IN THE MATTER OF

THE MAGNAVOX COMPANY

MODIFYING ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 8822. Consent Order, June 9, 1971—Modifying Order, July 11, 1983

This order reopens the proceeding and modifies the Commission's order issued on June 9, 1971 (78 F.T.C. 1183), by amending Part I-T and deleting Part I-V of the order, to permit the company to control the transshipment of its consumer electronic products. The modification also deletes Part III of the order, which had prohibited the company from engaging in exclusive dealing, full line forcing and tying practices in connection with the sale of its products.

ORDER MODIFYING DECISION AND ORDER

On February 2, 1983, respondent The Magnavox Company ("Magnavox") filed its "Request To Reopen And Modify Consent Order" ("Request"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice. The Request asked that the Commission reopen the consent order that was issued on June 9, 1971, in this matter ("the order") and modify it in two respects. First, Magnavox requested that certain words in Part I-T of the order and all of Part I-V be deleted to eliminate order language that prevents Magnavox from prohibiting transshipment of its consumer electronic products. Second, Magnavox requested that the Commission delete Part III of the order, which forbids respondent from engaging in exclusive dealing, full line forcing and tying practices in connection with the sale and distribution of its consumer electronic products. Magnavox's Request was on the public record for thirty days and no comments were received.

After reviewing respondent's Request, the Commission has concluded that the public interest warrants reopening and modification of the order in the manner requested by respondent.

The transshipment provisions of the order were adopted as "fencing-in" restraints ancillary to the order's ban on resale price maintenance. *See FTC v. National Lead Co.*, 352 U.S. 419 (1957). Respondent has specifically represented in its Request that it does not fix the price at which its customers resell any of the products purchased from it, that prices vary from outlet to outlet, and that current market conditions would prevent it from fixing resale prices even if it were so inclined. Respondent also has argued that the image of the Magnavox brand is being harmed by its inability to control transshipment of its

products to outlets that, at least in some instances, do not have the resources to provide adequate pre-sale and post-sale service.

The transshipment provisions in question have been in effect for nearly twelve years, and appear to have served their remedial purposes. There is no indication that respondent during that time has engaged in resale price maintenance or has breached the order's provisions governing transshipping restraints. Particularly in view of the continued existence of the order's underlying prohibitions against resale price maintenance, there no longer appears to be a need to continue the transshipment provisions of the order.

Part III of the order forbids respondent from engaging in exclusive dealing, full line forcing and tying practices in connection with the sale and distribution of its consumer electronic products. The Commission has determined that the public interest will be served if it deletes Part III of the order. It does not appear that respondent has the market power to impose exclusive dealing or related arrangements on a competitively significant number of its dealer outlets. Any exclusive dealing or similar arrangements that respondent may adopt with respect to its outlets is not likely to result in any significant market foreclosure of competitors, or to raise entry barriers. Moreover, Magnavox contemplates that any exclusive arrangements that it may adopt would be terminable by dealers at will. As the Commission pointed out in *Beltone Electronics Corp.,* Docket No. 8928 (Slip Opinion, July 6, 1982) [100 F.T.C. 68], the length of time that competitors are foreclosed by exclusive transactions has been an important element in the evaluation of such contracts. Slip Opinion, at 34, n. 39 [100 F.T.C. at 204]. The provisions of Part III of the order apparently are acting to inhibit respondent's ability to build a strong distribution network. At the same time, respondent's competitors, including its larger competitors, are not under comparable restraints.

Accordingly, *it is ordered* that this matter be, and it hereby is, reopened and that Part I-T of the order be, and it hereby is, amended to read as follows:

T. Terminating, harassing, threatening, intimidating, coercing or delaying shipments to any dealer because the dealer has sold or is selling its products at other than its established or suggested retail prices.

It is further ordered, That Part I-V of the order be, and it hereby is, deleted.

It is further ordered, That Part III of the order be, and it hereby is, deleted.

Commissioners Pertschuk and Bailey voted in the affirmative as to the modification to Part III of the original order and voted in the

negative as to the modification deleting Part I, subparts T and V, of the original order relating to transshipping.

STATEMENT OF COMMISSIONER PERTSCHUK DISSENTING IN PART

I dissent from the Commission's decision to modify the order in this matter to permit the North American Philips Consumer Electronics Corporation (NAP), the successor to the Magnavox consumer electronics line, to ban transshipment of its consumer electronic products.[1] The petition sets forth no changed circumstances or public interest sufficient to require the complete lifting of the order's prohibition on transshipping bans, which was one of the restrictions put into place to prevent Magnavox from resuming the practice of resale price maintenance (RPM). Further, while NAP asserts that its market share has declined since the Magnavox order went into effect in 1971, it has made no showing that this was the result of transshipping. Also, while claiming that market prices in this industry are competitive, NAP has presented no specific evidence of discounting by its authorized dealers. It is thus uncertain whether there would be much intrabrand price competition in NAP's consumer electronic products if it could completely stop transshipments to other retailers, including price-cutters.

NAP argues that it no longer engages in RPM and that the order's fencing-in measure outlawing transshipping bans is therefore no longer necessary. Presumably, however, an important reason Magnavox no longer fixes resale prices is because the order's many anti-RPM provisions, including the one allowing transshipping, have prevented it from doing so. There is no hard evidence in the record that Magnavox would go back to RPM, or necessarily use the reacquired right to bar transshipping as a means for furthering new RPM schemes. But there is growing evidence that many manufacturers, including some in the consumer electronics industry, are increasingly cutting off discounters, relying in part on the new freedom to restrict transshipping. For example, according to the *Wall Street Journal* (June 21, 1983, p. 37), "many manufacturers besides Pioneer [a competitor of Magnavox] have choked off supplies to discounters in recent months . . ."[2]

I am frankly concerned that the FTC's present policy of non-enforcement of the law against RPM, together with the relaxation of transshipping restrictions on a number of past resale price fixers, has

[1] The Magnavox Co. continues to exist, but is no longer in the consumer electronics business.

[2] In the same article, the Secretary of Lenox, Inc.—which just last year was allowed by the FTC to resume banning transshipments of its fine china, *see Lenox, Inc.*, Docket No. 8718, July 12, 1982 [100 F.T.C. 259]—implied a readiness to restrict transshipments to discounters in saying that while "we don't terminate anybody for discounting," transshipping to unauthorized price-cutters "takes away control of our image."

contributed to this reported trend of cutting off discounters. It is this overriding worry, as well as NAP's failure to make the requisite statutory showing for relief, that has led me to oppose the company's request for permission to prohibit transshipping.

Admittedly, product image and adequate pre-sale and post-sale services are important components of marketing and customer satisfaction in the consumer electronics industry, and NAP—like its competitors—is entitled to maintain them. However, this legitimate business objective can be achieved by means far more compatible with price competition than the rather blunt instrument of transshipping bans, which are typically used to cut off discounters. The NAP Magnavox Dealer Agreement already requires retailers to maintain sufficient product services. NAP's main complaint seems to be that it is barred by the transshipping ban from establishing similar standards for other dealers with whom it has no relationship. If so, that problem could be easily fixed by modifying the order to allow NAP to set reasonable non-discriminatory criteria on transshippees, while still permitting its dealers to sell to other retailers who meet those objective criteria. This is what the Commission did in the *Pioneer* and *JBL* matters,[3] and what it could and should have done here.[4] It is a sensible solution that would protect both NAP's competitive interest in freely choosing its dealers and the consumer's economic interest in vigorous price competition.

STATEMENT OF COMMISSIONER BAILEY DISSENTING IN PART

As my votes in the order modification requests by *JBL Sound, Inc.*, *Lenox Inc.*, and *U.S. Pioneer Electronics* show, I will not lightly give companies under an order to cease and desist resale price maintenance *carte blanche* to control product transshipment. I firmly believe that principles of finality dictate that FTC orders should be reopened only upon a strong showing of need. Also, transshipment bans can so easily be used as a facilitating device for resale price maintenance that less draconian means should always be sought to achieve the stated goals of ensuring pre-and post-sale service. Here petitioner has made an adequate, though not overwhelming, showing of "free rider" problems associated with the Magnavox brand being transshiped to outlets that, in some instances, fail to provide adequate service. How-

[3] *U.S. Pioneer Electronics Corp.*, Docket No. C-2755, Nov. 5, 1982 [100 F.T.C. 526]; *James B. Lansing Sound, Inc.*, 97 F.T.C. 914 (1981). In retrospect, this may be what the Commission should also have done in *Lenox*.

[4] NAP contends that unlike Pioneer it is entitled to a complete lifting of transshipping restrictions because it has no "current plan" to eliminate classes of retailers, including discounters (Petition at 29). That may be so, though NAP admits that it "may want to adopt a . . . categorical policy" itself on barring transshipping (Petition at 27). In any event, objective, non-discriminatory standards governing transshipping would give NAP flexibility in preventing unsatisfactory retailers from dealing in its products, while preserving qualified discounters' access to those products and thus some enhanced degree of intrabrand competition.

ever, petitioner has not shown why a total ban on transshipping is needed to correct this sporadic problem or why a *Pioneer*-type order would not suffice. Accordingly, I must partially[1] dissent from the Commission's decision.

[1] I have voted to grant petitioner's request for deletion of Part III of the order which absolutely prohibits exclusive dealing, full line forcing and tying practices. The legality of these practices depends upon market conditions and other factors associated with rule of reason analysis. While *per se* treatment may have been appropriate as a fencing in device when this order was issued twelve years ago, enough time has passed to justify a return to the normal standard.

IN THE MATTER OF

THE GRAND UNION COMPANY, ET AL.

DISMISSAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket 9121. Complaint, Nov. 21, 1978—Final Order, July 18, 1983

Finding no violation of antitrust law, the Commission has ordered that the complaint challenging The Grand Union Company's 1978 acquisition of Colonial Stores, Inc. be dismissed.

Appearances

For the Commission: *James T. Rohrer, Katherine B. Alphin, Douglas B. Brown, David R. Flowerree* and *Linda Earley Chastang.*

For the respondents: *William C. Pelster, Joan M. Secofsky, Barbara Z. Blumenthal* and *Kenneth A. Plevan, Skadden, Arps, Slate, Meagher & Flom,* New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that The Grand Union Company; Grand Union Holdings Inc.; Cavenham (USA), Inc.; and Cavenham Holdings, Inc., corporations subject to the jurisdiction of the Commission, have acquired the stock of Colonial Stores, Inc., a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act [15 U.S.C. 45(b)] and states its charges as follows:

I. DEFINITIONS

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

1. *Retail food stores* are retail establishments primarily engaged in selling food for home preparation and consumption.

2. *Supermarket* is a retail establishment primarily engaged in selling a wide variety of canned and frozen food, dry groceries (either

packaged or in bulk), other processed food and non-edible grocery items, fresh meat and prepared [2] meat products, fresh fish and poultry, fresh fruits and vegetables, and dairy products, for home preparation and consumption and having a minimum of six thousand (6,000) square feet of floor space and at least one million dollars ($1,000,000) in annual sales.

II. GRAND UNION COMPANY

3. Respondent, Grand Union Company (hereinafter "Grand Union"), is a Delaware corporation with its principal office located at 100 Broadway, Elmwood Park, New Jersey.

4. Grand Union Holdings Inc. is a wholly-owned subsidiary of The Grand Union Company with its principal office at 115 East Putnam Avenue, Greenwich, Connecticut.

5. Grand Union is a wholly-owned subsidiary of Cavenham (USA), Inc., a Delaware corporation, with its principal office at 115 East Putnam Avenue, Greenwich, Connecticut.

6. Cavenham (USA), Inc., is a wholly-owned subsidiary of Cavenham Holdings, Inc., a Delaware corporation, with its office at 115 East Putnam Avenue, Greenwich, Connecticut.

7. As of April, 1978, Grand Union operated a chain of approximately 474 food retail stores in the States or Territories of New Hampshire, Vermont, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, West Virginia, Florida, Puerto Rico and the Virgin Islands. Grand Union also operates fourteen (14) Grand Way Stores, selling general merchandise, and nine (9) catalog showrooms.

8. For its fiscal year ending March 31, 1978, Grand Union had total sales of $1,649,274,000; sales from its food retail operations totaled $1,574,119,000. Grand Union is the eleventh largest food retailer chain in the United States.

9. At all times relevant herein, Grand Union was engaged in the purchase or sale of products in interstate commerce and was a corporation engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, and was a corporation whose business was in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

III. COLONIAL STORES

10. Colonial Stores, Inc. (hereinafter "Colonial"), is a Virginia corporation with its principal office at 2251 North Sylvan Road, East Point, Georgia. [3]

11. Colonial operates a chain of approximately 378 food retail stores in the States of Virginia, North Carolina, South Carolina, Maryland,

Alabama, Georgia and Florida. Colonial owns and operates several facilities which manufacture or process various products, including bakery items, dairy products, jams and jellies, mayonnaise, salad dressings and other items, as well as store fixtures. Substantially all such products are sold to Colonial retail food stores.

12. For its fiscal year ending December 31, 1977, Colonial had total sales of $1,053,167,343. Colonial is the eighteenth largest food retail chain in the United States. Colonial's assets for fiscal year 1977 were $189,118,000 and net earnings for that year were $10,907,000.

13. At all times relevant herein, Colonial was engaged in the purchase or sale of products in interstate commerce and was a corporation engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, and was a corporation whose business was in or affecting commerce within the meaning of the Federal Trade Commission Act, as amended.

IV. THE ACQUISITION

14. On June 29, 1978, Grand Union made a cash tender offer of $30 per share for all outstanding shares of Colonial stock.

15. On July 7, 1978, Colonial's Board of Directors rejected the offer. Grand Union then made a tender offer directly to Colonial shareholders. Colonial responded by filing suit in Federal District Court in Atlanta to enjoin the hostile tender offer.

16. Grand Union revised its tender offer to $35 per share. On August 1, 1978, Colonial's Board of Directors voted 7 to 5 to recommend the revised offer to its shareholders and to dismiss all pending litigation. By October 13, 1978, Grand Union had purchased over 90 percent of Colonial's shares.

17. Previous to the tender offer for Colonial shares, Grand Union purchased eight Colonial stores in the Tampa-St. Petersburg, Florida, area. This transaction was closed on July 6, 1978.

18. On August 18, 1978, Grand Union and staff of the Federal Trade Commission entered into a Hold Separate Agreement for the Colonial operations. The initial term of this agreement is for 90 days and runs out on November 17, 1978. [4]

V. TRADE AND COMMERCE

A. *Product Market*

19. The relevant product market is the retail sales by retail food stores, and submarkets thereof, including the submarket of sales by supermarkets.

B. *Geographic Market*

20. The relevant geographic markets are some of the Standard Metropolitan Statistical Areas (S.M.S.A.s), cities or towns in which Colonial operates supermarkets.

21. The retail food store business in each of the relevant geographic markets is dominated by a few large retail food chains. The prospects for increased competition in these markets depends heavily upon potential competition from perceived or actual potential entrants.

22. In many of the relevant geographic markets Colonial is a dominant or leading competitor.

C. *Barriers to Entry*

23. Barriers to entry into the relevant markets are high. The increased economic power of a Grand Union-Colonial combination is likely to further inhibit competition in these markets.

VI. THE COUNTS

A. *Grand Union—Actual Potential Competition*

24. Grand Union has the capability and motivation to enter some of the relevant geographic markets within the southeast region in which Colonial operates.

25. Grand Union can enter some relevant geographic markets of Colonial from its current distribution centers. It is also feasible for Grand Union to make a *de novo* entry into other relevant geographic markets in which Colonial operates. In the alternative, Grand Union could enter one or more of those markets through one or more toehold acquisitions.

26. Grand Union is likely to enter some of the relevant geographic markets by means other than the acquisition of Colonial if it were deprived of the Colonial acquisition. Grand Union is extremely interested in expanding its operations beyond its current marketing area. It is especially motivated to enter the southeast region containing relevant geographic markets of Colonial. Grand Union has seriously explored acquisitions throughout this region and has been interested [5] in filling in the gap between its Florida and northern Virginia operations.

27. Grand Union is an actual potential entrant into some of the relevant geographic markets in the southeast region, but for the Colonial acquisition. Grand Union is one of the few most likely potential entrants into certain of the relevant markets.

B. *Grand Union—Perceived Potential Competition*

28. Grand Union is perceived as the most likely or a leading potential entrant by food retail chains in some of the relevant geographic markets of Colonial. Its presence on the fringe of those geographic markets has had a beneficial effect on competition at all times relevant herein.

C. *Grand Union—Entry Through One of the Most Anticompetitive Options*

29. Paragraphs 24 through 26 are incorporated herein.

30. Grand Union, through its acquisition of Colonial, has selected one of the most anticompetitive methods for entering the Southeastern United States.

VII. EFFECTS

31. The effects of the acquisition of Colonial by Grand Union may be substantially to lessen competition or to tend to create a monopoly in violation of Section 7 of the Clayton Act, as amended, and constitute an unfair act and practice or unfair method of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, in the following ways, among others:

a. Some or all of the relevant geographic markets are highly concentrated and have become or are likely to become increasingly concentrated in the product market alleged above. Grand Union's acquisition of Colonial may increase the probability of further concentration and decrease the probability of deconcentration in some or all of those markets;

b. Substantial actual potential competition through internal expansion or toehold acquisition may be eliminated;

c. Concentration in the retail food business in some or all of the relevant geographic markets in the southeast region may increase the economic power of the Grand Union Company after the acquisition, and may dampen competition among retail food chains in some or all of the relevant geographic markets; [6]

d. Already high barriers to entry of new competition may be heightened and increased;

e. It may eliminate the procompetitive effects of perceived potential competition in certain relevant geographic markets;

f. The effect of the merger may be to encourage tendencies for combination and merger by other actual and potential competitors in relevant geographic markets; and

g. Members of the purchasing public may be denied the benefits of free and open competition.

VIII. VIOLATIONS

32. The acquisition of Colonial common stock by Grand Union and the merger between Grand Union and Colonial constitute violations of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

INITIAL DECISION BY

ERNEST G. BARNES, ADMINISTRATIVE LAW JUDGE

OCTOBER 30, 1981

PRELIMINARY STATEMENT

The Federal Trade Commission issued its Complaint in this matter on November 21, 1978, charging that The Grand Union Company, by its acquisition of over 90% of the stock of Colonial Stores Incorporated, violated Section 7 of the Clayton Act [15 U.S.C. 18, as amended], and Section 5 of the Federal Trade Commission Act [15 U.S.C. 45, as amended].

Grand Union, on July 14, 1978, announced its intention to acquire Colonial through a cash tender offer and on August 8, 1978, made an offer to purchase any and all shares of Colonial stock. Grand Union purchased 91% of this stock by the expiration date of its offer, September 1, 1978. [2]

On August 18, 1978, Grand Union and the Commission staff entered into an agreement whereby the staff would not seek to enjoin or otherwise delay the consummation of the sale, and Grand Union would keep Colonial's assets as a separate subsidiary. This agreement expired on December 1, 1978.

On November 20, 1978, Grand Union acquired the outstanding shares of Colonial stock and the Commission's Complaint was issued the next day. An agreement between the Commission and Grand Union to preserve Colonial's trade names and trademarks was entered into on November 29, 1978. This agreement, subsequently modified, remains in effect currently.

The Complaint alleges that Grand Union's acquisition of Colonial may have the effect of substantially lessening competition or tending to create a monopoly in violation of Section 7 of the Clayton Act; or may constitute an unfair act and practice or unfair method of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The product market was alleged to be sales by retail food stores, including the submarket of sales by supermar-

kets. The relevant geographic markets were alleged to be some of the Standard Metropolitan Statistical Areas, cities or towns in which Colonial operated supermarkets.

The Complaint listed three counts constituting theories of the alleged violations:

Count A: Grand Union was eliminated as an *actual potential entrant* into the markets constituting Colonial's operating area.

Count B: Grand Union was eliminated as a *perceived potential entrant* into the markets constituting Colonial's operating area.

Count C: Grand Union's acquisition of Colonial constituted entry into the Southeastern United States through one of the most anticompetitive methods.

Specifically, the Complaint alleges that Grand Union's acquisition of Colonial had the following effects:

a. Some or all of the relevant geographic markets are highly concentrated and have become or are likely to become increasingly concentrated. Grand Union's acquisition of Colonial may increase the probability of further concentration and decrease the probability of deconcentration in some or all of those markets;

b. Substantial actual potential competition through internal expansion or toehold acquisition may be eliminated; [3]

c. Concentration in the retail food business in some or all of the relevant geographic markets in the southeast region may increase the economic power of Grand Union after the acquisition, and may dampen competition among retail food chains in some or all of the relevant geographic markets;

d. Already high barriers to entry of new competition may be heightened and increased;

e. It may eliminate the procompetitive effects of perceived potential competition in certain relevant geographic markets;

f. The effect of the merger may be to encourage tendencies for combination and merger by other actual and potential competitors in relevant geographic markets; and

g. Members of the purchasing public may be denied the benefits of free and open competition.

(Complaint ¶ 31)

On December 15, 1978, Grand Union filed its "Motion to Dismiss the Complaint or in the Alternative for a More Definite Statement." Pursuant to an Order of January 5, 1979, respondents' motion to dismiss was denied, but the motion for a more definite statement was granted. Complaint counsel was ordered to make a more definite statement regarding relevant product submarkets and geographic

markets, and to consider whether Count C was necessary to the Complaint or whether it should be stricken as redundant.

On January 18, 1979, complaint counsel filed a statement supporting the Complaint, alleging an additional product submarket of "grocery stores" as defined by the Bureau of the Census, and identified thirteen relevant local geographic submarkets in addition to designation of Colonial's entire area of operation as a relevant geographic market. These submarkets are:

Atlanta, Georgia
Augusta, Georgia
Charlotte/Gastonia, North Carolina
Fayetteville, North Carolina
Gainesville, Florida
Greenville/Spartanburg, South Carolina
Jacksonville, Florida
Macon, Georgia
Newport News/Hampton, Virginia
Norfolk/Virginia Beach, Virginia
Orlando, Florida
Raleigh/Durham, North Carolina
Richmond, Virginia **[4]**

Complaint counsel also reserved the right to allege further submarkets constituting several distinct markets within one or more of the submarkets listed.

On February 5, 1979, respondents filed their Answer, and requested expedited procedure pursuant to Section 3.21(b) of the Rules of Practice. In addition, respondents filed a Reply Memorandum in support of their motion to dismiss Count C of the Complaint. On February 14 the parties were ordered to file non-binding statements setting forth the issues to be tried and the theories of defense. Complaint counsel filed their statement on February 28 and respondents on March 12, 1979.

A prehearing conference was held in Atlanta, Georgia on March 19 and oral arguments were heard regarding Count C. On April 17, 1979, respondents' motion to dismiss Count C was denied.

A second prehearing conference was held on October 3, 1979.

Presentation of complaint counsel's case-in-chief began on December 11, 1979, in Atlanta and continued through January 17, 1980. Hearings were stayed on January 30, pending review by the Commission, pursuant to Rule 3.23, of a subpoena issued to Dr. John Albertine, Director, Joint Economic Committee, United States Congress. On June 30, 1980, the Commission quashed the subpoena,[1] and hear-

[1] The Commission held that the broad subpoena power of Section 9 of the Federal Trade Commission Act does not authorize the Commission to subpoena documents that are part of the legislative process of the Congress.

ings were resumed on September 23, 1980. Presentation of respondents' defense began December 16, 1980 in Washington, D.C. and concluded on January 30, 1981. On April 7, 1981, respondents presented supplemental direct testimony of their expert witness and complaint counsel presented one of their expert witnesses in rebuttal to that testimony. The record was closed on May 1, 1981.

Approximately 540 exhibits were accepted into evidence and the following witnesses were called:

Witness	Title	Called By
Henry S. Addison, Jr.	Carolinas Regional Vice President, Colonial Division of Grand Union	Respondents [5]
M.A. Adelman	Professor, Massachusetts Institute of Technology	Respondents
Cosby R. Byrd, Jr.	Chief Executive Byrd Food Stores Burlington, North Carolina	Complaint Counsel
Carrol W. Cheek	Chairman of Board OWC Companies (Great Scott of Florida) Clearwater, Florida	Complaint Counsel
Thomas A. Connell	Director of Merchandising, Richmond Division of A & P Richmond, Virginia	Complaint Counsel
Ronald C. Curhan	Professor, Boston University	Respondents
Joseph Foy, Sr.	President, Certified Grocers of Florida Ocala, Florida	Complaint Counsel
James E. Gooding	President, Gooding's Markets Maitland, Florida	Complaint Counsel
Peter V. Gregerson, Sr.	Chairman of Board Warehouse Groceries Management, Gadsden, Alabama	Complaint Counsel
Joseph E. Isaacs	Vice President Colonial Atlanta Division of Grand Union	Respondents

Witness	Title	Called By
Bruce W. Marion	Agricultural Economist, Dept. of Agriculture Madison, Wisconsin	Complaint Counsel
Russell C. Parker	Economist, FTC	Complaint Counsel
Samuel H. Posey	President, Middle Florida Supermarkets, subsidiary of Malone & Hyde (Fairway Markets) Orlando, Florida	Complaint Counsel **[6]**
Edward B. Roehm	Vice President, Colonial Thomasville Division of Grand Union	Respondents
Albert N. Solomon	President, Albert N. Solomon Co. (So-Lo Foods) Atlanta, Georgia	Complaint Counsel
William G. Spearman	Atlanta Regional Vice President, Colonial Division of Grand Union	Complaint Counsel
William F. Stewart	Former President, Colonial and Senior Vice President Colonial Division of Grand Union	Complaint Counsel
Bert L. Thomas	President, Winn-Dixie Stores, Inc. Jacksonville, Fla.	Complaint Counsel
Charles L. Thomas	Group Vice President, The Kroger Company Cincinnati, Ohio	Complaint Counsel
Eugene Walters	President, Commonwealth Foods (Farm Fresh Supermarkets) Norfolk, Virginia	Complaint Counsel
Ronald S. Woodberry	Vice President and General Manager Ingles Markets Asheville, N.C.	Complaint Counsel