

Complaint

95 F.T.C.

IN THE MATTER OF
ELI LILLY AND COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT

Docket C-3021. Complaint, April 29, 1980 — Decision, April 29, 1980

This consent order requires, among other things, an Indianapolis, Indiana manufacturer and seller of pharmaceuticals and other chemical substances, to cease engaging in several anticompetitive practices involving the United States finished insulin industry. Additionally the order requires Eli Lilly and Co. to grant certain licenses covering its existing and future insulin-related technology to existing and prospective competitors.

Appearances

For the Commission: *William C. Holmes.*

For the respondent: *Charles E. Buffon, Covington & Burling,*
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Eli Lilly and Company, hereinafter referred to as "Lilly" or "respondent", has violated Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45), and Section 7 of the Clayton Act, as amended, (15 U.S.C. 18), and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

I. RESPONDENT

PARAGRAPH 1. Lilly is a corporation organized and existing under and by virtue of the laws of the State of Indiana, with its principal executive offices located at 307 East McCarty St., Indianapolis, Indiana.

PAR. 2. Lilly's principal business is the manufacture and sale of chemical compounds and substances for use by or on living organisms — human, plant and animal. This business accounted for approximately 89% of the consolidated net sales of Lilly and its subsidiaries during the years 1972 through 1976.

PAR. 3. In 1976, Lilly's consolidated net sales were approximately \$1.34 billion, consolidated net income after taxes was approximately

\$200 million, and consolidated total assets were approximately \$1.58 billion. Sales of pharmaceuticals accounted for approximately \$761 million of Lilly's consolidated net sales in 1976.

II. NATURE OF TRADE AND COMMERCE

A. Relevant Market

PAR. 4. The relevant geographic market involved in this complaint is the United States as a whole.

PAR. 5. The relevant product market involved in this complaint is finished insulin.

PAR. 6. Finished insulin is a drug used by approximately 1,600,000 diabetics within the United States in the treatment of diabetes mellitus, commonly known as diabetes. For those diabetics who are insulin-dependent, finished insulin is the only method of treatment.

PAR. 7. The market for finished insulin has been and is expanding rapidly. In 1970, total industry sales of finished insulin within the United States were approximately \$26 million. By 1976, industry sales had expanded to approximately \$57 million, representing an increase of more than 119% between 1970 and 1976.

PAR. 8. The market for finished insulin within the United States is dominated by Lilly. Only two firms, including Lilly, account for 100% of total industry sales. Lilly alone accounted for more than 85% of total industry sales during the period from 1970 through 1976.

B. Industry Information

PAR. 9. A vital raw material in the production of finished insulin is animal pancreas glands, derived as by-products from meat slaughterhouses. Unrefined insulin and other materials are extracted from these glands in a form called "insulin salt cake." Insulin salt cake is then purified into a precipitate referred to as "insulin crystals." Insulin crystals are combined with other substances to produce finished insulin.

PAR. 10. Lilly is the only firm in the United States finished insulin industry that is fully integrated. Lilly purchases animal pancreas glands, extracts raw insulin from the glands in the form of insulin salt cake, refines the salt cake into insulin crystals, produces finished insulin from the crystals, and markets the finished insulin to hospitals and pharmacies throughout the United States for use by diabetics.

PAR. 11. Lilly purchases its requirements of animal pancreas glands from United States meat slaughterhouses either directly or through "collectors" or "brokers." "Collectors" are firms that purchase glands

from the slaughterhouses for their own accounts, trim and freeze the glands, and then sell them to manufacturers, either directly or through brokers. "Brokers," in contrast, are firms that simply arrange for the purchase and/or sale of the glands at a commission.

III. JURISDICTION

PAR. 12. At all times relevant to this complaint, Lilly has purchased and offered to purchase animal pancreas glands from meat slaughterhouses, collectors and brokers located throughout the United States, and has sold, shipped and promoted its finished insulin products to customers located throughout the United States. Lilly has thereby engaged in or affected commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 44. Except to the extent that competition has been hindered, restrained or frustrated by the acts and practices alleged below in this complaint, Lilly has been and is in competition with other firms in the purchase of pancreas glands within the United States and in the sale and distribution of finished insulin within the United States.

A. Count I

PAR. 13. Lilly has monopoly power within the relevant market.

PAR. 14. Lilly has since at least 1952 directly and indirectly engaged in acts, practices and methods of competition that, individually or collectively, have willfully maintained its monopoly power within the relevant market and that have given it the power to inhibit, frustrate and restrain actual and potential competition within the relevant market.

Examples of such acts, practices and methods of competition include, but are not limited to, the following:

(a) Lilly has conspired with other domestic and foreign companies, including certain collectors, brokers, and other manufacturers of insulin, to:

- (1) Allocate and control the meat slaughterhouses at which pancreas glands are collected within the United States;
- (2) Allocate and control the distribution of pancreas glands collected within the United States;
- (3) Suppress potential competition in the collection of pancreas glands within the United States through such acts, practices and methods of competition as:

- (i) A concerted refusal to deal with collectors and brokers not privy to the conspiracy (hereinafter "disfavored collectors and brokers");
- (ii) The inducement of refusals to deal with disfavored collectors and brokers by their customers and suppliers;

(b) Lilly has acquired exclusive licenses within the United States to certain key patents in the production of insulin products, including in particular a 1952 exclusive patent license from Novo Industri A/S, a Danish insulin producer ("Novo"), that expressly precluded other insulin manufacturers from entering the United States finished-insulin market with certain key insulin products.

PAR. 15. The aforesaid acts, practices and methods of competition by Lilly have had, among others, the following effects:

(a) The discouragement of potential entry into the United States finished insulin market, including, in particular, potential entry by:

- (1) The insulin manufacturers privy to the aforementioned conspiracy affecting the collection and distribution of pancreas glands within the United States;
- (2) The insulin manufacturers affected by the aforementioned exclusive patent licenses;
- (3) Novo Industri A/S;

(b) The creation and maintenance of barriers to competition in the United States finished insulin market through:

- (1) Control of the pancreas glands needed to produce finished insulin within the United States;
- (2) Control of key patents significant to effective competition within the United States finished insulin market.

PAR. 16. The aforesaid acts, practices and methods of competition constituted and still constitute unfair methods of competition and unfair acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

B. Count II

PAR. 17. Lilly has since at least 1952 acquired patent rights under exclusive patent licenses where the effect has been to tend to substantially lessen competition, or to tend to create a monopoly, within the relevant market.

An example of such acquisitions includes, but is not limited to, the 1952

exclusive patent license from Novo Industri A/S referred to in Paragraph Fourteen (b), above.

PAR. 18. The aforesaid acquisitions by Lilly have had, among others, the following effects:

(a) The discouragement of potential entry into the United States finished insulin market, including, in particular, entry by:

(1) The insulin manufacturers affected by the aforementioned exclusive patent licenses;

(2) Novo Industri A/S;

(b) The creation and maintenance of barriers to competition in the United States finished insulin market through control of key patents.

PAR. 19. The aforesaid acquisitions by Lilly constituted and still constitute violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act and the Clayton Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent 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 thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34, now in further conformity with the procedure prescribed in Section 2.34 of its

Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Eli Lilly and Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal executive offices located at 307 East McCarty St., Indianapolis, Indiana.

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

ORDER

I

DEFINITIONS

It is ordered, That the following definitions shall apply in this order:

1. "Lilly" means respondent Eli Lilly and Company, its subsidiaries, and its successors and assigns.

2. "Animal Insulin Products" means insulin extracted from animal pancreas glands, including any and all stages of production (insulin salt cake, insulin crystals and/or finished insulin).

3. "Other Insulin Products" means insulin produced by chemical synthesis, by microbes genetically manipulated using recombinant DNA techniques, or by any other methods other than extraction from animal pancreas glands.

4. "Existing Patents" means:

(a) United States and foreign patents owned by Lilly, or with respect to which Lilly has the power to grant licenses or sub-licenses, as of the date that the agreement containing this order is signed by Lilly, and

(b) Applications for United States and foreign patents, and any patents which may issue on any such applications, which applications are owned by Lilly, or with respect to which Lilly has the power to grant licenses or sub-licenses, as of the date that the agreement containing this order is signed by Lilly.

5. "Existing Know-How" means technical information, processes and procedures, whether patented or unpatented, which are used by Lilly in commercial production of Animal Insulin Products within the United States as of the date that the agreement containing this order is signed by Lilly. Lilly's obligation to make certain of such know-how available to licensees pursuant to this order may be met by (a) providing such licensees with a written description of the licensed

know-how sufficient to enable one reasonably skilled in the art to understand and reproduce such know-how, and (b) upon written request by a licensee, additionally providing written clarification respecting licensed know-how to such licensee where such clarification is reasonably necessary.

6. "Future Patents" means United States patents (exclusive of Existing Patents) issued within five (5) years after the date that the agreement containing this order is signed by Lilly, which patents are owned by Lilly, or with respect to which Lilly acquires the power to grant licenses or sub-licenses.

7. "Future Know-How" means technical information, processes and procedures (exclusive of Existing Know-How), whether patented or unpatented and including any United States patents which may issue thereon, which relate to the production of Animal or Other Insulin Products, and which Lilly acquires from persons, research groups or companies other than Lilly and Lilly employees within five (5) years after the date that the agreement containing this order is signed by Lilly, and which are in writing and are known by Lilly to have been reduced to practice by Lilly or by the persons, research groups or companies from which the know-how is acquired. Lilly's obligation to make certain of such know-how available to licensees pursuant to this order may be met by (a) providing such licensees with a written description of the licensed know-how sufficient to enable one reasonably skilled in the art to understand and reproduce such know-how, and (b) upon written request by a licensee, additionally providing written clarification respecting licensed know-how to such licensee where such clarification is reasonably necessary.

8. "Patents Issuing on Future Applications" means United States patents (exclusive of Existing or Future Patents) owned by Lilly which issue on applications filed within five (5) years after the date that agreement containing this order is signed by Lilly, which applications cover innovations developed by Lilly or Lilly employees.

9. "Reduced to practice" means demonstrated by actual use, by tests or by laboratory experiments as being workable for its intended purpose.

10. "Domestic Company" means any sole proprietorship, partnership, corporation or other business entity that is a United States citizen and that is not owned or controlled by a business entity that is not a United States citizen.

11. "Foreign Company" means any sole proprietorship, partnership, corporation or other business entity that is not a United States citizen, and any business entity that is a United States citizen but is

owned or controlled by a business entity that is not a United States citizen.

12. "United States" means the United States of America, its territories and possessions, and the Commonwealth of Puerto Rico.

13. "The date that the agreement containing this order is signed by Lilly" means and is: May 30, 1979.

II

PRACTICES PROHIBITED

It is further ordered, That Lilly, and its directors, officers, agents, representatives and employees, directly or indirectly, or through any corporation, subsidiary, division or other device:

A. In connection with the purchase or sale of animal pancreas glands used in the manufacture of Animal Insulin Products:

(1) Shall not participate in any agreement or conspiracy with any manufacturer of any Animal Insulin Products or any buyer, broker or collector of animal pancreas glands to allocate or control the meat slaughterhouses within the United States from which animal pancreas glands are or will be obtained.

(2) Shall not participate in any agreement or conspiracy with any manufacturer of any Animal Insulin Products or any buyer, broker or collector of animal pancreas glands to allocate or divide animal pancreas glands obtained from meat slaughterhouses within the United States.

(3) Shall not participate in any agreement or conspiracy with any manufacturer of any Animal Insulin Products or any buyer, broker or collector of animal pancreas glands to suppress or limit actual or potential competition in the purchase or sale of animal pancreas glands obtained from meat slaughterhouses within the United States by (a) refusing to deal with any buyer, broker or collector of animal pancreas glands collected within the United States, or (b) inducing any manufacturer of any Animal Insulin Products, any buyer, broker or collector of animal pancreas glands or any meat slaughterhouses located within the United States, to refuse to deal with any buyer, broker or collector of animal pancreas glands collected within the United States.

(4) Provided that nothing contained in Subparagraphs (1), (2), and (3) above shall be construed to prevent Lilly (a) from making purchases of animal pancreas glands in the ordinary course of business from meat slaughterhouses, collectors, brokers and other sellers of such glands

located in the United States or elsewhere, (b) from entering into supply contracts with meat slaughterhouses, collectors, brokers and other sellers of glands located in the United States or elsewhere for reasonable periods of time not to exceed thirteen (13) months, or (c) from unilaterally refusing to purchase animal pancreas glands which do not meet Lilly's insulin yield or other quality standards, which Lilly does not need, or which are offered at a price unacceptable to Lilly.

B. Shall not for a period of ten (10) years after the date that the agreement containing this order is signed by Lilly enter into or enforce any provision in any license of any patent or know-how respecting the production of any Animal or Other Insulin Products, or any forms of Animal or Other Insulin Products, which provision by its terms restricts or prevents any other company from importing any Animal or Other Insulin Products into, or manufacturing any Animal or Other Insulin Products within, the United States.

III

LICENSING OF EXISTING INSULIN PATENTS AND KNOW-HOW

It is further ordered, That:

A. Upon written application, made within five (5) years after the date that the agreement containing this order is signed by Lilly, Lilly shall grant to any Domestic Company that states in its application its bona fide intention to engage in:

(a) the production of any Animal Insulin Products within the United States for sale within the United States or export sale from the United States, or

(b) the production of any Animal Insulin Products outside the United States for sale exclusively within the United States,

a non-exclusive, royalty-free license to produce and sell Animal Insulin Products under any part or all, as the applicant may request, Existing Patents and Existing Know-How pertaining to the Animal Insulin Products that the applicant states that it intends to produce. Each such license granted pursuant to this Paragraph III. A shall contain no time limitation or other restriction or limitation whatsoever, except that such license:

(1) May limit the production and sale of Animal Insulin Products produced using such licensed patents and know-how to: production within the United States for sale within the United States and export

sale from the United States; and production outside the United States for sale exclusively within the United States.

(2) May be nontransferable.

(3) May require the licensee to pay reasonable expenses actually incurred by Lilly in administering the license and in making licensed know-how and written clarifications of licensed know-how available to the licensee (as provided in Paragraph I.5 above).

(4) May require the licensee to hold know-how received pursuant to the license confidential so long as such know-how is not otherwise in the public domain and not to communicate such know-how to anyone other than such governmental authorities as may be necessary to permit the licensee to produce and market Animal Insulin Products under the license.

(5) May make reasonable provision for cancellation of the license upon the licensee's failure to comply with the terms of the license.

(6) Provided that if Lilly disputes the "bona fide" nature of the applicant's stated intention to engage under the requested license in the production or sale of Animal Insulin Products within the United States, Lilly shall, within thirty (30) days from the date the written application was received by Lilly, submit to the Federal Trade Commission a written statement setting forth in detail its reasons for disputing the bona fide nature of such stated intention. The Commission may, at its election, request further information and itself determine the issue of whether such stated intention is bona fide, in which case the Commission's determination shall be final and binding upon both Lilly and the applicant. If the Commission instead declines to itself determine such issue, the applicant may, at its election, submit the issue for settlement by arbitration, which arbitration shall be conducted by and in accordance with the rules then effective of the American Arbitration Association.

B. Upon written application, made within five (5) years after the date that the agreement containing this order is signed by Lilly, Lilly shall grant to any Foreign Company that states in its application its bona fide intention to engage in the production of any Animal Insulin Products within the United States for sale exclusively within the United States, a non-exclusive, reasonable-royalty license to produce and sell Animal Insulin Products under any part or all, as the applicant may request, Existing Patents and Existing Know-How pertaining to the Animal Insulin Products that the applicant states that it intends to produce. Each such license granted pursuant to this Paragraph III.B shall contain no time limitation or other restriction or limitation whatsoever, except that such license:

Decision and Order

(1) May limit the production and sale of Animal Insulin Products produced using such licensed patents and know-how to production within the United States for sale exclusively within the United States.

(2) May be nontransferable.

(3) May require the licensee to pay reasonable expenses actually incurred by Lilly in administering the license and in making licensed know-how and written clarifications of licensed know-how available to the licensee (as provided in Paragraph I.5 above).

(4) May require the licensee to pay a reasonable royalty for such licensed patents and know-how. Upon receipt of a written application for a license pursuant to this Paragraph III.B, Lilly shall advise the applicant, in writing within thirty (30) days, of the royalty it deems reasonable for the patents and know-how applied for. If the applicant and Lilly are unable to agree upon what constitutes a reasonable royalty within ninety (90) days from the date the written application for the license was received by Lilly, the applicant may, at its election, submit the issue of the royalty for settlement by arbitration, which arbitration shall be conducted by and in accordance with the rules then effective of the American Arbitration Association.

(5) May make reasonable provision for periodic inspection of the books and records of the licensee by an independent auditor, or other person acceptable to both Lilly and the licensee, who shall report to Lilly only the amount of the royalty due and payable and no other information.

(6) May require the licensee to hold know-how received pursuant to the license confidential so long as such know-how is not otherwise in the public domain and not to communicate such know-how to anyone other than such governmental authorities as may be necessary to permit the licensee to produce and market Animal Insulin Products under the license.

(7) May make reasonable provision for cancellation of the license upon the licensee's failure to comply with the terms of the license.

(8) Provided that if Lilly disputes the "bona fide" nature of the applicant's stated intention to engage under the requested license in the production of Animal Insulin Products for sale exclusively within the United States, Lilly shall follow the procedure for settling such disputes set forth in Subparagraph III.A.(6) above.

IV

LICENSING OF FUTURE INSULIN PATENTS AND KNOW-HOW

It is further ordered, That:

A. For a period of five (5) years after the date that the agreement containing this order is signed by Lilly, and in all agreements or licenses with other persons, research groups or companies other than Lilly, under which Lilly acquires or contracts to acquire rights to patents, applications or know-how respecting any Animal or Other Insulin Products, Lilly shall use its best efforts to have reasonable language empowering Lilly to grant the licenses contemplated by Paragraph IV.B below included in such agreements or licenses.

B. Upon written application, made within five (5) years after the date that the agreement containing this order is signed by Lilly, Lilly shall grant to any Domestic Company that states in its application its bona fide intention to engage in the production of any Animal or Other Insulin Products within the United States for sale exclusively within the United States, a non-exclusive license to produce and sell Animal or Other Insulin Products under any part or all, as the applicant may request, of the following: Future Patents and Future Know-How acquired by Lilly from persons, research groups or companies other than Lilly and Lilly employees as of the date of such application for a license, that pertain to the Animal or Other Insulin Products that the applicant states that it intends to produce, and that Lilly has the legal capacity to license or sub-license as of the date of such application for a license. Each such license granted pursuant to this Paragraph IV.B shall contain no time limitation or other restriction or limitation whatsoever, except that such license:

(1) May limit the production and sale of Animal or Other Insulin Products produced using such licensed patents and know-how to production within the United States for sale exclusively within the United States.

(2) May be nontransferable.

(3) May require the licensee to pay reasonable expenses actually incurred by Lilly in administering the license and in making licensed know-how and written clarifications of licensed know-how available to the licensee (as provided in Paragraph I.7 above).

(4) May require the licensee to pay a reasonable pro rata share of the amounts actually spent by Lilly in acquiring, or financing the research and development by such other persons, research groups or companies of, such licensed patents and know-how.

(5) May require the licensee to pay a royalty not to exceed the royalty, if any, that Lilly shall become obligated to pay such other persons, research groups or companies respecting sales of licensed products by the licensee.

(6) May make reasonable provision for periodic inspection of the

books and records of the licensee by an independent auditor, or other person acceptable to both Lilly and the licensee, who shall report to Lilly only the amount of the royalty due and payable and no other information.

(7) May require the licensee to hold know-how received pursuant to the license confidential so long as such know-how is not otherwise in the public domain and not to communicate such know-how to anyone other than such governmental authorities as may be necessary to permit the licensee to produce and market Animal or Other Insulin Products under the license.

(8) May make reasonable provision for cancellation of the license upon the licensee's failure to comply with the terms of the license.

(9) May contain provisions that require the licensee to grant Lilly, at a reasonable royalty, a reciprocal cross-license on a non-exclusive basis with respect to any part or all, as Lilly may request, rights under United States patents issued and know-how reduced to practice (including any United States patents which may issue on such know-how), that pertain to Animal or Other Insulin Products, that are acquired by the licensee from persons, research groups or companies other than the licensee and the licensee's employees after the date that the agreement containing this order is signed by Lilly, and that the licensee has the legal capacity to license or sub-license as of the date of its application to Lilly for a license under this Paragraph IV.B.

(10) Provided that if Lilly disputes the "bona fide" nature of the applicant's stated intention to engage under the requested license in the production and sale of Animal or Other Insulin Products exclusively within the United States, Lilly shall follow the procedure for settling such disputes set forth in Subparagraph III.A.(6) above.

C. Upon written application, made within five (5) years after the date that the agreement containing this order is signed by Lilly, Lilly shall grant to any Domestic Company that states in its application its bona fide intention to engage in the production of any Animal or Other Insulin Products within the United States for sale exclusively within the United States, a non-exclusive license to produce and sell Animal or Other Insulin Products under any part or all, as the applicant may request, of the following: Future Patents, and Patents Issuing on Future Applications, covering innovations developed by Lilly or Lilly employees as of the date of such application for a license, that pertain to the Animal or Other Insulin Products that the applicant states that it intends to produce, and that Lilly has the legal capacity to license as of the date of such application for a license. Each such license granted

pursuant to this Paragraph IV.C shall contain no time limitation or other restriction or limitation whatsoever, except that such license:

(1) May limit the production and sale of Animal or Other Insulin Products produced using such licensed patents to production within the United States for sale exclusively within the United States.

(2) May be nontransferable.

(3) May require the licensee to pay reasonable expenses actually incurred by Lilly in administering the license.

(4) May require the licensee to pay a reasonable royalty for such licensed patents. Upon receipt of a written application for a license pursuant to this Paragraph IV.C, Lilly shall advise the applicant, in writing within thirty (30) days, of the royalty it deems reasonable for the patents applied for, and, with respect to patents not yet issued, Lilly shall so advise the applicant within thirty (30) days of issue. If the applicant and Lilly are unable to agree upon what constitutes a reasonable royalty within ninety (90) days thereafter, the applicant may, at its election, submit the issue of the royalty for settlement by arbitration, which arbitration shall be conducted by and in accordance with the rules then effective of the American Arbitration Association.

(5) May make reasonable provision for periodic inspection of the books and records of the licensee by an independent auditor, or other person acceptable to both Lilly and the licensee, who shall report to Lilly only the amount of the royalty due and payable and no other information.

(6) May make reasonable provision for cancellation of the license upon the licensee's failure to comply with the terms of the license.

(7) May contain provisions that require the licensee to grant Lilly, at a reasonable royalty, a reciprocal cross-license on a non-exclusive basis with respect to any part or all, as Lilly may request, rights under United States patents and United States patents which may issue on United States patent applications, that issue on patent applications filed after the date that the agreement containing this order is signed by Lilly, that pertain to Animal or Other Insulin Products, that cover innovations developed by the licensee or the licensee's employees, and that the licensee has the legal capacity to license as of the date of its application to Lilly for a license under this Paragraph IV.C.

(8) Provided that if Lilly disputes the "bona fide" nature of the applicant's stated intention to engage under the requested license in the production and sale of Animal or Other Insulin Products exclusively within the United States, Lilly shall follow the procedure for settling such disputes set forth in Subparagraph III.A.(6) above.

V.

REPORTING PROVISIONS

It is further ordered, That:

A. Within one hundred eighty (180) days of the effective date of this order, Lilly shall submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which it has complied with this order.

B. For a period of five (5) years after the effective date of this order, Lilly shall submit in writing to the Federal Trade Commission a report concerning each instance in which a license is granted pursuant to this order, which report shall identify the licensee and set forth in detail all terms of the license. Such report shall be made within thirty (30) days after the granting of the license.

C. For a period of five (5) years after the effective date of this order, Lilly shall submit in writing to the Federal Trade Commission a report concerning each instance in which a license made pursuant to this order is cancelled, or in which a request for a license under this order is refused for reasons other than a dispute under Subparagraphs III.A.(6), III.B.(8), IV.B.(10) or IV.C.(8) concerning the applicant's "bona fide intention", which report shall set forth in detail the reasons for such cancellation or refusal. Such report shall be made within thirty (30) days after such cancellation or refusal.

D. Lilly shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in Lilly which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other such change.

E. Lilly shall forthwith distribute a copy of this order to each of its operating divisions concerned with the purchase or sale of animal pancreas glands or with the licensing of patents or know-how.

IN THE MATTER OF

HERBERT R. GIBSON, SR., ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION
OF SEC. 2 OF THE CLAYTON ACT AND THE FEDERAL TRADE
COMMISSION ACT*Docket 9016. Complaint, Feb. 25, 1975*—Final Order, April 30, 1980*

This order requires, among other things, a Dallas, Texas retailer of sundry items, to cease coercing, intimidating, boycotting or taking other action against suppliers because they do not appear in the Gibson Trade Shows; further, the order prohibits certain Gibson officials and corporations from receiving brokerage commissions from a supplier while acting as a buyer for Gibson retail stores.

Appearances

For the Commission: *Andre Trawick, Jr., Robert G. Boomer, J.B. Brookshire and Juliam V. Buenger.*

For the respondents: *Bardwell D. Odum, Dallas, Tex., John M. Gillis, Gillis, Rogers & Taylor, Dallas, Tex., Robert E. Rader, Jr., McCarty & Wilson, Ennis, Tex. and Robert W. Steele and J. Wallace Adair, Howrey & Simon, Washington, D.C.*

INITIAL DECISION BY THEODOR P. VON BRAND, ADMINISTRATIVE LAW
JUDGE

FEBRUARY 26, 1979

PRELIMINARY STATEMENT

[2]The complaint charges that the individual or "Gibson family" respondents, Herbert R. Gibson, Sr., Herbert R. Gibson, Jr., Gerald Gibson and Belva Gibson, and the "Gibson corporate respondents," Gibsons Inc., Gibson Discount Centers, Inc., Ideal Travel Agency, Inc., Gibson Warehouse, Inc. and Gibson Products Co., Inc., have violated Section 5 of the Federal Trade Commission Act and Section 2(c) of the Clayton Act as amended by the Robinson-Patman Act.

The charges against Al Cohen Associates, Inc., Progressive Brokerage, Inc. and Barshell Inc.¹ are confined to allegations that these respondents violated Section 2(c) of the Robinson-Patman Act.

The complaint alleges that the Gibson family respondents have been

* Reported in 87 F.T.C. 1389 as to all parties.

¹ The Commission, by order dated June 17, 1976, accepted a consent settlement negotiated with respondents Progressive Brokerage, Inc. and Barshell, Inc.