

In the case of the Southern Pacific Railroad the record is unclear as to the reason for the cessation of direct sales to Bethlehem Pacific, except that around the time of the Korean conflict the railroad decided to sell scrap to Luria for shipment to Bethlehem Pacific because the latter was buying "through their brokers" (R. 11,566).

Despite the apparent reluctance of some of the suppliers to ascribe their cessation of direct sales to any advice from Bethlehem Pacific, several of the suppliers were quite specific in assigning this as the reason. Among these was The Learner Company, a substantial dealer and broker with yards in Oakland, Stockton, San Francisco, Sacramento and Honolulu. From 1947 to 1950 Learner was either the largest or second largest supplier to the San Francisco plant of Bethlehem Pacific. In 1949 and 1950 Learner sold between 75% and 81% of its scrap to Bethlehem Pacific. Thereafter its sales to Bethlehem Pacific began to decline sharply, until 1954 when it made no sales, although it did sell small amounts of scrap in 1955 and 1956, amounting to less than 5% of its total sales. Most of the scrap sold to Bethlehem Pacific after 1950 consisted of cast iron and other special grades. When Learner sought to sell the regular grades of scrap which it had formerly sold in large quantities to Bethlehem Pacific it was advised by the latter that it "was being serviced by Luria Brothers and that they [Bethlehem Pacific] were happy with the service and did not need our scrap" (R. 11,172). It was suggested to Learner that it offer its scrap to Luria. This Learner declined to do, except for certain minor quantities. Another dealer-broker from which Bethlehem Pacific declined to buy directly was Associated Metals. Associated, which had been a direct supplier to the San Francisco plant, began selling through Luria in 1953, except for certain special grades, because Bethlehem Pacific would no longer give it orders for the regular grades which it had formerly sold.

Bethlehem Pacific has continued to deal directly with certain other dealers or broker-dealers in the San Francisco area. The most important of these are California Metals Co., The Purdy Company and Markovitz & Fox. However, while purchases from Luria soared during the period after 1950, those from these other suppliers have remained fairly constant or declined. Thus purchases from California Metals, which were 24,000 tons in 1950, as compared to approximately 10,000 tons from Luria, continued to range between 18,000 and 26,000 tons in the succeeding years, and declined to 11,000 tons in 1954, during which year purchases from Luria amounted to 60,000 tons. Purchases from Purdy have ranged between 7,000 and 18,000 tons, and those from Markovitz & Fox between 5,000 and 13,000 tons. The brokers and dealers other than Luria have not shared in the significant

Initial Decision

62 F.T.C.

increase in scrap purchases by Bethlehem Pacific's San Francisco plant during 1951, 1952 and 1953.

Furthermore, there is evidence of a deliberate down-grading in the role of such other suppliers or of limiting them largely to a dealer function. In the case of California Metals, the entry of Luria upon the scene resulted in its loss of the scrap which it had been obtaining from Rheem Manufacturing Company's Richmond and San Pablo, California plants, and supplying to Bethlehem Pacific. While Purdy is a broker as well as a dealer, approximately 90% of the scrap sold to Bethlehem Pacific is railroad scrap which is sold largely on a dealer basis. Purdy has been unable to broker scrap for more than a few dealers because of its inability to engage in the extensive financial assistance of dealers which has come to be required in the area. Another dealer which still continues to sell directly to Bethlehem Pacific is J. Levin, which also operates a yard in Los Angeles. Levin's sales to Bethlehem Pacific declined from 11,000 tons in 1947 to 2,500 in 1953 and 3,500 in 1954. While it makes some brokerage sales to other consumers, its sales to Bethlehem Pacific are limited to scrap from its own yard. Although undoubtedly there is a somewhat larger proportion of brokerage scrap sold to Bethlehem Pacific for its San Francisco plant by other dealers than is the case in Los Angeles, the examiner is satisfied that all but a minor fraction of the brokerage scrap is purchased from Luria.

The Seattle Plant

53. Luria first began selling substantial quantities of scrap to Bethlehem Pacific's Seattle plant in 1949. In that year it sold approximately 13,500 tons of scrap, which represented 11.9% of the scrap purchased by the plant from broker-dealer sources and 9.0% of the plant's total scrap purchases. In 1950 there was a modest increase in Luria's sales to the Seattle plant, to 16,766 tons, which constituted 16.8% of the scrap purchased from brokers and dealers. In 1951 Luria was requested to open an office in Seattle by Bethlehem Pacific, and thereafter the increase in its sales to the Seattle plant began to gain momentum. In 1952, the first full year following the opening of its Seattle office, Luria sold 72,500 tons of scrap to the Seattle plant of Bethlehem Pacific, constituting 46.4% of the scrap purchased from brokers and dealers. By 1954 Luria was selling 83.1% of the scrap purchased by the Seattle plant from broker-dealer sources, and 65.7% of the scrap purchased from all sources.

Elimination of Other Suppliers

54. The improvement in Luria's position as a supplier to the Seattle plant was accompanied by the elimination of a number of other bro-

kers and dealers as direct suppliers to the plant. A number of these dealers and brokers were requested by Bethlehem Pacific to ship their scrap to it through Luria. Those who refused were unable to sell their scrap to Bethlehem Pacific.

55. Foremost among those eliminated as suppliers to Bethlehem Pacific at Seattle was Dulien Steel Products, Inc. Dulien operated several yards in Seattle, and also operated yards or had an interest in yards in Portland, Los Angeles and Honolulu. It had been a substantial shipper to the Seattle plant of Bethlehem Pacific for a number of years. In 1948 it was the largest shipper of scrap to the Seattle plant, and in 1951 and 1952 it was the third and fourth largest shipper, respectively. Most of the scrap which it sold to Bethlehem Pacific was shipped from the yards of other dealers, with Dulien acting as broker and receiving \$1.00 a ton commission during the period of OPS. In 1951, for example, it shipped \$53,614 worth of scrap from its own yards, compared to \$217,242 from the yards of other dealers. During 1951 and 1952 Dulien was shipping from the yards of 35 other dealers in Washington, Oregon and Montana, and from four railroads.

Beginning sometime in 1952, Bethlehem Pacific began to advise Dulien that it could no longer ship scrap from the yards of certain of the latter's dealer sources because they were "somebody else's" accounts or because "somebody else" had an "outstanding order" (R. 10,600). The "somebody else" referred to was Luria. After it had lost a number of dealer accounts Dulien, by letter dated August 28, 1952, protested to Bethlehem Pacific that it did not wish to be an "information bureau as to available scrap which is not of interest to you" and asked to be advised as to what "portion of the territory in which we operate that you consider to be the exclusive territory of Luria Brothers & Company, Inc." (CX 988). It does not appear from the record what response was made to this letter, but by November 1952 Dulien was restricted to shipping from the yard of one other dealer and from one railroad, in addition to its own two yards in Seattle.

In February 1953, Bethlehem Pacific requested Dulien to cease all direct shipments of scrap to Bethlehem Pacific, including shipments from Dulien's own yards, and requested that it ship its scrap through Luria as broker. The Bethlehem Pacific scrap buyer advised Dulien that this change had come about as a result of a decision by the company's headquarters in San Francisco, and asked Dulien to endeavor to accommodate itself to the new arrangement on a trial basis. After endeavoring to ship to Bethlehem Pacific through Luria for a period of about a month Dulien, on April 7, 1953, wrote to Bethlehem Pacific

and advised it that the new arrangement was "unsatisfactory and unfair" because, among other things, it prevented Dulien from brokering scrap from other dealers and also deprived Dulien of direct contact with Bethlehem Pacific which it had enjoyed for thirty years. The letter advised Bethlehem Pacific that Dulien did not wish to do business with it, except on a direct basis, and urged Bethlehem Pacific to resume business dealings on such a basis (CX 983). The reply from Bethlehem Pacific was to the effect that Dulien was not a consistent shipper to Bethlehem Pacific and that in view of the mill's large requirements for scrap it had "no intention at this time of changing our present scrap buying policy, and unless we hear from you to the contrary we will proceed on the assumption that you do not desire to ship scrap to us when arranging for our requirements in the future" (CX 984). Following this exchange of correspondence, business relations between Bethlehem Pacific and Dulien came to an end.

Bethlehem Pacific contends that Dulien's handling of brokerage scrap for it was limited to the period of the Korean conflict, and that it had nothing to do with Dulien's loss of various dealer accounts for which it had formerly acted as broker. Neither of these contentions has any merit. While it is true that Bethlehem Pacific formally recognized Dulien's brokerage status in 1951 by paying it an additional \$1.00 commission on scrap originating outside its own yards, as was authorized by OPS regulations which went into effect in 1951, Dulien had been selling scrap from the yards of other dealers long before that time. There was nothing about the dropping of price controls in early 1953 to prevent Bethlehem Pacific from purchasing scrap from Dulien originating in the yards of other dealers. In fact, the curtailment of purchases from such yards occurred even prior to the expiration of controls. Contrary to the contention of Bethlehem Pacific, the record establishes that in a number of instances it did request dealers to ship their scrap through Luria, rather than through Dulien or other brokers. From the evidence as a whole, including the eventual dropping of Dulien as a direct supplier, it seems evident that the restrictions placed on Dulien were part of the development of the Bethlehem Pacific policy whereby Luria became the substantially exclusive broker for its Seattle plant.

The ostensible reason for dropping Dulien as a direct shipper was that it had not been a substantial and consistent shipper to Bethlehem Pacific. The fact of the matter is that Dulien was dropped at the very time it had become a substantial and consistent shipper. It is true that Dulien had shipped no scrap to Bethlehem Pacific in 1950, after having made substantial shipments amounting to \$585,000 in 1948 and \$248,000 in 1949. However, this was largely due to an over-all

decline in its scrap sales in 1950, which were only about 12% of those in the preceding year. In 1951 and 1952 it again returned to the ranks of the five largest shippers to Bethlehem Pacific, its sales to the latter constituting over 35% of its total scrap sales. Despite the gradual imposition of restrictions by Bethlehem Pacific on points of shipment of scrap by Dulien during 1952, Dulien's sales to Bethlehem Pacific in that year were \$100,000 in excess of its sales in 1951. To the extent Dulien's sales may have begun to decline in 1953, the examiner is satisfied that this was the result of Bethlehem Pacific's own action in limiting Dulien in the shipment of brokerage scrap.

It may be noted, in this connection, that Bethlehem Pacific declined an offer of scrap from Dulien's Hawaiian affiliate because it was not satisfied the scrap was of a nonbrokerage character. In replying to an offer of scrap by the Hawaiian affiliate in April 1953, Bethlehem Pacific stated that while it was "interested in off-shore scrap offerings" it was not clear from the offer "whether the scrap is actually owned by you or whether you are merely requesting a price in order that you may bid on this particular lot." It was suggested that the Dulien affiliate "contact Luria Brothers & Co., Inc., our brokers * * * as they are currently handling our off-shore scrap purchases for West Coast delivery" (CX 990).

Another substantial supplier of Bethlehem Pacific which was affected by Luria's advent into the Seattle market was Sternoff Metals Corporation of Seattle. Sternoff had sold scrap directly to Bethlehem Pacific for its Seattle plant for about 12 years. In 1950 and 1951 it was second only to Luria as a supplier to the plant, and in 1952 it was the third largest supplier. Sometime during 1952 a scrap buyer for Bethlehem Pacific advised Sternoff that thereafter Bethlehem Pacific's "purchases of heavy melting scrap and bundles would all be made through the Luria organization" (R. 10,813), and Sternoff was requested to ship its scrap to Bethlehem Pacific through Luria as broker. Sternoff indicated that it would prefer to continue direct shipments to Bethlehem Pacific since it did not wish to lose its "identity with the mill, our long-time relationship as a direct shipper" (R. 10,814). The Bethlehem Pacific official expressed regret with regard to the change, but stated that "he did not set the company policy, that it was beyond his control" (R. 10,817). Sternoff reluctantly agreed to ship its scrap through Luria, and between 1953 and 1956 sold the bulk of its scrap to Luria for shipment to Bethlehem Pacific's Seattle plant.

In addition to Dulien and Sternoff, Bethlehem Pacific ceased the direct purchase of scrap from a number of other dealers and brokers in the States of Washington and Oregon during the period from 1951 to 1953. While most of these did not sell as much scrap as Dulien or

Initial Decision

62 F.T.C.

Sternoff, a number had been substantial shippers to Bethlehem Pacific over a number of years. Many of the dealers and brokers were specifically requested to ship their scrap through Luria by a Bethlehem Pacific representative, and in some instances the request came from a Luria representative.³⁰ Two of the dealers who made written offers of scrap in 1953, were advised in writing by Bethlehem Pacific that "Luria Brothers & Co., Inc. * * * have orders for our immediate requirements for this grade of scrap", and were requested to "contact them regarding the tonnage you have available" (CX 1005B and 1008). Several dealers who had been shipping scrap to Bethlehem Pacific through other brokers, including Dulien and Eastwood & Co. (the latter being operated by a former Bethlehem Pacific employee), were instructed by Bethlehem Pacific to ship their scrap through Luria.³¹

56. By 1953 and 1954 Bethlehem Pacific's direct purchases of scrap from other dealers, in any significant quantities, for delivery to the Seattle plant were limited to two other dealers, viz, M. Bloch & Co. and Seattle Iron & Metal Co. Its only other suppliers of any consequence were Kaiser Steel Corp. and Northern Pacific Railroad. These four suppliers, together with Luria, accounted for 146,586 tons out of 172,741 tons purchased for the plant in 1953, and 114,043 tons out of 121,161 tons purchased in 1954.

As previously noted, in 1954 Luria supplied 83.1% of the scrap purchased by the Seattle plant from broker-dealer sources. Substantially all of the balance was accounted for by the purchases from Bloch and Seattle Iron, and from a few other dealers, on a dealer basis. Why Bethlehem continued to purchase from Bloch and Seattle Iron, but eliminated suppliers such as Dulien and Sternoff is not clear from the record. It may be noted, in this connection, that whereas Dulien was eliminated ostensibly because it was not a substantial and consistent supplier, Bethlehem Pacific purchased scrap from Bloch despite the fact that Bloch had dropped from the ranks of the Seattle plant's five largest suppliers in 1948 and did not appear again until 1953. It seems probable that Dulien was eliminated because once its dealer sources (accounting for two-thirds or more of the scrap shipped by it) had been taken over by Luria, it no longer served any useful purpose as a direct supplier. However, whatever may have been Bethlehem Pacific's precise reason for retaining two of its dealers as direct

³⁰ Among those requested to ship their scrap to Bethlehem Pacific through Luria were: Simon Junk (Tacoma), Tacoma Junk, Alaska Junk (Seattle), Inland Hide & Metals (Spokane), Spokane Metals, Alaska Junk (Spokane), Schnitzer Steel Products (Portland), Zidell Machinery (Portland) and California Bag & Metal (Portland).

³¹ Among those who had shipped through other brokers and were requested to ship through Luria were: Schuman Steel Products (Bellingham), Riverside Junk (Everett), and Alaska Junk (Portland).

suppliers and eliminating almost all the others, it seems clear that it has confined its purchases of scrap on a brokerage basis almost entirely to Luria.

Concluding Findings

57. Up to about 1950 Bethlehem Pacific purchased scrap for its three west coast plants from a number of different dealers. These dealers supplied approximately 90% of the scrap purchased by Bethlehem Pacific. With few exceptions the dealers were located in the general area of the plant supplied by them, and shipped to only a single plant of Bethlehem Pacific. Most of the scrap supplied by the dealers came from their own yards, but in some instances dealers also brokered scrap originating in the yards of other dealers. Scrap purchases for the three plants were made under the over-all control of Elwin W. Thomas, purchasing agent for Bethlehem Pacific.

58. Up to 1950 Luria was a minor supplier to Bethlehem Pacific. It did not operate any offices or yards on the West Coast until 1948, when it opened a brokerage office in San Francisco. Beginning in 1950 Luria rapidly became the principal supplier to all three plants of Bethlehem Pacific. By 1954 it was supplying 80.4% of the scrap purchased by the three plants from brokers and dealers, and 72.3% of the scrap purchased from all sources. The percentages of broker-dealer scrap purchased from Luria for the Los Angeles and Seattle plants were somewhat higher than that purchased by Bethlehem Pacific for the San Francisco plant.

59. Luria's meteoric rise as a supplier to Bethlehem Pacific was an outgrowth of a written agreement entered into with Bethlehem Pacific to supply its Los Angeles plant with scrap. Pursuant to a written agreement entered into in October 1950, Luria undertook to open a scrap yard in Los Angeles on premises leased from Bethlehem Pacific, and to supply the latter for a period of 10 years with at least 70% of the requirements of its Los Angeles plants for the basic open hearth grades, and with all of the requirements of bundles and turnings purchased by the plant from sources other than industrial fabricators. Despite a delay in the opening of the yard by Luria and the purported suspension of certain of the terms of the agreement during the period of OPS controls, the agreement was fully implemented within a relatively short period and is still in effect.

60. While the agreement required the purchase of only 70% of the basic open hearth grades from Luria, Bethlehem Pacific has in fact obtained over 90% of the purchased scrap requirements of the Los Angeles plant from Luria. With one exception, that of J. Levin & Sons, all of the other dealers and dealer-brokers who had formerly been substantial suppliers of the Los Angeles plant have been elimi-

nated as direct shippers. Most of the former suppliers are now shipping their scrap to the plant through Luria as broker. Many of them agreed to this arrangement because of the receipt of financial aid from Luria. In some instances they have shipped through Luria because they were advised that Luria was Bethlehem Pacific's broker and were instructed to ship through Luria by Bethlehem Pacific. Several of the dealers who refused to ship through Luria were eliminated as suppliers to the Los Angeles plant. In addition to continuing direct purchases from J. Levin, Bethlehem Pacific has also made minor purchases from The Purdy Company for the Los Angeles plant. Its combined purchases from these two companies has been around 5% or less of its total purchases and consists largely of dealer scrap.

61. While Luria did not come to occupy the same predominant position as a supplier to the San Francisco plant of Bethlehem Pacific as it did in Los Angeles, it did become the principal supplier to the former plant. A number of the suppliers to the San Francisco plant began to ship through Luria after 1950, either because of the receipt of financial assistance from Luria or because they were requested to do so by Bethlehem Pacific. One of the largest suppliers, the Learner Company, which declined to sell through Luria after being requested to do so by Bethlehem Pacific, was cut off as a direct supplier except for minor amounts of special scrap.

While Bethlehem Pacific continued direct dealings with several other dealers, its purchases remained relatively static compared to those from Luria, or even declined. One of the more important of these, California Metals Co., lost a substantial source of industrial scrap when Rheem Manufacturing Company entered into a contract with Luria at the urging of Bethlehem Pacific's East Coast affiliate. By 1954 Luria was supplying approximately 57% of the scrap purchased from dealers and brokers for the San Francisco plant of Bethlehem Pacific. There were only three other dealers or dealer-brokers supplying scrap in quantities as large as 9,000 tons a year, and this was mainly scrap of dealer origin.

62. Luria's position as a supplier to the Seattle plant of Bethlehem Pacific is more nearly parallel to that with respect to the Los Angeles plant. At Bethlehem Pacific's request Luria opened a brokerage office in Seattle in 1951. Between the latter part of 1951 and 1953 a considerable number of other dealers and dealer-brokers were eliminated as direct suppliers to the Seattle plant. One of the larger of the dealer-broker suppliers to the plant, Dulien Steel Products, Inc., underwent a gradual curtailment of the yards or points from which it could ship scrap, which is reminiscent of the experience of certain of the suppliers of Bethlehem Pacific's East Coast affiliate which has been discussed

above. Dulien was finally requested in early 1953 to ship its remaining scrap through Luria, and when it refused it was entirely eliminated as a supplier. A number of other suppliers were likewise requested by Bethlehem Pacific to ship through Luria, and most of them agreed to do so lacking any alternative, in view of Bethlehem Pacific's predominant position as a consumer of scrap in the Pacific Northwest. By 1954 Luria was supplying 83.1% of the scrap purchased by the Seattle plant from dealer-broker sources. The examiner is satisfied that the great bulk of the remaining 16.9% was purchased on a dealer basis.

63. While the evidence indicates some differences in Luria's position as a supplier to each of the three plants of Bethlehem Pacific, there is a basic underlying pattern revealed by the evidence as a whole. This is not surprising since the over-all scrap policy of Bethlehem Pacific, insofar as that company's officials had a hand in determining it, was established by its chief purchasing agent located in San Francisco, E. W. Thomas. The evidence reveals that the changes which were made in the pattern of purchasing for the various plants were the result of instructions received from San Francisco. The basic policy of the company, as disclosed by Thomas' own testimony, was to use only one broker to purchase brokerage scrap. The broker chosen by Bethlehem Pacific for all three plants was clearly Luria.

64. Luria was initially selected with the idea that it would supply Bethlehem Pacific with substantial quantities of dealer scrap through the yard which it would open in Los Angeles, and would broker scrap for a number of smaller dealers to whom it would furnish financial assistance where necessary. Although it was contemplated that Bethlehem Pacific would still use several of the existing dealers as "secondary sources" of scrap, as the arrangement developed Luria soon began to supply almost all of the dealer scrap, as well as substantially all of the brokerage scrap. Through the use of financial aid and with the use of pressure from Bethlehem Pacific, Luria was able to induce most of the so-called secondary sources to ship through it on a brokerage basis.

65. The arrangement began to prove so successful that by October 1951 officials within the Bethlehem organization were giving consideration to whether it might be "advantageous to have Lipsett [Luria's affiliate] establish a similar operation at Seattle and/or San Francisco" (CX 221). Luria did not actually establish a yard in San Francisco. However, it did, at Bethlehem Pacific's request, open a brokerage office in Seattle in 1951, and as of July 1957 was negotiating with Bethlehem Pacific to also open a yard in Seattle.

66. As the arrangement began to prove successful in Los Angeles,

its basic principles were put into effect in San Francisco and Los Angeles. Lacking a yard operation in San Francisco, Luria was unable to supply Bethlehem Pacific with the substantial quantities of yard scrap which it had supplied to Los Angeles. However, through the use of financial aid as an inducement and with some persuasion from Bethlehem Pacific, Luria was able to induce a significant number of dealers to ship their scrap through it as broker. Bethlehem Pacific continued direct purchases from a somewhat greater number of secondary suppliers than it did in Los Angeles. It may be that its unfortunate experience when one of the larger dealers, Learner, refused to ship through Luria was responsible for this. In any event, its purchases from the secondary suppliers were largely on a dealer basis.

67. In Seattle, on the other hand, Bethlehem Pacific was somewhat more successful than in San Francisco. Even though it lost the scrap of one of the larger dealers, most of the rest were willing to ship through Luria. The few who did not do so were confined mainly to shipping dealer scrap. So successful was the experience there that negotiations were undertaken to have Luria establish a yard operation in Seattle. Once established, this would give Luria additional leverage for persuading other dealers to broker their scrap through it.

68. That Luria has become Bethlehem Pacific's substantially exclusive broker is clearly revealed by the record. It is a fact which may be inferred from the course of dealings between the parties, which was admitted by various Bethlehem Pacific officials to other dealers and brokers in the area, and which is accepted as an operative business reality by many dealers and brokers on the West Coast and by others in the industry. The only remaining question is whether the relationship existing between Luria and Bethlehem Pacific is one of mere happenstance or is the result of an agreement, understanding or arrangement by Bethlehem Pacific to buy substantially all of its brokerage scrap from Luria. As in the case of the East Coast relationship, the examiner is satisfied that there is a conscious agreement, understanding or arrangement between the parties for Luria to act as Bethlehem Pacific's substantially exclusive broker. While the basic elements of the arrangement have been reduced to writing only in the case of the Los Angeles plant, the principles of that agreement have been applied to the balance of the West Coast operation. Furthermore, as will be hereafter noted, the arrangement is part of the conscious policy of all the Bethlehem companies.

Bethlehem Steel Corporation

69. As has been previously found, Bethlehem and Bethlehem Pacific are wholly owned subsidiaries of Bethlehem Steel Corporation. Of

the 17 individuals who are officers or directors of Bethlehem Steel Corporation, 13 are also officers or directors of Bethlehem, 3 are officers of Bethlehem Pacific, and 3 are officers of both Bethlehem and Bethlehem Pacific.

70. Paul S. Killian, who is vice president in charge of purchases for Bethlehem, is also a director of Bethlehem Steel Corporation. While he is not an officer or director of Bethlehem Pacific, he is required by the chairman of the board of Bethlehem Steel Corporation to be familiar with the over-all activities of Bethlehem Pacific, including its purchase of scrap. He is kept informed concerning the scrap problems of Bethlehem Pacific through detailed reports from that company with respect to inventories, costs, suppliers, supplies, competition and market conditions generally. The purchasing agent for scrap of Bethlehem Pacific consults with Killian, and with Bethlehem's assistant purchasing agent in charge of scrap, concerning his scrap activities. The problems and policies of Bethlehem Pacific with respect to scrap are resolved after giving appropriate consideration to the advice and guidance of officials of Bethlehem and Bethlehem Steel Corporation. In reporting to Killian, the purchasing agent of Bethlehem Pacific draws no distinction between the former's position with Bethlehem and his position with Bethlehem Steel Corporation. One of the purposes of the reports by Bethlehem Pacific to Killian is for the latter's information in discussions with the chairman of the board of Bethlehem Steel Corporation concerning the operations of Bethlehem Pacific, because of the chairman's interest "in all operations that are owned and controlled by Bethlehem Steel Corporation" (R. 11,092).

71. The purchasing agents of Bethlehem and Bethlehem Pacific participate in management meetings at Bethlehem, Pennsylvania. These meetings are presided over by the chairman of the board or the president of Bethlehem Steel Corporation, and are attended by representatives of the various subsidiary companies of Bethlehem Steel Corporation. At these meetings managerial problems, including problems with respect to scrap are discussed. On important problems with respect to scrap, Bethlehem Pacific has consulted with Bethlehem Steel Corporation before arriving at its decision. The purchase orders issued by both Bethlehem and Bethlehem Pacific for the purchase of scrap are on stationery which does not identify the individual company, but bears only the heading "Subsidiary Companies of Bethlehem Steel Corporation".

72. In October 1950, Bethlehem Pacific entered into a contract with Luria for the purchase of scrap for its Los Angeles plant, the nature and details of which have already been described. The contract represented a major change in the method and policy which had previously

been followed by Bethlehem Pacific in the purchase of scrap. Before entering into the contract, the problem was thoroughly considered in conferences with representatives of Bethlehem Steel Corporation and Bethlehem. Arrangements were made for Vice President Killian to proceed with negotiations with Luria with respect to the contract. The latter characterized the arrangement as a major policy matter "for our corporation" (R. 1369). Throughout the negotiations with Luria, officials of Bethlehem and Bethlehem Steel Corporation took an active part. Even where Luria undertook separate discussions with Bethlehem Pacific officials, it saw fit "to go over the ground again with your associates at Bethlehem, Pa." (CX 216). After the agreement was entered into, Bethlehem Pacific kept its East-Coast "associates" advised as to the progress being made, and the latter gave consideration to having "our scrap man from the East spend a few weeks on the Coast" with a view to aiding in a determination of whether to have Luria establish "a similar operation at Seattle and/or San Francisco" (CX 221).

73. As has heretofore been found, in the period beginning around 1950 a profound change took place in the scrap buying practices and policies of both Bethlehem and Bethlehem Pacific, as a result of which Luria became the substantially exclusive broker for both companies. The change first began to manifest itself in the practices of the East-Coast Bethlehem respondent. Following this, officials of the West-Coast affiliate began to consider establishing a close relationship with Luria as a supplier to the Los Angeles plant. They recognized that "the success of such a relationship with Luria will largely depend upon the relationship between Bethlehem and Luria in the East" (CX 214F). The relationship proved to be successful, and within a period of about 2 years was in effect for the entire operation of the Bethlehem companies, both East and West Coast.

From the coincidence in the timing of the change, the close parallel in the manner and circumstances under which it was accomplished in both instances, and the part played by officials of all the Bethlehem companies in bringing it about, the examiner is convinced that the change reflected a policy decision which was made at the top echelons of the Bethlehem companies, including the parent company. Accordingly, to the extent any liability attaches from the relationship with Luria, it must be shared by all three Bethlehem companies.

(2) *Respondents CF&I and Roebbling*

1. Respondent The Colorado Fuel and Iron Corporation (sometimes referred to herein as CF&I) is the ninth largest steel producer in the United States. Its ingot capacity, including that of its subsidiary

John A. Roebling's Sons Corporation (sometimes referred to herein as Roebling), represents approximately 2% of the industry total. It operates plants at Pueblo, Colorado; Claymont, Delaware; Birdsboro, Pennsylvania; and Buffalo, New York. Roebling operates a plant in Trenton, New Jersey.

2. Respondents CF&I and Roebling admit, in their joint answer, that on or about June 1, 1946, CF&I entered into an oral understanding with Luria, pursuant to which Luria was to act as exclusive scrap broker for CF&I's Pueblo mill, but allege that such oral understanding, while still in effect, is terminable at the will of either party. It is also alleged that the above oral understanding only applies to the mill located at Pueblo, Colorado. Respondents admit having made substantially all of the purchases of scrap for the Pueblo and Trenton plants from Luria during certain years.

Minnequa Works—Pueblo

3. CF&I's mill at Pueblo, Colorado is known as the Minnequa Works. Prior to entering into the arrangement with Luria, the Minnequa Works acquired the greater part of its scrap (60% in 1945) from railroads, and the balance from a number of small dealers in the Rocky Mountain area (particularly in Pueblo and Denver, Colorado) and from the relatively few industrial fabricators in the area. Prior to 1946 there were no brokers with offices or yards in the Rocky Mountain area, although brokers from other areas sporadically came into the market to buy or sell scrap. Luria had not been a regular supplier of scrap to the plant prior to 1946, although it had made some small sales in 1943.

4. In the spring of 1946, following discussions with Luria officials, CF&I entered into an informal arrangement, on a trial basis, for Luria to act as the exclusive broker for the Minnequa Works of the company. The arrangement was originally limited to dealer-broker scrap and did not cover railroad scrap. There was some difference of opinion as to the time period within which Luria was to become the exclusive broker for CF&I. The CF&I official who negotiated the arrangement originally contemplated that "our break with other sources of supply should be gradual which meant a continuing of purchasing on a continuously reducing scale while Luria Brothers were establishing themselves in our behalf" (CX 939). However, the Luria representatives opposed such a change-over and the CF&I officials, after reviewing the situation in the latter part of May 1946, "came to the conclusion that continuing of negotiations with other sources of supply had elements of self competition and elements of frustration to Luria Brothers when attempting to become established," and therefore decided that it would be in the "best interests [of CF&I] to imme-

diately withdraw from the market in connection with our other suppliers and give Luria Brothers immediate control of all commercial scrap customarily sold through dealers" (CX 939).

The Luria officials were still not satisfied with the arrangement, insofar as it did cover railroad scrap, and advised CF&I that if it "expected Luria Brothers to assume entire responsibility for keeping [CF&I's] plant in scrap they [Luria Brothers] should then be accorded the privilege of also handling [CF&I's] railroad transactions." (CX 939). There was some opposition to this from CF&I since it would result in paying Luria approximately \$50,000 in commissions, which it had not previously had to pay. However, since it was felt the over-all arrangement would improve CF&I's scrap-supply situation, the change requested by Luria was agreed to and letters were sent to a number of railroad suppliers between May 28 and 31, 1946, advising them that Luria had become CF&I's "exclusive broker for scrap purchases" (See CX 30). In addition to the notification to railroads, a formal announcement was issued to the trade by CF&I on June 1, 1946, "Announcing the Appointment of Luria Brothers & Company, Inc. of Philadelphia, Pennsylvania, As Our Exclusive Scrap Broker" (CX 191). The announcement requested that future offerings of scrap be made through Luria's office in St. Louis, Missouri.

5. Several months later the arrangement between Luria and CF&I was formalized into an actual written agreement, dated August 23, 1946, which provided that CF&I would purchase and Luria would supply all of the purchased scrap requirements of CF&I at the Pueblo, Colorado plant for a period of 5 years (CX 193). The price to be paid for such scrap was to be the OPA price, plus 50¢ commission per ton during the period of government regulations and, in the absence of government regulations, was to be determined by a formula based on the Pittsburgh, Pennsylvania price quoted in "Iron Age."

6. In October 1946 the new president of CF&I requested Luria to cancel the written contract of August 1946. Luria, by letter dated October 11, 1946, agreed to the cancellation, stating (CX 193):

Your intent with respect to your Company's continued purchase from us of its scrap needs as expressed in our recent interviews is satisfactory.

We look forward to many years of business relations based on mutual friendly cooperation. As you so forcibly and rightly said, our keeping scrap rolling into your plants in these difficult times will not be forgotten when it becomes easier to obtain scrap, and we appreciate your assurances of esteem and particularly your concluding words that we would not regret our compliance with your wishes in cancelling the existing agreement.

The reply from CF&I, dated October 21, 1946, expressed appreciation of Luria's consent to cancel the existing contract and contained the following assurance (CX 194):

You can feel assured that this has brought about a fine understanding and acquaintance between your representatives and myself and it will add tremendously to a business relationship in the future which will be mutually advantageous.

7. Despite the cancellation of the written contract, relations between CF&I and Luria continued as they had been before. No written notice was ever issued to the trade countermanding the announcement of June 1, 1946, nor were the railroads advised that Luria was no longer CF&I's broker. On the contrary, during the period of the Korean conflict, when the vendor of the scrap had the right to designate the broker on allocated scrap, CF&I requested a number of the railroads to designate Luria as broker on all scrap allocated to it. CF&I's scrap buyer went to work for Luria when the latter opened a brokerage office in Pueblo in 1946, and for all practical purposes CF&I closed down its own scrap buying office and depended entirely on Luria. In the years following the alleged cancellation of the brokerage contract, from 1947 to 1954, 100% of the scrap purchased by CF&I for the Minnequa Works was purchased through Luria, except for the year 1951, when as a result of the mill's receiving some allocated scrap pursuant to government regulations the percentage of scrap purchased from Luria was reduced to 95.4%.

8. It is unnecessary for the examiner to speculate as to the reasons why CF&I requested Luria to cancel the written contract within a few months after it was signed. However, it is obvious that Luria received oral assurances of a continuation of the relationship on a less formal basis, which convinced it that its long-range interests would be better served by consenting to a cancellation of the written agreement. Succeeding events demonstrated that this was a sound decision since in place of a 5-year written contract, it has enjoyed the benefit of an oral arrangement which, as of the close of evidence in this case, had been in effect for over twelve years and, as will hereafter appear, has been extended to more recently acquired plants of CF&I and of its subsidiary, Roebing.

9. CF&I, as has been noted above, does not deny that there exists an oral understanding pursuant to which Luria acts as its exclusive broker for the Pueblo plant. However, it argues that the arrangement is terminable at will, and will therefore continue only as long as CF&I is satisfied with Luria's performance. In the opinion of the examiner it is of little consequence that the arrangement has no fixed duration and may be terminated if CF&I becomes dissatisfied. As far as competitors of Luria and dealers in the area are concerned, it is of little consolation that the arrangement is of an indefinite, rather than a fixed, duration. They are, and have been for over twelve years, effectively precluded from dealing directly with CF&I.

10. Respondent Luria argues that the arrangement between CF&I and itself has actually benefited dealers in the area, citing in support of this argument the figures purporting to show an increase in CF&I's purchases of scrap from dealer sources. In the opinion of the examiner this argument is without merit since (a) it assumes that the alleged increase in dealer purchases by CF&I is attributable largely to Luria's intervention as CF&I's broker and (b) it overlooks the fact that increases in sales are not necessarily a barometer of economic well-being.

(a) It may be noted, at the outset, that the alleged increase in dealer purchases is not as large as that suggested by Luria. The latter's argument is based on an alleged increase in CF&I's purchases from broker-dealer sources, as revealed by the statistical evidence of CF&I's scrap purchases. However, after 1946 substantially all of CF&I's purchases were made from Luria. Since the scrap supplied by Luria included scrap of railroad and industrial fabricator origin, as well as scrap of dealer origin, it is clear that the figures cited by Luria are inflated to the extent that they include scrap of nondealer origin. It is true that the record does reveal a substantial decline in the percentage of scrap of railroad origin supplied to CF&I (e.g., from 60.3% in 1945 to 24.1% in 1954). To this extent it may be assumed that there was a significant increase in the proportion of scrap supplied by dealers. However, the increase is not as great as that suggested by Luria, and it is not established that all, or even most, dealers shared in the increase.

Even accepting the fact that there has been a significant increase in CF&I's purchases of scrap of dealer origin, it is by no means clear that this has been due to Luria's entry upon the scene. It is quite likely that a major factor has been CF&I's increase in steel production and the consequent increase in its need for scrap. One of the reasons given by CF&I for entering into the arrangement with Luria was an anticipated increase in its scrap needs due to an expansion in its production facilities. This may well have accounted for a substantial part of the increase in the purchase of broker-dealer scrap, cited by Luria, which rose from 44,000 tons in 1945 to 124,000 tons in 1946, and then to 281,000 tons in 1948. Overlooking the fact that 56.8% of the 1948 figure involves scrap of railroad origin, it is significant that with the nationwide drop in scrap consumption in 1949, CF&I's purchases of broker-dealer scrap declined to 213,000 tons. With the advent of the Korean conflict its purchases again rose, and reached a maximum of 334,000 tons in 1951. Again overlooking the fact that a substantial portion of this scrap was of railroad origin and an undisclosed quantity of industrial

origin, it is significant that with the decline in steel production, CF&I's scrap purchases again declined to 124,000 tons in 1953, returning substantially to the 1946 level.

(b) Luria's argument, based on the alleged increase in dealer sales, presupposes that an increase in sales is necessarily synonymous with an improvement in the competitive position of dealers in the Rocky Mountain area from which CF&I draws its scrap. There is, however, evidence to the contrary. For example, dealers had difficulty in selling No. 1 heavy melting steel to Luria for CF&I, and were required to sell such scrap commingled with the No. 2 steel, at the lower price of the latter grade.³² Dealers were discouraged from installing baling presses in competition with that of Luria's subsidiary Pueblo Compressed Steel Corp. and that operated by another dealer in Denver, which sold all its bundles to Luria and had operated a press prior to Luria's entry into the market. Dealers have had very little opportunity for genuine price negotiation with Luria. Usually they were given the opportunity of taking the price quoted by Luria or of holding their scrap. Because of the considerable distances to other scrap consuming markets and the high freight rates involved, this has left the dealers little real choice. Dealers who have endeavored on occasion to sell their scrap in other markets have been admonished by Luria or CF&I.³³

Luria contends that the nonavailability of other markets to dealers in the Denver-Pueblo area was a matter of geography over which it had no control, and that there was no difference in price negotiations by reason of its becoming CF&I's broker. It contends that "CF&I determined the price it was willing to pay for scrap in exactly the same manner whether it bought through its own buying organization or through Luria" (p. 323, Proposed Findings). This, however, is contrary to the evidence. The record establishes that CF&I turned over to Luria the primary responsibility for acquiring scrap in its

³² Luria cites an instance of a dealer who had recently (July 1957) sold some No. 1 steel to Luria for CF&I. The testimony of this witness is contrary to the general weight of the evidence. A number of other dealers indicated that CF&I, through Luria, did not recognize the No. 1 grade as far as dealers were concerned, and that they had had to sell it with No. 2 steel at the lower price. Considering the fact that one of the reasons CF&I entered into the arrangement with Luria was because it wished to lessen its reliance on the more expensive No. 1 grade which it was getting from the railroads, it would not be surprising if Luria were to have discouraged dealers from supplying such scrap, at least at the higher No. 1 price.

³³ One dealer who had sold heavy melting steel to a Chicago broker testified that he was told by Luria's scrap buyer that "in the long run it is going to hurt us more than help us" (R. 9896) and "that the steel in this area which you generate belongs to CF&I and Luria" (R. 9897). The dealer experienced a temporary cutback in its quota of orders from Luria. Another dealer was subtly reminded by a CF&I official at the time he was considering selling to a broker outside the area that while CF&I might be in need of his scrap at the time, "the time's coming when you are going to need us" (R. 10,058). As a result of this advice the dealer dropped all thought of selling out of the area.

Initial Decision

62 F.T.C.

behalf. It expected Luria to decrease its reliance on expensive railroad scrap, and to supply it with increased quantities of less expensive dealer scrap. Its former scrap buyer, John Crum, began to work for Luria as head of its newly-established Pueblo office. The prices which CF&I offered to pay were based largely on the advice which it received from Crum, as to the price at which scrap could be acquired. It is clear, therefore, that the price which dealers received was determined or influenced in large measure by Luria.

It is suggested that dealers in the area would have only one substantial outlet for their scrap irrespective of whether they dealt directly with CF&I or through Luria. It is also argued that if they were dissatisfied there were potential outlets in other markets. In the opinion of the examiner there is a considerable difference in the bargaining position of dealers vis-a-vis CF&I, and that vis-a-vis Luria. While the dealers would still be under considerable economic compulsion to come to terms with CF&I in bargaining with it, the latter would also be under economic pressure to come to terms with dealers because of its need for scrap and its isolation from other scrap-producing areas. In bargaining with Luria, on the other hand, dealers are faced with a considerably stronger adversary. With the nationwide scope of its operations, Luria is in a position, if circumstances were to require it, to ship in scrap from more distant areas so as to make dealers in the Rocky Mountain area more complaisant to its price terms. It also exercises a considerable amount of influence on the limited alternatives open to scrap dealers in the area by reason of the fact that it is the exclusive broker for a number of other scrap consumers in the Rocky Mountain area, including Electron Corporation, Pacific States Cast Iron Pipe Co., Kennecott Copper Co., and the Geneva plant of U.S. Steel, as well as being exclusive broker for Bethlehem Pacific whose plants at Seattle and San Francisco also represent alternative shipping points for Rocky Mountain scrap in times of unusual economic activity. While there are several other small mills in Kansas City and Houston, the freight rates to these points are so high as to make them unavailable except during periods of unusual demand.

Buffalo Plant

11. The plant at North Tonawanda, New York, near Buffalo, was acquired by CF&I from Wickwire Spencer Steel Company in 1945, and is known as the Buffalo plant of the Wickwire Spencer Division of CF&I. Between 1945 and 1947 it was supplied by from 13 to 19 different dealers and brokers, including respondent Luria. In 1945, when CF&I acquired the plant, Luria was supplying 4.1% of the scrap purchased by the plant, and in 1946 its percentage increased to 11.1%.

In 1947 Leonard C. Rose, who was the director of purchases for the Minnequa Works of CF&I, became a director of purchases for CF&I as a whole, including the Buffalo plant. During 1947 discussions were had between Rose and Ralph Ablon, Luria vice president, with regard to Luria's supplying the Buffalo plant. Ablon, who had been instrumental in bringing about the exclusive arrangement at Minnequa, felt that his company had done "a satisfactory job" for the Colorado plant and had proven "we had a service to perform and that we were of value" to CF&I, and decided to talk to Rose "about selling scrap to their other plants" (R. 3271). While denying that Rose automatically agreed to make Luria the exclusive supplier of the Buffalo plant, Ablon conceded that he "agreed to give us a try" and that "[o]n the basis of his being satisfied and pleased with our services, we continued to get the business" (R. 3272). As Rose explained the arrangement, "we began placing the responsibility on Luria Brothers to furnish the right kind of material" (R. 9837) for the Buffalo plant.

12. In the year 1947, 47.4% of all the scrap purchased by the plant was supplied by Luria. In 1948, the first full year following the decision to give Luria the responsibility for supplying the plant with scrap, purchases from Luria reached 97.5% of the scrap purchased for the plant. In the succeeding years the percentage of purchases from Luria varied from 95% to 99%, except for 1952 and 1954. In 1952, a year of scrap allocations, the percentage purchased from Luria was 91.3 and in 1954 it was 87.3%.

Claymont Plant

13. CF&I obtained control of the plant at Claymont, Delaware, in March 1951, when it acquired the stock of Worth Steel Company, which then operated the plant. Since June 30, 1952, the plant has been operated as part of the Wickwire Spencer Steel Division of CF&I, along with the plant at Buffalo. Luria had been a substantial supplier to Worth Steel prior to 1951, supplying between 49% and 70% of the broker-dealer scrap purchased by the plant, and between 35% and 65% of the total purchased scrap. In 1950, the last full year prior to the acquisition of the plant by CF&I, Luria supplied 62.1% of the broker-dealer scrap, and 64.3% of all scrap purchased by the Claymont plant. In 1951, these percentages increased to 76.1% and 77.5%, respectively.

14. In the middle of 1952 Leonard Rose, the director of purchases for CF&I, decided to purchase all of Claymont's scrap requirements from Luria for the reason, as he testified, that "you have no right to expect anybody to undertake such an obligation [i.e., supplying the tonnages Luria was supplying] unless they have total responsibility" (R. 9830). A representative of Luria Steel & Trading, which had

Initial Decision

62 F.T.C.

been a substantial supplier of the Claymont plant,³⁴ was advised by Rose that, "we are imposing upon Luria [Brothers] the obligation to get our entire melt of scrap" (R. 9830). For the year 1952, the year during which the decision to make Luria the exclusive broker for Claymont was made, purchases from Luria increased to 89.1% of the scrap purchased from brokers and dealers, and 86% of the plant's total scrap purchases. In the years 1953 and 1954 the percentage of broker-dealer scrap purchased from Luria was 98.7% and 99.8% respectively, and the percentage of total scrap purchases was 96.3% and 93.8%, respectively.

Brooke Furnace, Birdsboro

15. CF&I's plant at Birdsboro, Pennsylvania, consists of a blast furnace, which it acquired from The E. G. Brooke Iron Company in January 1952. The plant was thereafter operated as a part of the Wickwire Spencer Steel Division. Luria had been a substantial supplier to the plant prior to its acquisition by CF&I. Purchases from Luria ranged from about 25% to 72% of the scrap purchased by the plant during the period 1945 to 1949. In 1950 and 1951, the 2 years immediately prior to the plant's acquisition by CF&I, purchases from Luria had dropped to 34.3% and 27.1%, respectively.

16. After CF&I acquired the plant in 1952, the new management decided it was not necessary to maintain a separate purchasing department at the plant. Rose, who was the purchasing director for the entire company, arranged for Luria to take over full responsibility for supplying the scrap requirements of the plant and, in 1953, 100% of the plant's scrap purchases from brokers and dealers, and 98% of the purchases from all sources, were purchased from Luria. In 1954, for reasons not appearing in the record, purchases from Luria declined to 87.1%.

17. One of the broker-dealers which was eliminated as a supplier for the plant was the Mayer-Pollock Company of Pottstown, Pennsylvania, which has previously been mentioned in connection with the exclusive arrangement between Luria and Bethlehem. Mayer-Pollock had been a substantial supplier to the Brooke plant, the amount of scrap purchased from Pollock exceeding that purchased from Luria in every year from 1945 to 1951, except for the year 1949. After May 1952, Pollock was unable to sell to the plant directly, but was required to sell through Luria as broker. The explanation given by Rose for the cessation of direct purchases from Pollock was that "we gave Luria Brothers a job to do, to keep us loaded with scrap of the kind and quantity that we want" (R. 9868). In the case of Pollock, it

³⁴ In 1950 LS&T was second only to Luria as a supplier to the Claymont plant, supplying it with 43,000 tons compared to 90,750 by Luria.

may be noted, that the shipments which it made to Brooke through Luria consisted of essentially the same scrap as it had previously been shipping directly, viz, the scrap originating from the Spicer Manufacturing Division of the Dana Corporation.

Roebbling Plant, Trenton

18. CF&I acquired the mill of John A. Roebbling's Sons Co., at Trenton, New Jersey, on December 31, 1952. Prior to that time Luria had been a substantial supplier to the mill for many years. The proportion of the mill's purchases from Luria increased steadily over the years until, by 1945, it was purchasing approximately 95% of its broker-dealer scrap and 90% of its total scrap from Luria. The trend continued during the succeeding years, and by 1950 it was purchasing 99.9% of its scrap from Luria. In the years 1951 and 1952, when the Government allocations program was in effect, the proportion of its purchases from Luria decreased slightly to 94.7% and 94.0%, respectively. However, in 1953, after the lifting of controls and Roebbling's acquisition by CF&I, the plant purchased 99.3% of its scrap from Luria.

Unlike the other plants acquired by CF&I, there was no significant change in the policy or pattern of purchases by the Roebbling plant from Luria after CF&I acquired control. As explained by Rose, there was: "No occasion to [change] * * * inasmuch as they were buying practically all of their scrap from Luria Brothers and it fitted in with our pattern of thinking for other points" (R. 9839).

Concluding Findings

19. In 1946 Luria became the exclusive broker of CF&I's then main plant at Pueblo, Colorado. An announcement to the trade that Luria had been appointed as CF&I's "Exclusive Scrap Broker" was made in June 1946, although Luria had been acting as such on a trial basis even prior thereto. An agreement formalizing the arrangement was entered into in August 1946, for a period of 5 years, but was cancelled in October 1946 by mutual consent. The arrangement, nevertheless, continued on a nonformal basis and CF&I has continued to purchase substantially all of the scrap for the Pueblo plant from Luria. It is admitted by CF&I, in its answer, that it has an oral understanding with Luria whereby the latter acts as exclusive broker for the Pueblo plant.

20. Over the next few years, after entering into the exclusive brokerage arrangement with Luria pertaining to the Pueblo plant, CF&I extended the arrangement to the other plants owned or subsequently acquired by it. The first extension involved its plant at Buffalo, New York. Following the appointment of Leonard C. Rose,

theretofore director of purchases only at Pueblo, as director of purchases for the whole company, Luria was given the responsibility of supplying the Buffalo plant with substantially all of its purchased scrap requirements. Following the acquisition of the plant at Claymont, Delaware in 1951, Rose decided to purchase all of that plant's scrap requirements from Luria. In 1952, after CF&I had acquired the plant at Birdsboro, Pennsylvania, Rose decided to give Luria the full responsibility for supplying that plant's scrap requirements. At the Trenton plant of its subsidiary, Roebling, which was acquired at the end of 1952, there was no need to make any change since Luria was already supplying the plant on an exclusive basis.

21. Respondents CF&I and Roebling contend that the decision to purchase substantially all of the scrap requirements of their various plants from Luria was based on "local operating conditions" at such plants, and that the agreement involving the Pueblo plant was not merely "extended" to the other plants, as contended by counsel supporting the complaint. The examiner regards this argument as merely an exercise in semantics. It is immaterial whether local conditions contributed to the decision to make Luria the exclusive broker for the other plants, in addition to Pueblo. The fact is that Luria did, by agreement or understanding with CF&I, become the exclusive broker for all its other plants. By 1954 Luria was supplying 100% of the scrap purchased by CF&I (including Roebling) from broker-dealer sources, and 99.3% of the scrap purchased from all sources.

It is inconceivable that substantially the same pattern of scrap purchases should have developed at all of the CF&I plants without some over-all agreement with Luria. That such an understanding existed is implicit in Rose's explanation of why no change was made in the scrap purchasing policy of Roebling when it was acquired in late 1952, at which time it was already purchasing substantially all of its scrap from Luria, viz, that Roebling's scrap policy "fitted in with our pattern for other points", i.e., other CF&I plants (R. 9839). At another point Rose admitted the existence of an over-all agreement with Luria on the part of CF&I, but merely claimed that it was terminable. When asked by CF&I counsel whether CF&I was "bound by any agreement to *continue* purchasing scrap from Luria", Rose responded (R. 9841): No, it was made quite clear months and months ago that we could, either party could, cancel *the now verbal arrangement* on one day's notice, let's say. [Emphasis supplied.]

Granted that the exclusive brokerage arrangement between CF&I and Luria is cancellable on one day's notice, or at will, the fact remains that it exists, that it has existed for many years and that it will continue to exist indefinitely until it is cancelled. It is concluded and

found that respondents CF&I and Roebing have entered into an understanding or agreement with Luria whereby the latter acts as substantially exclusive broker for said respondents and said respondents purchase substantially all of their requirements of purchased scrap from Luria.

(3) *U.S. Steel*

1. Respondent United States Steel, sometimes hereinafter referred to as U.S. Steel, is the largest steel producer in the United States, its ingot capacity as of January 1, 1954, representing approximately 31% of the industry. U.S. Steel operates numerous plants and divisions throughout the United States, including one at Geneva, Utah. The plant at Geneva is the largest consumer of scrap on the western slope of the Rocky Mountain area.

2. U.S. Steel has been named as a respondent in this proceeding especially because of its activities at the Geneva, Utah plant. The proof offered by counsel supporting the complaint concerning an exclusive brokerage arrangement between that company and Luria is limited to the Geneva plant, and counsel supporting the complaint have conceded that their contention concerning the existence of such an arrangement is "limited to the Geneva plant of U.S. Steel" (R. 12,727).

3. In its main or Central Operation, it is the policy of U.S. Steel to purchase scrap from a number of different suppliers, including brokers and dealers and industrial concerns. It is not the policy of that respondent, in its Central Operation, to purchase all or substantially all of its scrap from a single or primary supplier for any of its plants. It is the policy of U.S. Steel in its Central Operation to pay the same price for scrap to all suppliers of a given plant and no distinction is made between brokers and dealers.

The Issue

4. In the case of the Geneva plant, U.S. Steel admits in its answer that in October 1948 it accepted the offer of Luria "to act on an informal basis as its exclusive broker for the purchase of iron and steel scrap" for that plant. It is alleged, however, that there was no commitment as to the period of time such arrangement would remain in effect, and that the arrangement came to an end early in 1952 when the operations at Geneva were merged with those of the parent company on the West Coast. The issue presented, therefore, is whether the exclusive brokerage arrangement between Luria and the Geneva operation of U.S. Steel was effectively terminated.

Geneva Plant

5. During the period of World War II and until its purchase by U.S. Steel in 1946, the plant at Geneva, Utah, was operated by the Geneva Steel Company for the Defense Plants Corporation. The

plant was designed to be self-sufficient, insofar as its metallics requirements were concerned. The pig iron from its blast furnace and its home scrap (*i.e.*, scrap generated from its own operations) were sufficient to take care of its needs.

6. After the cessation of hostilities at the end of World War II, the plant was put in a standby condition. It was purchased by U.S. Steel in June of 1946 and went into partial operation as Geneva Steel Company in 1947. By the time the plant was in full operation in the first quarter of 1948, it was found that it was necessary to obtain a substantial tonnage of scrap from outside sources. Even in 1947 it had been necessary to purchase some outside scrap, the major portion of which was obtained from Berg Metals, a Los Angeles dealer and broker. Purchases of scrap from outside sources increased from 1,710 tons in 1947 to 24,374 tons in 1948 and to 73,630 tons in 1949.

The Exclusive Arrangement

7. By late August or early September 1948, Geneva Steel Company began to take active steps to increase its supply of scrap from outside sources. The Geneva scrap buyer, George R. Ten Eyck, sought the advice of the purchasing agents of other U.S. Steel subsidiaries and of the vice president in charge of purchases of the parent company. The director of purchases of the West Coast affiliate of U.S. Steel, Columbia Steel Co., was unable to offer any assistance due to the fact that the plants within his jurisdiction were having difficulty themselves in meeting their own scrap requirements. However, the vice president of the parent company, C. A. Ilgenfritz, sent the following telegraphic advice to Ten Eyck on October 1, 1948 (CX 788):

Luria Bros. have heard you are about to come in market for scrap. They are large operators and good outfit. Understand they are now supplying Colorado Fuel & Iron. It might be to your advantage to line up Luria as your main source. In any event suggest you discuss matter with them and see what you think after so doing. I can recommend them without any reservation.

8. At or about the time of the sending of the above telegram two Luria representatives, B. L. Vernor of its Pittsburgh office and John L. Crum of its Pueblo office, called upon Ten Eyck to discuss the supplying of the Geneva plant's scrap requirements. At the conclusion of the meeting they were requested to submit a written proposal.

9. A few days later, Crum returned after conferring with Luria's president, and submitted a written proposal in the form of a letter dated October 7, 1948, addressed to Geneva Steel Company. The letter proposed a number of terms and conditions pertaining to price, commissions and other pertinent matters, and contained the proposal that Geneva (CX 9)—

* * * agree to accept iron and steel scrap only if sold by or through Luria Brothers & Company, Inc.

It also stated that Luria was prepared to start operating under the proposal immediately, with the understanding that "this agreement may be cancelled preemptorily" (sic). The letter called attention to the fact that in supplying Geneva's requirements Luria would have to obtain scrap "from territories not now accustomed to shipping to Geneva and with full consideration for the difficulties which will necessarily arise with other mills depending on scrap from these territories." It added:

* * * we have commitments and responsibilities at these other mills and it is to our advantage, as well as yours, that your requirements be satisfied with the least possible disturbance or disruption of the present markets.

10. The written proposal by Luria was discussed by Crum with Ten Eyck and with Geneva's attorney. There was some disagreement on certain of the terms of the proposed arrangement. Among other things, attention was called by the Geneva attorney to the fact that the provision requiring Geneva to buy scrap only from Luria would preclude Geneva from buying scrap elsewhere, in the event Luria was unable to supply Geneva with all the scrap it needed. Geneva was willing to use Luria as its exclusive broker, but wished to be free to buy elsewhere if Luria was unable to meet its requirements. Crum finally agreed to forget the written proposal and to proceed on the basis of an oral understanding under which Luria would act as Geneva's exclusive broker and would endeavor to supply it with its scrap requirements. It was agreed that Geneva would issue monthly orders for its requirements to Luria, with the price to be negotiated each month and with Luria to receive a commission of 50¢ per ton in addition to the agreed price.

11. While Crum was willing to proceed without any written contract, he did request Geneva to issue a written announcement of Luria's appointment as its exclusive broker. This Geneva agreed to do. The written announcement was prepared by Luria for issuance by Geneva, and was similar to the announcement used by CF&I in June 1946. The Geneva announcement, which was issued October 15, 1948, recited "The Appointment of Luria Brothers & Company Inc" as Geneva's "Exclusive Scrap Broker" and requested that future offerings of scrap be made through Luria. The reason for Luria's request that a written announcement be issued by Geneva was, as Crum testified, that "it was an introduction for me and it was a written assurance that the mill would buy their scrap" (R. 13,027).

12. While the main point of contention is whether the exclusive brokerage arrangement was later effectively terminated, there is also

some disagreement as to the nature of the brokerage arrangement between Luria and Geneva. In its answer to the complaint in this proceeding respondent U.S. Steel admits that it "accepted the offer of respondent Luria Brothers and Company, Inc., to act on an informal basis as its exclusive broker for the purchases of iron and steel scrap for the said Geneva plant" (emphasis supplied). This would imply that it agreed to purchase scrap on a brokerage basis from Luria only, irrespective of the sources of the scrap. However, in its memorandum filed in support of a motion to dismiss, U.S. Steel contends that the exclusive brokerage arrangement was intended to be limited only to the purchase of scrap "originating in dealers' yards in the [Geneva] area" (p. 2 U.S. Steel Memorandum).

The record fails to support the contention of U.S. Steel that the brokerage arrangement was limited to the supplying of scrap from the yards of dealers in the general Geneva area. The formal announcement itself contains no such limitation, but refers to Luria, generally, as Geneva's exclusive broker. The testimony of Geneva's scrap buyer, Ten Eyck, who represented Geneva at the meeting when the arrangement was consummated, likewise reveals no such limitation as that now contended for. According to Ten Eyck, he and the Luria representative orally agreed that Geneva would buy all of its requirements of scrap from Luria, but that "where they [Luria] didn't offer sufficient [scrap] * * * it [was] my duty as the purchasing agent to acquire such additional scrap as I could" from other sources (R. 13,657).

Ten Eyck's testimony, which indicates that there was no intention to limit the arrangement to scrap of dealer origin, is corroborated by correspondence sent within 4 months after the arrangement was made, in which this precise subject was discussed. In a letter dated February 1, 1949, from Luria Steel & Trading Corporation's Chicago office to Carl Ilgenfritz, U.S. Steel vice president, reference is made to the fact a representative of the Union Pacific Railroad (from which LS&T was interested in buying scrap for sale to the Geneva plant) had advised LS&T that Luria "had the exclusive at Geneva", that another U.S. Steel official after checking with Ten Eyck had advised LS&T that the exclusive was "only on dealer's scrap", but that when LS&T spoke to Ten Eyck directly it was advised that Luria "had an exclusive" and had bought the railroad scrap for Geneva (CX 789-B). The letter sought to have Ilgenfritz use his good offices on LS&T's behalf.

Ilgenfritz sent Ten Eyck a copy of the LS&T letter, and Ten Eyck by letter dated February 16, 1949, advised Ilgenfritz that Geneva had "entered into an exclusive brokerage agreement with Luria, covering all types of scrap" (emphasis supplied), and therefore "had no re-

course" other than to request LS&T and another broker (Purdy) "not to enter a bid on our behalf" for the railroad scrap (CX 789-E). Without awaiting a reply from Ten Eyck, Ilgenfritz, by letter dated February 4, 1949, replied to the LS&T letter, advising it as follows (CX 789-D):

Up until a short time ago, the Geneva Steel Company was virtually self-contained on scrap. When it developed that they were going to require some outside tonnage, it seemed under the circumstances to be the part of wisdom to line up with someone that has been operating in that territory and knowing one particular scrap company was the main supplier for the Colorado Fuel & Iron Company, we felt it would be better for all concerned to look to this company for as much of the Geneva tonnage as it could supply.

Thus far, I think the arrangement has worked quite satisfactorily and I question whether now is the time to consider any change * * *. [Emphasis supplied.]

It seems clear, therefore, that the exclusive brokerage arrangement with Luria was not limited to dealer scrap, but included scrap originating for other sources, and covered all of Geneva's purchased scrap requirements to the extent Luria was able to supply them. Only where Luria was unable to fill Geneva's full requirements was the latter to purchase scrap elsewhere.

13. While the brokerage arrangement was not intended to be limited to dealer scrap originating in the general geographic area of the Geneva plant, it was in practice so limited to a large extent. Although Luria supplied Geneva with railroad and other scrap, the bulk of the scrap which it supplied consisted of scrap originating in the yards of dealers located in the Intermountain area, *i.e.*, Idaho, Utah, parts of Nevada, the western slope of Colorado and Montana. This was for the practical reason that this was the natural area, because of favorable freight rates, from which to obtain scrap to meet Geneva's requirements.

It is clear from the record that Geneva selected Luria as its exclusive broker because of the latter's familiarity with the Intermountain area, from which it was already supplying scrap to CF&I at Pueblo. Another important reason for the selection of Luria was that Geneva wished to minimize, as far as possible, competition with CF&I for the same scrap. Luria challenges such a finding on the ground that it is more natural for the area on the western slope of the Rockies to ship its scrap to Geneva "due to geographic and transportation conditions", and contends that there is very little competition between CF&I and Geneva. While competition between the two plants may have been considerably minimized by reason of their having a common broker, as the figures cited by Luria suggest, there can be no doubt that a vital element in the minds of both Luria and Geneva, in entering into

the arrangement, was the desire to minimize competition. This seems clear from the exchange of correspondence referred to above.

It cannot be assumed, for example, that Luria was engaging in mere salesman's talk, when it stated in its proposal of October 7, 1948, that it would have to draw scrap for Geneva "from territories not now accustomed to shipping to Geneva and with full consideration for the difficulties which will necessarily arise with other mills depending on scrap from these territories." As previously noted, the same letter emphasized Luria's "commitments and responsibilities at these other mills", and that it was to both Geneva's and Luria's advantage that Geneva's requirements "be satisfied with the least possible disturbance or disruption of present markets." That U.S. Steel was similarly concerned about possible conflict with competitors, particularly with CF&I, seems evident from its vice president's letter of February 4, 1949, to LS&T, that his company felt it "would be better for all concerned" to "line up with someone knowing the territory" who was also "the main supplier for the Colorado Fuel & Iron Company".

Termination of the Exclusive

14. On December 31, 1951, U.S. Steel's two western subsidiaries, Geneva Steel which operated the Geneva plant and Columbia Steel which operated several plants in California, were merged into the parent company and became known as the Columbia-Geneva Division of the company. The responsibility for the purchase of scrap for the entire division was assigned to Helmer L. Christensen, who had previously been director of purchases for the Columbia Steel Company with offices in San Francisco. On September 1, 1952, Christensen consolidated all of the division's purchasing activities into his San Francisco office, and Ten Eyck, purchasing agent for Geneva, was transferred from Geneva to San Francisco where he became assistant director of purchases.

15. Respondents U.S. Steel and Luria contend that the exclusive brokerage arrangement with Luria was terminated in 1952, shortly before the transfer of the purchasing functions from Geneva to San Francisco. This contention is based on Christensen's testimony to the effect that about 2 weeks prior to September 1, 1952, he called Luria's San Francisco representative (from whom he had been purchasing scrap for Columbia Steel's California plants) to his office and advised him that whatever arrangement Geneva had had with Luria was at an end and that henceforth purchases would be made from Luria "as a vendor, not as a broker; as another supplier on a competitive basis" and, further, that Crum who had handled the Geneva account from Pueblo "should assume no more responsibility as far as Geneva Works scrap requirements were concerned", but that negotiations would there-

after be conducted with Luria's San Francisco representative (R. 13,712).

Counsel supporting the complaint contend that there was actually no effective termination of the exclusive brokerage arrangement with Luria, despite Christensen's testimony of an alleged termination of the arrangement in a conversation with Luria's representative in San Francisco just prior to September 1, 1952. Cited in support of counsel's contention is the lack of notification to, or knowledge on the part of, those who would ordinarily be expected to be apprised of the cancellation of the brokerage arrangement, including Luria's home office, its Pueblo office and the trade generally. The evidence, in this connection, supports the position of counsel supporting the complaint. Thus, it appears that despite the alleged giving of notice of cancellation to a representative in Luria's San Francisco office, this fact was never communicated to Luria's home office, and the latter office was unaware that the exclusive brokerage arrangement at Geneva had ever been cancelled.³⁵ So far as appears, Luria's office in Pueblo, which had been buying scrap for Geneva, likewise received no notification, and was unaware, of any termination of the brokerage arrangement at Geneva. The only change which occurred, as far as Pueblo was concerned, was that after Geneva's buying functions were transferred to its San Francisco office, the price of the scrap to be supplied to Geneva was negotiated between Luria's San Francisco office and the U.S. Steel office in San Francisco, instead of directly by Crum, but this was only after "my office [Pueblo] and the San Francisco office [of Luria] go into what the right price should be pretty thoroughly before we talk to Geneva" (R. 13,030).

Of perhaps the greatest significance in determining the issue of termination, is the complete absence of any evidence of notification to, and the apparent lack of awareness of any such termination on the part of, those who were actually supplying the scrap which Luria sold to Geneva. Although the exclusive brokerage arrangement had

³⁵ William J. Luria, a Luria vice president, originally testified that as far as he was aware no notification had ever been received that the brokerage arrangement at Geneva had been terminated, and that if it had been he "would be likely to know about it" (R. 573). When called to testify more than a year later he stated, in response to interrogation by U.S. Steel counsel, that the "agreement was cancelled", but could not recall how this was accomplished (R. 4038). However, when counsel supporting the complaint directed the witness' attention to his earlier testimony, he agreed that such testimony was "correct insofar as I recall as to what happened" (R. 4094). He attempted to explain his later testimony, to the effect that the agreement had been cancelled, as being based on his assumption that the arrangement "just died of its own weight", because of the fact that Geneva "just stopped buying from us" following the "change in their organizational set-up" (R. 4094). However, the fact is that Geneva did not just stop buying from Luria, as will hereafter appear. The examiner is satisfied that the witness' original testimony is correct, and that his later testimony involved some *ex post facto* rationalizing, based on the factual assumption of a cessation of purchases which is not supported by the record.

been announced to the trade by a written formal announcement, no steps were taken to notify the trade that the arrangement had been revoked. So far as appears from the record, dealers and other sources of scrap which had sold through Luria for delivery to Geneva were unaware that any change in the relationship had occurred in 1952. The Pueblo office of Luria continued to supply scrap for Geneva from substantially the same sources as previously. No effort was made to advise the dealers in the area that Geneva desired to do business on a direct basis until sometime in 1954, after this proceeding had been initiated.

Also of considerable significance is the lack of any adverse change in the pattern of buying of the Geneva plant after 1952, despite the alleged termination of the exclusive brokerage arrangement. In 1949, the first year after the brokerage arrangement had been entered into, Luria supplied Geneva with 94.5% of the scrap purchased by the plant. In 1949 the percentage of scrap purchased from Luria declined to 72.4%. The balance of the scrap in these 2 years was supplied mainly by Geneva's former supplier in Los Angeles, Berg Metals, except for a small amount in 1950 by a San Francisco dealer. While the level of purchases from Luria in 1951 and 1952 remained as high as in previous years, viz, approximately 75,000 tons, the proportion of purchases from it declined to 63.2% and 60.1%, respectively. In terms of purchases from broker-dealer sources the percentage in 1952 was 69.1%. Most of the scrap purchased from sources other than Luria was supplied by dealers in Los Angeles and San Francisco which had been supplying Columbia Steel's plants in California. The decline in the proportion of purchases from Luria in 1951 and 1952 may be attributed to the latter's inability to supply Geneva with its full requirements during a period of peak demand incident to the Korean conflict, which left Geneva free under its agreement with Luria to obtain scrap from outside sources. In any event, in 1953, the first year after the brokerage arrangement was allegedly terminated, the proportion of Geneva's scrap purchased from Luria increased to 77.1% (compared to 60.1% in 1952), which represented 89.5% of all scrap purchased from broker-dealer sources. While there was a decline in over-all purchases from Luria in 1954, following the end of the Korean conflict, and the proportion of scrap purchased from it declined to 60.9% this represented an increase in purchases from broker-dealer sources to 93.9%.

It seems evident, therefore, that the alleged termination of the exclusive brokerage arrangement at Geneva has had no adverse effect on Geneva's pattern of purchasing from Luria but, on the contrary, it has continued to purchase as high if not a higher proportion of its

scrap from Luria, particularly scrap of broker-dealer origin. It is conceded by U.S. Steel that as far as the Intermountain area is concerned, which is the area where the agreement was intended to have its primary application, Geneva has not purchased scrap from any broker or dealer other than Luria, except for some government, demolition or railroad scrap. Luria contends that the continued high level of purchases from it, despite the alleged termination of the exclusive brokerage arrangement, is merely a tribute to its continued satisfactory performance as a supplier to Geneva. This argument does not impress the examiner, particularly when it is noted that Luria does not enjoy a comparable position as a supplier to the rest of the plants of Columbia-Geneva, where it has never had an exclusive brokerage arrangement and where, presumably, its performance has also been satisfactory.⁸⁶

Not only have purchases for Geneva continued at the same high level as before the alleged termination of the brokerage arrangement, but Luria has continued to supply scrap on a brokerage basis and to receive a commission of \$1 a ton. This would hardly seem to square with Christensen's putative advice to the Luria representative, at the time of the alleged termination, that henceforth purchases from Luria would be made "as a vendor, not as a broker". U.S. Steel's practice, in this respect, is contrary to that followed in its Central Operations where all suppliers are treated as vendors, irrespective of whether they are brokers or dealers.

In the light of the evidence discussed above, it is the opinion and finding of the examiner that there was no effective termination of the exclusive brokerage arrangement between Luria and U.S. Steel, with respect to the Geneva plant, in 1952. Even assuming that Christensen did inform the Luria representative in the manner testified to, this does not constitute such a termination of the relationship as to absolve U.S. Steel for such responsibility as may otherwise attach from the original relationship. The exclusive brokerage relationship was publicly announced, and many dealers and others, particularly in the Intermountain area, based their business relations with Luria and with Geneva thereon. After 4 years, the pattern of dealing with Geneva had become well established. Under these circumstances the private notification to Luria was not an effective termination of the relationship, particularly where Geneva continued to deal with Luria ostensibly in the same manner and to the same extent as theretofore.

⁸⁶ In 1951 and 1952 Luria supplied 9.3% and 13.7%, respectively, of the dealer-broker scrap purchased by the California plants of the division. In 1953, the first year after the consolidation of purchasing functions, Luria's share increased only modestly to 15.7%. While there was a further increase in 1954, Luria was still a long way from being the principal supplier of those plants.

Alleged Efforts to Purchase Directly from Dealers

16. Respondents contend that in June 1954 and again in April 1956, U.S. Steel offered to buy scrap directly from dealers in the Intermountain area for the Geneva plant, but that the dealers indicated they preferred to sell through Luria. This contention is based on the testimony of Leonard H. Atwood, a scrap buyer for the Columbia-Geneva Division, who claimed to have made such an offer to dealers in the course of scrap surveys of the area in 1954 and 1956. According to Atwood, the dealers preferred to sell through Luria because it advanced them money against bills of lading, whereas Geneva did not pay for scrap until 30 to 45 days from shipment; Luria purchased grades of scrap which Geneva did not use; and Luria had a market for their scrap at times when Geneva was not purchasing.

17. In evaluating respondents' contention it should be noted at the outset that the fact U.S. Steel thought it necessary in 1954 and 1956 to advise dealers in the Intermountain area of the fact that Geneva was willing to purchase scrap directly from them attests to the ineffectiveness of the alleged notification to Luria in 1952 that the brokerage arrangement was terminated, and to the lack of awareness on the part of dealers of any such termination. Secondly, the withholding of such notification to dealers until after the impetus of the present proceeding is hardly sufficient to absolve U.S. Steel from such responsibility as may otherwise attach from the original agreement. It should also be noted, in this connection, that the main effort in this direction occurred in 1956, well after this proceeding had been started, rather than in 1954. The main purpose of the 1954 survey by Atwood was to investigate "complaints from our operating department in Geneva that they were not receiving proper preparation on scrap" (R. 13,770). Atwood endeavored to talk to dealers about the proper preparation of their scrap, check their facilities and get an idea as to the amount of scrap which could be produced in the area.³⁷ From the evidence as a whole, the examiner is not convinced that any serious effort was made in 1954 to encourage dealers to ship directly to Geneva, although there may have been some casual reference to it in certain instances.

18. Aside from the fact that the alleged offers to buy directly did not take place *ante litem motam*, and even assuming that a bona fide offer was made by Geneva in 1954, it is not surprising that a number of the dealers declined to accept the offer. By the middle of 1954 the arrangement between Geneva and Luria had been in effect for 6 years, and Luria had become well entrenched in the Intermountain

³⁷ Atwood was transferred from the southern California plant of Columbia-Geneva to San Francisco in June 1954. He had made similar surveys of dealer facilities in southern California in prior years, and respondent U.S. Steel apparently considered it desirable to have an up-to-date survey of dealer facilities in the Intermountain area.

area. Its position in the area as exclusive broker for Geneva was reinforced by a similar arrangement with CF&I and with several lesser consumers in the Rocky Mountain area, as well as with consumers in contiguous areas who periodically came into the area for scrap, particularly Bethlehem Pacific at Seattle. Many of the dealers, under the circumstances, had come to rely on Luria as the accepted medium for disposing of their scrap, and were not anxious to change particularly, as will hereafter appear, where they were not offered terms of equality with Luria. Having contributed, in large measure, to the selling pattern of dealers in the area, Geneva cannot automatically purge itself 6 years later by an offer to buy direct.

19. While Atwood at first claimed that none of the dealers in the Intermountain area were willing to sell directly (R. 13,794), he later conceded that there were some who did wish to do so (R. 13,849). Such dealers, however, wished to receive the same price as Luria was being paid, which was generally \$1.00 a ton above what dealers were being paid. This Atwood declined to agree to for the alleged reason that Luria was a broker and was therefore entitled to a dollar a ton more than the price paid dealers. This attitude, as has previously been noted, is contrary to the position taken by U.S. Steel in its Central Operations where the same price is paid dealers and brokers. It is suggested by U.S. Steel that its payment of a differential to Luria merely accorded with the prevailing practice in the western part of the United States. However, it seems clear that if there were such a practice, it was largely an outgrowth of the arrangements which Luria had with a number of the major consumers in the area, including that with U.S. Steel at Geneva. The examiner is not convinced from the record as a whole that Geneva made any serious or genuine effort to encourage dealers in the Intermountain area to change the established selling pattern, which it had helped to bring about.

The Arrangement with E. J. Keeley

20. Counsel supporting the complaint cite the arrangement between Luria and E. J. Keeley, a broker-dealer in Butte, Montana, as indicative of the type of control which Luria was able to establish in the Intermountain area through the leverage of its brokerage agreement with Geneva, and as also indicating why certain of the dealers were reluctant to change the existing pattern after it had been in operation for a number of years. Keeley, it may be noted, was referred to by Atwood of U.S. Steel as being one of a few dealers in the area who were capable of shipping substantial quantities to Geneva.

Edward J. Keeley, the principal owner of the Keeley Company, owns an interest in another company which operates a scrap yard on the premises of Anaconda Mining Company in Butte, from which

it supplies scrap to the latter company. The E. J. Keeley Company itself is primarily a scrap broker, selling ferrous scrap from the yards of other dealers in the Montana-Idaho area. At one time Keeley sold scrap directly to a number of different consumers in the Rocky Mountain area and on the West Coast, including the Geneva plant of U.S. Steel, the Pueblo plant of CF&I and the Seattle plant of Bethlehem Pacific. After the exclusive brokerage arrangement with CF&I in 1946 Keeley ceased shipping directly to the Pueblo plant but began selling through Luria. Direct sales to Geneva ceased after 1948 and shipments to that plant were thereafter made through Luria. Direct sales to the Seattle plant of Bethlehem Pacific ceased in 1952 and shipments to that plant were thereafter made through Luria.

In 1950, the earliest year for which there are figures in evidence, Keeley sold 2,700 tons or approximately 20% of his scrap to Luria, most of the rest being sold to direct consumers. Of the scrap sold to Luria approximately 60% was shipped to Geneva and 27% to CF&I. After 1950 there was a sharp increase in Keeley's sales to Luria and a corresponding drop in its sales directly to consumers. In 1951 Keeley's sales to Luria increased to 7,251 tons, of which approximately 27% was shipped to Geneva and 39% to CF&I at Pueblo. Keeley's sales to Luria continued to grow in most of the succeeding years until, by 1956, it was selling 15,200 tons or 71% of its scrap to Luria (compared to 20% in 1950). During the period from 1952 to 1956 substantial quantities of the scrap sold to Luria by Keeley were shipped to Geneva, to CF&I at Pueblo and to Bethlehem Pacific at Seattle. The largest proportion of the scrap was shipped to Geneva, except for 1952 when more scrap was shipped to Bethlehem Pacific at Seattle than to Geneva.

Under its arrangement with Luria, Keeley became, in effect, Luria's representative in Montana and portions of Idaho. Luria made almost no purchases of scrap in the area where Keeley operated, but obtained scrap from the area through Keeley which, in turn, acted as broker for many of the dealers in the area. Luria endeavored to pay Keeley a dollar-a-ton commission on the scrap purchased by Keeley, and the record reveals that from time to time Luria made upward price adjustments in Keeley's favor, in order to enable the latter to make a profit of \$1.00 above the cost of the scrap. Luria also passed on the benefit of price increases to Keeley, where the mill increased the price to it. So close did the relationship between Luria and Keeley become that the latter felt it could, with confidence, inform dealers in the area that if they wanted to sell to Luria they would have to sell through Keeley.

While Luria denies that it has any understanding with Keeley to

buy scrap from the Montana area only through him, it concedes that it presently "buys little, if any, scrap directly" from dealers in the area, and that it finds it "easier" to deal with Keeley, than with the scattered small dealers and scrap collectors in the area. It points out that it did at one time buy directly from Carl Weissman & Son, a dealer in Great Falls, but claims that the latter began to sell its scrap elsewhere because it apparently found a better market. However, the evidence discloses that Weissman has sold large quantities of its scrap to Keeley for delivery to Geneva and to Bethlehem Pacific at Seattle, and that when it endeavored to sell directly to Luria it was advised by Luria that Keeley was its agent or sub-broker. On one occasion when Keeley suspected that Weissman and another dealer in the area, Pacific Hide & Fur Depot, were selling scrap directly to Bethlehem Pacific at Seattle it advised Luria of this fact, and asked the latter to look into the matter "through your usual channels" (CX 794). While there may be no legally binding agreement between them, there can be no doubt that there is a working arrangement between Luria and Keeley, whereby the latter acts as Luria's exclusive agent in part of the territory from which Luria obtains scrap to supply the consumers with which it has exclusive brokerage arrangements, including U.S. Steel's Geneva plant.

21. Respondent U.S. Steel refers to letters which it received in April 1956 from Keeley and from a scrap dealer in Salt Lake City (Pepper's Allied Metals) as establishing the fact that if these dealers continued to sell through Luria, it was as a result of a voluntary decision on their part and not because of any compulsion from Geneva. It may be noted, parenthetically, that both letters, in which the dealers decline an opportunity to sell directly and express a preference for selling through Luria, are similar in tone with their fulsome praise of Luria and its Pueblo manager (Crum), and their detailed explanation of the reasons for preferring to deal with Luria. They smack more of contrived evidence than of normal business correspondence. It is also unusual that these dealers, who were allegedly offered an opportunity to sell directly in 1954, should have waited till 1956 to place themselves on record. Assuming the genuineness of the correspondence, the fact that such letters were written in 1956, and not in 1954, suggests that the earlier alleged offer was not seriously made or considered.

In any event, the fact that these dealers should have declined the offer by Geneva to purchase from them directly is not sufficient to absolve Geneva from further responsibility for the state of facts to which it contributed. Aside from the fact that no offer was made to pay them a price comparable to that paid Luria, it is not surprising that they should have preferred to continue with the existing arrangement. By 1956 the Salt Lake City dealer was selling 95% of its scrap

to Luria, all of which was being shipped to Geneva. It had become almost completely dependent on Luria. Keeley had been given an exclusive territory by Luria and assured of a steady outlet for its scrap to three major consumers with which Luria had exclusives and to several lesser ones. Luria also had sought to protect Keeley's profit as far as possible. By 1956 Luria had achieved a dominant, if not monopoly, position in the Intermountain area, aided in large measure by its exclusive brokerage arrangement with Geneva. It is not surprising, therefore, that dealers in the area were somewhat timid in admitting they no longer wished to sell to Luria, particularly those like Keeley which Luria had placed in a favored position.

Concluding Findings

22. It is undisputed that in October 1948 respondent U.S. Steel's subsidiary, Geneva Steel Company, entered into an informal agreement with Luria pursuant to which Luria was to become the exclusive broker for Geneva's plant at Geneva, Utah. The arrangement was entered into by Geneva after conferring with, and upon recommendation of, the parent company. An important factor in the selection of Luria as Geneva's exclusive scrap broker was the desire to minimize competition for scrap with other consumers in the area for whom Luria was also the exclusive broker, particularly CF&I's plant at Pueblo, Colorado.

23. A printed announcement advising the trade of Luria's appointment as Geneva's "Exclusive Scrap Broker" was issued on October 15, 1948. While the extent of Luria's role as Geneva's exclusive broker was not spelled out in the announcement or in any formal agreement, it was understood that Geneva would give Luria an opportunity to supply its needs for purchased scrap as far as possible, but that Geneva would be free to purchase from other sources to the extent Luria was not able to supply its full requirements. The arrangement with Luria, while primarily intended to cover scrap of dealer origin, was not limited to such scrap but included scrap of railroad and other origin.

24. In 1949, the first full year after the exclusive brokerage arrangement went into effect, Geneva purchased 94.5% of its requirements of non-home scrap from Luria. In the succeeding years there was some decline in the proportion of scrap supplied by Luria, the lowest percentage being reached in 1952, when Luria supplied 60.1% of Geneva's total scrap purchases, which represented 69.1% of the scrap purchased from broker-dealer sources. The reason for the decline is not entirely clear from the record. However, since the period of the decline coincides largely with the period of the Korean conflict, it would appear likely that difficulties in obtaining scrap to meet

Geneva's increased demand was a factor. Thus it appears that while Luria supplied Geneva with approximately 75,000 tons of scrap in 1952, compared to 70,000 in 1949, Geneva's total scrap purchases had increased from 73,630 tons in 1949 to over 124,000 tons in 1952.

In any event, in 1953 the amount and proportion of scrap supplied by Luria again increased, accounting for 77.1% of Geneva's total scrap purchases and 89.5% of its purchases from broker-dealer sources. While the proportion of Geneva's total scrap purchases supplied by Luria declined to 60.9% in 1954, following the end of the Korean conflict and the decline in scrap consumption, the proportion of broker-dealer scrap supplied by Luria increased substantially to 93.9%.

25. From the pattern of Geneva's purchases as well as from other evidence in the record, it seems clear that Luria acts as Geneva's exclusive broker and supplies it with substantially all of the scrap which it obtains in the Intermountain area. Because of high transportation costs this is the area from which Geneva obtains the bulk of its scrap. As Geneva's scrap needs increase, and it becomes necessary to reach out beyond this area, it calls periodically on a few dealers and an industrial fabricator in California, who are substantial suppliers to its California plants, to supply it with additional scrap.³⁸ While the Geneva plant also purchases scrap from several other dealers or from direct sources, most of such purchases are insubstantial or sporadic.³⁹ For the bulk of its scrap, which originates in the Intermountain area, Geneva relies principally on Luria. Outside of a sporadic purchase of scrap of Government, demolition or railroad origin, Geneva has not purchased scrap in the Intermountain area for any broker or dealer other than Luria with a single minor exception in April 1958, when the Purdy Co. offered it scrap from a newly established yard in Salt Lake City. All other dealers or broker-dealers in the Intermountain area sell their scrap to Geneva through Luria.

26. On September 1, 1952, the purchasing functions of the Geneva plant were transferred to San Francisco, following the merger of Geneva Steel and U.S. Steel's California subsidiary, Columbia Steel Co., into the parent company. It is contended by respondents that as an incident of such transfer the exclusive brokerage arrangement

³⁸ In the peak year of outside purchases, 1952, Geneva's principal purchases in addition to those from Luria were from the Los Angeles dealers, Alpert & Alpert and Berg Metals; from the Oakland dealer, the Learner Company; and from Metal & Thermit Corp., an industrial fabricator of South San Francisco. Purchases from Alpert declined in 1953 and ceased in 1954. Purchases from Berg were negligible in 1953 and ceased in 1954. The same is true of those from Learner. Only Metal & Thermit continued to supply substantial quantities of scrap in the succeeding years. Almost all of the scrap purchased from sources other than Luria in 1954 is accounted for by purchases from Metal & Thermit.

³⁹ Outside of the sources previously mentioned, the only other substantial purchases by Geneva were a single purchase of 3,100 tons from Kennecott Copper Co. in 1952, purchases of 1,700 and 4,800 tons from a Fresno dealer in 1952 and 1953, and a single purchase of 2,700 tons from an Oakland dealer in 1953.

pertaining to Geneva was terminated. No notification of such termination was given to the trade, and the purchases for the Geneva plant from Luria continued as they had before, the proportion thereof, particularly of scrap from broker-dealer sources, even increasing. It is highly dubious, on the basis of the evidence in the record, whether there was any intention to terminate the exclusive brokerage arrangement with Luria. Assuming, however, that U.S. Steel did intend to terminate the arrangement in or around September 1952, the action which it took does not constitute an effective termination of the arrangement so as to relieve it from such responsibility as may otherwise attach from the initial arrangement.

27. It is further contended by U.S. Steel that in June 1954 and April 1956 it advised dealers in the Intermountain area that they could sell scrap directly to the Geneva plant, rather than through Luria as broker. For the most part, the dealers who were so advised indicated that they preferred to continue selling through Luria. However, several dealers indicated that they would be interested in selling directly to Geneva but wished to be paid the same price as Luria was receiving, which was generally \$1.00 above that paid dealers. This the U.S. Steel representative declined to agree to, although in its main operations in the eastern and central United States, the company makes no distinction between dealers and brokers with respect to the price which it pays for scrap. Outside of an apparently pro forma offer to buy directly, dealers were given no encouragement by U.S. Steel to break the existing market pattern.

After operating for from 6 to 8 years as the Geneva plant's exclusive broker, Luria had become the dominant factor in the Intermountain scrap market. Its position was further enhanced by a similar arrangement with the Pueblo plant of CF&I and with others, with which U.S. Steel was familiar when it entered into the arrangement pertaining to the Geneva plant. It is, accordingly, the opinion and finding of the examiner that the efforts allegedly made by U.S. Steel to buy directly from dealers in 1954 and 1956 do not, in the light of the conditions which it had helped create, and in view of the fact that they were made after the institution of this proceeding, present a set of circumstances sufficient to relieve it of such responsibility as may otherwise attach from its original action in entering into the exclusive brokerage arrangement with Luria.

(4) *Respondents National and Weirton*

National Steel Corporation

1. Respondent National Steel Corporation, hereinafter referred to as National, is not an operating company, but owns and controls three

companies which operate steel plants, viz, Weirton Steel Company at Weirton, West Virginia; Great Lakes Steel Corporation at Detroit, Michigan; and Hanna Furnace Corporation at Buffalo, New York. The National companies, combined, constitute the fifth largest integrated steel producer in the United States in terms of annual ingot capacity, with 4.8% of the steel capacity and 5.5% of the pig iron capacity of the country.

Weirton Steel Company

2. Weirton Steel Company, herein referred to as Weirton, operates a plant at Weirton, West Virginia, which is located on the Ohio River about 45 miles west of Pittsburgh and 65 miles south of Youngstown. It is within the Pittsburgh-Youngstown steel-producing complex and scrap-market area. This area is a "minus" area, as far as scrap is concerned, in that it generates less scrap than it consumes because of its large concentration of steel-producing and scrap-consuming facilities. It is therefore frequently necessary for Weirton to reach out to more distant areas to meet its scrap requirements, which amount to approximately 40,000 tons to 60,000 tons a month.

3. Weirton is generally able to obtain only about 1,000 tons a month from strictly local sources, mainly industrial fabricators. It obtains about another 1,000 to 2,000 tons a month from Vulcan Detinning Co., an industrial fabricator in Pittsburgh. Additional quantities of scrap are obtained from several dealers or dealer-brokers located outside the Pittsburgh-Youngstown area. Most of these are located further down the river and ship to Weirton by barge, which is considerably cheaper than rail transportation. Among the largest of these are American Compressed Steel Corp., with branches at Cincinnati and Louisville, and F. Perlman & Co. at Memphis. Such barge suppliers account for about 10% of Weirton's scrap requirements. Additional small quantities are purchased from a few other dealers, such as I. H. Schlezinger & Son of Columbus, for shipment by rail. The balance of Weirton's scrap, varying from 64.5% to 85.4% of its total purchases, is acquired from Luria.

4. In purchasing from dealers and dealer-brokers other than Luria, Weirton usually issues orders monthly calling for delivery of a fixed amount of scrap at a fixed price. These suppliers are generally expected to limit their shipments to scrap which originates in their own local areas. They receive no brokerage commission over and above the agreed price. In dealing with Luria, on the other hand, Weirton pays it a commission of \$1.00 a ton above the price agreed upon. No limitation is placed upon the areas from which Luria may ship scrap, and it may even ship from the areas within which the local dealer and dealer-broker suppliers described above are located.

5. Weirton looks to Luria to supply it with the bulk of its scrap requirements, outside of the relatively small and fairly stable amounts which it purchases at regular monthly intervals from a few industrial fabricators and dealers. It regularly confers with Luria with regard to its scrap requirements and with regard to market conditions. It also consults with Luria concerning the prices to be paid other suppliers.

6. Luria is the only firm from which Weirton buys scrap on a brokerage basis. While some of the dealers from whom it buys scrap also do a brokerage business, Weirton deals with them essentially as dealers. It generally issues monthly orders to these dealers based on the limited amounts of scrap which they expect to generate in their local areas. The dealers receive a fixed price which is set by Weirton. In Luria's case, orders are issued from time to time throughout the month, for as much scrap as is necessary to fill Weirton's requirements over and above the scrap ordered from the few other dealers and fabricators. Unlike the other dealers who receive a fixed price irrespective of cost, Luria is paid the cost of the scrap to it plus \$1.00 a ton commission.

7. It is generally recognized by brokers and dealers in the Pittsburgh, Youngstown and Cleveland areas that Luria is Weirton's only broker. Dealers in these areas shipping scrap to Weirton do so only through Luria. Other brokers who have attempted to sell to Weirton have been unsuccessful and have generally ceased to offer scrap to Weirton. Some brokers who have attempted to sell scrap to Weirton have been referred to Luria and, in some instances, have shipped scrap to Weirton through Luria.

8. It is undisputed that Luria is, and has been for a number of years, Weirton's principal supplier of scrap. Weirton's vice president in charge of scrap purchases, Wilmer A. Murphy, acknowledged in his testimony that Weirton looks to Luria to supply it with its "general run of dealers' scrap" (R. 9351), which constitutes its "main requirements" for scrap (R. 9354). While denying that there was any "obligation on either part, theirs or ours", for Luria to supply, or for Weirton to order, the bulk of Weirton's scrap requirements, Murphy conceded he "would like to feel" that Luria had a "moral obligation" to supply Weirton with its principal scrap requirements.

9. It seems clear that there is an informal understanding, agreement or arrangement between Luria and Weirton, that Luria will supply the principal part of Weirton's scrap requirements and, as a part thereof, that Luria will act as Weirton's substantially exclusive broker. There is no serious dispute as to what Weirton's policy or practice is in dealing with Luria. The principal dispute is as to the legally binding nature thereof. Weirton argues that there is "no

legally enforceable agreement between Luria and Weirton to supply Weirton's requirements of scrap" and that "[e]ither side may cancel at any time". Granted that the arrangement may not be legally enforceable and may be cancelled at any time, the fact remains that it exists, that it has existed since at least 1945 and probably prior to that time, and that it will continue to exist indefinitely until either side elects to cancel it. As such, it constitutes a substantial impediment to competitors of Luria in selling scrap to Weirton.

10. It is suggested by Weirton that the arrangement does not constitute a serious impediment to competitors of Luria since Weirton's purchases of scrap account for only a minor portion of the scrap purchased by the principal scrap consumers in the Pittsburgh-Youngstown area. The figures cited by Weirton do not, however, sustain its position. In the period from 1945 to 1954, Weirton's scrap purchases were never less than 9.74% of the scrap purchased by steel producers in the area and in most years exceeded 11%. In the years 1946, 1949 and 1954, Weirton's scrap purchases accounted for 14.07%, 15.18% and 13.62%, respectively, of the scrap purchased in the area. Weirton is the third largest consumer of broker-dealer scrap, being surpassed only by U.S. Steel and Republic Steel among the other consumers in the area. It seems clear, under the circumstances, that Weirton's scrap purchases involve a not insubstantial portion of the Pittsburgh-Youngstown scrap market.

Great Lakes Steel Corporation

11. Great Lakes Steel Corporation, herein referred to as Great Lakes, is not named as a respondent in this proceeding. Until the middle of 1954 it had no exclusive or preferential arrangement with any broker or dealer. It bought its scrap from a number of different brokers and dealers, including respondent Luria. In the years 1945 to 1953, Luria never supplied more than 19.6% of the total scrap purchased by the plant or 23.5% of the scrap purchased from broker-dealer sources. These maximum percentages were reached in the years 1948 and 1949. In the following years, from 1950 to 1953, the percentage of scrap purchased by Great Lakes from Luria declined until it was less than 5% in 1953. Among the brokers and dealers from whom Great Lakes purchased substantial tonnages of scrap during this period were Grant Iron & Metal Co., S. G. Keywell Co., Luria Steel & Trading Co., and Herman Golanty Co., who, respectively, accounted for 19%, 14.4%, 10.6% and 28.5% of Great Lakes' total scrap purchases in 1953.

12. While Great Lakes was owned and controlled by respondent National prior to 1954, it pursued an independent policy insofar as the purchase of scrap was concerned. However, in the middle of 1954

Initial Decision

62 F.T.C.

a number of changes were made in the top management of Great Lakes, as a result of which Wilmer A. Murphy, vice president in charge of scrap purchases for Weirton, took over a similar responsibility for Great Lakes. As a result of this change, Great Lakes ceased doing business with all its former brokers and dealers, except for respondent Luria and The S. G. Keywell Company of Detroit. Murphy's explanation for selecting Luria as one of the two main suppliers for Great Lakes was that, "through my familiarity with Luria and my contact with Luria [at Weirton] it was only natural and I did select them as one of our brokers for the Detroit area" (R. 9360). His explanation for restricting his purchases for Great Lakes to two brokers was (R. 9360) :

Detroit being a plus scrap market where the scrap is produced rather plentifully at most times, I thought that two suppliers, two brokers in the Detroit area were sufficient * * *.

The examiner finds it somewhat difficult to follow the logic of Murphy's explanation. He apparently felt that he could get along with only two brokers at Great Lakes because of the abundance of scrap in the area. Yet at Weirton, which is a "minus" area, requiring that Weirton reach out for great distances to acquire scrap, Murphy instead of expanding his suppliers to encompass a greater number of brokers, has done the reverse and has limited himself to substantially one broker. This is the same broker which he chose as one of his two main suppliers for Great Lakes. One can only speculate as to whether the fact that Murphy's decision at Great Lakes occurred approximately 6 months after the institution of this proceeding had any effect on his decision to choose another broker in addition to Luria. Suffice it to say, that for purposes of this proceeding, the fact that Murphy catapulted Luria, which had been in a declining position at Great Lakes, into one of the prime positions as a supplier to the plant is indicative of the close relationship which existed between them at Weirton.

13. During the first 6 months of the new dispensation at Great Lakes, Luria received the lion's share of the business. For the last half of 1954 Great Lakes purchased 70.4% of its scrap from Luria as compared to 27.9% from Keywell, and a minor fraction from non-broker sources. However, in 1955 Great Lakes' purchases were more evenly distributed between its two brokers. In the first quarter of the year 56.9% was purchased from Luria, compared to 39.2% from Keywell, while in the second quarter 53.1% was purchased from Luria, compared to 44.7% from Keywell. Aside from any difference in quantities purchased, Keywell was placed in a position of competitive equality with Luria, in that it received \$1.00 a ton commission on

all purchases. This is in sharp contrast to the treatment of the other dealers and broker-dealers supplying the Weirton plant, who received no such commission on purchases made from them.

Hanna Furnace Corporation

14. Hanna Furnace Corporation, herein referred to as Hanna, is not named in the complaint as a respondent. It does not purchase any scrap directly. Purchases for that plant are made by the Great Lakes subsidiary of National.

15. Luria has been a relatively minor supplier of scrap for Hanna. The maximum percentage of scrap sold by it to Hanna was 21.7% in 1948. Thereafter, purchases from Luria for the Hanna plant declined, until they ceased entirely in 1953.

16. The change described above involving the top management of Great Lakes, which occurred in the middle of 1954, also affected Hanna, in that Murphy's scrap-buying responsibilities were also extended to Hanna. No scrap was purchased for Hanna in the second half of 1954, after Murphy assumed responsibility for the Hanna operation. However, in the second quarter of 1955, approximately 14,000 tons were purchased, of which 8,700 were purchased from Keywell, 3,000 tons from Luria and 2,500 tons from Buffalo Housewrecking & Salvage Co. The latter, it may be noted, had been by far the largest supplier to Hanna in the period prior to the middle of 1954. While it cannot be said that Luria became the chief supplier to Hanna following the assumption of control by Murphy of purchasing for Hanna, it is significant that there was a resumption of purchases from Luria in 1955 following a complete cessation of relations in 1953.

Concluding Findings

17. Since at least 1945 Luria has been the principal supplier of scrap to Weirton Steel, the largest scrap-consuming facility of National Steel. Luria supplies between 65% and 85% of Weirton's scrap requirements, which average between 500,000 and 750,000 tons annually. Luria is Weirton's substantially exclusive broker and supplies substantially all of the scrap which Weirton purchases on a brokerage basis. There exists an understanding, agreement or arrangement between Weirton and Luria for Luria to supply the principal part of Weirton's scrap requirements and to act as its substantially exclusive broker. This arrangement is informal, has no fixed duration, and is subject to cancellation at any time. However, from the period of time it has been in effect, and the conduct of the parties, there is no reason to anticipate any early cancellation of the arrangement.

18. Luria is also a substantial supplier to Great Lakes Steel and Hanna Furnace, National Steel's two other scrap-consuming facilities. Great Lakes scrap purchases average from 350,000 to 650,000

tons annually. It also purchases scrap for the Hanna plant, which generally averages less than 20,000 tons a year. Prior to 1954 Luria's sales to Great Lakes were either declining or had ceased. However, in the middle of 1954, Luria's position as a supplier to these plants underwent a marked improvement. This occurred after the vice president in charge of scrap purchasing at Weirton assumed a similar responsibility at Great Lakes and Hanna. Luria became the largest supplier to the Great Lakes plant, although the plant continued to purchase brokerage scrap from one other broker, The S. G. Keywell Company. Purchases from all other brokers ceased. Luria also became the second largest supplier to Hanna Furnace, following Keywell. Purchases from Buffalo Housewrecking & Salvage Co., formerly the largest supplier to Hanna, have been curtailed. While the change at Great Lakes and Hanna, which occurred after the institution of this proceeding, did not result in Luria's becoming exclusive broker for those plants, the examiner is satisfied that the improvement in its position is an outgrowth of the basic arrangement which exists at Weirton. The examiner is also satisfied that the relationships maintained with Luria by all three of National Steel's subsidiaries are the result of a policy decision by the parent company, and to this extent the latter must share any liability arising from such relationships.

(5) *Respondent Edgewater*

1. Edgewater Steel Company, sometimes referred to herein as Edgewater, operates a steel mill at Verona, Pennsylvania, about 15 miles north of Pittsburgh. As of January 1, 1954, it was the twenty-seventh largest semi-integrated steel producer in the United States, in terms of annual steel ingot capacity. Edgewater has no corporate connection with any other steel mill. However, the chairman of the board of respondent National is also a member of the board of Edgewater.

2. Up to 1948, Edgewater followed the practice of purchasing iron and steel scrap from a number of different scrap brokers and dealers, among which was included respondent Luria. In the years 1945 and 1946 Luria supplied 21.8% and 23.6%, respectively, of all the scrap purchased by Edgewater. In 1947 Edgewater bought no scrap from Luria.

3. Around the middle of 1948 Edgewater changed its scrap buying policies. It was decided to concentrate the company's scrap purchases on a single broker. Respondent Luria was chosen as this broker. While the decision was made during 1948, it was not fully implemented for over a year, Edgewater's arrangement with Luria being conducted on an experimental basis during this period. After the middle of 1948 it began to step up its purchases from Luria and curtail its purchases

from other suppliers. In 1949 it purchased scrap from only one broker other than Luria. Beginning in 1950 Luria became Edgewater's exclusive source of broker-dealer scrap, its sales to Edgewater constituting 100% of the scrap purchased by Edgewater from brokers and dealers in that year and in each succeeding year, except for the year 1951 when purchases from Luria amounted to 94.9% of the broker-dealer scrap acquired by Edgewater, due to Edgewater's acquiring some scrap under the Government allocations program. Edgewater also purchased some scrap from a non-broker-dealer source in the period after 1950. Purchases from such source were generally less than 10% of its total scrap purchases. Edgewater concedes, in its proposed findings, that it has "continued the practice of buying substantially all of its scrap from respondent Luria".

4. The decision to buy through a single broker was made by the operating officials of Edgewater. However, in choosing Luria as that broker they consulted with Ernest G. Weir, chairman of the board of respondent National Steel, who is also a member of Edgewater's board, and with officials of respondent Weirton. Discussions were had with an official in Luria's Pittsburgh office, who advised Edgewater that Luria could supply Edgewater's full requirements and would undertake to do so.

5. It is contended by Edgewater that its decision to buy from a single broker was motivated by the fact that it had been unable, particularly in 1948 and just prior thereto, to obtain sufficient scrap to meet its requirements. Edgewater's president testified that other brokers and dealers were unwilling to accept orders for the small quantities involved. The evidence discloses that 1948 represented a high-water mark in Edgewater's scrap purchases, which was approached again only in 1952. Thus it appears that the quantity of scrap supplied by Luria was generally no greater than that being supplied by multiple suppliers prior to the Luria exclusive. It may also be noted that in 1947, which was Edgewater's lowest postwar scrap year, quantity-wise, Luria supplied it with no scrap. Thus it appears that Edgewater was rewarding a company which ranked high among those which did not or would not supply it with scrap.

It is also contended that Edgewater had been unable to obtain scrap of the quality it needed when it purchased from multiple suppliers. However, Edgewater's president conceded in his testimony that he could recall no complaints regarding the quality of the scrap shipped to his company in the pre-exclusive period (R. 8840), and that there was no noticeable difference between the rate of rejection of scrap shipped by Luria and that shipped by other brokers (R. 8857).

6. While conceding that competition resulting from the use of multi-

ple suppliers might affect the price it would have to pay for scrap, Edgewater's president claimed that the small amount of scrap purchased by his company would be insufficient "to throw the market out" (R. 8848). Edgewater cites, in this connection, the figures of its scrap purchases as compared to those purchased from brokers and dealers in the Pittsburgh-Youngstown market as a whole. The figures cited reveal that Edgewater's purchases from brokers and dealers constitute around 2/10 of 1% of the total purchases of broker-dealer scrap in the Pittsburgh-Youngstown market in most years. It thus appears that Edgewater is a very minor factor in the market, insofar as its purchases of scrap are concerned.

7. Aside from the relative quantities of scrap involved, it is contended by respondents that there is no agreement between Edgewater and Luria to continue purchasing from Luria, and that the arrangement between them is on a day-to-day basis. The evidence discloses that Edgewater looks to Luria to supply it with its scrap requirements and has done so for over 10 years, that during the Korean conflict Government agencies were advised Luria was Edgewater's exclusive supplier (CX 860), and that other brokers or dealers who attempt to sell to Edgewater would be advised that Edgewater wishes to continue with Luria (R. 8855). It is concluded and found, from the evidence as a whole, that there exists an agreement or understanding between Luria and Edgewater for Luria to act as Edgewater's broker and to supply it with substantially all of its scrap. The agreement is similar to the one with respondent Weirton, with whom Edgewater conferred before entering into the agreement with Luria. While the arrangement is informal and is subject to cancellation, there is no question that it is more than an order-to-order or day-to-day arrangement. Until steps are taken to cancel it, the arrangement will continue indefinitely.

(6) *Respondents Central and Phoenix*

1. At the time of the issuance of the complaint herein, Central Iron & Steel Company, referred to herein as Central, operated a steel mill at Harrisburg, Pennsylvania. Central was then a subsidiary of Barium Steel Company, having been acquired by Barium in 1946. Central, in turn, owned and controlled Phoenix Iron & Steel Company, referred to herein as Old Phoenix, which was acquired in 1949. Old Phoenix operated a steel plant at Phoenixville, Pennsylvania. Following the issuance of the complaint, Old Phoenix and several other companies then owned by Barium were merged into Central and the name of Central was changed to Phoenix Iron & Steel Company, which is referred to herein as New Phoenix. The plants operated at Harris-

burg and Phoenixville are the only substantial scrap-consuming and steel-producing plants of Barium or its subsidiaries. The Barium companies were the twentieth largest integrated steel producer in the United States as of January 1, 1954.

Central

2. Luria was a supplier to the mill operated at Harrisburg by Central prior to the acquisition of the mill by Barium. In 1947, the first year after Barium's acquisition of the mill, Luria supplied 44.7% of the scrap purchased by Central. Other substantial suppliers were Luria Steel & Trading, which supplied approximately 14% of the mill's requirements and Charles Dreifus Company of Philadelphia, which supplied about 12%.

3. In July 1948, Joseph Sisto, chairman of the board of Barium, entered into an oral agreement with Luria and with Southwest Steel Corporation to buy the scrap requirements for Central's mill at Harrisburg exclusively from these two brokers. The arrangement was apparently not for any fixed duration and was subject to termination at any time by any of the parties. At the time the agreement was entered into, Southwest was an independent company and was not affiliated with Luria, which, as previously noted, acquired control of Southwest in February 1950. In 1948, during which year the agreement had been in effect for about 6 months, Central purchased 53.8% of its scrap requirements from Luria and 17.4% from Southwest. In the succeeding years Central's purchases from Luria increased substantially and those from Southwest declined until they ceased entirely during 1954. The percentage figures of Central's purchases from Luria and from Southwest between 1949 and 1954 are as follows:

	1949	1950	1951	1952	1953	1954
Luria.....	74.9	92.9	79.2	83.7	90.0	97.9
Southwest.....	21.7	4.3	11.9	13.9	10.0	0.6

4. Although the evidence establishes that Central agreed to buy its scrap exclusively from Luria and Southwest, it is not clear what understanding was reached with respect to the proportion of scrap which would be purchased from each company. Harold B. Freeman, vice president of Central in charge of scrap purchases, who assumed that responsibility for Central in 1951, testified that while he was instructed by Sisto to buy scrap only from Luria and Southwest, he received no instructions as to how to divide his purchases as between the two companies. From the purchase figures themselves, it is apparent that even before Freeman took over the responsibility of purchasing scrap for Central in 1951, the bulk of the scrap was being

Initial Decision

62 F.T.C.

acquired from Luria. Freeman's testimony suggests that purchases from Southwest involved mainly specialty grades of scrap, such as cast iron. Southwest was restricted to supplying scrap from the Pittsburgh area and points further west. It was not permitted to purchase scrap in the Harrisburg area. No such limitation was placed on Luria.

While Luria acquired control of Southwest in 1950, according to Freeman's testimony he did not learn of this until early in 1954 when the complaint in this proceeding was issued, although he had heard rumors of the acquisition prior to that time. Freeman testified that he ceased further purchases from Southwest in 1954 because "[t]hey now belong to Luria Brothers" (R. 4937). As of the middle of 1956, when Freeman testified, Central was buying substantially all of its scrap requirements from Luria.

Phoenix

5. Barium acquired control of Old Phoenix in September 1949, when it became a subsidiary of Central. Prior to its acquisition by Central, the principal suppliers of the Old Phoenix plant at Phoenixville, Pennsylvania, were Luria, Charles Dreifus Company, and Luria Steel & Trading. Harold B. Freeman, the vice president in charge of scrap purchases at Old Phoenix as well as Central, assumed responsibility of buying scrap for the Phoenixville plant in March 1950. At that time he received instructions from Sisto to follow the same scrap buying policy as was then in effect at Central, viz, to buy only from Luria and Southwest. The proportion of Phoenixville's purchases from Luria and Southwest in the years 1950 through 1954, for which there is information in the record, was as follows:

[Percent]

	1950	1951	1952	1953	1954
Luria.....	87.0	61.9	77.9	92.9	100.0
Southwest.....	12.1	23.0	12.0	5.9	0.0

As is apparent from the above figures, the proportion of purchases from Southwest declined after 1951 and ceased entirely in 1954. This was due to the same reason discussed above in connection with Central, viz, that Luria had acquired control of Southwest and Phoenix considered it part of the same organization.

6. Luria suggests in its proposed findings that Old Phoenix ceased doing business with its former suppliers, Dreifus and LS&T, because they had refused to complete certain orders which were outstanding when the plant at Phoenixville was closed down in June 1949, prior to its acquisition by Barium in September 1949. This argument is based on Freeman's testimony that when Barium sought to reinstate

the old orders with Dreifus and LS&T, after they had been suspended for 4 or 5 months, the latter brokers were unwilling to fill the orders. The examiner is not convinced that this had anything to do with the dropping of the two former suppliers. In the first place, Freeman did not take charge of scrap purchases for Old Phoenix until March 1950, and was obviously speculating in his testimony as to why purchases from these companies had ceased prior thereto. In the second place, it is apparent from Freeman's testimony that with the rapid changes in the scrap market, there could have been no serious expectation that a contract which had been suspended for four or five months could be reinstated at the same price. Finally, and most important, it is clear that the reason why Old Phoenix ceased buying from these two former suppliers was that Barium had decided to apply to the plant at Phoenixville the scrap buying policy which was already in effect at Central. Freeman himself testified that after Barium acquired control of Phoenixville, he received instructions from either Sisto of Barium or the president of Central "that we were buying our scrap from Luria Brothers and Southwest" (R. 4944).

Concluding Findings

7. It is undisputed that the Central and Phoenix respondents purchase substantially all of the requirements of scrap for their plants at Harrisburg and Phoenixville, Pennsylvania from respondent Luria. This is admitted in the answer filed by the mill respondents in this proceeding, and in the testimony of the official who is in charge of scrap purchases for said mills at the present time.

8. This practice has its origin in an oral agreement entered into by the chairman of the board of Barium Steel, parent company of the mill respondents, in July 1948, pertaining to the Harrisburg plant of respondent Central. Pursuant thereto it was agreed that Central would buy its scrap requirements exclusively from respondents Luria and Southwest. This agreement was extended to the Phoenixville plant of respondent Phoenix after that plant was acquired by respondent Central in September 1949.

9. While the original arrangement provided that purchases would be made from both Luria and Southwest, the bulk of the purchases were made from Luria, and Southwest was restricted to a minor role. Purchases from Southwest, which was acquired by Luria in February 1950, gradually declined and ceased altogether in 1954. Respondents Phoenix and Central do not attempt to buy from other brokers, have advised other brokers they are not in the market, have designated Luria as broker on Government scrap allocated to them, and have requested railroads and others to designate Luria as broker on scrap

allocated to them. The agreement, which was originally made by respondent Central and extended to respondent Phoenix, has been adopted by New Phoenix with which said respondents were merged in 1955.

10. It is concluded and found that respondents Central and Old Phoenix, and their successor, New Phoenix, have agreed with Luria that the latter shall be their exclusive broker and that they shall purchase substantially all of their scrap from Luria. It is contended that any agreement which exists with Luria is not of a fixed duration and may be cancelled at any time. While this may be true, it does not gainsay the existence of the arrangement or the likelihood of its indefinite continuance. It may be noted, in this connection, that the record reveals the making of substantial loans by Luria to Central, to Old Phoenix and to certain officials of Barium Steel. While some of the loans have been repaid, certain of them were still outstanding at the time of the taking of testimony in this proceeding. The close relationship thus revealed is an additional circumstance militating against the possibility of an early cancellation of the present exclusive arrangement.

(7) *Respondent Granite City*

1. Granite City Steel Company, sometimes referred to herein as Granite City, operates a steel mill at Granite City, Illinois, which is located across the Mississippi River from St. Louis, Missouri, and is within the St. Louis steel-producing and scrap-consuming market complex. It is the sixteenth largest integrated steel producer in the United States and is the largest in the St. Louis area. Only one other company in the St. Louis area approaches Granite City in the quantity of scrap which it purchases, viz, Laclede Steel Company.

2. Prior to 1950 Granite City purchased its scrap from a number of different scrap brokers and dealers in the St. Louis area. Luria, which had opened a brokerage office in St. Louis in 1945, was a negligible source of supply for Granite City up to 1950. In 1945, the first year for which there are any figures in the record, Luria supplied 3.4% of the scrap purchased by Granite City. In the succeeding years up to 1950 Luria's sales to Granite City were infinitesimal, being 0.1% in two of the intervening years and 0.3% in the other two years.

3. In 1950 a change occurred in Granite City's scrap buying policy, as a result of which Luria became Granite City's exclusive scrap broker and substantially exclusive supplier. The change began in April of that year and was fully implemented within about 5 months. For the year 1950 the proportion of Granite City's purchased scrap requirements supplied by Luria increased to 59.0%, as contrasted with

0.3% in the year 1949. In the years 1951 and 1952, Luria supplied 83.5% and 90.0%, respectively, of Granite City's scrap requirements, the balance being accounted for largely by scrap received under Government allocations. In 1953 Luria supplied 100.0% of Granite City's scrap requirements and in 1954 Luria's percentage was 97.7%, the balance in the latter year being obtained from nonbroker-dealer sources. It is conceded by Granite City in its answer filed to the complaint that it has pursued "a policy of obtaining, insofar as it was possible, all of its iron and steel scrap requirements" from Luria.

4. The change in Granite City's scrap buying policies was an outgrowth of a change in its top management, which occurred in August 1949 when John N. Marshall became the chairman of the board of Granite City and took over active management of the company. Later in 1949 Marshall entered into discussions with Mr. Jack Gordon, the head of Luria's St. Louis office (whom Marshall had previously known when he was in business in Pittsburgh), with a view to Luria's becoming Granite City's broker and exclusive supplier. Gordon advised Marshall that Luria was the supplier for a number of other steel companies, including CF&I, Lukens and U.S. Steel. Marshall sent two Granite City officials to CF&I to verify the facts with respect to Luria's performance for that company, and himself talked to a representative of Lukens. After further discussions in which representatives of Luria's top management participated, including its then president, Joel Claster, and its executive vice president, Ralph Ablon, agreement was reached in March 1950 on an arrangement under which Luria was to become Granite City's exclusive broker and undertake to supply the mill with its entire requirements of purchased scrap.

5. Thereafter, a notice dated April 5, 1950, was sent out to the trade by Granite City "Announcing the Appointment of Luria Brothers & Company, Inc. of Philadelphia, Pennsylvania, As Our Exclusive Scrap Broker" (CX 195). The announcement was similar to that sent out announcing the U.S. Steel (Geneva) exclusive with Luria and was identical with the one announcing Luria's appointment as CF&I's exclusive broker. The announcement caused considerable "furor" and "indignation" among the dealers and brokers in the area who had previously been direct suppliers of Granite City (R. 6192). Consequently Marshall, on September 28, 1950, called a meeting of the brokers and dealers in the area in an apparent effort to assuage their feelings and secure their cooperation. During the course of the meeting those assembled were advised that they could not expect to do business with Granite City directly, as they had formerly done, and were requested to continue to supply their scrap to Granite City by

selling it to Luria as the company's exclusive broker. Some of the brokers and dealers were unwilling to sell their scrap through Luria, but a number of others continued to supply scrap to Granite City by selling it to Luria.

6. The arrangement between Granite City and Luria involves daily contact between the two companies, with the mill keeping Luria advised of its scrap tonnage requirements for a constantly projected period or "lead time" of ninety days. Luria purchases Granite City's requirements for the 90-day projected period, with periodic modifications to accord with the mill's changing melt needs and the current market situation. The price to be paid for the scrap is agreed upon at 30-day intervals. The price is based on the cost of scrap to Luria, plus \$1.00 a ton commission to it. Where freight charges are involved, Granite City pays the freight.

7. Following the understanding reached in March 1950, a close and intimate relationship developed between Granite City and Luria, which precluded all possibility of other brokers and dealers selling directly to Luria, and in which Luria's position as Granite City's exclusive broker was constantly reinforced. Other brokers and dealers who periodically offered scrap to Granite City were advised that Luria was its exclusive broker, and were requested to contact Luria. In some instances written offers of scrap from others were turned over to Luria. During the period of Government allocations, Granite City sought to have Luria designated as broker on scrap allocated to it. On some occasions it declined scrap from a broker originally designated and sought to have Luria substituted. It also refused "free scrap", *i.e.*, nonallocated scrap, at a time when it was applying to the Government for allocations. During periods of shortage, it sought to persuade industrial fabricators to whom it sold steel, to ship their scrap back to it through Luria.

8. There is no real dispute as to Granite City's scrap buying policy, nor as to its practice in dealing with Luria. Indeed, in the face of the announcement made to the trade in April 1950, the statistical evidence of its scrap purchases since 1950, and the other evidence discussed above, there can be little dispute on this score. The only matters as to which there is any dispute are: (a) The legally binding nature of the relationship which now exists between Granite City and Luria, and (b) the reason for the change in Granite City's scrap buying policy. To a consideration of these matters the examiner now turns briefly.

9. In its answer to the complaint Granite City, while conceding that it has "announced and followed the policy of obtaining, insofar as it was possible, all of its iron and steel scrap requirements from

respondent Luria Brothers & Company, Inc.", asserts that it has done this "voluntarily and without agreement of any nature". In the memorandum filed in support of its motion to dismiss the complaint, Granite City contends that there is "no agreement binding either party to continue to deal with the other" and that the present "arrangement exists on an 'order-to-order' basis". Respondent Luria likewise characterizes the arrangement as being on "an order-to-order basis" (R. 674).

Respondents' argument appears to assume that absent a legally binding agreement to continue their relationship for a fixed period, it can only be regarded as a casual "order-to-order" arrangement. However, it is clear from the evidence as a whole, including the testimony of respondents' own officials, that the parties contemplated a stable, long-range relationship of a more than casual order-to-order nature, albeit the arrangement had no fixed duration and either party could withdraw at any time. Thus, according to Marshall's own testimony, Luria agreed at the time of entering into the arrangement that (R. 6191):

They would guarantee to supply our requirements at the set price, and they would have it there no matter what. I said "In other words, we are hiring you to do a job that has to be done."

It also appears from Marshall's testimony that Luria at first undertook to assume this obligation only for a trial period, and that when this period was up it was decided to continue the arrangement for an indefinite period. This was obviously what Marshall contemplated in announcing the arrangement to the trade at the meeting of September 28, 1950, at the end of the trial period. Marshall told those assembled that Luria had agreed to guarantee his company's entire requirements and that it was in his opinion the only broker capable of doing this, and he requested the other brokers and dealers to thereafter make their offerings through Luria. A Luria official, while characterizing the arrangement as being on an order-to-order basis, also testified (R. 674):

As long as we were willing to give them what they wanted they were *willing to continue* to give us new orders. [Emphasis supplied.]

It is significant that while Granite City officials endeavored in their testimony to stress the casual nature of the arrangement with Luria, in a statement submitted to the Commission several years earlier they stated (CX 720-A):

In April of 1950 we gave Luria Brothers & Company, Inc., an agreement for the exclusive supplying of our scrap requirements.

It seems clear from the record that there is an understanding and agreement between Granite City and Luria, of unspecified duration,

to the general effect that Granite City will deal with Luria as its exclusive broker and that Luria will supply all or substantially all of Granite City's scrap requirements. While it may be that, as a matter of private contract law, either party could withdraw from the arrangement, there is no question as to the existence of the understanding and agreement. The fact is that it has persisted for almost 10 years, and that it will continue in effect indefinitely until rescinded by either party.

10. The other matter in dispute concerns Granite City's reason for entering into the arrangement with Luria. According to the Granite City witnesses, the company was dissatisfied with the performance of the brokers and dealers in the area because they periodically failed to fill their contracts, at the prices and within the times agreed upon, and because the scrap delivered failed to live up to specifications. This was denied by a number of the suppliers, who were called as witnesses in support of the complaint and who testified that Granite City had not indicated any dissatisfaction with their performance. They claimed that their deliveries and performance were in accordance with the usual practice in the industry. According to the testimony of these dealers, which the examiner credits, no reference was made, at the meeting of September 28, 1950, by the Granite City representative concerning the company's dissatisfaction with its former suppliers. They were merely requested to cooperate and ship their scrap to Granite City through Luria.

The examiner is not convinced that dissatisfaction with the performance of existing suppliers, as described by the Granite City representatives, was the basic reason for the change in Granite City's scrap buying policy. The same suppliers were requested by Granite City to continue to ship their scrap to it, except that they were requested to sell it through Luria. The record reveals that the performance by a broker depends largely on the capability of the dealers from whom the scrap is obtained to properly prepare it and ship it on time. It is also significant that a substantial proportion of the suppliers to Granite City were also suppliers to the other major consumers of scrap in the St. Louis market, and continued as direct suppliers to such mills even after the Granite City-Luria arrangement.⁴⁰ The testimony of representatives of these companies, in charge of scrap buying, reveals that the performance of the suppliers concerning whom Granite City complained was generally satisfactory and in accordance with

⁴⁰ The other major consumers of scrap in the St. Louis area include Laclede Steel Company, Scullin Steel Company, General Steel Castings Company and American Steel Foundries.

industry standards, both with respect to fulfilling their contracts and with respect to quality and time of delivery.⁴¹

In any event, aside from the dubious nature of the testimony of the Granite City officials regarding the performance of their other suppliers as the basic reason for the mill's selecting Luria as its exclusive broker, it is the opinion of the examiner that most of the testimony in this regard is of marginal relevance. The important issue in this proceeding, as will hereafter be more fully discussed, is not so much a mill's motive in selecting Luria as its exclusive broker, as it is whether the exclusive arrangement has or may be expected to have a substantial preclusive effect on competition in the market.

11. There can be little doubt as to the effect of the exclusive arrangement between Luria and Granite City on the St. Louis market. As will hereafter more fully appear, it resulted in boosting Luria to the position of the major supplier in the St. Louis market, with its sales accounting for almost half of the scrap purchased from brokers and dealers by the five major consumers of scrap in the area. It has resulted in a reduction in the price of scrap paid by Granite City due, in part at least, to the reduction of competition which occurred when former suppliers were precluded from selling scrap directly to Granite City. There can be no doubt that Luria, with its wide-spread, nationwide buying organization, is in a better position to bring pressure on recalcitrant dealers to sell at its price than would Granite City if it were buying directly from multiple brokers and dealers. The alternatives open to dealers who do not wish to sell to Luria for delivery to Granite City are relatively limited, first because Granite City is the largest consumer of scrap in the area, and secondly because it is the major consumer of No. 2 bundles. Dealers who produce No. 2 bundles prefer to deal with consumers, or brokers for consumers, who will buy all their scrap.

Following Luria's exclusive arrangement with Granite City, two of the brokers in the St. Louis area went out of business. These were Jack R. Forcheimer & Son and Hickman, Williams & Co. Inc. In June or July 1950, the Forcheimer operation was closed down and its principal officials went to work for Luria. While Forcheimer's sold considerably more scrap to Laclede Steel than it did to Granite City,

⁴¹ The largest suppliers to Granite City Steel included Bierman Iron & Metal Company, Gus Gillerman Iron & Metal Company, Hyman-Michaels Company, The Purdy Company, and Luria Steel & Trading Company. All of these were also among the main suppliers to Scullin Steel. All except LS&T were among the main suppliers to General Steel Castings, and all but Bierman were among the main suppliers to Laclede and American Steel Foundries. The Scullin Steel witness indicated that there was no difference between the performance of Luria, which is also a supplier to that company, and the company's other suppliers. The only substantial broker or dealer supplier to Granite City, who was not a large supplier to the other four large consumers of scrap, was Grossman Iron & Metal Company. The largest proportion of Grossman's scrap after 1950 was sold to Luria for shipment to Granite City.

the position Luria was able to achieve as a result of the exclusive with Granite City was undoubtedly a factor in the Forcheimer decision to liquidate.⁴² In the case of Hickman, Williams the Granite City exclusive with Luria "was a contributing factor" (R. 6879). While, as respondent Luria points out, the receipt of an excellent offer from another broker was also a "strong factor," the examiner entertains no doubt that it was considered to be "strong" because Hickman, Williams' future had become considerably less bright due to the Luria exclusive. Following the arrangement between Luria and Granite City, Hickman, Williams for a period of about 2 years sold scrap to Luria for Granite City, before going out of business. This experience undoubtedly played a part in Hickman, Williams' conclusion, in deciding to sell out, that the St. Louis district "had developed into a not too attractive market" (R. 6880).

In addition to playing a part in the departure of dealers or brokers from the market, the Luria-Granite City exclusive caused a decline in the sales of other firms. Thus The Purdy Company, which had been a substantial supplier to Granite City, experienced a drop in sales after 1950 from which it had still not recovered by 1955. While certain brokers and dealers experienced an increase in sales after 1949 or 1950, in only a few instances was it commensurate with the substantial increase in Luria's sales or in the over-all increase in scrap purchases during the Korean conflict, and in several instances the increases were accomplished at the expense of increased dependence on Luria.

Concluding Findings

12. In or about March 1950 Luria and Granite City entered into an agreement or understanding that Luria would be Granite City's exclusive broker, and that Granite City would purchase substantially all of its scrap requirements from Luria. A printed announcement of Luria's appointment as Granite City's exclusive broker was issued to the trade on April 5, 1950. At a meeting of many of the brokers and dealers in the area, called by Granite City in September 1950, as a result of dissatisfaction over the inability of the dealers and brokers to sell directly to Granite City, the latter's chief executive official advised those assembled that his company intended to continue using Luria as its exclusive broker and requested them to sell scrap, intended for Granite City, through Luria.

13. Since entering into the agreement with Luria in 1950, Granite City has continued to use Luria as its exclusive broker and has con-

⁴² A Forcheimer official testified (R. 6784):

I just thought the future with Luria Brothers was large enough that it would be a more personal gain for myself to be with Luria Brothers than continue our company.

tinued to purchase substantially all of its scrap requirements from Luria. While the agreement between Granite City and Luria has no fixed duration and either party has the right to withdraw, there is no reason to anticipate any early termination of the present arrangement.

14. The arrangement between Luria and Granite City has resulted in making Luria the major broker in the St. Louis market. It has resulted in a decrease in price competition among brokers and dealers in the market, and in the relative price paid for scrap by Granite City. Because Granite City is the largest consumer of scrap in the market and the main user of No. 2 bundles, its exclusive arrangement with Luria has permitted the latter to obtain a considerable degree of domination and control in the St. Louis scrap market.

(8) *Respondent Lukens*

1. Lukens Steel Company, sometimes referred to herein as Lukens, is a semi-integrated producer of steel. As of January 1, 1954, it had the twenty-fourth largest ingot capacity of the steel producing companies in the United States, and had the fourth largest capacity of the semi-integrated producers. It operates a plant at Coatesville, Pennsylvania. Lukens has no blast furnace for the production of pig iron and consequently uses no "hot metal" in producing steel. It is highly dependent on scrap in producing steel. Purchased pig iron represents 20 to 30% of its metallics charge, and the balance consists of scrap.

2. Prior to about 1929 or 1930, Lukens bought scrap from several different brokers and dealers. One of these was respondent Luria, which had opened a yard at nearby Modena, Pennsylvania, in 1922. Around 1929 or 1930, Lukens decided to buy its scrap through one broker, rather than from a number of different brokers. The explanation given by the Lukens official who was in charge of buying its scrap from 1929 to 1954 was that (R. 5156)—

* * * the scrap * * * was all coming from the same source, so rather than have a lot of people handle it we handled it through one. We picked out the best qualified.

Luria was chosen as Lukens exclusive broker because it was considered "the one best qualified", since it had a large yard near Coatesville and "had a very aggressive outfit on the road buying scrap".

3. Since 1929 or 1930, Luria has acted as Lukens' substantially exclusive broker. Lukens has regularly purchased relatively small quantities of scrap from a local dealer having a yard in Coatesville, and has periodically bought small amounts of scrap from a miscellany of other sources. During the period from 1945 to 1954, covered by the statistical evidence, Lukens' purchases from Luria constituted 85.9% to 90.7% of its scrap requirements. The major portion of the

balance of Lukens' purchases is accounted for by purchases from the local yard dealer in Coatesville with whom Lukens has continued to deal on a direct basis.

4. At the time that Lukens chose Luria as its exclusive broker, it notified other brokers that Luria had been so desingated. It has since become a generally accepted fact in the trade that Luria is Lukens' broker. Offers from other brokers are seldom received. Lukens' scrap purchasing agent for approximately 25 years explained this as follows (R. 5158) :

Once in a while they would come in there, *but they knew the situation.* [Emphasis supplied.]

When other brokers did occasionally make offers, they were advised by Lukens: "We weren't in the market." Sometimes Lukens advised Luria of such offers or requested the offeror to communicate with Luria. Illustrative of such referrals is the following reply to an offer of scrap in October 1951 (CX 644) :

Wish to advise that we are very much interested in scrap, but we handle our scrap through our brokers, Luria Brothers and Company, Inc., Lincoln Liberty Bldg., Philadelphia, Pa., and would suggest you contact them direct.

Lukens' purchasing agent explained such referrals on the ground that: "The thing has to work both ways. * * * If they are going to help us get scrap we have to help them too" (R. 5159).

During the period of scrap allocations, Lukens, at Luria's request, asked a number of railroads, including the Pennsylvania Railroad, The Reading Company, and the Baltimore & Ohio, to designate Luria as its broker on scrap allocated from these railroads. Industrial fabricators were also requested to designate Luria as broker on scrap generated by them which was allocated to Lukens. Where allocated scrap required in transit preparation, Lukens generally followed Luria's recommendation as to which dealer should prepare it.

5. There is no serious dispute that Luria is Lukens' substantially exclusive broker and has been such for a number of years. However, it is argued that this arrangement is not the subject of an agreement between the companies. Luria argues:

No agreement was made with Luria. Lukens just started buying from Luria and told Luria that it expected it to supply Lukens with scrap. Lukens could have stopped buying from Luria at any time.

Similarly, Lukens, while conceding that around 1929 it "decided to utilize one broker for the purchase of substantially all of its iron and steel scrap", argues that:

This corporate policy embodied day-to-day purchases on an at-will basis terminable in accordance with the normal purchase order procedure of doing business.

It is undoubtedly true that the record fails to establish any formal agreement of fixed duration between the parties. However, it is clear from the evidence that the arrangement between them is of more than a "day-to-day" nature but takes on the character of an informal agreement or understanding of an indefinite, but anticipatedly extended, duration. Thus Lukens' purchasing agent at the time the arrangement was made testified that (R. 5156): "There was no agreement or anything, *it was just an understanding*". [Emphasis supplied.] It is clear from the witness' testimony that his statement that there was "no agreement" was a mere conclusion on his part, based on the absence of a written agreement of fixed duration, which he interpreted as being synonymous with an agreement. However, he recognized that there was an "understanding" with Luria, and that Luria was probably advised: "From now on you got to furnish the scrap" (R. 5158). While asserting in this connection that, "we made no contract or any such agreement, *written agreement anyhow*", he conceded that: "*It may have been oral.*" [Emphasis supplied.]

From the course of dealings between them it is clear that both parties conducted their business on the basis of an implicit assumption that there existed a long-range understanding, with mutually reciprocal obligations, between them. Lukens expected Luria to keep it supplied with substantially all of its scrap requirements. Luria expected Lukens to deal with it as Lukens' exclusive broker, and to refer other offers of scrap to it in order to enable it to fulfill its obligations to Lukens. The arrangement was expected to "work both ways", as Lukens' scrap purchasing agent expressed it. While the arrangement had no fixed duration and there was no legal obligation to continue it, there was no expectation of its momentary or early discontinuance. The parties proceeded on the assumption that in the normal course of events the arrangement would continue indefinitely. The fact that the parties were at liberty, in the event either of them elected to do so, to discontinue the arrangement, does not metamorphize it into a casual, order-to-order, day-to-day relationship.

It is concluded and found that there exists an understanding or agreement between Lukens and Luria of indefinite duration, whereby Lukens has undertaken to deal with Luria as its exclusive broker and to purchase substantially all of its scrap from Luria. There is no reason to anticipate that there will be an early termination of this agreement or understanding, which has been in effect for almost 30 years.

(9) *Respondent Detroit Steel*

1. Respondent Detroit Steel Corporation, sometimes referred to as Detroit Steel, has been made a respondent in this proceeding because

of the activities of its Portsmouth Division, sometimes referred to herein as Portsmouth. Portsmouth operates a steel mill at Portsmouth, Ohio, and is Detroit Steel's only scrap consuming plant. Prior to January 1, 1950, the Portsmouth plant was owned and operated by Portsmouth Steel Corporation, which had acquired it from Wheeling Steel Corporation around July 1946. The physical assets of Portsmouth were acquired by Detroit Steel on January 1, 1950. Prior to that time, Detroit Steel was not a producer of basic steel or a consumer of scrap. As of January 1, 1954, Detroit Steel was the seventeenth largest integrated steel producer in the United States, in terms of annual steel ingot capacity.

2. During the period from July 1946 to the latter part of 1947, when the Portsmouth plant was owned and operated by Portsmouth Steel Corporation, it purchased its scrap from a number of different brokers and dealers, including respondent Luria. In late 1947 the company adopted a policy of buying all or substantially all of its scrap from a single broker, Columbia Iron & Metal Company of Cleveland, Ohio. This policy continued until the end of 1949, when the Portsmouth plant was purchased by Detroit Steel.

3. Following its acquisition of the Portsmouth plant on January 1, 1950, Detroit Steel made changes in the scrap purchasing policy of the plant, which led to respondent Southwest Steel Corporation's becoming the substantially exclusive broker for the plant. During November or December 1949, prior to the time title had actually passed, and again in January 1950, the president of Detroit Steel met with the President of Southwest and discussed the matter of scrap purchases. As a result of these meetings, it was agreed that Southwest would become the principal supplier of the Portsmouth plant, on a trial basis. During 1950 Detroit Steel purchased 88.4% of the scrap requirements of its Portsmouth plant from Southwest. During 1951 and 1952, as a result of the Government allocations program, there was some decline in the proportion of purchases from Southwest. In 1951 the proportion of its total scrap purchased from Southwest was 75.6%. However, Portsmouth also purchased some small quantities of scrap from Luria, which had obtained control of Southwest in February 1950. The combined purchases from the two broker respondents in 1951 represented 77.4% of Detroit Steel's total scrap purchases and 81.2% of its purchases from brokers and dealers. In 1952 the purchases of Detroit Steel from Southwest and Luria amounted to 77.4% of its total scrap purchases.

In the middle of 1953, following the end of the Korean conflict and the termination of controls, Detroit Steel decided to make Southwest its exclusive broker and to purchase all of its scrap requirements from

that respondent. During the year 1953, 91.1% of the total scrap purchases made for the Portsmouth plant were made from Southwest. In 1954, the first full year of the operation of the arrangement, 100% of Portsmouth's scrap requirements were supplied by Southwest.

4. Detroit Steel regularly discusses its scrap requirements with Southwest, which advises Detroit as to the availability of scrap in the various grades that are used in the Portsmouth plant. Tentative prices are agreed upon and Southwest endeavors to obtain the required amounts and grades of scrap at these prices. However, it is authorized and has purchased scrap for Detroit Steel at prices varying from the prices tentatively agreed upon. Upon receiving advice from Southwest as to the quantity and price of the scrap purchased for its account, Detroit Steel issues a confirming order to Southwest. The price of the scrap in the Detroit Steel purchase order includes the price which Southwest is committed to pay for the scrap, plus \$1.00 commission to Southwest.

5. There is no dispute as to the basic facts concerning the relationship between Southwest and Detroit Steel. After a trial period which began in 1950 and which, as a result of the controls' program incident to the Korean conflict, was extended to 1953, Detroit Steel has arranged to buy substantially all of the scrap requirements for its Portsmouth plant from Southwest. It regularly discusses its scrap requirements with Southwest, and Southwest is aware that it is supplying substantially all of Detroit Steel's scrap requirements. The fact that Southwest is Detroit Steel's exclusive broker and supplies it with substantially all its scrap requirements is well known in the trade.

The main point of contention, insofar as respondents Southwest and Detroit Steel are concerned, is that the present arrangement does not involve a legally binding agreement of a continuing nature. This position is similar to that already discussed in connection with the arrangements between Luria and a number of the other steel mills. However, while it may be that, as in the other instances previously discussed, there is no legally binding, formal agreement to continue the present exclusive relationship, it is clear that the existing arrangement between Southwest and Detroit Steel involves more than a casual day-to-day, order-to-order relationship.

It is concluded and found, from the evidence as a whole, that there exists an informal agreement or arrangement between Detroit Steel and Southwest that the latter will be the exclusive broker for the former's Portsmouth plant, that Detroit will order substantially all of the scrap requirements for the Portsmouth plant from Southwest and that the latter will undertake to supply the requirements of such plant. While the present agreement or arrangement may be termi-

nated by either party, it has been in effect for over seven years and there is no reason to anticipate its early termination.

(10) *Respondent McLouth*

1. Respondent McLouth Steel Corporation, sometimes referred to herein as McLouth, is engaged in the production and sale of iron and steel products. Prior to 1949 it was a nonintegrated mill, *i.e.*, it rolled and finished steel slabs purchased from others. However, in the latter part of 1948 it began operating a plant at Trenton, Michigan, which produces basic steel. As of April 1, 1949, McLouth was the nineteenth largest integrated steel producer in the United States.

2. The Trenton plant is McLouth's only scrap-consuming facility. When the plant originally opened it was entirely dependent on outside sources to supply it with the raw materials for making steel, since McLouth operated no blast furnace for the production of pig iron. In 1954 McLouth installed a blast furnace. However, it has continued to purchase substantial quantities of scrap for the Trenton plant.

3. When it became known that McLouth would be in the market for scrap in 1948 after the Trenton plant was erected, McLouth was approached by five or six different brokers, including respondent Luria. The Luria representatives advised McLouth that their company could supply it with substantially all of its scrap requirements. Several meetings were had at which there were discussed the quality and quantity of scrap required by McLouth, how price would be determined and what the brokerage commission would be. During the course of the negotiations the Luria representatives informed the McLouth representatives that Luria was supplying various plants of United States Steel, Weirton Steel, Bethlehem Steel and other steel mills. The reaction of the McLouth official in charge of buying scrap was that "if they [Luria] were good enough for those people, they were good enough for me" (R. 9687). McLouth, accordingly, decided to give Luria an opportunity to supply it with its scrap requirements.

4. During the years 1948 and 1949, the first 2 years of the arrangement between McLouth and Luria, McLouth purchased of all its scrap requirements from Luria. In 1950 McLouth purchased from Luria all of the scrap which it obtained from broker-dealer sources, but purchased about 5% from other sources. In the next few years there was some decline in the proportion of McLouth's purchases from Luria. This occurred mainly during the period of Government allocations, during which McLouth obtained substantial quantities of allocated scrap. However, Luria continued to supply approximately three-fourths of McLouth's scrap.

5. McLouth has admitted in its answer that: "Since the commencement of operations at its Trenton plant this respondent has purchased substantially all of its steel scrap requirements * * * from Luria Brothers & Company, Inc." It nevertheless contends that it has no agreement or understanding with Luria obligating it to purchase or to continue purchasing its scrap requirements from Luria, and that Luria is not obligated to supply or to continue supplying scrap to McLouth. Luria's position is substantially the same. Its vice president who testified in this proceeding acknowledged he was aware that his company was selling McLouth "substantially all of their scrap" (R. 801). However, he claimed that the relationship between them was on an "order-to-order basis" since there was no contract obligating McLouth to buy from his company.

6. While there may be no formal contract or agreement legally obligating either party, as a matter of private contract law, to deal with the other, the examiner entertains no doubt that there is an informal understanding or agreement between them, on the basis of which they have been conducting their dealings with one another for a number of years. Under this agreement or understanding McLouth looks to Luria to supply it with substantially all of its scrap requirements, and the latter understands it has the responsibility for fulfilling this expectation.

The arrangement was "sold" to McLouth by Luria on the basis that Luria would undertake to supply McLouth "with substantially all their scrap". As the Luria vice president familiar with the matter testified (R. 800):

Mr. Skinner [the Luria representative] sold them the idea that he can service them, he can supply them with substantially all their scrap, sold them the idea and he has been selling them ever since.

While the McLouth vice president in charge of scrap buying claimed in his testimony that "we don't buy anything [from Luria] except on a month-to-month basis, only if they have it for sale" (R. 9691), in a letter written to Luria in 1951, ante litem motam, the same official stated (CX 929):

As you know our scrap inventory position is very critical and *you have been charged with the responsibility of keeping this plant in operation. We are depending on you to continue to take care of our requirements.* [Emphasis supplied.]

It is concluded and found from the evidence as a whole that there is an informal agreement or understanding between McLouth and Luria whereby the latter acts as the former's exclusive broker and has undertaken to supply it with substantially all of its scrap requirements. While the agreement has no fixed duration and may be

terminated at any time, there is no reason to anticipate its early termination.

(11) *Respondent Baldwin*

1. Baldwin-Lima-Hamilton Corporation, sometimes referred to herein as Baldwin, operates a number of plants in various parts of the country, and ranked twentieth among the semi-integrated producers of steel in the United States as of January 1, 1954. It is primarily a fabricator of steel products. However, three of its plants are consumers of scrap. These are the Standard Steel Works Division, located at Burnham, Pennsylvania; the Eddystone Division located at Eddystone, Pennsylvania; and the Hamilton plant located at Hamilton, Ohio. Baldwin was made a respondent in this proceeding especially because of the activities of its Standard Steel Works Division, which is its only steel-producing plant and its largest consumer of scrap. The other two plants operate foundries and are relatively small users of scrap. In 1954 the Standard Steel Works purchased 55,000 tons of scrap compared to 2,400 tons at Eddystone and 4,000 tons at Hamilton.

Standard Steel Works Division

2. The Standard Steel Works Division, referred to herein as Standard, produces a number of steel specialty products, including steel wheels, steel castings, forgings, rings and springs. In connection therewith, it operates five acid open hearth furnaces, which require scrap with certain characteristics, foremost among which is that it be low in phosphorous and sulphur content.

3. Baldwin has purchased a substantial portion of the scrap for the Standard plant from Luria since at least 1930. During the early '30s consideration was given to buying scrap directly from producers thereof, but it was concluded that it would be more advantageous to continue buying through a broker. A decision was made to concentrate the company's purchases on a single broker as the best way to "establish a definite dependable and reliable source of scrap" which would be familiar with the company's requirements for selected grades of scrap (R. 5274). The explanation given for the choice of Luria as the exclusive broker was that it was the only large dealer which operated its own yards and maintained complete sorting facilities east of Pittsburgh, and because it was familiar with the grades of scrap used by respondent and was a dependable source of supply.

As has been previously suggested, the fact that respondent was motivated by what it considered to be good business reasons in selecting Luria as its exclusive broker is, in the opinion of the examiner, largely immaterial in determining the legality of the arrangement. It

may be observed, however, that the record discloses there are a number of other reliable brokers and dealers operating substantial yards with adequate facilities east of Pittsburgh, which are also able to properly service respondent Baldwin. The fact is that only a small percentage of the scrap supplied to respondent by Luria actually comes from its own yards. The bulk of it originates in the yards of other dealers or from industrial fabricators, and a substantial portion of the scrap is prepared in the yards of other dealers for Luria.

4. In any event, whatever may have been the reason therefor, there is no dispute as to the fact that Luria has been the substantially exclusive supplier for Baldwin's Standard plant at Burnham for a number of years. Baldwin admits in its answer that "for a number of years" it has purchased "substantially all of its steel scrap requirements" from Luria. The statistical evidence in the record, covering the period from 1945 to 1954, indicates that except for the period of Government allocations, the proportion of scrap purchased from Luria by the Burnham plant has exceeded 95% of its purchased scrap requirements, and in some years has exceeded 99%.

5. Except for the period of Government allocations, Luria has been the substantially exclusive broker for the Standard plant. The peak period of purchases from other brokers and dealers was 1951, when 10.7% of the scrap purchased for the plant was obtained from brokers and dealers other than Luria. The official in charge of scrap purchases for the Standard plant ascribed the increase in purchases from other brokers and dealers in 1951 mainly to the fact that it involved allocated scrap on which the seller had the right to select the broker or dealer to handle the transactions. However, even during this period Standard sought to induce railroads, industrial fabricators and other vendors of scrap to designate Luria as a broker on scrap allocated to it. Typical of such efforts is a letter written to the Baltimore and Ohio Railroad by Standard's scrap purchasing official on February 15, 1951, reading in part as follows (CX 659-A) :

* * * we would appreciate it if you would make the sale through Luria Brothers & Company, Lincoln Liberty Building, Philadelphia. They have been our brokers for a number of years and we have had excellent service from them and we prefer not to open up accounts with numerous other dealers.

6. Respondent Baldwin, while conceding that it has purchased substantially all of the scrap used by its Standard plant from Luria for a number of years, denies that there is any understanding or agreement pursuant to which Luria acts as the exclusive supplier or broker for Standard. It contends that: "The business dealings between Standard and Luria through the years were the result of the unilateral undertaking by Standard that Luria should act as its regu-

lar broker for the purchase of scrap." It further contends that each order placed with Luria involved an "independent exercise of its [Standard's] business judgment and was separately negotiated".

While it may be, as respondent Baldwin contends, that each order was separately negotiated, it is clear from the evidence that the relationship between the parties was on more than an order-to-order basis. The Standard official in charge of buying scrap conceded that he had made it clear to Luria that he expected it to supply his plant with its requirements of scrap and, further, that "when we get in a tight spot we don't mind telling them about it" (R. 5276). Luria is aware that it is the substantially exclusive supplier for the Standard plant, and that the plant looks to it to supply its scrap requirements.

7. It is concluded and found from the record as a whole that there exists an informal agreement or understanding between Baldwin and Luria pursuant to which Luria acts as the substantially exclusive broker for the Standard plant, and supplies the plant with substantially all of its scrap requirements. While the agreement or arrangement has no fixed duration and may be terminated at any time, there is no reason to anticipate its early termination.

Eddystone Division

8. Baldwin's Eddystone plant is primarily a fabricating plant which manufactures capital equipment, including presses and locomotives. In connection therewith it maintains an iron foundry for which it purchases specially prepared scrap for cupola charging. As previously indicated, the amount of scrap used at the Eddystone plant is relatively small compared to that consumed by the Burnham plant of the Standard Steel Works Division. In most years the scrap purchased by Eddystone has been less than 5% of that purchased for the Standard plant at Burnham.

9. Luria has been the principal supplier of scrap to Eddystone since the plant was acquired in the mid-1930s. During the period for which there are actual figures in the record, i.e., between 1948 and 1954, Luria supplied Eddystone with between 60% and 90% of its scrap, except for the year 1954 when Luria supplied 15.2% of the scrap. The scrap purchased from sources other than Luria is accounted for mainly by purchases from industrial fabricators and from dealers. Other than the period of Government allocations in 1951 and 1952. Eddystone purchased almost no scrap from any broker other than Luria.

10. The principal supplier other than Luria has been L. Blumberg's Son, Inc., a dealer in Philadelphia. Blumberg, as will be later noted in connection with another charge of the complaint, sells substantial quantities of its scrap to Luria and has purchased quantities of new steel from Luria in connection with a new steel warehouse which it

operates. In 1954 Blumberg replaced Luria as the principal supplier to Eddystone. The record contains no explanation of Blumberg's substitution for Luria, as Eddystone's principal supplier. The record does not indicate whether the decline in Luria's role in 1954 had anything to do with a gradual phasing out of the foundry at Eddystone, which occurred in 1956.

11. In addition to buying scrap from Luria, Eddystone also sells scrap to Luria which it generates in its fabricating operations, but which it is unable to use in its own foundry. Luria has been the principal purchaser of such scrap; the proportion of Eddystone's scrap purchased by it has exceeded 90% in most years, except for the year 1954 when it purchased 67% of the scrap. In 1954, 99.1% of Eddystone's scrap was sold to Luria.

12. It is clear that up to 1954 Luria was Eddystone's exclusive broker and principal supplier. It is also clear that there was a close business relationship between Luria and Eddystone, pursuant to which the plant sold substantially all of its own scrap to Luria and looked to Luria to supply it with the principal part of the scrap requirements for its iron foundry. Baldwin concedes in its proposed findings that: "Luria has generally been regarded as the regular scrap broker for Standard and Eddystone and has been so regarded for a number of years." However, counsel supporting the complaint have made no claim that the exclusive arrangement alleged in the complaint to exist at Standard also involves the Eddystone plant. In view of the conclusions reached with respect to the Standard plant and the lack of any charge with respect to the Eddystone plant, the examiner finds it unnecessary to determine whether there is an exclusive agreement or understanding applicable to the latter plant.

Hamilton Plant

13. The Hamilton plant at Hamilton, Ohio, operates an iron foundry. It is Baldwin's only other scrap consuming plant. The amount of scrap purchased by the plant is about 10%, or less, of that purchased by Baldwin's Standard plant. The Hamilton plant is located in the southwestern corner of Ohio, near Cincinnati, in an area somewhat removed from the area where Luria generally buys or supplies scrap. Hamilton has purchased scrap from Luria from time to time. In 1945, the first year for which there are any figures in the record, 44% of the scrap consumed at the plant was purchased from Luria. The proportion of purchases from Luria declined to 25% in 1946. Thereafter, purchases from Luria ceased entirely until 1951, when approximately 3% of the plant's scrap requirements was purchased from Luria. In 1952 Luria's percentage increased to 6%. No purchases were made from Luria in 1953 and 1954. The principal

supplier of the Hamilton plant has been a local company, Wolf & Company. The record fails to support any finding of an exclusive brokerage arrangement with Luria pertaining to the Hamilton plant, and no such claim is made by counsel supporting the complaint.

(12) *Respondent Bucyrus-Erie*

1. Respondent Bucyrus-Erie Company, sometimes referred to herein as Bucyrus-Erie, is a manufacturer of excavating equipment, shovels, cranes, drills and other products. In connection with its manufacturing operations it maintains three foundries for the production of castings. Two of these are located in Erie, Pennsylvania, and are known, respectively, as the Twelfth Street plant and the Raspberry Street plant. The third plant is located in South Milwaukee, Wisconsin. Bucyrus-Erie has been made a respondent in this proceeding because of the scrap buying activities of its two plants at Erie.

Twelfth Street Plant

2. The Twelfth Street plant is a cast iron foundry and for its scrap requirements uses mainly drop broken cast iron, with a sprinkling of steel scrap. Luria has been a supplier of scrap to the plant since the 1940's. During the period covered by the statistical evidence, 1947 to 1957, the plant's scrap requirements have been supplied almost entirely by two suppliers, respondent Luria and Joseph Chestner & Son, Inc. The latter is a local dealer operating a scrap yard in Erie. In 1947 Luria supplied only 4% of the scrap purchased by the Twelfth Street plant and Chestner supplied the balance. In 1948 the percentage of scrap supplied by Luria increased sharply to 54.1% and that supplied by Chestner declined proportionately. Luria's share of the scrap purchased by the Twelfth Street plant continued to increase until 1950, when it reached 84.7%. Following the imposition of Government controls in 1951, Luria's share declined somewhat, due in part to the purchase of allocated scrap and in part to an increase in purchases from Chestner. During the period from 1951 to 1954 purchases from Luria accounted for about two-thirds of the purchased scrap requirements of the Twelfth Street plant. In 1955 and 1956, following the issuance of the complaint in this proceeding, there was a sharp drop in purchases from Luria, the proportion of scrap purchased from Luria in these 2 years being approximately 31% and 16%, respectively. However, in 1957 the proportion of purchases from Luria again increased to approximately 56%.

3. The Bucyrus-Erie vice president who was in charge of scrap purchases until September 1954, explained the decline in purchases

from Chestner and the substantial increase in purchases from Luria after 1947, as being due to the fact that Chestner was unable to supply the needs of the Twelfth Street plant and that it was necessary to select a broker who had sources of supply outside of Erie. He claimed that his company was buying all of the scrap which Chestner could produce. His successor as director of purchases after September 1954 testified that the increase in purchases from Chestner was not due to any change of policy on the part of Bucyrus-Erie, but rather to the greater "availability" of scrap from Chestner (R. 6146).

A representative of Chestner, who testified in this proceeding, claimed that his company could have sold greater quantities of scrap to Bucyrus-Erie during the period after 1947. He also indicated that Luria had endeavored to purchase his company's scrap for shipment to Bucyrus-Erie, but that he had declined because he preferred to sell directly to the consumer. His testimony further reveals that after the change in purchasing officials at Bucyrus-Erie in September 1954, his company was able to increase its sales to Bucyrus-Erie substantially.

It is the conclusion and finding of the examiner that the decline in purchases from Chestner was not due to the latter's inability to furnish more scrap, but to a decision by Bucyrus-Erie to favor Luria in its purchases. It is significant that beginning in 1955, following the issuance of the complaint, purchases from Chestner increased three-fold, and the latter had no apparent difficulty in meeting the needs of the Twelfth Street plant.

Raspberry Street Plant

4. Until September 1951 the Raspberry Street plant was operated by the National Erie Corporation, sometimes referred to herein as National Erie. In September 1951, Bucyrus-Erie acquired the stock of National Erie and began to operate it as a subsidiary until February 1954, when National Erie was merged with Bucyrus-Erie. After Bucyrus-Erie acquired National Erie, the latter's plant became known as the Raspberry Street plant of Bucyrus-Erie, to distinguish it from the plant which it had operated for a number of years at Twelfth Street.

5. The Raspberry Street plant is a steel foundry, which has small acid open-hearth furnaces requiring a fine grade of low phosphorous, low sulphur scrap. Up to the time the plant was acquired by Bucyrus-Erie, it had been served by about four different brokers and dealers, the principal one of which was Republic Iron & Metal Company, a broker and dealer in Erie, Pennsylvania. Respondent Luria was also a substantial supplier to the plant. In 1948 it supplied 19.3% of the plant's requirements of purchased scrap. The percentage of scrap

supplied by Luria increased in the years 1949-1951 to about 40%.

6. After the plant was acquired by Bucyrus-Erie in September 1951, responsibility for purchasing the scrap requirements of the former National Erie plant was assigned to Bucyrus-Erie's vice president in charge of scrap purchasing for the other plants, with headquarters in Milwaukee. A decision was made to cease buying scrap from Republic Iron & Metal and from the other brokers and dealers who had been supplying the plant, and to buy all the plant's requirements through a single broker. Luria was selected as the broker.

7. Respondents suggest that Luria was chosen as the broker for the Raspberry Street plant, instead of Republic Iron & Metal, because the latter had failed to keep the plant sufficiently supplied with scrap at the time the plant was taken over by Bucyrus-Erie. Aside from the dubious nature of testimony on which this argument rests (being based on a hearsay report of what a Bucyrus-Erie official had been told by the plant's former manager), the examiner is satisfied that the failure to select Republic as a supplier had nothing to do with its alleged failure to keep the plant supplied with scrap. The evidence shows that in 1950-1951 Luria was supplying 40% of the plant's requirements, and if there was a shortage of scrap at the plant when Bucyrus-Erie took over, the fault, if there was any, lay with Luria as well as with Republic. Furthermore, the fact that Bucyrus-Erie later suggested to Republic that it sell its scrap to Luria for shipment to Bucyrus-Erie suggests that it had no basic lack of confidence in Republic's ability to deliver substantial quantities of scrap. Republic did, in fact, continue for some years thereafter to ship scrap to Bucyrus-Erie through Luria, when it was unable to sell directly. The true explanation for the choice of Luria as exclusive broker appears to lie not in any failure of performance by Republic, but in the decision reached by Bucyrus-Erie that it wished to use the strongest broker in the area as its exclusive broker. Luria was considered to be that broker because of its position in the nearby Cleveland area, and because it had recently acquired a yard in Erie.⁴³

8. After the decision to make Luria the exclusive broker for the Raspberry Street plant, there was a sharp increase in purchases from it. In 1952 and 1953, 96.4% of the plant's scrap was purchased from Luria, compared to 40% in the period from 1949 to 1951. In 1954

⁴³ After some testimony suggesting that Republic had been remiss in supplying the former management of the plant, the Bucyrus-Erie witness gave the following explanation of why Luria was selected as exclusive broker (R. 6136):

"We felt that we needed a broker and a supplier that was strong in the area in which the plants were located. And a broker and supplier who had a yard to give us that cushion that you need when the scrap is scarce. * * * Luria had facilities, good facilities at Cleveland for buying scrap, and had established recently a yard in Erie. So that they were the logical people * * *."

Luria supplied 94% of the plant's scrap. In 1955, after the issuance of the complaint in this proceeding, Bucyrus-Erie began to make some purchases from Chestner for the Raspberry Street plant, as well as the Twelfth Street plant. The purchases from Chestner in 1955 constituted approximately 8% of the total scrap purchases for the Raspberry Street plant in 1955, compared to approximately 90% purchased from Luria. In 1956 and 1957 there was a substantial increase in purchases from Chestner. In 1956 the scrap purchases of the plant were almost evenly divided between Luria and Chestner. In 1957, 62% of the plant's purchases were made from Luria, as compared to approximately 35% from Chestner.

Conclusions As To Erie Plants

9. The examiner is convinced and finds that at least until the issuance of the complaint in this proceeding there was an agreement or understanding between Bucyrus-Erie and Luria, pursuant to which Luria acted as the exclusive broker for both of Bucyrus-Erie's plants in Erie, Pennsylvania. At the Raspberry Street plant this resulted in Luria's supplying substantially all of that plant's scrap requirements from 1951 to 1954. While Chestner continued to act as a supplier to the Twelfth Street plant, it was on a sharply reduced basis. By 1950 Luria was supplying 85% of the scrap purchased by the plant and was attempting to get Chestner to sell its scrap through it, rather than directly to Bucyrus-Erie. It seems quite likely that but for the intervention of the Korean conflict, with the concomitant scrap shortage, Chestner might eventually have been eliminated as a direct supplier. In any event, purchases made from Chestner were strictly on a dealer basis and the scrap had to come from its own yard. The price paid to it was controlled by the price paid to Luria, which supplied between two-thirds to three-fourths of the plant's scrap requirements between 1951 and 1954.

10. There can be no doubt that Luria was considered by Bucyrus-Erie to be the exclusive broker for the Twelfth Street plant and, after its acquisition of National Erie in 1951, of the Raspberry Street plant. This was the result of a policy decision made by Bucyrus-Erie to buy through a single broker for the reason that it wished to avoid competing with itself. As the Bucyrus-Erie official responsible for the decision testified (R. 6118):

In a market such as Erie, a small market, where certain of the industries did produce a certain amount of scrap that they offered for bid, if you as a buyer of scrap had two or three people bidding for you, you were bidding against yourself in these industries. *So we had decided that one strong broker and supplier was the thing for us to use at Erie.* [Emphasis supplied.]

While the testimony related primarily to the Raspberry Street plant, there can be no doubt that the same policy was applied at the Twelfth Street, which is subject to the jurisdiction of the same official under the company's centralized buying organization. A similar policy is admittedly followed at the company's South Milwaukee plant, where substantially all of the plant's requirements of scrap are supplied by a Chicago brokerage firm.

11. Bucyrus-Erie has periodically advised other brokers and dealers who had offered it scrap for the Erie plants that its purchases are made from a single broker. Thus in November 1951, in confirming a conference and telephone conversation with a representative of Republic Iron & Metal, as a result of which it had been suggested that the latter offer its scrap through Luria, the Bucyrus-Erie vice president in charge of scrap purchases stated (CX 715) :

It is agreed that orders for scrap for our Erie operations will be placed by us with Luria Brothers in Cleveland who have told us that they are agreeable to obtaining part of the scrap against our orders from you on a continuing percentage basis with the understanding, of course, that the scrap is acceptable and to grade.

A broker from Buffalo who offered scrap to Bucyrus-Erie originating at the General Electric Company was advised by the same official (R. 6121) :

* * * we were not going to bid against ourselves, and that we had somebody bidding for us and we expected that they would take care of us and we weren't interested.

12. During the period of the Korean conflict Bucyrus-Erie sought to have Luria designated as broker on scrap which was allocated to its Erie plants from both railroads and industrial fabricators. Thus it advised one industrial fabricator in a letter, dated October 23, 1951, as follows (CX 716-A) :

While we fully appreciate that the choice of brokers is yours as seller, if convenient we would appreciate if in the future you would arrange your allocations in such a way that the allocations to us are made through Luria Brothers in Cleveland to whom we are looking to keep our Erie Plant in full operation insofar as scrap is concerned.

13. As in the case of other respondents, it is argued that there is no binding legal agreement between Luria and Bucyrus-Erie, that business between them is on an order-to-order basis, and that either is free at any time to discontinue the existing arrangement. While it may be true that there is no binding legal agreement between them, there is no question but that there exists an understanding or agreement of more than an order-to-order character. There can be no doubt that Bucyrus-Erie looks to Luria to keep its Erie plants supplied on a continuing, long-term basis, subject only to reaching agreement on the

price to be paid in monthly orders. The Bucyrus-Erie official in charge of scrap purchases, while denying that Luria was under any "legal or moral obligation" to supply the company, conceded that he considered it had "an obligation to accept orders from us as we needed scrap, in order to keep the plant going, and we worked very closely with them" (R. 6122). He further described the relationship as follows (R. 6115):

* * * it was our feeling that the company would be best served by making Luria Brothers responsible for seeing that that plant was kept well supplied with scrap and at the right prices and the proper quality * * *. So we told Luria that we expected them to keep that plant going. As long as they operated and supplied the proper scrap for us we would continue to give them orders and on a month to month basis.

Further evidence of the continuity of the relationship between the two companies may be found in the letter to Republic Iron & Metal, referred to above, dated in November 1951, in which Bucyrus-Erie's vice president acknowledged that his company had "agreed that orders for scrap for our Erie operations will be placed by us with Luria Brothers in Cleveland." A copy of this letter was sent to Luria's Cleveland office.

14. Since the institution of this proceeding and following the change of scrap-purchasing officials in September 1954, there has been some modification in Bucyrus-Erie's scrap buying policy, to the extent that the dealer Chestner has received a greater share of the Bucyrus-Erie business. It is not necessary to speculate whether this has been due to the impetus of this proceeding or the change in management, or both. The relationship must be judged on the basis of the factual situation which existed at the time of the issuance of the complaint. It may be noted, however, that while the proportion of purchases from Chestner increased in 1955, Luria continued to be the only broker from whom scrap was purchased for these plants.

(13) *Respondent Columbia*

1. Columbia Malleable Castings Corporation, sometimes referred to herein as Columbia, was a subsidiary of Grinnell Corporation until it was merged into Grinnell on December 31, 1955, as has heretofore been found. It has been stipulated that Grinnell may be substituted as a respondent in this proceeding in all respects for respondent Columbia. References hereinafter made to Columbia include Grinnell since the end of 1955.

2. Respondent Columbia operates a malleable iron foundry at Columbia, Pennsylvania, which produces malleable iron castings consisting of pipe fittings, pipe hangers, unions and kindred items. In connection therewith, it operates cupolas, air furnaces and other facili-

Initial Decision

62 F.T.C.

ties. In the course of its operations Columbia uses railroad scrap and other scrap low in phosphorus and as free as possible from chrome and nickel content.

3. From the time that Columbia began buying scrap around 1936, until the present time, it has purchased all of its scrap requirements from Luria, except for purchases from others amounting to less than 5% of its total scrap requirements in 1951 and 1952 and consisting of scrap allocated to it under Government orders.

4. The explanation given for Luria's exclusive position at Columbia is that Luria is the only large dealer which operates its own yards and maintains complete sorting facilities east of Pittsburgh, and is familiar with the selected grade of scrap required by Columbia. This explanation is identical to that given by respondent Baldwin for entering into a similar arrangement with Luria. However, as is the case with Baldwin there are a number of other dealers in the area who are capable of preparing scrap to Columbia's requirements and who have, in fact, done so. Some of the scrap shipped to Columbia by Luria originates in the yards of other dealers or is prepared in the yards of other dealers.

5. The trade generally understands that Luria is Columbia's exclusive broker. When Columbia receives offers from other brokers or dealers it gives no serious consideration to such offers. It is its conscious policy to buy only from Luria. During the period of the Korean conflict Columbia requested railroads and others to designate Luria as broker on scrap allocated to it.

6. As in the case of a number of the other respondents, Columbia concedes that it buys all of its scrap from Luria, but denies that it has any agreement with Luria requiring that it do so. It contends that the "dealings between the two are on an order-to-order basis and either is free to discontinue dealing with the other". While there may be no formal, binding agreement governing the existing relationship, the examiner is satisfied that the present relationship is of more than an ephemeral, order-to-order character. The Columbia scrap-purchasing official conceded that he relied on Luria to meet his scrap requirements, and felt that Luria had an obligation to keep the plant supplied. It is the conclusion and finding of the examiner that there is an informal agreement or understanding between Luria and Columbia, pursuant to which Luria acts as Columbia's exclusive broker and supplies it with all of its scrap requirements. While either party may be legally free to withdraw from the arrangement, there is no reason to anticipate an early termination thereof.

(14) *Nonrespondent Mills*

1. Counsel supporting the complaint contend that Luria has exclusive brokerage agreements with a number of other mills and foundries, in addition to those named in the complaint. Evidence in support of this contention was offered under the allegation of the complaint which charges that such agreements exist not only with the respondent mills, but with "other mills" not specifically named.

2. While the evidence cited by counsel supporting the complaint does establish that Luria is the exclusive or preponderant supplier of the mills in question, it is generally insufficient, with one exception, to support any finding of an arrangement which may be characterized as constituting an agreement or understanding. Since any order which may issue in this proceeding could not run against nonrespondents, and since an order issued against Luria would be sufficient to reach exclusive agreements with nonrespondents, the examiner deems it unnecessary to make detailed findings concerning Luria's arrangements with the nonrespondent mills. However, such arrangements are briefly hereinafter described, as bearing on Luria's position in certain market areas where it has exclusive agreements with the respondent mills.

Merritt-Chapman & Scott Corporation

3. Luria was the principal supplier of the plant at Milton, Pennsylvania, when it was acquired by Merritt-Chapman on October 31, 1953. The plant has continued to purchase 10 to 15% of its scrap from local dealers, and the balance from Luria.

4. When Merritt-Chapman acquired a steel plant at Newport, Kentucky from Newport Steel Corp. in March 1954, the plant was being supplied by David J. Joseph Company, a broker in Cincinnati, and several local dealers. Since the acquisition, Luria has supplanted Joseph and has been supplying about three-fourths of the plant's scrap requirements.

Electron Corporation

5. By letter-agreement dated July 14, 1950, Luria undertook to supply the requirements of the foundry operated by Electron at Littleton, Colorado. The agreement provides that Luria will supply the mill's "entire requirements of scrap" and that the mill will "refrain from making purchases from any other broker or dealer" (CX 958). The agreement was of no fixed duration.

Pacific States Cast Iron Pipe Company

6. Pacific States purchases all of its requirements of broker-dealer scrap from Luria. Local dealers who formerly shipped directly were required to ship through Luria. This change occurred at or about the time Luria became the exclusive broker for U.S. Steel's Geneva plant.

Ohio Area Foundries

7. Luria has been the exclusive, or principal, supplier of a number of different foundries in Ohio. The names of these foundries and the proportion of scrap supplied by Luria as of March 1951 is as follows:

- a. Buckeye Steel Castings Co., Columbus, Ohio; Luria major supplier.
- b. James B. Clew, Coshocton, Ohio; Luria supplied 95%.
- c. Dayton Steel Foundry, Dayton, Ohio; Luria exclusive supplier.
- d. Elyria Foundry Division, Elyria, Ohio; Luria exclusive supplier.
- e. Grabler Mfg. Co., Cleveland, Ohio; Luria supplied 95%.
- f. Lake City Malleable Co., Ceico, Ohio; Luria supplied major share.
- g. National Supply Co., Toledo, Ohio; Luria exclusive supplier.
- h. Superior Foundry Co., Cleveland, Ohio; Luria exclusive supplier.
- i. National Metal Abrasive Co., Cleveland, Ohio; Luria exclusive supplier.
- j. Ohio Ferro Alloys, Philo, Ohio; Luria exclusive supplier.
- k. Shenango Furnace, Sharpsville, Penna.; Luria exclusive supplier.
- l. Westinghouse Electric Co., Cleveland, Ohio; Luria exclusive supplier.

(15) The Alleged Conspiracy Among the Mills With Luria

1. As heretofore indicated, the complaint charges each of the mills not merely with entering into an exclusive agreement or understanding with Luria, but with doing so pursuant to an over-all agreement, understanding and conspiracy among themselves to use Luria as their exclusive broker. At the end of the case-in-chief the examiner ruled that the evidence failed to support a finding of any over-all agreement, conspiracy, understanding or combination among the mills to deal with Luria as their exclusive broker, and that appropriate provision for dismissal of this charge would be made in the initial decision to be issued at the close of the case.

2. In their proposed findings, counsel supporting the complaint re-assert their contention that there is an over-all combination among the mills with Luria, but fail to cite any evidence to support such a finding. This position is apparently taken for record purposes, in order to preserve a possible right of appeal from the examiner's ruling. It appears to the examiner that, for all practical purposes, counsel recognize that there is no serious basis for asserting the existence of an over-all combination among the mills. It is, therefore, considered unnecessary to discuss this charge in any detail. However, the following general observations may be made concerning the evidence relating to the charge.

3. Generally speaking, whatever agreements, arrangements or understandings were entered into by the mills with Luria, were entered into by each of the mills at different times and for different reasons, and were based on economic conditions prevailing in their own areas and the individual needs of the particular mills involved. The record

does indicate that in a few instances some of the mills knew that another mill, or other mills, had similar arrangements with Luria. However, in entering into their arrangement with Luria such mills did not do so because of any understanding or agreement with the other mill or mills involved. Generally speaking, their interest in the fact that other mills had a similar arrangement arose out of an inquiry as to Luria's ability to perform a similar function for them. In some instances little or no competition existed between the mills involved, in the acquisition of scrap. In other instances there is evidence that there was some competition between the mills for scrap and there is evidence that in entering into the agreement with Luria there was a desire not to compete with another mill. However, the record fails to support a finding that the mills involved conspired among themselves to use Luria as their exclusive broker. Generally speaking, Luria already had an arrangement with one of the mills when it entered into a similar arrangement with another mill in the area. While the latter mill may have been cognizant of the existence of the agreement between its competitor or competitors and Luria, and entered into a similar arrangement with Luria in order to lessen competition for scrap between itself and its competitor or competitors, the record fails to support a finding that it did so as a result of any agreement, understanding or conspiracy between itself and any other mill or mills.

C. Other Unfair Practices Charged Against Luria Separately, and in Cooperation with Respondent Mills

1. The complaint charges the respondent mills and Luria with engaging in a series of acts and practices in pursuance of, and in furtherance of, the exclusive arrangements discussed above. It also charges Luria independently with engaging in a series of acts and practices, separate and apart from any combination with the mills. In some instances the acts and practices charged against Luria, separately, parallel those charged against the mills and Luria acting in combination.

2. The evidence pertaining to these charges is considered below in connection with each of the charges concerning which proposed findings have been offered by counsel supporting the complaint. Before discussing each of the charges it may be noted that counsel supporting the complaint do not contend that any of the specific acts and practices charged are illegal "standing alone", but that such practices "in the aggregate" constitute violations of the Federal Trade Commission Act (R. 143).

(1) *Pressure on Railroads*

1. The complaint contains four separate charges in Count I involving the use of alleged pressure against railroads and other sources of supply to sell scrap to Luria. In Paragraph 9(h) it is alleged that the respondent mills and other mills requested railroads and other sources of supply to sell their iron and steel scrap to Luria, and that because of the substantial volume of business which the mills were in a position to divert, their request "had a strong and frequently coercive influence", and caused the railroads and other sources of scrap in many instances to divert scrap to Luria from competitors. Paragraph 9(i) is somewhat similar to Paragraph 9(h), except that it involves the period of Government controls and alleges that the mills requested railroads and other sources of scrap to designate Luria as broker in connection with scrap allocated to such mills under the Government allocations program, contrary to applicable Government regulations.

Paragraph 10(a) involves Luria alone, and charges it with threatening to divert and with diverting scrap tonnage from railroads which failed or refused to sell it substantial quantities of scrap. Paragraph 10(b) involves the period of allocations and charges that Luria engaged in conduct similar to that charged in 10(a), where railroads fail to designate it as broker for substantial quantities of allocated scrap.

The Charges Against the Mills

2. Aside from requests made with respect to allocated scrap during the period of Government controls (which will be separately discussed), counsel supporting the complaint have cited no evidence to support a finding that any of the respondent mills requested railroads or other sources of scrap to sell scrap to Luria, as alleged in Paragraph 9(h). There is no substantial, reliable or probative evidence in the record to support such a finding, or to support a finding that scrap originating from railroads and other sources of supply was diverted to Luria from its competitors as a result of requests made by the respondent mills. It is, accordingly, concluded that Paragraph 9(h) of the complaint has not been sustained.

3. The record does establish that during the period of Government controls (beginning on February 7, 1951) some of the respondent mills requested railroads and other sources of scrap to designate Luria as the broker, in connection with the sale of scrap allocated to such mills under Government order. Instances in which such requests were made have been referred to previously, in connection with consideration of the allegations of the complaint dealing with the alleged exclusive arrangements between Luria and various respondent mills. It may be noted at this point, however, that such evidence was not

offered with respect to each of the respondent mills, but only as to respondents CF&I, Central, Granite City, Lukens, Baldwin, Edgewater, Bucyrus-Erie, and Columbia.

While it does appear that certain of the mills did request railroads and other sources of supply to designate Luria as broker on scrap allocated to them under the Government allocations program, counsel supporting the complaint have failed to establish, (a) that the requests made by the mills "had a strong and frequently coercive influence" on the railroads or other sources of supply, or (b) that there was any substantial diversion of scrap from Luria's competitors as a result of such requests.

4. There is nothing about the requests themselves, most of which were in writing, to suggest that they were made in a strong or coercive manner or that they were calculated to have a coercive effect on the railroads. For the most part, the requests merely sought to enlist the cooperation of the railroads or other sources of supply in shipping scrap to the requesting mill through its regular broker. Typical of such requests is one made by respondent Baldwin stating (CX 585):

If it is your policy not to sell direct, and we understand it is, we would appreciate very much handling these sales through Luria as we do not wish to open up accounts with other brokers.

In the same vein is a request made by respondent CF&I's Claymont Division to a railroad stating (CX39):

If it is possible for you to do so, we would like to have this, and any other [allocations] you may get, go through our brokers, Luria * * *.

Requests sent by the other respondents above-named were similarly worded.

5. While the railroads and other sources of supply had a right to designate the broker on allocated scrap, the evidence indicates that it was not a matter of particular concern to them who the broker was, as long as he was reliable. The price of the scrap was fixed by Government regulations, and the railroad could not receive any more money by shipping it through one broker than through another. A number of the railroad witnesses testified that it was their general policy, even without any specific request, to ship scrap to a consumer through the broker or brokers from which the consumer generally bought, as revealed by the railroad's record of scrap sales during periods when there were no controls. The record fails to establish that the railroads or other sources of supply considered requests received from steel mill consumers to be coercive, or that such requests were uniformly or generally honored.

6. Counsel supporting the complaint urge that because of the fact that the mills are large shippers over the railroads in question, any

request made by them to have a particular broker designated would necessarily have a strong and coercive effect. Aside from the fact that the record does not establish the volume of shipments of the particular mills involved, over the indicated railroads, the examiner cannot infer from the fact of volume shipments alone that requests made by the mills would have any necessarily coercive effect. In fact, as above indicated, the record fails to establish that the requests made by the mills were necessarily or generally honored by the railroads. It is accordingly concluded that Paragraph 9(i) of the complaint has not been sustained.⁴⁴

The Charges Against Luria

7. The evidence likewise fails to sustain the charge contained in Paragraph 10(a) that Luria threatened to, and did divert, scrap shipments from railroads which failed or refused to sell it substantial quantities of scrap. Counsel supporting the complaint cite only two instances from the record which are even remotely suggestive of any threats against railroads. The first of these is an interoffice memorandum (CX 31) from Luria's Cleveland office to its Philadelphia office, dated December 23, 1948, indicating dissatisfaction with the amount of scrap which had been purchased from the Nickel Plate Railroad, and requesting information as to the amount of scrap shipped over the railroad by Luria, for use as "ammunition" by the Cleveland office in a conference with the railroad 5 days hence. There is nothing in the record to indicate that the proposed conference ever took place or, that if it did, Luria ever threatened the railroad with any diversion of shipments if the railroad failed to increase its scrap sales to Luria.

The only other evidence of any so-called threat is an interoffice memorandum written by Luria's St. Louis office to its Houston office, dated March 21, 1946, in which the St. Louis office representative indicated some reservations about making a certain shipment over The Missouri Pacific Railroad for the reason, as stated (CX 18) :

* * * I think we should have held off this routing a little while and make the Mo. Pac. sweat, in order to persuade them that we need a little more scrap here in St. Louis. * * * You might tell that to their traffic man down in Houston, and see if he cannot put a little pressure on them there as well as the pressure we are going to put on from here.

The record fails to establish that the Houston office did, in fact, discuss the matter with the Missouri Pacific's traffic manager in

⁴⁴ It may be noted that Paragraph 9(i) contains the allegation that the requests made by the respondent mills to the railroads were "contrary to the spirit and purpose" of the regulations of the OPS. In view of the general failure of proof with respect to the gravamen of this paragraph of the complaint, the examiner considers it unnecessary and inappropriate to determine whether the requests violated the spirit and purpose of another Government agency, now nonexistent.

Houston, or that any "pressure" was put on the railroad either in St. Louis or Houston. On the contrary, another interoffice memorandum in the record, sent to St. Louis by the traffic manager of the Philadelphia home office, dated March 25, 1946, indicates the lack of probability that this suggestion was ever carried out. The latter memorandum states (CX 17):

Before you go out on the limb too far let me inform you that I have been working very hard with the Missouri-Pacific to get a better share of their scrap and I believe that our results with Mr. Mau are due in part to my efforts.

I have been working through their Vice President, and their Freight Traffic Manager, and their General Eastern Agent. It takes a little time, but I believe we will get a great deal further by not using too much pressure.

While the latter memorandum indicates that Luria was endeavoring to persuade the Missouri Pacific that it should get a better share of the scrap, it does not establish that it was doing this through threats or coercion, but rather that it was relying on normal business persuasion.

8. The manner in which most railroads sell their scrap would tend to preclude the possibility that threats or coercion are an effective method in obtaining their scrap business. Substantially all of the railroads whose representatives testified in this proceeding, sell their scrap on the basis of the highest bid received in response to periodic invitations to bid on the railroads' scrap. Where the highest bidder does not bid on the entire amount of scrap offered, other firms may be given an opportunity to purchase portions of the offering, but this is usually on the basis of matching the price offered by the highest bidder.

One of the few railroads which does not invite bids from dealers, brokers and consumers of scrap generally, is the Southern Pacific Railroad. This railroad follows the practice of receiving bids, on an informal basis, from a small group of interested firms. It, nevertheless, sells its scrap on the basis of the highest bid received, and where the entire amount offered is not bid for, it will make an award to the next highest bidder or bidders on the basis of the price offered by them. Luria has been a substantial purchaser of Southern Pacific scrap, particularly of No. 1 heavy melting steel. During the period from January 1949 to March 31, 1954, approximately half of the scrap sold by the Southern Pacific has been sold to Luria. According to the Southern Pacific scrap representative who testified, such sales were made on the basis of Luria being the highest bidder for the scrap it purchased. There is nothing in the testimony of the Southern Pacific representative or of any of the other railroad witnesses to suggest that there were any threats or pressure brought to bear upon them, either by Luria or by any of the respondent mills, to sell any of their scrap to Luria.

Initial Decision

62 F.T.C.

9. Counsel supporting the complaint contend that because of the large quantities of scrap handled and shipped by Luria any requests made by it to the railroads would necessarily have a coercive effect. Counsel refer, in this connection, particularly to the fact that Luria periodically notified railroads of the amount of scrap which it shipped over their lines. While undoubtedly Luria wished the railroads to be aware of the large amounts of business which it gave them, the examiner cannot infer from this alone, or from the fact that Luria was a substantial shipper, that bids submitted by Luria had a necessarily coercive effect. Absent other evidence of a more direct and specific nature, it cannot be inferred that Luria "threatened to and did divert" scrap from railroads which failed to award it substantial quantities of scrap, merely because it let the railroads know it was a substantial shipper. This is particularly true where, as here, the record indicates that awards of scrap were generally made on the basis of the highest bid. It is accordingly concluded that Paragraph 10(a) of the complaint has not been sustained.

10. The charge in Paragraph 10(b) is similar to that in Paragraph 10(a), except that it involves threats against railroads which failed to designate Luria as the broker for substantial quantities of scrap allocated to various shippers, as distinguished from a failure to sell scrap directly to Luria. This charge apparently is the counterpart of Paragraph 9(i) of the complaint, involving requests made by the mills to the railroads, to designate Luria as broker during the period of Government controls. There is evidence in the record that Luria requested some of its mill customers to intercede with railroads to have it designated as broker on allocated scrap, and that a number of the mills did request railroads to designate Luria as broker on scrap allocated to them. There is no substantial evidence, however, that Luria threatened any railroads with a diversion of scrap for failure of the railroads to designate Luria as broker on such allocated scrap.

11. The only evidence referred to by counsel supporting the complaint as indicative of an effort by Luria "to pressure railroads into supplying it with scrap" during the period of controls, involves an interoffice memorandum from Luria's Cleveland office to its Philadelphia office, dated February 12, 1951, containing a draft of a letter that the former was contemplating sending to the Nickel Plate Railroad "in response to their [the railroad's] request * * * the names of our customers so that awards can be made to us for the consumers we deal with." It does not appear whether such a letter was actually sent to the railroad, requesting that Luria be designated as broker for the mills with which they dealt, but it is clear that if such a letter was sent by Luria, it did so at the request of the railroad. Furthermore, the reply

which was proposed by Luria, expressing the thought that "we would appreciate your giving us consideration for the companies listed", can hardly be considered as a threat to divert shipments from the railroad if the request was not complied with. Nor can such a threat be implied, as suggested by counsel supporting the complaint, merely from the fact that Luria was a substantial shipper over the railroad. It is, accordingly, concluded that the evidence fails to sustain Paragraph 10(b) of the complaint.

(2) *New Steel*

1. The complaint, in Count I, contains a series of three charges revolving about the alleged sale of finished and semifinished steel (which are referred to for convenience herein as "new steel"), on the condition that scrap resulting from the sale of the steel would be sold to Luria. In Paragraph 9(f) it is charged that, in furtherance of the exclusive arrangements between the mills and Luria, the respondent mills and other mills sold new steel to fabricators and others with the understanding that the scrap resulting from further fabrication, or other scrap produced, would be sold to Luria. In Paragraph 9(g) it is charged that the mills, in furtherance of their exclusive arrangements with Luria, sold new steel to Luria and that the latter sold such steel to fabricators or others on condition that the vendees would sell their scrap to it. Paragraph 10(c) is directed against Luria alone, and charges that it sold new steel to fabricators and others under the same exclusive dealing arrangements as alleged in Paragraphs 9(f) and (g).

New Steel Sales by Mills to Fabricators

2. Insofar as there is evidence in the record having to do with the alleged sale of new steel on condition that the vendee would sell scrap to Luria, it involves sales of new steel by Luria, and not sales directly by the mills. While the evidence does indicate that some of the new steel sold by Luria originated with certain of the respondent mills, there is no evidence of any direct sales by the mills to fabricators and others on condition that the scrap generated by the vendees would be sold to Luria.

Counsel supporting the complaint have proposed no findings that sales of new steel were made by the mills to fabricators under the challenged conditions. The only evidence purporting to show direct sales by mills to industrial fabricators, actually involves sales arranged by Luria (which received a commission thereon) where, due to Government control regulations, the mills could not sell the new steel directly to Luria and sold it to Luria's designees. Counsel supporting the

complaint have conceded that such sales represent sales made by Luria, rather than by the respondent mills.⁴⁵ In any event, there is no evidence in connection with such sales of any understanding between the mills and the fabricators involved that the latter would sell their scrap to Luria. It is, accordingly, concluded that Paragraph 9(f) of the complaint has not been sustained by the evidence.

New Steel Sales by Mills to Luria

3. There is evidence in the record that some of the mills sold new steel to Luria, a fact which the mills involved do not deny. The only issue with respect to such sales relates to the conditions, agreements or understandings under which such sales were made. The complaint alleges, in Paragraph 9(g), that the sales of new steel by the mills to Luria were, (a) made "in furtherance" of the understandings they had with Luria to act as their exclusive broker, and (b) that Luria sold such new steel to fabricators and others on the condition that the vendees would sell to it the scrap generated in their own operations.

While the complaint is not entirely unambiguous, it is apparently the position of counsel supporting the complaint that the sales of new steel were made on a "steel for scrap" basis, i.e., that the mills sold the new steel with the understanding that Luria would sell them scrap. It is not entirely clear whether the complaint also charges the mills with being privy to the understandings allegedly had between Luria and those to whom it resold the new steel, but apparently it is the position of counsel supporting the complaint that the steel was sold by the mills in contemplation of the fact that Luria would use it as a vehicle for acquiring scrap. It is the position of the mills who sold new steel to Luria that they did so in the normal course of business, and without any conditions attached such as that Luria would sell them scrap or would use the steel to obtain scrap from fabricators or others.

4. The only respondent mills as to whom evidence was offered in support of Paragraph 9(g) of the complaint are CF&I, Bethlehem, Central and Phoenix, Weirton, McLouth and Detroit. Evidence was also offered as to new steel sales to Luria by certain nonrespondent mills, including Copperweld Steel Co., Buckeye Steel Castings Co., and Erie Forge & Steel Corporation. The evidence pertaining to the respondent mills consists principally of statistical evidence as to their sales to Luria, and some limited testimony concerning the basis upon which such sales were made, from which counsel supporting the complaint seek to have the examiner infer that the sales made to Luria

⁴⁵ Counsel supporting the complaint stated in connection with an objection to such evidence (R. 2970):

It has particular relevance * * * to Paragraph 10(c). * * * That involves a sale by Luria of scrap to fabricators and others.

were on a "steel for scrap basis". The statistical evidence discloses a considerable increase in new steel sales to Luria by the respondent mills in question during the period of the Korean War. Counsel supporting the complaint seek to infer, largely from the lack of any substantial history of prior sales to Luria, that such sales were made pursuant to an understanding with Luria that the latter would sell the mills scrap. To a consideration of such evidence the examiner briefly turns.

CF&I

5. In 1951 and 1952 the Claymont plant of CF&I sold Luria 58,000 tons and 13,000 tons, respectively, of steel ingots. The plant had made no previous sales of ingots to Luria and further sales ceased in 1953 after the steel shortage had become less acute. While Claymont had sold no ingots to Luria prior to 1951, the former operators of the plant (prior to its acquisition by CF&I) had sold finished steel plate to Luria at least as far back as 1947. The explanation given by the Claymont witness for the sale of ingots to Luria was that after the Claymont plant was acquired by CF&I in March 1951, Claymont began to operate an additional furnace which resulted in an excess of ingot capacity in relation to the mill's capacity to roll the ingots into finished steel. This excess was further aggravated by a temporary shutdown of the rolling mill. Consequently, when Luria offered to purchase some of the excess ingots, Claymont was delighted. After this introduction into the ingot-selling business, Claymont began to sell ingots to others.

6. Sales of new steel to Luria by CF&I's Minnequa plant preceded the period of shortage incident to the Korean War. The plant sold 6,603 tons of semi-finished steel to Luria in 1948. Further sales of 23,868 tons and 59,871 tons were made in 1950 and 1951, respectively. In addition, Minnequa rolled 37,713 tons of ingots for Luria in 1951, some of which probably was part of the semi-finished steel theretofore sold to Luria. The explanation given by the Minnequa witness for the sales in 1950 and 1951 was that as a result of putting an additional blast furnace into operation in the latter part of 1950, it had an excess of ingots in relation to its orders for finished steel and therefore sold some to Luria.

7. The Buffalo plant of CF&I made sales of new steel to Luria in amounts ranging from about 700 tons in 1946 to 8,300 tons in 1951. No evidence was offered as to the circumstances of such sales.

Bethlehem

8. Between 1950 and 1954 Bethlehem sold approximately 48,000 tons of prime steel to Luria and 68,095 tons of rejected steel products.

Order

62 F.T.C.

There is no evidence in the record concerning the circumstances of such sales to Luria or of any understanding had in connection therewith.

Central and Phoenix

9. The Harrisburg plant operated by Central sold new steel to Luria between 1947 and 1950 in amounts ranging from approximately 2,000 tons to 8,000 tons a year. Between 1948 and 1954 it also sold new steel to Southwest, amounting to approximately 6,000 tons a year, except for 1949 when the amount sold was approximately 4,000 tons. During the period between 1947 and 1951, Central also sold new steel to other brokers and dealers, in amounts ranging, in the aggregate, from 244 tons in 1948 to 2,500 tons in 1951.

10. Counsel supporting the complaint cite certain correspondence between Luria officials as establishing that Luria had a "steel for scrap" arrangement with Central. While the correspondence indicates some concern on the part of Luria over Central's failure to deliver new steel in the full amount of the orders previously placed, and expresses a hope that something can be done to get Central to complete the shipments, there is nothing in the correspondence to support a finding of any scrap for steel agreement or understanding between the companies.

11. The Phoenixville plant of respondent Phoenix likewise sold new steel to Luria. Its largest sale was 8,700 tons in 1949. Further sales were relatively small, amounting to less than 500 tons a year in most years and no steel in several years. Phoenix also sold 2,600 tons to Southwest in 1951. Sales were also made by it to other brokers and dealers, the peak being 3,800 tons in 1951. There is no evidence as to the circumstances of the new steel sales to Luria or Southwest.

Weirton

12. In the period between 1951 and 1955 Weirton shipped new steel to Luria in amounts ranging from approximately 1,000 tons to 4,000 tons per year, except for 1952 in which such shipments were approximately 9,000 tons. In 1956, long after the Korean emergency with which the argument of counsel supporting the complaint is largely concerned was over, Weirton's shipments of new steel to Luria increased sharply to approximately 43,000 tons. Most of Weirton's shipments to Luria did not involve actual sales of finished steel to Luria, but consisted of steel which Weirton had rolled or otherwise converted for Luria from ingots which the latter had supplied, and for which it paid Weirton a service charge for finishing. Weirton's explanation for these transactions was that the company's finishing capacity was greater than its ingot producing capacity and that it was

therefore agreeable to using the excess capacity to finishing the ingots which Luria supplied.

McLouth

13. McLouth sold approximately 1,000 tons of semi-finished steel (ingots) to Luria in 1949, and 7,000 tons in 1950. There is no evidence from which it may be inferred that such sales were made pursuant to a steel for scrap arrangement or any similar understanding between McLouth and Luria.

Detroit Steel

14. Detroit Steel sold approximately 3,400 tons of semi-finished steel to Luria's affiliate, Southwest, in 1951. The explanation given for such sale was that when Detroit Steel took over the steel plant at Portsmouth, Ohio in 1950, it had only limited finishing capacity, its only product then being semi-finished steel, which it was happy to sell to anyone. In addition to its sales to Southwest, Detroit Steel sold approximately 500 tons of semi-finished steel to the Hyman-Michaels Company, a Chicago broker which had not sold it any scrap.

Conclusions as to New Steel Sales to Luria

15. As indicated above, the evidence upon which counsel supporting the complaint rely is largely circumstantial in nature. There is a complete lack of any direct evidence that the sales of new steel by the mill respondents who sold new steel to Luria were made pursuant to any such understanding, agreement or arrangement as that suggested by counsel supporting the complaint. Counsel appear to recognize this in stating, in their proposed findings, that: "The exact terms by which Luria and [the six respondent mills] handled the sale and purchase of new steel were never supplied by any one of the witnesses."

Actually, a number of the mill witnesses did endeavor to explain the new steel sales as being normal business transactions. Counsel supporting the complaint have sought to question such explanations because of the lack of any history of prior sales in some instances, or for other reasons. Generally speaking, the testimony of the mill witnesses was such as to give the examiner no reason not to accept it, particularly in the absence of any countervailing evidence. However, even if such explanations are not accepted, no affirmative finding can be based on an absence of evidence explaining such sales.

16. Despite the admitted lack of direct evidence to sustain the position of counsel supporting the complaint with respect to the new steel sales of the mill respondents, counsel have endeavored to seek support for their position by relying on evidence involving nonrespondent mills. They argue that: "The essential terms of the agreements between Luria and the respondent mills * * * are indicated by an ex-

amination of similar agreements with * * * non-respondent mills". Among the arrangements with nonrespondent mills cited, is one purporting to exist with Copperweld Steel Company. According to an interoffice memorandum from Luria's Cleveland office to its Buffalo office, dated November 22, 1950, Luria had an arrangement with Copperweld involving an "Ingot Conversion Deal", pursuant to which "for every ten tons of scrap shipped * * * we [Luria] will receive one ton of ingots" (CX 79). A Copperweld official who was called as a witness in support of the complaint explained the transaction as being one in which his company had the capacity available for additional ingot production, and was willing to sell a portion of such production to Luria provided the latter supplied it with a proportionate amount of the scrap required to produce the ingots.

This evidence is entirely irrelevant insofar as establishing the arrangement between Luria and any respondent mill. It was originally offered by counsel supporting the complaint under Paragraph 10(c) of the complaint, as establishing how Luria got the steel which it sold to fabricators (R. 8533). There is no claim made that understandings with nonrespondent mills reflect any general custom or practice in the industry. Indeed, no such claim can be made on the basis of the evidence in the record.

17. It seems probable that as a result of its exclusive brokerage arrangements with a number of the mills Luria had a close working relationship with such mills, and was in a position to know when certain of them had an excess of ingot capacity and others had an excess of finishing capacity. It was thus able to take advantage of such information to obtain ingots or finished steel which were in generally short supply. It may even be that because of their close working relationship with Luria certain of the mills tended to give it more favorable consideration in the sale of new steel than they would a complete outsider. However, this does not justify a finding that there existed an understanding or agreement between the respondent mills and Luria to supply Luria with new steel in return for scrap.

A number of the mills sold Luria no new steel despite the existence of an exclusive brokerage arrangement between them and Luria. In some instances the exclusive arrangement preceded, by a considerable period of time, the sale of new steel to Luria by a particular mill, and continued for a considerable period of time after the new steel sales ceased. There is, therefore, no necessary connection between the two. There is, moreover, no evidence to support a finding that the new steel sales were made in contemplation of the fact that Luria would use such steel to obtain scrap. It may be noted, in this connection, that Luria was in the new steel business for some years prior

to the period of steel shortage, 1951-1952, and has sold new steel as a regular part of its operations, and not merely as a vehicle for acquiring scrap.⁴⁶ It is concluded and found that the evidence fails to support the charge in Paragraph 9(g) of the complaint.

New Steel Sales by Luria to Fabricators and Others

18. Paragraph 10(c) charges Luria with having sold new steel to fabricators and others "under and subject to the condition, agreement or understanding" that the scrap resulting from further fabrication of the steel, or other scrap generated by the vendees, would be sold to Luria. The record establishes that Luria sold new steel to industrial fabricators, to scrap dealers, to steel merchants and to steel mills and foundries. During the period from 1950 to 1954 it sold new steel to approximately 250 different customers. Its new steel sales amounted to \$6,920,000 in 1950, \$32,168,000 in 1951, \$6,819,000 in 1952, \$3,918,000 in 1953 and \$462,200 in 1954.

19. The evidence offered by counsel supporting the complaint relates mainly to sales of new steel to certain industrial fabricators and scrap dealers from whom Luria purchased scrap. It is contended that the new steel was sold to such vendees on the condition, agreement or understanding that they would sell scrap resulting from their operations to Luria. As in the case of new steel sales by the mills to Luria, there is no direct evidence as to the conditions, agreements or understanding pursuant to which Luria sold new steel to the vendees in question. Counsel supporting the complaint concede that at least with respect to dealer-vendees:

The record contains no contract nor direct admission of an oral agreement to the effect that the yard dealers would sell their scrap to Luria because of the new steel.

However, counsel seek to infer such an agreement from the course of dealings and other evidence.

20. As in the case of the sale of new steel by certain of the respondent mills to Luria, counsel supporting the complaint seek to establish their claim of a "steel for scrap" agreement largely on the basis of the coincidence of the two events, i.e., that those to whom Luria sold new steel sold scrap to it. Additional support for such an inference is sought from the fact that the new steel sales were allegedly not made in the regular course of business, or from other circumstantial evidence. However, as will be more fully indicated below, the evidence fails to support any inference of agreement.

⁴⁶ In 1945, shortly after its separation from LS&T (which had formerly handled new steel for the Luria organization), Luria set up a new steel division, and began to deal actively in buying and selling new steel. New steel became and is a substantial part of its business.

21. The only direct evidence of any effort by Luria to obtain scrap in return for new steel involves a telegram sent by an official in Luria's new steel department to an employee in its Chicago office in which the former states he had been advised by a third person that the George D. Roper Company of Rockford, Illinois, had purchased some new plate from Luria, and the telegram continues:

If this is true we will be able to purchase their scrap. Please let me know on this at your earliest convenience.

The sender of the telegram testified that as far as he was aware the new steel division had not actually sold any new steel to Roper. An exhibit offered by counsel supporting the complaint, which purports to reflect new steel sales by Luria from 1950 to 1954, does not include Roper among the vendees. No evidence was offered to indicate that Luria ever actually attempted to obtain scrap from Roper in return for new steel.

In the opinion of the examiner that Luria may have attempted to obtain scrap from a particular fabricator to which it had sold new steel does not establish that other fabricators or vendees agreed to sell it scrap in return for new steel. The position of counsel supporting the complaint, in this respect, is similar to that previously discussed in which it was urged that because there was a "steel for scrap" agreement with a nonrespondent mill, Copperweld Steel Co., a similar agreement existed with the respondent mills. While the telegram may indicate that Luria tried to use the fact that it sold new steel to a particular fabricator as an entree for seeking to persuade him to sell it scrap, it does not follow that it invariably or generally pursued this practice or that fabricators invariably or generally agreed to sell their scrap to Luria in return for obtaining new steel from it.

22. As indicated above, the evidence upon which counsel supporting the complaint rely is largely circumstantial in nature. In the opinion of the examiner there is nothing about the pattern of sales of new steel and of scrap to support any finding that the new steel sales were made "under and subject to the condition, agreement or understanding" that the vendees would sell scrap to Luria. It may be noted, parenthetically, that the charge itself is ambiguous, since it is not clear whether it is charged that the vendees agreed to sell all their scrap or any definite portion thereof, or merely that they agreed to sell some scrap to Luria. In any event, the evidence fails to establish any agreement or understanding to sell scrap as a *quid pro quo* for new steel. Set forth below is a brief analysis of transactions with the fabricators and scrap dealers upon which the case of counsel supporting the complaint largely rests, as revealed by their proposed findings.

Dana Corporation

23. Dana manufactures automobile parts and assemblies, and has plants in various parts of the country. The evidence pertaining to it involves primarily its plants at Toledo, Ohio and Pottstown, Pennsylvania. The only new steel sold to Dana by Luria consists of 1,500 tons of ingots which it sold to the Toledo plant in May and June 1951. Prior to this sale Luria had been purchasing scrap for a number of years from Dana's Toledo plant and also from its plants at Fort Wayne, Indiana and Reading, Pennsylvania.

Sales of scrap by Dana's plants were handled separately by officials at each plant. Bids were received from a number of different dealers and brokers, and awards were made on the basis of the highest bid, with those submitting lower bids being given an opportunity to purchase portions of the scrap by meeting the price offered by the highest bidder.

In the fiscal year ending August 31, 1950, Luria purchased 24% of the scrap of the Toledo plant. In the year ending August 31, 1951, during which it purchased 1,500 tons of new steel from Luria, its sales of scrap to Luria increased to approximately 42%. In the following year, when Luria sold Dana no new steel, Luria purchased approximately 80% of the Toledo plant's scrap. Luria's scrap purchases in the years 1953 to 1955 amounted to 67%, 50% and 45%, respectively. There is nothing about the pattern of scrap sales from which it may be inferred that they were made as the *quid pro quo* for Luria's selling 1,500 tons of new steel to Dana in 1951.

The position of counsel supporting the complaint with respect to the Dana transaction is apparently based mainly on Luria's purported indirect purchase of scrap from the Pottstown plant, rather than on any sale of scrap at Toledo.⁴⁷ As previously noted in connection with the discussion of the Luria-Bethlehem exclusive arrangement (pp. 314, 315), Mayer Pollock, which had been purchasing scrap from the Dana plant at Pottstown, agreed to sell an equivalent tonnage to Luria after the latter had informed Pollock sometime in 1951 that Dana wished it to handle the Pottstown scrap because Luria had done Dana a "favor" at Toledo. In the opinion of the examiner this incident fails to support a finding that the sale of steel to Dana at Toledo was based on an agreement that Dana would sell Luria the scrap from its Pottstown plant.

⁴⁷ Counsel supporting the complaint do refer to the fact that Columbia Iron & Metal Co., a Cleveland broker, was unable to purchase scrap from Dana's Toledo plant in 1951. However, the Columbia witness made no effort to ascribe this to Luria. Columbia was not a large purchaser of Dana scrap. It purchased \$18,000 to \$22,000 worth of scrap from Dana in 1946 and 1947. Its purchases from Dana declined in 1948 to \$9,000 and ceased entirely in 1949, before Luria had sold any new steel to Dana. Further small purchases of \$11,000 and \$10,000 were made in 1950 and 1951.

In the first place, it is not entirely clear that the "favor" which Luria did for Dana was the sale of new steel. In the second place, it is not established that Luria's statement to Pollock that Dana wished Luria to handle the scrap at Pottstown was ever authorized by Dana. Pollock, admittedly, took no steps to verify the information and the matter was not brought to the attention of Dana, which continued to sell its Pottstown scrap to Pollock. The scrap sales at each plant, as previously noted, are made separately by an official at the plant. The most that the Toledo plant could have done was to offer to get Luria an entree to the Pottstown plan. While this subject was discussed, according to the official in charge of scrap at Toledo it was never "followed * * * through" (R. 9448). Even assuming that the Toledo official did promise to use his good offices to get Luria an entree at Pottstown, this is hardly the equivalent of a sale of new steel "under and subject to the condition, agreement or understanding" that Dana would sell scrap to Luria.

American Stamping Co.

24. Luria sold new steel to American Stamping Co. of Cleveland amounting to approximately \$146,000 in 1951 and \$2,700 in 1952. In addition, American Stamping purchased 2,100 tons of scrap from Moritz Steel Co., a steel wholesaler in Cleveland, which Moritz had obtained from Luria and sold to American Stamping in its own behalf or in a joint venture with Luria (the record being unclear how the transaction was handled). American Stamping Co. did not sell any scrap to Luria until 1954, and no claim is made that such sale was connected with the new steel it had obtained from Luria several years earlier.

However, counsel supporting the complaint seek to connect with Luria, scrap sales made by American Stamping to two Cleveland dealers, Paramount Steel & Supply Co. and Lederer Iron & Steel Co. The dealers are described by counsel as "captive" yards of Luria, since they had received loans from Luria and were required to offer their scrap to it on a first-refusal basis.

The record fails to support a finding that the sale of scrap by American Stamping to Paramount or Lederer was an outgrowth of any agreement made in connection with the sale of new steel by Luria. The sale of scrap to Lederer did not occur until 1953 (amounting to approximately \$13,000), a year after Luria's last sale to American Stamping (amounting to \$2,700). Paramount had been buying scrap from American Stamping at least as far back as 1948, which is several years prior to its financial obligation to Luria, and to the latter's sale of new steel to American Stamping. There was no significant change in the proportion of scrap sold to Paramount after Luria's sales of

new steel to American Stamping. Counsel supporting the complaint have suggested no reason why the sale of scrap to Paramount and Lederer should be considered as resulting from the sale of new steel by Luria to American Stamping.

Midland Steel Products Co.

25. Midland Steel Products Co. of Cleveland is a fabricator of metal products. Midland purchased ingots from Luria amounting to approximately \$330,000 in 1949 and \$135,000 in 1951. Midland also regularly sold scrap to Luria. During the period between 1949 and 1955, such sales amounted annually to between \$700,000 and \$1,500,000.

The only evidence cited by counsel supporting the complaint, outside of the coincidence of steel and scrap sales, is the hearsay testimony of the Cleveland broker, Columbia Iron & Metal Co., who has ceased buying scrap from Midland in 1951. Columbia apparently had no trouble buying scrap from Midland in 1949 and 1950, despite the fact that Luria had sold new steel to Midland in 1949 amounting to \$330,000. However, in 1951, according to the Columbia official, he was advised by his purchasing agent (who had talked to some unidentified person at Midland) that Midland was selling its scrap to "several people" from whom "they were getting ingots" (R. 8973). Luria was not specifically identified as being one of the "several people" involved.

Aside from the dubious reliability of the hearsay testimony of the Columbia witness, the record does not support a finding that Midland sold scrap to Luria because the latter sold it new steel and, conversely, that it refused to sell scrap to Columbia because Columbia did not sell it new steel. According to the credited testimony of a Midland official, his company's scrap sales were made on the basis of the highest price offered by a number of bidders, and his company's scrap was awarded largely to Luria and to Luntz Iron & Steel Co., another Cleveland broker, because they were the highest bidders. The Midland official specifically denied that the sale of scrap to Luria was connected with its purchase of new steel from Luria. It is significant that Midland sold scrap to Luntz despite the fact that the latter sold it no new steel.⁴⁸

Electric Auto-Lite Company

26. Electric Auto-Lite is a manufacturer of automotive electrical equipment, and operates a number of different plants. The evidence upon which counsel supporting the complaint rely relates mainly to the plant at Toledo, Ohio. Toledo handles the sale of scrap not only for

⁴⁸ The Midland official testified that Luria was the only scrap broker from which his company purchased new steel.

its own plant, but for three other plants of the company in Ohio. Luria sold 300 tons of ingots to Electric Auto-Lite in 1950 and 1,600 tons in 1951. In 1952 Luria was instrumental in obtaining 1,500 tons of ingots from Buckeye Steel Castings Co., which was sold to Electric Auto-Lite by Buckeye and on which transaction Luria received a commission or "finder's fee" of \$3.00 per ton. Luria had theretofore been a regular purchaser of scrap from a number of the Electric Auto-Lite plants, including the plant at Toledo.

There is nothing in the pattern of scrap sales by Electric Auto-Lite, from which it may be inferred that the sales to Luria were an outgrowth of, or were affected by, Luria's sales of new steel to it. While the earliest year for which counsel supporting the complaint offered statistical evidence of scrap sales to Luria is 1950, there is credible testimony in the record that Luria had been buying scrap from the Toledo plant of Electric Auto-Lite as far back as 1934. There was no significant change in the proportion of scrap sold to Luria by the Toledo plant during the period covered by the statistical evidence, so as to suggest that such sales were influenced by the sale of new steel.⁴⁹

The only evidence cited by counsel supporting the complaint as indicating some connection between Luria's sale of new steel and its purchase of scrap, is the fact that the Cleveland broker, Columbia Iron & Metal Co., was unable to buy any scrap from Electric Auto-Lite's Toledo plant. However, the Columbia witness made no effort to ascribe his company's lack of success to the fact that others had sold Electric Auto-Lite new steel. The lack of probability of any such connection is suggested by the fact that Columbia was unable to purchase any scrap from the Electric Auto-Lite at any time during the period from 1945 to 1949, which was prior to the earliest date when Luria had sold any new steel to that company, nor was it able to buy any scrap from the company between 1953 and 1956, after the sale of new steel by Luria had ceased.

According to the credible testimony of the Electric Auto-Lite witness, sales of scrap from Toledo were generally made on the basis of the highest bid received, with some of the smaller dealers being given an opportunity to buy a portion of the scrap if they were willing to meet the high bid. Since the Columbia witness conceded that at least some of the time "[o]ur price evidently was not high enough" (R. 8974), it seems likely that this was a factor in Columbia's not buying any of the Electric Auto-Lite scrap. In any event, there is no substantial evidence that its lack of success was due to Luria's sale of new steel.

⁴⁹ The proportion of scrap sold to Luria by the Toledo plant was as follows: 1950—66%, 1951—74%, 1952—72%, 1953—75%, 1954—74%, 1955—67%.

The Budd Company

27. The Budd Company, as has been previously noted (pp. 58-60), began selling the bulk of the scrap from its Hunting Park plant to Luria beginning around 1951. The evidence also discloses that Luria sold new steel to Budd as follows: 1,571 tons in 1950; 60,000 tons in 1951; and 15,714 tons in 1953. In addition, Luria was responsible for obtaining 26,499 tons of semi-finished steel for Budd from various mills in 1952, and Budd paid it a finder's fee for its assistance in arranging such sales.

It is apparently the position of counsel supporting the complaint that Luria was able to buy the Budd scrap because it had sold Budd new steel. However, elsewhere in their proposed findings counsel have suggested that the decision by Budd to sell the bulk of its scrap to Luria was an outgrowth of the Bethlehem-Luria exclusive arrangement, Budd having theretofore sold substantial portions of its scrap to Bethlehem. This, as the examiner has already found, is the root of the Budd decision, rather than any sale of new steel. Counsel supporting the complaint suggest no convincing reason why it must be inferred that because Luria bought scrap from a fabricator to whom it sold new steel, there is a causal connection between the two events.

Counsel devote considerable argument to the proposition that certain of the new steel transactions in which Luria engaged, including those in which it received a finder's fee for obtaining new steel for Budd, were in violation of the Government price and materials-control regulations. However, the evidence cited by counsel was offered and received in support of Paragraph 10(c) of the complaint, and not in support of any charge of a violation of OPS or NPA regulations.⁵⁰ The examiner considers it not only irrelevant to any issue in this proceeding, but entirely improper and inappropriate, to determine whether Luria or any respondent mill violated the regulations of other agencies now defunct.

Pennsylvania Forge Company

28. The only other user of new steel as to whom evidence was offered that Luria had sold new steel and purchased scrap was Pennsylvania Forge Company. No reference to this company is made by counsel supporting the complaint in their proposed findings. However, the record discloses that Luria sold to this company 9,700 tons of finished steel and ingots in 1951, and 8,200 tons in 1952. Pennsylvania Forge also sold scrap to Luria. There is no evidence from which it may be

⁵⁰ In offering evidence showing the receipt of finder's fees by Luria on shipments to fabricators, including Budd, counsel supporting the complaint offered such evidence as being relevant to Paragraph 10(c), stating (R. 2969):

[W]e * * * hope to show that the fabricators * * * sold scrap to Luria as part of the consideration.

inferred that there is any causal connection between these two events. Pennsylvania Forge had been selling scrap to Luria for about 25 years before it sold it any new steel. There was no significant change in the already substantial proportion of Pennsylvania Forge's scrap purchased by Luria when the latter began to sell it new steel in 1951.⁵¹

New Steel Sales to Scrap Dealers

29. Counsel supporting the complaint devote considerable attention to Luria's sales of new steel to a number of scrap dealers. Special emphasis is placed on sales to a group of dealers in the Philadelphia area. It is contended that the sales of new steel to these dealers were not bona fide sales, but that Luria had actually made all the arrangements to sell the new steel to third parties and had merely channeled the sales through one or another of these dealers so as to enable them to make a profit on the transaction, in return for a commitment to sell their scrap to Luria. The dealers involved in these transactions were Abrams Metal Co., S. D. Richman Sons, Inc., Alleghany Iron & Metal Co., Ace Iron & Metal Co., Giordano Waste Material Co. and Camden Iron & Metal Co.

30. Respondent Luria concedes in its proposed findings that it "pre-sold" some or all of the new steel which it ostensibly sold to these dealers and which they, in turn, purported to resell to third parties who were actually customers of Luria's. Luria concedes that, in effect, it split its profit on these sales with the dealers in question, they having had nothing to do with the actual resale except to do the necessary bookkeeping and take a small credit risk. However, it denies that it made any of the new steel sales on the condition that the dealers would sell their scrap to it.

31. As counsel supporting the complaint concede, the record contains no direct evidence in the form of a written agreement or any admission by the dealers that they agreed to sell their scrap to Luria in return for being permitted to share in Luria's profit on new steel sales, which the latter had actually arranged. However, they contend that such an agreement may be inferred from various facts and circumstances in the record, particularly from the fact that certain of the dealers conceded Luria had done them a "favor" in selling them new steel, and also from the irregularity of the transactions in which Luria purported to sell the steel to dealers who did not actually handle new steel, while having previously presold the steel to third parties. In connection with the latter circumstance, counsel contend that the

⁵¹ The proportion of Pennsylvania Forge's scrap sold to Luria during the period covered by the figures in evidence is as follows: 1948—66%, 1949—51%, 1950—61%, 1951—64%, 1952—64%, 1953—65%, 1954—53%, 1955—50%.

colorable sales to the dealers were part of a so-called "daisy chain" to circumvent Government control of regulations.

32. Luria concedes that it "did these dealers a favor in these transactions". While also conceding that it "hoped and expected" the dealers, all of whom had formerly been substantial suppliers of scrap to it, would continue to sell it scrap, Luria denies that the new steel sales were made on the condition or agreement that the dealers would sell their scrap to it. The dealers involved in the transaction denied that there was any understanding that they would sell their scrap to Luria in return for its sale of new steel to them.

33. The examiner cannot infer merely from the fact that Luria did a "favor" for certain of its dealer-suppliers, that it had an agreement or understanding with them to sell it scrap. As will hereafter more fully appear, the dealers had been substantial suppliers of scrap to Luria for years. Luria undertook to do them a favor during a period of steel and scrap shortage, no doubt in the hope of gaining their good will and keeping their patronage. However, this does not justify a finding that when Luria purported to sell them new steel it did so, as alleged in the complaint, "under and subject to the condition, agreement or understanding" that the dealers would sell their scrap to it.

The fact that the sales of new steel may have been in violation of Government regulations likewise does not support such a finding, but on the contrary is, as previously indicated in connection with the discussion of sales to fabricators, irrelevant to any issue in this proceeding. Counsel supporting the complaint suggest that the irregularity of the transactions establishes that they were not made "in the regular course of business", and is a factor to be taken into consideration in determining whether there was a *quid pro quo* for such sales. However, even assuming that the fact the sales were made in violation of Government regulations establishes they were not made in the regular course of business, it does not follow that they were made with the agreement or understanding that the dealers would sell their scrap to Luria.

34. There is nothing about the pattern of the scrap sales to Luria to suggest that they were the result of, or influenced by, the sale of new steel. All of the dealers had been substantial suppliers of scrap to Luria prior to their purported purchase of new steel and there was no significant change in their sales of scrap thereafter.

(a) *Abrams Metal Co.* bought new steel from Luria between April and November 1951 amounting to approximately \$26,000. During the fiscal year 1948-1949, the earliest year for which there are figures in evidence, Luria was the third largest purchaser of scrap from Abrams. There are no figures in evidence for the years 1949-

Initial Decision

62 F.T.C.

1950 and 1950-1951. The figures for the next year, 1951-1952 disclose that Luria had become the largest purchaser of Abrams' scrap. It cannot be inferred, however, that the increase in scrap sales to Luria was due to the sale of new steel. The increase in sales to Luria appears to have resulted in large part from the fact that Charles Dreifus Co., another Philadelphia broker, which had been the largest purchaser of Abrams' scrap temporarily discontinued business from November 1949 to September 1954. When Dreifus resumed business it again became the largest purchaser of Abrams' scrap, both in 1954-1955 and 1955-1956. It may be noted that in the period 1952-1953 and 1954, before Dreifus' resumption of business, Luria was the largest purchaser of Abrams' scrap although it had made no new steel sales during this period.

(b) *S. D. Richman Sons, Inc.* had been selling scrap to Luria for 25 years before it bought any new steel from it in 1951. In 1950, the earliest year for which there are any figures in evidence, Luria was Richman's biggest customer and purchased 83% of the scrap sold by Richman. In 1951, the only year in which Luria sold it any scrap, the proportion of Richman's scrap sold to Luria declined to 67%.

(c) *Alleghany Iron & Metal Co.* had been doing business with Luria for 30 years before Luria sold it any new steel in 1951. In 1950, the earliest year for which there are any figures in evidence, Luria was the largest purchaser of scrap from Alleghany, its purchases accounting for 51% of Alleghany's sales. In 1951, the only year in which Luria sold it new steel, Alleghany sold 51% of its scrap to Luria. In the years 1952 and 1953 the proportion of scrap sold to Luria increased to over 60%.

(d) *Ace Iron & Metal Co.* has been selling scrap to Luria since 1937. In 1950, before any purchases of new steel from Luria, it sold approximately 52% of its scrap to Luria. In 1951, the only year in which it purchased new steel from Luria, the proportion of its sales to Luria declined to 37%. In the years 1952 and 1953 the proportion of its sales to Luria increased to 53% and 62%, respectively.

(e) *Giordano Waste Material Co.* has been selling scrap to Luria since approximately 1923. The only sales of new steel to Giordano by Luria were between April and November 1951. There are no figures in evidence of scrap sales by Giordano prior to 1952. It is therefore not possible to determine whether any significant change in its pattern of sales to Luria occurred during and after 1951. During the period from 1952 to 1955, the proportion of its scrap sold to Luria fluctuated between 43% and 63%.

(f) *Camden Iron & Metal Co.* has been selling scrap to Luria since

1929. In 1950, the earliest year for which there are figures in evidence, Camden sold approximately 56% of its scrap to Luria. In 1951, the only year in which it purchased new steel from Luria, the proportion of Camden's scrap sold to Luria declined to 44%. In the years 1952 and 1953, it increased to 61% and 57%, respectively.

(g) *L. Blumberg's Son, Inc.*, unlike the other Philadelphia area dealers referred to above, operates a steel warehouse for the sale of new steel in addition to being a scrap dealer. It purchased new steel from Luria, beginning in 1950, in the following approximate amounts: 1950—\$5,200; 1951—\$152,300; 1952—\$223,750; 1954—\$21,600. Unlike Luria's transactions with the other Philadelphia dealers, those with Blumberg involved actual sales and not pro forma transactions in which Luria had "presold" the steel to third parties. Blumberg sold substantial quantities of scrap to Luria from its two scrap yards. The record does not disclose how long the two companies had been doing business, 1950 being the earliest year for which there are any figures in evidence.

The figures of scrap sales to Luria fail to disclose any such pattern as to suggest they were influenced by Luria's sales of new steel. In 1950 Blumberg sold \$370,000 worth of scrap to Luria, representing approximately 11% of its total scrap sales. There is no reason to infer that such sales were an outgrowth of approximately \$5,000 worth of new steel purchased from Luria. In 1951, when Luria's sale of new steel to Blumberg increased to about \$150,000, the percentage of Blumberg's scrap purchased by it declined somewhat to approximately 10%. In the succeeding years the proportion of Blumberg's scrap purchased by Luria was: 1952—23%; 1953—10%; 1954—14%; and 1955—18%.

Other Dealers

35. The evidence pertaining to dealers in other areas is no more persuasive than that discussed above. Another scrap dealer whose dealings with Luria are the subject of extended discussion by counsel supporting the complaint is *Alpha Steel Company*, of Pittsburgh. Alpha bought new steel from Luria in 1951 and 1952, amounting to \$160,000 and \$71,000, respectively. It also bought new steel from respondent Southwest, amounting to \$24,000 in 1951 and \$4,600 in 1952. In addition, Alpha bought new steel from several of the Philadelphia area dealers in transactions in which Luria had actually presold the scrap to it. Alpha sold substantial quantities of its scrap to both Luria and Southwest.

There is nothing in the evidence or in the pattern of scrap sales to suggest that they were an outgrowth of Alpha's purchases of new steel from Luria and Southwest. In 1950, before any purchases of

new steel, Alpha sold 69% of its scrap to Luria and Southwest. In 1950, the first year in which it purchased new steel from these respondents, the proportion of its scrap sales to them declined to 35%. In the following year, when it again purchased new steel from the respondent brokers, the proportion of its scrap sales to them declined to 26%. Alpha bought new steel from other brokers to whom it sold no scrap. For example, Hyman-Michaels Co. of Chicago sold Alpha more new steel than Luria and Southwest combined in 1951, but Alpha sold it no scrap in 1951 or 1952. Conversely, it sold substantial quantities of scrap to two Pittsburgh brokers, M. W. Singer and Max Solomon, but purchased no new steel from them.

36. Another dealer to whom counsel supporting the complaint refer is *J. Kasle & Sons, Inc.*, of Indianapolis, to whom Luria sold new steel in 1951. This dealer had been selling scrap to the Cleveland broker, Columbia Iron & Metal Co. Columbia ceased purchasing scrap from Kasle in 1952, after having declined to sell it new steel. Counsel supporting the complaint fail to suggest any causal connection between the termination of scrap sales to Columbia in 1952 and Luria's sale of new steel to Kasle in 1951. Columbia's substantial business with Kasle had begun to decline sharply in 1950, before any sale of new steel to Kasle by Luria. Most importantly, the record fails to establish that Kasle ever sold any of its scrap to Luria.

37. Finally, counsel supporting the complaint make reference to a transaction involving *Steel Baling Company*, a St. Louis dealer. Steel Baling was the owner of some scrap which had been allocated to Granite City Steel Company under NPA regulations. Several St. Louis brokers had been promised by Steel Baling that they would be designated as broker on this scrap. One of them was later advised by Steel Baling that it was going to designate Luria as broker on the entire award because it was Granite City's broker, and Steel Baling did not wish to antagonize Granite City or Luria. Reference was also made to the fact that Luria had done a "favor" for Steel Baling's affiliate company in Toledo by selling it some new steel. Counsel supporting the complaint cite this incident as being a "dramatic example of Luria's use of new steel to implement an exclusive scrap arrangement".

It seems clear that Luria was designated as broker in this transaction because it was Granite City's exclusive broker and Steel Baling wished to accommodate Granite City, and not because Luria had done Steel Baling's affiliate a "favor". The latter was merely an incidental fact, and not in any true sense part of any agreement or understanding for Luria's designation as broker.

Conclusions as to New Steel Sales by Luria

38. The evidence discloses that Luria sold new steel to a number of industrial fabricators from whom it purchased scrap. The evidence offered by counsel supporting the complaint involves mainly the period of the Korean War when steel was in short supply. There is no direct evidence that Luria sold new steel "under and subject to the condition, agreement or understanding", as alleged in Paragraph 10(c) of the complaint, that the vendees would sell their scrap to Luria. Counsel supporting the complaint seek to infer such an agreement or understanding largely from the coincidence of the fact that certain vendees to whom Luria sold new steel also sold it scrap. In the case of a number of the dealers counsel rely on the fact that they admitted Luria had done them a "favor" in selling them new steel. Counsel also emphasize the fact that some of the sales were contrary to Government control regulations.

39. The evidence cited by counsel supporting the complaint fails to justify an inference of agreement between Luria and the vendees of new steel with respect to the sale of scrap. In almost every instance, the vendees had been selling scrap to Luria prior to the time Luria had sold them any new steel. There was no significant change in their pattern of sales of scrap to Luria after their purchase of new steel from it, so as to suggest that the former was caused or influenced by the latter.

40. The fact that Luria may have "favored" some of its suppliers of scrap, or have even violated Government regulations in so doing, does not, without more, require the drawing of an inference that it did so as the result of any agreement or understanding that the vendees would sell their scrap to it. Undoubtedly Luria hoped that in selling steel to certain of the vendees it would gain or retain their good will, and thus help protect its sources of scrap. It may also be that some of the vendees appreciated the good turn Luria had done them. However, this does not add up to an agreement or understanding to sell scrap in return for new steel. There is nothing about the course of dealings between Luria and its vendees of new steel to suggest the existence of any such agreement. In most instances the amount of steel sold by Luria was too small to even be a major influencing factor, particularly in the case of sales to fabricators. The sale of scrap to Luria was governed largely by the price it was willing to pay.

41. It is concluded and found that counsel supporting the complaint have failed to establish that Luria sold new steel to fabricators and others "under and subject to the condition, agreement or understanding" that the vendees would sell all or any part of their scrap to Luria.

(3) *Tie-In Purchases of Scrap by Luria*

1. Paragraph 10(d) of the complaint charges that Luria:

Purchased certain grades of iron and steel scrap under and subject to the condition, agreement or understanding that the dealer or other source of supply would sell to said respondent other grades of iron and steel scrap.

There is no direct evidence that any specific dealer or other source of supply ever actually agreed or was required to sell to Luria certain grades of iron and steel scrap in order to be able to sell other grades. The case of counsel supporting the complaint, insofar as this allegation is concerned, is based on a single piece of documentary evidence purporting to reflect a general policy on the part of Luria to engage in "tie-in" purchases, and on the contention that tie-in purchases are "implicit" from Luria's dominant position in certain markets. To a consideration of both these matters the examiner now turns.

The Documentary Evidence

2. Counsel supporting the complaint cite as "direct evidence that Luria insisted upon such tie-in purchases of various grades" the following memorandum, dated January 25, 1950, which was sent by Luria Vice President W. J. Luria to certain other Luria officials and employees:

On any purchases of Bundles for Phoenixville or Lukens we expect you to obtain an equal tonnage of No. 2 Steel.

W. J. Luria explained this memorandum as involving a situation where Luria had received purchase orders from Phoenixville (Phoenix Steel Company) and Lukens for specified amounts of No. 2 bundles and No. 2 steel, and in order to cover those orders it was necessary for the Luria people to buy proportionate amounts of No. 2 steel and of No. 2 bundles. Obviously, if they did follow a balanced buying program Luria would be unable to fill its customers' orders.

The fact that the memorandum in question calls the attention of the Luria officials involved to what their objective should be in trying to fill Phoenix's and Lukens' orders, does not establish that they refused to buy scrap from those dealers who offered them No. 2 bundles but not No. 2 steel, or purchased No. 2 bundles from dealers only on condition that they sell Luria No. 2 steel. Presumably, the Luria officials could buy substantial quantities of No. 2 bundles from one dealer who specialized in bundles, and little or no No. 2 steel from that dealer, while buying large quantities of No. 2 steel from another dealer and little or no bundles from the latter. While the memorandum reflects an over-all goal which the Luria officials would have to bear in mind in order to

meet their obligations to certain mills, it cannot be inferred, in the absence of further supporting evidence, that in meeting this objective Luria officials refused to buy bundles from certain dealers unless the dealer sold them No. 2 steel. Although counsel supporting the complaint called literally dozens of dealers who sold No. 2 bundles and other grades of scrap to Luria, not a single one testified that he was required to sell grades other than those which he was offering to Luria.

Market Position as Resulting in Tie-In Purchases

3. The rest of the argument of counsel supporting the complaint is based on Luria's alleged dominance in certain markets, particularly as an outlet for No. 2 bundles. Counsel argue that: "Luria's insistence upon such tie-in purchases of various grades of scrap is implicit in those areas where it had a monopoly at the mills which used No. 2 bundles." As an example of this situation counsel cite the Philadelphia area where the primary users of No. 2 bundles were Phoenix, Lukens and Claymont (CF&I), with which Luria had substantially exclusive brokerage arrangements. Other instances cited are the St. Louis area, where Luria was the exclusive broker for Granite City, the principal buyer of No. 2 bundles; the Intermountain area where Luria was the exclusive broker for CF&I and Geneva, the principal consumers of No. 2 bundles; and the Baltimore market, where Bethlehem's Sparrows Point plant was the principal consumer of No. 2 bundles.

In the opinion of the examiner, the facts cited by counsel supporting the complaint fail to establish the point for which they argue. While it may be that a number of dealers in these markets sold the bulk of their scrap to Luria, this condition resulted from Luria's dominant position in the market due to its exclusive arrangements with certain mills in the market, a matter which will be hereinafter discussed in greater detail, and not because of any tie-in policy or program which Luria pursued. The dealers sold most of their scrap to Luria not because Luria wouldn't buy part of it unless they sold the rest of it, but because it was not practical in many instances to ship their scrap elsewhere. In a number of the instances cited it was a case of the dealers wanting to sell all of their scrap through a single source, rather than split it up, and not a matter of Luria insisting that they do so.

It is concluded and found that counsel supporting the complaint have failed to establish that Luria purchased certain grades of scrap under and subject to the condition, agreement or understanding that the dealer or other source of supply would sell to Luria other grades of scrap.

(4) *Purchasing at Preclusive Prices*

1. Paragraph 10(e) charges that Luria:

In seeking to secure control of marketing areas in certain sections of the country, bid and paid for iron and steel scrap at prices so high that neither respondent nor its competitors could resell such scrap at existing price ceilings or at generally prevailing market prices except at financial loss.

The evidence upon which counsel supporting the complaint rely in support of this allegation involves mainly evidence that in some instances Luria sold scrap at prices below what it paid for it. Before discussing such evidence, certain preliminary observations should be made which are generally applicable to the evidence cited by counsel supporting the complaint.

The mere fact Luria incurred losses on scrap from time to time, a fact which it freely admits, does not necessarily establish the allegation of the complaint. What Paragraph 10(e) of the complaint is directed at is the pursuit by Luria of a conscious and deliberate policy, undertaken for the purpose of securing market control, of buying scrap at prices so out of line with prevailing prices that it knew, or should have known, that it would have to resell the scrap at a loss. Counsel supporting the complaint recognize in their proposed findings that an essential element of the charge is a showing that the losses were incurred "for the purpose and with the effect of lessening competition". The fact that Luria took losses on scrap, while relevant, does not necessarily establish that it did so as part of any policy to obtain market control, since it is common knowledge that any business may, from time to time, incur losses as a result of ordinary market risks. The evidence relied upon by counsel supporting the complaint is discussed below in the light of these general considerations, and in relation to each of the market areas where it is claimed Luria engaged in preclusive buying.

*Cleveland-Youngstown Area
Leyava Incident*

2. The only direct evidence of any effort by Luria to engage in preclusive buying involves the testimony of a single employee who was employed in Luria's Cleveland office from September 1, 1948, to October 12, 1948. The employee, Michael Leyava, had previously managed a yard in Erie, Pennsylvania, for a short time on a joint basis with Luria, and was transferred to Cleveland because of his dissatisfaction with the fact that the yard was not making money, allegedly because of interference from Luria and the high prices which Luria charged the yard for scrap which it shipped to it for prepara-

tion. Leyava was hired as a trader in the Cleveland office, it being part of his duties to purchase scrap from industrial fabricators.

3. According to Leyava, after he came to work in Cleveland, Carl Ablon, a Luria official stationed in Cleveland, instructed him to call upon the accounts of one scrap dealer in the area who was not selling enough scrap to Luria and to "hit his accounts and hit them hard" (R. 9192). Leyava was allegedly told that if necessary he could pay \$3.00 to \$5.00 over the market to take accounts away from the dealer. While testifying broadly on direct examination as to the instructions received by him to "hit" the accounts of the competing dealer and to "hit them hard", on cross-examination Leyava could "only remember one account that I was told to call on" (R. 9214). Despite the alleged offering of prices \$3.00 to \$5.00 over the market, Leyava was unable to wean a single account away from the competitor because, as he explained it (R. 9193):

If a man is doing a good job and people are satisfied with the type of service they are getting, why price isn't always of the essence.

Luria urges that no finding be made based on the testimony of "this disgruntled employee" and argues that, in any event, it fails to establish any "practice" on the part of Luria such as that alleged in the complaint.

4. There is no doubt that because of his animosity toward Luria (stemming from his feeling that he had been mistreated at Erie), Leyava tended to exaggerate somewhat in his testimony. However, since his testimony stands undenied by the Luria official involved and is not palpably incredible, it must be accepted as having a measure of truth. Nevertheless, when his testimony as a whole is reconciled, it boils down to the fact that in the fall of 1948 he was instructed to try to take a single account away from a single competitor by offering prices above the market, and that this effort failed because of the account's satisfaction with the service it was receiving from the competitor. In the opinion of the examiner, this single incident in 1948, by itself, hardly amounts to a "practice" such as that alleged in the complaint.

The Evidence Involving the Wilkoff Yard

5. The next incident cited by counsel supporting the complaint involves a period in 1951 when Luria allegedly bought unprepared scrap at prices above the market in the Youngstown area and resold some of it at a loss to The Wilkoff Company, a dealer in Youngstown, Ohio. This is alleged to have occurred in connection with Luria's efforts to become the principal supplier to the Youngstown plant of Youngstown Sheet & Tube Company.

6. In 1950 Luria became the largest supplier to the Youngstown plant of Youngstown Sheet & Tube Company. Prior thereto, it had been a sporadic and relatively small supplier. In order to be in a better position to serve the plant, Carl Ablon of Luria's Cleveland office decided that it would be desirable to have some dealer in the city of Youngstown prepare the scrap since it was uneconomical to have the scrap prepared outside of Youngstown and shipped into the mill. Rather than open a yard itself, Luria entered into an agreement with The Wilkoff Company, a dealer in Youngstown, to prepare the scrap. Since Wilkoff did not have a baling press for preparing bundled scrap, Luria arranged to finance the purchase of a press by Wilkoff. Because Wilkoff was dubious of its ability to obtain sufficient unprepared scrap to keep the press in operation, Luria agreed that it would deliver to Wilkoff sufficient unprepared scrap to keep the press operating at a rate sufficient to enable Wilkoff to make the payments due on the press.

7. The supplying of unprepared scrap by Luria to Wilkoff was handled in two ways. In some instances the scrap was shipped to Wilkoff, which was paid a fixed fee for preparing the scrap, and then it was shipped to the ultimate consumer, Youngstown Sheet & Tube, on Luria's order. In other instances, and apparently more usually, the transaction between Luria and Wilkoff was handled as if it involved a sale of scrap to Wilkoff, rather than the payment of a service fee for preparation. For bookkeeping purposes, Luria "sold" the scrap to Wilkoff and, after preparation by the latter, bought it back for resale to the ultimate consumer, Youngstown Sheet & Tube.

8. The contention of counsel supporting the complaint that Luria sustained losses in transactions with Wilkoff is based on the fact that in certain transactions the price paid by Luria for the unprepared scrap was somewhat higher than the price at which Luria "sold" the scrap to Wilkoff. Luria contends that while there was a bookkeeping loss on some transactions with Wilkoff, these were not true losses since, after the scrap was prepared by Wilkoff, Luria resold it at a profit to the ultimate consumer, Youngstown Sheet & Tube. Luria contends that the transactions involving Wilkoff must be considered as a whole, and a comparison made between what it paid for the unprepared scrap initially and what it got from Youngstown Sheet & Tube for the scrap in prepared form, after taking into account the preparation costs involved in the transactions with Wilkoff.

9. In the opinion of the examiner a more realistic view of the situation requires that a comparison be made of the entire transaction, from the purchase of the unprepared scrap to its ultimate sale by Luria to the mill, rather than on the fragmented basis urged by counsel

supporting the complaint. Luria bought the scrap in order to sell it to the mill. If it had prepared the scrap in its own yard, these costs would have been added to the cost of the scrap in order to determine whether it made a profit on the resale. The fact that it had the scrap prepared by another dealer and handled the transaction with the dealer as if it were a sale, should not hide the true nature of the situation. The difference between the price which Luria charged the dealer and the price at which it bought the scrap back from the dealer is, in effect, the fee which the dealer received for preparing the scrap. However, even if the view urged by counsel supporting the complaint be accepted, the evidence fails to establish that Luria took any significant losses in the sale of scrap to Wilkoff or that such losses as it did sustain were the result of any deliberate policy to secure control of the Youngstown market.

10. Counsel supporting the complaint cite certain interoffice correspondence between Luria's Philadelphia home office and the Cleveland office in January 1951, with regard to the alleged sale of scrap to Wilkoff at a loss, as purporting to reflect a practice of selling such scrap at a loss. Such evidence fails to sustain the position of counsel supporting the complaint. The memorandum from Luria's home office indicates that it was contrary to the policy of that office to permit the handling of material on a loss basis. The memorandum, which is dated January 16, 1951, after calling attention to an apparent loss on two carloads of scrap shipped to Wilkoff, states (CX 71) :

If this is the way material is going to be handled going into Wilkoff's Yard, this office is going to be extremely reluctant to order any material shipped there inasmuch as the material could be handled in this district for considerable profit. We would appreciate your explanation.

The memorandum from the Cleveland office which is also dated January 16, 1951, is apparently in reply to an earlier memorandum from the Philadelphia office, dated January 9, 1951, with regard to "losses on unprepared scrap going into the Wilkoff Company". The reply from the Cleveland office indicates that it was not the general policy of that office to incur losses on scrap sold to Wilkoff, stating (CX 72) :

As explained to you over the telephone, we sell Wilkoff at approximately our average cost plus one dollar, which would naturally mean that on certain cars we lose money. However, in the overall transaction a nominal profit would be realized.

The reply further emphasizes the fact that on the resale to Youngstown Sheet & Tube of scrap prepared by Wilkoff, the Cleveland office made a profit, and the memorandum cites a number of specific sales in which

Luria made a profit of from \$1.00 to \$2.50 per ton on the resale to Youngstown Sheet & Tube of scrap prepared in the Wilkoff yard.⁵²

11. Counsel supporting the complaint refer to a specific transaction with Wilkoff purporting to exemplify the losses allegedly sustained by Luria. The evidence cited discloses that on March 19, 1951, Luria sold a carload of scrap to Wilkoff at \$38.25, which it had purchased earlier at \$41.00 a ton. However, counsel ignore four other transactions with Wilkoff on the same day, in which Luria sold scrap to Wilkoff at a profit. In two transactions it sold scrap to Wilkoff for \$38.25 per ton, which it had purchased at \$35.50, leaving a profit of \$2.75 per ton, and in two other transactions it sold scrap for \$38.25 per ton, which it purchased for \$37.25, yielding a profit of 97¢ per ton. Thus, while Luria sustained a loss of \$65.00 on the one transaction referred to by counsel supporting the complaint, it made a profit of \$110.99 on the other four transactions. Counsel supporting the complaint produced no evidence to establish that Luria took a loss on the resale of any of the scrap to Youngstown after preparation by Wilkoff. Such evidence as there is indicates that it was customarily resold at a profit.

12. As further evidence of preclusive buying by Luria in the Youngstown area counsel supporting the complaint cite the testimony of an official of Columbia Iron & Metal Co. of Cleveland, to the effect that when his company opened a yard in Youngstown in August 1951, "it seemed that the price of unprepared scrap was selling for the price of prepared, and we were unable to buy any tonnage at all and we were

⁵² Counsel supporting the complaint argue that the total profit on the 13,750 tons referred to in the memorandum was not \$24,250, as the memorandum suggests, but \$9,500, and that therefore Luria sustained a loss on some of the transactions totaling \$14,750. Counsel's argument is based on the fact that the memorandum contains a pencilled notation by the Philadelphia office, "\$9,500", which counsel interpret as being Luria's net profit on the resale of the scrap. Counsel cite in support of their argument the testimony of Carl Ablon purporting to explain the pencilled notation. Ablon, who testified in April 1957 regarding the significance of a notation made on the memorandum by someone in the Philadelphia office in January 1951, was obviously speculating with respect to the significance of the figure \$9,500. His testimony, that the figure "appears to indicate the overall profit on the shipment of 7,500 tons of scrap", was erroneous since there were 13,750 tons of scrap involved, not 7,500. Counsel supporting the complaint, while recognizing that Ablon was in error to the extent that he referred to 7,500 tons, claim that he merely misspoke himself with regard to the total quantity involved and really meant 13,750 tons, but that his testimony was correct insofar as he stated that it appeared that \$9,500 was the profit on the entire transaction. In the opinion of the examiner, the situation regarding the notation appearing on the memorandum of January 16, 1951, is so confused and unclear that no finding can be made based thereon. To accept the version of counsel supporting the complaint would mean that Luria had taken a loss on the bulk of the scrap shipped into the Wilkoff yard of such magnitude that even a profit of \$24,250 on the resale to Youngstown enabled it to recoup only about one-third of the loss. This, however, is contrary to the memorandum itself which indicates that on scrap going into the Wilkoff yard it was customary to make a profit of \$1.00 per ton. The testimony of Carl Ablon likewise indicates that Luria usually showed a profit on scrap shipped into the Wilkoff yard sufficient to balance out losses on some shipments. The evidence of specific transactions which is hereinafter discussed, also tends to show that a profit was customarily made on scrap shipped into the Wilkoff yard.

just practically out of business there for a while" (R. 8975). The Columbia witness identified Luria and Wilkoff as being the "big offenders" in the prices being paid dealers.

The examiner can make no findings, based on the testimony of the Columbia witness, that Luria was paying prices for unprepared scrap which were out of line with the prices being paid in the market. The testimony of the witness concerning the prices being paid by others to dealers in the area was a mixture of hearsay and speculation. He was unable to recall a single dealer who had informed him what prices were being offered by others. Recognizing that price control regulations would have limited the prices being paid dealers, the witness conceded that the situation could have involved refusals to sell scrap unless his company sold the dealer new steel, rather than refusals to accept his price offers. He finally opined that Luria couldn't have increased their volume in the area "the way they did if they didn't pass out something" (R. 8980). Absent independent evidence as to the prices being paid by Luria to dealers in the area, the examiner can make no finding that Columbia was unable to buy scrap because of the preclusive prices being paid by Luria.⁵³

The Evidence Involving Buckeye Steel Castings

13. Buckeye Steel Castings Co. of Columbus, Ohio is an account to which, as has been previously noted, Luria has been a major supplier of scrap and which has also sold Luria new steel. As further evidence of preclusive buying, counsel supporting the complaint cite correspondence between Luria's home office in Philadelphia and its Cleveland office in January 1951 pertaining to a loss of \$2,800 on scrap sold to Buckeye Steel Castings in the latter part of 1950 and early January 1951. The Philadelphia office apparently discussed the matter in a telephone conversation with the Cleveland office and was advised that the latter office expected to recoup such losses by making a profit on the sale of ingots which had been purchased from Buckeye. In an interoffice memorandum dated January 15, 1951, confirming the telephone conversation, William J. Luria of the Philadelphia office expressed concern to Jack Levand of the Cleveland office over the "tre-

⁵³ The examiner ruled during the course of the witness' testimony that no finding as to the prices being paid by Luria would be based on such testimony, and that it would be necessary for counsel supporting the complaint to introduce independent evidence of such prices, to which instruction counsel responded: "That is understood" (R. 8981). No such evidence has since been introduced. In an apparent effort to explain such failure, counsel state that Luria's records pertaining to the purchase and sale of scrap consigned to Wilkoff in 1951 have been destroyed. Such records were destroyed through inadvertence in 1957, some months prior to the usual time for their destruction. However, they were available for inspection by Commission personnel between 1952 and 1957. Furthermore, evidence of the prices which Luria had paid to dealers would presumably be available in the records of the dealers. In any event, no finding can be made on an absence of evidence, and no inference adverse to Luria can be drawn therefrom.

mendous losses", and raised the question whether it would be possible to recoup the losses by profits from the sale of new steel.

14. The evidence does unquestionably establish that Luria incurred losses on scrap sold to Buckeye. Counsel supporting the complaint suggest that such losses were deliberately incurred with the thought that they would be recouped from the sale of ingots purchased from Buckeye. However, according to the uncontradicted and credited testimony of Jack Levand, Luria had committed itself to sell the scrap in the latter part of 1950 at a price at which it expected to make a profit, but due to increases in scrap prices thereafter it could not buy the scrap at a price sufficiently low to yield a profit. Since price controls did not go into effect until February 1951, it is reasonable to assume that scrap prices were quite volatile during the latter part of 1950 and January 1951, and that Luria could have misjudged the market. The fact that it hoped to recoup the losses, after they became apparent, does not require a finding that the original sale was made in contemplation of such losses.

15. However, even if the contention of counsel supporting the complaint is accepted and it be assumed that Luria deliberately sold the scrap to Buckeye at too low a price in order to obtain ingots, this does not establish the charge in Paragraph 10(c). What that paragraph charges is not the *sale* of scrap at prices so low that Luria incurred losses, but the *purchase* of scrap at prices so high that it could only be sold at a loss. No evidence was introduced as to the prices which Luria paid for the scrap. According to Levand's version of the transaction, Luria bought the scrap at or about the market but was caught in the squeeze of an earlier commitment to Buckeye. There is nothing to show that Luria bought the scrap at prices above the market.

Other Evidence of Losses

16. The only other evidence of any losses in the sale of scrap in the Cleveland-Youngstown area involves the period of price controls when the Cleveland office had bought scrap below the OPS ceiling price but, because of the necessity for paying a loading fee, was unable to sell the scrap at a profit. This situation is referred to in an inter-office memorandum from Luria's Philadelphia office to its Cleveland office, dated July 3, 1951. The memorandum is critical of the Cleveland office for entering into such transactions.

17. There is nothing to show that the loss referred to in this transaction was typical, or that the Cleveland office engaged in any considerable number of transactions. The situation involved in the transaction is peculiar to a period of national emergency, when the imposition of price controls prevents the natural play of economic

forces which might otherwise have permitted the resale of the scrap at a profit.

New York Metropolitan Area

18. Counsel supporting the complaint contend that Luria, either directly or through its subsidiary Lipsett Steel Products, Inc., engaged in the buying of scrap at preclusive prices in the New York metropolitan area. The area as defined by counsel includes the city of New York and certain adjacent areas in northern New Jersey and southern Connecticut.

The Evidence Involving Lipsett

19. The Lipsett yard, which is located in Brooklyn, New York, was opened in 1950. It was equipped with dock facilities and equipment for cutting scrap, but had no bailing press for preparing bundles until 1956. Lipsett purchases scrap from other dealers in the area, and resells substantially all of it to Luria. Prior to the opening of the Lipsett yard, the only other wholesale scrap yard with dock facilities in Brooklyn was that operated by Schiavone-Bonomo. The volume handled by the Lipsett yard increased from approximately 44,000 tons in 1950 to 130,000 tons in 1953. Counsel supporting the complaint contend that the increase in Lipsett's volume was accomplished largely through the buying of scrap at preclusive prices.

20. Counsel supporting the complaint rely mainly on the testimony of an official of Schiavone-Bonomo, Lipsett's principal competitor, to establish their claim of preclusive buying by Lipsett. The testimony of the Schiavone-Bonomo official does not, however, sustain the position of counsel supporting the complaint. While it may be, as the Schiavone-Bonomo official testified, that his company found it "much more difficult" (R. 2602) to buy scrap after the opening of the Lipsett yard, this is by no means surprising in view of the fact that Schiavone had almost no competition in the area prior thereto. However, the examiner is not convinced that preclusive buying by Lipsett was a material factor in the situation.

The Schiavone witness sought to attribute the difficulty in buying to two factors, (1) difficulty in meeting Lipsett's prices, and (2) difficulty in accepting scrap of the same quality as Lipsett. The latter is not directly related to price, and the testimony of another dealer witness called by counsel supporting the complaint suggests that the fact Schiavone was overly particular in its quality requirements may have been a factor in its alleged difficulty in buying scrap.

Insofar as the alleged difficulty in meeting Lipsett's prices is concerned, the witness could give no specific instances where Lipsett had paid higher prices, to support his broadly-stated complaint. How-

ever, his testimony suggests that the fact Bethlehem paid Luria 50¢ to \$1.00 more for scrap than it paid Schiavone, may have been a factor in the alleged difficulty in buying scrap in competition with Lipsett. While this fact tends to support the position of counsel supporting the complaint concerning Luria's favored position with Bethlehem, which has previously been discussed, it does not support the preclusive buying charge. This charge involves the buying of scrap at prices so high it could not be resold at a profit, and not merely paying more for scrap than a competitor. The fact that a broker or dealer pays a little more for scrap because it has a more favorable price from a customer than a competitor is not, in the opinion of the examiner, preclusive buying within the meaning of the complaint.

In any event, it is by no means established that Lipsett did, in fact, pay 50¢ or \$1.00 more for scrap than Schiavone-Bonomo. No evidence was offered by counsel supporting the complaint to show that Lipsett's prices were usually higher than Schiavone-Bonomo's. On the contrary, an exhibit introduced by them pertaining to Willetts Point Scrap Iron & Baling Corp., which sold scrap to both Lipsett and Schiavone, discloses that the prices paid by both were largely comparable (CX 367). It may also be noted that despite the Schiavone-Bonomo witness' testimony regarding competitive difficulties with Lipsett, he conceded that there was no decline in the amount of scrap it was handling in its Brooklyn yard.

21. Counsel supporting the complaint refer to Lipsett's dealing with several scrap dealers in Brooklyn as corroborating the "competitive difficulties of Schiavone-Bonomo during the period 1950 through 1953, from the higher prices paid * * * by Luria and the Lipsett yard." One of the dealers referred to by counsel, Industrial Scrap Iron Co., had ceased dealing with Schiavone prior to the time it started selling to Lipsett. The Industrial witness testified that he stopped selling to Schiavone and began selling to another dealer, Boro Scrap Iron Co., because "during the war Schiavone was a little bit too particular with their scrap" (R. 2660). The witness also testified that he switched to Lipsett from Boro Scrap because "there was more money" (R. 2661).

22. The fact that Lipsett paid Industrial "more money" than Boro Scrap does not necessarily establish that its prices were out of line with the market. There is no indication of how much more Lipsett paid for scrap than Boro Scrap, or that the scrap was resold at a loss. Counsel supporting the complaint suggest that the scrap must have been resold at a loss because Lipsett was paying Industrial the OPS ceiling price for No. 2 steel (\$35.99) between 1951 and 1953. This, however, does not necessarily follow. The scrap was already prepared (R. 2658), and therefore Lipsett had no preparation costs. Under

OPS regulations it was entitled to charge \$1.25 a ton, in addition "to the actual transportation charges", for scrap shipped from its own dock (CPR 5, Sec. 6(b)). Conceivably Luria might have decided to handle the scrap at cost through Lipsett, and to make its profit out of its \$1.00 brokerage commission. That the price was not out of line with the market is suggested by the fact that another dealer, Willetts Point Iron & Scrap, was receiving the same price for No. 2 steel in January 1953 from Schiavone-Bonomo, as Industrial was from Lipsett, viz, \$35.99.

23. The other Brooklyn scrap dealer whose dealings with Lipsett are referred to by counsel supporting the complaint is Independent Scrap Iron Corporation. Independent sells its scrap to a number of brokers and dealers, including Lipsett, Luria and Schiavone-Bonomo. During the period from 1953 to 1955 it sold about 50% of its scrap to the Luria organization, either directly or through Lipsett. There is no indication of whether this represents an increase over any earlier period. Counsel supporting the complaint rely on the testimony of the Independent witness that "the Lipsett price would be the same or better than I could get on the open market" (R. 2496), and cite several transactions where Lipsett paid higher prices to Independent than a competitor.

24. The fact that Lipsett's prices were the same as, or even that they were sometimes better than, competitors' hardly establishes that it was engaged in preclusive buying. The Independent witness would not say that Lipsett's prices were generally, or even in a majority of instances, above that of competitors. The fact that it sold half of its scrap to other brokers would hardly seem to suggest that Lipsett was outbidding the market.

The specific transactions cited by counsel supporting the complaint likewise fail to support the preclusive buying charge. In the first group, Lipsett paid Independent \$4.00 more a ton for No. 2 bundles than did a competitor, and in the second, \$2.50 more. While each set of transactions occurred in the same month (the first in April 1953; the second in June 1953), they were entered into on different dates within the month, and took place after the removal of price controls at a time when the market was fluctuating rapidly. It is just as reasonable to ascribe the differences to normal market fluctuations, as it is to ascribe them to the fact that Lipsett outbid the market. Presumably Independent would have sold the scrap to Lipsett, rather than the other broker, if it had felt Lipsett would pay it a better price at the time it was considering the offer from the latter. In any event, there is nothing to indicate that the differentials revealed by these two sets of transactions are typical or that Lipsett resold the scrap at a loss.