

25. While, as above indicated, counsel supporting the complaint failed to show in any of the transactions discussed that Lipsett resold any of the scrap at a loss, there is evidence in the record covering part of the period at issue, which indicates that Lipsett was conducting a profitable operation generally. Thus, statistical evidence for 1952, introduced by counsel supporting the complaint, establishes that on gross sales of \$4,390,000, Lipsett realized a gross profit of \$222,000, and a net profit before taxes of \$65,700.

*The Evidence Involving Luria*

26. In addition to the evidence involving the Lipsett operation, counsel supporting the complaint rely on evidence pertaining to Luria's own purchases from four dealers in the New York metropolitan area, as establishing their contention that Luria engaged in preclusive buying in that area. The dealers are located, respectively, in New Haven, Connecticut; Jamaica, New York; Brooklyn, New York; and Newark, New Jersey.

27. The most important of the dealers is M. Schiavone & Sons, of New Haven. For a number of years M. Schiavone had sold the bulk of its scrap to Schiavone-Bonomo, which had helped finance the opening of its first yard in 1937 and with whom there existed a family relationship. Beginning around 1950 there was a substantial decline in M. Schiavone's sales to Schiavone-Bonomo, and it began to do an increasing business with other brokers including respondents Luria and Southwest. Counsel cite the testimony of the Schiavone-Bonomo witness that "quotations from that yard [M. Schiavone's] were certainly dollars higher than we could afford to pay" (R. 2607), as establishing that prices paid by Luria and Southwest were responsible for the decline in business between M. Schiavone and Schiavone-Bonomo.

Aside from the fact that the testimony of the Schiavone-Bonomo witness was based on hearsay and opinion, the record does not support a finding that the payment of preclusive prices by Luria or Southwest was responsible for a decline in business between the two companies. A representative of M. Schiavone, who was also called as a witness by counsel supporting the complaint, testified that his company's business with Schiavone-Bonomo had begun falling off even prior to 1950 because it felt the latter was taking advantage of the family relationship in paying it prices below the market. He stated that his company had received better price quotations from "a lot of different people", not merely from Luria and Southwest, and that it continued to do business with Schiavone-Bonomo only "for old times sake" (R. 3956).

The statistical evidence offered by counsel supporting the complaint with respect to M. Schiavone's scrap sales would appear to belie the

claim that Luria was offering or paying M. Schiavone "dollars higher" than the market. The figures disclose that during the period from 1950 to 1953, with which most of the testimony was concerned, M. Schiavone was selling most of its scrap to dealers and brokers other than Luria.<sup>54</sup> Presumably if Luria were paying prices dollars above the market it would have been able to purchase more of M. Schiavone's scrap.

28. Another of the dealers referred to by counsel supporting the complaint is Special Steels Co. of Newark, which sold 80 to 90% of its scrap to Luria during the period from 1952 to 1955. The Special Steels representative gave as the reason for the high percentage of his company's sales to Luria: "A higher price, service and so forth" (R. 2535). The fact that Special Steels sold most of its scrap to Luria and that one reason was a "higher price" does not, in the opinion of the examiner, justify an inference that Luria was engaged in preclusive buying. Higher prices are not necessarily synonymous with preclusive prices. The record fails to establish that the prices paid Special Steels by Luria were so out of line with the market that the scrap was resold at a loss.

29. The third dealer referred to is Newton Iron & Steel Corporation of Jamaica, New York, which sold approximately 95% of its scrap to Luria since about 1949. The reason given by the Newton witness for selling so large a portion of his company's scrap to Luria was that, "we get the service we think we require to do business" (R. 2885). While the witness did not explain the type of "service" his company was getting, the record does indicate that it received loans from Luria periodically, which amounted to as much as \$100,000 in 1950.

Counsel supporting the complaint suggest that prices received from Luria were a factor because of the witness' testimony that the prices paid by Luria were the prices which Newton received from competitors "and perhaps a little better at times" (R. 2885). The fact that Luria's prices were sometimes better than competitors' hardly establishes the preclusive buying charge. There is nothing to show what such prices were or that they resulted in a resale of the Newton scrap at a loss.

30. The last of the dealers in the New York area referred to is Charles J. King, Inc. of Brooklyn. Counsel supporting the complaint cite the fact that in 1953 Luria paid King \$2.00 more a ton on certain

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<sup>54</sup> In the fiscal year ending February 1950, prior to Luria's acquisition of Southwest, M. Schiavone sold to Luria only about 12% of the scrap sold to brokers and dealers. Southwest, which was then independently owned, purchased 42% of the scrap sold by M. Schiavone to brokers and dealers. In the fiscal years ending February 1951 and February 1952 (after Luria's acquisition of Southwest), M. Schiavone sold approximately two-thirds of its scrap to dealers and brokers other than Luria and Southwest. In the fiscal year ending February 1953, it sold approximately 58% to other dealers and brokers.

scrap than the latter had been offered by Schiavone-Bonomo. However, in the light of the fact that King never sold more than 5% of its scrap to Luria and never less than 85% to Schiavone-Bonomo, during the period at issue, it can hardly be inferred that Luria was engaging in predatory price tactics in buying from King.

*New England Area*

31. The case of counsel supporting the complaint, insofar as the New England area is concerned, is based on the claim that Luria paid better prices to certain dealers than did competitors, and that in the case of one dealer Luria increased its price to the dealer on several occasions, although not required to do so by contract. No evidence was offered that any of the scrap purchased from these dealers was resold at a loss.

32. One of the dealers referred to is Harcon Corporation of Boston, which has previously been mentioned in connection with the Luria-Bethlehem exclusive arrangement. During the period from 1950 to 1955 the proportion of Harcon's scrap sold to Luria increased from about 1% to 38%, and Harcon's direct sales to Bethlehem, which had constituted about 10% of its business, ceased. A large part of the scrap sold to Luria was shipped for export.

As evidence of the fact that Luria was paying Harcon preclusive prices, counsel supporting the complaint cite the testimony of a Harcon official that Luria had treated his company "more favorably" than did other brokers in the matter of price (R. 4567). In the absence of evidence showing that the extent to which Luria's prices were above those of competitors, and that they resulted in periodic losses upon the resale of the scrap, there is no basis for inferring that Luria bought scrap from Harcon at preclusive prices.

33. The second dealer whose testimony is referred to by counsel supporting the complaint is General Scrap Iron, Inc., of Providence, Rhode Island, which began selling most of its scrap to Luria around 1950, after having previously sold directly to consumers, principally to Bethlehem. The General Scrap witness testified that he could get "more money" by selling to Luria than by selling direct to Bethlehem (R. 4464). The examiner cannot infer from this that Luria paid General Scrap prices which were out of line with the market and which resulted in the resale of the scrap at a loss. The more likely explanation for the sales to Luria is not the latter's payment of preclusive prices, but the fact that Bethlehem ceased buying directly in New England when Luria became its exclusive broker.

34. The third dealer referred to by counsel supporting the complaint is South Boston Iron & Metal Co. of Boston. Prior to 1956, South Boston sold most of its scrap to LS&T. It also sold relatively

small amounts to others, including respondent Luria. Despite the fact that Luria was putatively paying high prices in the New England market since about 1950, it was generally able to purchase less than 20% of South Boston's scrap until late 1955, when it replaced LS&T as South Boston's largest purchaser. The first large transaction between the two companies occurred in December 1955 when South Boston sold Luria a substantial tonnage of scrap for shipment to a combine of European mills. Further dealings were had in 1956, also largely involving scrap for exports.

Counsel supporting the complaint emphasize the fact that Luria's price to South Boston was substantially higher than the price offer of LS&T to buy scrap from South Boston for export in December 1955, and was also higher than the price at which LS&T had unsuccessfully offered to sell scrap to the same European combine. Counsel also refer to the fact that the price which Luria paid South Boston was \$3.00 higher than the price originally agreed upon, due to the fact that Luria's customer had increased the price to it.

In the opinion of the examiner the evidence cited by counsel supporting the complaint fails to sustain the preclusive buying charge. It seems evident that the fact Luria had a better price from its customer than did LS&T enabled it to buy at a higher price than the latter. Whether the price paid by Luria was or was not out of line would depend upon the price at which it could resell the scrap. There is no claim made that it resold the scrap at a loss. The vice in the situation, if there was one, lay in the leverage which Luria had obtained by reason of its preferential position with the European combine rather than in preclusive buying. The former is the subject of another charge in the complaint and is hereafter separately considered.

*West Coast (Southern Pacific Company)*

35. The contention of counsel supporting the complaint that Luria paid preclusive prices on the west coast revolves largely about the prices which it paid to the Southern Pacific Railroad, particularly for No. 1 heavy melting steel. The Southern Pacific generates and sells large tonnages of railroad scrap, of which No. 1 heavy melting steel constitutes a substantial portion. It is the largest producer of railroad scrap in the California area.

36. In selling railroad scrap other than No. 1 heavy melting scrap, the Southern Pacific receives price quotations from a number of different brokers and dealers, and usually sells to the highest bidder. In the case of No. 1 heavy melting steel, which the railroad generates in large quantities and which must be disposed of monthly, it negotiates for the sale thereof with a limited number of dealers and brokers. The No. 1 heavy melting scrap is accumulated at various accumulation

points along the railroad such as El Paso, Los Angeles, San Francisco and Portland, and price quotations are obtained from brokers and dealers in the different areas, who usually bid on behalf of mill customers. It receives price quotations from Luria for the purchase of No. 1 heavy melting scrap at all of its accumulation points. In addition, it receives price quotations from a Dallas broker, Commercial Metals, for scrap accumulated at El Paso, and from a limited number of other dealers and brokers at Los Angeles, San Francisco and Portland.

37. The statistical evidence in the record discloses that between 1955 and 1957 Luria purchased the great bulk of Southern Pacific's No. 1 heavy melting scrap. In 1955 it purchased 57,750 tons out of 59,900 tons sold by Southern Pacific; in 1956 it purchased 43,435 tons out of 47,135 tons; and during the first 7 months of 1957 it purchased 19,600 tons out of 20,550 tons. In terms of Southern Pacific's total scrap sales, including obsolete locomotives, cars and other scrap, as well as heavy melting scrap, Luria's purchases represented 39% in 1955, 52% in 1956, and 45% in 1957. The record does not contain a breakdown of Luria's purchases, prior to 1955, as between No. 1 heavy melting scrap and other grades. However, it does appear that during the period from January 1, 1949 to March 31, 1954, Luria purchased 297,821 tons out of 603,625 tons of ferrous scrap sold by Southern Pacific, which is slightly less than half of the scrap sold. It may be assumed that a very substantial part of this consisted of No. 1 heavy melting steel.

38. It is the position of counsel supporting the complaint that the very heavy sales of No. 1 heavy melting steel to Luria have been due to the fact that Luria paid preclusive prices for the scrap. Counsel's argument is based largely on a comparison of the prices paid to Southern Pacific by Luria, at the Los Angeles and San Francisco shipping points, with the prices quoted for No. 1 heavy melting steel at these points in the trade publication "Iron Age". Respondent contends that a comparison with Iron Age prices is not the proper way to determine whether its prices were out of line with the market since Iron Age did not accurately reflect the true market prices, being below what other brokers as well as Luria paid to the Southern Pacific and below the prices paid by brokers to other railroads. Respondent further argues that, aside from other considerations, the failure to establish that any of the scrap bought by it from the Southern Pacific was resold at a loss is fatal to the position of counsel supporting the complaint.

39. The evidence of the prices paid by Luria for No. 1 heavy melting steel to the Southern Pacific between 1954 and July 1957 does establish, as contended by counsel supporting the complaint, that its

prices were generally higher than those quoted in Iron Age for the San Francisco and Los Angeles markets. The prices bid by Luria for scrap accumulated by the Southern Pacific at Los Angeles, San Francisco and Portland were always the same, although the Iron Age quotations for Los Angeles and San Francisco frequently differed. Indicative of the extent to which Luria's prices to Southern Pacific differed from those quoted in Iron Age are those for 1954 which, in San Francisco, ranged from as little as \$1.00 a ton above Iron Age prices in the month of June to as much as \$9.00 a ton above in November. The average differential per month from the Iron Age quotations for San Francisco during 1954 was \$4.25. The differential for Los Angeles ranged from a minimum of \$4.00 above Iron Age to \$9.00 above, with the average monthly differential for the year amounting to \$6.15. Only in April 1956 was Luria's price at San Francisco below the Iron Age quotation, viz, by \$2.50, but in Los Angeles it was \$4.50 above Iron Age.

40. However, as pointed out by Luria, the evidence discloses that other brokers and dealers likewise bid or paid to the Southern Pacific prices above those quoted in Iron Age for No. 1 heavy melting steel, although such prices in most instances were not as high as Luria's. Out of 33 price quotations from other brokers for West Coast accumulation points between 1954 and 1957, 25 were in excess of those quoted in Iron Age and 8 were as high or higher than those quoted by Luria to the Southern Pacific.

41. The record also supports Luria's contention that brokers were paying prices to other railroads operating on the West Coast which were above those quoted in Iron Age for No. 1 heavy melting steel, and in some instances above those paid to the Southern Pacific. Thus out of 28 sales made by the Atcheson, Topeka & Santa Fe Railroad and the Union Pacific Railroad between 1954 and 1957, from the same shipping points as those involved in the Southern Pacific's sales to Luria, 15 were made at prices higher than those received by the Southern Pacific from Luria. All but three of those sales were made to brokers and dealers other than Luria. Of the remaining 13 sales, 1 was at the same price as that received by the Southern Pacific from Luria and 6 were within \$1.00 of that price. All of the sales were made at prices above those quoted in Iron Age.

In addition to these transactions, respondent Luria cites a number of other transactions involving sales by the Union Pacific from its Seattle accumulation point, which Luria contends is comparable to Portland. In all but 6 of the 24 transactions involved between 1954 and 1956, the price paid to the Union Pacific was equal to or better than the price paid by Luria to Southern Pacific at Portland. All but 10 of the transactions were with vendees other than Luria. Counsel

