

IN THE MATTER OF  
THE HOUSE OF SCHILLER, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF  
THE FEDERAL TRADE COMMISSION ACT

*Docket C-2723. Complaint, Aug. 27, 1975-Decision, Aug. 27, 1975*

Consent order requiring a Long Island City, N.Y., manufacturer and distributor of plastic slipcovers, among other things to cease using bait and switch tactics in the sale of its merchandise.

*Appearances*

For the Commission: *Jerry R. McDonald.*

For the respondents: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The House of Schiller, Inc., a corporation, and Lawrence Kane and Donald Sherman, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The House of Schiller, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 41-40 27th St., Long Island City, N.Y.

Respondents Lawrence Kane and Donald Sherman are individuals and are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of plastic slipcovers to members of the purchasing public at retail.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped from their place of business located in the State of New York, to purchasers thereof located in various other States, and maintain, and at all times mentioned herein

have maintained, a substantial course of trade in said merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their merchandise, respondents have made, and are now making, numerous statements and representations in advertisements inserted in newspapers of general interstate circulation and by oral statements and representations of their sales representatives and agents to prospective purchasers with respect to said merchandise and services.

Typical and illustrative of said statements and representations, but not all inclusive thereof, is the following:

Sofa \$14.95 Chair \$8.50 3 piece sectional \$29.95

PAR. 5. By and through the use of said above quoted statements and representations, and others of similar import and meaning but not expressly set out herein, separately and in connection with the oral statements and representations of respondents' salesmen to customers and prospective customers, respondents have represented and are now representing directly or by implication that:

1. Respondents are making a bona fide offer to sell the advertised merchandise at the price and on the terms and conditions stated in the advertisements.

PAR. 6. In truth and in fact:

1. Respondents' offers are not bona fide offers to sell said merchandise at the price and on the terms and conditions stated in the advertisements. To the contrary, said offers are made for the purpose of obtaining leads to persons interested in the purchase of plastic slipcovers. Members of the purchasing public who respond to said advertisements are called upon in their homes by respondents or their salesmen who make little or no effort to sell to the prospective customer the advertised merchandise. Instead, they exhibit what they represent to be the advertised merchandise which, because of its poor appearance and condition, is frequently rejected on sight by the prospective customer. Higher priced merchandise of superior quality is thereupon exhibited, which by comparison disparages and demeans the merchandise. By these and other tactics, purchase of the advertised merchandise is discouraged, and respondents, through their salesmen, attempt to sell and frequently do sell the higher priced merchandise.

Therefore, the statements and representations as set forth in Paragraphs Four and Five, hereof, were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business as aforesaid, and at all times mentioned herein, respondents have been, and now are, in

substantial competition in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, with corporations, firms and individuals engaged in the sale of merchandise of the same general kind and nature as the aforesaid merchandise sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that such advertisements and representations were and are true, and into the purchase of substantial quantities of respondents' said merchandise by reason of said erroneous and mistaken beliefs.

PAR. 9. The aforesaid acts and practices of respondents as herein alleged were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

#### DECISION AND ORDER

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

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

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent The House of Schiller, Inc. is a corporation organized, existing and doing business under and by virtue of the laws

of the State of New York with its offices and principal place of business located at 41-40 27 St., Long Island City, N.Y.

Respondents Lawrence Kane and Donald Sherman are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation.

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

#### ORDER

*It is ordered,* That respondents The House of Schiller, Inc., a corporation, its successors and assigns, and its officers, and Lawrence Kane and Donald Sherman, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale and distribution of plastic slipcovers or other merchandise to the public at retail, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using, in any manner, a sales plan, scheme, or device wherein false, misleading, or deceptive statements or representations are made in order to obtain leads or prospects for the sale of plastic slipcovers or other merchandise or services.

2. Making representations, directly or indirectly, orally, or in writing, purporting to offer merchandise or services for sale when the purpose of the representation is not to sell the offered merchandise or services but to obtain leads or prospects for the sale of other merchandise or services at a higher price.

3. Disparaging in any manner, or discouraging the purchase of any merchandise or services which are advertised or offered for sale.

4. Representing, directly or indirectly, orally or in writing, that any merchandise or services are offered for sale when such offer is not a bona fide offer to sell such merchandise or services.

5. Failing to maintain and produce for inspection and copying for a period of three years adequate records to document for the entire period during which each advertisement was run and for a period of six weeks after the termination of its publication in press or broadcast media:

a. the cost of publishing each advertisement including the preparation and dissemination thereof;

b. the volume of sales made of the advertised product or service at the advertised price; and

c. a computation of the net profit from the sales of each advertised product or service at the advertised price.

*It is further ordered,* That respondents shall maintain for at least a one (1) year period, following the effective date of this order, copies of all advertisements, including newspaper, radio and television advertisements, direct mail and in-store solicitation literature, and any other such promotional material utilized for the purpose of obtaining leads for the sale of plastic slipcovers and other merchandise, or utilized in the advertising, promotion or sale of plastic slipcovers and other merchandise.

*It is further ordered,* That respondents, for a period of one (1) year from the effective date of this order, shall provide each advertising agency utilized by respondents and each newspaper publishing company, television or radio station or other advertising media which is utilized by the respondents to obtain leads for the sale of plastic slipcovers and other merchandise, with a copy of the Commission's news release setting forth the terms of this order.

*It is further ordered,* That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents who are engaged in the offering for sale and sale of respondents' products, or in any aspect of preparation, creation, or placing of advertising and that respondents secure a signed statement acknowledging receipt of said order from each such person and that respondents distribute a copy of this order to each of their operating divisions.

*It is further ordered,* That respondents maintain full and complete records of all complaints and correspondence received from customers, or any memoranda in connection therewith, for a period of two years after receipt.

*It is further ordered,* That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

*It is further ordered,* That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business addresses and a statement as to the nature of the business or employment in which they are engaged as well as a description of their duties and responsibilities.

*It is further ordered,* That no provision of this order shall be construed in any way to annul, invalidate, repeal, terminate, modify or

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exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or State regulatory agencies. No provision of this order shall be construed to imply that any past or future conduct of respondents complies with the rules and regulations of, or the statutes administered by, the Federal Trade Commission.

*It is further ordered,* That respondents 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 this order.

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IN THE MATTER OF

THE BUDD COMPANY

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

*Docket 8848. Complaint, June 18, 1971—Decision, Aug. 29, 1975*

Order dismissing complaint issued against a Philadelphia, Pa., automotive parts supplier for alleged violation of Section 7 of the Clayton Act. The Commission vacated the initial decision of the administrative law judge, finding respondent's acquisition of Gindy Manufacturing Corporation to be procompetitive rather than anticompetitive as alleged in the complaint.

*Appearances*

For the Commission: *K. Keith Thurman, Ronald J. Dolan and James C. Egan, Jr.*

For the respondent: *Ralph W. Brenner, Edward R. Sandell and T. Michael Mather, Montgomery, McCracken, Walker & Rhoads, Philadelphia, Pa.*

COMPLAINT

The Federal Trade Commission having reason to believe that The Budd Company, a corporation subject to the jurisdiction of the Commission, has acquired the stock of Gindy Manufacturing Corporation, a corporation, in violation of Section 7 of the Clayton Act (15 U.S.C. §18), hereby issues this complaint, pursuant to Section 11 of that Act (15 U.S.C. §21), stating its charges in that respect as follows:

## I. Definition

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

(a) "Containers and chassis," as used here, refer to large, closed box-type structures which can be used for the intermodal transportation of goods, by rail, ship or motor carrier and chassis used to transport containers. The container is detachable from the chassis of a trailer or semi-trailer when so used. Sizes are now generally standardized to 8 feet wide, 8 feet high and either 20 feet or 40 feet long, although a few odd sizes are also made.

(b) "Van trailer," as used here, refers to a large box-type structure attached permanently to a chassis for use as a truck trailer or semi-trailer. Among the principal types are:

- (1) Closed-top dry freight
- (2) Open-top.

## II. The Budd Company

2. Respondent, The Budd Company (hereafter "Budd") is now, and was at the time of the acquisition, a Pennsylvania corporation with its principal office, and place of business located at 2450 Hunting Park Ave., Philadelphia, Pa.

3. In 1967, Budd had sales of \$330.9 million, and assets of \$264.5 million. In that year it was the 250th largest industrial corporation in the Nation in total sales. In 1968, its sales increased to \$469.5 million and assets increased to \$346.7 million making it the nation's 209th largest industrial corporation in total sales. By 1969, Budd had annual sales of \$561.7 million and assets of \$402 million and in terms of sales had progressed to rank 191st among the nation's largest industrial corporations.

4. Budd is one of the largest independent automotive suppliers in the nation and the largest independent supplier of body components to the automotive industry. Budd manufactures automotive bodies, wheels, rims, hubs, drums, brakes and other automotive products. It also produces jigs, dies and fixtures used in the manufacture of automotive bodies and components, railroad cars, metal stampings and industrial plastic products. Approximately 85 percent of its sales are in the automotive field.

5. Prior to its acquisition of Gindy Manufacturing Corporation, Budd surveyed the transportation equipment field, including manufacturers of van trailers and containers and chassis, with a view to acquisition of such companies. As a major manufacturer of metal stampings and parts such as wheels, rims, hubs, and drums, Budd made

many of the parts used in the manufacture of van trailers and container chassis. Furthermore, Budd has designed and produced components used in the manufacture of stainless steel dry freight van trailers and aluminum containers.

6. By virtue of its position as a substantial manufacturer and supplier of transportation equipment and component parts, its financial resources, its marketing knowledge and its demonstrated interest in entering the van trailer and container and chassis industry, Budd was, prior to Oct. 22, 1968, one of the most likely potential entrants into the manufacture and sale of van trailers and containers and chassis.

7. At all times relevant herein, Budd sold and shipped its products throughout the United States and was and is now engaged in commerce as "commerce" is defined in the Clayton Act.

### III. Gindy Manufacturing Corporation

8. Prior to its acquisition by Budd on Oct. 22, 1968, Gindy Manufacturing Corporation (hereafter "Gindy") was a Pennsylvania corporation with its principal office and place of business located in Downingtown, Pa.

9. Gindy was engaged principally in the manufacture, sale and distribution of van trailers and containers and chassis. Its manufacturing and assembly facilities were located in Eagle, Lebanon and Honey Brook, Pa.; Pennsauken, N.J.; Collinsville, Va.; and St. Louis, Mo.

10. For the fiscal year ending May 31, 1968, Gindy's sales were approximately \$32.2 million, and its assets amounted to approximately \$44 million.

11. In calendar year 1968, Gindy was a substantial manufacturer and seller of van trailers and containers and chassis. With sales of \$32.2 million, it ranked fourth in the country in the sale of van trailers; with sales of \$26.7 million, it ranked fourth in the country in the sale of closed-top dry freight van trailers; with sales of \$3.1 million, second in the sale of open-top van trailers; and, with sales of \$3.1 million, sixth in the sale of containers and chassis. In that year, Gindy accounted for 8.4 percent of van trailer shipments, 10.8 percent of closed-top dry freight van trailer shipments, 15.9 percent of open-top van trailer shipments and 3.8 percent of container and chassis shipments. In calendar year 1969 Gindy's shipments of van trailers increased to \$42.6 million, and its market share increased to 8.8 percent. In that same year its shipments of closed-top dry freight van trailers increased to \$40.3 million, making Gindy the 3rd largest supplier with 12.9 percent of shipments. A significant increase in Gindy's position in the shipment of containers and chassis also occurred in 1969; its value of shipments increased to

\$9.0 million making it the 3rd largest supplier with 9.9 percent of that market.

12. At all times relevant herein Gindy sold and shipped its products throughout the United States and engaged in commerce as "commerce" is defined in the Clayton Act.

#### IV. The Acquisition

13. On or about Oct. 22, 1968, Budd acquired all of the then issued and outstanding capital stock of Gindy, aggregating 62,730 shares, for approximately 900,000 shares of Budd common stock. At the time of the acquisition the Budd stock exchanged for Gindy was valued at approximately \$24 million. Gindy has been operated as a Budd subsidiary since the acquisition.

#### V. Trade and Commerce

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

- (a) Van trailers
- (b) Containers and chassis.

The relevant product sub-markets are:

- (a) Closed-top dry freight van trailers
- (b) Open-top van trailers.

15. The manufacture of van trailers and containers and chassis is a significant industry in the United States. During 1968, the approximate total value of shipments in the relevant markets and submarkets by domestic producers was as follows:

- (a) Van trailers, \$381.7 million;
- (b) Closed-top dry freight van trailers, \$246.1 million;
- (c) Open-top van trailers, \$19.8 million; and
- (d) Containers and chassis, \$81.6 million.

During 1969, the approximate total value of shipments in the relevant markets and submarkets by domestic producers was as follows:

- (a) Van trailers, \$486.4 million;
- (b) Closed-top dry freight van trailers, \$312.3 million;
- (c) Open-top van trailers, \$16.3 million; and
- (d) Containers and chassis, \$91.6 million.

16. The van trailer manufacturing industry is marked by a high degree of concentration. In 1968, the four largest companies accounted for approximately 58.9 percent and the eight largest companies for approximately 81.1 percent of total industry sales. The closed-top dry freight van trailer market is even more highly concentrated with the

top four firms accounting for 65.9 percent of 1968 shipments and the top eight firms accounting for 84.8 percent. Concentration in the open-top van trailer market is also high, with the top four firms accounting for 56.9 percent of 1968 shipments and the top eight firms accounting for 72.1 percent. Concentration in the sale of containers and chassis is extremely high; in 1968 four firms accounted for 90.4 percent of shipments and the top eight for virtually all of the shipments in this market.

17. By 1969 concentration in the shipment of van trailers and closed-top dry freight van trailers had increased. In that year the top four firms accounted for 61.5 percent of van trailer shipments and the top eight firms for 81.7 percent. In 1969 the top four firms accounted for 72.0 percent of closed-top dry freight van trailer shipments and the top eight firms for 88.7 percent.

18. Of major importance to most purchasers of van trailers and containers and chassis, in many instances governing the purchaser's choice of supplier, are the terms relative to extent, duration, and rate of financing for proposed sales transactions. Access to significant financial resources which will permit a manufacturer to extend generous credit on easy repayment terms constitutes a decisive competitive advantage in the sale of van trailers and containers and chassis.

19. Entry into the manufacture and sale of van trailers and containers and chassis is difficult. A successful manufacturer and supplier of van trailers and containers and chassis must possess manufacturing and marketing knowledge of transportation equipment, must have ample financial resources, and must possess the ability to accept, service and dispose of substantial numbers of used trade-in van trailers.

#### VI. Effect of the Acquisition

20. The effects of the acquisition of Gindy by Budd may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of: (1) van trailers, (2) closed-top dry freight van trailers, (3) open-top van trailers, and (4) containers and chassis throughout the United States in violation of Section 7 of the Clayton Act, as amended, in the following ways among others:

(a) Substantial potential competition between Budd and Gindy in each such line of commerce has been eliminated.

(b) Potential competition in each such line of commerce has been substantially lessened.

(c) Other manufacturers in each such line of commerce may be led to agree to acquisition by financially strong companies for defensive or retaliatory reasons.

(d) Barriers to entry of new manufacturers into each such line of commerce have been raised significantly.

### VII. The Violation Charged

21. The acquisition of Gindy by Budd constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18).

INITIAL DECISION BY RAYMOND J. LYNCH, ADMINISTRATIVE  
LAW JUDGE

MARCH 8, 1974

#### PRELIMINARY STATEMENT

The Federal Trade Commission, on June 18, 1971, issued its complaint in this proceeding alleging that The Budd Company, a corporation, hereinafter referred to as Budd, by its acquisition of the stock of the Gindy Manufacturing Corporation, hereinafter referred to as Gindy, violated Section 7 of the Clayton Act (15 U.S.C. §18).

For the purposes of the complaint, the Commission has chosen the following definitions:

(a) "Containers and chassis," as used here, refer to large, closed box-type structures which can be used for the intermodal transportation of goods, by rail, ship or motor carrier and chassis used to transport containers. The container is detachable from the chassis of a trailer or semi-trailer when so used. Sizes are now generally standardized to 8 feet wide, 8 feet high and either 20 feet or 40 feet long, although a few odd sizes are also made.

(b) "Van trailer," as used here, refers to a large box-type structure attached permanently to a chassis for use as a truck trailer or semi-trailer. Among the principal types are:

- (1) Closed-top dry freight
- (2) Open-top

In addition, the relevant product markets are:

- (a) Van trailers
- (b) Containers and chassis

The relevant product submarkets are:

- (a) Closed-top dry freight van trailers
- (b) Open-top van trailers

and the relevant geographic market involved in the complaint is the United States as a whole.

Further, Budd's acquisition of Gindy violated Section 7 of the Clayton Act.

## Summary of Proceedings

On Oct. 22, 1968, Budd acquired all the then outstanding capital stock of Gindy Manufacturing Corporation, a Pennsylvania corporation with its principal office and place of business located in Downingtown, Pa.

Although an initial investigation was conducted by the Federal Trade Commission at the time of the acquisition, no action was taken at that time. Several years later, on June 18, 1971, the Federal Trade Commission issued a complaint charging that Budd's aforesaid acquisition of Gindy violated Section 7 of the Clayton Act. An answer and an amended answer were duly filed by the respondent, admitting in part and denying in part the various allegations of the complaint.

Prehearing conferences were held on several occasions between Dec. 15, 1971 and May 15, 1973. In addition, depositions of three foreign nationals were taken in England, France and Belgium during the month of April 1973. The course and conduct of the prehearing procedures were regulated by the administrative law judge through the issuance of a series of prehearing orders.

Presentation of the case-in-chief began in Wash., D.C., on July 30, 1973, hearings being held continuously through Aug. 16, 1973, on which date they were adjourned until Sept. 17, 1973, on which latter date, in that city, complaint counsel rested their case.

Respondent filed a motion to dismiss with a supporting memorandum of law. Complaint counsel filed a memorandum of law in opposition. The administrative law judge denied the motion on Sept. 17, 1973, to hear respondent's defense.

Respondent's defense was presented at hearings held in Washington, D.C., during the periods Sept. 17 through Oct. 3, 1973, Oct. 29, 1973 through Oct. 31, 1973, and on Nov. 15, 1973, on which latter date respondent rested its defense and complaint counsel presented rebuttal.

The record, which included a transcript of testimony of 2,273 pages, was closed on Nov. 26, 1973. Upon order of the administrative law judge, both counsel for the respondent and complaint counsel filed proposed findings of fact and conclusions of law on Dec. 26, 1973, and filed reply briefs on Jan. 11, 1974.

Any motions not heretofore or herein specifically ruled upon, either directly or by the necessary effect of the conclusions in this initial decision, are hereby denied.

This proceeding is before the administrative law judge upon the complaint, answer and amended answer, testimony and other evidence, proposed findings of fact and conclusions of law filed by counsel supporting the complaint and by counsel for respondent. The proposed

findings of fact, conclusions and arguments of the parties have been carefully considered, and those findings not adopted either in the form proposed or in substance are rejected as not supported by the evidence or as involving immaterial issues not necessary for this decision.

References to the record are made in parentheses, and certain abbreviations, as hereinafter set forth, are used:

CX - Commission's Exhibits.

RX - Respondent's Exhibits.

The transcript of the testimony is referred to with either the last name of the witness and the page number or numbers upon which the testimony appears or with the abbreviation Tr. and the page.

Having heard and observed the witnesses and after having carefully reviewed the entire record in this proceeding, together with the proposed findings and conclusions submitted by the parties, the administrative law judge makes the following findings:

#### FINDINGS OF FACT

##### I. Identity and Business of Respondent and Acquired Company

###### A. *The Budd Company*

1. Respondent Budd is now, and was at the time of the acquisition, a Pennsylvania corporation with its principal office and place of business located at 2450 Hunting Park Ave., Philadelphia, Pa. (complaint and answer, par. 2).

2. Since the acquisition, the executive offices of Budd have been removed from the aforesaid principal office in Pennsylvania to 2155 W. Big Beaver Road, Troy, Mich. (admitted by respondent).

3. In 1967, Budd had sales of \$330.9 million, and assets of \$264.5 million. In that year, it was the 250th largest industrial corporation in the nation in total sales. In 1968, its sales increased to \$469.5 million and assets increased to \$346.7 million making it the nation's 209th largest industrial corporation in total sales. By 1969, Budd had annual sales of \$561.7 million and assets of \$402 million, and in terms of sales had progressed to rank 191st among the nation's largest industrial corporations (complaint and answer, par. 3).

4. Budd is one of the largest independent automotive suppliers in the nation and the largest independent supplier of body components to the automotive industry. Budd manufactures automotive bodies, wheels, rims, hubs, drums, brakes and other automotive products. It also produces jigs, dies and fixtures used in the manufacture of automotive bodies and components, railroad cars, metal stampings and

industrial plastic products. Approximately 85 percent of its sales are in the automotive field (complaint and answer, par. 4).

5. Prior to its acquisition of Gindy Manufacturing Corporation, Budd surveyed the transportation equipment field, including manufacturers of van trailers and containers and chassis, with a view to acquisition of such companies. As a major manufacturer of metal stampings and parts such as wheels, rims, hubs, and drums, Budd made many of the parts used in the manufacture of van trailers and container chassis. Furthermore, Budd has designed and produced components used in the manufacture of stainless steel dry freight van trailers and aluminum containers (complaint and answer, par. 5).

6. At all times relevant herein, Budd sold and shipped its products throughout the United States and was, and is now, engaged in commerce as "commerce" is defined in the Clayton Act (complaint and answer, par. 7).

B. *Gindy Manufacturing Corporation*

7. Prior to its acquisition by Budd on Oct. 22, 1968, Gindy was a Pennsylvania corporation with its principal office and place of business located in Downingtown, Pa. (complaint and answer, par. 8).

8. Gindy was engaged principally in the manufacture, sale and distribution of van trailers and containers and chassis. Its manufacturing and assembly facilities were located in Eagle, Lebanon and Honey Brook, Pa.; Pennsauken, N.J.; Collinsville, Va.; and St. Louis, Mo. (complaint and answer, par. 9).

9. For the fiscal year ending May 31, 1968, Gindy's sales were approximately \$32.2 million, and its assets amounted to approximately \$44 million (complaint and answer, par. 10).

10. In calendar year 1968, Gindy was a substantial manufacturer and seller of van trailers and containers and chassis. With sales of \$32.2 million, it ranked fourth in the country in the sale of van trailers; with sales of \$26.7 million, it ranked fourth in the country in the sale of closed-top dry freight van trailers; with sales of \$3.1 million, second in the sale of open-top van trailers; and, with sales of \$3.1 million, sixth in the sale of containers and chassis. In that year, Gindy accounted for 8.4 percent of van trailer shipments, 10.8 percent of closed-top dry freight van trailer shipments, 15.9 percent of open-top van trailer shipments, and 3.8 percent of container and chassis shipments. In calendar year 1969, Gindy's shipments of van trailers increased to \$42.6 million, and its market share increased to 8.8 percent. In that same year, its shipments of closed-top dry freight van trailers increased to \$40.3 million, making Gindy the third largest supplier with 12.9 percent of shipments. A significant increase in Gindy's position in the shipment of containers and chassis also occurred in 1969; its value of shipments

increased to \$9.0 million, making it the third largest supplier with 9.9 percent of that market (complaint and answer, par. 11).

11. At all times relevant herein, Gindy sold and shipped its products throughout the United States and engaged in commerce, as "commerce" is defined in the Clayton Act (complaint and answer, par. 12).

## II. The Acquisition

12. On or about Oct. 22, 1968, Budd acquired all of the then issued and outstanding capital stock of Gindy, aggregating 62,730 shares, for approximately 900,000 shares of Budd common stock. At the time of the acquisition, the Budd stock exchanged for Gindy was valued at approximately \$29.7 million. Gindy has been operated as a Budd subsidiary since the acquisition (complaint and answer, par. 13; admission 19, 1/15/73).

## III. Trade and Commerce

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

- (a) Van trailers;
- (b) containers and chassis.

The relevant product submarkets are:

- (a) Closed-top dry freight van trailers;
- (b) open-top van trailers (complaint and answer, par. 14).

14. The manufacture of van trailers and containers and chassis is a significant industry in the United States. During 1968, the approximate total value of shipments in the relevant markets and submarkets by domestic producers was as follows:

- (a) Van trailers, \$381.7 million;
- (b) closed-top dry freight van trailers, \$246.1 million;
- (c) open-top van trailers, \$19.8 million; and
- (d) containers and chassis, \$81.6 million (counsel supporting the complaint's confidential proposed finding 57).

During 1969, the approximate total value of shipments in the relevant markets and submarkets by domestic producers was as follows:

- (a) Van trailers, \$486.3 million;
- (b) closed-top dry freight van trailers, \$312.3 million;
- (c) open-top van trailers, \$16.3 million; and
- (d) containers and chassis, \$91.6 million (counsel supporting the complaint's confidential proposed finding 59).

15. The van trailer manufacturing industry is marked by a high

degree of concentration. In 1968, the four largest companies accounted for approximately 59.0 percent and the eight largest companies for approximately 80.7 percent of total industry sales. The closed-top dry freight van trailer market is even more highly concentrated, with the top four firms accounting for 65.9 percent of 1968 shipments and the top eight firms accounting for 84.9 percent. Concentration in the open-top van trailer market is also high, with the top four firms accounting for 57.2 percent of 1968 shipments and the top eight firms accounting for 72.1 percent. Concentration in the sale of containers and chassis is extremely high; in 1968, four firms accounted for 89.9 percent of shipments and the top eight for virtually all of the shipments in this market (counsel supporting the complaint's confidential proposed finding 57).

16. By 1969, concentration in the shipment of van trailers and closed-top dry freight van trailers had increased. In that year, the top four firms accounted for 61.6 percent of van trailer shipments and the top eight firms for 80.8 percent. In 1969, the top four firms accounted for 72.2 percent of closed-top dry freight van trailer shipments and the top eight firms for 87.9 percent (counsel supporting the complaint's confidential proposed finding 59).

17. Of major importance to most purchasers of van trailers and containers and chassis, in many instances governing the purchaser's choice of supplier, are the terms relative to extent, duration, and rate of financing for proposed sales transactions. Access to significant financial resources which will permit a manufacturer to extend generous credit on easy repayment terms constitutes a decisive competitive advantage in the sale of van trailers and containers and chassis (complaint and answer, par. 18).

18. Entry into the manufacture and sale of van trailers and containers and chassis on a large scale is difficult. A successful manufacturer and supplier of van trailers and containers and chassis must possess manufacturing and marketing knowledge of transportation equipment, must have ample financial resources, and must possess the ability to accept, service and dispose of substantial numbers of used trade-in van trailers (complaint and answer, par. 19).

19. By 1972, Gindy's total sales of van trailers, containers and chassis had increased to \$62 million (Hindin 1314).

20. Gindy enjoyed a good reputation, both among its competitors and its customers (CX 10; CX 11B, D; CX 63; CX 68B; CX 73A; CX 82; Ginsberg 260; Miller 376-77; Hammond 666).

21. Prior to its acquisition, Gindy was a very profitable company and never lost money in any single year (CX 42; CX 45; Ginsberg 274; Scott 1035, 1048-49, 1106). Indeed, Budd was interested in acquiring

Gindy because of the latter's profitability (Scott 1035, 1048-49, 1059). Gindy's average rate of return on sales before taxes in the five years preceding its acquisition was over 10 percent (CX 45F; Scott 1106). In the year preceding its acquisition, Gindy's average rate of return on stockholders' equity, before taxes, was 27.1 percent (RX 395, *in camera*).

22. Prior to Oct. 22, 1968, Gindy had credit arrangements with several banks and an insurance company (Ginsberg 275; Morris 1227; Todd 1540-41). In 1968, these creditors indicated that Gindy's borrowing power would be continued at a level which would have enabled Gindy to maintain its then present market share in its various product markets (Todd 1547). However, because of the tight money situation then extant for all van trailer manufacturers, Gindy could not secure the financing to expand its position in its various markets as rapidly as it had been expanding (Ginsberg 274-76; Morris 1228-29, 1239-40; Todd 1543, 1547). At the time of the acquisition, Gindy had a four- to five-month backlog of orders (CX 46).

23. At all times relevant herein, Gindy sold and shipped some of its products throughout the United States and engaged in commerce, as "commerce" is defined in the Clayton Act (complaint and answer, par. 12; Ginsberg 317, 346; Heinmiller 691).

#### IV. The Transaction

24. On Oct. 22, 1968, Budd acquired all of the then issued and outstanding capital stock of Gindy, aggregating 62,730 shares, in exchange for approximately 900,000 shares of Budd common stock and a contingent right to about 300,000 additional shares of common stock two years after said date (complaint and answer, par. 13). The Budd stock exchanged for the capital stock of Gindy on that date had a value of approximately \$29.7 million (admission 19, 1/15/73). Gindy has been operated as a Budd subsidiary since the acquisition (complaint and answer, par. 13).

#### V. The Geographic Market

25. The relevant geographic market is the United States as a whole for van trailers, closed-top dry freight van trailers and open-top van trailers (complaint and answer, par. 14).

26. The leading van trailer manufacturers sold throughout the United States (CX 68C; Bernstein 1426-27; Crumrine 1725; Linnen 1767; Bachman 1912).

27. The relevant geographic market is the United States as a whole for containers and chassis (findings 28-32).

28. Current federal regulations prohibit subsidized American shipping line operators from purchasing cargo containers of foreign manufacture with capital reserve funds or with general funds if reimbursement to the general fund for such purposes will be sought from the capital reserve fund.<sup>1</sup>

29. The governments of Western Europe prohibit the use of American manufactured containers in point-to-point commerce within each country unless a duty has been paid (CX 149Z-41; CX 150Z-41). In fact, American manufactured containers do not meet the standards required by France (CX 149Z-12). The use within the United States of foreign built containers for which no duty has been paid is also severely restricted.<sup>2</sup>

30. When containers were first introduced, the United States was about the only place where they were available (Hindin 1336). Later, the foreign steamship lines bought them from manufacturers in their own countries (Hindin 1335-36).

31. Containers produced in the United States are delivered domestically, whereas containers produced outside the United States are delivered abroad (Heinmiller 720). American container producers manufacture and sell aluminum containers primarily (CX 150Z-14). European manufacturers of containers produce and sell steel containers primarily (Hindin 1335). This reflects the fact that shipping lines in the United States prefer and buy aluminum containers, while European shipping lines prefer and buy steel containers (CX 150Z-13; Hindin 1335).

32. Since the devaluation of the United States dollar, foreign container manufacturers have found it difficult to sell containers to domestic companies (Ginsberg 313).

## VI. Lines of Commerce

### A. *Van Trailers*

33. Van trailers are recognized as constituting a separate product market. The Bureau of the Census reports van trailer shipments separately (CX 39; CX 40; RX 48-50). The Truck Trailer Manufacturers Association (hereinafter "TTMA") assisted in establishing the classifications reported on by the Bureau of the Census (Calvin 914; Berard 1461, 1477). TTMA, manufacturers of trailers and the Bureau of the Census accept these categories, including van trailers, as appropriate categories (Calvin 915-16; Berard 1463).

34. There is a special section of TTMA to which manufacturers of

<sup>1</sup> 30 F.R. 12036 (Sept. 21, 1965).

<sup>2</sup> 19 CFR §10.41 a(f) (Jan. 1, 1972).

van trailers belong and a different section to which manufacturers of tank trailers belong (Calvin 914-15).

35. Van trailers have distinct physical characteristics which determine their end use. A van trailer is enclosed on at least five sides and is permanently attached to wheel assemblies. As a result of its construction, a van trailer is utilized in hauling a wide variety of commodities over the road (finding 36).

36. Van trailers have uses distinct from other types of trailers (Bernstein 1453). Van trailers are utilized to carry a wide variety of cargo, whereas other types of trailers are utilized to carry specific types of cargo (Ginsberg 235-37). Platform trailers are used to transport certain types of commodities, including steel girders and heavy equipment, which are bulky and not affected by weather conditions (Ginsberg 239; Miller 359; Walters 483; Weaver 904; Persinger 938). Low bed heavy haulers are used to haul anything extremely heavy, primarily construction equipment (Ginsberg 239-40; Walters 484-85; Heinmiller 690; Bernstein 1454). Pole and logging trailers are used to carry logs, poles, and long steel bars (Ginsberg 239; Walters 484; Bernstein 1454-55). Tank and bulk commodity trailers are used to transport liquids, chemicals or gaseous commodities (CX 143; CX 144; Ginsberg 238; Walters 483; Hammond 658). Dump trailers are used to transport bulk items such as dirt or coal (Ginsberg 240; Walters 485).

37. Van trailers are produced on unique production lines which cannot be economically utilized to produce other types of trailers (Miller 367-68, 386-87; Bachman 572; Bertsch 640; Hammond 661; Heinmiller 696-97; Brown 885; Persinger 940-41; Crumrine 1719-21, 1723; Linnen 1791). All types of van trailers can be produced on the same assembly line (Miller 386-87; Hegner 468; Bertsch 640; Heinmiller 703; Tway 877; Hindin 1341-43; Linnen 1791; Bertolini 1833-34). Tank trailers or bulk commodity trailers cannot be built on the same assembly lines used to produce van trailers (Ginsberg 249-51; Miller 367, 388; Bertsch 643-45; Hammond 659, 661, 679; Bernstein 1447-50; Crumrine 1719-21, 1723). A major revamping of Gindy's plants would have been necessary before it could have produced tank trailers (Ginsberg 252; Walters 495). It is not practical or economical to manufacture flat beds, low beds or dump trailers on the same assembly lines used to produce van trailers (Ginsberg 252; Miller 367-68; Walters 496; Bertsch 643-45; Hammond 679; Heinmiller 697; Brown 885; Hindin 1341-43; Crumrine 1750-51).

38. Van trailers, in general, are sold to different customers than those who purchase other types of truck trailers (Hammond 658; Weaver 904; Paterson 1631). Common carriers are generally restricted

by their Interstate Commerce Commission license to hauling general commodities; therefore, such carriers do not have specialized truck trailers such as tank trailers and low bed heavy haulers (Gross 1570; Burten 1577). Fruehauf's van trailer customers generally do not purchase tank trailers (Weaver 904). Strick's customers use only van trailers (Bachman 458-49, 574).

39. Some leasing companies purchase only van trailers while others purchase different types of truck trailers (Hindin 1381-82; Bernstein 1450-51; Paterson 1631). Such purchases are made after they have business from a customer (Weaver 904; Hindin 1382; Paterson 1631). Rental companies do not stock tank trailers (Weaver 909).

40. There are unique producers of van trailers (Ginsberg 231; Miller 356; Bachman 546). Few van trailer producers make tank trailers or low bed heavy haulers (Miller 356; Bachman 546; Hindin 1311-12, 1318). Conversely, Butler and Heil, leading producers of tank trailers, do not make van trailers (Paterson 1631-32).

41. Because of the uses for which they are intended, there is no substitution of van trailers for other types of trailers or containers, or vice versa, due to price changes of either (findings 36, 42; Bernstein 1453). Van trailers do not compete with tank trailers, dump trailers or platform trailers (Hammond 672; Hindin 1312; Bernstein 1453).

42. Van trailers are priced without regard for the pricing of other types of truck trailers (Bachman 552; Hammond 659; Brown 885; Bernstein 1455-56).

43. The van trailer market consists of several distinct submarkets, including closed-top dry freight van trailers and open-top van trailers (findings 44-52).

44. Each of these submarkets is recognized as being a distinct market by the industry. The industry trade association, TTMA, in cooperation with the Department of Commerce, established separate census reporting categories for closed-top dry freight van trailers and open-top van trailers (CX 39; CX 40; RX 48-51; Calvin 914; Berard 1461, 1477).

45. Each type of van trailer is designed to haul a specific type of cargo. Closed-top dry freight van trailers are designed to haul general, nonbulk commodities that do not require refrigeration or special loading (Ginsberg 232; Miller 358; Walters 481; Bachman 547; Hammond 658; Heinmiller 690; Burten 1595). Refrigerated or insulated van trailers are designed to haul commodities requiring constant or cool temperatures, although they may occasionally be used to haul general dry freight commodities on a backhaul basis when no freight requiring refrigeration or constant temperature is available (Ginsberg 233; Miller 358-59; Bachman 547; Hammond 658; Bernstein 1455; Gross 1566, 1568,

1573; Burten 1595). Drop frame van trailers are designed to haul furniture or high bulk, lightweight cargo (Ginsberg 236; Miller 359; Walters 482; Hammond 658; Heinmiller 690). Livestock van trailers are designed and used to haul livestock (Walters 483; Persinger 938). Open-top van trailers are designed to haul cargo that must be top loaded (Walters 481-82; Bachman 548; Hammond 658; Weaver 903; Gross 1567; Burten 1595). Open-top van trailers occasionally may be used on a backhaul basis to haul general freight if a canvas top is added; such use occurs when no top loaded freight is available (Weaver 903; Gross 1566-67). Open-top van trailers used with a canvas top experience some leakage problems that makes them inferior to a regular closed-top dry freight van trailer (Walters 481-82).

46. Only closed-top dry freight van trailers and refrigerated or insulated van trailers are designed for dock level loading by means of fork lift trucks (Miller 358-59; Hammond 665). Open-top van trailers generally are top loaded while drop frame van trailers are difficult to load from most docks and can, at most, be only partially loaded by means of a fork lift truck (Ginsberg 236-37; Miller 358-60; Hammond 665-66).

47. There are specialized customers for certain types of van trailers. Drop frame van trailers are commonly sold to different customers than those who purchase closed-top dry freight van trailers (Walters 380-81; Hammond 657; Weaver 902-03). Refrigerated van trailers are generally sold to different customers than those who purchase closed-top dry freight van trailers (Walters 534; Weaver 903). Livestock and grain trailers are sold to individuals, whereas other van trailers are sold to common carriers (Ginsberg 231-33; Persinger 938).

48. There are differences in the construction between closed-top dry freight van trailers and open-top van trailers (Brown 887). The top rail on the latter is much heavier than on the former (Hammond 665; Brown 895). Likewise, there are differences in the construction between closed-top dry freight van trailers and refrigerated van trailers. The body on the latter is sealed tighter than on the former and the latter has ventilators and insulation, whereas the former does not (Hammond 665).

49. Each type of van trailer is priced individually without regard to the prices for other types of van trailers (Ginsberg 244-46; Miller 361-62; Walters 487-88; Bachman 551-52; Brown 885; Bernstein 1455). Prices for other types of van trailers sold by competitors are not considered in submitting bids for closed-top dry freight van trailers (Walters 489; Hammond 659; Brown 885; Bernstein 1456).

50. Each type of van trailer has a distinct price (Ginsberg 240-42; Bachman 551; Hammond 659-60; Persinger 939; Gross 1569).

51. There are many producers of van trailers who specialize in a particular type of van trailer (Bachman 571; Persinger 937; Hindin 1318).

52. Budd recognized that closed-top dry freight van trailers constitute a separate product market, characterizing them as a "product line" in reports to its shareholders and listing their sales separately (CX 94K).

B. *Containers and Chassis*

53. Containers and chassis are reported to the Bureau of the Census under SIC 37150 53 "Detachable Trailer Bodies, Sold Separately" and SIC 37150 54 "Detachable Trailer Chassis, Sold Separately" (CX 39; CX 40; Berard 1461; Collier 1641, 1658). TTMA assisted in establishing these Census categories (Calvin 916-17; Berard 1461, 1477).

54. Containers have a use distinct from closed-top dry freight van trailers. As a result of their detachable characteristics, containers are most frequently used to transport commodities to and from seaports and over bodies of water (Ginsberg 234, 238; Brown 886) in contrast to closed-top dry freight van trailers, which are utilized almost exclusively for overland transportation (Brown 886).

55. Containers are constructed in a manner different from that utilized in van trailer production. Because containers are stacked on shipboard, the compressive loads required in the construction of shipping containers are completely different from those required in a van trailer (Brown 886-87; Bertolini 1832-33).

56. In contrast to van trailers, containers have to be tested with regard to their ability to sustain loads (Bertolini 1833). Such tests are performed by lifting the container from the four corners (Bertolini 1833). These tests must be certified by an independent agency whom the customer specifies (Bertolini 1833).

57. Containers are often constructed on different assembly lines than those used to build van trailers (Hindin 1318; Crumrine 1750-51; Bertolini 1833-34). It is difficult to construct a container on a van trailer assembly line, as additional fixtures are required (Hindin 1343-44).

58. Most containers and chassis are sold to different customers than purchase van trailers. The vast majority of containers and chassis are sold to ship lines (Ginsberg 234; Miller 357-58; Walters 481; Bachman 546-47; Brown 886). Van trailers generally are sold to common carriers or private truckers (Ginsberg 231-34; Miller 357; Walters 479-81; Bachman 546).

59. Containers are priced without regard to the price of van trailers (Walters 488; Bachman 550).

60. The average price of a container or a chassis is far lower than the average price of a van trailer. In 1968, the average price of a

container was \$2,500 and a chassis was about \$2,200 (CX 39A-H; Ginsberg 242, container \$2,500 to \$2,800, chassis \$2,500; Miller 360, container \$2,850, chassis \$2,700 to \$2,800; Walters 487, container \$3,200 to \$3,400, chassis \$1,400; Bachman 551, container \$2,750, chassis \$2,400 to \$2,600).

## VII. The Market

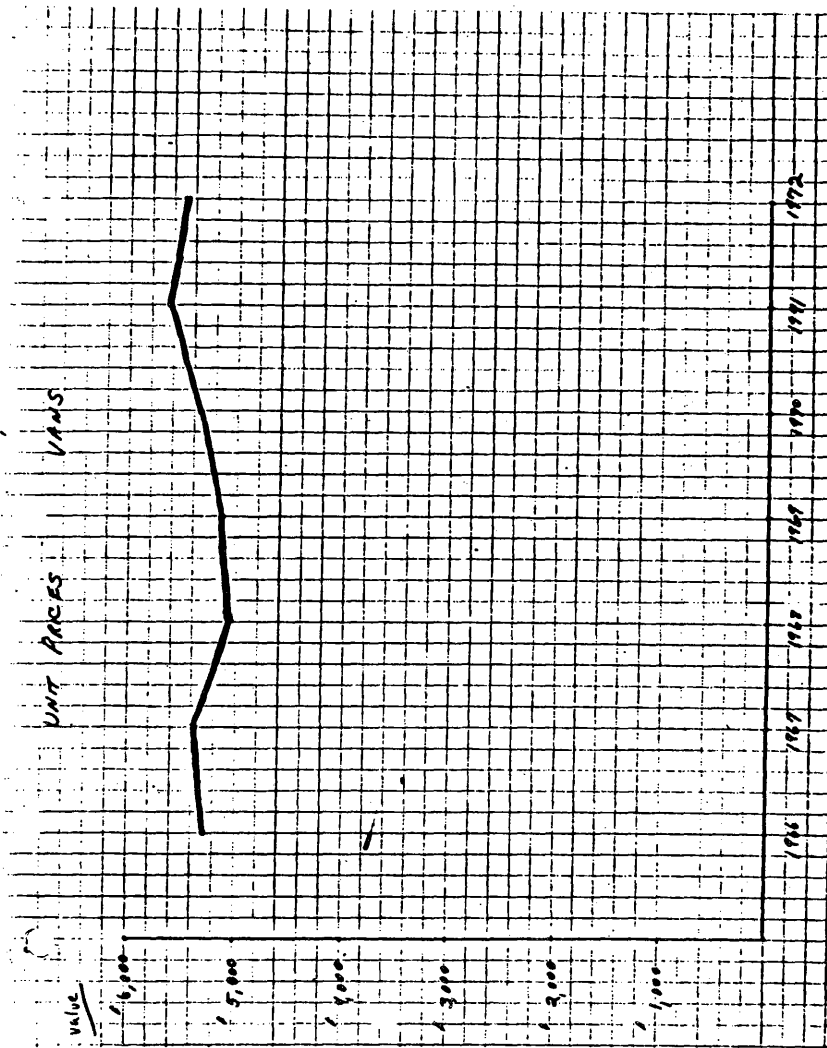
61. In 1968, there were 100 van trailer manufacturers, of whom 35-40 produced closed-top dry freight van trailers (Linnen 1799).

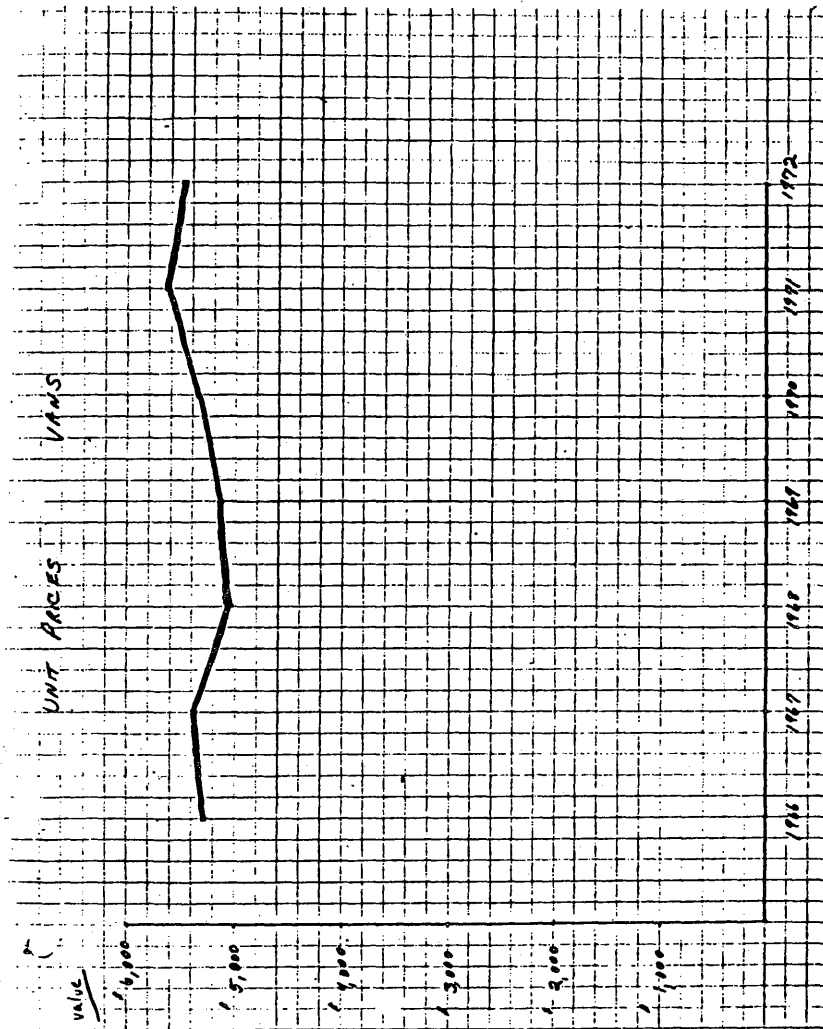
62. In 1968, the year of Gindy's acquisition by Budd, concentration in the relevant markets was high (see counsel supporting the complaint's confidential proposed finding 57).

63. Budd recognized that concentration was high, stating to its shareholders that 10 firms producing Gindy's type of products accounted for 90 percent of the sales of these products (CX 69E; CX 94M).

64. Concentration in these markets increased from 1968 to 1969 and then remained relatively constant through 1972 (see counsel supporting the complaint's confidential proposed finding 59).

65. Prices of van trailers fell from 1966 to 1968 and have generally increased since 1969 (Crumrine 1737). Prices of closed-top dry freight van trailers fell from 1966 to 1968, remained steady for one year and then steadily rose through 1972. The price trends of van trailers and closed-top dry freight van trailers are shown in the following charts:





66. The manufacture of van trailers, containers and chassis is very profitable. In the period 1962-1967, both Fruehauf Corporation and Gindy experienced an average rate of return on sales, before taxes, of approximately 10 percent (finding 21; CX 118E; CX 119E; CX 120E; CX 121E; CX 122E; CX 123E; Silverstein 1886-88). Profitability of van trailer, container and chassis manufacture, expressed as a rate of return on stockholders' equity, also is very high. In the year of acquisition, Gindy's rate of return on stockholders' equity, before taxes, of 27 percent was one of the highest in the industry (finding 21; RX 38F, Y, *in camera*; see also counsel supporting the complaint's confidential proposed findings 57, 59, 61).

#### VIII. Barriers to Entry

67. Entry into the manufacture and sale of van trailers and containers and chassis on a level such as that evidenced in this proceeding is difficult. One of the principal barriers to entry into the manufacture and sale of van trailers and containers and chassis is the need to finance sales (CX 10F; CX 46; CX 73B; CX 150Z-19; Ginsberg 257; Miller 371-73; Walters 502; Bachman 555, 558; Hammond 674; Blatt 757; RX 429J, T, Z-4, *in camera*). Financing may be more important than manufacturing (Feinberg 829). Smaller manufacturers of van trailers lose business because they do not have the ability to extend financing (Miller 372-73; Walters 502; Blatt 757; Feinberg 840; Tway 873-74).

68. The leading van trailer manufacturers in 1968 financed in excess of 40 percent of their total sales and extended 6-8 year terms with no down payment (Walters 502; Bachman 558). Small manufacturers generally did not have the ability to extend credit at all, or did so indirectly through banks (Miller 371; Hammond 662; Brown 886; Tway 873). In 1969, Theurer, Inc. was sold, among other reasons, in order to obtain a source of financing (Blatt 757). In 1968, those smaller van trailer manufacturers who could finance internally or through banks did not and could not offer credit terms as advantageous as those offered by the dominant firms (Ginsberg 257-58; Miller 371-73; Brown 886). Such smaller van trailer manufacturers lost business in 1968 due to their lack of ability to extend financing (finding 67).

69. Financing has played an increasingly important role in Gindy's sale of van trailers (Morris 1227). From 1965 through 1969, the number of van trailers Gindy sold with virtually no downpayment increased steadily from 46 percent to 64 percent, a fact which is dramatically reflected in the following table (CX 48B; CX 53B; Ward 1149):

## GINDY MANUFACTURING COMPANY

## Percentage of trailers sold with less than 10 percent down

1965	45.7%
1966	56.9%
1967	60.3%
1968	61.6%
1969	64.1%

Gindy also has extended its terms so that the percentage of trailers financed over 60 months has increased from 9 percent in 1965 to almost 44 percent in 1969 (CX 48B; CX 49B; CX 50B; CX 51B; CX 52B; CX 53B; Ward 1149).

70. The trend toward extended payment terms existed throughout the van trailer manufacturing industry during the period from 1965 to 1969 (Walters 501; Hammond 663; Todd 1543, 1548).

71. The substantial facilities and financial resources required to accept trade-ins and dispose of them is another principal barrier to entry into the manufacture and sale of van trailers (CX 11C). A small van trailer manufacturer does not have the funds or the outlets to accept used trailers (Tway 873). Unless the van trailer purchaser can turn in his used trailer, he does not purchase the new van trailer (Heinmiller 699-700).

72. It is difficult to enter into the sale of van trailers to large customers (answer, Par. 19). Since 1967, the size of customers buying van trailers has increased (Crumrine 1733, 1735; Linnen 1782). This increase in the size of customers for van trailers has increased the difficulty of entry into the manufacture and sale of van trailers.

73. There have been no entrants of any significance into the manufacture and sale of van trailers, containers and chassis for many years (Ginsberg 261, 334; Miller 377-78, 400; Bachman 563; Hammond 666-67; Heinmiller 700, 711-12). To the contrary, several manufacturers have left these markets (admission 24, 1/15/73; Miller 370, 378; Hegner 464; Walters 505; Bachman 563; Heinmiller 700-01; Paterson 1632; Linnen 1797; Bertolini 1828-29, 1855-56). Several manufacturers entered into the manufacture of containers or chassis in recent years and then have left within a short period of time. Several such new entrants went broke (Bertolini 1849-50, 1858-59). Grumman Aircraft entered into the manufacture of specialized van trailers, made no more than 200 and quit (CX 186; CX 187A-C; Ginsberg 323-24; Bertolini 1828-29, 1855-56).

## IX. Budd Was The Most Likely Entrant

A. *Budd's Desire to Enter*

74. From 1934 to 1968, Budd was at the edge of the van trailer,

container and chassis market (CX 73A). During the period 1934 to 1956, Budd manufactured the primary portion of a van trailer, stainless steel shells (Bachman 552; Brown 887-88; Necker 1415; Bernstein 1435). These shells were sold to Fruehauf who incorporated them in complete van trailers (Bachman 552; Brown 888; Scott 1028; Bernstein 1438). Budd's role as a supplier of this component was widely known among van trailer manufacturers (Ginsberg 271; Miller 382; Walters 505-06; Bachman 552-53; Hammond 662-63; Heinmiller 699; Brown 888; Hammond 1306; Bernstein 1438).

75. As early as 1956 or 1957, Budd desired to enter the van trailer market. When Budd's relationship with Fruehauf concerning the stainless steel trailer shells was about to be terminated, Budd approached Brown Trailer Company, a manufacturer of van trailers, with a view to acquiring it or selling stainless steel trailers to or through Brown Trailer Company (Brown 887-88, 1532-36).

76. Between September 1960 and September 1961, Budd built aluminum containers for sale to Union Carbide at its Red Lion plant (complaint and answer, par. 5; Scott 1083).

77. In the early 1960's, Budd built a prototype sky-lounge, made primarily of aluminum, at its Red Lion plant (CX 19; CX 20).

78. In late 1961, Mr. Scott, then executive vice president of Budd, presented a white paper to Budd's top management (Scott 1017). This paper recommended closing down Budd's Railway Division as it was a losing operation and broadening the base of the company to make it less vulnerable to the whims of Budd's principal customers, the Big Three auto makers, and especially Ford (CX 69B; Scott 1017-18). For example, in 1966, 70 percent of Budd's sales were to the four domestic automobile manufacturers, including 35 percent of sales to Ford Motor Company (CX 94J). Budd felt that it had become "semicaptive" to the Big Three auto makers and desired to extricate itself from this "very dangerous situation" (CX 69B; CX 94J; Scott 1018-19; Ward 1116-17).

79. At that time, Budd decided to broaden its base by going into a proprietary, industrial type product which it would manufacture (Scott 1019). Budd considered van trailers to be a proprietary product (Scott 1093).

80. By 1965, Budd had decided to continue in the railway car business despite the fact that its "passenger rail business was getting into some difficulty" (CX 94H-J; Scott 1021-22). Therefore, it decided to attempt to add some products that had some relationship to this business (CX 2B; Scott 1021-22).

81. During the period from 1963 to 1968, Budd contacted Utility Trailer Manufacturing Company (hereinafter "Utility") at least twice concerning the possibility of acquiring Utility (Heinmiller 694-95; Ward

