

Complaint

IN THE MATTER OF
LITTON INDUSTRIES, INC.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
CLAYTON ACT, SECTION 7

*Docket 8778. Complaint, April 10, 1969—Decision, March 13, 1973.**

Opinion and order requiring a Beverly Hills, California, large conglomerate corporation with a broadly diversified product area and a worldwide operation, among other things to divest itself of its stock interest in Triumph-Werke Nurnberg, A.G. and Adlerwerke A.G.; and to cease and desist for a period of ten years from making acquisitions in the typewriter or typewriter parts or accessories manufacturing industry within the United States without prior Federal Trade Commission approval.

COMPLAINT

The Federal Trade Commission, having reason to believe Litton Industries, Inc., a corporation subject to the jurisdiction of the Commission, has acquired 98.5 percent of the stock of Triumph-Werke Nurnberg, A. G., 82 percent of the stock of Adlerwerke A. G., and all of the stock of their associated companies (hereinafter collectively referred to as "Triumph-Adler") in violation of Section 7 of the Clayton Act (15 U.S.C. Section 18), hereby issues this Complaint stating its charges in those respects as follows:

I

DEFINITIONS

1. Typewriters are manual and electric, office and portable machines for writing in characters similar to those produced by printer's type by means of key-board-operated types.

2. (a) *Standard Typewriters* are typewriters designed primarily for ordinary office typewriter uses, excluding special purpose typewriters such as office composing, stencil-cutting, reproduction and continuous form handling typewriters.

*By order issued April 20, 1973, the Commission extended the effective date of the decision and order for seven days until March 20, 1973, and tolled for seven days until May 24, 1973, the statutory time period within which respondent may petition for review of the Commission's decision and order. The same order granted complaint counsel an extension of time until April 27, 1973, within which to file a reply to respondent's petition and brief for reconsideration of the order of divestiture. See p. 1424 herein.

(b) *Office Electric Typewriters* are standard typewriters powered by electric motors.

(c) *Office Manual Typewriters* are standard typewriters powered manually.

3. Portable typewriters are typewriters designed primarily for non-commercial consumer users, generally sold with a case as a method of carrying or storing.

II

LITTON INDUSTRIES, INC.

4. Litton Industries, Inc. (hereinafter "Litton"), the respondent herein, is a corporation organized and doing business under the laws of the State of Delaware with its principal office and place of business located at 9370 Santa Monica Boulevard, Beverly Hills, California.

5. Litton ranks among the largest industrial corporations in the United States. In the year ended July 31, 1968, its sales and service revenues totaled \$1.9 billion and its assets were \$1.2 billion. In that year Litton reported profits of \$102 million before taxes and enjoyed a cash flow of more than \$103 million.

6. Litton's growth has been achieved in large part through a series of mergers and acquisitions. Litton represents that the direct contribution of acquired firm sales accounted for nearly half of its sales in 1967. Acquisitions and mergers secured for Litton leading positions in a number of industries, several of which are concentrated among relatively few firms. Litton ranks among the nation's eight largest sellers of cash registers, office calculating machines, power transmission equipment, A.C. electric motors, trading stamps, military and commercial ships, seismic surveys, store fixtures and refrigeration equipment, medical X-Ray equipment, elementary and high school textbooks, and a number of other products.

7. Litton represents that its multi-industry, multiple-disciplinary structure offers dramatic opportunities for new technical solutions and product innovations. Litton also represents that it is organized to create, develop and offer a flow of innovative products resulting from economies of technological scale.

8. In 1965, Litton acquired Royal McBee Corporation (hereinafter "Royal"), the second largest firm in the typewriter industry with 1964 sales of \$114 million. Royal held a strong position

in portable typewriters, had made advances in the office electric typewriter market, and dominated the office manual typewriter market. Litton represented that its experience combined with that of Royal in electromechanical technology would facilitate product innovation and development.

9. In 1967, Litton ranked first in domestic sales of office manual typewriters, with 40.8 percent; second in office electric typewriters, with 11.2 percent; and second in portable typewriters, with 23.1 percent. In total typewriter sales, Litton ranked second with a market share of 19.5 percent.

10. Litton recognized in 1965 a requirement for basic improvement in the typewriter products of Royal. Its response was to choose expedients that avoided commitment to original research and development. Acquisitions have been among the expedients chosen.

(a) In office electric typewriters, Litton replaced Royal's successful "GA" machine with its Models 550 and 660 typewriters differing from the "GA" largely in style and weight. By 1968, Litton recognized again the unfilled need for original research on a new office electric typewriter. It has estimated that an expenditure of \$3.6 million would be required to develop, start and tool for a machine based on patent licenses to replace its existing models. The acquisition of Triumph-Adler is an alternative to original research and to developing a suitable machine based on the present state of the art.

(b) Litton acquired Imperial Typewriter Company, Ltd. in 1966, discontinuing the latter's production of office electric and portable manual typewriters. Litton continues to produce as the "Model 80" Imperial's office manual typewriter.

(c) In portable typewriters, Litton introduced in 1966 an all-electric "Ultronic" portable developed by Royal. In 1966, it acquired Willy Fieler, GmbH, to obtain a similar typewriter known as the "All Electric." Litton has also obtained world-wide distribution rights on a low cost manual portable typewriter.

11. It all times relevant herein, Litton sold and shipped its products in interstate commerce throughout the United States; hence, Litton was, and is, engaged in commerce, as "commerce" is defined in the Clayton Act.

III

TRIUMPH-ADLER

12. Triumph-Adler is the collective designation for Triumph-Werke Nurnberg, A. G., a German corporation with its principal office and place of business in Frankfurt, Germany; Adlerwerke, A. G., a corporation owned or controlled by Triumph-Werke Nurnberg, A. G., and subsidiary corporations of each, including Adlerwerke vorm. Heinrich Kleyer A. G., a manufacturing unit, Grundig Burotechnik GmbH., a distributing company, Grundig Business Machines, Inc., USA, Grundig Bureau-equipment SARL, France, and Grundig Business Machine Pty., Ltd., Australia. Triumph-Adler has its principal office and place of business located at Kurgartenstrasse 37 Furth/Bay, Germany, and is headquartered in the United States at 355 Lexington Avenue, New York, New York.

13. Triumph-Adler manufactures office manual and electric typewriters and portable typewriters and ranks among the leading international typewriter companies. Its sales in 1967 were approximately \$52 million, and its operations are profitable.

14. Triumph-Adler introduced its standard office typewriters and manual portable typewriters in the United States in the late 1940's. In 1967, Triumph-Adler ranked sixth in typewriter sales in the United States, accounting for about 2.3 percent of all typewriter sales. Triumph-Adler's share of office electric typewriter sales in the United States has grown to 2.6 percent of all such United States sales following introduction of its new model.

15. By 1968 Triumph-Adler accounted for 3.8 percent of manual office typewriter sales, 2.6 percent of electric office typewriters and nearly 1 percent of portable typewriter sales. Triumph-Adler announced a new portable electric typewriter to the trade in June 1968, and intended to market this product in the United States.

16. Triumph-Adler had recognized a requirement for basic development and engineering in the development of an office electric typewriter. Its development efforts culminated in 1962 with the introduction of an office electric typewriter judged by Litton to be superior to competitive machines. Triumph-Adler has continued a program of basic engineering development, spending proportionally more than Litton for typewriter research

and development efforts. Its research staff is judged by Litton to out-rank its own. Triumph-Adler is in advanced development stages of basic innovation for additional office electric typewriters, portable typewriters.

17. At all times relevant herein, Triumph-Adler sold or shipped its products in interstate commerce throughout the United States; hence Triumph-Adler was, and is, engaged in commerce, as "commerce" is defined in the Clayton Act.

IV

TRADE AND COMMERCE

18. Trade and commerce in typewriters is substantial, amounting to about \$569 million in 1967. Very high levels of concentration have prevailed in the typewriter industry over the last three decades, with the four and eight largest firms accounting for more than 75 percent and 99 percent of typewriter shipments respectively. Entry barriers into the typewriter industry are high, and the number of companies engaged in producing typewriters and parts therefor declined from 23 in 1947 to 17 in 1963. In recent years the principal source of new entry has been foreign typewriter producers.

19. Office typewriters constitute the largest segment of typewriter sales, representing \$403 million in 1967. Concentration in this segment of the industry is high. The acquisition by second ranked Litton of sixth ranked Triumph-Adler results in a combined market share of 20.9 percent of such sales, and, on the basis of 1967 data, increases concentration of such sales among the two largest firms from 64.3 percent to 67.1 percent.

20. Sales of manual office typewriters were \$93 million in 1967, with the two largest firms accounting for 68.9 percent of such sales. Combined first-ranked Litton and sixth-ranked Triumph-Adler hold 44.6 percent of such sales, increasing concentration among the two largest firms to 72.7 percent of such sales.

21. Office electric typewriters are a fast growing segment of the typewriter industry, with 1967 sales of about \$310 million. Combined, second ranked Litton and sixth ranked Triumph-Adler hold 13.8 percent of such sales, increasing concentration among the two largest firms to 73.8 percent of such sales. Triumph-

Adler was one of the few new entrants in the sale of standard office electric typewriters in the last six years.

22. Sales of portable typewriters, both manual and electric, totaled \$166 million in 1967. The combination of second-ranked Litton with Triumph-Adler results in a market share of about 24 percent of such sales, increasing the share of the two largest firms to about 67.5 percent of such sales. Triumph-Adler, a significant actual and potential competitor, was one of few firms exerting a restraining influence on competition in portable electric office typewriter sales.

V

THE ACQUISITION

23. On or about January 3, 1969, Litton acquired substantially all of the outstanding stock of Triumph-Adler for a consideration of approximately \$51 million.

VI

EFFECTS OF THE ACQUISITION

24. The effect of acquisition of Triumph-Adler by Litton may be substantially to lessen competition or to tend to create a monopoly in the sale of typewriters generally and in particular kinds of typewriters, throughout the United States, or sections thereof, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18). These effects may occur in the following, among other ways:

(a) Substantial, actual and potential competition between Triumph-Adler and Litton may be eliminated;

(b) The restraining influence of Triumph-Adler as an actual or potential competitor may be eliminated;

(c) The competitive benefits of internal expansion and innovation by Litton in the development of improved standard office electric and portable typewriters of the kind manufactured by Triumph-Adler may be eliminated;

(d) Litton may be entrenched in its leading position in office manual typewriters;

(e) Already high barriers to the entry of new competition in the typewriter industry, or in segments thereof, may be heightened and increased;

(f) Members of the purchasing public and the ultimate consumer may be denied the benefits of free and open competition;

(g) The cumulative effect of the violation charged, separ-

ately and in the context of the series of acquisitions alleged in Paragraph 10 may be to entrench or increase already high levels of concentration by encouraging tendencies for combination and merger by actual and potential competitors.

VII

THE VIOLATION CHARGED

25. Consummation of the acquisition of substantially all of the stock of Triumph-Adler by Litton constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18).

Mr. Richard B. Lavine, Mr. Don M. Kaminsky and Mr. Murray L. Lyon supporting the complaint.

Howrey, Simon, Baker & Murchison by *Mr. J. Wallace Adair, Mr. Francis A. O'Brien, Mr. Edward W. Gass, Mr. Ralph Gordon, Washington, D.C., and Mr. Theodore F. Craver, Litton Industries, Inc., Beverly Hills, California* for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER
FEBRUARY 3, 1972

INDEX

	Page
Introduction	801
I. LITTON INDUSTRIES, INC.	811
II. TRADE AND COMMERCE	819
A. Companies Engaged in the Typewriter Business in the United States	819
1. Introduction	819
a. Worldwide	819
b. United States	822
2. The Traditional United States Typewriter Companies	825
a. R. C. Allen (Woodstock Typewriter Company)	825
b. SCM Corporation	825
c. Remington Rand Division (Sperry-Rand Corporation)	829
d. Underwood Typewriter Company	832
e. Royal Typewriter Company	836
3. The Rise of IBM	839
4. Foreign Typewriter Companies	844
a. Ing. C. Olivetti and Co.	844
b. Paillard, Inc.	845
c. Facit AB	846
d. Olympia Werke A.G.	848
e. Triumph-Adler	849

	Page
f. Brother Industries, Ltd.	853
g. Nippo Machine Co., Ltd.	855
h. Messa	855
i. Other Companies	855
B. Line of Commerce	857
1. Introduction	857
2. Consideration of Relevant Markets	860
a. Typewriter Industry	860
b. Office Typewriters	861
c. Light Duty Office Typewriters	861
(1) Office Manual Typewriters	863
(2) Light Duty Office Electric Typewriters	864
d. Heavy Duty Office Typewriter Market	867
e. Portable Typewriters	875
(1) Total Portable Typewriter Market	875
(2) Electric Portable Typewriters	875
3. Quantitative Measurement of the Relevant Markets	875
4. Market Share and Trends in the Relevant Markets	885
a. Introduction	885
b. The Office Typewriter Market	888
c. The Heavy Duty Office Typewriter Market	893
d. The Portable Typewriter Market	896
e. The Electric Portable Typewriter Market	902
5. Concentration Ratios and Trends	904
a. Introduction	904
b. Office Typewriter Market	907
c. Heavy Duty Office Typewriter Market	908
d. Portable Typewriter Market	910
e. Total Typewriter Industry	911
f. Capital Intensity as Affecting Concentration	913
III. COMPETITIVE EFFECTS	915
A. The Potential of Royal	916
1. Failure to Develop Quality Typewriters	916
2. Prelude to the Triumph-Adler Acquisition	923
B. Potential of Triumph-Adler and Independent Office Machine Dealers	927
C. The Potential of IBM	940
1. IBM's Pricing Policies	941
2. IBM's Monopoly of Single Element Typewriters	947
D. Potential of The Typewriter Industry	952
E. Profit Trends in the United States	958
IV. COMPETITORS AND INDEPENDENT OFFICE MACHINE DEALERS WILL NOT BE ADVERSELY AFFECTED BY THE ACQUISITION OF TRIUMPH- ADLER BY LITTON	963
A. Manufacturers and Dealers Testified That The Acquisition Would Have No Adverse Effects	963
B. The Litton-Adler Combination May Limit The Dominance of the Typewriter Industry by IBM and SCM	966

	Page
C. Without Triumph-Adler, Royal Would Not Be A Substantial Competitor	967
V. CONCLUSIONS	969
ORDER	970

The Federal Trade Commission, on April 10, 1969, issued the complaint herein charging that the acquisition, on or about January 3, 1969, by Litton Industries, Inc., a corporation, of 98.5 percent of the stock of Triumph-Werke Nurnberg, A. G., 82 percent of the stock of Adlerwerke, A. G., and all of the stock of their associated companies for a consideration of approximately \$51,000,000 violated Section 7 of the Clayton Act (15 U.S.C. Section 18). The complaint states in part:

4. Litton Industries, Inc. (hereinafter "Litton"), the respondent herein, is a corporation organized and doing business under the laws of the State of Delaware with its principal office and place of business located at 9370 Santa Monica Boulevard, Beverly Hills, California.

5. Litton ranks among the largest industrial corporations in the United States. In the year ended July 31, 1968, its sales and service revenues totaled \$1.9 billion and its assets were \$1.2 billion. In that year Litton reported profits of \$102 million before taxes and enjoyed a cash flow of more than \$103 million.

6. Litton's growth has been achieved in large part through a series of mergers and acquisitions. Litton represents that the direct contribution of acquired firm sales accounted for nearly half of its sales in 1967. Acquisitions and mergers secured for Litton leading positions in a number of industries, several of which are concentrated among relatively few firms. Litton ranks among the nation's eight largest sellers of cash registers, office calculating machines, power transmission equipment, A.C. electric motors, trading stamps, military and commercial ships, seismic surveys, store fixtures and refrigeration equipment, medical X-Ray equipment, elementary and high school textbooks, and a number of other products.

* * * * *

8. In 1965, Litton acquired Royal McBee Corporation (hereinafter "Royal"), the second largest firm in the typewriter industry with 1964 sales of \$114 million. Royal held a strong position in portable typewriters, had made advances in the office electric typewriter market, and dominated the office manual typewriter market. Litton represented that its experience combined with that of Royal in electromechanical technology would facilitate product innovation and development.

9. In 1967, Litton ranked first in domestic sales of office manual typewriters, with 40.8 percent; second in office electric typewriters, with 11.2 percent; and second in portable typewriters, with 23.1 percent. In total typewriter sales, Litton ranked second with a market share of 19.5 percent.

10. Litton recognized in 1965 a requirement for basic improvement in

Initial Decision

82 F.T.C.

the typewriter products of Royal. Its response was to choose expedients that avoided commitment to original research and development. Acquisitions have been among the expedients chosen.

(a) In office electric typewriters, Litton replaced Royal's successful "GA" machine with its Models 550 and 660 typewriters differing from the "GA" largely in style and weight. By 1968, Litton recognized again the unfilled need for original research on a new office electric typewriter. It has estimated that an expenditure of \$3.6 million would be required to develop, start and tool for a machine based on patent licenses to replace its existing models. The acquisition of Triumph-Adler is an alternative to original research and to developing a suitable machine based on the present state of the art.

(b) Litton acquired Imperial Typewriter Company, Ltd. in 1966, discontinuing the latter's production of office electric and portable manual typewriters. Litton continues to produce as the "Model 80" Imperial's office manual typewriter.

(c) In portable typewriters, Litton introduced in 1966 an all-electric "Ultronic" portable developed by Royal. In 1966, it acquired Willy Fieler, GmbH, to obtain a similar typewriter known as the "All Electric". Litton has also obtained world-wide distribution rights on a low cost manual portable typewriter.

* * * * *

12. Triumph-Adler is the collective designation for Triumph-Werke Nurnberg, A.G., a German corporation with its principal office and place of business in Frankfurt, Germany; Adlerwerke, A.G., a corporation owned or controlled by Triumph-Werke Nurnberg, A.G., and subsidiary corporations of each, including Adlerwerke vorm. Heinrich Kleyer A.G., a manufacturing unit, Grundig Burotechnik GmbH., a distributing company, Grundig Business Machines, Inc., USA, Grundig Bureau-equipment SARL, France, and Grundig Business Machine Pty., Ltd., Australia. Triumph-Adler has its principal office and place of business located at Kurgartenstrasse 37 Furth/Bay, Germany, and is headquartered in the United States at 355 Lexington Avenue, New York, New York.

13. Triumph-Adler manufactures office manual and electric typewriters and portable typewriters and ranks among the leading international typewriter companies. Its sales in 1967 were approximately \$52 million, and its operations are profitable.

14. Triumph-Adler introduced its standard office typewriters and manual portable typewriters in the United States in the late 1940's. In 1967, Triumph-Adler ranked sixth in typewriter sales in the United States, accounting for about 2.3 percent of all typewriter sales. Triumph-Adler's share of office electric typewriter sales in the United States has grown to 2.6 percent of all such United States sales following introduction of its new model.

15. By 1968 Triumph-Adler accounted for 3.8 percent of manual office typewriter sales, 2.6 percent of electric office typewriters and nearly 1 percent of portable typewriter sales. Triumph-Adler announced a new portable electric typewriter to the trade in June 1968, and intended to market this product in the United States.

* * * * *

24. The effect of acquisition of Triumph-Adler by Litton may be substantially to lessen competition or to tend to create a monopoly in the sale of typewriters generally and in particular kinds of typewriters, throughout the United States, or sections thereof, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18). These effects may occur in the following, among other ways:

(a) Substantial, actual and potential competition between Triumph-Adler and Litton may be eliminated;

(b) The restraining influence of Triumph-Adler as an actual or potential competitor may be eliminated;

(c) The competitive benefits of internal expansion and innovation by Litton in the development of improved standard office electric and portable typewriters of the kind manufactured by Triumph-Adler may be eliminated;

(d) Litton may be entrenched in its leading position in office manual typewriters;

(e) Already high barriers to the entry of new competition in the typewriter industry, or in segments thereof, may be heightened and increased;

(f) Members of the purchasing public and the ultimate consumer may be denied the benefits of free and open competition;

(g) The cumulative effect of the violation charged, separately and in the context of the series of acquisitions alleged in Paragraph 10 may be to entrench or increase already high levels of concentration by encouraging tendencies for combination and merger by actual and potential competitors.

The answer of the respondent, filed on June 23, 1969, denied the material charges of the complaint and, as an affirmative defense, states in part:

26. Acquisition by respondent of Triumph-Adler will substantially enhance competition and be in the public interest; disapproval will substantially impede, injure and destroy competition in the typewriter industry.

27. The predominant typewriter market is the office electric market in which the overwhelming bulk of all typing is done. The state of this market is such that without some effective competition, IBM, which now has a virtual monopoly, will increase its lead and will gain a complete monopoly. By all judicially approved antitrust indicia, that company already possesses monopoly power. With the quality of its products, research programs, new product introductions, and the effectiveness of its sales and service organization, it has the power to sweep aside the few remaining weak obstacles to its complete monopoly of the office market. Neither respondent nor Triumph-Adler acting separately is or can become a realistic competitive force in the office market against this dominant concern.

28. Entry barriers to both domestic and foreign companies into the office market are virtually insurmountable.

29. Respondent's Royal Typewriter operations are sustaining heavy losses: \$6½ million in fiscal 1968 and at least \$6 million in fiscal 1969 ending July 31, 1969. Its sales organization has been declining through resignations of dealers, salesmen and servicemen. Triumph-Adler's United States business is barely profitable: less than 1½ percent in fiscal 1968. Only by the joint

Initial Decision

82 F.T.C.

efforts of respondent and Triumph-Adler will respondent have any opportunity to continue in the typewriter business.

30. Triumph-Adler has an office electric typewriter which, from a quality standpoint, compares favorably with the older IBM basket-type office electric. Neither Triumph-Adler nor respondent has a machine comparable to or directly competitive with the IBM single element "Selectric" machine or the even newer IBM Magnetic Tape Selectric Typewriter (MT/ST). It is the hope of respondent that, by introducing the Triumph-Adler office electric into the Royal line in competition with IBM, Royal will be able to slow the continuing substantial decline of its sales of office electric typewriters and the decline of its sales and service organization and thereby obtain a base from which to develop products competitive with the IBM Selectric, the new MT/ST and other products inevitably to be introduced.

31. Only in this way can respondent remain in the typewriter business, gain the time required, and justify the expense of attempting to develop machines competitive to IBM's. If respondent is denied this opportunity, it will have no alternative but to withdraw completely from the typewriter business and leave the market to IBM, thus further enhancing and accelerating the trend towards complete monopoly. Disapproval of the Triumph-Adler acquisition by the Commission will have this effect.

32. Not only does respondent deny that the effects of its acquisition of Triumph-Adler will have a tendency to substantially lessen competition, but it affirmatively alleges that for the reasons herein pleaded to require respondent to divest Triumph-Adler would, itself, substantially lessen competition and tend to create a monopoly contrary to the intent and purpose of Section 7 of the Amended Clayton Act.

* * * * *

44. Prior to World War II, the world typewriter industry was centered in the United States and was dominated by United States manufacturers. Since then, however, typewriter production outside of the United States has increased substantially and imports of typewriters into the United States have also increased. The effect of typewriters imported into the United States by foreign manufacturers, however, has been limited primarily to portables sold in the home market through mass merchandising and discount chains. In the office electric typewriter market, the effect of machines imported by foreign manufacturers has been significantly less because of the necessity of selling through independent typewriter dealers, which, in turn, is dictated, among other things, by the prohibitive cost of building nationwide direct sales organizations.

45. Concurrently with the growth of foreign typewriter manufacturers, United States manufacturers increasingly have been establishing foreign production in order to compete successfully with the foreign manufacturers. In the home market, United States based manufacturers are finding it impossible to compete cost and pricewise against Japanese manufactured machines. All United States typewriter manufacturers, except one, have now ceased United States production of portable manuals. Respondent was the latest to stop when, on April 29, 1969, it closed its Springfield, Missouri plant. Although this was a relatively modern plant only 10 years old, it

sustained losses of \$3 million in fiscal year 1968 and would have lost approximately \$3.3 million in fiscal 1969 if operated for the entire year.

* * * * *

49. By the turn of the century the visible front strike basket design typewriter had been achieved. This upright manual typewriter was a mechanical device depending upon finger power for operation. For the next forty years the industry remained essentially static. By the mid-1920's and until World War II approximately 80 percent of domestic industry sales were concentrated in four companies: Underwood, Remington, Smith-Corona and Royal.

* * * * *

52. With the advent of World War II the major typewriter companies were required by the government to suspend all typewriter manufacture to concentrate on war production. Only IBM, located outside the critical war production zone and having successfully advanced the proposition that one IBM electric typewriter could do the work of two manual typewriters thus saving materials and labor, was permitted to continue its electric typewriter production, then in its infancy. IBM obtained raw material priorities for the manufacture of electric typewriters and placed tens of thousands of machines with government agencies and American industry.

53. This head-start during World War II has had the most profound and lasting impact upon the post-war developments of the office typewriter market. The advantages accruing to IBM as a result of the war years were many and important. IBM used its established product and nationwide sales and service organization to preempt the office market for electric typewriters. Introduction of IBM electric typewriters was accelerated; widespread public acceptance was obtained during the war. The old-line manual companies faced an uphill fight in returning to the market. They had to re-establish their production facilities and undertake substantial re-training of their work force. In addition, their product, manual office typewriters, had lost substantial favor in office use to the newer, faster electric IBM machines. Moreover, they had none of the new skills required to break into the electric typewriter market.

On July 10, 1969, counsel for the parties met with the hearing examiner in a reported non-public prehearing conference. As a result thereof, an agreed order was issued which was to control the subsequent course of the proceeding unless modified to prevent manifest injustice. Each party was required to file (and thereafter did file) trial briefs containing (a) a summary of the issues of fact and law; (b) the name and address of each witness whom it intends to call at the hearings, together with a statement of the nature of the witness' testimony; and (c) a list of the documentary exhibits to be offered. Thereafter, and before the commencement of formal hearings, a series of prehearing conferences were held, at which time matters relating to the conduct of the proceeding, including the receipt of documents in evidence, discovery, and the times and places of hearings, were discussed and resolved.

On June 5, 1969, upon request of complain counsel, the hearing examiner issued a subpoena *duces tecum* directed to respondent Litton, calling for the production of certain documents. Respondent filed a motion to quash the subpoena *duces tecum* on two grounds: first, that it was improper as seeking a post-complaint investigation; and second, that the documents called for were not in its possession, but in the custody of the German companies. Further, it was contended that the enforcement of the subpoena *duces tecum* would violate German law prohibiting improper disclosure of corporate information. At the first prehearing conference on July 10, 1969, the examiner, after hearing oral argument, denied the motion to quash and directed the parties to attempt to negotiate informal compliance (Tr. 19-21, 32). At a prehearing conference on September 23, 1969, counsel for the parties reported that they had conferred and were working out a procedure which would effect the production of the documents sought by complaint counsel.

Subsequent thereto, after a trip to Germany by one of respondent's counsel, who had discussions with the key officials¹ and the attorneys of the acquired companies, which resulted in an arrangement whereby the requested documents would be produced and the persons whose testimony may be needed would appear voluntarily, the hearing examiner, on December 5, 1969, authorized the taking of depositions² on behalf of Commission counsel in support of their case-in-chief, and the respondent in connection with its defense, at Frankfurt, Germany, and at London, England. On application of the hearing examiner, the Commission, on December 23, 1969, issued orders authorizing

¹ Mr. Gerd E. Weers, the managing director of the acquired companies, in a letter dated October 27, 1969 (attached to the application of the parties for the taking of depositions) to one of the complaint counsel, said in part:

"To the extent that any of the documents called for or testimony to be given may include confidential information, however, I am advised by my German counsel that under German law the information divulged must be accorded confidential treatment. In discussing the requirements of German law with Mr. Adair, he has informed me that the Federal Trade Commission procedures provide for *in camera* treatment of confidential information. With the understanding that confidential treatment will be afforded any documents or testimony which require confidential treatment under German law, such information will be made available at the depositions."

² In the application for the taking of the depositions, it is stated:

"Since the persons whose depositions are required herein will not be available for the ultimate hearing on the merits, both parties believe that the presence of the hearing examiner at the deposition proceeding is necessary and desirable so that he can observe the demeanor and credibility of the witnesses and, to the extent of his authority, make appropriate rulings."

and requesting the Consul or Vice Consul of the United States in Frankfurt, Germany, and in London, England, to administer the oath or affirmation to the individuals to be deposed and to appoint the hearing examiner to preside at the taking of the depositions.

Depositions were taken in Frankfurt, Germany, from April 12 to April 24, 1970, and in London, England, from April 29, 1970 to May 1, 1970, at which times twelve witnesses testified and numerous documents were identified and received. The depositions taken in Germany and reported on typewritten pages numbered 1 through 964, and those taken in England and reported on typewritten pages numbered 1 through 287, together with the documents, were subsequently received into the record of this proceeding (Tr. 9233-38, 9248).

On January 14, 1971, four days before the commencement of formal hearings on the complaint, the Federal Trade Commission brought an action against Litton in the Federal District Court in Los Angeles (*United States v. Litton Industries*, C.A. 71-113-FW) to compel Litton to comply with Section 6(b) orders to file Special Reports in the Commission's Conglomerate Investigation, File No. 691 0629. The orders seek the production of certain information relating to Litton's growth by acquisition and its position as a conglomerate firm. Due to the pendency of this complaint, which contains allegations relating to the size of Litton, its alleged growth through mergers and acquisitions, its behavior as a conglomerate, and its acquisition of typewriter companies other than Triumph-Adler (Complaint, Pars. 5, 6, 8, 10), Litton elected not to furnish the information requested pursuant to the Commission's Section 6(b) orders on the grounds that its production would jeopardize Litton's position in the pending proceeding.³

Litton contends that the Commission's role as investigator, prosecutor and adjudicator, inherently, and as exercised in this case, has deprived it of due process of law in contravention of the Fifth Amendment of the Constitution of the United States, the Administrative Procedure Act, and the Rules of Practice of

³ During the trial of this matter, Commission counsel introduced documents (CXs 10, 48, 299), and testimony relating to aspects of Litton's conglomerate activities to which respondent's counsel objected, and Commission counsel have proposed numerous findings with regard to Litton's financial size in relation to other United States industrial corporations and its growth by acquisitions unrelated to the typewriter business (CCF 3-4, 6-8, 9, 28-57).

Initial Decision

82 F.T.C.

the Commission, and that any decision rendered by the Commission in this proceeding in the future cannot be the result of consideration by a fair and impartial tribunal based on the official record.

Commission counsel deny that they have injected into this proceeding the issues or evidence involved in the Commission's Conglomerate Investigation and that the conduct of the Commission's Conglomerate Investigation of Litton concurrently with this case would prejudice Litton in this case. However, Commission counsel have made the following contentions as to the relevancy of respondent's conglomerate history, organization and behavior to the issues in this case:

Respondent introduced evidence * * * to rebut whatever inferences may be drawn from the allegations of the complaint and the evidence offered by complaint counsel regarding Litton's financial size, behavior as a conglomerate and growth through acquisition * * * (Brief, pp. 5-6).

The inferences we urge from this evidence are the following: Litton is one of the largest, most diversified and most powerful corporations ever put together in the United States. On the basis of this record (CCF 1-14), it would tax the imagination to conceive of a mechanical or electro-mechanical or electronic venture which Litton could fail to undertake successfully if it were willing to allocate sufficient funds and resources. [Footnote omitted.]

Litton has acquired successful companies where that suited its purpose. And Litton has acquired unsuccessful companies and injected managerial capability, money and other resources to effect success where that has suited its purpose. Where Litton has encountered competitive and other resistance to its vigorous aggressive policies, it has time and time again overcome such resistance through the application of its huge reservoir of organization, talent, and money. (CCF 1-84; RPF 12-20).

This record shows that whatever serious mistakes may have been made in Litton's typewriter business, they are directly attributable to Litton management and not to some mythical intervention by outside forces.

* * * * *

In short, the inference that should be drawn from "Litton's financial size, behavior as a conglomerate and growth through acquisition" (Brief, p. 5), is that it is inconceivable, as a matter of fact and of law, that this \$2 billion company could not build an adequate office electric typewriter if it needed one, providing it was willing to take the internal initiative to do so and devote the necessary money and manpower to the task [CCR 18-19, 21].

The hearing examiner concludes that the issue raised by respondent in this connection creates a serious question as to the Commission's procedure in this case. The hearing examiner,

however, does not make a finding on this issue because it does not affect the initial decision.

Formal hearings in the United States were held at Washington, D.C., New York, New York, and Los Angeles, California, commencing on January 18, 1971, and concluding on June 21, 1971, at which time 93 witnesses were called by the parties, which testimony is reported in transcripts totaling 9248 pages, and approximately 1500 documentary exhibits totaling well over 10,000 pages were received in evidence. At the combined hearings in Europe and in the United States, 105 witnesses testified, of which Commission counsel called 18 witnesses in support of their case-in-chief and 4 witnesses for rebuttal, and respondent called 83 witnesses in connection with its defense.

A broad cross-section of representatives from every facet of the typewriter business were called as witnesses. In addition to officials of Litton, Royal and Triumph-Adler, witnesses included representatives from typewriter manufacturers doing business in the United States, a number of independent office machine dealers, and representatives of a number of purchasers and users of typewriters, including large commercial firms, banks, utilities, insurance companies, universities and secretarial schools. An economist of the Federal Trade Commission testified in support of the complaint, but not as an expert witness. Respondent presented two expert economic witnesses who submitted statistical and economic analysis of the issues involved in this proceeding and their appraisal as to the probability of any adverse effects which might result from the acquisition.

At the outset of the hearings, the hearing examiner announced that, in order to give adequate and fair consideration to all concerned, he would withhold ruling, until the record was closed, on what testimony and documents would eventually be accorded *in camera* status (Tr. 45-46). During the course of the hearings, respondent and third parties made requests for *in camera* treatment of certain documents and testimony, stating the justification therefor, and indicating the duration for which such testimony and documents should remain *in camera*. The same were then received into evidence on a temporary *in camera* basis (Tr. 45-47). At the request of the hearing examiner (Tr. 9091-92), counsel for the parties submitted memoranda containing their recommendations as to the documents and testimony received into evidence on a temporary *in camera*

Initial Decision

82 F.T.C.

basis. Upon consideration of the foregoing requests and memoranda submitted, the hearing examiner, on June 21, 1971, entered an order on the record with reference to *in camera* treatment of documents and testimony and the *in camera* expiration date (Tr. 9238-9244).

The hearing examiner, on June 14, 1971, filed an application with the Commission for an extension of time within which to file his initial decision⁴ on the assumption that the record would be closed on June 21, 1971, and on June 16, 1971, the Commission issued an order granting an extension, but not all of the time requested. The record was closed on June 21, 1971, and on that day the hearing examiner, in compliance with the order of the Commission, on the record directed that Commission counsel file their proposed findings on August 20, 1971; respondent its answer thereto and its proposals on September 20, 1971; and Commission counsel their reply on October 11, 1971. Proposals were filed by the parties as directed.

On October 28, 1971, the respondent filed its petition for leave to file a "Rejoinder Brief" and to reopen the record of this proceeding for the limited purpose of receiving into evidence specified documents with reference to relevant matters occurring after the close of the record.⁵ Commission counsel filed a response thereto on November 3, 1971 opposing the receipt of the rejoinder brief but not objecting to reopening the proceeding. On November 4, 1971, the hearing examiner issued an order and directed (1) that the rejoinder brief be received; (2) that the record be opened; and (3) that a hearing be held on November 8, 1971. Hearing was held on the scheduled day, at which time exhibits offered by respondent were received into evidence without objection, the record was closed for the receipt of evidence, and the parties were authorized to file, and did file, supplemental proposed findings with reference to the new evidence received (respondent on November 15, 1971 and Commission counsel on November 22, 1971).

The proposed findings and conclusions not hereinafter specifically found or concluded are herewith rejected as not sup-

⁴ The Commission in its rules provides (Section 3.51):

"The hearing examiner shall file an initial decision within ninety (90) days after completion of the reception of evidence, * * * or within such further time as the Commission may by order allow upon written request from the hearing examiner * * *."

⁵ Section 3.51(d)(1) of the Commission's rules provides:

"At any time prior to the filing of his initial decision, a hearing examiner may reopen the proceeding for the reception of further evidence."

ported by the record or as involving immaterial matters. The following abbreviations have been used herein: "CX" for Commission's Exhibit; "RX" for Respondent's Exhibit; "Tr." for Transcript of Proceeding; "DG" for Depositions taken in Germany; and "DE" for Depositions taken in England. Upon consideration of the entire record herein, the hearing examiner makes the following findings of fact and conclusions:

I. LITTON INDUSTRIES, INC.

The respondent, Litton Industries, Inc., was incorporated under the laws of the State of Delaware in 1953, under the name of "Electro Dynamics Corporation." In 1954, the name of the company was changed to its present title. Litton's general offices are located at 9370 Santa Monica Boulevard, Beverly Hills, California (CX 15). It is a broadly diversified company ranging from microwave technology to shipbuilding, and over its 18 years has enjoyed enormous growth in sales, assets and net earnings. For the fiscal ending July 31, 1954, it had sales of approximately \$3 million (CX 515). For the fiscal year 1970, through its worldwide operations, Litton's sales, net earnings and total assets were \$2,404,327,000, \$68,751,000, and \$1,934,012,000, respectively (CX 273). For the year 1969, Litton ranked 39th by sales, 55th in assets, and 63rd in net revenues of the largest U.S. Industrial Corporations (CX 200). Nearly half of its growth has been achieved through more than 100 acquisitions since 1953 (Tr. 1954-56).

The majority of Litton's acquisitions have been small, and almost three-quarters of its growth since 1953 (the year of Litton's formation) has been through internal expansion and foothold acquisitions. Acquisitions involving \$10 million or more in assets have accounted for only 27 percent of Litton's growth in assets since 1953. In contrast, such acquisitions accounted for an average of 34 percent of the growth in assets of the fifty companies that became newcomers to the ranks of the 200 largest industrial and mining corporations between 1954 and 1968. The newcomers naturally would have higher growth rates than the companies that were among the 200 largest in both 1954 and 1968, because the newcomers had to start from lower asset bases in 1954 to join the ranks of the 200 largest in 1968 than did the old-line corporations that were already among the 200 largest in 1954. Litton's percentage growth between 1954 and 1968 due to

large acquisition was also smaller than the median per cent of asset growth due to large acquisitions for the newcomer corporations in various sub-groups of the 200 largest that have outstanding growth records over the same period of time (Tr. 8190-8193, 8231-34).

Thus, Litton's growth from large acquisitions was less than the median percentage for the newcomers among the 29 corporations with increases in assets of 1,000 percent or more, the 32 "major conglomerates" identified in the "Celler Subcommittee" investigation of conglomerate corporations in 1970, the 25 "most active acquiring companies" defined in the Federal Trade Commission's 1969 staff "Economic Report on Corporate Mergers," the 54 corporations with increases in assets of 25 percent or more attributable to large acquisitions, and the 11 "new conglomerates," also identified in the FTC's 1969 staff Economic Report. Further, evidence introduced by Commission counsel shows that Litton's acquisitions since the company's formation have brought it into competition with over 40 of the 200 largest industrial corporations in 38 separate product lines with many of the companies being substantially larger than itself (Tr. 8202, 8205, 8207, 8211-13, 8224-25).

Dr. Betty Bock, who appeared as an economic expert, testified as follows concerning Litton's growth:

Among the newcomers, Litton's high rate of growth resulted from the fact that its origin dates only from the early 1950's. And no matter how one views the figures, it is plain that Litton's growth in assets occurred primarily through small acquisitions and internal investment. Large acquisitions have played a minor role in Litton's growth. * * * But to the extent that large acquisitions have contributed to Litton's growth, they have helped bring Litton into competition with the country's largest industrial corporations. * * * In 15 years it grew from virtually nothing to the point where it was competing in almost 40 [markets]. * * * These facts do not suggest that Litton was seeking by acquisition to avoid competition or to reduce the competitive impact of its encounters with other companies. The fact that Litton now faces a broad range of the country's largest corporations in an equally broad range of markets suggests that its growth has served to increase competition, not the reverse (Tr. 8232-33).

Dr. J. Fred Weston, who also appeared as an economic expert, analyzed a variety of performance measures and concluded that conglomerate firms have outperformed industrial and non-industrial firms by a substantial margin and have "made a positive contribution to economic efficiency;" that Litton and the other companies that entered the group of 200 largest corpora-

tions between 1954 and 1968 represented increased competition; and that, while some conglomerate firms have grown by increasing their ratios of debt to total assets and debt to equity, Litton has maintained relatively conservative debt ratios in line with other industrial firms (Tr. 8259, 8268, 8282, 8284).

Litton is organized into four major operational groups comprising approximately 120 divisions (Tr. 1250, 7146). In 1970, the four major operational groups were: (1) Defense and Marine Systems, (2) Industrial Systems and Equipment, (3) Professional Services and Equipment, and (4) Business Systems and Equipment (CX 273; Tr. 1250). The Defense and Marine Systems Group, which formed the nucleus of Litton's initial business, includes the manufacture and sale of navigation and control systems, communications and electronic data systems, and marine engineering and production (CX 273; Tr. 1250-51). The Industrial Systems and Equipment Group includes machine tools, material handling, engineering and construction, electronic components, electric motors and power drives and controls (CX 273). The Professional Services and Equipment Group includes medical products, educational and professional publishing, resource exploration, and food products and services (CX 273). The Business Systems and Equipment Group includes business machines and systems, retail and revenue systems, typewriters, office copiers, specialty paper, printing and forms, and business furnishings and fixtures (CX 273). This group, with which we are principally concerned in this proceeding, had its beginning in 1958 when Litton acquired the Monroe Calculating Machine Company.

In 1970, the Defense and Marine Systems Group accounted for 25 percent of Litton's total sales and service revenues; the Industrial Systems and Equipment Group accounted for 29 percent; the Professional Services and Equipment Group accounted for 17 percent; and the Business Systems and Equipment Group accounted for 29 percent of Litton's total sales and service revenues (CX 273).

Mr. Roy L. Ash,⁶ Litton's president, who has been with the

⁶ Mr. Ash served as chairman of the President's Advisory Council on Executive Organization which in early 1970 issued a report recommending reorganization of the executive branch of the federal government, including some recommended changes in the Federal Trade Commission. Mr. Ash refrained from participating in any way in the investigation, discussions, deliberations or recommendations with respect to the Federal Trade Commission. Mr. Ash testified to this effect when called as a witness by Commission counsel (Tr. 1283-84; RX 1541).

company from the outset, described the concept of management which has been applied to its business. He testified in part:

Our basic concept is one that attempts to bring the general management responsibilities as close to the product and as close to the marketplace as possible. In effect, these 120 divisions are business units of themselves (Tr. 7146).

* * * * *

Some companies would form them into a more monolithic structure with functional responsibilities being the prime ones.

We, instead, prefer to form around successive levels of general management on the theory that we can be much more knowledgeable about the markets, the technologies to serve them and with that—and having more efficient total operation that way than if we had just a monolithically-structured organization where there was only one general manager and everybody else would only be a functional manager (Tr. 7147).

* * * * *

Our method of management is one where the top level of management considers itself more a management of managers rather than a management of operations.

We attempt to bring the general management structure as near to the product in the marketplace as possible, and, therefore, successive levels of management are much more oriented towards the selection, training, evaluation, assistance to managers in their managerial capacity, rather than assuming away from them their functional operational responsibilities (Tr. 7149).

* * * * *

Each division manager is responsible for the totality of his business enterprise, all the way from research and development to manufacturing to marketing to the investments necessary to carry out his business to the point of responsibility for the profit from doing so (Tr. 7150).

* * * * *

Then, another method of management control by corporate management is that certain decisions and judgments are reserved for corporate management to make. We, in effect, parallel the concept of the Constitution: All rights and responsibilities not reserved are hereby delegated (Tr. 7151).

Under Litton's concept, each of Litton's 120 divisions is a "profit center," with a manager responsible for operating the division as a total business enterprise. This includes accountability for research and development, marketing, making investments necessary to run the business, and, ultimately, for making a profit. Litton executives are expected to circulate among the divisions under their jurisdiction as much as possible. They spend about three-quarters of their time in the field. This is one of the most important parts of Litton's management process. When a Litton division is operating poorly, corporate and divisional management provide extra assistance. A Litton management consulting

group is available to work with division management and, if this is not successful, the division management may be changed (see CCF 18, 21, 23).⁷

Litton has no single measurement of divisional performance. Performance is measured by many factors, including profits, reductions of losses, improvements of positions, and return on gross assets, sometimes referred to as "ROGA." While all of these are important measurements, no one is determinative. The direction of Litton's divisions is sometimes charted in Opportunity Review sessions. Mr. Ash, generally, and others in Litton's management meet directly with division managers to hear expressions of their understanding of the business environment ahead and to discuss business strategies they might undertake (see CCF 20, 22; Tr. 8113).

Litton is considered a leader in the forms of management that a number of industries are using today. Numerous publications, including both the news press and the professional press, have identified Litton as being in the forefront of some of the newer modern management techniques. Mr. Ash testified that Litton's concept of management provides it with a reservoir of managerial talent and Litton is adept at applying established or evolving technology in creating new businesses and improving old businesses (see CCF 12, 13).

As to the operations of Litton's divisions, Mr. Ash said that, of the 120 divisions, 100 are excellent, 16 or 18 are acceptable, and there are always two or three that require corporate attention (Tr. 7153-54).

Monroe Calculating Machine Company, in business for 47 years, acquired in 1958, was Litton's largest acquisition as of that time, and was the basis of the Litton Business Equipment Group. After the acquisition, Monroe developed electronic calculators with the use of electronic techniques from Litton's Data Systems Division. This was accomplished by Litton's moving an electronic specialist from its Data Systems Division to Monroe to become head of research and development. This provided an infusion of Data System's technical competence in electronics into the Monroe organization (see CCF 56; Tr. 7222). The merger brought to Litton a network of 325 sales and service branches in the United

⁷ A number of the findings in this initial decision are taken from or are summarized from Commission counsel's proposed findings and respondent's proposed findings. For ease of reference, Commission counsel's proposed findings are cited by paragraph number as "CCF" and respondent's proposed findings are cited by paragraph number as "RPF."

States, five wholly-owned foreign subsidiaries with dealer outlets throughout the world, and a modern manufacturing plant in Amsterdam, Holland. By 1970, Monroe's products included full keyboard electric adding machines, advanced electronic display and printing calculators, and electro-mechanical printing calculators (CXs 14, 273, 518; Tr. 1263).

The November 1959 acquisition of controlling interest in Sweda (Svenska Dataregister, A. B., of Stockholm, Sweden) and of 100 percent ownership of that company's American, Swiss, Canadian and Mexican distributing companies marked Litton's entrance into the field of cash registers and point of sale recording equipment, a field which up to now has been the domain of a limited few manufacturers (CX 520).

Mr. Ash, after testifying that both Sweda and Monroe were examples of Litton's very successful operations, continued (Tr. 7154-56):

When we acquired Sweda in 1959, its product was electro-mechanical cash registers, had a very small part in the market.

National Cash really dominated the market, well, around the world, and they were just like IBM is in office electric typewriters.

* * * * *

We entered in a very, very small way and are now going to be already on the way to be one of the significant companies, along with three or four others that will provide a new kind of competition in the market that one company had all to itself for 80 years.

Litton explored the possibility of entering the typewriter market as early as 1957 or 1958 through the acquisition of the Underwood Company (Tr. 8087-88). A series of discussions was held between top officials of Litton and Underwood, but the negotiations failed and Underwood was later acquired by Ing. C. Olivetti & Company of Italy (Tr. 1576-78).

In February 1965, Litton acquired Royal-McBee Corporation. Royal manufactured manual and electric typewriters for offices and schools, portable typewriters for the home, typewriter supplies and, through its McBee organization, accounting forms and related products (CX 11; Tr. 915, 1271, 6918-19, 7228; see CCF 66, 68, 70).

Litton's acquisition of Royal was its entry into the typewriter business. The acquisition was intended to satisfy Litton's desire to complement its business equipment product line. Litton believed that typewriters were a major business product that was des-

tined to grow and become more important in the future. Mr. Ash, called as a witness by Commission counsel, testified:

Our view at that time was very parallel to that that we had about Monroe at an earlier time and of course what we have had about other industries at earlier times. But to get to that one particularly, at that time we saw, and the public generally saw, the typewriter business as one making free standing products, electro-mechanical in nature, used broadly in a market, but we were absolutely convinced that in the future there would be a major change, a major revolution, not just evolution, in that industry where again the potential of electronics would be brought to bear not in just making another free standing product but making products that even today we haven't yet seen. Word processors of various kinds, composing machines in effect, where the whole process of preparing correspondence, preparing typed documents of various kinds, would be done by a completely different approach than just a free standing desk electro-mechanical product.

That evolution has already begun. In another five or another ten years I think we will see around us in many offices these kinds of different products that will just change the whole nature of what an industry is and what its products are.

This was our belief as we entered that business just as in parallel it was a similar belief as we entered the calculating machine business. Fortunately—it does not matter whether it is fortunate or not—but because of the different nature of calculating, dealing in numerical data rather than alphabetical data, the technology has an earlier application and can more readily be brought into the marketplace. Yet we are absolutely convinced even now that there will be a quite different complex of machines serving the data recording market, the data transmission market. There will be input devices, transmission devices, hard and soft copy, storage and retrieval systems, all an integral part of a new form and a new dimension of an industry and out of which of course will come a lot of change and a lot of different compositions of the industry in general. That was our basic belief that we had then, that we still hold to (Tr. 1266-68).

In March 1966, Royal acquired Willy Feiler, GmbH, a small manufacturer of adding machines in West Berlin, Germany. Willy Feiler also had a design of a portable electric typewriter which was in a pre-prototype stage and had never been marketed (Tr. 8123-24; see CPF 73).

In November 1966, Litton acquired Imperial Typewriter Company Limited of Leicester, England, to give Royal an entry into the United Kingdom-British Commonwealth market (Tr. 937; see CPF 74). Imperial manufactured office and portable typewriters which it sold in the United Kingdom and British Commonwealth countries (DE 130-131). The company had been declining since 1960 and a number of attempts to strengthen it through diversification had been unsuccessful (DE 105-110, 171-173, 176-181, 206, 210-213, 219-220, 223-224, 232-233, 251, 253).

Its management determined that liquidation or sale to Litton were the only alternatives available to the company (DE 187-189, 230-231, 233-234, 239-240). Its office electric typewriter was of inferior quality and was not successful; it had not been successful in developing a portable electric typewriter; and, shortly after the acquisition, Imperial's production of office electric and portable manual typewriters was discontinued (DE 125-127, 134-136, 161, 168, 185).

The acquisition challenged by the complaint was the purchase on or about January 3, 1969 by Litton of about 98 percent of the stock of Triumph Werke Nuernberg, A.G., which in turn owned approximately 82 percent of the stock of Adlerwerke vorm Heinrich Kleyer A.G. from Max Grundig of Nuernberg, Germany (Complaint, Par. 23; Answer, Par. 23; DG 27, 43; CXs 4-9). Litton paid Grundig a total of 220,000,000 German Marks, or approximately \$55 million, for the stock involved (Tr. 958). In fiscal 1968, Triumph Werke had gross sales of \$29.3 million and Adlerwerke had gross sales of \$19.1 million (CX 187, p. 30; CX 188, p. 7). As of December 31, 1968, the total consolidated net worth of the Triumph-Adler companies acquired by Litton was \$16,237,112, and the consolidated net income of the companies was \$3,272,709 (DG 531, 533; RX 70 B-C).

In determining whether the acquisition of Triumph-Adler by Litton violates Section 7 of the Amended Clayton Act, the hearing examiner will direct his attention first to the typewriter businesses of the two companies in the context of the typewriter industry, worldwide and in the United States. Thereafter he will analyze market trends within the defined relevant markets, and then, of most importance in this case, examine the changing market characteristics and behavior in the typewriter industry over the past ten years, including the decline of the traditional typewriter companies in the sale and distribution of office typewriters, the growth and importance of automatic typewriters, and the ability of Royal to survive as a viable typewriter company.

II. TRADE AND COMMERCE

A. Companies Engaged in the Typewriter Business in the United States.

1. *Introduction*a. *Worldwide*

In analyzing the United States typewriter industry and considering the actual and potential effects of the acquisition in the United States, it is necessary to consider the United States markets in relation to the sales and production of typewriters in the rest of the free world. There are a number of reasons why the typewriter industry must be looked at in its worldwide dimensions. All typewriter companies sell throughout most of the free world, and most of them have production facilities in more than one country, based on comparative production advantages (RXs 29, 632 E-6, I, K, 819, 1039, 1534 H-O, 1555 A-D, 1571 B, D, H-M, 1582 A-D, 1611-13; Tr. 146-147, 151-152, 422-423, 975-976, 1517, 4493-95, 4498-5000, 4714).

As the import-export data in this record show, the trade and commerce in typewriters is international in scope. Typewriter parts, sub-assemblies, and complete typewriters are imported to and exported from and assembled in various parts of the free world and sold in all parts of the free world. This case, which is one of the few litigated cases in which the acquired company was a foreign-owned company, highlights the international scope of the industry. Eighty-one percent of Triumph-Adler's sales are made in Europe and other parts of the world and only 19 percent were made in the United States. It considered its major world competition to be IBM and the European-based typewriter manufacturers. Indeed, its exports to the United States in 1969 were less than \$10 million (RXs 645 A-B, 1534 J-O, 1571 E, H-M, 1617; Tr. 146-147, 422-423, 796, 1517, 4493-95, 4714, 4745; DG 897).

The international trade and commerce in typewriters is shown by the substantial shift in production away from the United States and to the rest of the free world. Before World War II, the production of typewriters in the United States accounted for the major share of the total free world production (Tr. 1567, 1573). Now, however, production in the rest of the free world substantially exceeds production in the United States. This movement of typewriter production abroad is significant in assess-

ing the ability of United States typewriter companies to produce effectively in the United States (Tr. 8545-8550). The switch of United States production abroad is demonstrated by a comparison of the import-export ratios. In 1965, the ratio of imports to exports was 1.6 to 1; by 1969, it was 3.1 to 1 (RX 1882, and see RXs 62, 632 A-1, 1527 D, 1528 B, 1531, 1534 H-L, 1536 A, 1555, 1556 A-C, 1564 C, 1567, 1571 H-J, 1573, 1582, 1611-13, 1667, 1718, 1821).

A most significant development has been the increasing trend of imports into the United States by the traditional American typewriter companies.⁸ While in 1963, the dollar value of imports of typewriters by the traditional companies amounted to \$24.1 million, by 1969 this figure had grown to \$41.4 million. While the traditional companies were importing 3.2 typewriters into the United States for each typewriter they exported in 1963, by 1969 they were importing almost 8 typewriters for each one they exported from the United States (RX 1883; Tr. 8545-46).

IBM is the only typewriter company whose typewriter exports have consistently exceeded its imports. In 1963, IBM exported \$6.7 million of typewriters from the United States, while importing only \$9,000 of typewriters. In 1969, IBM exported over \$20 million of typewriters as against imports of slightly more than \$500,000, or approximately 40 typewriters for each typewriter it imported (RXs 1882, 1883).

The low wage rates in foreign countries in relation to United States wage rates have been a principal reason for the movement of typewriter production abroad. As of 1968, the approximate hourly wage rates in various countries in Europe, Japan and the United States were as follows: Germany \$1.75; England \$1.50; Italy \$1.56; Sweden \$2.83; The Netherlands \$1.93; France \$1.86; Japan \$.78; and the United States \$4.49 (RX 328; Tr. 7365-67, 8545-46).

The high wage rate differential between the United States and other countries can be offset only if a company has a sufficient volume of typewriter production in the United States so that it can automate its production lines to the point of reducing the per unit labor costs. Of the United States manufacturers of heavy duty office electric typewriters, only IBM is in a position

⁸For ease of reference, Underwood, Smith-Corona, Royal and Remington are referred to herein as the "traditional" typewriter companies.

to achieve economies of scale necessary to manufacture profitably in the United States (Tr. 8545-47). The efficiency of its high production at its Lexington, Kentucky, plant results in cost savings that outweigh the relatively high cost of labor.

In fact, a number of typewriter plants in the United States have been closed. R. C. Allen ceased its office typewriter production in November 1970 (see CCF 526; Tr. 512). SCM closed its Orangeburg, South Carolina, typewriter plant in June of 1970, and ceased the production of office manual typewriters and heavy duty office electric typewriters at its Cortland, New York, plant at the same time (Tr. 582, 652-655, 2359-2360).⁹ Royal closed its Springfield, Missouri, portable typewriter plant in April 1969, shortly thereafter began phasing out production of office typewriters at its Hartford plant, and began purchasing portable typewriters from Japan (RXs 403, 405 A-D; Tr. 7070-74, 7769-70). Olivetti closed the Underwood typewriter plant in Hartford, Connecticut, in June 1968, replacing part of its production capacity with a factory in Harrisburg, Pennsylvania, which, along with typewriters, also produces desktop computers (RX 695, pp. 9, 14; Tr. 4744-45, 4747-49). Remington had ceased production of portable typewriters in the United States in the 1950's, and it closed its Glasgow, Scotland, plant in 1968 which had been making office manual typewriters. Remington now imports all of its portable typewriters from either Holland or Japan (Tr. 4390, 4435, 4498-4502, 4537-4538). In September 1971, Remington announced that it was discontinuing production of office manual typewriters at its Elmira, New York, plant at the end of its current fiscal year, reducing the production of office manual typewriters outside the United States, and reducing the production of office electric typewriters at its Elmira plant (RX 1917 A-B).

As a consequence, the United States, which accounted for over 31 percent of world typewriter production in 1968, accounted for only 26 percent in 1969 even though the overall production of typewriters has expanded. The United States share of total free world typewriter production declined over one-third in 1966 to barely more than one-quarter in 1969. During this period, the rest of the free world increased its production share from 63.6 percent

⁹ SCM's 1970 Annual Report stated that the company had "discontinued production of manual and deluxe electric office typewriters * * * since the return on further investments required would not meet our standards" (RX 1193, pp. 6, 30, 35).

to 74 percent. Excluding IBM, the United States share of total free world production has declined from 28.4 percent in 1966 to 17.8 percent in 1969. Thus, typewriter production has moved overseas at an increasing rate since 1966.

United States production of portable typewriters declined drastically from 59 percent of total production in 1966 to 31 percent in 1969. European portable typewriter production remained constant at 20 percent, while Japan increased its share of free world portable typewriter production from 27 percent to 45 percent (RXs 62 C-D, 1527 D, 1528 B, 1531, 1534 L, 1555 A-D, 1556 C, 1564 C, 1571 H, 1573 B, 1582 A-D, 1613, 1667, 1718, 1821).¹⁰

As the above findings show: (1) the traditional United States companies have been forced to seek foreign sources of production to compensate for their inability to manufacture typewriters economically in the United States; and (2) by 1969 the Japanese manufacturers had captured almost one-half of the total free world production of portable typewriters.

b. United States

Remington was the first commercial manufacturer of typewriters in the United States, introducing its first model in 1873. Underwood Typewriter Company was formed in 1896. It was followed in 1903 by L. C. Smith & Bros. Typewriter Company, and in 1904 by the Royal Typewriter Company, Inc. (see CCF 473, 512; Tr. 422, 1559; RX 1192, p. 19; CX 15 Z-2).

In the early 1930's, Underwood was the dominant typewriter company with over 50 percent of the world market for typewriters (see CCF 498; Tr. 1566-67). Prior to World War II, Remington, Underwood, L. C. Smith and Royal controlled over 95 percent of the typewriter business in the United States (see CCF 455; Tr. 1568-69, 1573). The principal business of each company was the sale of typewriters (Tr. 2991-92). In addition to the four traditional typewriter companies, the Woodstock Typewriter Company also had manufactured and sold manual office typewriters since the early 1900's (Tr. 512). IBM entered the industry in 1933 when it acquired the rights to manufacture the Electromatic typewriter from the Northeast Manufacturing Company (RX 488; Tr. 1386, 1567-1568). Several European

¹⁰ For the first ten months of 1969, Japanese exports of typewriters amounted to 768,428 typewriters, which was an increase of 21 percent over the previous year's exports (RX 94, p. 4).

typewriter companies also began to sell typewriters in the United States prior to World War II.

With the advent of World War II, the four traditional typewriter companies were required by the United States Government to convert to war production, and to discontinue the manufacture of typewriters (see CCF 457; Tr. 1386-87, 1569, 1574, 2990, 2992, 4531). Underwood manufactured carbines; Remington produced small arms; and Royal and Smith-Corona produced military hardware of one form or another (see CCF 457, 490, 499, 513; Tr. 1574).

Commission counsel contend that these companies were required to convert to war production as punishment for having been charged with a conspiracy (CPF 457). On April 20, 1940, the Department of Justice brought an antitrust action against the companies charging them with conspiring to restrain trade in the sale of typewriters. Concurrently with the filing of the complaint, the government and each of the defendants consented to the entry of an order settling the case. No testimony was taken, there were no findings of fact and no admission or adjudication that any violation of law had occurred. *United States v. Underwood Elliott Fisher Co.*, CCH 1940-1943 Trade Cas. ¶ 56,027 at p. 81 (S.D.N.Y. 1940).

Commission counsel's argument that the four companies were required to discontinue the manufacture of typewriters as punishment for alleged price fixing is totally without support in the record and appears to have been an unfounded attempt to discredit Royal in this case. In fact, the change to war manufacture by Royal and the other typewriter companies was only one of many similar occurrences of the time. The War Powers Act of 1940 (Act of June 28, 1940, Pub. L. 671, c. 440, 76th Cong., 3rd Sess., 54 Stat. 676), as amended, gave the President power to order the discontinuance of the manufacture of products deemed non-essential, and the shift to the production of products deemed essential to the war effort. Orders issued by the War Production Board halted the manufacture of many products not essential to the war effort. Among these products were "automobiles * * * refrigerators, laundry equipment, vacuum cleaners, cast iron tubular radiators, *typewriters*, oil burners, outboard motors and sewing machines" (CCH War Law Service [copyright 1943], Pars. 30, 424-30, 426).

Only IBM and Woodstock, which was acquired by R. C. Allen

