

tical Availability", beginning on page 910 with the words "Exclusionary Aspects" and ending on page 916 with the words "intended to condemn."

It is further ordered, That the initial decision as modified hereby be, and it hereby is, adopted as the decision of the Commission.

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

Commissioner Elman dissenting.

IN THE MATTER OF
HENDERSON TOBACCO MARKET BOARD
OF TRADE, INC., ET AL.

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

Docket 8684. Complaint, May 18, 1966—Decision, June 15, 1967

Order requiring a Henderson, N.C., tobacco warehousing trade association and its members to cease restraining competition in the buying and selling of leaf tobacco through the adoption of bylaws and other rules which favor established warehouses and penalize new entrants.

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 each and all of the parties named in the caption hereof, and hereby made respondents herein, and more particularly hereinafter described and referred to as respondents, have violated the provisions of Section 5 of said Act (U.S.C., Title 15, § 45), and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, the Commission hereby issues its complaint charging as follows:

PARAGRAPH 1. The following is a description of the respondents:

1. Respondent Henderson Tobacco Market Board of Trade, Inc., hereinafter referred to as respondent Board, is a corpora-

tion duly organized under the laws of the State of North Carolina, with its principal office and place of business located in the city of Henderson, North Carolina. Membership in respondent Board is limited to those persons, firms, corporations, and associations engaged in or about to engage in business as leaf tobacco warehousemen, buyers or rehandlers of leaf tobacco on the Henderson tobacco market.

The following named individuals are now, or have been during the time mentioned here, officers of respondent Board and as such and individually, are named as respondents herein, and in that capacity have dominated, controlled and directed, and are now dominating, controlling and directing, the affairs of respondent Board, including the policies and practices as hereinafter set forth:

Charles Brooks Turner, President

W. J. Alston, Jr., Vice President

William H. Hoyle, Secretary-Treasurer.

2. Respondents George T. Robertson and Samuel E. Southerland are individuals engaged in the operation of five tobacco auction warehouses, four trading and doing business under the name and style of Liberty Warehouse, more commonly known, referred to and described as Liberty #1, Liberty #2, Liberty #3 and Liberty #4, and one under the name and style of Robertson & Southerland, all of which are located in or near the city of Henderson, North Carolina, where respondents have their principal office and place of business, and as such and individually are named as respondents herein. Said respondents are members of the Henderson Tobacco Market Board of Trade, Inc.

3. Respondent W. J. Alston, Jr., an individual trading and doing business under the name and style of Farmer's Warehouse, is engaged in the business of operating four tobacco auction warehouses commonly known, referred to and described as Farmer's Warehouse, Alston #1, Alston #2 and Alston #3, all of which are located in or near the city of Henderson, North Carolina, where respondent has his principal office and place of business, and as such and individually is named as respondent herein. Said respondent is a member of respondent Henderson Tobacco Market Board of Trade, Inc.

4. Respondents A. H. Moore and C. E. Jeffcoat, individuals trading and doing business under the name and style of Moore's Big Banner Tobacco Warehouse, are engaged in the business of operating three tobacco auction warehouses commonly known, referred to, and described as Big Henderson #1, Big Henderson #2,

and Big Banner, all of which are located in or near the city of Henderson, North Carolina, where respondents have their principal office and place of business, and as such and individually are named as respondents herein. Said respondents are members of respondent Henderson Tobacco Market Board of Trade, Inc.

5. Respondents F. H. Ellington, Gilbert F. Ellington, and John Ellington, individuals trading and doing business under the name and style of Ellington Warehouse, are engaged in the business of operating two tobacco auction warehouses commonly known, referred to, and described as Ellington Warehouse and Planters Warehouse, both of which are located in or near the city of Henderson, North Carolina, where respondents have their principal office and place of business, and as such and individually are named as respondents herein. Said respondents are members of respondent Henderson Tobacco Market Board of Trade, Inc.

6. Respondent M. L. Hight is an individual engaged in the operation of a tobacco auction warehouse trading and doing business under the name and style of Hight Warehouse, which is located in or near the city of Henderson, North Carolina, where respondent has his principal office and place of business, and as such and individually is named as respondent herein. Said respondent is a member of respondent Henderson Tobacco Market Board of Trade, Inc.

7. Carolina Tobacco Warehouse is a partnership comprised of the subsequently named individuals who formulate, direct and control the acts and practices of the said partnership, including the acts and practices hereinafter set forth. The principal office and place of business of respondent partnership is located in or near the city of Henderson, North Carolina.

8. Respondents M. L. Hight, B. W. Young and J. S. Royster, copartners trading and doing business under the name and style of above partnership, are engaged in the business of operating six tobacco auction warehouses commonly known, referred to and described as follows:

Carolina Warehouse.

Royster-Hight No. 1 (known also as Golden Belt Warehouse).

Royster-Hight No. 2.

Royster-Hight No. 3.

Big Four Warehouse No. 18.

Big Four Corporation House No. 17.

All of the above-named warehouses are located in or near the city of Henderson, North Carolina, where respondents have their

principal office and place of business. Said respondents are members of respondent Henderson Tobacco Market Board of Trade, Inc., and as such and individually are named as respondents herein.

9. Respondent Royster-Hight Corporation is a corporation organized under the laws of the State of North Carolina with its principal office and place of business in Henderson, North Carolina. Respondent corporation was chartered in 1954 for the purpose of conducting the business of the above-named Royster-Hight Warehouses No. 1, No. 2 and No. 3 and as such said corporation is named a respondent herein.

The following named individuals are now, or have been during the time mentioned herein, officers and directors of respondent Royster-Hight Corporation, and in that capacity they have dominated, controlled and directed and are now dominating, controlling and directing the affairs of said respondent corporation, and as such and individually are named as respondents herein:

Fred S. Royster—President
W. G. Royster—Vice President
J. S. Royster—Secretary
M. L. Hight—Treasurer.

10. Respondents C. B. Turner, R. E. Tanner, S. P. Flemming and R. E. Flemming, individuals trading and doing business under the name and style of High Price Tobacco Warehouse, are engaged in the business of operating four tobacco auction warehouses commonly known, referred to and described as Dixie #1, Dixie #2, New Dixie, and High Price Warehouse, all of which are located in or near the city of Henderson, North Carolina, where respondents have their principal office and place of business, and as such and individually are named respondents herein. Said respondents are members of respondent Henderson Tobacco Market Board of Trade, Inc.

11. The membership of respondent Board includes, in addition to those warehouse owners and operators hereinabove described, other members whose names are not known at this time to the Federal Trade Commission but who may possess or own interests in one or more of the different warehouses operating on the Henderson tobacco market and thus be eligible under respondent Board's Constitution and By-Laws to vote on matters pertaining to the allocation of selling time to said warehouses operating on the Henderson market. Furthermore, such membership of said respondent Board is, or may be, changed from

time to time by the addition and withdrawal of such members. For these reasons, all of such members of said respondent Board at any given time cannot be properly described and set forth herein for the purpose of naming them as respondents without considerable inconvenience and delay. Wherefore, the respondents hereinbefore named as respondents, as such officers and warehouse members, are also made respondents as generally and fairly representative of and as representing all of the warehouse members of said respondent Board, including those not herein specifically named and described.

PAR. 2. Flue-cured tobacco (type 11[b]) produced in the States of North Carolina and Virginia is brought to the Henderson tobacco auction warehouses, operated and controlled by respondent members of respondent Board, where it is sold at auction on such warehouse floors to purchasers, or agents or representatives thereof, who are also members of respondent Board and who are, in a great many instances, engaged in the export tobacco trade or in the domestic manufacture of tobacco products in States other than North Carolina. Said tobacco is then shipped or otherwise transported by such purchasers or by those to whom such tobacco is resold or for whom such tobacco is purchased, from said State of North Carolina to other States within the United States and the District of Columbia and foreign countries, and there has been, and now is, a constant and continuous current and flow of said tobacco and tobacco products between and among the several States of the United States and the District of Columbia, and with foreign countries.

PAR. 3. There are five types of flue-cured tobacco as classified by the United States Department of Agriculture, the primary bases of classification being the date of maturity and area of production:

Type 11(a): Grown in northwestern North Carolina and south central Virginia, an area commonly referred to as the "Old Belt."

Type 11(b): Grown in central North Carolina and southwestern Virginia, an area commonly referred to as the "Middle Belt."

Type 12: Grown in eastern North Carolina.

Type 13: Grown in southeastern North Carolina and northeastern South Carolina.

Type 14: Grown in southern Georgia and northern Florida.

In 1963, the total sales of all flue-cured tobacco (types 11[a], 11[b], 12, 13 and 14) was 1,463.4 million pounds worth

\$843,980,000 or \$56.67 per cwt. The State of North Carolina, which is the largest producer of flue-cured tobacco, accounted for 64 percent of this total or 933.3 million pounds worth \$541,490,000. Thus, in North Carolina, the cash receipts from flue-cured tobacco accounted for 47 percent of the total receipts from the sale of all farm commodities.

PAR. 4. (1) The Henderson tobacco market, located in north central North Carolina, ranks as one of the largest markets engaged in the auction of type 11(b) flue-cured tobacco. Of the total 1963 sales of type 11(b) flue-cured tobacco (177.7 million pounds worth \$101,356,000), the Henderson market accounted for 16 percent (27.9 million pounds worth \$15,650,000 or \$56 per cwt.). Among the ten markets engaged in the auction of type 11(b) flue-cured tobacco, the Henderson market ranks third in terms of pounds of tobacco sold. And among the 93 markets engaged in the auction of all types of flue-cured tobacco, the Henderson market ranks 16th.

(2) The perishable nature of flue-cured tobacco—once it is put “in order” by the grower for sale at auction—demands that there be a coordination of efforts between grower, warehouseman and purchaser. To a large extent, the Bright Belt Warehouse Association, a voluntary association comprised of the majority of warehousemen engaged in the auction of flue-cured tobacco, has fulfilled this coordinating function. This Association sets the opening and closing dates for each market engaged in the auction of flue-cured tobacco (the opening dates being determined by the projected date the type of tobacco sold on a particular market matures), establishes maximum rates of sale as well as the length of each selling day and the maximum allowable weight for each basket of tobacco, and declares market holidays to prevent or relieve a glutted market. There is no statutory authority for this action by the Association. Such authority is derived from the consent of its membership and the farmers and industry generally. The Association takes no action with respect to the internal allocations of selling time among warehouses on any market.

The selling season for the Henderson market generally opens the beginning of September and ends in November. The Henderson market is allowed a 5½ hour sale day at a rate of 400 baskets per hour (the maximum weight of each basket being set at 300 pounds) for a total of 2200 baskets per day per single set of buyers. And, because it is a two-buyer market—thus permitting two auctions to be held simultaneously in two different

warehouses—the number of baskets of tobacco which can be sold on the Henderson market is doubled.

(3) The auction sale of flue-cured tobacco must be accomplished within a short time after the tobacco is placed on the warehouse floors in order to prevent deterioration in the quality and value of the tobacco. Accordingly, after tobacco is delivered to a warehouse, it is weighed and identified in accordance with the provisions of the Tobacco Inspection Act of 1935, and, in most instances, auctioned within the next two sales days. After the tobacco is sold, it is either removed from the warehouse floor and shipped to the redrying plants of the purchaser or hauled to local redrying plants and subsequently shipped to the tobacco purchasers for further processing.

(4) The sale of flue-cured tobacco by means of the auction system is encouraged as a means of promoting competition among the buyers in bidding for the producers' tobacco. Consequently, the presence of buyers from the major tobacco manufacturing companies and independent buying companies and speculators and rehandlers is essential to a successful auction.

PAR. 5. (1) Prior to 1949, the sale of leaf tobacco at auction on the Henderson market was governed by the rules and regulations promulgated by the Henderson Tobacco Board of Trade, Inc., a corporation organized under the laws of the State of North Carolina in 1921. On October 3, 1949, respondent Board was organized and chartered as successor to the Henderson Tobacco Board of Trade, Inc.

(2) Membership in respondent Board is divided into two categories; warehousemen, and purchasers of leaf tobacco other than warehousemen. Each person, firm or corporation operating a tobacco auction warehouse on the Henderson market is automatically a participating member and is entitled to one vote per warehouse on matters coming before respondent Board. Membership among purchasers of leaf tobacco other than warehousemen may be either participating or non-participating. Purchasers who elect to become participating members are entitled to one vote each.

(3) The selling time allotted to the Henderson tobacco market by the Bright Belt Warehouse Association is distributed among the warehouse members of respondent Board in accordance with the rules and regulations of respondent Board now in effect. Pursuant to these rules and regulations, selling time is allocated to each warehouse on the basis of the unit system unless there is unanimous agreement as to the amount of sell-