per annum, simple interest, and shall be secured by first liens on the assets of the Firm.

C. In the event that respondent Illinois Central Industries divests the machinery, equipment or other property to the Firm as required by this paragraph, such machinery, equipment and other property shall be appraised by an independent appraiser, acceptable to the Commission, at its then-current fair market value, which appraised value shall be considered part of the financial assistance rendered to the Firm.

D. Respondent Illinois Central Industries shall:

1. Make available to the Firm, for the nontransferable use of the Firm alone, such technical information, formulae, trade secrets and know-how necessary to establish the Firm as a viable entity in the business of manufacturing and selling automotive brake friction materials for passenger automobile disc brakes, and bonding thereof (to the extent performed by Illinois Central Industries at any time during the year preceding the date of service upon it of this order), which meet nondiscriminatory, minimum quality standards for such products promulgated by Midas and which meet

any Federal regulations in effect at the time of divestiture as required by this paragraph. Nothing in this order, however shall require Illinois Central Industries to perform research or development for the Firm in addition to that which Illinois Central Industries is performing for itself. Such technical information, formulae, trade secrets and know-how shall be made available at no cost to the Firm (except as provided herein) for a period of twenty-four (24) months after the date of the closing of the divestiture required by Subparagraph II.A. *Provided, however,* That such period may be extended for an additional twelve (12) months in the event that the Firm can demonstrate to the Commission the necessity for such an extension. The Firm shall compensate Illinois Central Industries for the pro rata salary and reasonable expenses of its employees engaged in assisting the Firm pursuant to this subparagraph at any time subsequent to a six (6) month period after the Firm begins actual production of passenger automobile disc brake pads.

2. Grant to the Firm a nonexclusive, royalty-free right to use, without right to sublicense, all United States patents relating to the manufacture of automotive brake friction materials for passenger automobile disc brakes, and bonding thereof, vested in Illinois Central Industries, or to which Illinois Central Industries has a right to sublicense, as of the date of service upon it of this order or within two (2) years thereof. Said royalty-free licenses shall be for the life of each respective patent.

3. Assist the Firm to identify and obtain facilities, including realty, in which the Firm can conduct the business of manufacturing automotive brake friction materials.

4. Assist the Firm to identify and obtain well-qualified management personnel and other employees to staff adequately the Firm; *Provided, however,* That (a) Illinois Central Industries shall not hinder or obstruct the Firm's efforts to employ employees of Illinois Central Industries; but (b) nothing herein contained shall prevent Illinois Central Industries from

enforcing all lawful employment agreements, including all provisions concerning confidentiality and employer's shop rights.

E. Respondent Midas shall, at the option of the Firm, enter into a requirements contract with the Firm under which the Firm shall, to the extent it is able, supply Midas with up to seventy-five (75) percent of Midas' requirements of passenger automobile disc brake pads for resale. Said requirements contract shall be in effect for a period of five (5) years, commencing at the time the Firm begins actual production of passenger automobile disc brake pads which meet nondiscriminatory, minimum quality standards for such products promulgated by Midas and which meet any Federal regulations in effect at the time of divestiture as required by this paragraph and shall be at prevailing market prices for the products involved at the time in question.

F. In the event that the Firm commences the manufacture, rebonding or sale of automotive brake friction materials including brake shoes for passenger automobile drum brakes prior to or during the effective period of the requirements contract provided for in Subparagraph II.E., respondent Midas shall, at the option of the Firm, enter into a requirements contract with the Firm under which the Firm shall supply Midas with up to seventy-five (75) percent of Midas' requirements of automotive brake friction materials including brake shoes for passenger automobile drum brakes for resale. Said contract shall be in effect during the effective period of the requirements contract provided for in Subparagraph II.E., or remaining portion thereof. The obligation of Midas under the contract provided for in this subparagraph shall be conditioned upon the ability of the Firm to manufacture a product which meets nondiscriminatory, minimum quality standards for such products promulgated by Midas and which meets any Federal regulations in effect at the time of divestiture as required by this paragraph, and shall be at prevailing market prices for the products involved at the time in question. *Provided, however,* That these Subparagraphs II.E. and II.F. shall not affect purchases by Midas or a subsidiary or affiliate thereof, of brake and axle assemblies from another subsidiary or affiliate of Midas.

III

It is further ordered, That respondent Illinois Central Industries shall, as soon as possible and in any event no later than two (2) years after service upon it of this order, divest itself absolutely and unconditionally, subject to the approval of the Commission, of all of the assets, properties, rights and privileges, tangible and intangible, owned by Illinois Central Industries as a result of its acquisition of the Signal-Stat Division of Lehigh Valley Industries, Inc., related to or involved in the production, distribution or sale of flashers including the following: all machinery and equipment used for or related to the manufacture and sale of flashers; all inventory in stock of flashers and of parts therefor; names of suppliers of parts, materials and equipment used in the manufacture of flashers; a list of all customers to which flashers have been sold since January 1, 1969; all plans, drawings, blueprints, tooling, patents, both domestic and foreign, which relate to the production, distribution and sale of flashers; and the exclusive, royalty-free right to use the trademark "Signal-Stat Brand" in connection with the manufacture and sale of flashers; but not to include real property, office equipment or motor vehicles.

IV

It is further ordered, That, pending divestiture required by Paragraph III, respondent Illinois Central Industries shall not take any action with respect to any of the assets, properties, rights and privileges of Signal-Stat required to be divested by Paragraph III which may impair their usefulness for the production, distribution or sale of flashers, or their market value.

V

It is further ordered, That the divestiture required by Paragraphs I and III shall not be effected, directly or indirectly, to any person who is an officer, director, employee or agent of, or otherwise under the control or influence of Illinois Central Industries, or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of common stock of Illinois Central Industries.

VI

It is further ordered, That respondent Midas, directly or indirectly or through any corporate or other device, shall within

thirty (30) days after service upon it of this order, cease and desist from:

A. Selling or distributing, directly or indirectly, or attempting to sell or distribute, automotive brake shoes and disc brake pads containing automotive brake friction materials manufactured or distributed by Illinois Central Industries, to any company, except in emergency and distress situations approved by the Commission.

B. Purchasing or obtaining from Illinois Central Industries any products containing automotive brake friction materials, except in emergency and distress situations approved by the Commission. *Provided, however,* That nothing in this order shall prevent Midas or a subsidiary or affiliate thereof from purchasing brake and axle assemblies from another subsidiary or affiliate of Midas.

C. Selling or distributing, directly or indirectly, or attempting to sell or distribute to any company, flashers manufactured or distributed by Illinois Central Industries, except in emergency and distress situations, as approved by the Commission.

D. Purchasing flashers from Illinois Central Industries except in emergency and distress situations, as approved by the Commission.

VII

It is further ordered, That respondent Illinois Central Industries shall forthwith cease and desist from:

A. Purchasing, or entering into or adhering to any agreement or understanding to purchase, from an actual or potential supplier on the understanding that any of such purchases are conditioned upon or related to any sales by any company other than such actual or potential supplier;

B. Selling, or entering into or adhering to any agreement or understanding to sell, to an actual or potential customer on the understanding that any of such sales are conditioned upon or related to any purchases by any company other than such actual or potential customer;

C. Purchasing in order to promote or induce sales to any company;

D. Selling in order to promote or induce sales by any company;

E. Communicating to any company that (1) purchases by Illinois Central Industries on its bidder lists will or may be conditioned upon or related to sales by any company; or that (2) sales by Illinois Central Industries on its bidder lists will or may be conditioned upon or related to purchases by any company;

F. Discussing, comparing, or exchanging statistical data or other information with another company in order to ascertain, develop, facilitate, or further any reciprocal relationship between purchases and sales by any such company;

G. Causing or permitting the personnel of Illinois Central Industries, who are directly engaged in obtaining sales, or who by virtue of their responsibilities are able to influence directly obtaining sales, to (1) engage in purchasing; (2) obtain statistical data or other information which shows actual or potential purchases from any company; (3) attend any meeting, a purpose of which is the discussion of Illinois Central Industries' purchases or its purchasing strategy; or (4) specify or recommend that purchases could or should be made from any company;

H. Causing or permitting the personnel of Illinois Central Industries who are directly engaged in purchasing, or who by virtue of their responsibilities are able to influence directly any determination to purchase from a particular company, to (1) engage in obtaining sales; (2) obtain statistical data or information which shows actual or potential sales to any company; (3) attend any meeting, a purpose of which is the discussion of Illinois Central Industries' sales or its strategy for obtaining sales; or (4) specify or recommend that sales could or should be made to any company.

Provided, however, That nothing in this paragraph shall prevent personnel of Illinois Central Industries from having such influence on purchasing or obtaining sales as is necessary to comply with the other provisions of this order or prevent principal executive officers from performing their regular management functions.

VIII

It is further ordered, That respondent Illinois Central Industries

1097

Decision and Order

shall, within thirty (30) days after service upon it of this order, destroy:

A. All statistical data in its possession, custody, or control which compares or otherwise relates purchases from any company to sales to such company;

B. All statistical data and other information which shows actual or potential purchases from any company and which is in the possession, custody or control of any personnel employed by Illinois Central Industries on the effective date of this order who, at any time within the two (2) years preceding the effective date of this order, were directly engaged in obtaining sales, or by virtue of their responsibilities were able to influence directly obtaining sales;

C. All statistical data and other information which shows actual or potential sales to another company, and which is in the possession, custody, or control of any personnel employed by Illinois Central Industries on the effective date of this order who, at any time within two (2) years before service upon Illinois Central Industries of this order, were directly engaged in purchasing, or by virtue of their responsibilities were able to influence directly any determination to purchase from a particular company.

Provided, however, That nothing in this subparagraph shall prevent personnel of Illinois Central Industries from compiling or maintaining such statistical data or other information as is necessary to comply with the other provisions of this order.

IX

It is further ordered, That respondent, Illinois Central Industries, shall, within thirty (30) days after service upon it of this order:

A. Issue a copy of Attachment A, hereof, to each of the personnel employed by Illinois Central Industries who, at any time within two (2) years after service upon Illinois Central Industries of this order, has directly engaged in purchasing, in obtaining sales, or in compiling or distributing statistical purchase or sales data, or by virtue of his responsibilities has been able to influence directly any of such functions.

B. Insert and maintain within any manuals and other such documents which set out the policies or procedures of

Illinois Central Industries for purchasing or for obtaining sales, or its policies relating to the compilation or distribution of statistical purchase or sales data (1) the language of Attachment A, hereof; and (2) a current list of the personnel of Illinois Central Industries, so distinguished, who are directly engaged in purchasing or in obtaining sales, or who by virtue of their responsibilities are able to influence directly either of such functions.

C. Mail a copy of Attachment B, hereof, together with a copy of this order, to each company from which Illinois Central Industries has, in either of the two (2) calendar years preceding the year of service upon Illinois Central Industries of this order, made purchases from or sales to in excess of \$50,000.

X

It is further ordered, That respondent Illinois Central Industries shall, within thirty (30) days of the third (3rd) anniversary after service upon it of this order:

A. Cause each of its then-current personnel who, at any time subsequent to the date of service upon Illinois Central Industries of this order, has directly engaged in obtaining sales on behalf of Illinois Central Industries, or by virtue of his responsibilities has been able to influence directly the obtaining of such sales, to complete and furnish to the legal department of Illinois Central Industries a sworn statement in the form of Attachment C, hereof;

B. Cause each of its then-current personnel who, at any time subsequent to the date of service upon Illinois Central Industries of this order, has directly engaged in purchasing on behalf of Illinois Central Industries, or by virtue of his responsibilities has been able to influence directly any determination to purchase from a particular Company, to complete and furnish to the legal department of Illinois Central Industries a sworn statement in the form of Attachment D, hereof;

C. Request each of its personnel who, at any time subsequent to the date of service upon Illinois Central Industries of this order, has directly engaged in obtaining sales on behalf of Illinois Central Industries, or by virtue of his responsibilities has been able to influence directly the ob-

taining of such sales, and who leaves the employ of Illinois Central Industries prior to the third (3rd) anniversary of the date of service upon Illinois Central Industries of this order, to complete and furnish to Illinois Central Industries' legal department, within ten (10) days preceding such termination of employment, a sworn statement in the form of Attachment C, hereof;

D. Request each of its personnel who, at any time subsequent to the date of service upon Illinois Central Industries of this order, has directly engaged in purchasing on behalf of Illinois Central Industries, or by virtue of his responsibilities has been able to influence directly any determination to purchase from a particular company, and who leaves the employ of Illinois Central Industries prior to the third (3rd) anniversary of the date of service upon Illinois Central Industries of this order, to complete and furnish to the legal department of Illinois Central Industries, within ten (10) days preceding such termination of employment, a sworn statement in the form of Attachment D, hereof.

XI

It is further ordered, That respondent, Illinois Central Industries, shall within sixty (60) days of the third (3rd) anniversary of the date of service upon Illinois Central Industries of this order submit to the Commission copies of all sworn statements which it has received pursuant to Paragraph X.

XII

It is further ordered, That respondent Illinois Central Industries shall, for a period of ten (10) years from the date of service upon it of this order, cease and desist from acquiring, directly or indirectly, without the prior approval of the Commission, all or any part of the stock, share capital, assets or any interest in any company engaged in the domestic manufacture or domestic wholesale distribution of automotive brake shoes, automotive disc brake pads, automotive brake parts or flashers, (other than products, machinery, and equipment sold in the normal course of business and nonexclusive patent and know-how licenses) or from entering into any arrangements with any such concern by which Illinois Central Industries obtains the market share, in whole or in part, of such concern in such product lines. As used in the preceding sentence, the phrase

"assets or any interest" shall refer to assets or any interest relating to the product lines enumerated therein.

XIII

It is further ordered, That respondents Midas and Illinois Central Industries, shall, for a period of five (5) years from the date of service upon it of this order, cease and desist from acquiring, directly or indirectly, without the prior approval of the Commission, all or any part of the stock, share capital, assets or any interest in any domestic franchised Midas Muffler Shop, except for distress situations, in which event Midas shall not own or hold an interest in all or any part of the stock, share capital, assets or any interest in any franchised Midas Muffler Shop, or its successors or assigns, acquired after the date of service upon Midas of this order, for more than twelve (12) months. Nothing in this order shall prevent Midas from opening any new Midas Muffler Shops which are to be owned or operated by Midas. *Provided, however,* That these Paragraphs XII and XIII shall not apply to an interest arising out of the conversion of a debt interest acquired incident to a sale or other transaction and disposed of within twelve (12) months, or to any interests, rights or privileges arising out of a standard franchise agreement, or agreement to supply goods or services in the normal course of doing business, between Midas and actual or prospective Midas Muffler Shops.

XIV

It is further ordered, That, for the purpose of determining or securing compliance with this order, respondent Illinois Central Industries shall, upon written request, on reasonable notice and subject to any legally recognized privilege, grant permission to interview any personnel of Illinois Central Industries at a reasonably convenient time regarding any matter prohibited or required by this order.

XV

It is further ordered, That respondent Illinois Central Industries shall:

- A. Within thirty (30) days from the date of service upon it of this order and every thirty (30) days thereafter until it has fully complied with Paragraphs I through V of this order, submit a report in writing to the Commission

setting forth in detail the manner and form in which it intends to comply, is complying or has complied therewith. All such reports shall include, in addition to such other information and documentation as may hereafter be requested by the Commission, without limitation, (1) a specification of the steps taken by Illinois Central Industries to make public its desire to make the divestitures required by Paragraphs I and III of this order; (2) a list of all persons or organizations to whom notices of divestiture have been given; (3) a summary of all discussions and negotiations, together with the identity and addresses of all interested persons or organizations; and (4) copies of all reports, internal memoranda, offers, counter-offers, communications and correspondence concerning said divestiture.

B. Within sixty (60) days from the State of service upon it of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with Paragraphs VI through IX of the order, including, but not limited to the name and title of each individual to whom a copy of Attachment A, hereof, was issued pursuant to Paragraph IX.A. of this order, and the name of each company to which a copy of this order was mailed pursuant to Paragraph IX.C. of this order.

C. On the first (1st) anniversary of the date of service upon it of this order and on each anniversary date thereafter for a total of ten (10) years, submit a report in writing to the Commission listing all acquisitions, mergers and agreements to acquire or merge made by Illinois Central Industries; the date of each such acquisition, merger or agreement; the products involved; and such additional information as may from time to time be required by the Commission.

D. Notify the Commission at least thirty (30) days prior to any proposed changes which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, and that this order shall be binding on any such successor.

Attachment A

Re: Federal Trade Commission Order concerning the selling and purchasing activities of Illinois Central Industries and its subsidiaries.

Pursuant to an Order of the Federal Trade Commission, we issue the following policies and guidelines:

General

No employee shall:

1. discuss, compare, or exchange statistical data or other information with another company in order to ascertain, develop, facilitate, or further any relationship between our purchases and our sales.
2. prepare, maintain or in any manner obtain statistical data which compares or otherwise relates our purchases from a company to our sales to such company.

Purchasing

It is our policy to purchase solely on the basis of price, quality, and service. Purchasing personnel shall be prepared to justify all purchases in light of these criteria. No purchase may be conditioned upon or related to our sales or sales by any other company, nor shall any employee suggest or imply to any actual or potential supplier that any purchase is so conditioned or related.

No purchasing personnel shall:

1. engage in sales or marketing on our behalf;
2. in any manner obtain statistical data or other information which shows actual or potential sales to any company, or which specifies that purchases be made from a company because of the status of such company as an actual or potential customer;
3. attend any meeting, a purpose of which is the discussion of our sales or our strategy for obtaining sales;
4. specify or recommend to our sales or marketing personnel that sales could or should be made to any company.

Selling

No employee promoting sales to any actual or potential customer shall suggest or imply that such sales are conditioned upon or related to our purchases or purchases by any other company.

No sales or marketing personnel shall:

1. engage in purchasing on our behalf;
2. in any manner obtain statistical data or other information which shows actual or potential purchases from any company, or which specifies or recommends that sales be made to a company because of the status of such company as an actual or potential supplier;
3. attend any meeting, a purpose of which is the discussion of our purchases or our purchasing strategy;
4. specify or recommend to our purchasing personnel that purchases could or should be made from any company.

Violation of Policies or Guidelines

Violation of the above policies or guidelines shall subject any offending employee to dismissal from his employment.

Attachment B

To Our Customers and Suppliers:

Pursuant to the attached Order of the Federal Trade Commission, we

herewith advise you that it is the policy of Illinois Central Industries to purchase solely on the basis of price, quality, and service. We wish to assure you that our purchases will in no way be conditioned upon or related to our sales to you or any other company.

Chief Executive Officer

Attachment C

Name:

Dates of employment and positions held with Illinois Central Industries or its subsidiaries:

I have initialed all statements below which have been true at any time since (the date of this Order):

- _____ 1. I have not discussed, compared, or exchanged statistical data or other information with another company in order to ascertain, develop, facilitate, or further any relationship between purchases and sales by Illinois Central Industries or its subsidiaries.
- _____ 2. I have not prepared, maintained, or in some manner obtained statistical data which compared or otherwise related purchases and sales by Illinois Central Industries or its subsidiaries.
- _____ 3. I have not prepared, maintained, or in some manner obtained statistical data or other information which specified or recommended that sales could or should be made to a company because of its status as an actual or potential supplier of Illinois Central Industries or its subsidiaries.
- _____ 4. I have not suggested or implied to another company that purchases by Illinois Central Industries or its subsidiaries might be conditioned upon or related to sales to such company.
- _____ 5. I have not engaged in purchasing on behalf of Illinois Central Industries or its subsidiaries.
- _____ 6. I have not in some manner obtained statistical data or other information which showed actual or potential purchases from a company by Illinois Central Industries or its subsidiaries.
- _____ 7. I have not attended a meeting, a purpose of which was the discussion of the purchasing strategy of Illinois Central Industries or its subsidiaries.

(Signature)

City of _____

State of _____

Sworn to and subscribed
before me this _____ day of
_____, 1972.

(Notary Public)

Decision and Order

82 F.T.C.

Attachment D

Name: _____

Dates of employment and positions held with Illinois Central Industries or its subsidiaries: _____

I have initialed all statements below which have been true at any time since (the date of the Order): _____

- _____ 1. I have not discussed, compared, or exchanged statistical data or other information with another company in order to ascertain, develop, facilitate, or further any relationship between purchases and sales by Illinois Central Industries or its subsidiaries.
- _____ 2. I have not prepared, maintained, or in some manner obtained statistical data which compared or otherwise related purchases and sales by Illinois Central Industries or its subsidiaries.
- _____ 3. I have not prepared, maintained, or in some manner obtained statistical data or other information which specified or recommended that purchases could or should be made from a company because of its status as an actual or potential customer of Illinois Central Industries or its subsidiaries.
- _____ 4. I have not suggested or implied to another company that purchases by Illinois Central Industries or its subsidiaries might be conditioned upon or related to sales to such company.
- _____ 5. I have not engaged in sales or marketing on behalf of Illinois Central Industries or its subsidiaries.
- _____ 6. I have not in some manner obtained statistical data or other information which showed actual or potential sales to a company by Illinois Central Industries or its subsidiaries.
- _____ 7. I have not attended a meeting, a purpose of which was the discussion of the sales strategy of Illinois Central Industries or its subsidiaries.

(Signature)

City of _____

State of _____

Sworn to and subscribed
before me this _____ day of
_____, 1972._____
(Notary Public)

Order

IN THE MATTER OF
THE BENDIX CORPORATION, ET AL.*Docket 8739. Interlocutory Order, March 29, 1973.*

Order reversing action of the administrative law judge authorizing a subpoena to the Commission's Secretary, and quashing said subpoena.

ORDER REVERSING ACTION OF ADMINISTRATIVE LAW
JUDGE AUTHORIZING SUBPOENA TO COMMISSION SECRETARY

This matter is before the Commission pursuant to Section 3.23(a) of the Commission's Rules of Practice to review the order of the administrative law judge dated February 15, 1973, which granted respondents' application for a subpoena directing Charles A. Tobin, Commission's Secretary, to produce a "staff memorandum * * * asking for permission to conduct or recommending the 'investigation into the Acts and Practices of Companies Manufacturing Automotive Parts, Accessories and Equipment.'"

In March 9, 1973, upon its own motion, the Commission placed this matter on its docket for review.

As a result of such review, the Commission has determined the document in question is an intra-agency memorandum reflecting the mental processes of the agency in considering the initiation of the investigation and, hence, not appropriate for discovery; therefore

It is ordered, That the administrative law judge's order of February 15, 1973, be, and hereby is, reversed and the subpoena issued pursuant thereto is hereby quashed.

IN THE MATTER OF
HORIZON INDUSTRIES, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED
VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE
FLAMMABLE FABRICS ACTS*Docket C-2371. Complaint, Mar. 29, 1973—Decision Mar. 29, 1973.*

Consent order requiring a Dalton, Georgia, manufacturer and seller of carpets and rugs, among other things to cease manufacturing for sale, selling, importing, or distributing any product, fabric, or related mate-