

any sale of respondents' products to any such buyer for his own account.

2. Paying or contracting for the payment of anything of value to or for the benefit of any customer of respondents as compensation or in consideration for any services or facilities furnished by or through such customer, in connection with the offering for sale, sale or distribution of any of respondents' products, unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products with the favored customer.

*It is further ordered,* That, with the exception of findings numbered 105 through 110 which have not been reviewed, the initial decision, as modified, be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered,* That respondents Tillie Lewis Foods, Inc. (formerly Flotill Products, Inc.), Mrs. Meyer L. Lewis, Albert S. Heiser and Arthur H. Heiser shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist set forth herein.

Commissioner Elman's views are set forth in a separate opinion. Commissioner MacIntyre dissented in part. Commissioner Reilly did not participate for the reason he did not hear oral argument.

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IN THE MATTER OF

ALFONSO GIOIA & SONS, INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECS. 2(a), 2(d),  
AND 2(e) OF THE CLAYTON ACT

*Docket 7790, Complaint Feb. 25, 1960—Decision, June 30, 1964*

Consent order requiring a macaroni manufacturer in Rochester, N.Y., to cease discriminating in price by such practices as giving to some customers substantial discounts on certain of its products and free goods, but not to other customers competing with them, in violation of Sec. 2(a) of the Clayton Act; making payments for advertising or other services furnished in connection with the sale of its products to some customers but not to their competitors, thus violating Sec. 2(d); and furnishing demonstrators to certain customers while not furnishing proportionally equal services to all other competing purchasers, in violation of Sec. 2(e).

Decision

65 F.T.C.

## ORDER REOPENING PROCEEDING

FEBRUARY 8, 1962

The Commission having issued on October 21, 1960 [57 F.T.C. 964], its decision adopting as its own the initial decision of the hearing examiner in this matter accepting an agreement containing a consent order to cease and desist theretofore executed by respondent and counsel in support of the complaint; and

The Commission, upon petition of respondent, having determined that the public interest requires that its aforesaid decision of October 21, 1960, be vacated and set aside, thereby reinstating the initial decision of the hearing examiner; and

The Commission being of the opinion that by reason of the filing of its aforesaid petition, respondent has waived notice and opportunity for hearing thereon:

*It is ordered*, That this proceeding be, and it hereby is, reopened.

*It is further ordered*, That the Commission's decision of October 21, 1960, adopting as its own the initial decision of the hearing examiner be, and it hereby is, vacated and set aside.

*It is further ordered*, That the date on which the initial decision of the hearing examiner, as reinstated by the order herein, would otherwise become the decision of the Commission be, and it hereby is, extended until further order of the Commission.

## DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission, for reason of the public interest cited in its order of February 8, 1962, having by said order reopened this proceeding; having thereby vacated and set aside its decision of October 21, 1960 [57 F.T.C. 964], which had adopted as its own the initial decision of the hearing examiner in this matter, and having thereby reinstated said initial decision; and also having thereby further ordered that the date on which the initial decision of the hearing examiner, as so reinstated, would otherwise become the decision of the Commission be extended until further order of the Commission; and

That matter now coming on to be heard by the Commission, *sua sponte*, and it appearing to the Commission that it would be in the public interest now to adopt as the Commission's own decision the initial decision of the hearing examiner, which initial decision accepted an agreement containing a consent order to cease and desist theretofore executed by respondent and counsel in support of the complaint; now, therefore,

1161

Complaint

*It is ordered,* That the initial decision of the hearing examiner be, and it hereby is, adopted as the decision of the Commission.

*It is further ordered,* That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

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IN THE MATTER OF

## EKCO PRODUCTS COMPANY

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

*Docket 8122. Complaint, Sept. 26, 1960—Decision, June 30, 1964*

Order requiring the nation's largest producer of baking pans for commercial and industrial use, also a large producer of commercial meat-handling equipment, tinware and cutlery, with plants in many states and Canada and which, in the ten years 1950 to 1959, inclusive, had more than doubled the size of its operations largely as a result of acquiring the assets and stock of some two dozen operating concerns, to divest itself of assets acquired as a result of its acquisition in 1954 of the McClintock Manufacturing Co.—a relatively small concern which had a monopoly in the production of commercial meat-handling equipment—including (1) trade names and secrets, patents, customer lists, inventories, supply and requirements contracts, tools, patterns, etc., used in the manufacture or sale of commercial meat-handling equipment; (2) all other assets peculiar to such manufacture and sale but excepting assets not peculiar thereto; and (3) all other assets necessary to reconstitute McClintock as a going concern and effective competitor; and for one year to furnish such technical and marketing assistance as might be requested by McClintock; and for 20 years to refrain from acquiring stock or assets of any corporation manufacturing or selling commercial meat-handling equipment without prior approval of the Commission.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 7 of the Clayton Act (U.S.C., Title 15, Sec. 18) as amended and approved December 29, 1950, hereby issues its complaint, pursuant to Section 11 of the aforesaid Act (U.S.C. Title 15, Sec. 21) charging as follows:

PARAGRAPH 1. Respondent, Ekco Products Company (hereinafter referred to as "respondent") is a corporation organized and existing under the laws of the State of Delaware, with its office and principal

place of business located at 1949 North Cicero Avenue, Chicago, Illinois.

Respondent was originally established in 1888 and was subsequently incorporated in Illinois on October 6, 1903, as Edward Katzinger Company. The name Ekco Products Company was adopted in June 1944. The state of incorporation of respondent was changed from Illinois to Delaware and the assets and business of Ekco Products Company, an Illinois corporation, were merged into a new Delaware corporation of the same name effective as of April 29, 1960.

PAR. 2. The McClintock Manufacturing Company (hereinafter referred to as "McClintock") was, prior to June 30, 1954, a corporation organized and existing under the laws of the State of California, with its office and principal place of business located at 2700 Eastern Avenue, Los Angeles, California.

PAR. 3. The Blackman Stamping & Manufacturing Company (hereinafter referred to as "Blackman") is a corporation organized and existing under the laws of the State of California, with its office and principal place of business located at 2730 East 37th Street, Los Angeles, California.

PAR. 4. Respondent, directly and through various wholly owned subsidiary corporations, is engaged in the manufacture and sale of commercial food and meat-handling equipment and containers, kitchen tools and tinware, cutlery, commercial baking pans, ice cream scoops and paddles, woodenware, pressure cookers, stainless steel cooking utensils and flatware, aluminum-ware, enamelware, clothes dryers, bathroom hardware and accessories, sliding door hardware, and steel lockers and cabinets.

Respondent is the largest producer in the United States of baking pans for commercial and industrial use. Respondent is also one of the largest, if not the largest, producers in the United States of kitchen tools, tinware and cutlery, and is a leading and substantial producer in many of its other product fields.

Since its acquisition of McClintock in June 1954, respondent has been the largest and most dominant manufacturer and seller in the United States of commercial meat-handling equipment. (The term "commercial meat-handling equipment," as hereinafter used in this complaint, refers to aluminum platters, pans, and lugs (deep pans) and metal racks and carts for said platters, pans and lugs, which equipment is used by food supermarkets, chain grocery stores, butchers, meat markets, smaller grocery stores and others in handling, storing and transporting meat.) Also, since the McClintock acquisition, respondent has been a major producer, seller and lessor of rubber greens used

1163

## Complaint

for decorative purposes in meat markets and meat departments of other food establishments.

Respondent markets its products under the following trade names: Ekco, A. & J., Miracle, Flint, Ovenex, Sta-Brite, Tru-Spot, Katzinger, Ekcoware, Ekco Line, Minute Mop, Diamond, Shore Craft, Geneva Forge, Pakkawood, Mary Ann, Bocaroy, Autoyre, McClintock, Best, Kennatrack, Scottie and Worley.

The manufacturing operations of respondent are conducted through its main plant in Chicago, Illinois, and through three operating divisions: Ekco Massillon Division, with a plant at Massillon, Ohio; Sta-Brite Division, with a plant at Byesville, Ohio; and McClintock Manufacturing Co. Division, with a plant at Whittier, California. In addition, many of the products sold by respondent are manufactured by respondent or its subsidiaries at plants at the following locations:

Geneva, New York	Elkhart, Indiana
Lock Mills, Maine	Pico, California
Canton, Ohio	Holyoke, Massachusetts

Respondent engages in considerable manufacturing and marketing abroad of many household and commercial products similar to those produced and sold in the United States. Said foreign business is conducted through wholly owned or controlled subsidiaries located in Canada, England, Germany, Netherlands and Mexico.

In addition to the foregoing operations, respondent through wholly owned subsidiaries engages in glazing, coating, washing and conditioning of bakery pans for commercial bakeries through plants located at Chicago, Illinois; San Francisco and Los Angeles, California; Kansas City, Missouri; Seattle, Washington; Minneapolis, Minnesota; Dallas, Texas; New Orleans, Louisiana; Columbus, Ohio; Pittsburgh, Pennsylvania; Fairlawn, New Jersey; Baltimore, Maryland; Charlotte, North Carolina; Miami, Florida; Chattanooga, Tennessee; and in Canada at Toronto, Ontario and Vancouver, British Columbia.

PAR. 5. Respondent, directly and through various wholly owned or controlled subsidiaries, sells its products and services to some 10,000 customers throughout the United States. Its principal sales divisions are: The Housewares Division, which handles its household lines of kitchen tools and utensils, cutlery and related items; the Bakery Division, which sells its commercial and institutional bakery pans, equipment and accessories; and another division, which markets building hardware and commercial meat handling equipment and accessories.

Respondent's houseware products are distributed nationally through jobbers, chain grocery stores, food supermarkets, department stores, mail order and premium specialty houses, hardware stores and

## Complaint

65 F.T.C.

other retail establishments. Sales of commercial bakery pans, equipment and accessories are made directly to commercial and institutional bakeries as well as through bakery supply jobbers throughout the country. Commercial meat handling equipment, rubber greens and other meat market accessories, are sold by respondent throughout the United States directly to food supermarkets and chain grocery stores, and are also distributed through butcher and meat market supply jobbers.

Respondent sells the products and services described in Paragraphs Four and Five herein to purchasers thereof located in various States of the United States and in the District of Columbia. In the course and conduct of its business of producing and selling said products and services, respondent is engaged in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 6. During the ten year period between 1950 and 1959 inclusive, respondent has more than doubled the size of its operations. A comparison of selected financial data of respondent and its domestic and foreign subsidiaries for the period 1950 and 1959 shows the following:

	1950	1959	Percent of increase
Net sales.....	\$36,759,142	\$73,593,729	100.2
Net income before taxes.....	5,889,581	11,371,296	93.1
Total assets.....	27,605,190	63,395,251	129.6
Net worth.....	19,193,105	43,714,050	127.8

During the period between 1950 and 1959 respondent's substantial increase in size and growth and the diversification of its operations and product lines have been accelerated and achieved in large measure as a result of acquiring the assets and stock of numerous operating concerns. The acquisitions made during this period include the following:

Month and year	Company	Product
January 1951.....	Lusto Company, Inc.....	Copper cleaners.
November 1951.....	Minute Mop Company.....	Cellulose sponge mops.
May 1952.....	Republic Stamping & Enameling Co.....	Enameled kitchen utensils.
October 1953.....	Bocaroy Manufacturing Corp.....	Disappearing clothes lines.
Do.....	Continental Gem Company.....	Tea strainers.
February 1954.....	Autoyre Manufacturing Co.....	Bathroom accessories.
June 1954.....	McClintock Manufacturing Company.....	Commercial meat-handling equipment and rubber greens.
July 1954.....	Adams Plastics Co., Inc.....	Compressed wood and plastic cutlery and kitchen tool handles.
September 1954.....	Olson Panglaz Co.....	Silicone coating of commercial baking pans.
April 1955.....	Houseware-Plastics Division of Kilgore, Inc.	Plastic housewares.
August 1955.....	Shore Machine Corp.....	Ice cream scoops and paddles.
August 1956 (sold February, 1959).	Ruby Lighting Company.....	Fluorescent lighting fixtures.
September 1956.....	Kennatrack Corporation.....	Sliding door hardware and frames.
Do.....	Plasteel Division of P. R. Mallory Plastics, Inc.	Plastic bathroom accessories.
Do.....	Ekco-Alcoa Containers (50% interest).....	Aluminum foil and foil containers.
September 1956 (sold in 1958).	Consolidated Can Company (80% interest).	Cans, containers and packaging.
January 1957.....	Metaloid Company.....	Kitchen stove and table mats, step stools and serving carts.

## Complaint

Month and year	Company	Product
February 1957.....	Worley & Co.....	Steel lockers and shelving.
July 1957.....	Emro Manufacturing Company.....	Beverage can piercers and wire bottle cap openers.
May 1958.....	Commercial Meat Handling Equipment Line of Blackman Stamping & Manufacturing Company.	Commercial meat-handling equipment.
September 1959.....	Berkeley Industries, Inc.....	Shoe, hat and tie racks, garment hangers and store display items.
December 1959.....	J. C. Davis Rolling Pin Company.....	Rolling pins and kitchen boards.
January 1960.....	Engineered Nylon Products Company.....	Nylon parts used in housewares and builders' hardware.
February 1960.....	Washington Steel Products, Inc.....	Cabinet and door hardware and kitchen cabinet attachments.

In addition to the foregoing acquisitions, respondent between 1927 and 1950 expanded and diversified its operations by the acquisition of at least eight other companies that were engaged in the manufacture and sale of household kitchen utensils and tools, cutlery, table flatware, wooden handles for cutlery and kitchen tools, aluminumware, houseware specialty items, and grade rolled and stamped flatware.

PAR. 7. Prior to June 30, 1954, McClintock was engaged in the business of manufacturing commercial meat-handling equipment which was sold to food supermarkets, chain grocery stores, and to distributors and jobbers who resold said equipment to butchers, grocery stores, meat markets and other meat handlers. It also produced and sold or leased rubber greens, which are used for decorative purposes in meat markets and meat departments of other food establishments.

McClintock owned and operated a large manufacturing plant at Los Angeles, California, which was fully equipped with machinery, tools, dies and other facilities for producing a complete line of commercial meat-handling equipment. (As used in this complaint, "a complete line" of commercial meat-handling equipment means that the manufacturer or seller produces or sells all of the various sizes of aluminum platters, pans, lugs (deep pans) and metal racks and carts that are generally used by food supermarkets, chain grocery stores and others in handling meat.)

Prior to its acquisition by respondent, McClintock was the largest producer and seller of aluminum meat-handling platters, pans and lugs in the United States. It was also the only manufacturer and marketer of a complete line of said products on a national basis. It was a growing and profitable concern and was recognized as the leading and dominant factor in the production and sale of commercial meat-handling equipment in the United States. In 1953, the last complete year of operations prior to its acquisition, McClintock's total sales and rentals were \$1,496,999 of which \$696,879 represented sales of commercial meat-handling equipment. On May 31, 1954, one month before the acquisition, the total assets of McClintock were \$716,859.

McClintock sold and distributed commercial meat-handling equipment and meat-market accessories to purchasers thereof located in various States of the United States and in the District of Columbia. In the course and conduct of its business, McClintock was engaged in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 8. On or about June 30, 1954, respondent acquired McClintock as a going concern, including all of its assets, patent rights, trademarks, trade name, business and goodwill. The acquisition was accomplished by respondent purchasing from various stockholders all of the outstanding capital stock (48,080 shares) of McClintock for \$782,982.90.

Subsequently on November 30, 1954, McClintock was dissolved and all of its assets were distributed and merged into respondent. Since this date the business of McClintock, except its rubber greens rental business, has been operated as a division of respondent. In December 1954, respondent formed a new subsidiary, McClintock Products Company, which operates the rubber greens business formerly conducted by McClintock.

PAR. 9. While respondent neither made nor sold any products directly competitive with commercial meat-handling equipment before the acquisition of McClintock, respondent, by virtue of said acquisition, has expanded, diversified and implemented the line of products it manufactures and sells to, and through, food supermarkets and chain grocery stores. These establishments constitute one of the largest, if not the largest, class of customers for commercial meat-handling equipment in the country. Before the acquisition of McClintock, respondent was one of the leading suppliers of professional-quality knives and other butcher's cutlery to supermarkets and grocery chains. Respondent also, before said acquisition, sold substantial quantities of cutlery, kitchen tools and utensils and similar products through supermarkets and grocery chains. Therefore, as a result of the acquisition of McClintock, respondent, with its previously established supplier relationship with supermarkets and chain grocery stores, is in a dominant and commanding position to increase further the monopolistic position which McClintock held in the commercial meat-handling equipment field, before it was acquired by respondent.

PAR. 10. Prior to May 9, 1958, a part of the manufacturing operations of Blackman were devoted to the production of a complete line of commercial meat-handling equipment, which was sold for use by food supermarkets, chain grocery stores, butchers, smaller grocery stores, meat markets and other meat handlers. Blackman's production of commercial meat-handling equipment was sold and distributed throughout the United States through a national sales agent, Gleason Sales, Inc., Los Angeles, California, which sold said equipment di-

rectly to users such as food supermarkets and grocery chains, as well as to distributors, market equipment dealers and butcher supply houses.

Blackman purchased the necessary tools, dies and machinery and began producing and selling commercial meat-handling equipment sometime in 1955. In due course Blackman began manufacturing said equipment in all of the various sizes generally used by food supermarkets, chain grocery stores, butchers, and other meat handlers, and, at the time of the acquisition of this phase of its business by respondent, Blackman was the only manufacturer, other than respondent, who was producing a complete line of said equipment and offering it for sale throughout the United States.

During the period from 1955 when it entered the field, until May 9, 1958, Blackman's production and sale of commercial meat-handling equipment grew considerably, and Blackman had become a substantial competitor of the McClintock Division of respondent. Blackman's commercial meat-handling equipment was sold and distributed under the name "Dura-Loy", which had become well know and accepted in the trade at the time of the acquisition.

In 1956, the first year in which Blackman produced commercial meat-handling equipment, its annual sales of said equipment were approximately \$113,000, with said sales amounting to about \$100,000 in 1957 and approximately \$96,000 for the five month period January 1, through May 31, 1958. Blackman's operations in the commercial meat-handling equipment business were profitable in each of the years 1956 and 1957, as well as during the last five months of its operations in 1958.

The commercial meat-handling equipment produced by Blackman was sold and distributed to purchasers thereof located in various States of the United States and in the District of Columbia. In the course and conduct of its business of producing and selling said equipment, Blackman was engaged in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 11. On or about May 9, 1958, respondent acquired the business and manufacturing operations of Blackman devoted to the production of commercial meat handling equipment, including tools and dies, inventories of raw materials and finished goods, patents and customer lists, plus an agreement by Blackman not to engage in any way in the manufacture and sale of commercial meat-handling equipment for five years. The acquisition was accomplished through execution of a purchase and sales agreement under which the aforementioned assets and properties of Blackman were purchased by respondent for a cash consideration of \$142,335.52.

Following the acquisition from Blackman, respondent completely removed from the United States domestic market the commercial meat-handling equipment operations that were acquired from Blackman.

PAR. 12. Since its acquisition of McClintock, respondent has engaged in certain acts and practices and conduct designed to insulate itself from competition and to perpetuate its monopolistic position as the largest, most dominant producer and seller of commercial meat-handling equipment in the United States. One of the most significant of such acts was the acquisition from Blackman of its expanding commercial meat-handling equipment business. Another such act was respondent's unsuccessful attempt to acquire the commercial meat-handling equipment business of another producer, which came into the market about the time respondents acquired McClintock, and which is now the sole competitor that competes with respondent on a national basis in selling commercial meat-handling equipment.

The only national competitor of respondent in the commercial meat-handling equipment business at the present time is a small producer which entered the market on a limited basis shortly after respondent acquired McClintock. It began by producing, and has continued to produce, only the two sizes of aluminum meat platters, in addition to metal carts and racks, that are most frequently used by food supermarkets, chain grocery stores, butchers and other meat handlers.

Following its acquisition of McClintock, respondent increased prices on all of the various sizes of aluminum meat platters, pans, lugs, racks and carts in its line, except that respondent did not increase prices on its two sizes of aluminum meat platters that were competitive with the two sizes of said platters produced and sold by its sole national competitor. Respondent's prices on these two items until recently have remained the same as its competitor's prices.

Through the utilization of a system of freight equalization, respondent, with its plant in Whittier, California, has eliminated any geographical competitive advantage which its only national competitor had, by virtue of having a plant located nearer to the Eastern, Southern and Midwestern markets for commercial meat-handling equipment in the United States. This has been achieved by respondent absorbing freight, to the extent necessary, to equalize its delivered prices, in all parts of the United States with the delivered prices on the two sizes of aluminum platters produced and sold by its only national competitor.

Since on or about April 1, 1960, respondent has further intensified its activities and has engaged in certain price cutting which may substantially reduce the competitive effectiveness of, or ultimately elimi-

nate, its only national competitor in the commercial meat handling equipment business. Commencing on or about April 1, 1960, respondent discontinued selling at the same prices as its only national competitor, and began selling at substantially reduced prices, its two sizes of aluminum meat-handling platters that are competitive with the two sizes of said platters produced and sold by its only national competitor. Said price cutting action by respondent constitutes a serious threat to the continued existence of respondent's only national competitor, who found it necessary, on account of increased costs, to announce a price increase on its two sizes of aluminum meat-handling platters about the time when respondent effectuated the aforementioned price reduction.

PAR. 13. At the time of its acquisition, the only competitors of McClintock in the production and sale of commercial meat-handling equipment were small local manufacturing concerns, none of which were producing a complete line of said equipment, and many of which were producing said products only as a side line, or on a special order basis. The sales made by these small producers were primarily on a local basis and the share of the market represented by such sales was inconsequential.

On the other hand, when it was acquired by respondent, McClintock occupied a dominating and monopolistic position in the production and sale of commercial meat-handling equipment in the United States. Inasmuch as there were no other producers competing with McClintock in manufacturing and selling a complete line of said equipment on a national or regional basis, McClintock's sales, at the time it was acquired, constituted the national market for commercial meat-handling equipment.

In 1957, the total sales of commercial meat-handling equipment by the three producers which marketed said equipment on a national basis amounted to about \$1,278,159. The total sales of said equipment that year by the McClintock Division of respondent represented \$1,064,169, or an 83.3 per cent share of the national market. Blackman's sales of commercial meat-handling equipment in 1957 were \$99,990, representing 7.8 per cent of the national market. On this basis, therefore, respondent's share of the national market was increased to 91.1 per cent, following its acquisition of the commercial meat-handling equipment business of Blackman in May 1958.

PAR. 14. Respondent has violated Section 7 of the Clayton Act, as amended, in that the acquisition of the stock, assets, and business of McClintock; as well as the acquisition of the commercial meat-handling equipment, assets and business of Blackman, as described in Paragraphs Eight and Eleven hereof, may have the effect of sub-

stantially lessening competition or tending to create a monopoly in the production and sale of commercial meat-handling equipment in the United States, or in various parts thereof.

More specifically, the aforesaid effects include the actual or potential lessening of competition or a tendency to create a monopoly in the following ways, among others:

(a) Actual and potential competition generally in the production and sale of commercial meat-handling equipment has been or may be substantially lessened.

(b) McClintock and Blackman have been permanently eliminated as independent competitive factors in the production and sale of commercial meat-handling equipment.

(c) The only national competitor of respondent, as well as any potential future competitors, in the commercial meat-handling equipment field have been or may be foreclosed from competing with respondent because of any one, or more, or all of the following factors:

1. Respondent's financial and economic strength;
2. Respondent's power and ability to control prices, terms and conditions of sale on commercial meat-handling equipment, particularly through the use of pricing practices that have the effect of lessening, restricting, restraining or eliminating competition;
3. Respondent's dominant and monopolistic position as the only manufacturer and seller of a "complete line" of commercial meat-handling equipment; and
4. Respondent's demonstrated ability to eliminate competition by acquiring or buying out competing producers and sellers of commercial meat-handling equipment.

(d) Actual and potential competition between distributors and jobbers of commercial meat-handling equipment has been, or may be, substantially lessened or eliminated;

(e) By reason of the aforesaid acquisitions, respondent has acquired and been placed in a dominant and monopolistic position in the production and sale of commercial meat-handling equipment in the United States;

(f) By reason of the aforesaid acquisitions, respondent is the only producer and seller in the United States of certain types and sizes of commercial meat-handling equipment;

(g) By reason of the aforesaid acquisitions, competition has been eliminated between McClintock and Blackman in the production and sale of commercial meat-handling equipment;

(h) New entrants into the business of producing and selling commercial meat-handling equipment have been, or may be, discouraged or inhibited because of the dominant and monopolistic position, financial

resources and economic power of respondent and because of the substantial costs involved in establishing manufacturing facilities and in breaking into and gaining a share of the commercial meat-handling equipment market;

(i) By reason of the aforesaid acquisitions, concentration generally in the commercial meat-handling equipment business has been greatly increased; one of respondent's two national competitors in the field has been eliminated; and respondent's capital resources, operating facilities and economic power generally have been substantially increased; and

(j) By reason of the aforesaid acquisitions, respondent has acquired the manufacturing facilities, the market position and the dominant ability to monopolize or tend to monopolize the market for commercial meat-handling equipment in the United States and various parts thereof.

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

*Mr. William J. Boyd, Jr., and Mr. Peter Jeffrey* supporting the complaint.

*Mayer, Friedlich, Spiess, Tierney, Brown & Platt, Chicago, Ill. by Mr. Leo F. Tierney, Mr. Bryson P. Burnham and Mr. Robert W. Patterson* of Chicago, Ill. for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

*Nature of the Proceeding—The Issues*

In this case it is alleged in the complaint, and denied in the answer, that respondent corporation, Ekco Products Company (hereinafter for brevity referred to either as Ekco or as respondent), has violated § 7 of the Clayton Act, as amended, and approved December 29, 1950, 15 U.S.C.A. § 18.<sup>1</sup> The two acquisitions made by respondent, which are alleged to constitute such violation, are (1) its conglomerate acquisition in 1954 of the McClintock Manufacturing Company (hereinafter for brevity referred to as McClintock), which had been theretofore engaged, among other things, in the manufacture, sale and distribution

<sup>1</sup> The innuendo of the complaint also properly refers to its issuance pursuant to § 11 of the Clayton Act, as amended (15 U.S.C.A. § 21) which is the procedural section of said act. Since no procedural questions under said section have been raised herein, it will not be further referred to in this initial decision. Many questions relating to evidence and procedure under the Administrative Procedure Act, however, have been raised by counsel and determined by numerous rulings and orders in the course of this litigation.

Initial Decision

65 F.T.C.

of commercial meat-handling equipment, which is the line of commerce involved; and (2) its subsequent horizontal acquisition of those particular assets of Blackman Stamping & Manufacturing Company (hereinafter for brevity referred to as Blackman), which it had used in its competition with respondent in the same type of business for more than two years prior to the time respondent purchased such assets on May 9, 1958.

Under the pleadings, and as the case was actually tried, the only basic issue in substantial dispute is whether the facts establish with reasonable probability that the said acquisitions by respondent in such line of commerce, and its activities in such business, constitute a violation or violations of said § 7, as amended.<sup>2</sup> There is no essential dispute (1) as to the status, character and extent of the business of the three respective corporate organizations involved in the two mergers; (2) that such corporations are, or at material times have been, engaged in interstate commerce; (3) as to what constitutes the relevant geographic market or (4) the line of commerce involved; and (5) that respondent did effect the said two acquisitions.

Counsel supporting the complaint insist, in substance, that the evidence establishes that respondent corporation in its totality is far larger and more financially powerful than any of its competitors in the line of commerce involved herein; that the aforesaid acquisitions, as well as the various acts of respondent allegedly related thereto, which are hereinafter referred to briefly, were and are unlawfully predatory in character and have the effect of substantially lessening competition or tending to create a monopoly as prohibited by said § 7, as amended; and, therefore, such evidence justifies and requires the issuance of an extremely broad and harsh order of divestiture of McClintock by Ekco, although such order is not demanded of the Blackman assets since the same are now nonexistent for purposes of such an order.

<sup>2</sup> The material language of said section which is contained in its first paragraph is as follows: "That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock \* \* \* and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

The following language in the third paragraph of said section is not material to the issues of the proceeding, but is relevant to any possible implication or inference that the numerous other acquisitions and over-all corporate structure of respondent not charged in the complaint as violations of § 7 are unlawful: "\* \* \* [Nothing] contained in this section [shall] prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition."

Respondent, however, in denying the charges contends, in substance, that each of its two questioned acquisitions has been lawfully made and that the evidence fails to show either that it has established a monopoly or that there is any reasonable probability there will be any such alleged unlawful monopolistic effect in the future. Among other matters presented in support of its position, respondent argues that the evidence establishes that there is and can be no tendency toward monopoly in this type of business because the line of commerce is of such a nature that entry into it is comparatively easy; that none of the products in this line of commerce require any large investment for the necessary presses, dies and tools for their manufacture; and that there were already, and still are, substantial competitors actually engaged to some extent in the business, and that there are many others who presently have the potentiality of engaging competitively at any time in this line of commerce. It further asserts that relative to its acquisition of the Blackman assets, any order of divestiture would be moot (as to which contention counsel supporting the complaint have tacitly conceded); that its prior acquisition of McClintock made no change in the competitive market then existing, and there is no evidence of any unlawful acts on its part subsequent thereto upon which divestiture of McClintock can be lawfully premised. It further contends that in any event certain portions of the order of divestiture as to McClintock proposed by counsel supporting the complaint are without authority of law.

In this initial decision, on the whole record, it is found and determined that counsel supporting the complaint, having the burden of proof,<sup>3</sup> have failed to establish by substantial evidence any legal basis for divestiture under § 7 of the Clayton Act, and the complaint herein is therefore dismissed. But, as hereinafter set forth, the alleged acts of respondent after its acquisition of McClintock in 1954 may be such as to warrant a proceeding under Section 5 of the Federal Trade Commission Act, as well as under the Clayton Act, as amended by the Robinson-Patman Act. Without expressing any opinion, however, either as to the administrative advisability of such a proceeding or as to the merits of any facts which might therein be adjudicatively presented, this dismissal of the present complaint, by its very nature, is without prejudice to any such further proceeding as the Commission in its wisdom may deem is required.

<sup>3</sup> Section 7(c) of the Administrative Procedure Act (15 U.S.C.A. 1006(c)), and the Commission's Rules of Practice for Adjudicative Proceedings, formerly § 3.12, and now § 4.12(a).

*History of the Litigation*

The Commission issued its complaint herein on September 26, 1960, and it was thereafter duly served upon respondent. When the complaint issued, the undersigned hearing examiner was appointed to take the testimony, receive evidence and perform all other duties authorized by law. On November 2, 1960, respondent moved for an extension of time to plead, and also requested that if a motion were filed by it, a date should be set for oral argument thereon. On November 3, 1960, respondent was granted to December 5, 1960, to plead.

Respondent, within the time granted therefor, filed its motion to strike those considerable portions of the complaint which related to the acquisition of McClintock, together with a motion for extended time to answer the remaining portions of the complaint. These motions were opposed by an answer filed December 14, 1960, by counsel supporting the complaint and thereafter, on January 19, 1961, the examiner heard oral arguments on the motion to strike. On March 9, 1961, after due consideration, the examiner denied respondent's said motion to strike and thereupon set April 1, 1961, as the time for filing answer to the complaint in its entirety as administratively approved and issued by the Commission.

Respondent, on March 20, 1961, filed a request for leave to file an interlocutory appeal from this order and also requested the Commission for a corresponding extension of time to answer. Counsel supporting the complaint then filed their answer brief before the Commission, and respondent filed a reply brief thereto. On April 10, 1961, the Commission denied the respondent's request for an interlocutory appeal on the ground that respondent had made no showing that the Commission in issuing its complaint had erred in its administrative decision that it had reason to believe respondent's acquisition of McClintock Manufacturing Company violated § 7 of the Clayton Act, and on the further grounds that the appeal was premature and not one to be granted under the Commission's Rules of Practice.

On April 11, 1961, respondent promptly filed its answer to the complaint.

The presentation of the Commission's case in chief required some 23 days of trial on and between August 7, 1961, and September 18, 1962. Hearings were held in the cities of Washington, D.C., Chicago, Illinois, Detroit, Michigan, and Los Angeles and San Francisco, California. A number of objections, motions and other matters were presented and determined by the examiner during the course of those hearings. Specific and detailed references to most such matters are unnecessary to be recited herein, but reference is made herein to certain matters that bear materially upon this decision.

After 15 hearings had been held in four of the said cities, on November 28, 1961, counsel supporting the complaint requested the Commission for permission to file their interlocutory appeal, raising questions as to various rulings made by the examiner during the hearings rejecting certain proffered evidence and, in the alternative, praying that the Commission either amend the complaint, or direct its amendment, in numerous substantial and specific particulars which would have injected additional issues into the complaint by expanding the lines of commerce, thereby broadening the other issues on which the case had theretofore been partially and extensively tried. In practical effect, it would have necessitated a retrial from the beginning or due process of law would have been denied to respondent. Respondent filed a reply to the said request for permission to appeal and, on January 24, 1962, the Commission denied such request for interlocutory appeal as unjustified under its Rules of Practice and also denied counsels' alternative request for numerous amendments to the complaint, apparently confirming its earlier administrative determination as to the nature and breadth of the charges it desired to have tried in this proceeding.

These rejected amendments, if allowed, would have extensively broadened the alleged lines of commerce by including commercial baking pans and rubber greens. The latter are artificial vegetables used to decorate meat displays to the retail trade. Neither of these types of products had been alleged in the complaint to constitute any part of the line of commerce set forth therein and, in fact, are entirely irrelevant thereto as is hereinafter found.

At the last hearing of evidence on September 18, 1962, the case in chief was rested. Respondent then rested its defense without presenting any evidence, conditioned only upon the examiner's deferred rulings on certain offers of evidence made late in the trial by counsel supporting the complaint. Such offers in due course were rejected by an order issued December 10, 1962, whereby respondent's rest became absolute (R. 2866-2873), and by the said order the examiner therefore also formally closed the case for the reception of evidence.

During said last hearing on September 18, 1962, counsel supporting the complaint, prior to resting the case-in-chief, moved that the hearing examiner take official notice of the Commission's "Report on Corporate Mergers and Acquisitions, May 1955," which respondent opposed only insofar as it would tend to establish specific facts in issue. The examiner, by a comprehensive written order dated December 6, 1962, granted said motion in part and denied it in part, in substance agreeing to take official notice of said report as background evidence, but refusing to officially notice such certain requested particular por-

tions thereof as proof of any specific facts in actual contest in this proceeding.

Pursuant to leave granted, counsel for the parties on January 25 and 28, 1963, filed their respective proposed findings and conclusions, together with supporting briefs. Counsel supporting the complaint also filed their proposed order of divestiture. Also, by further leave granted on January 21, 1963, each of the parties thereafter filed their respective objections to the matters theretofore proposed by the other, the "Answer" of counsel supporting the complaint being filed on February 25, 1963, and the "Objections" of respondent being filed on February 26, 1963. Counsel supporting the complaint meanwhile on January 25 had filed their "In Camera Schedules Supplementing Proposed Findings of Fact" etc., and upon February 26 respondent filed an "In Camera Memorandum in Opposition to Certain Findings Proposed by Counsel Supporting the Complaint", together with a Reply brief.

*Case Submitted Generally and Considered Upon the Whole Record*

This case has been submitted generally for initial decision and not upon an interlocutory motion to dismiss under § 4.6(e) of the Commission's Rules of Practice for Adjudicative Proceedings, and the evidence has therefore been evaluated, weighed and considered and is decided herein upon the merits with applicable legal principles.

The record herein consists of a transcript of evidence of 2873 pages and some 400 documentary exhibits. Some 34 witnesses testified. Counsel supporting the complaint has submitted 253 proposed findings, while respondent has submitted 73. Many of these proposed findings, based upon considerable evidence, now become immaterial to decision in view of the very recent opinion of the Supreme Court in *United States v. The Philadelphia National Bank, et al.*, decided June 17, 1963, not yet officially reported, but found set forth in full in BNA's Antitrust and Trade Regulation Report No. 101, June 18, 1963, pp. X-7 to X-29, inclusive. While this decision involved bank mergers, and other provisions of law than § 7 were involved, in the course of the opinion the court, after reviewing the legislative history of the 1950 amendments to § 7, and with reference to many pertinent court decisions, including *United States v. Brown Shoe Co.*, U.S. 370 U.S. 294, held (p. X-19) :

This intense Congressional concern with the trend toward concentration warrants dispensing, in certain cases, with elaborate proof of market structure, market behavior, or probable anti-competitive effects. Specifically, we think that a merger which produces a firm controlling an undue percentage share of the relevant market, and results in a significant increase in the concentration of firms in that market, is so inherently likely to lessen competition substantially that it must

be enjoined in the absence of evidence clearly showing that the merger is not likely to have such anti-competitive effects. \* \* \*

Such a test lightens the burden of proving illegality only with respect to mergers whose size makes them inherently suspect in light of Congress' design in § 7 to prevent undue concentration. \* \* \*

The merger of appellees will result in a single bank's controlling at least 30% of the commercial banking business in the four-county Philadelphia metropolitan area. Without attempting to specify the smallest market share which would still be considered to threaten undue concentration, we are clear that 30% presents that threat. \* \* \*

While this recent decision involves only a horizontal merger, the opinion makes clear, as have earlier decisions, that all mergers are within the contemplation of the 1950 amendments to § 7 and the above-quoted principles undoubtedly apply to the case at bar which has been mostly concerned with evidence purporting to show "market behavior" and "probable anti-competitive effects."

In the case at bar the proof establishes that, prior to its acquisition by Ekco in 1954, McClintock had approximately 98% of business done on the national scale in the line of commerce involved herein (excluding a few companies doing business on a local or limited basis). Ekco's share, while shrinking somewhat during Blackman's short boom and Chesley's near monopoly in the Detroit distribution area, has again reached a percentage of such national business substantially approximating what McClintock had when Ekco acquired it. While there are some minor disputes, there is no doubt that McClintock, in its day, held, and Ekco now holds the lion's share of the total production and sale of the products in question. Therefore, such substantially uncontradicted facts now appear to have established a prima facie case in support of the complaint, except as the facts in evidence establish that by the very nature of the business there is no reasonable probability that a monopoly exists within the contemplation of § 7, as amended. Of course, counsel for both parties, as well as the examiner, during the trial were unaware that such a broad rule would be laid down in this recent bank decision and the case was tried and heard without its benefit.

A decision covering all issues presented in detail is impossible to prepare within the very limited time therefor which the Commission has prescribed. But since very substantial parts of the record relate to numerous events occurring subsequent to respondent's acquisition of McClintock, with which a large part of the proposed findings of the parties is concerned, such record and findings may be disregarded herein without passing upon their merits. This is true not only because they relate to post-acquisition activities of respondent unnecessary to ultimate decision, but also because this is a conglomerate merger

with special guide lines which are determinative of the case upon consideration of certain basic facts relating to the fundamental nature of the business which can more briefly be stated. The gist of this case lies within the ambit of a few basic facts, that respondent has by far the largest share of the market of the products involved but (1) it does not make or control the source of the basic materials used in such products' manufacture, (2) the amount involved for necessary machinery and tools to manufacture these products is small; and (3) sales organizations are readily at hand in numerous distributors of various items to the meat market trade, all of which means easy access to the markets and buyers.

Many of the proposals submitted by counsel supporting the complaint are premised upon evidence which was rejected according to basic principles of evidence. This decision must be made upon the whole record and not upon rejected evidence. Therefore, to grant such proposals by reconsidering and receiving rejected evidence would necessarily require reopening and retrying substantially the entire case in order to afford respondent due process of law, and unduly delay the final determination of this proceeding. Such proposals, therefore, have been rejected. All other proposed findings of fact, together with conclusions of law and orders, respectively submitted by the parties, which are not incorporated herein, either verbatim or in substance and effect, are also hereby rejected; and any pending offers of evidence, motions, or objections made during the course of the proceedings, which have not heretofore been expressly granted, denied or overruled, are hereby denied or overruled.

The hearing examiner has given full, careful and impartial consideration to all testimony, taking into consideration his observation of the appearance, conduct and demeanor of each of the witnesses who appeared before him. All documents in evidence and stipulations of fact, as well as those facts alleged in the complaint which are admitted in the answer, have been duly considered, and all statements, arguments, proposals and briefs of counsel have been closely studied in the light of all the evidence. The examiner has also carefully considered as a matter of judicial notice the Commission's said Report of May 1955, but only for background purposes in accordance with his said ruling of December 10, 1962. He has, however, limited the findings herein made to those which are deemed material and rejected those which seem relevant to another type of proceeding or are unnecessary to this decision.

Upon the whole record so considered, the hearing examiner finds generally that counsel supporting the complaint have failed to maintain the burden of proof incumbent upon them, and have failed to

1163

Initial Decision

establish by reliable, probative and substantial evidence, and the fair and reasonable inferences drawn therefrom, the material disputed issue herein, and therefore finds that the charges of the complaint have not been sustained. More specifically, upon consideration of the whole record, the hearing examiner makes the following

## FINDINGS OF FACT

*The Corporations Involved*

Ekco Products Company, which for brevity is hereinafter referred to either as "respondent" or "Ekco," was originally established as a business in 1888. On October 6, 1903, it became an Illinois corporation as "Edward Katzinger Company." In June 1944, the corporate name was shortened by substituting "Ekco" for the personal name "Edward Katzinger." It is inferred that "Ekco" was coined from the initials of the first and surnames of the founder as set forth in the previous corporate title, and with the syllable "co" added in short for "Company." It is further inferred that this short, distinctive and catching trade name of "Ekco" was also adopted not only to retain the flavor of the original name but to hold substantial and long established good will. In any event the word "Ekco" had become so well known it was retained when the corporation was reorganized as a Delaware corporation on April 29, 1960, as "Ekco Products Company" and all of respondent's assets and business were merged into the new Delaware corporation. Since becoming a Delaware corporation, respondent has continued to maintain its office and principal place of business at 1949 North Cicero Street, Chicago, Illinois.

Counsel supporting the complaint seek to read into this reorganization of respondent as a Delaware corporation something sinister relative to the alleged illegality of the two mergers involved in this proceeding. None such appears, and such suggestion is rejected as fantastic, unrealistic, and wholly contrary to the clearly proper and legitimate corporate purposes of respondent in effecting such reorganization under the laws of the State of Delaware.

McClintock Manufacturing Company, hereinafter which for brevity is referred to as "McClintock," was incorporated April 5, 1934, and before its sale to "Ekco" on June 30, 1954, had been a corporation organized and existing under the laws of the State of California, with its office and principal place of business at 2700 South Eastern Avenue, Los Angeles, California.

The Blackman Stamping & Manufacturing Company, which for brevity is hereinafter referred to as "Blackman," is now and was at the times material hereto, a corporation organized and existing under

the laws of the State of California, with its office and principal place of business at 2730 East 37th Street, Los Angeles, California.

*Interstate Commerce—The Relevant Market*

There is no dispute as to the fact that respondent is now and at all times material hereto has been engaged in commerce, as "commerce" is defined in the Clayton Act, as amended. In the course and conduct of its business respondent has produced and sold, and continues to produce and sell, its products and services to purchasers located in the various states of the United States and in the District of Columbia.

It is also undisputed that at the time Ekco acquired all the stock and assets of McClintock on June 30, 1954, McClintock was engaged, and for many years prior thereto had been engaged, in the sale and distribution of commercial meat-handling equipment and meat market accessories in commerce, as "commerce" is defined in the Clayton Act, as amended, its purchasers being located in the various states of the United States and in the District of Columbia.

Further, it is undisputed that at the time Ekco by purchase acquired certain assets of Blackman on May 9, 1958, Blackman in the course and conduct of its business of selling and distributing commercial meat-handling equipment was engaged, and for a period of over two years prior thereto had been engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, in the sale and distribution of such products to purchasers thereof located in various states of the United States and in the District of Columbia. There is no evidence, however, that Blackman in its other activities hereinafter more fully referred to, was so engaged in commerce.

It is substantially agreed by the parties and it is also found upon the evidence that the relevant lines of products involved in this proceeding are sold on a national basis and the entire United States is therefore the relevant market.

*The Line of Commerce*

The relevant line of commerce in this proceeding as substantially alleged and referred to in Paragraphs Four, Seven, and Nine to Eleven, inclusive, of the Complaint, and clearly established by the evidence consists of two sub-lines:

(a) The manufacture and sale of anodized aluminum platters, pans and lugs suitable for storing and transporting a variety of commercial products within a factory, store or warehouse, the use of which insofar as is relevant here consists of the storing and transporting of meats; and

(b) The manufacture and sale of metal racks, which are stationary, and metal carts, which with wheels attached are movable racks, and which are appropriately used in such premises in the storing and transportation of meats.

These two sub-lines of products require different materials and methods of manufacture. The basic material used in the manufacture of the platters, pans and lugs is aluminum, which when anodized by an electrolytic process makes a product the surface of which is hard and impervious to organic acids deriving from raw meats and which surface easily lends itself to cleaning, does not chip or shatter and break and by reason of its durability has longtime life in spite of the ordinarily hard usage it receives in meat handling. On the other hand, racks and carts, which are used respectively to store or to transport the platters, pans and lugs in which the meat is placed, are made of sheet metal shelving held in place by metal tubing, plus wheels, of course, in the case of carts. Aluminum is not the basic metal used in the making of racks and carts.

These two lines are complimentary and used in conjunction with each other in the business of handling meats. Each on account of its strength and durability only infrequently needs replacement and the replacement market for such products is very small and the primary and important sales are now made to those who are equipping newly opened supermarkets as hereafter more fully set forth under the caption "Market for the Line of Commerce."

In order that the distinction between the differently named containers above referred to may be clearly defined, platters are shallow, being about three-fourths of an inch deep and pans are from one to three inches deep, depending on size of the other dimensions, while lugs are much deeper pans, such depths being dependent on the size of the other dimensions and the specific use for which such lugs are intended. In the trade, models of such products are described and referred to by their length and breadth, Model 1024, for example, being 10 inches wide by 24 inches long.

The Commission by its order of January 24, 1962, had denied the attempt of counsel supporting the complaint to inject into this case any new line of commerce or to enlarge by amendment the above-described line of commerce to include (1) rubber greens, which are artificial vegetables used for decorative purposes in the display of meat to retail trade, and (2) baking pans which are used for the baking of breads and pastries. It is obvious that baking pans are entirely a different line of commerce and that rubber greens have no direct connection with platters, pans and lugs and their storage and transport, which matters primarily have to do with the behind the scenes of "back room" opera-

Initial Decision

65 F.T.C.

tions. It is inferred that even the carts, after wrapped meats have been transported to and placed in self-service refrigerators, or other refrigerated display cases in the sales area of the store or market, are usually promptly returned to the cutting room for further use there and not left to impede the passage of clerks and retail customers through the aisles of the retail selling areas.

*Market for the Line of Commerce*

For some time prior to the recent tremendous growth in popularity of self-service retail meat operations, and as late as 1954 when Ekco acquired McClintock, the principal market for aluminum platters, pans and lugs had been the service type of butcher shop usually found in food stores and markets. In this earlier type of butcher shops the meat was displayed in closed refrigerated cases attended by butchers who dealt directly with and served the customers by cutting or grinding the meat as selected and ordered by the customers. This type of store utilized aluminum platters and pans primarily for the showing of uncut or unground meat products in the refrigerated display cases. This required the manufacturer to provide a large variety of different sizes of platters and pans to fit the various cuts of meat which were on display as well as to fit them into the various sizes of display cases then generally in use. Those stores, however, had comparatively little "back room" meat cutting and consequently had at best but limited need for lugs, carts and racks.

Similar to many other businesses there have been significant changes in the retail meat trade in recent years. Commencing in the middle 1950's and continuing thereafter, there has been a steady and rapid increase in the number of self-service type of supermarkets. Although not all individual units of all grocery chains are supermarkets, the evidence shows that the grocery chains and independents are rapidly closing many of their non-supermarket stores and replacing them by constructing new and larger stores in the same general trading areas to conform with supermarket business needs and practices.

The increase in self-service supermarkets has resulted in a great decline in demand for varied smaller sizes of platters and pans but in an increased demand for carts, racks and lugs and for larger sizes of platters and pans. Now generally, only a few of the larger dimension platters and pans are used in the self-service type of meat operation. Chain food stores usually standardized on one or two of the larger sizes of platters and pans for use in their self-service retail meat operations of all of the stores in the chain, but different chains have standardized on different sizes.

At the present time, the principal market for the meat-handling products just described are new food supermarkets, both chain and independent, where such products are used principally for the handling and storing of meat in their "back room" meat cutting and packaging operations and generally food supermarkets utilize self-service techniques in their meat merchandising. In such self-service retail meat operations, their meat handling products are generally utilized only for the storage of the meat products and the movement thereof from the "back room" to the refrigerated display cases, but ordinarily they are not used in the display cases themselves.

A "complete line" of platters and pans to service food supermarkets which now are the principal market for these products consists of not more than seven sizes, and may be as few as four. Even Gleason and Jayne, Blackman's former salesmen, definitely hostile to respondent, conceded in substance that a large line was not necessary and a few large sizes of such products would be sufficient to meet the demands of the trade.

Illustrative of the popularity of larger sizes, the seven largest dimension platters which Ekco's McClintock Division has recently manufactured, for example, constituted 81% of its total production of platters for the year 1960, and five of those largest sizes, from 10 to 12 inches wide by 24 to 30 inches long, constituted 74% of said total production.

The cost of equipping the meat department in an average modern self-service supermarket is approximately \$20,000; of this amount only about \$400 is devoted to the purchase of platters, pans and lugs and only approximately \$500 to the purchase of carts and racks, a total of or less than five per cent of the total cost of such department's entire meat-handling equipment. The total annual dollar value of this line is but a very small part of the Gross National Product.

Since this comparatively small cost of equipping self-service retail meat departments with platters, pans, lugs, carts and racks has not been shown to have any effect upon the retail prices of meat and there is no charge or proof in this proceeding that the public at large has been injured, the principal theoretical injuries which upon this proceeding must be founded *sub silentium* appears to be those which might probably occur to the supermarkets of the country. The evidence concerning them in this case, without more, is fully indicative that such corporate entities are well able to look out for their own interests as to the selection and prices of the commodities involved herein.

