

Interlocutory Order

IN THE MATTER OF

BENEFICIAL CORPORATION, ET AL.

Docket 8922. Interlocutory Order, Dec. 20, 1977

Order rejecting proposed form of order submitted by respondents and directing the submission, by both parties, of a new form of order within sixty days. If no joint proposal is submitted, parties are directed to submit, within sixty days, briefs fully addressing the issues raised in the Commission's order of July 15, 1977.

In response to our order of July 15, 1977, calling for briefs directed to issues presented by the order of the United States Court of Appeals for the Third Circuit remanding this matter, respondents have submitted a proposed order and sample advertisement which is not opposed by complaint counsel. We have examined the proposed order and sample advertisement and find them deficient in several respects. First, only a proposed print advertisement has been submitted with the proffered order as an example of what the order would permit, although the record establishes that respondents use radio and television advertising extensively. It is not at all clear how the parties believe the order would apply to such advertising.

Moreover, our review of the proposed advertisement does not convince us that the deception that we earlier found in respondents' use of the "instant tax refund" slogan would be cured. The proposed advertisement still suggests that there is *some* relationship (even if not a dependency) between the loan and the amount of the expected refund. In fact, as we have previously held, and the court of appeals has affirmed, the eligibility for, or amount of, any income tax refund is entirely unrelated to an applicant's eligibility for, or the amounts of, any loan.

Under the circumstances, we believe that the best course is to conduct further proceedings.

It is ordered, That the parties submit, within 60 days, such other order (if any) as they may jointly propose. Any such proposed order shall be accompanied by proposed advertisements for the media customarily used by respondents and by a detailed proposed protocol for objective consumer perception surveys of those and other representative advertisements. The proposed protocol should be designed to test whether the proposed advertisements cure the deception which we previously found in respondents' use of the "instant tax refund" slogan.

It is further ordered, That if the parties do not submit such a joint

proposal, they submit within 60 days briefs as required by our order of July 15, 1977, fully addressing the issues raised in that order.

IN THE MATTER OF
JIM WALTER CORPORATION

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECTION 7 OF THE CLAYTON ACT

Docket 8986. Complaint, July 29, 1974 — Final Order, Dec. 20, 1977

This order, among other things, requires a Tampa, Fla. manufacturer of shell housing and construction material to divest itself within one year of all interests in the Philip Carey Company and Carey-Canadian Mines, Ltd., divisions of Panacorp Corporation; and prohibits the firm from acquiring for a period of ten years, any interest in a manufacturer, seller, or distributor of asphalt or tar roofing products without prior Commission approval.

Appearances

For the Commission: *Joseph J. O'Malley, Peter W. Kitson, Harold J. Lamboley, Jr. and Gilbert E. Geldon.*

For the respondent: *W. Donald McSweeney, William A. Montgomery and Susan A. Henderson, Schiff, Hardin & Waite, Chicago, Illinois.*

COMPLAINT

In the exercise of authority vested in it by the Federal Trade Commission Act, the Federal Trade Commission, having reason to believe that respondent, Jim Walter Corporation, a corporation, has violated Section 7 of the Clayton Act (15 U.S.C. 18), and that a proceeding in respect thereof would be in the public interest, issues this complaint charging as follows:

I. DEFINITIONS

For the purpose of construing this complaint the following definitions shall be controlling:

(a) "Asphalt and tar roofing" shall include both built-up roofing and shingles which are made from a dry felt, asbestos, or fiber glass base, saturated or coated with asphalt flux or coal tar pitch.

(b) "Built-up roofing" includes both tar and asphalt multi-layer, flat-topped roofing. This type of roof covering normally consists of from two to four plies of roll roofing sheets "built-up" with alternating coats of asphalt or coal tar pitch. [2]

(c) "Saturated felts" consist of a dry felt base, made from rags, wood, and other cellulose fibers, impregnated with an asphalt or tar saturant.

(d) "Roll roofing" is made from a saturated felt by applying an

additional coating of more viscous, weather-resistant asphalt. Roll roofing serves as the laminations in a built-up roof.

(e) "Asphalt shingles" are mineral-surfaced saturated felts machine-cut into squares of strips.

(f) "Asphalt and tar roofing materials" and "asphalt roofing materials" are used interchangeably herein to refer to saturated felts, roll roofing, and asphalt shingles, but specifically excludes accessory items such as asphalt cements, adhesives, primers, and mineral granules.

II. RESPONDENT

2. Jim Walter Corporation (hereafter "JWC") is a publicly-held corporation chartered and operating under the laws of the State of Florida, with a principal place of business at 1500 North Dale Mabry Highway, Tampa, Florida.

3. In addition to being the leading manufacturer of shell (partially finished) housing, JWC also ranks as a major producer of construction materials. Most of the corporation's activities are conducted through eight operational groups: mineral and fiber products; metal and wood products; stone and concrete products; pipe products; homebuilding supplies; paper; sugar operations; and oil and gas operations. Since its incorporation in 1955, JWC has managed to increase its share of the shell house market by internal expansion, and diversified into homebuilding supplies via acquisitions. In the past ten years alone JWC has [3] acquired no fewer than seventeen separate companies. For its fiscal year ending August 31, 1972, JWC reported revenues of \$881,737,000; total assets of \$983,217,000; and a net income of \$44,568,000. On the basis of these figures, the May 1973 *Fortune 500* issue ranked Jim Walter Corporation as the 161st largest industrial corporation in the United States.

4. On July 12, 1962, JWC revealed the details of its agreement to purchase a 34 percent stock interest in the Celotex Corporation. A principal manufacturer of insulation fiberboard, mineral wool, gypsum, and asphalt roofing materials, Celotex became a fully-owned subsidiary of Jim Walter Corporation by the close of 1964. JWC further expanded its capacity to produce building materials and, in particular, roofing products by acquiring the Barrett Building Materials Division of Allied Chemical Corporation in 1967. The merger of Barrett into JWC's Celotex Division extended "Celotex' capabilities in roofing materials from one plant to eight."

5. At all times relevant to this complaint JWC has sold and shipped, and continues to sell and ship, its products in interstate

commerce throughout the United States. Consequently, JWC was, at the date of the acquisition in question here, and is now, engaged in commerce as "commerce" is defined in the Clayton Act (15 U.S.C. 12).

III. PANACON CORPORATION

6. Prior to April 17, 1972, Panacon Corporation (hereafter "Panacon") was a corporation chartered and operating under the laws of the State of Michigan, with a principal place of business at 320 South Wayne Ave., Cincinnati, Ohio. The Glen Alden Corporation owned 89 percent of the outstanding common stock of Panacon prior to April 1972.

7. At the time of its acquisition, Panacon was a substantial manufacturer of "a wide range of products for residential and commercial construction and industrial applications." Organized in six operating divisions, Panacon produced and marketed such diverse products as vitreous china, porcelain-on-steel plumbing ware, floor tiles, roofing materials, insulations, bathroom cabinets, lighting fixtures, ventilating fans, electric [4] fireplaces, and water heaters. For its fiscal year ending December 31, 1971, Panacon reported revenues of \$181,129,000; total assets of \$106,008,000; and a net profit of \$10,591,000.

8. On April 9, 1970, the Plan and Agreement of Merger executed on December 31, 1969, by the Philip Carey Corporation and Briggs Manufacturing Company was consummated. Under the terms of this agreement Carey was merged into Briggs and Briggs, as the surviving entity, adopted the new name of Panacon Corporation. Each share of the Briggs common stock was exchanged for one share in Panacon; all of the Carey common stock was converted into 4,644,000 shares of common and 7,356,000 shares of Class A common stock in Panacon.

9. At all times relevant to this complaint Panacon sold and shipped products in interstate commerce and was, therefore, engaged in commerce as that term is defined in the Clayton Act (15 U.S.C. 12).

IV. THE ACQUISITION

10. Pursuant to an agreement signed earlier in the month, JWC purchased an 89 percent stock interest in Panacon from Glen Alden Corporation for \$62,000,000 on April 17, 1972. On June 29, 1972, the shareholders of Panacon voted to approve the merger of Panacon into the Celotex Division of JWC. Thereafter, JWC completed its

takeover by giving the remaining shareholders cash for their 11 percent interest. The total cost of the acquisition was approximately \$73,000,000.

V. TRADE AND COMMERCE

11. Functionally, the production of asphalt and tar roofing materials breaks down into two distinct processes: (1) the preparation of a base (dry felt, asbestos, or fiberglass) mat; and (2) the conversion of this mat into saturated felts, roll roofing, or shingles. The overwhelming proportion of asphalt roofing materials derive from a dry felt base saturated with asphalt flux, coated with mineral granules, and cut into sheets or shingles. [5]

12. Today over 80 percent of all roofing applied in the United States is produced by the asphalt roofing industry. There are approximately 29 manufacturers of asphalt roofing materials operating a total of 120 plants in the United States.

13. Asphalt roofing materials are manufactured, transported, sold, and applied throughout the United States. For the year (1971) preceding the acquisition in question here total sales of asphalt roofing materials, as defined herein, amounted to \$654.7 million, of which \$457.9 million represented sales of shingles and \$196.8 million was sales of built-up roofing (saturated felts and roll roofing). The eight largest manufacturers of these products reported sales of \$539.6 million, or 82.4 percent of all sales; the four largest manufacturers realized \$336.3 million in sales, or 51.4 percent of all sales of asphalt roofing materials. These same eight manufacturers operated 92, or 76.7 percent, of all plants producing these materials in the United States.

14. For the year 1971, Jim Walter Corporation ranked fifth in sales of all asphalt roofing materials; third in sales of built-up roofing materials; and seventh in the sale of shingles. JWC represented 8.8 percent, 12.3 percent, and 7.3 percent of all sales of asphalt roofing materials, built-up roofing, and shingles. During the same year Panacon ranked sixth, fifth, and sixth in sales of all asphalt roofing materials, built-up roofing, and shingles, respectively. After this acquisition, Jim Walter Corporation ranked second, first, and second in the sales of all asphalt roofing materials, built-up roofing, and shingles, respectively, with total sales of asphalt roofing materials of \$123.5 million.

VI. EFFECTS OF THE ACQUISITION

15. The effect of the acquisition of Panacon by JWC may be

substantially to lessen competition or to tend to create a monopoly in the manufacture, sale, and distribution of all asphalt roofing materials and of built-up roofing and shingles in the United States, as a whole, and in certain states in the following ways: [6]

(a) By eliminating actual competition between JWC and Panacon in the manufacture, sale and distribution of all asphalt roofing materials and built-up roofing and shingles.

(b) The ability of JWC's competitors to compete in the manufacture, sale and distribution of all asphalt roofing materials and built-up roofing and shingles has been, and may be, further substantially diminished.

(c) The probability of JWC's competitors pricing their asphalt roofing products on an independent basis has been, and may be, further substantially impaired as a result of the increased potential for price leadership among manufacturers of asphalt roofing materials.

(d) The entry of new asphalt roofing materials manufacturers may have been, and may be, significantly discouraged or retarded.

(e) The ability of purchasers of asphalt roofing materials, as defined herein, to select from alternative manufacturers has been and may be substantially limited.

(f) The dominant position of JWC in the manufacture, sale and distribution of all asphalt roofing materials and of built-up roofing materials and shingles has been, and may be, further enhanced and solidified vis-a-vis its competitors with the result that any reduction in such dominance will be extremely remote.

VII. VIOLATION

16. The acquisition of Panacon Corporation by Jim Walter Corporation constitutes a violation of Section 7 of the Clayton Act (15 U.S.C. 18).

INITIAL DECISION BY JOSEPH P. DUFRESNE, ADMINISTRATIVE
LAW JUDGE

MAY 6, 1976

PRELIMINARY STATEMENT

In a complaint dated July 29, 1974, the Commission charged Jim Walter Corporation (JWC) with violation of Section 7 of the Clayton Act (15 U.S.C. 18). The gravamen of the charges was that the effect of the purchase by JWC of the stock of Panacon Corporation (Panacon) for approximately \$73,000,000 in April 1972 (Complaint, par. 10) may

have been, or be, substantially to lessen competition or to tend to create a monopoly in the manufacture, sale and distribution of all asphalt roofing materials and of built-up roofing and shingles in the United States as a whole and in certain states (Complaint, par. 15). [2]

The complaint definition of asphalt and tar roofing materials includes saturated felts, roll roofing, and asphalt shingles made from a dry felt, asbestos or fiber glass base, saturated or coated with asphalt flux or coal tar pitch, but excludes accessory items such as asphalt cements, primers, and mineral granules (Complaint, par. 1(a), (f)).

It was alleged that adverse effects on competition would come about in the following ways:

(a) By eliminating actual competition between JWC and Panacon in the manufacture, sale and distribution of all asphalt roofing materials and built-up roofing and shingles.

(b) The ability of JWC's competitors to compete in the manufacture, sale and distribution of all asphalt roofing materials and built-up roofing and shingles has been, and may be, further substantially diminished.

(c) The probability of JWC's competitors pricing their asphalt roofing products on an independent basis has been, and may be, further substantially impaired as a result of the increased potential for price leadership among manufacturers of asphalt roofing materials.

(d) The entry of new asphalt roofing materials manufacturers may have been, and may be, significantly discouraged or retarded.

(e) The ability of purchasers of asphalt roofing materials, as defined herein, to select from alternative manufacturers has been and may be substantially limited.

(f) The dominant position of JWC in the manufacture, sale and distribution of all asphalt roofing materials and of built-up roofing materials and shingles has been, and may be, further enhanced and solidified vis-a-vis its competitors with the result that any reduction in such dominance will be extremely remote. (Complaint, par. 15)

[3] In its answer, JWC denied the allegations and denied making the acquisition, but admitted that its wholly-owned subsidiary, The Celotex Corporation (Celotex), had acquired approximately 89 percent of the two classes of common stock of Panacon. The answer also raised the defenses (1) that the acquisition of Panacon by Celotex enhanced competition, (2) that neither asphalt roofing materials, built-up roofing, nor shingles, as referred to in the complaint, is a proper line of commerce under Section 7 of the Clayton Act, and (3) that the entire United States is not a proper section of the country under Section 7 for purposes of this case.

Prehearing conferences were held on October 24, 1974, and January 7, 1975; however, participation by counsel for JWC in other antitrust proceedings involving Celotex interfered with the completion of discovery and the start of the adjudicative hearings. The start of the hearings also was delayed due to the filing of numerous (23)

motions and applications for review having to do with such things as the date for the hearings to begin, discovery, and the protection of competitively sensitive information.

The hearings began on October 28, 1975. Presentation of the case-in-chief was completed on December 1, 1975. A motion for dismissal was orally argued on December 1, 1975 (Tr. 1152-1197), and denied on January 21, 1976. Presentation of the case-in-defense was completed on January 21, 1976. The record was closed for the receipt of evidence on February 11, 1976, but was reopened for the receipt of additional testimony on February 17, 1976. March 12, 1976, was the date by which proposed findings of fact, conclusions and a proposed order were to be filed and March 29, 1976, was the date by which the parties replied to the proposals and briefs of the other side.

The findings of fact below are based on a review of the complaint, respondent's answer, stipulations, testimony and exhibits, and consideration of the demeanor of the witnesses at the hearings. In addition, the proposed findings of fact, conclusions and order, together with reasons and briefs in support thereof filed by both sides have been given careful consideration. To the extent not adopted in this decision in the form proposed or in substance, they are rejected as not supported by the record or as immaterial. [4]

The findings of fact include references to supporting evidentiary items in the record. Such references are intended to serve as guides to the testimony, evidence and exhibits supporting the findings of fact. They do not represent complete summaries of the evidence considered in arriving at such findings. The following abbreviations have been used:

CX - Commission's Exhibit, followed by number of exhibit being referenced.

RX - Respondent's Exhibit, followed by number of exhibit being referenced.

Tr. - Transcript, preceded by the name of the witness, followed by the page number.

Admissions - Respondent's response to Complaint Counsel's Request for Admissions filed May 16, 1975.

FINDINGS OF FACT

I. RESPONDENT JIM WALTER CORPORATION

A. Jim Walter Corporation

1. The Jim Walter Corporation (JWC) is a publicly held corporation organized and existing under the laws of the State of Florida, with its principal place of business at 1500 North Dale Mabry Highway, Tampa, Florida (Complaint and Answer, par. 2). It was incorporated in 1955 (Complaint and Answer, par. 3).

2. JWC is one of the nation's largest building and construction materials companies (CX 28, at 22; CX 29U; CX 31B). Prior to December 31, 1969, JWC was engaged in the sale, construction and financing of shell-type homes. As of January 1, 1970, JWC home building activities were transferred to its wholly-owned subsidiary, Jim Walter Homes, Inc. (Admissions, pars. 6, 9). [5]

3. JWC conducts its business through a large number of subsidiary corporations which are organized into operating groups (Complaint and Answer, par. 3; see CX 8B). In 1972, these groups included mineral and fiber products; pipe products; home building; metal and wood products; stone and concrete products; paper; sugar; savings and loan operations; and oil and gas operations (CX 29L-T).

4. JWC and its subsidiaries had approximately 26,400 employees on August 31, 1974 (CX 37E).

5. As of August 31, 1972, JWC owned all of the outstanding voting securities of the following corporations:

- Jim Walter Homes, Inc.
- Dixie Building Supplies, Inc.
- J.W. Walter, Inc.
- Best Insurors, Inc.
- Mid-State Homes, Inc.
- Coast to Coast Advertising, Inc.
- Jim Walter Advisers, Inc.
- The Celotex Corporation
- First Brentwood Corporation
- The South Coast Corporation
- Knight Paper Company
- The Georgia Marble Company
- United States Pipe and Foundry Company
- The Columbia Moulding Company
- Walter Land Company
- Gamble Brothers, Inc.

Monarch America, Inc.

At the same time Celotex owned all of the outstanding voting securities of the following subsidiaries:

Jim Walter Export, Inc.
Celotex Canada Limited
Jim Walter Research Corp.
Celotex Limited
Miami Carey Ltd.
Carey Canadian Mines, Ltd.

(CX 35M).

[6] 6. For its fiscal year ending August 31, 1971, consolidated sales and revenues of JWC and its subsidiaries were \$710,029,000 and consolidated earnings were \$32,449,000 (CX 28, at 12; CX 33X). For its fiscal year ending August 31, 1972, JWC reported consolidated revenues of \$885,172,000; total assets of \$983,217,000; and a net income of \$44,568,000 (Complaint and Answer, par. 3; CX 29X; CX 35G). For its fiscal year ending August 31, 1973, JWC reported consolidated sales and revenues of \$1,068,636,000; total assets of \$1,081,999,000; and net income of \$54,097,000 (CX 30B; CX 36F).

7. The JWC organization has grown through a series of acquisitions. In the ten year period preceding the filing of the complaint in July 1974, JWC or its subsidiaries acquired no fewer than 17 separate companies with cash and/or stock (Complaint and Answer, par. 3). The following were among the more prominent acquisitions by JWC:

- a. Celotex stock - 34% in 1962, the balance by 1964 (CX 28, at 20, 21; CX 33B; CX 35B);
- b. Edwards Power Door Company, Inc., Mount Vernon, New York, in 1965, which became a part of Celotex in 1971 (CX 8A; CX 17I; CX 28, at 21);
- c. Brentwood Financial Corporation, Los Angeles, California, in 1966, an operator of savings and loan companies and an insurance agency (CX 8A; CX 17I);
- d. Barrett Building Materials Division of Allied Chemical Corporation in 1967. The Division later became a part of Celotex (CX 8A; CX 28, at 21; CX 45; CX 47);
- e. Alger-Sullivan Company, Inc., Century, Florida, in 1967, a producer of laminated railroad flooring. In 1971, it also became a part of Celotex. (CX 8A; CX 17I);

- f. Marquette Paper Corp. of Chicago, Illinois, in 1968 (CX 8A; CX 17J);
 - g. Gilbert C. Van Camp Insurance Agency in 1968 through the Brentwood subsidiary (CX 8A; CX 17J); [7]
 - h. Majestic Carpet Mills, Inc., Georgia, in 1968, which later became a part of Celotex (CX 8A; CX 28, at 21; CX 17J);
 - i. Knight Paper Corporation, Jacksonville, Florida, in 1968 (CX 8A; CX 28, at 21);
 - j. Georgia Marble Company, in 1969, which mines or quarries granite, marble, limestone and other minerals (CX 8A; CX 17K);
 - k. Mohawk Tablet Company, in 1969, through its Marquette Paper subsidiary (CX 8A; CX 17J);
 - l. United States Pipe and Foundry Company of New Jersey, in 1969 (CX 8A; CX 17J);
 - m. Columbia Moulding Company, in 1970 (CX 8A; CX 17L; CX 28, at 22);
 - n. Aetna Savings and Loan Association of Los Angeles, in 1971, through its Brentwood subsidiary (CX 8A; CX 53);
 - o. Monarch America, Inc. of St. Louis, Missouri, in 1972, a manufacturer of metal weather stripping (CX 17L; CX 29F; CX 54);
 - p. North American Door Corporation, Lindenhurst, New York, in 1972, which became a part of Celotex (CX 17M; CX 55);
 - q. Gamble Brothers, Louisville, Kentucky, in 1972 (CX 9B; CX 29F; CX 56);
 - r. Marble Products Company, Atlanta, Georgia, in 1972, which became a part of Georgia Marble (CX 9B; CX 30E);
 - s. D.J. Dinsmore of South Dakota in 1972, a producer of window sash products (CX 9B; CX 30E);
 - t. Christian Wood Products in 1972, which was combined with Gamble Brothers (CX 9B; CX 30E);
 - u. Crown Tough Carpets Division from Johns-Manville Corporation in 1973 (CX 9B). [8]
8. William Frack, a JWC Vice-President in charge of corporate expansion programs and with no employment relationship to Celotex, participated in the negotiations for most of JWC's acquisitions from 1968 through 1974 (Frack, Tr. 389, 397-404).
 9. The companies acquired by JWC during the period 1968-1973 were headquartered in various states and did business in interstate commerce (Frack, Tr. 411-12).
 10. JWC was, at the date of the acquisition, engaged in commerce as "commerce" is defined in the Clayton Act (15 U.S.C. 12) (Findings 11-14).
 11. JWC subsidiaries are operated as integral parts of the JWC

organization (*see, e.g.*, CX 28, CX 29; Findings 3, 23), and these subsidiaries engage in interstate commerce (Findings 9, 22).

12. In connection with the negotiations for the acquisition of Panacon, officers of JWC traveled several times between JWC headquarters in Tampa, Florida, and New York City (Frack, Tr. 390-93).

13. JWC has borrowed money from commercial banks located in a number of states. It has long term loan agreements with Continental Illinois National Bank and Trust of Chicago, Chase Manhattan Bank, First National City Bank, First National Bank of Chicago, Bank of New York, National Bank of Detroit, Chemical Bank, and Cleveland Trust Company (CX 49B). The funds used by Celotex to purchase the Panacon stock were borrowed by JWC from a group of commercial banks (CX 39B).

14. The common stock of JWC has been registered and traded on the New York Stock Exchange since 1964 (CX 28, at 21). JWC has listed securities on the New York, Midwest, and Pacific Stock Exchanges (CX 32B; CX 33A; CX 35A; CX 36A; CX 37A; CX 52; CX 53; CX 54; CX 55; CX 56). Its transfer agents have included the First National City Bank in New York, the Central National Bank of Cleveland, Ohio, and the First National Bank of Chicago, Illinois (CX 28, at 27). [9]

B. The Celotex Corporation

15. Celotex is a corporation organized and existing under the laws of the State of Delaware. It was in 1972, and is now, a wholly-owned subsidiary of JWC (CX 35M, Admissions No. 1).

16. Celotex and its subsidiaries manufacture and distribute a variety of building material products throughout the United States. Among these products are asphalt roofing products, including residential roofing, roll roofing, and felts, and asphalt coatings and accessories. Celotex also produces gypsum wallboard insulation products, acoustical products, and siding (CX 33B; CX 35B; CX 36B; McMurry, Tr. 1267).

17. In 1971, Celotex operated a total of 22 plants in the U.S. and one in Canada (CX 33J). In 1972, after the merger of Panacon, Celotex operated 29 plants located throughout the U.S. and one in Canada (CX 35K). By 1973 the number of plants had grown to 31 (CX 36L).

18. In 1967, Celotex increased its roofing capacity from one plant to eight when the Barrett Building Materials Division of Allied Chemical Corporation was acquired by JWC and merged into Celotex (CX 28, at 21; CX 45).

19. In 1972, Celotex operated roofing plants at Birmingham, Alabama; Camden, Arkansas; Chester, West Virginia; Chicago, Illinois; Edgewater, New Jersey; Los Angeles, California; Philadelphia, Pennsylvania; and San Antonio, Texas. It had dry felt mills at Camden, Arkansas; Peoria, Illinois; Los Angeles, California; Philadelphia, Pennsylvania; and San Antonio, Texas (CX 2B).

20. As of August 31, 1971, JWC estimated that Celotex was the fourth or fifth largest manufacturer of asphalt roofing products in the United States (CX 33D) and in all of 1971 shipped asphalt roofing products into 47 states and the District of Columbia (CX 70, *in camera*). By August 31, 1972, after the merger of Panacon into Celotex, JWC estimated that Celotex was the second largest manufacturer of asphalt roofing products (CX 35E). [10]

21. At the time of the acquisition, Celotex was in the process of building a new roofing plant in Goldsboro, North Carolina. The Goldsboro plant was an entirely new, high speed, large capacity plant which was planned to include a felt mill and to produce a full line of roofing products. Its capacity was at least twice that of Panacon's proposed plant at Hopewell, Virginia (*see Findings 42-43*). The plant cost \$9-12 million (Cordell, Tr. 1232; Di Salvo, Tr. 1829-30), and was scheduled to become operational in 1973 (CX 28, at 4).

22. Celotex was in 1972, and is now, engaged in trade or commerce among several states (Admissions, par. 12), and is engaged in commerce as "commerce" is defined in the Clayton Act (15 U.S.C. 12).

C. Relationship Between Jim Walter Corporation and Celotex

23. Although Celotex is maintained as a separate corporate entity, having its own officers and separate books of accounts, corporate minutes and other corporate records (Cordell, Tr. 1208-09; RX 55; RX 56), it is operated as an integral part of the JWC organization. In its annual reports, JWC refers to Celotex as the "Celotex Division" (CX 28F; CX 29L; CX 30L) and publishes consolidated financial statements which include the assets, earnings and liabilities of Celotex and other subsidiaries (CX 27-31). JWC also incorporates the accounts of all companies which are over 50 percent owned by it, including Celotex, in reports filed with the Securities and Exchange Commission (Admissions, par. 5; CX 32-39).

24. JWC sets the general policies regarding salaries and promotions for Celotex, but specific decisions on salaries, hiring and promotions are made by the Celotex management (Di Salvo, Tr. 1767-68).

25. JWC operates a stock option program for employees of Celotex (Di Salvo, Tr. 1769-70). The plan allows full-time employees of all JWC domestic subsidiaries, including Celotex, to purchase JWC common stock (CX 58; CX 60). [11]

26. Celotex does not operate a separate legal department. Legal services are secured from JWC on a request basis either from in-house attorneys or from outside sources (Di Salvo, Tr. 1775-76).

27. Celotex is in charge of its own advertising, which often bears the name of JWC (Di Salvo, Tr. 1776-77). Top management of JWC tries to establish and promote the name and image of the Jim Walter Corporation itself, rather than the brand names of its corporate subsidiaries, such as Celotex (Cordell, Tr. 1212-13).

28. Celotex does not maintain a research department for its exclusive use. The Jim Walter Research Corporation, a wholly-owned subsidiary of Celotex, conducts research for all the divisions of Celotex and for the other companies within the JWC organization. The Jim Walter Research Corporation is maintained as a separate profit center. Celotex is billed for its services on a monthly basis, and maintains an annual budget for research expenditures (Di Salvo, Tr. 1756-57; Hasselbach, Tr. 1476, 1495B; see RX 600-603).

29. JWC exercises extensive control over the business activities of Celotex. JWC appoints or elects all of the members of the Board of Directors of Celotex (Admissions, par. 2), and there is substantial overlap between the officers and directors of the two corporations.

30. The following chart identifies the positions that the members of the Board of Directors of Celotex occupied with JWC at the time of the acquisition of Panacon in April 1972:

	<i>Celotex</i>	<i>JWC</i>
J. O. Alston	Director	Vice-Chairman Director
William Herbert	President Director	(Herbert became Vice-President in 1972 and Sr. Vice- President and Di- rector in June 1973)
Eugene Katz	Director	Vice-President Director
Richard Thompson	Vice-President Director	Vice-President Secretary
James Walter	Chairman	Chairman

(CX 8B; CX 10; CX 30I; CX 37-0; CX 42; CX 43C).

[12] In addition, one of Celotex's Vice-Presidents, Mr. Cordell, was a director of JWC and JWC's Senior Vice-President and Treasurer (CX 8B; CX 10). Mr. Cordell is now both President of JWC and Vice-President of Celotex (Cordell, Tr. 1205-06). Four of Celotex's six other vice-presidents were also officers of JWC in 1972 (CX 8B; CX 10).

31. Celotex's acquisition of Panacon was for the most part planned and negotiated by officials of JWC (Findings 46-51).

32. Celotex made the acquisition of Panacon with funds borrowed from JWC. Celotex lacks authority to borrow from commercial banks because of restrictions contained in loan agreements between JWC and its long-term lenders (Cordell, Tr. 1213-14, 1228; Di Salvo, Tr. 1776).

33. The management of JWC and the management of Celotex occupy the same headquarters office building in Tampa, Florida (Admissions, par. 3).

II. PANACON CORPORATION, THE ACQUIRED COMPANY

34. Prior to April 17, 1972, Panacon Corporation was a corporation chartered and operating under the laws of the State of Michigan, with its principal place of business at 320 South Wayne Ave., Cincinnati, Ohio (Complaint and Answer, par. 6).

35. The Glen Alden Corporation owned approximately 89 percent of the outstanding two classes of stock of Panacon Corporation prior to April 1972 (Complaint and Answer, par. 6).

36. Panacon is the surviving corporation of a merger effected on April 9, 1970, whereby the Philip Carey Corporation, an Ohio corporation, was merged into Briggs Manufacturing Company, a Michigan corporation, with the survivor's name changed to Panacon Corporation (CX 39G; Tennesson, Tr. 416-17).

37. Panacon manufactured a wide range of products for residential and commercial construction and industrial applications. At the time of the acquisition, Panacon was organized into six divisions: the Philip Carey Company, which manufactured roofing and other building materials (hereinafter Philip Carey/Panacon); Briggs Manufacturing Company, which produced sanitary plumbing ware; Republic Heater Corporation, which manufactured water heaters; Miami Carey and Miami Carey Ltd., which produced residential products including bathroom and [13] kitchen equipment; and Carey Canadian Mines, which was engaged in the mining of asbestos fibers (Tennesson, Tr. 414-15; CX 25, at 8-14; CX 26, at 6-10). For the year ending December 31, 1971, Panacon reported revenues of approximately \$181,129,000, total assets of approximately \$106,008,000; and

net profits consisting of income before extraordinary items of \$6,138,293 plus tax benefits from utilization of federal income tax operating loss carry forward of \$4,453,000 (Complaint and Answer, par. 7).

38. In 1972, Panacon had approximately 5500 employees in the United States and Canada (CX 39T).

39. In 1970, Philip Carey/Panacon produced more than 200 different building and industrial products. It was principally engaged in the manufacture of asphalt shingles and prepared roofing materials. It owned plants in Cincinnati (Lockland), Ohio; Linden and Perth Amboy, New Jersey; Houston, Texas; Memphis, Tennessee; and Wilmington, Illinois (CX 25, at 12).

40. Philip Carey/Panacon was a major manufacturer of asphalt and tar roofing products in the United States, and was a direct competitor of Celotex (Mulligan, Tr. 192; Jenkins, Tr. 580-81; Kingery, Tr. 738; Black, Tr. 1395).

41. Sales of Philip Carey/Panacon were approximately \$89 million in 1971 (CX 44C).

42. At the time of the acquisition, Philip Carey/Panacon was about to construct a new roofing plant in Hopewell, Virginia to serve the Mid-Atlantic and Southeast areas of the United States. It had acquired an option on land, secured approval for the money to finance the project, ordered equipment, and conducted engineering studies (CX 26, at 9; Tennesson, Tr. 424; Di Salvo, Tr. 1723).

43. The Hopewell plant was to be built for an estimated \$2 million, using a simple warehouse-type building and as much used machinery as possible. The proposed plant was a small one, with a limited capacity and no felt mill (Tennesson, Tr. 442, 467-69; Di Salvo, Tr. 1829-30). After the acquisition by Celotex, plans for construction of the Hopewell plant were abandoned (Tennesson, Tr. 425). [14]

44. In 1971, Philip Carey/Panacon distributed asphalt roofing products in 42 states and the District of Columbia (CX 70, *in camera*).

45. Panacon was engaged in interstate commerce at the time of the acquisition (Complaint and Answer, par. 9).

III. THE ACQUISITION OF PANACON

46. Negotiations for the acquisition began in the fall of 1971 when Stanley Mirsky, a merger broker representing the Glen Alden Corporation, which owned 89 percent of the common stock of Panacon, contacted William A. Frack, Jr., JWC's Vice-President for Corporate Development and Expansion, to notify him of the

availability of Panacon as an acquisition candidate (Frack, Tr. 389-90; 407-08).

47. Following the initial contact, Frack was actively involved in preparing for and attending meetings with Glen Alden personnel during the entire course of the negotiations which lasted approximately four months (Blaney, Tr. 334; Frack, Tr. 390-93). In addition to Frack, the early negotiations were attended by Frank Pizzitola, the President of JWC; Bernard Blaney, the Vice-President and Assistant Treasurer of Glen Alden; and Isidore Becker, a member of Glen Alden's Board of Directors (Frack, Tr. 390). Neither Frank Pizzitola nor William Frack was an officer or a director of The Celotex Corporation (CX 10; CX 42; Frack, Tr. 388-89, 391; Cordell, Tr. 1232).

48. Mr. Cordell, Senior Vice-President and Treasurer of JWC and Vice-President of Celotex, became involved in the negotiations (Frack, Tr. 409-10; Cordell, Tr. 1206, 1218-19), and Mr. Pizzitola and Mr. Cordell went to Lockland, Ohio, to inspect the Panacon operations (Cordell, Tr. 1218-19).

49. Charles E. Tenneson, Jr., Panacon's President and Chief Operating Officer, participated in several meetings during the negotiations. The first of those meetings was attended only by Messrs. Tenneson and Pizzitola (Tenneson, Tr. 435). During this session, Mr. Pizzitola outlined to Mr. Tenneson the benefits to Panacon of becoming a part of JWC, a large, growing organization. The name of Celotex was not mentioned during these discussions (Tenneson, Tr. 435-37). [15]

50. Mr. Frank Pizzitola and Mr. Jim Walter, the Chairman of the Board of JWC, met with Mr. Tenneson and other representatives of Glen Alden in early March 1972 (Tenneson, Tr. 437). Mr. Tenneson also had several meetings with Mr. Cordell in New York City (Cordell, Tr. 1209).

51. During the negotiations, it was understood by the Panacon representatives that JWC would acquire Panacon (Tenneson, Tr. 439-37; *see* Frack, Tr. 392). The terms of the acquisition were agreed upon by Mr. Jim Walter, Chairman of the Boards of JWC and Celotex, and Mr. Meshulam Riklis, Chairman of the Board of Glen Alden Corporation (Frack, Tr. 392). The ultimate decision to acquire Panacon was made by the Board of Directors of JWC (Frack, Tr. 406).

52. On April 3, 1972, JWC and Glen Alden issued a joint press release announcing an agreement in principle whereby JWC would acquire Glen Alden's 89 percent stock interest in Panacon, subject to a satisfactory definitive agreement (CX 38D).

53. On the same day, Mr. Jim Walter forwarded to each member

of the Board of JWC a memorandum relating to the proposed acquisition of Panacon (CX 44; Frack, Tr. 393). The memorandum discussed the effects on JWC of three alternative methods of purchasing Panacon: cash; JWC convertible debentures; and JWC common stock (CX 44H, I; Frack, Tr. 394).

54. A draft agreement, dated April 11, 1972, which identified JWC and Glen Alden as the principals, was circulated between the parties (CX 62D-P; Blaney, Tr. 330). On April 12, 1972, the Executive Committee of Glen Alden approved the draft agreement. At this same meeting, Glen Alden's Executive Committee unanimously resolved that the corporation would sell its shares of capital stock of Panacon to JWC (CX 62; Blaney, Tr. 330).

55. JWC often included in contracts for the purchase of companies a provision allowing JWC to assign the contract to one of its subsidiaries (Cordell, Tr. 1216). Such a provision was included in the contract for purchase by JWC of the assets of the Barrett Division of Allied Chemical Corporation (CX 45Z-21). A similar provision was contained in the draft agreement between JWC and Glen Alden (CX 62-0). [16]

56. Some time after April 12, 1972, it was decided that Celotex rather than JWC would purchase the Panacon stock (Blaney, Tr. 330).

57. On April 14, 1972, the Board of Directors of JWC met to discuss "the proposed transaction whereby the corporation would acquire" approximately 89 percent of the stock of Panacon (CX 43A). The Board approved the acquisition and urged the management to consummate the transaction (CX 43B).

58. On April 14, 1972, the Board of Directors of Celotex met and authorized its officers to execute an agreement with Glen Alden (CX 42).

59. On April 17, 1972, Celotex purchased Glen Alden's Panacon stock (6,528,739 shares of common and 7,356,000 shares of Class A common) using \$62 million advanced by JWC, which had borrowed it from a group of commercial banks (CX 39B; CX 39Z-28 - Z42; Blaney, Tr. 328; Admissions, pars. 20-22). This accounted for about 89 percent of the shares outstanding (Complaint and Answer, par. 10). That same day, JWC issued a press release announcing that it had purchased Panacon stock from Glen Alden. No mention was made of Celotex (CX 23B). On April 20, 1972, the Board of Directors of JWC confirmed and ratified the purchase of the stock by Celotex (Admissions, par. 24). Effective June 29, 1972, the remaining 11 percent of Panacon stock was acquired by Celotex (CX 29Z-2). The

total cost of the stock was approximately \$73 million (Complaint and Answer, par. 10).

60. Immediately following the purchase of the stock Messrs. Walter, Pizzitola and Cordell were elected to the Board of Directors of Panacon. Mr. Pizzitola was also elected President and Chief Executive Officer of Panacon (CX 23C; CX 40C). All of these men were members of the Board of Directors and officers of JWC; Messrs. Walter and Cordell also held positions with Celotex (Finding 30).

61. A "Notice of Delayed Annual Meeting of Stockholders," dated May 31, 1972, was addressed to stockholders of Panacon and announced a meeting to elect a Board of five directors (CX 40). The following chart lists the five nominees and their principal occupations, as described in the notice. [17]

J. W. Walter	Chairman and Director of JWC
F. J. Pizzitola	President (since 1970) and Director of JWC. For three years prior thereto he was a Vice-President of Celanese Corporation, a chemical manufacturer.
J. B. Cordell	Senior Vice-President and Treasurer and director of JWC.
B. F. Harrison	President (since 1970) of United States Pipe and Foundry Company ("U.S. Pipe"), Birmingham, Alabama, a wholly-owned subsidiary of JWC. For more than three years prior thereto he was a Vice-President of U.S. Pipe; also a director of JWC (since 1970).
J. Warren Frazier	Attorney, partner of Shackelford, Farrior, Stallings & Evans, Tampa, Florida, General Counsel for JWC.

(CX 40C)

62. On May 31, 1972, and June 28, 1972, the Board of Directors of Celotex unanimously approved a resolution authorizing the merger of Panacon into Celotex (RX 64B, G).

63. The shareholders of Panacon voted to merge Panacon into Celotex on June 28, 1972. The merger took place on June 30, 1972, after approval by the Board of Directors of Celotex of the plan of

merger and consent of the sole shareholder of Celotex, JWC (Answer, par. 10(b), (c); RX 64A-H; Tr. 2151-52).

64. Subsequent to the merger, Philip Carey/Panacon and Carey Canadian Mines, Ltd., operated in the Celotex Division. Miami Carey, Miami Carey Ltd., and Briggs Manufacturing Company, all previously part of Panacon, were included in different operating groups of JWC (CX 29L, P).

65. It is clear from the record as a whole that JWC actively participated in direction of the course of events leading up to and following the acquisition by Celotex of the Panacon stock. JWC's role in the acquisition is illustrated by a statement contained in a report filed by JWC with the Securities and Exchange Commission on May 8, 1972: [18]

. . . Walter [JWC] and Celotex anticipate that the shareholders of Panacon would receive an amount of cash (as yet undetermined) for their shares of Panacon. As of the date hereof, Walter and Celotex have not decided whether such anticipated action should be accomplished by a liquidation, sale of assets, statutory merger, or otherwise.

(CX 39B)

IV. LINE OF COMMERCE

A. Roofing Products

66. "Roofing products" are materials used to shelter the interior of a structure from the effects of weather, and in particular, to prevent entry of water. A wide variety of materials can be, and are, utilized for this purpose in the United States. These include asphalt shingles, wood shakes and shingles, clay, concrete, cement and asbestos-cement tile, plastic shingles, metal shingles of steel and aluminum, fiberglass sheets, flat and corrugated aluminum sheets, terne, an alloy of tin and lead (Woodward, Tr. 1835) sheets, copper sheets, corrugated galvanized iron sheets, slate, asphalt saturated felts, tar saturated felts, asphalt roll roofing, and rubber and plastic (elastomeric) sheets (Whittemore, Tr. 160-161, 166; Jenkins, Tr. 570; Hasselbach, Tr. 1380; Linck, Tr. 1535, 1551-1552; Taylor, Tr. 1603; Hogan, Tr. 2129).

67. Each of these products is, in the broadest sense, competitive with the others (Taylor, Tr. 1603; Woodward, Tr. 1833-38; 1840; Humphreys, Tr. 1996; McMahon, Tr. 2105-08; Hogan, Tr. 2128-29; Peterson, Tr. 2185; Tinnell, Tr. 2222).

B. Asphalt and Tar Roofing Products

68. Asphalt and tar roofing products have been in use in the

United States since 1893 (CX 1, at 1). They are applied to residential, commercial and industrial roofs, and account for at least 80 percent of all roofing applied in the nation (CX 1, at 1; Snow, Tr. 685-87; Kingery, Tr. 756, 800; McMurry, Tr. 1274; Musser, Tr. 1646; Humphreys, Tr. 2044).

69. Asphalt and tar roofing products are sold and used in every part of the United States (Tennesson, Tr. 470; Snow, Tr. 683; Kingery, Tr. 739; McMurry, Tr. 1238). In contrast, slate, concrete and clay tile, wood shingles and shakes, and asbestos-cement shingles [19] tend to be fairly localized in use (Tennesson, Tr. 460-70). Wood shakes and shingles, while found throughout the United States, are most popular in the Pacific Northwest, California and Texas (Snow, Tr. 683; RX 66; RX 67; RX 68; RX 69; RX 70), with almost 60 percent of all red cedar shingles and shakes shipped into three states (Peterson, Tr. 2197). Clay and concrete tile complement the Spanish architecture of Southern California, Arizona, and Florida (Snow, Tr. 683). Use of slate is primarily confined to Pennsylvania and New England (McMurry, Tr. 1239).

70. There are three basic types of asphalt and tar roofing products: asphalt or tar saturated felts; asphalt roll roofing; and asphalt shingles (CX 1, at 12; Whittemore, Tr. 101; Mulligan, Tr. 178-79, 187). In addition, various accessory items, including coatings, cements, fasteners, and adhesives are used in connection with asphalt and tar roofing products to complete a roof system (CX 1, at 16-18). Shingles, or prepared roofing products, are fastened in overlapping fashion to the roof deck and are not completely sealed. As a result, they are used on more steeply pitched roofs. Built-up roofs are constructed over the roof deck with successive plies of asphalt or tar saturated felts and roll roofing, bonded with asphalt or coal tar pitch. Built-up roofs may be used on flat or low slope roofs (Whittemore, Tr. 107-08; Tennesson, Tr. 415-16; CX 1, at 20).

71. Manufacture of asphalt and tar roofing products involves two separate production steps: (1) fabrication of a base fiber; and (2) conversion of this base fiber into a finished roofing product (CX 1, at 3, 4, 7; Jenkins, Tr. 570). The base fiber serves as the asphalt or tar "carrier" and furnishes strength; the asphalt or tar acts as a binder and provides waterproofing capabilities to the product (Jenkins, Tr. 570; Snow, Tr. 679; Morris, Tr. 819).

72. Asphalt and tar roofing products may be made on a variety of bases, most often asbestos felt, organic felt, or fiberglass mat (Kingery, Tr. 740; Snow, Tr. 1125-27).

73. Organic felts are made from wood, wood chips, newspapers, cartons, rags, wood flour, and other cellulose materials; inorganic

felts are made from asbestos or fiberglass fibers (Whittemore, Tr. 101; Di Salvo, Tr. 1730). Despite some differences in raw material inputs, organic-based and inorganic-based asphalt and tar roofing products are similar in production, use, and performance (Snow, Tr. 679; Kingery, Tr. 740-41). [20]

74. Saturated felts are organic or inorganic "sheets" which have been saturated or impregnated with asphalt or tar (Whittemore, Tr. 102; Snow, Tr. 1106; Hasselbach, Tr. 1356-57); their principal uses are as plies in built-up roof systems or as underlayments for asphalt shingles or other shingles or tiles (Whittemore, Tr. 108; Mulligan, Tr. 186; Tennesson, Tr. 415; McMurry, Tr. 1272; McMahan, Tr. 2120; CX 1, at 12).

75. Roll roofings are asphalt saturated or impregnated felts or dry fiberglass or asbestos mats which have been coated with viscous asphalt. These products may be used in place of saturated felts, and result in the need for fewer plies when used as part of a built-up roofing system (CX 1, at 12; Whittemore, Tr. 102-03; Jenkins, Tr. 571; Kingery, Tr. 739-40; Hogan, Tr. 2142-43; Conley, Tr. 2265).

76. Smooth-surfaced roll roofing typically has a fine surfacing applied to its top and back to act as a binding agent. Mineral surfaced roll roofing is made by surfacing the weather side of roll roofing with colored mineral granules. Both smooth-surfaced and mineral-surfaced roll roofings serve as temporary and utility roof coverings or as components to built-up roof systems (Whittemore, Tr. 102-03, 133, 139; Mulligan, Tr. 186; Hasselbach, Tr. 1350-52; CX 1, at 12).

77. Asphalt shingles are mineral-surfaced roll roofing cut into strips or designs for use on steeper sloped roof decks (Whittemore, Tr. 102, 107-08; Mulligan, Tr. 186-87; CX 1, at 12).

78. Two other asphalt roofing products, "Ondeline" and "Decromastic," are not as widely used as saturated felts, roll roofing and shingles and do not appear to fit within the definition of asphalt and tar roofing products by which our consideration of this matter has been guided. "Ondeline" is a mineral-surfaced, asphalt product manufactured in France and sold in corrugated sheet form for use as siding as well as roofing (Woodward, Tr. 1835-36). "Decromastic" is made from galvanized corrugated iron sheets, coated with asphalt and covered with roofing granules for use for roofing (McMahan, Tr. 2107-08). The record evidence does not indicate their use is significant. [21]

79. The full-line manufacturers of asphalt and tar roofing products produce saturated felts, roll roofing, and asphalt shingles (Mulligan, Tr. 189-90; Jenkins, Tr. 570; Snow, Tr. 678-79; Tinnell, Tr.

2212). One measure of the competitive strength of an asphalt roofing company is its total sales of these three product categories (Mulligan, Tr. 190). The trade association of asphalt roofing manufacturers collects production statistics from its members for these products (CX 4; CX 5; CX 6).

80. Asphalt and tar roofing products have peculiar characteristics and uses which make them an appropriate line of commerce within which to assess the competitive effects of the acquisition challenged in this proceeding.

(1) Industry Recognition

81. The Asphalt Roofing Manufacturers Association (ARMA) is a nonprofit trade association which exists to promote the sale and use of asphalt and tar roofing products (Whittemore, Tr. 106-07). As part of its sponsored activities the association conducts public relations programs; participates in advertising ventures; lends financial support for industry research; maintains contacts with the National Bureau of Standards, the Federal Housing Administration, and other federal agencies; urges the American Society for Testing and Materials (ASTM) and Underwriters' Laboratories (UL) to establish appropriate standards for asphalt and tar roofing products; and acts as a liaison with roofing contractors (Whittemore, Tr. 107, 124-25).

82. Regular membership in ARMA is restricted to domestic manufacturers of asphalt and/or tar roofing products. The association makes no distinctions between manufacturers of organic and inorganic products for membership purposes. Companies which supply raw materials for asphalt and tar roofing products are eligible for associate memberships in ARMA (Whittemore, Tr. 106, 112-13). Prior to the subject acquisition both Philip Carey and Celotex were members of ARMA (Whittemore, Tr. 106). It was estimated by the managing director that ARMA members account for 85 percent of the total production of asphalt and tar roofing products annually (Whittemore, Tr. 148). [22]

83. The managing director of ARMA compiles a list of all known domestic manufacturers of asphalt and tar roofing products together with their roofing plant and dry felt mill sites (CX 2; CX 3; Whittemore, Tr. 116-17). The list is updated periodically in an attempt to identify all plants operating in the United States (Whittemore, Tr. 116, 122).

84. As a service to its regular members, ARMA employs a private accounting firm to collate statistics on member shipments of asphalt and tar roofing products. The report questionnaire requests information of each participating member's shipments of mineral and

do not precipitate immediate cost movements in, or demand shifts to, other roofing products, although they may cause customers to consider other products (Waltz, Tr. 1675-76). [27]

104. Dr. Lanzillotti, the economist called as a witness by JWC, testified that the price movements for asphalt and tar roofing products from 1970 to 1975 were affected by two overriding events: (1) imposition of federal price controls in 1971 and 1972; and (2) escalation of petroleum prices by the OPEC cartel in late 1973 (Lanzillotti, Tr. 2392). Respondent's exhibits disclose the lack of correlation between the prices of wood roofing products and asphalt roofing products during the period 1970-1975 (RX 84; RX 90; RX 91; Lanzillotti, Tr. 2393, 2573-74).

V. SECTION OF THE COUNTRY

105. Transportation costs are an important factor in determining the distance asphalt roofing products can profitably be shipped by a manufacturer (McMurry, Tr. 1239; Musser, Tr. 1651-52; Malarkey, Tr. 1961). Since producers of asphalt roofing products generally sell their products FOB seller's plant equalized to the nearest competitive producing or shipping point, they must usually absorb a portion of the transportation cost of shipments they make (Mulligan, Tr. 195; Finding 100). A producer located considerably farther away from a given area than other producers selling in that area cannot profitably sell in that location at a competitive price (Linck, Tr. 1569).

106. The distance a producer can profitably ship his product depends on a number of factors: the capacity and available supply of his plant, demand for his product, the type of transportation available and the amount of transportation charges which he must absorb. These factors vary according to the product sold, and change over time (Jenkins, Tr. 599; Kingery, Tr. 774-76; McMurry, Tr. 1239; Musser, Tr. 1651).

107. While industry witnesses agreed that they prefer to sell close to the plant, they gave estimates of the maximum distance they generally shipped or preferred to ship the bulk of their products which ranged from 250 miles to 600 miles (Jenkins, Tr. 599; Tennesson, Tr. 423; Mulligan, Tr. 196-97; Humphreys, Tr. 1977, 2006; Tinnell, Tr. 2220; see Kingery, Tr. 762-63, 780; RX 1). The President of Tamko Asphalt Products (Tamko) testified that a producer of asphalt roofing products should be able to ship at least 300 miles on a regular basis (Humphreys, Tr. 2005-06). [28]

108. Philip Carey/Panacon sold its roofing products only within the area in which it could make a profit (Musser, Tr. 1651). As a

general rule, it sold as much as possible within a 250 mile radius of its plants (Tennesson, Tr. 423; CX 14A).

109. All industry witnesses testified that they made some shipments on a regular basis to areas beyond their preferred maximum shipping distance. These shipments ranged up to 700 or 750 miles (Mulligan, Tr. 196-97; Tennesson, Tr. 423; Jenkins, Tr. 599; Kingery, Tr. 762-63; Humphreys, Tr. 2006; Tinnell, Tr. 2220). As stated by the President of Tamko:

[Transportation] is a factor, but it is not the most critical factor. The most critical factor is to make the wheels turn.

* * * * *

Keep the plant running.

(Humphreys, Tr. 2006)

110. For example, Johns-Manville Corporation shipped about one third of the products it sold in the southern United States from its Waukegan, Illinois, plant, a distance of up to 750 miles. The products shipped were those which were not produced by Johns-Manville's southern plants (Kingery, Tr. 762-63, 782). Philip Carey/Panacon, likewise, made substantial shipments into Middle Atlantic and Southeastern states from its Lockland, Ohio, plant because it had no manufacturing facilities in those areas (Tennesson, Tr. 423). It had two large customers in that part of the United States, which the new Hopewell plant was intended to serve (Tennesson, Tr. 426; Finding 42).

111. Philip Carey/Panacon sold most of its asphalt roofing products east of the Mississippi River, within a 250 mile radius of its plants (Tennesson, Tr. 426; Musser, Tr. 1652). Within these areas it was in direct and substantial competition with Celotex (Tennesson, Tr. 428). The areas within 250 miles of both Philip Carey/Panacon and Celotex plants, and the overlap between them, extending from Texas to Maine, are shown on CX 14. Both Philip Carey/Panacon and Celotex made the bulk of their sales within the areas of overlap. In the 24 states and the District of Columbia, which are entirely or more than half encompassed within the overlapping circles shown on CX 14, the two companies made the following percentages of their sales of asphalt roofing products: [28]

	<i>1970</i>	<i>1971</i>	<i>1972</i>
Celotex	74.8	73.6	71.9
Philip Carey/Panacon	79.7	89.5	88.8
Panacon/Celotex			80.2

671

Initial Decision

If two other states in which significant sales were made, South Carolina and Wisconsin, are included in the calculation, the percentages of sales are as follows:

Celotex	78.2	76.9	75.8
Philip Carey/Panacon	93.2	93.0	92.1
Panacon/Celotex			83.5

(Glassman, Tr. 1069A).

112. While there are a large number of asphalt roofing products manufacturers who sell and compete only on a local or regional basis (Mulligan, Tr. 208, 191-92; Humphreys, Tr. 2063; *see* CX 2; CX 3), the largest companies in the asphalt roofing industry sell throughout most or all of the United States (Mulligan, Tr. 191-92, 207; Jenkins, Tr. 581; Kingery, Tr. 739, 788; Conley, Tr. 2259-60; *see* CX 2; CX 3). Philip Carey/Panacon sold its products in a total of 42 states and the District of Columbia in 1971, including a limited amount of sales of some products on the West Coast (Tennesson, Tr. 442; Musser, Tr. 1952; CX 70, *in camera*). Celotex in 1971 sold its asphalt roofing products in 47 states and the District of Columbia (CX 70, *in camera*).

113. Dr. Lanzillotti testified that in his study of the roofing industry, he considered a nation-wide market because the firms making up the industry had plants throughout the United States and were shipping interregionally into broad areas of the country (Lanzillotti, Tr. 2309-10). He also testified that Philip Carey/Panacon and Celotex both competed in the national market, shipping products interregionally from their various plants, and competed with each other generally throughout the United States (Lanzillotti, Tr. 2478). [30]

114. The United States as a whole and that region of the country encompassing the 26 states and the District of Columbia which run northeast from Texas to Maine, in which both Philip Carey/Panacon and Celotex made the bulk of their sales of asphalt roofing materials (Finding 111), are appropriate sections of the country within which to assess the competitive effects of the acquisition challenged in this proceeding.

VI. INDUSTRY STRUCTURE

A. Industry Members and Production

115. According to an industry-wide survey conducted by the Commission, total domestic shipments of organic and inorganic based asphalt and tar roofing products for 1970, 1971, and 1972

amounted to \$484.9 million, \$680.9 million, and \$765.4 million, respectively (CX 15A, B, C, *in camera*).

116. The industry shipment figures (as well as market share and concentration figures) for 1970, 1971, and 1972 were compiled from data submitted by each company listed in Finding 123 in response to a 6(b) Special Report survey authorized by the Commission on June 25, 1973 (*see* CX 69) and/or in response to supplementary requests made by Commission personnel (Glassman, Tr. 490). All information used to compile this survey was submitted in certified documentary form (Glassman, Tr. 1043-44). Initial uncertainties over the treatment to be accorded asbestos and fiberglass based materials and the inclusion of interplant transfers were clarified through follow-up inquiries and a stipulation with respondent (*see* CX 69; Tr. 234; Glassman, Tr. 490, 518-19). Questionnaires were sent to known producers of asphalt and tar roofing products and to any company identified as a competitor by those companies responding to the Special Report (Glassman, Tr. 490).

117. Value of shipments of imported asphalt and tar roofing products were not incorporated in the industry universe totals for 1970, 1971 and 1972 in view of evidence that imports represented at most 1 percent of the domestic market (Glassman, Tr. 956-58, 964, 966-67; *see also* Lanzillotti, Tr. 2525). It is not possible to determine from public sources the precise level of imports of asphalt and tar roofing products (*see* Lanzillotti, Tr. 2509-25; RX 76-79). [31]

118. In order to check the reliability of the data compiled from the 6(b) responses and supplementary responses, complaint counsel attempted to reconcile the 6(b) universe with figures derived from Bureau of Census data on 1972 value of shipments of the asphalt and tar roofing products covered by the 6(b) survey, and with an ARMA report on unit shipments by state in 1972 of certain categories of asphalt roofing products by 24 of its members (Glassman, Tr. 492, 969).

119. The size of the Census universe was \$688.1 million in shipments and was constructed from the following SIC codes:

<i>Product Code</i>	<i>Product</i>	<i>Value</i>
2952311	Smooth-surface roll roofing	\$50.5 million
2952313	Mineral-surface roll roofing	\$44.0 million
2952314	Self-sealing strip shingles, 240 pounds or less	\$388.1 million

671	Initial Decision	
2952315	Self-sealing strip shingles	\$17.4 million
2952316	245 pounds or more Regular strip shingles, 235 pounds or less	\$57.8 million
2952317	Regular strip shingles, 245 pounds or more	
2952318	Individual shingles	\$25.8 million
2952351	Asphalt saturated felts	\$78.2 million
2952355	Tar saturated felts	\$3.1 million
3292781	Asphalt or tar saturated asbestos felts	\$23.2 million

(CX 12S; CX 13U; Glassman, Tr. 481-86, 1008-10, 1014, 1018).

[32] 120. The ARMA report covered the following categories or products: smooth-surface roll roofing, shingles, and asphalt and tar saturated felts. ARMA's Managing Director testified that the categories of products used in the 6(b) survey were generally comparable to the classifications used by ARMA in the survey of its members (CX 4A-B; Whittemore, Tr. 127-29, 131-32, 137-39).

121. There appear to be no sources of statistics on sales or shipments of asphalt and tar roofing products other than the 6(b) survey, the ARMA reports, and the Bureau of the Census data (Glassman, Tr. 1072; Whittemore, Tr. 129-30).

122. The 6(b) universe of shipments of asphalt and tar roofing products was the largest of those constructed from the three sources. The margin of error in the 6(b) universe as compared to the others varied from 2.7 percent to 10 percent (Glassman, Tr. 966, 969). The discrepancy may be attributable to the fact that the ARMA survey of its membership does not cover all industry firms, while it was not possible to isolate shipments of fiberglass based asphalt and tar roofing products from the Census data (Glassman, Tr. 1072-74).

123. According to the Commission's 6(b) survey, there were approximately 32 domestic manufacturers of asphalt and tar roofing products during the period 1970-1972. The following is an alphabetical listing of those companies which manufactured asphalt or tar saturated felts, asphalt roll roofings, and/or asphalt shingles during those years:

1. Allied Materials Corporation;
2. American Tar Company;
3. Arctic Roofing, Inc.;
4. Atlas Roofing Manufacturing Co., Inc. (subsidiary of Masonite Corp.);
5. Bear Brand Roofing, Inc.;
6. Big Chief Roofing Company;
7. Bird & Son, Inc.;
8. The Celotex Corporation;
9. Certain-teed Products Corporation (including B.F. Nelson Manufacturing Company, a one plant roofing operation in Minneapolis, acquired in December of 1970);
10. Congoleum-Nairn, Inc.;
11. Daingerfield Manufacturing Company (owned by the same principals who own Big Chief Roofing Co.);
12. Delta Roofing Mills, Inc.;
13. Elk Roofing Company;
14. Evans Products Corporation;
15. Fensky Felt & Wrapping Mills; [33]
16. The Flintkote Company;
17. Lloyd A. Fry Roofing Company;
18. GAF Corporation;
19. Globe Roofing Products Company, Inc.;
20. Johns-Manville Corporation;
21. The Koppers Company;
22. The Logan-Long Company;
23. Lunday-Thagard Oil Company;
24. Herbert Malarkey Roofing Company;
25. Nicolet Industries;
26. Owens-Corning Fiberglas Corporation;
27. Philip Carey Company (a division of Panacon before it was merged into Celotex in mid-1972);
28. Southern Asphalt Roofing Corporation;
29. Tamko Asphalt Products, Inc. (including its subsidiary Royal Brand Roofing, Inc.);
30. Tilo Company, Inc.;
31. United States Gypsum;
32. Volunteer Asphalt Company.

(RX 82, *in camera*; see also CX 2A-E; RX 99A; RX 99B)

B. Concentration

124. Four-firm and eight-firm concentration in the asphalt and

