

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

supporting the complaint question whether a comparison between prices at Portland and Seattle is proper. The record discloses that there is a significant amount of traffic in scrap between the two areas. The examiner also notes that the OPS price for No. 1 railroad heavy melting steel was the same at both Portland and Seattle. Under all the circumstances, it is the opinion of the examiner that the prices paid at Seattle may appropriately be compared with those paid at Portland in determining whether Luria's prices at the latter point were out of line with the market.

Counsel supporting the complaint contend that the evidence of prices paid to other railroads does not provide a "satisfactory basis of comparison", because of the insufficient number of transactions involving sales from areas comparable to those from which the Southern Pacific sold scrap to Luria. Since the Southern Pacific is the principal producer of railroad scrap in the California area, it is not surprising that it should be involved in a considerably larger number of transactions than the other railroads. However, the prices paid to the other railroads, to the extent they sell in competition with southern Pacific, has probative value in determining whether Luria's price to Southern Pacific was in line with the market, and particularly in determining whether the prices quoted in Iron Age for No. 1 railroad steel accurately reflected market prices. This is so whether prices paid at Seattle are included or not.

42. Considering the evidence as a whole, the examiner is not convinced that it has been established that Luria's prices to the Southern Pacific were out of line with the market. The case of counsel supporting the complaint rests on a comparison with the prices quoted in Iron Age for the Los Angeles and San Francisco markets. However, it has not been established that the Iron Age quotations, particularly for No. 1 railroad heavy melting steel in these two markets, were an accurate reflection of market prices. The evidence showing the prices paid to the Southern Pacific by other brokers as well as Luria, and the evidence of prices paid to other railroads at comparable shipping points indicate that the Iron Age prices are considerably below the prices actually being paid in a substantial number of transactions. Considering the fact that the Southern Pacific is the principal producer of No. 1 railroad heavy melting scrap in California, the wide variances between the prices paid to it and those quoted in Iron Age raises a very substantial doubt as to the reliability of Iron Age quotations as a reflector of market prices for No. 1 railroad scrap in Los Angeles and San Francisco during the period at issue. This doubt is reinforced by the testimony of a broker-dealer witness called in support of the complaint, who stated that the quotations were generally

under the market for the northern California area, frequently by as much as \$4.00 a ton (R. 11, 181).

43. In any event, without regard to the reliability of Iron Age prices, the record fails to establish that the No. 1 railroad scrap purchased by Luria from the Southern Pacific was resold at a loss. As previously noted, the charge is not merely that Luria's prices were above those of competitors, but that they were "so high" that it could not be resold "except at a financial loss."

Such evidence as there is in the record would appear to negate the probability that the scrap was resold at a loss. The testimony indicates that the largest potential consumers of such scrap are U.S. Steel's West Coast plants, Bethlehem Pacific, and Kaiser Steel. The latter actually purchases little of such scrap. As a result of a court decree in a Clayton Act proceeding, based on interlocking directorships, Southern Pacific is not permitted to do business with U.S. Steel in excess of \$50,000 a year without advertising for bids. This leaves Bethlehem Pacific as the largest potential user of Southern Pacific's scrap. For the most part the scrap purchased by Luria was resold to Bethlehem Pacific. There is no reason to believe that it did not generally receive its customary mark-up of \$1.00 a ton on such sales. The basic reason for Luria's purchase of such large quantities of Southern Pacific's scrap would appear to lie not in the fact that it was paying preclusive prices, but in the fact that, as Bethlehem Pacific's substantially exclusive broker, it had a home for large quantities of this desirable scrap.

*Rheem Manufacturing Company*

44. Counsel supporting the complaint contend that Luria's handling of the scrap of Rheem Manufacturing Company is an example of the buying of scrap at preclusive prices. As has previously been discussed (pp. 310-314), between 1952 and 1953 Luria took over the handling of the scrap of Rheem's plants located in six states. Prior to that time the scrap had been sold directly to the Bethlehem companies whose plants were located in the area of the Rheem plants, or to scrap dealers.

45. The Rheem scrap was generally unprepared and required preparation by yard dealers. In entering into the arrangement with Rheem, Luria had promised that, as far as possible, it would use the same dealers as had formerly done business with Rheem directly. While Luria could have arranged to pay these dealers a preparation fee and then resell the scrap to its mill customers, including Bethlehem, in most instances it arranged to sell the scrap to the dealers at a stipulated price and then bought back an equivalent tonnage of prepared scrap, which it sold to its mill customers.

46. The contention of counsel supporting the complaint that Luria bought the Rheem scrap at preclusive prices is based mainly on the fact that in some areas, particularly New Orleans, Houston and San Francisco, it sold the unprepared scrap to the dealers at the same price it had paid Rheem, and thus realized no profit on the sale to the dealer. Counsel supporting the complaint also rely on the fact that Luria was able to obtain the Rheem scrap by promising it higher prices than had been paid by the dealers who were formerly buying it directly.

47. Turning to the latter situation first, there is no dispute as to the fact that Luria undertook to obtain a higher price for Rheem on its scrap. When the initial arrangement with Rheem was made OPS price regulations were in effect, and one of the inducements which Luria offered to Rheem to handle its scrap was that it would endeavor to qualify the scrap for a higher OPS grade by better sorting and preparation. The fact that Luria was able to qualify the Rheem scrap for a higher OPS price grade cannot be regarded as preclusive buying, within the meaning of the complaint, in the absence of evidence that the scrap could not be resold "at existing price ceilings or at generally prevailing market prices except at a financial loss."

48. With regard to the contention that Luria resold the Rheem scrap to dealers at the same price it had paid Rheem for the scrap, there is no dispute as to the fact that it did occur in certain areas. The practice started during the OPS period when Luria, in keeping with its promise to Rheem, paid Rheem the highest permissible OPS price for the scrap, and then resold the scrap to a dealer at this price. The dealer, after preparation, resold the scrap to Luria at the OPS price for prepared scrap. Luria then resold the scrap to the mill at the OPS price for prepared scrap, plus the commission to which it was entitled under OPS regulations. It is not clear how long this situation continued. The "last nonprofit arrangement" involving the San Francisco area plant of Rheem occurred in the end of 1953 (CX 440), but apparently the practice continued in New Orleans as late as 1956 (R. 6583).

49. The position of counsel supporting the complaint with respect to Luria's failure to make a profit on the sale of the Rheem scrap to dealers suffers from the same infirmity as that involved in the case of the Wilkoff transactions in Youngstown, viz, that it is based on a fragmented view of the transactions. Luria did not buy the Rheem scrap to sell it to a dealer. It used the dealer essentially as an intermediate preparation agency. It could have paid the dealer a preparation fee and then resold the exact scrap to a mill, after adding the cost of preparation and its commission. Instead, and apparently as an ac-

commodation to Rheem and to the dealers who had previously been handling the Rheem scrap directly, it handled the transaction as a sale of the scrap and bought back from the dealer a tonnage equivalent to that of the Rheem scrap. So far as appears from the record, it made its normal profit on the resale of the scrap to the mill. The criticism of counsel supporting the complaint appears to be based on the fact that it did not also seek to make a profit on the initial sale to the dealer. During the period of OPS controls it is dubious that it could have done so. In any event, the fact that it was content to make one profit, instead of two, does not establish that it was engaged in preclusive buying.

*Conclusions as to Preclusive Buying*

50. The complaint charges Luria with having sought to "secure control of marketing areas in certain sections of the country" by buying scrap at preclusive prices, *i.e.*, at prices which were "so high that neither said respondent nor its competitors could resell said scrap at existing ceiling prices or at generally prevailing prices except at financial loss." Evidence in support of the charge was offered with respect to three market or geographic areas, *viz*, Cleveland-Youngstown, metropolitan New York and New England. Evidence was also offered as to Luria's buying practices with respect to two suppliers, *viz*, the Southern Pacific Railroad and Rheem Manufacturing Company.

51. To support the charge it must appear not only that Luria's prices were periodically above those of competitors and that it incurred losses from the resale of the scrap, but that such prices were paid and such losses were incurred in a deliberate effort to secure control of certain markets. The only direct evidence of any purposeful paying of higher prices involves a brief period in 1948, when Luria's Cleveland office endeavored to secure an industrial account or accounts from a competitor in Cleveland by offering prices above the market. The effort, which was unsuccessful, was directed at a particular competitor, and it cannot be said from the evidence that it involved an effort to secure control of the Cleveland market, or that it reflects a deliberate policy or practice by Luria to use preclusive prices as an instrument for market control.

52. Most of the evidence upon which counsel supporting the complaint rely purports to show that Luria lost money or did not make a profit in certain transactions, or that it paid prices which were higher than those of competitors. In most instances the evidence that Luria paid prices higher than competitors was of a general nature and did not establish the extent to which, or regularity with which, Luria's prices exceeded those of competitors, nor the fact that Luria sustained

a loss in the resale of the scrap. In some instances where evidence was offered purporting to show losses by Luria, e.g., the transactions involving Wilkoff and Rheem Manufacturing, the evidence involved an intermediate transaction in which the scrap was sold to a dealer for preparation purposes, and where there was no loss on the ultimate resale of the scrap by Luria. The one concentrated effort to show that Luria's prices were out of line with the market, viz, that involving the prices paid to the Southern Pacific for No. 1 heavy melting scrap, rests on a comparison with the prices quoted in a trade publication where the evidence does not establish that the quoted prices accurately reflect market prices, and where there is no showing that any of the scrap was resold at a loss.

53. Apparently mindful of the fact that in most instances where evidence was offered purporting to show that Luria paid higher prices than did competitors, there was no evidence that the scrap was resold at a loss, counsel supporting the complaint suggest that such evidence is not necessary. They argue that the fact the prices paid Luria "may not have resulted in actual or overall financial losses to Luria, does not alter its purpose nor lessen its competitive impact", and that Luria's ability to pay high prices "without financial loss" is due to its "position of market control and the effectiveness of its challenged arrangements with various respondent mills".

As has already been noted, the complaint alleges not merely that Luria paid prices above those of competitors, but that such prices were so high that the scrap could not be resold at generally prevailing prices "except at financial loss". The fact that Luria may have been able to bid strongly for scrap because of the fact that it had orders from the mills for which it was exclusive broker may reflect the competitive impact of the exclusive arrangements, but is not evidence of preclusive buying within the meaning of the complaint unless it were demonstrated that the prices which it was receiving from the mills did not reflect generally prevailing market prices. This the evidence offered by counsel supporting the complaint does not do. It seems clear, therefore, that a showing of actual or probable financial loss is an essential element of proof by counsel supporting the complaint in order to sustain the preclusive buying charge in the complaint.

54. The evidence offered by counsel supporting the complaint fails to establish that, to the extent Luria may have paid prices above the market, it did so "for the purpose of \* \* \* lessening competition" in certain markets, as counsel supporting the complaint concede is required under Paragraph 10(e) of the complaint. There being no substantial direct evidence of any purpose or effort to secure market

control through the payment of preclusive prices, it is necessary to infer such a purpose in order to sustain this paragraph of the complaint. There is nothing about the pattern of prices paid or losses incurred, or any of the other evidence in the record from which it may be inferred that Luria deliberately paid prices above the market and incurred losses in order to secure market control. Such evidence as there is, suggests that top management of the company frowned upon the practice of buying scrap at prices which would not yield a profit.

55. It is concluded and found that counsel supporting the complaint have failed to sustain the preclusive buying charge in Paragraph 10(c) of the complaint by reliable, probative and substantial evidence.

(5) *Punitive Scrap Yards*

1. Paragraph 10(f) of the complaint charges that Luria threatened to open and did open competing scrap yards, and that it threatened to install and did install additional equipment in existing yards, in areas where additional yards or equipment were "economically undesirable", and that it did so "for the purpose and with the effect of harassing \* \* \* scrap dealers in such areas who failed or refused to sell all or a substantial part of their scrap" to Luria. The essence of the charge is not merely that Luria opened additional yards or installed additional equipment in competition with others, but that (1) it did so in areas where this was "economically undesirable" and (2) for the purpose and with the effect of harassing existing dealers who failed to trade with Luria to the extent it sought.

2. The only evidence cited in support of the charge involves two scrap yards, one in Erie, Pennsylvania, and the other in Tiffin, Ohio. However, counsel supporting the complaint suggest that there would be more so-called punitive yards but for the fact that the considerable number of yards which Luria owns or to which it has given financial assistance "stand as a warning to independent scrap yards that Luria is able to reach the primary sources of supply if independent operators fail or refuse to sell scrap to Luria on a satisfactory basis." In addition to the implied threat to so-called independent yards, allegedly stemming from the mere existence of the yards which Luria owns or with which it has financial connections, counsel supporting the complaint contend that actual threats were made by Luria to dealers to open additional facilities, and that only in the two instances hereafter discussed have the threats failed to produce results by causing the dealers to sell additional scrap.

Before discussing the facts with respect to the two yards as to which evidence was offered, it may be noted that there is no substantial evidence in the record that the yards which Luria owns or to which it has

given financial assistance are regarded by other dealers as an implied threat which causes them to sell scrap to Luria, or that Luria has actually threatened to open additional yards or install additional facilities unless such dealers sell all or a substantial part of their scrap to Luria. The case of counsel supporting the complaint with respect to the establishment of so-called punitive yards by Luria must, therefore, stand or fall on the basis of the evidence offered with respect to the yards in Erie and Tiffin.

*Erie Yard*

3. Luria purchased the equipment and leased the property of an existing scrap yard in Erie, Pennsylvania, in July 1947. The purchase price for the equipment and scrap on hand amounted to approximately \$17,000. The yard had been operated for about 6 months or a year prior to its acquisition by Luria, after having been closed for a number of years, and was apparently not in good operating condition equipment-wise. Luria brought in additional equipment such as cranes, shears and later a hydraulic press, and made general improvements to the yard.

4. In December 1947 Luria organized a corporation known as Ajax Steel & Supply Co. Inc., to operate the Erie yard. It arranged to sell 49% of the stock to Michael Leyava, who became president of the newly formed corporation and manager of the Erie yard. Leyava remained with Ajax until August 1948, when he transferred to Luria's Cleveland office. For the first 9 months of 1948 the Erie yard operated at a loss of approximately \$11,000. There is no indication in the record as to whether this situation continued for the last 3 months of the year. In 1949 Luria took over the direct operation of the Erie yard and continued to operate it for approximately 6 years thereafter until 1954, when it was sold. The record contains no profit and loss figures after September 1948, but there is credible testimony that it was operated at a profit, albeit not a large one. During the first 9 months of 1948, while Ajax operated the yard, it sold 5,800 tons of scrap. In most of the remaining years the yard sold over 10,000 tons a year, the peak year being 1953 when it handled 15,000 tons.

5. It is the position of counsel supporting the complaint, based on Leyava's testimony, that the Erie yard could have been operated profitably during the first 9 months of 1948 except for the interference of Luria's Cleveland office, which required Leyava to handle scrap on an uneconomical basis. On the other hand, it was the testimony of a Luria official that the loss was due to Leyava's shortcomings, and that as a result he was transferred to Cleveland. The examiner finds it unnecessary to resolve this conflict since both sides

agree that the yard could have been operated profitably, as indeed it thereafter was.

6. This being so, it is difficult to comprehend the basis of the claim of counsel supporting the complaint that Luria's taking over of the yard involved its extension into an operation which was economically undesirable, particularly where it was taking over an existing operation rather than starting a new one. It is true that Luria built up the yard and installed a new press, but it cannot be inferred that this was economically undesirable. The fact that several other dealers in the area also subsequently installed presses would suggest that such equipment was needed when Luria put in its press. There is no evidence to show that other dealers in the area sustained a loss in volume or profits following Luria's expansion of the Erie yard, or any other evidence from which it can be inferred that Luria took over a yard in an area where it was uneconomical to do so.

7. Aside from the dubious nature of the evidence pertaining to the uneconomic nature of Luria's entry into the Erie area, the record fails to establish that it took over the yard for the purpose of harassing dealers who refused to sell it all or a substantial part of their scrap. So far as appears from the record Luria came into the Erie area for bona fide business reasons and not to harass competitors. It had been considering opening a yard in Erie soon after it opened its brokerage office in Buffalo, New York in 1942, so that it would be in a better position to service the numerous foundries in the area. By 1945 Luria had become the second largest supplier to Erie Forge & Steel Corporation, the largest consumer of scrap in the area. From 1946 to 1954 Luria was Erie Forge's largest single supplier. By 1947 Luria was doing business with respondent Bucyrus-Erie's Twelfth Street plant and within a year thereafter was supplying over half of that plant's scrap. In addition, Luria was supplying a number of other foundries in contiguous areas in New York, Pennsylvania and Ohio. Luria had a legitimate interest in establishing a yard in the area, not merely to supply its customers in Erie but in the nearby areas of Buffalo, Youngstown and Cleveland.

8. The contention of counsel supporting the complaint that Luria took over the Erie yard in order to harass competitors is based largely on the testimony of its former employee, Michael Leyava, and that of two dealers in the area. Leyava's testimony that, "I believe Luria had always encountered difficulty in buying scrap from the Erie boys" (R. 9187), was obviously of a conclusional nature, being based on conversations with a Luria employee as to which the witness had no recollection, and involved a period prior to his coming with the company. Also cited is the testimony of a representative of Liberty

Iron & Metal Co. to the effect that he had been told by a Luria employee that the company "did not feel that they were getting enough tonnage in the area and they had to go in there and open up their own yard" (R. 8814); and testimony of a representative of Republic Iron & Metal Co. that he had been told by a Luria employee that "Erie had a greater potential than Luria Brothers were getting and that it was obtainable in that territory" (R. 9236).

9. In the opinion of the examiner the testimony cited fails to establish that Luria used the threat of opening a yard as an instrument for pressuring dealers to sell it more scrap. None of the dealers indicated that they considered such remarks as a threat by Luria to open a yard if the dealers did not sell them more scrap, nor can such an inference be drawn from the testimony. The representatives of Liberty Iron & Metal testified that it was typical of brokers to try "to get as much tonnage as [they] possibly can" (R. 8815). Both of the dealer witnesses indicated that they had their own commitments to consider, and it is not surprising therefore that Luria should come to the conclusion that it would be desirable to have its own yard in the area, not as a threat to other dealers, but in order to meet its own commitments. The Republic Iron & Metal witness, in response to the question whether the Luria representative had made any statement concerning the reason for opening a yard, testified he was told that Luria regarded Erie as "a good foundry town and they believed they should have a yard there in order to represent the various customers" (R. 9235).

10. Paragraph 10(f) of the complaint does not challenge Luria's right to open additional yards where there is a bona fide need therefor to meet its commitments in a particular area. The gravamen of the charge is that Luria used the threat of opening a competitive yard as an instrument for forcing dealers to sell it more scrap, in an area where there was no economic need for another yard or additional facilities. The record fails to establish (a) that there was no economic need for Luria to take over and improve an existing yard because of the fact that the yard was already economically surplus in the area, and (b) that it did so "for the purpose and with the effect of harassing" dealers who had not sold it sufficient scrap.

#### *Tiffin Yard*

11. The situation in Tiffin, Ohio involves the opening of a yard by a third party who had received financial assistance from Luria, rather than the establishment of a yard by Luria. The yard was opened in July 1954 by Paul F. Sweeney, who had been employed until May 1954 as assistant sales manager by A. Rosenblatt, Inc., another dealer in the area. Up to July 1954 there were two substantial dealers in the

area (of whom Rosenblatt was one) and several smaller dealers. Following Sweeney's opening of a yard he became a third substantial factor in the Tiffin area.

12. Luria had purchased scrap from Rosenblatt since about 1951. In 1953, the first year for which there are figures in evidence, Luria purchased approximately 36% of Rosenblatt's scrap. Substantially all of this was purchased between January and August. In 1954 Rosenblatt sold scrap to Luria only between January and May, except for a negligible amount in August, and then business between the two companies ceased. Up to May, Luria had purchased approximately 23% of the scrap sold by Rosenblatt in 1954.

13. Paul Sweeney had been employed by Rosenblatt for about 3 years when he obtained a loan for \$10,000 from Luria in May 1954, through the good offices of Robert Schroeder, an employee in Luria's Cleveland office, who was a long-time friend of Sweeney's. With these funds, plus \$6,500 which he raised within his own family, Sweeney opened a yard in Tiffin in July 1954. Although there was no express agreement requiring Sweeney to sell his scrap to Luria, he did in fact sell all of his scrap to Luria. This continued even after the loan to Luria was paid off.

14. It is the contention of counsel supporting the complaint, (a) that Luria assisted Sweeney in opening the yard because Rosenblatt would not sell it sufficient scrap, and (b) that there was no economic need for an additional yard in the area. In the opinion of the examiner the evidence fails to sustain the position of counsel supporting the complaint on either of these issues.

15. It is true there were no sales to Luria by Rosenblatt for the last 4 months in 1953. However, the record contains no explanation for this. Furthermore, the evidence discloses that sales were resumed again in the first part of 1954, although on a somewhat reduced scale. Since the scrap sales had declined generally following the end of the Korean War in 1953, this may well account for Rosenblatt's decline in sales to Luria in the latter part of 1953 and early 1954. In any event, the record fails to establish that Rosenblatt had refused to sell scrap to Luria or had cut down on the amount of scrap it was willing to sell to Luria.

Counsel supporting the complaint make much of the statement by Rosenblatt in his testimony that Luria was "never satisfied, no matter how much scrap I sold them" (R. 9476). However, it seems clear, in the context of his testimony, that he was making the same general observation as the Erie dealer previously referred to, viz, that brokers are always trying to get more scrap, and are never completely satisfied with the amount sold to them. His testimony on cross-examination

indicates that he was selling Luria all the scrap it wanted to buy, leaving it up to his then employee, Sweeney, who had apparently convinced him that "we could get as much money so why not sell to Luria Brothers" (R. 9476).

16. The contention of counsel supporting the complaint that Luria was assisting in the establishment of a yard which was economically undesirable is based largely on the fact that the scrap business was in a state of recession in 1954, and that the sales of Luria's Cleveland office and Rosenblatt's scrap yard were both down substantially from 1953. In the opinion of the examiner the fact that scrap sales were off in 1954, compared to 1953, does not justify an inference that Luria was assisting in the establishment of a yard in an area where it was economically undesirable to do so. While Rosenblatt's sales in 1954 had declined to \$170,000, compared to \$303,000 in the peak year of 1953, they resumed their upward trend thereafter, amounting to \$215,000 in 1955 and \$277,000 in 1956. Sweeney also experienced a favorable trend in his sales, those in 1955, the first full year of operations, amounting to \$87,000, and those in 1956 to \$174,000. The evidence fails to establish that the Tiffin area could not absorb another dealer, although Sweeney's entrance into the market undoubtedly increased competition in the area.

17. So far as appears from the record, Luria had decided to assist Sweeney partly because of his close friendship with a Luria employee and partly in the expectation that he would give it first call on his scrap. However, there is nothing to show that it was having difficulty with Rosenblatt and that it went into the operation in order to punish him. Nor can it be inferred that it was assisting a dealer where it was uneconomical to do so, merely because the scrap business was in the doldrums. It may be noted, in this connection, that the very fact the scrap business was in a quiescent state would seem to negate the likelihood that Luria was trying to pressure Rosenblatt to sell it more scrap, as suggested by counsel supporting the complaint.

*Conclusions as to Punitive Yards*

18. In order to sustain the allegations of Paragraph 10(f) it must appear, (1) that any yard opened by Luria or any addition to an existing yard was located in an area where such yard or addition was economically undesirable, and (2) that the yard or addition was undertaken for the purpose and with the effect of harassing dealers in the area who had declined to sell sufficient scrap to Luria. The only evidence offered to sustain this charge involves the taking over and improving of an existing yard in Erie, Pennsylvania, and the rendering of financial assistance to a new dealer in Tiffin, Ohio.

19. The record fails to establish that in either of these instances was the additional yard or equipment in an economically undesirable area, or that Luria's opening or assistance in opening the yard or adding to the yard was motivated by a desire to harass dealers who failed to sell it sufficient scrap. Counsel supporting the complaint have, therefore, failed to establish the allegations of Paragraph 10(f) of the complaint.

(6) *Bogus Independents*

1. Paragraph 10(g) charges that Luria held out and continues to hold out, as being independent, certain corporations which were under Luria's direction and control, either through stock ownership or financial and contractual affiliation, and that Luria thereby diverted business to such companies from competitors which would not have been diverted if the facts were known. It is contended that the facts with respect to Luria's control of such companies were concealed from the trade until the issuance of the complaint in this proceeding.

2. Counsel supporting the complaint have reserved the discussion of this charge for that portion of their proposed finding dealing with the separate charge of Luria's domination and control of competitors. This appears to be an appropriate manner for handling the charge in view of the fact that it is tied up inextricably with the domination and control charge. Further consideration of the bogus independents charge will, accordingly, be reserved for that portion of this decision dealing with the charge of Luria's domination and control of competitors.

(7) *Employing Personnel of Competitors*

1. The complaint does not charge, as a trade-restraining activity by Luria, the hiring of employees of competitors. However, counsel supporting the complaint cite such activities by Luria, and contend that they are encompassed by the broad language of Paragraph 10 of the complaint, which charges Luria generally with engaging in activities in restraint of trade and alleges that the specific practices, previously discussed, were engaged in "among others". Luria has made no contention in its proposed findings that the activities referred to by counsel supporting the complaint are not covered by the complaint.

2. The activities of Luria having to do with the hiring of competitors' employees, of which counsel supporting the complaint complain, fall into two categories, (a) the complete elimination of competitors by employing their entire personnel and (b) the harassment of competitors by the hiring of important or key personnel. There is no dispute as to the fact that in two instances Luria hired employees of competitors who went out of business, and that in several instances

it hired important employees of competitors who remained in business. The only issue is whether it did this for the purpose of eliminating or impairing the efficiency of these competitors.

For the most part counsel supporting the complaint have proposed no findings as to Luria's purpose or intent in hiring the personnel in question. However, in at least one instance it is contended that it did so "for the clear and deliberate purpose of harassing an important competitor" (p. 255 Proposed Findings). It seems clear, whether it is charged or not, that the essence of the wrong, if there is one, is the purposeful hiring of employees as part of a deliberate plan to eliminate or injure competitors, and not the mere act of hiring. With these considerations in mind, the examiner turns to the various incidents cited by counsel supporting the complaint.

*Livingston & Southard, Inc.*

3. This company was in the import-export business handling a variety of products, including steel and plastics. The main part of its business consisted in the export of off-grade steel to the Far East. It also handled some scrap, but the extent thereof does not appear from the record.

4. In the middle of 1953 Benjamin Livingston, the head of Livingston & Southard, a man in his middle sixties, approached Luria with a view to selling his business. His former associate, Southard, had retired from the company and four or five of its key personnel had already left. The company was operating on a much smaller scale than in former years, but enjoyed a good reputation in the field of foreign trade.

5. After the severance of relations with Luria Steel & Trading in 1944, Luria had been relatively inactive in the import-export field. However, it was considering increasing its activity in the field due to the impending removal of the embargo of scrap shipments abroad. Since the individual about whom its plans were centered suddenly died, it was interested in Livingston's overtures.

6. However, instead of buying out the company as proposed, Luria agreed to hire Benjamin Livingston and his then remaining staff consisting of 10 to 12 people, and to form a new company of which Livingston would become an officer and director. On June 13, 1953, a new corporation was formed known as Luria International, Inc., of which Livingston became president and a director. On July 21, 1953, the name of the corporation was changed to Livingston & Southard, Inc., the name of Livingston's old company.

7. There is not a scintilla of evidence that Luria hired Livingston and the remainder of his employees for the purpose of eliminating a competitor. There is no evidence as to whether there was

any actual or potential competition between the two companies. The initiative for the transaction came from Livingston, not from Luria. So far as appears from the record, Luria's interest was not in eliminating a competitor, but in acquiring Livingston's know-how at a time when the man about whom its own plans had been centered died.

*Jack R. Forcheimer & Son*

8. The other company whom it is contended Luria sought to eliminate as a competitor by hiring its personnel was Jack R. Forcheimer & Son, a St. Louis brokerage firm consisting of a father and son. The firm, a partnership, went out of business in June or July of 1950, following which both partners went to work for Luria. Charles Forcheimer, the son, worked as a trader (scrap buyer) in Luria's St. Louis office for several months and was transferred to its Houston office where he became manager. The father worked as a trader in the St. Louis office for several years, and then was transferred to Houston, where he retired in 1956.

9. So far as appears from the record, the impetus for the Forcheimers' joining Luria came from Charles Forcheimer, who felt he would have a greater future with Luria than remaining with his own firm. The father, who was then 69, decided to go with Luria himself after his son's decision to leave their firm. There was relatively little competition between Luria and Forcheimer. The latter's main customer was Laclede Steel Company. In 1950 Laclede was buying only 5.7% of its broker-dealer scrap from Luria. By 1953 Laclede's purchases from Luria had declined to 1.3%. As previously noted, Luria's main customer was Granite City Steel, for whom it became exclusive broker in April 1950.

10. The record fails to support any finding that Luria hired the Forcheimers in order to eliminate them as a competitor. While it was able to obtain a few accounts, from which the Forcheimers had been purchasing scrap, its main interest appears to have been in obtaining their know-how, particularly that of the son who remained in St. Louis only for a short time and became the manager of Luria's Houston office. The Forcheimers' decision to go out of business may have been influenced by the position which Luria had been able to attain in the St. Louis market as a result of its exclusive arrangement with Granite City, but there is no evidence that it was the result of a deliberate effort by Luria to eliminate the firm as a competitor.

*Employees of Export Competitors*

11. As previously noted, in addition to charging that Luria tried to eliminate competitors by hiring their entire personnel, counsel

supporting the complaint contend that Luria engaged in the practice of "pirating" away individual employees of competitors. Two of the employees referred to were employed by import-export firms which, among other things, were engaged in handling scrap metals.

12. One of the employees is Ludwig Schnogg, who had been employed by Associated Metals & Minerals Corp., a brokerage and exporting firm, and was hired as vice president of Luria's subsidiary, Livingston & Southard. The record does not indicate in what capacity Schnogg had been employed by Associated, or any of the facts and circumstances of his employment by Luria, outside of the fact that he was hired. The other employee is C. E. Vallentin, who had been employed by Western Steel International Corp., an importer and exporter of scrap, and was hired as assistant to Schnogg in the Livingston & Southard organization. There is nothing to indicate that he was a key employee of Western Steel, nor as to what the facts and circumstances of his hiring by Luria's affiliate were. In neither instance is there any evidence from which it may be inferred that Luria "pirated" these employees away from their former employers for the purpose of impairing the competitive status of these firms.

*Luria Steel & Trading Corp.*

13. On December 8, 1955, Luria hired Murray I. Glickman, who had been employed for approximately 8 years as a trader in LS&T's Boston office. His duties involved contacting scrap dealers in the New England States and arranging to purchase their scrap. He performed the same duties for Luria after his employment by the latter, buying from substantially the same dealers as he had dealt with on behalf of LS&T.

14. The only evidence as to how Glickman came to work for Luria is his own testimony that he approached Luria after coming to the conclusion that his future would be jeopardized if he remained with LS&T. There had been no appreciable improvement in the latter's purchases in the New England area for some years, and it appeared to be diverting its activities into other channels of business. In 1958 LS&T did, in fact, close its Boston office. While Luria's competitive activities in New England may have been responsible for Glickman's reaching the conclusion that his and LS&T's future in the area were limited, the evidence fails to support a finding that Luria pirated him away from LS&T, for the purpose of undermining it as a competitor.

*Luntz Iron & Steel Co.*

15. At different times between 1953 and 1956 Luria hired five employees of Luntz, a Cleveland brokerage firm, with offices in Pitts-

burgh, Canton (Ohio), and Kokomo (Indiana). Three of the employees had been in charge of the Pittsburgh office, one was head of the Canton office, and the fifth was in charge of the Kokomo office.

16. The first of the Luntz employees hired was Jack Langer, who was manager of the Pittsburgh office. Langer had previously been employed by another Pittsburgh broker and was hired by Luntz around August 1952. Langer sought, unsuccessfully, to obtain some sort of a long-term contract from Luntz, but was advised it was contrary to the company's policy to give contracts to employees. Langer decided to leave Luntz early in 1953 and was employed by Luria to work in its Memphis office. Upon leaving Luntz' employment, Langer advised his former employer that Luria had offered him a "fantastic increase" (R. 8911). The record contains no information as to Langer's salary, either with Luria or with Luntz. The record is unclear as to whether Langer left because of Luntz' unwillingness to give him a contract or because of a better salary offer from Luria. It does appear, however, that Luntz had regarded Langer as "just mediocre" (R. 8910) and had so advised him.

17. The next Luntz employee to come to work for Luria was hired about 3 years later. He was Myron L. Chase, who had been a Luntz vice president in charge of its Canton, Ohio office. Chase was the son-in-law of Darwin Luntz, who was president of the Luntz company until his death in 1951. Chase's explanation for leaving the company was friction with his deceased father-in-law's brother, A. M. Luntz, who had succeeded to the presidency of the company and had several sons of his own. Chase considered his own future with the company limited. In June 1956, on a visit to New York, Chase called on Ralph Ablon, who had become Luria's president, and indicated his desire to work for Luria. After several meetings Chase went to work for Luria as assistant to Ablon. His duties were mainly concerned with the export end of Luria's business. He had been receiving a combined salary and bonus of \$35,000 from Luntz, and Luria agreed to make the same salary arrangement.

18. After deciding to leave Luntz, Chase called two other Luntz employees with whom he had been close personal friends and advised them of his decision. One was Herbert L. Aronoff, who had succeeded Langer as head of Luntz' Pittsburgh office. The other was Frank Kilcline, who was in charge of Luntz' Kokomo, Indiana office. After several further communications with these two employees, they too contacted Ralph Ablon and were hired by Luria. Aronoff, who had been receiving a salary of \$24,000 a year, plus a bonus, from Luntz, was hired at a salary of \$18,000, plus a bonus varying with the amount of business done. Aronoff was transferred to Houston by Luria. Kilcline, who had been receiving a salary of \$21,000,

plus a bonus ranging from \$7,000 to \$15,000 a year, was hired at a salary of \$24,000, plus a variable bonus, by Luria. Luria also agreed to hire Kilcline's 28-year-old son at a salary of \$12,000, plus bonus. Kilcline remained in Kokomo as head of Luria's new office there. He was required to give up his interest in a steel warehouse company, from which he had been receiving \$4,500 to \$20,000.

19. The last Luntz employee to be hired by Luria was William Ferguson, who had been employed by a Columbus, Ohio broker, and was engaged by Luntz in the latter part of 1956. Before actually reporting to work, Ferguson attended an industry convention in Miami at Luntz' expense. While there, he met Ralph Ablon who, not aware that Ferguson was scheduled to go to work for Luntz, hired him to work for Luria in its Birmingham, Alabama office.

20. It is contended by counsel supporting the complaint that the employment by Luria of Luntz personnel represents a "planned course of action by Luria for the clear and deliberate purpose of harassing an important competitor by interfering with its orderly operations". There are undoubtedly a number of suspicious circumstances in connection with Luria's hiring of Luntz personnel, particularly those surrounding the hiring of Chase, Aronoff and Kilcline. However, the examiner cannot find, on the basis of the evidence in the record, that Luria hired those employees as part of a planned course of action to harass Langer. Its paramount purpose appears to have been to obtain experienced personnel. In most instances they were transferred out of the area where they had formerly been employed. While Luria undoubtedly was aware that Luntz would be unhappy over their loss, it cannot be said from the evidence in the record that this was a significant motivating factor in Luria's action.

*Conclusions As To Employing Personnel of Competitors*

21. Luria did, admittedly, hire the employees of a number of its competitors. Its primary purpose in doing so was to obtain experienced personnel to fulfill its own needs and requirements. In some instances the loss of such personnel was a serious inconvenience to competitors, although the evidence does not establish, in any instance, that a competitor's operations were substantially affected thereby. Despite the fact that in some instances there are elements of suspicion surrounding the hiring of certain of the employees, the evidence in the record fails to support a finding that a material consideration in the hiring of such personnel by Luria was the desire or purpose of eliminating a competitor or interfering with the orderly operations of a competitor.

*D. Domination and Control of Competitors*

1. The charge that Luria acquired domination and control over competitors is alleged in the complaint both as a violation of Section 5 of the Federal Trade Commission Act and as a violation of Section 7 of the Clayton Act. The Federal Trade Commission Act violation is alleged in Paragraph 11 of Count I of the complaint, which charges that Luria acquired and exercised "substantial domination and control" over competitors by two methods: (a) By making "substantial advances or loans" to dealers; and (b) by acquiring all or a substantial part of the capital stock of certain specifically-named scrap dealers and brokers. In Count II of the complaint the same stock acquisitions are charged as a violation of the Clayton Act. The loan and stock-acquisition charges are each separately discussed below. Since the same stock acquisitions are involved under both the Federal Trade Commission Act and the Clayton Act, they are considered together.

*(1) Loans and Advances*

1. The complaint, in Paragraph 11, does not challenge the mere practice of making loans and advances to dealers, but rather the use of this practice in a context of exclusive dealing. It is alleged that many of the loans or advances are made subject to the express understanding that the dealers will sell all of their scrap to Luria during the period that the loan or advance is outstanding. It is further alleged that while other loans or advances are not made subject to this express understanding, they nevertheless "have the capacity and tendency to result and have actually resulted in tacit understandings" that the dealers accepting the loans or advances will sell all of their scrap to Luria.

2. There is no dispute as to the fact that Luria makes loans or advances to scrap dealers. Such loans or advances take three main forms, (a) loans to enable a dealer to purchase needed equipment such as baling presses, (b) loans or advances of funds for use generally by a dealer in financing the operation of his business, including the purchase of scrap, and (c) advances of funds against specific quantities of scrap which a dealer has committed himself to sell to Luria. Advances of the latter type involve scrap which the dealer has already purchased, and such scrap is either in the dealer's yard or is in transit to Luria or to Luria's designee. Frequently the advance is made against a bill of lading covering the shipment of scrap, but sometimes it is made prior to actual shipment and while the scrap is still in the dealer's yard but has already been sold to Luria. Advances against

scrap falling within either of these categories are not challenged by counsel supporting the complaint.<sup>55</sup> The attack of counsel supporting the complaint is directed, rather, against loans to finance the purchase of equipment, and loans or advances which may be used generally by the dealer in his business, including the purchase of scrap not yet owned.

3. In the case of the loans or advances of the type which the complaint challenges, it may be noted that some of them are secured by chattel mortgages on the equipment being financed or on other chattels or real estate of the dealer, while some are unsecured. Some of the loans bear interest and some do not. In some instances the documents covering the loan transaction contain an express provision that during the period the loan or advance is outstanding the dealer will sell his scrap exclusively to Luria, or that he will offer his scrap to Luria on a "first refusal" basis, *i.e.*, Luria will be given the first opportunity to buy it on the basis of the current market price or some other price formula. In other instances, there is no express requirement that the dealer sell or offer his scrap to Luria. However, counsel supporting the complaint have sought to show by the actual pattern of sales of the dealer or by other evidence that, in practice, such arrangements frequently result in exclusive dealing, despite the absence of any express agreement to do so.

4. While, as already noted, respondent Luria does not deny the making of loans or advances to dealers, it does deny that they necessarily result in exclusive dealing, or that they are made for the purpose or have the effect of suppressing competition or that they have resulted in Luria's domination or control of dealers to whom they have been made. It contends that the making of such loans or advances is in accordance with usual industry practice and fills a need on the part of the dealers for financial assistance, which banks and other normal channels of financing are unwilling to undertake. It is also contended that the evidence offered by counsel supporting the complaint, in terms of the number of dealers receiving financial assistance and the amounts of money and scrap involved, fails to establish the likelihood of competitive injury or of a lessening of competition in any market area. To a consideration of the evidence in the light of these conflicting contentions, the examiner now turns.

#### *Extent of Luria's Loans and Advances*

5. The record contains evidence purporting to show the extent of the loans and advances made by Luria to dealers. Such evidence consists

<sup>55</sup> Counsel supporting the complaint state in this connection (Reply Brief, p. 45):

Advances against bills of lading or against scrap on hand do not represent the type of advances which are challenged in this proceeding or which have the restraining competitive effects which are in issue.

of a series of tabulations prepared by Luria, at the request of counsel supporting the complaint, purporting to show the amounts of loans and advances made to dealers and others and the status of each account at six-month intervals from January 31, 1949, to December 31, 1954 (CX 134 A-M). The tabulation covers loans or advances in a number of stated categories. The main categories included in the tabulation are, (a) loans to finance the "purchase of equipment," and (b) so-called "Permanent Advances for Credit." In some instances the tabulation contains a further breakdown on the basis of whether the loans or advances were "Secured by Mortgage" or "Secured by Stock of Company" or "Unsecured," or were evidenced by "Notes." The nature of the loans or advance made to finance the "purchase of equipment" are self-evidence. Advances which were "permanent advances for credit" cover monies advanced to the dealer for the general operation of his business, as distinguished from advance payments against specific lots of scrap sold to Luria.

6. Before discussing the extent of such advances, it is well to consider at this point the contention of counsel supporting the complaint that the figures of loans and advances produced by Luria do not reflect all of the loans and advances made by Luria and, therefore, are not a precise measure of Luria's loan practices. Counsel supporting the complaint state that: "No precise measure of the extent of the use of this practice by Luria was attempted." In support of their contention that the tabulation of Luria loans and advances is incomplete, counsel supporting complaint cite, (a) the testimony of several dealers in the Los Angeles and New York areas who had received advances from Luria, but whose names are not included in the tabulations in evidence, and (b) documentary evidence in the nature of statements of accounts of various dealers who had received advances from Luria's New York office, some of which dealers are not included in the over-all tabulation of loans and advances received in evidence.

Respondent Luria contends that the testimony and other evidence upon which counsel supporting the complaint rely as establishing the incompleteness of the Luria loan figures do not involve loans or advances in the true sense of the word, but relate to advance payments against scrap sold or about to be sold to Luria. Luria contends that such prepayments for scrap are not properly includable in the loan figures, and that the failure to include such advances in the case of the dealers referred to by counsel supporting the complaint does not demonstrate any inaccuracy or incompleteness in the over-all loan figures.

7. In order to understand the conflicting contentions with respect to the advances in question, it should be noted that it is customary

in the scrap industry for brokers to make advance payments to dealers prior to the actual delivery of their scrap. The mills to whom the scrap is ultimately shipped usually take 30 to 60 days, or even longer, to make payment to the broker. Many dealers are not in a financial position to wait for their money until the broker has been paid by the mill. It is therefore a common practice for brokers to advance 75%, and sometimes more, of the amount of the invoice to the dealer upon receipt of a copy of the bill of lading covering the shipment of the scrap by the dealer. Advances are also sometimes made by brokers even prior to the actual receipt of a bill of lading. Such advances may be made at the time the order is placed, or even in anticipation of an order or orders which are about to be placed by the broker.

Loans to finance the purchase of equipment and so-called permanent advances, which are in reality loans to enable the dealer to carry on his business generally, including the purchase of scrap, are usually evidenced by a note or other formal document requiring repayment of the obligation at stipulated monthly periods, in accordance with a fixed schedule of payments. Advances which are in the nature of advance payments for scrap sold or about to be sold to the broker, are usually not evidenced by a note or other indicia of debt, but are wiped out by the shipment of scrap against the advances rather than by fixed monetary payments.

8. The testimony and other evidence cited by counsel supporting the complaint as establishing the incompleteness of the Luria loan figures involve mainly advances in the nature of advance payments against scrap sold or about to be sold to Luria. The testimony of the dealers upon which counsel rely indicates that they were not referring to loans and advances of the so-called permanent type, but rather temporary advances which were worked off by the shipment of scrap.<sup>56</sup> The documentary evidence pertaining to advances made by Luria's New York office is merely a statement of the status of accounts of various dealers showing advances against scrap sales made by the dealers to Luria.<sup>57</sup>

9. In determining whether advances intended as prepayment for scrap sold or about to be sold should be considered as belonging in the

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<sup>56</sup> One of the California dealers cited by counsel supporting the complaint testified that he had received "advances on merchandise and worked it off and continued to get more, and kept working it down" (R. 11,765). Another of the West Coast dealers testified that the only financial assistance received from Luria was "advances on my inventory" (R. 11,874). A third California dealer testified that he had received advances from Luria on scrap which he was storing prior to its being baled for shipment to Luria (R. 11,935). The two New York area dealers cited also referred to advances which they had received against scrap shipments to Luria (R. 2663, 2922).

<sup>57</sup> The only testimony regarding this exhibit (CX 420A-Z27) was by a Luria official who testified that the dealers "must have made sales from which advances are made" (R. 3294). There is nothing in the record to show that this exhibit involves advances other than as thus indicated.

category of advances which should have been included in Luria's loan figures, it should be noted that at least some of such advances are not loans of the type which are being challenged by counsel supporting the complaint, viz: "Advances against bills of lading or against scrap on hand". Some of the advances involved in the evidence cited by counsel supporting the complaint were clearly advances falling in this noncontested category. It may also be that some of the advances were against scrap which the dealer did not yet have in his inventory, but which he hoped to acquire in order to fill an order from Luria. Presumably counsel supporting the complaint would challenge advances of the latter type as being more akin to general loans to enable the dealer to carry on his business. However, there is no way of determining from the evidence in the record to what extent the advances cited by counsel supporting the complaint involve advances against scrap which the dealer had not yet acquired. There is no way to determine whether the amounts involved in such advances were substantial or significant.

10. In evaluating the completeness and reliability of the statistical compilation of loans and advances made by Luria which is in the record, it should be noted that the documents on their face purport to be accurate and complete. They were offered by counsel supporting the complaint without any condition or limitation as to their accuracy or completeness. The testimony of the Luria witness through whom the compilation was offered indicates that it covers all loans and permanent-type advances made by Luria, including those to finance the purchase of equipment and those used in the general operation of the dealer's business, including the purchase of additional scrap. There is nothing in the other evidence or testimony referred to by counsel supporting the complaint to justify the hearing examiner in holding that it is not a substantially complete list of the loans, and advances in the nature of loans, made by Luria during the period in question.

Even assuming that there were some advances made by Luria against scrap which a dealer did not own, and that such advances should have been regarded as loans and included in the compilation, the extent or substantiality thereof, as previously noted, cannot be determined from the record. The only definite, quantitative measure of Luria's loans and advances is the compilation offered in evidence by counsel supporting the complaint, and any findings based on the substantiality of Luria's loan policy must be made on the basis of such compilation, there being no other definitive evidence on the extent of such policy in the record. To the extent that the figures may fail to support a finding as to the illegality of Luria's loan policy, the de-

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iciency cannot be supplied by the suggestion that there were additional loans of vague and unknown proportions.

11. The extent of Luria's loan program is revealed by the following table, which includes loans and advances to finance the purchase of equipment and all other types of advances covered by the tabulation of loans and advances offered in evidence by counsel supporting the complaint. Column (1) of the table reflects the number of dealers who received loans in each year from 1949 to 1954. Column (2) reflects the aggregate amount of the loans made in each year to the dealers in Column (1), and the total for the 6-year period. It should be noted that the set-up of this column differs from that in an equivalent column proposed by counsel supporting the complaint, which is expressed in terms of the "Amount Originally Advanced to the Dealers With Unpaid Balances". The latter method has not been used since it presents an exaggerated picture of the extent of Luria's loan program. Column (3) reflects the number of dealers with outstanding loans as of the end of each year, including not only those who received loans during the year but those with unpaid balances from previous years. Column (4) reveals the total amount of the unpaid balances, as of the end of each year, of the dealers in Column (3). Where the

*Luria loans and advances to dealers*

	Number of dealers receiving loans <sup>55</sup>	Total amount of loans <sup>55</sup>	Number of dealers with unpaid balances	Total amount of unpaid balances
	(1)	(2)	(3)	(4)
1949-----	6	\$253, 000	<sup>59</sup> 7	<sup>59</sup> \$185, 000
1950-----	11	407, 500	14	469, 658
1951-----	<sup>60</sup> 21	<sup>60</sup> 648, 785	26	763, 176
1952-----	<sup>61</sup> 18	<sup>61</sup> 572, 521	33	772, 205
1953-----	<sup>62</sup> 16	<sup>62</sup> 435, 034	<sup>63</sup> 25	<sup>63</sup> 529, 625
1954-----	<sup>64</sup> 11	<sup>64</sup> 170, 962	<sup>65</sup> 20	<sup>65</sup> 473, 202
Total-----		2, 487, 802		

<sup>55</sup> Includes additional loans made in refinancing the balances due from dealers who had received loans during an earlier period, and initial loans where a specific date during the year is not given in the compilation in evidence. Such loans are generally reflected in the record by the word "Various" in connection with the date of the loan, or by reference to an earlier and a later date, or by the addition of "Etc." after the date. Such loans will be hereafter specifically identified.

<sup>59</sup> As of June 30, 1949, there were 10 dealers with unpaid balances, the amount of such balances being \$204,670.

<sup>60</sup> Includes additional loans as follows: \$30,000 to Paramount Steel & Supply; \$25,000 to Lederer Iron & Steel; and \$50,000 to Wilkoff. The latter has been counted only once in computing the number of dealers, since it also received an earlier loan in March 1951.

<sup>61</sup> Includes initial loans as follows: Boosters Iron & Metal \$55,000; Eastern Iron & Metal \$100,000; General Pipe \$10,000; Ditmas Scrap \$50,000; and Novak \$100,000; also the following additional loans: A-1 Iron & Metal \$50,000; Aronofsky \$3,000; Fisher Steel & Supply \$20,700; Rubinstein \$22,500. Aronofsky has been counted only once in computing the number of dealers, since he received an earlier loan in July 1952.

<sup>62</sup> Includes additional or initial loans as follows: Aronofsky \$30,000; Ditmas \$41,634; Lederer \$20,500; A-1 \$38,000; East Bay Iron & Metal \$28,000. Aronofsky has been counted only once in computing the number of dealers, since he received another separate loan in September 1953.

<sup>63</sup> As of June 30, 1953, there were 35 dealers with unpaid balances, the amount of such balances being \$601,673.

<sup>64</sup> Includes additional or initial loans as follows: Lederer \$72,000; and Mayco Salvage \$10,000.

<sup>65</sup> As of June 30, 1954, there were 28 dealers with unpaid balances, the amount of such balances being \$547,029.

number of dealers with unpaid balances and the amount of such balances is greater as of June 30, than at the end of the year, this is indicated.

12. As is revealed by the above table, Luria's loans and advances to dealers in the 6-year period from 1949 to 1954 amounted to \$2,487,802.<sup>66</sup> If the column reflecting the number of dealers receiving loans were totaled, it would suggest that 83 leaders had received loans. However, since some of the dealers received loans in more than 1 year during this period, this total figure would not correctly reflect the number of different dealers assisted financially by Luria. Actually, there were only 60 different dealers who received financial assistance. The amounts of the individual loans varied from as little as \$1,690 to as much as \$198,500, the latter being a loan to Wilkoff to finance the purchase of a baling press. Only twelve of the dealers received loans in the order of magnitude of \$75,000 or more. The total of the loans to these 12 dealers over the 6-year period amounted to \$1,753,245, or 70% of the total of all loans made during the 6-year period covered by the figures in the record.<sup>67</sup> The geographical distribution of these 12 dealers is as follows: Three are located in the Cleveland-Youngstown area; four are located in the greater Los Angeles area; one is located in the San Francisco area; one in the Boston area; one in the Chicago area; and two in the Brooklyn, New York area.<sup>68</sup> The remaining dealers, for the most part, received individual loans at one time or

<sup>66</sup> The proposed findings of counsel supporting the complaint suggest that this figure is \$3,946,323. However, counsel's figure involves the duplication of earlier loans which were refinanced at a later period. For example, on August 25, 1950, a loan of \$99,000 was made to A-1 Iron & Metal Company. This loan was refinanced in January 1952 and brought up to \$149,000. It was refinanced again in the latter part of 1953 and the amount brought up to \$187,000. Instead of reflecting the original amount loaned, plus additional amounts involved in the refinancing in 1952 and 1953, the total figure used by counsel supporting the complaint apparently includes all three of the above total amounts.

<sup>67</sup> The total amount of money loaned to these 12 dealers is as follows:

Wilkoff.....	\$272,500
A-1 Iron & Metal.....	208,000
Novak.....	207,076
Lederer.....	201,500
Newton.....	170,000
Eastern Iron & Metal.....	140,000
Booster.....	123,000
Paramount.....	105,000
Ditmas.....	91,634
Aronofsky.....	85,500
Kingsbury Iron & Metal.....	75,000
East Bay.....	74,035

<sup>68</sup> The locations of the dealers are as follows:

Cleveland and Youngstown.....	Paramount, Lederer and Wilkoff.
Los Angeles.....	A-1, Novak, Eastern and Booster.
San Francisco.....	East Bay.
Boston.....	Aronofsky.
Chicago.....	Kingsbury.
Brooklyn.....	Newton and Ditmas.

another during the 6-year period covered by the figures, such loans generally ranging from about \$5,000 to \$25,000.

13. The substantiality of Luria's loan program and its potentialities for competitive injury cannot be determined merely from the fact that over a 6-year period it loaned approximately two and a half million dollars to 60 dealers. Substantiality is a relative, rather than a single-dimensional, concept. In the field of antitrust law the relationship is to some market. There are approximately 3,700 dealers in the United States. In the course of its operations Luria buys from between 1,200 to 1,800 dealers. Counsel supporting the complaint apparently make no claim that the likelihood of competitive injury can be inferred merely from the fact that Luria made loans and advances to approximately 60 of these dealers. Indeed, no such inference can be drawn therefrom in the absence of evidence as to the amount of scrap controlled by such loans and advances in relationship to some market.

14. The market in this instance, as has previously been noted, is primarily a regional rather than a national one. However, counsel supporting the complaint have made no effort to establish the substantiality of Luria's control over any particular scrap market by offering evidence as to the amount of scrap sold by dealers receiving financial assistance in comparison with the total amount of scrap sold in the market. Instead, counsel have offered evidence as to Luria's loans and advances to selected dealers in various market areas. Such evidence, counsel state, is "not exhaustive but simply representative". It was apparently offered not to establish the substantiality of Luria's control of any market, but "the nature and purpose of such loans and advances". The evidence relied upon is considered below in relationship to the various market areas discussed by counsel supporting the complaint.

#### *Cleveland-Youngstown Area*

15. Counsel supporting the complaint concede that "the extent to which the practice [of making loans] was used by Luria in that area is not disclosed" by the record. Their presentation was restricted largely to showing that the loans and advances as to which evidence was offered were expressly conditioned on exclusive or preferential dealing, or that they did in fact result in such dealing. No effort was made to establish the substantiality of Luria's control over the market by a comparison of the total amount of scrap purchased from financially-assisted dealers, with the total amount of scrap sold in the market. The following are the scrap dealers in the Cleveland-Youngstown area upon whose financial dealings with Luria the case of counsel supporting the complaint in that area rests.

*Lederer Iron & Steel Company*

16. Lederer, a Cleveland dealer, received a loan of \$50,000 on August 20, 1947, which is designated in the record as a "permanent advance for credit". During 1948 it also received advances totaling \$60,000 to finance the purchase of a baler. On December 11, 1950, it received an additional loan of \$75,000 to finance the purchase of a baler. On January 29, 1951, the latter amount was increased to \$100,000. During 1953 the balance due Luria was refinanced and the amount of the loan increased to \$129,000. In 1954 this amount was further increased to \$201,500.

The only evidence in the record of any exclusive dealing arrangement in connection with any of such loans or advances involves the loan of \$100,000 in the latter part of 1951. By formal agreement dated February 10, 1951, Lederer agreed that until the loan was repaid in full, it would sell all of its scrap to Luria (except for certain cast iron and heavy plate scrap, as to which it reserved the right to sell directly to foundries). The agreement permitted Lederer to sell its scrap to others where Luria refused, within 48 hours, to purchase it. This type of arrangement is sometimes referred to as affording the broker the exclusive right to the dealer's scrap on a "first refusal" basis. The record does not indicate whether this exclusive agreement was extended in 1953 and 1954 when the balance outstanding was refinanced.

Counsel supporting the complaint contend that even prior to the exclusive or preferential agreement of February 1951, Luria's loans to Lederer had had an adverse effect on competitors. Counsel cite the experience of the Cleveland broker-dealer, Columbia Iron & Metal, which in 1947 had purchased \$316,418 worth of scrap from Lederer, and in 1948 was able to purchase only \$26,000 worth from Lederer and thereafter was unable to purchase any. Apparently the first loan from Luria in August 1947 did not preclude Columbia from purchasing scrap from Lederer since its purchases in that year were the largest of any year in the record. However, it may be inferred that the additional financial assistance given to Lederer by Luria in 1948 and thereafter resulted in the loss of that account entirely by Columbia. Except for minor direct sales to its foundry accounts, Lederer sold substantially all of its scrap to Luria after 1948.

*Paramount Steel & Supply Corporation*

17. Paramount, a Cleveland dealer, received an interest-free loan of \$75,000 from Luria on May 29, 1950, for the purpose of buying out one of its stockholders. Paramount entered into an agreement, in connection with the loan, to sell its scrap to Luria on a "first refusal" basis until the loan was repaid or until September 30, 1954, whichever

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occurred later. Prior to the loan, in 1949, Paramount's sales of scrap amounting to \$300,000 had been fairly evenly distributed among Columbia, Luntz, Luria and M. Cohen. Following the agreement with Luria in 1950, substantially all of Paramount's sales of scrap were made to Luria until December 1953, when Paramount discontinued business as a separate entity and consolidated with Lederer.

*Tuschman Steel Company*

18. Tuschman, a Toledo dealer, received a loan of \$25,000 from Luria on January 5, 1949, to finance the purchase of a baler. The only other loan or advance to Tuschman, as to which there is any evidence in the record, is one for \$15,000 made on November 10, 1952. The record contains no evidence of any express agreement or understanding, entered into in connection with either of these loans or advances, that Tuschman would sell its scrap to Luria exclusively. However, counsel supporting the complaint contend that even without a written agreement requiring Tuschman to sell its scrap to Luria, the loans and advances "were effective in producing business" for Luria. Counsel base this argument on the amount of business done by Luria with Tuschman.

The examiner can draw no inference, from the figures in evidence, that Tuschman had agreed to sell its scrap to Luria, either exclusively or on a preferential basis. The earliest figures in the record of Tuschman's sales to Luria involve the year 1951 and, while the figures disclose substantial sales to Luria between 1951 and 1955, they also disclose substantial sales to other brokers.<sup>69</sup> There is nothing to show that the pattern of sales to Luria after 1951 differed from that prior to its receiving any loans from Luria. The record fails to establish that loans or advances from Luria resulted in Tuschman's selling all or substantially all of its scrap to Luria.

*The Wilkoff Company*

19. Wilkoff, a Youngstown dealer, received a loan of \$150,000 on December 7, 1950, from Luria to finance the installation of a baling press. A condition of the loan agreement was that Wilkoff would sell all of its scrap in the Youngstown area to Luria, except for some sales to foundry accounts of long standing. The amount of the loan was subsequently increased to approximately \$300,000. In 1949 Wilkoff's

<sup>69</sup> The following is the record of Tuschman's sales to Luria, to other customers (not including brokers) and to other brokers (CX 921):

Customer	1951	1952	1953	1954	1955
Luria .....	\$549,439	\$229,837	\$318,539	\$41,968	\$81,361
Other customers.....	262,484	14,587	188,960	40,352	102,384
Other brokers.....	275,785	254,320	314,300	137,613	401,698

sales to Luria amounted to about \$23,000 out of total sales of \$1,535,000. In 1950 its sales to Luria were \$310,000 out of total sales of \$2,785,000. In 1951, the first full year after the loan agreement of December 7, 1950, Wilkoff's sales to Luria were \$2,315,000 out of total sales of \$3,105,000. Its sales to Luria thereafter continued in substantially the same large proportions. It seems evident that Luria's loans to Wilkoff resulted in the latter's dealing with it on a substantially exclusive or highly preferential basis.

*Wayne County Iron & Metal Co.*

20. This dealer, located in Wooster, Ohio, received an interest-free loan of \$18,000 from Luria on May 8, 1954, to finance the purchase of a baler. The loan agreement provided that until the loan was repaid the dealer would sell to Luria, on a first refusal basis, all of the bundled scrap produced by the baler. There is no evidence in the record as to whether Wayne did, in fact, sell its scrap to Luria.

*P. Sweeney, Inc.*

21. This dealer, located in Tiffin, Ohio, received a loan of \$10,000 from Luria on May 18, 1954, to assist it in establishing a scrap yard. The loan bore interest at 3%. Although the agreement contained no provision obligating the dealer to sell its scrap to Luria, the dealer did in fact sell all of its scrap to Luria.

*Conclusions as to Cleveland-Youngstown Area*

22. Counsel supporting the complaint offered evidence as to loans made by Luria to six dealers in the northern Ohio area, between Toledo and Youngstown, which is served by Luria's Cleveland office. In several instances there was a written agreement requiring the dealer to sell its scrap to Luria exclusively or on a first refusal basis, until repayment of the loan. In several instances, even though there was no such express agreement, the dealers did in fact sell substantially all of their scrap to Luria. However, in at least one instance where there was no express exclusive or preferential agreement, the dealer did not sell all of its scrap to Luria and, while it sold substantial quantities of scrap to Luria, there is no evidence that it dealt with the latter on a preferential basis.

23. The examiner cannot determine from the evidence pertaining to the northern Ohio area whether Luria's loan program is calculated to result in substantial competitive injury in the area. It does appear that in a number of instances, but not in all instances, the recipients of financial assistance tend to deal with Luria exclusively or on a preferential basis during the period of assistance. In several instances this has resulted in the inability of other brokers and broker-dealers to buy scrap from the financially assisted dealers. However, it can-

not be inferred therefrom that substantial competitive injury is likely to result from Luria's loan program.

24. Exclusive or preferential dealing necessarily results in competitors being unable to sell freely to the party who is tied up by such an arrangement. However, such arrangements are not per se illegal. Their illegality generally depends on a showing as to the likelihood of substantial competitive injury resulting therefrom. Typically, such a showing involves evidence as to the substantiality of the share of the market foreclosed. No such evidence has been adduced in this instance. There is no evidence that the amount of scrap tied up by loans from Luria in the northern Ohio area, or any definable segment of the market, is substantial. While the illegality of such arrangements may also be established by evidence that they were undertaken as part of a deliberate program to obtain market control or for other predatory reasons, the record contains no such evidence with respect to the northern Ohio market or any of the other areas as to which evidence was offered.

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25. The examiner considers it unnecessary to make further detailed findings, similar to those made above, with respect to the other areas to which proposed findings have been offered by counsel supporting the complaint. In most instances the evidence establishes merely the fact that selected dealers in these areas received financial assistance, and that this frequently resulted in the assisted dealers selling their scrap to Luria exclusively or on a preferential basis, during the period of financial assistance. However, there is no evidence as to the substantiality of the amount of scrap tied up, in relation to the market, nor any other facts from which the likelihood of substantial competitive injury can be inferred. In order that the record may be complete for possible appellate purposes, there is set forth below, in tabular form, an outline of the evidence of loans and advances in other areas on which counsel supporting the complaint rely.

*New York Metropolitan Area*

26. Set forth below is a list of loans in the New York area, together with an indication of whether there was any element of exclusivity involved in connection with such loans. [Page 483.]

27. The above table discloses that between 1947 and 1953 Luria made loans to nine dealers in the New York metropolitan area. In most instances, either by express agreement or in practice, the dealers were required to sell or sold all or substantially all of their scrap to Luria during the period of financial assistance. However, outside of the fact of the making of these loans there is no evidence from which it may be found that Luria's assistance to nine dealers at

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various times over a 7-year period is calculated to result in substantial injury to Luria's competitors in the area. The assisted dealers represent a mere handful out of the hundreds of dealers in the area. There is nothing to show that they are key dealers in the area or that they control any significant portion of the scrap sold.

## LURIA LOANS NEW YORK AREA

Dealer	Date	Amount	Exclusivity
George H. Nutman, Inc. <sup>70</sup> .....	Jan. 14, 1947	\$25,000	Agreement to sell Luria 10,000 tons of unprepared ship scrap.
Newton Iron & Metal Co.....	Jan. 14, 1949	20,000	Agreement to sell to Luria on a first refusal basis.
Do.....	Sept. 25, 1950	(70a)	Agreement to sell exclusively to Luria.
Paterson Iron & Metal Co.....	Feb. 17, 1947	23,820	Do.
Lieberman-Koren Corp.....	Sept. 25, 1947	45,000	Do.
Do.....	Jan. 25, 1950	28,000	No evidence of exclusivity.
A. Olinick & Sons.....	Oct. 19, 1948	10,000	No evidence of exclusive agreement.
Do.....	Sept. 26, 1951	5,000	Dealer did sell all its scrap to Luria in 1953 and 1954 and 90% in 1952.
Irvington Metals Co.....	Jan. 22, 1951	5,000	No evidence of exclusivity.
Do.....	Mar. 30, 1953	12,000	Agreement to sell to Luria on first refusal basis.
Newark Iron & Metal Co.....	June 15, 1951	15,000	Agreement to sell exclusively to Luria.
Patchogue Scrap Iron Co.....	Sept. 20, 1951	3,000	Do.
Steel Scrap Inc.....	Sept. 14, 1953	8,000	Agreement to sell to Luria on first refusal basis.

<sup>70</sup> In addition to the above loan to Nutman, counsel supporting the complaint refer to an advance of approximately \$100,000 on November 4, 1954. However, this was an advance payment against 9,000 tons of scrap sold to Luria, valued at \$265,000, rather than an advance in the nature of a loan.

<sup>70a</sup> Amount of loan increased to \$100,000.

*Pacific Coast Area*

28. As previously noted, Luria did not begin to operate extensively on the West Coast until 1948, when it opened a brokerage office in San Francisco. In 1950, through its subsidiary Lipsett, it opened a scrap yard adjacent to the Bethlehem Pacific plant in the Los Angeles area. Set forth below is a table indicating the Luria loans in the San Francisco area, insofar as there is any specific evidence thereof in the record.

## LURIA LOANS SAN FRANCISCO AREA

Dealer <sup>71</sup>	Date	Amount	Exclusivity
Circosta Iron & Metal.....	Mar. 20, 1951.....	\$38,750	First refusal basis. However, dealer did not sell all of scrap to Luria. <sup>72</sup>
East Bay Iron & Metal.....	Jan. 2 and Mar. 6, 1951.	46,035	First refusal basis.
Do.....	1953.....	28,000	
Mayco Salvage Co.....	June 1, 1953.....	14,490	Do.
Do.....	1954.....	10,000	

<sup>71</sup> In addition to the dealers listed above, counsel supporting the complaint contend that advances were made to Salco Iron & Metal Company. However, with one exception, such advances involved merely prepayments against scrap sold to Luria. The one exception involved the assumption by Salco of a loan made to a predecessor company. No scrap was sold to Luria by Salco while this loan was outstanding.

<sup>72</sup> Despite the agreement to sell to Luria on a first refusal basis, Circosta did not sell all of its scrap to Luria during the period the loan was outstanding, viz, until December 31, 1954. In 1951, its sales to Luria were \$255,500 out of total sales of \$683,500; in 1952 they were \$451,000 out of \$835,000; in 1953 they were \$277,400 out of \$593,000; and in 1954 they were \$150,000 out of \$420,700.

29. As is apparent from the above table, Luria made loans to three different dealers in the San Francisco area at various times between 1951 and 1954. The agreements executed in connection with such loans required the dealers to sell to Luria on a first refusal basis during the period the loans were outstanding. In at least one instance the dealer did not sell all or substantially all of its scrap to Luria. There is no evidence in the record that such arrangements resulted in the tying up of a substantial portion of the dealer scrap in the San Francisco area; nor that competition in the area was, or is likely to be, substantially injured.

30. Set forth below is a table of Luria's loans in the Los Angeles area, insofar as there is any specific evidence thereof in the record.

LURIA LOANS LOS ANGELES AREA

Dealer	Date	Amount	Exclusivity
Boosters Iron & Metal <sup>73</sup> .....	Dec. 20, 1949.....	\$35,000	First refusal basis. No evidence of any agreement. However, dealer sold 95% of its scrap to Luria.
Do.....	Mar. 19, 1952.....	55,000	
Ace Metal & Waste (San Diego).....	Various.....	( <sup>74</sup> )	No evidence of any agreement. However, scrap was offered to Luria in an amount sufficient to cover any outstanding balances.
A-1 Iron & Metal.....	July 24, 1950.....	120,000	Agreement to sell exclusively to Luria. No evidence. However, dealer sold between 70-90% of its scrap to Luria.
Do.....	Jan. 30, 1952.....	50,000	
Do.....	Latter part of 1953.....	38,000	Same as above. No agreement. However, dealer sold all its scrap to Luria in 1953 and 1954, and 82% in 1955 and 94% in 1956.
Industrial Salvage & Building Supply	1951-52.....	<sup>75</sup> 75,000	
Eastern Iron & Metal.....	Feb. 18, 1952.....	100,000	First refusal basis.
Do.....	May 19, 1953.....	40,000	
Alex Novak & Sons (Ontario, Calif.)	June 19, 1952.....	<sup>76</sup> 100,000	Dealer refused to sign written agreement. However, it did sell to Luria on a first refusal basis.
Do.....	Mar. 2, 1953.....	107,076	

<sup>73</sup> In addition to the two loan transactions set forth above, counsel supporting the complaint contend there were additional advances as high as \$90,000. The latter advances were made against orders placed at the beginning of the month by Luria. They never exceeded the amount of such orders.

<sup>74</sup> Ace did not receive any actual loans from Luria. It periodically received advances to enable it to buy scrap. Such advances amounted to \$5,000-\$10,000 every week or two. These reached a peak of \$60,000-\$70,000. Such advances were repaid out of scrap shipments.

<sup>75</sup> Dealer received no formal loans. However, during the period a baling press was being installed it received advances against future scrap shipments. Such advances were usually \$10,000 at a time. They were paid off by scrap shipments after the press was installed.

<sup>76</sup> Dealer had received advances on an open account since 1951. When he was unable to repay them out of scrap shipments a note and mortgage covering the outstanding balance were signed in 1952.

31. As is apparent from the foregoing table, four dealers in the southern California area received loans from Luria and two received advances against the purchases of scrap. In most of the instances cited, there was an agreement to sell scrap to Luria on an exclusive or a first refusal basis, or the course of dealings between the parties was such that Luria was able to buy all or substantially all of the dealers' scrap. However, the record is lacking in evidence that the scrap tied up by any of these arrangements constituted a substantial part of the dealer scrap in any relevant market area, whether the relevant market

be considered as the Los Angeles area alone, the San Diego area, or the whole southern California area; nor is there any other evidence from which it may be inferred that Luria's loan practices in the area have resulted, or are likely to result, in substantial competitive injury.

*New England Area*

32. Counsel supporting the complaint concede that they did not offer evidence "concerning the extent to which loans and advances were made by Luria through its Boston office or in the New England area". However, they cite Luria's loans and advances to three dealers in the area, as illustrative of "the purpose and effectiveness of the practice in that area".

33. Among the three dealers referred to is Bartlett Scrap Iron Company of East Providence, Rhode Island, which received loans in 1947 and 1948 totalling \$53,500 to finance the purchase of a baling press. There is no evidence that any exclusive dealing agreement was entered into in connection with such loans or that the loans resulted in Bartlett's dealing with Luria on an exclusive basis. Counsel supporting the complaint also cite the fact that Bartlett received advances up to 100% against scrap which it owned and had sold to Luria. However, since counsel supporting the complaint have conceded that "advances against bills of lading or against scrap on hand" are not being challenged in this proceeding, the fact that Luria was willing to prepay the entire amount before delivery of the scrap would appear to be of dubious materiality.

34. The second dealer referred to is M. Aronofsky & Sons of Boston, which received loans in amounts varying from \$3,000 to \$32,500 between 1949 and 1954. The total amount of such loans was \$65,000. None of the loan contracts contained a provision requiring Aronofsky to sell its scrap exclusively to Luria. However, substantially all of Aronofsky's scrap was sold to Luria, except for some sales made directly to foundries in the New England area.

35. The third dealer cited by counsel supporting the complaint is South Boston Iron & Metal Co., Inc., of Boston. South Boston actually received no loans from Luria. It did, however, receive an advance of \$225,000 in December 1955, against an order of scrap sold to Luria. This represented less than 75% of the amount of the order from Luria. South Boston had formerly sold its scrap to Luria Steel & Trading (LS&T), from which it had received similar advances. The record fails to establish that this dealer's switch from LS&T to Luria was in any way connected with the above advance.

36. There is no evidence that Luria's loans and advances have resulted in tying up any substantial part of the dealer scrap market in either Boston, Providence, or the New England area generally; nor is

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there any other evidence from which it may be inferred that Luria's loan practices in the area have resulted or are likely to result, in substantial competitive injury.

#### *Other Areas*

37. In addition to the loans and advances referred to above in specific geographic or market areas, counsel supporting the complaint cite a number of other loans and advances made to dealers in widely scattered sections of the country, without regard to market or geographic area. These are as follows:

LOANS TO OTHER DEALERS

Name and location of dealer	Date	Amount	Exclusivity
Giordano Waste Material, Camden, N.J.	June 28, 1946.....	\$50,000	Agreement to sell 85% of scrap to Luria until 6 months after repayment of loan.
Berman Bros., Grand Rapids, Mich.	Nov. 28, 1949.....	15,000	No evidence of agreement. However, in 1950 Luria was buying all of dealer's scrap.
Ypsilanti Iron & Metal, Ypsilanti, Mich.	Mar. 23, 1950.....	25,000	First refusal basis as to dealer's yard scrap.
Fisher Steel & Supply, Muskegan, Mich.	Aug. 2, 1951.....	<sup>77</sup> 40,700	Agreement to sell exclusively, except for foundry scrap.
Douglas Scrap Steel & Metal, Plattsburg, N.Y.	Mar. 20, 1952.....	13,000	First refusal basis.
Harry Gordon Scrap Materials, Lexington, Ky.	Oct. 30, 1952.....	15,000	Same as above.
United Iron & Metals, Caldwell, Idaho.	October 1955.....	6,000	No evidence of agreement. However, substantially all of dealer's scrap was sold to Luria between 1953 and 1956.
Miller Junk & Waste, Lancaster, Pa.	( <sup>78</sup> )	( <sup>78</sup> )	Dealer has sold all its scrap to Luria for 50 years without any agreement.

<sup>77</sup> Agreement provided for \$213,000 loan, in installments, for purpose of financing purchase and installation of equipment. However, dealer did not avail itself of entire loan because it purchased only part of the contemplated equipment.

<sup>78</sup> Dealer received advances at various times of \$50,000 and \$100,000. However, these were advances against scrap sold to Luria. Luria has also owed dealer as much as \$100,000 on open account.

38. As in the case of the dealers previously mentioned, the record fails to establish that any exclusive arrangement with the dealers referred to in the above table has resulted in tying up any substantial proportion of the scrap in the areas where these dealers operate. In fact, in a number of instances, it is not possible to determine what the relevant market area is since no evidence as to the confines or extent of such areas was offered for the record. Nor is there any other evidence in the record from which it may be inferred that Luria's loan practices in any of the above areas have resulted in, or are likely to result in, substantial competitive injury.

#### *Use of the Practice by Others*

39. Counsel supporting the complaint suggest that respondent Luria has been a leader in the practice of making loans and advances to dealers and that, while other brokers have engaged in the practice, they have done so "rarely and sparingly". The record does not sustain

counsel's position in this respect. The evidence discloses that brokers have made loans and advances to dealers for a great many years. The extent of Luria's loans and advances, insofar as they are of a formal nature requiring specified periodic repayment, has been indicated above. Its advances of an informal nature, consisting mainly of prepayment for scrap sold and, sometimes, general advances which will be worked off out of scrap to be sold, cannot be determined from the evidence in the record. In the case of its competitors, it is clear that many of them also made loans and advances of all types. However, there is no record basis for determining, with any degree of accuracy, the extent to which other brokers have engaged in the practice.

40. An official of Luria's competitor, The David J. Joseph Company, expressed the opinion that (RX 41) "[s]upplying financial help is a normal function of brokers". He indicated that such assistance took many forms, the most common being "the custom by which the broker pays a substantial percentage of the total value of a shipment" and that "[i]n addition to this normal financing function, brokers sometimes provide additional monetary help", such help involving the making "of loans to dealers for purchase of inventory, or longer term loans for purchase of equipment".

A representative of another substantial competitor, Schiavone-Bonomo, testified that whereas the practice of making advances against bills of lading was one of long standing, that of making loans or so-called advances to enable dealers to carry on their business generally originated during the period of the depression when it was necessary "to keep the processors [of scrap] going and pay their labor and the machinery and keep up to date" (R. 12,777). A representative of another Luria competitor in the Pacific Northwest area, Dulien Steel Products, Inc., indicated that his company made equipment loans to dealers to enable them to modernize their facilities and produce a better grade of material" (R. 10,534).

Substantially all of Luria's competitors as to whom there is any evidence in the record make advances in the form of prepayment for scrap, either against a bill of lading or against invoices. A number of them also make loans to finance the purchase of equipment and make general advances for use in the operation of the dealer's business. Among those whom the record indicates have made loans and advances in this category are: Hyman-Michaels of Chicago and St. Louis, Max Solomon Company of Pittsburgh, Tube City Iron & Metal Company of Pittsburgh, Luntz Iron & Steel Company of Cleveland, Columbia Iron & Metal Company of Cleveland, Commercial Metals Company of Dallas, Dulien Steel Products Co., Inc., of Seattle, The Purdy Company of Chicago, St. Louis and San Francisco,

Schiavone-Bonomo of Jersey City and Luria Steel & Trading Company of New York.

41. Counsel supporting the complaint contend that the financing operations of these other brokers are more limited than those of Luria. Since these brokers for the most part operate on a smaller scale than does Luria, it would not be surprising if the extent of their financial assistance to dealers was smaller than that of Luria. However, there is no definite evidence in the record from which any meaningful comparison can be made. Counsel supporting the complaint cite certain general statements by witnesses representing these brokers, as indicative of the limited nature of their financing operations. However, such testimony is generally too vague, nonspecific and unreliable to support any definite finding as to the extent of their engagement in the practice of assisting dealers financially.<sup>79</sup>

*Conclusions as to Loans and Advances*

42. The complaint is not directed against the making of loans or advances generally. Counsel supporting the complaint concede that their attack is directed only against loans and advances which are made on the "express or implied condition that the dealers will sell scrap exclusively to Luria or will give Luria first call upon their scrap" (Reply Brief, p. 46). As has been previously noted, counsel also concede that they do not challenge advances which are made "against bills of lading or scrap on hand". It is clear, therefore, that what is challenged in this proceeding is the making of loans or advances for financing the purchase of equipment or for the operation of the dealer's business generally, other than for the prepayment of scrap which the dealer has on hand and has sold to the broker, where such loans or advances are made in a context of exclusive dealing.

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<sup>79</sup> For example, counsel supporting the complaint refer to the testimony of the manager of LS&T's office in Pittsburgh, that his company made no loans in that area, and that its policy elsewhere was not to make loans and advances, except in unusual situations. However, it is apparent from the witness' testimony that he had no personal knowledge on the subject, except for the Pittsburgh office, the policy in this respect being set by the New York office. While the president and office manager of LS&T's New York office were also called as witnesses by counsel supporting the complaint, they were not interrogated generally on the subject of loans and advances. It does appear from the testimony of the office manager that South Boston Metals, a dealer-supplier of LS&T, received advances of as high as \$100,000, which were not made against specific orders. Counsel supporting the complaint also refer to the testimony of the manager of the Purdy Company office in San Francisco as to having made only two loans to dealers on the West Coast. However, the witness obviously was unfamiliar with the company's loan policy elsewhere. Although the president of this company was also called as a witness in support of the complaint, he was not interrogated on the subject of the company's policy with respect to loans and advances. Another witness whose testimony counsel supporting the complaint cite is the president of Columbia Iron & Metal, who testified that his company did "little of that, if any", i.e., making loans and advances to dealers. The precise extent of this company's financing of dealers does not appear from the record, although it does appear that it assisted at least one dealer in financing the purchase of a press. Columbia does, however, regularly advance to dealers 75% of the value of scrap sold, either upon an invoice or a bill of lading.

43. It is not disputed that respondent Luria has made loans, and advances in the nature of loans, to dealers for use in the purchase of equipment or in the general operation of the dealer's business, including the purchase of scrap. The extent of such loans and advances appears from the record. There is also no dispute as to the fact that Luria has made advances which are in the nature of prepayment for scrap sold or about to be sold by the dealer to Luria. Such advances are generally made against bills of lading or against invoices covering the sale of the scrap. Sometimes, however, the advances are made prior to invoice and are made in anticipation of the sale of scrap which the dealer has not yet acquired. The extent of advances made against scrap which the dealer does not have on hand does not appear from the record, and there is no way by which the examiner can determine, with any degree of accuracy, the quantitative extent or substantiality of such advances.

44. Many competitors of Luria likewise make loans and advances. In the case of advances which are in the nature of prepayment for scrap sold to brokers, it is commonplace for brokers to make such advances, and the practice is widely engaged in by brokers. In the case of loans, or advances in the nature of loans, to enable a dealer to purchase equipment or to generally conduct his business, the record discloses that a number of brokers also engage in such practice. However, the extent to which they do so cannot be determined with any degree of accuracy on the basis of the evidence in the record. The record fails to support a finding, such as that suggested by counsel supporting the complaint, that Luria initiated the practice of making loans and advances, or that it has engaged in such practice more extensively, in relation to its total business, or in a manner different from, that of its competitors.

45. The record establishes that in connection with a number of loans, and advances in the nature of loans, Luria has required dealers to agree to sell their scrap to it exclusively, or on a first refusal basis, during the period the loan or advance was outstanding. It further appears that in some instances, even in the absence of a specific agreement requiring them to do so, dealers who have received loans and advances have dealt exclusively or substantially exclusively with Luria. However, the record also discloses that in other instances dealers who have received financial assistance have sold substantial amounts of their scrap to other brokers, and have not dealt with Luria on an exclusive or substantially exclusive basis.

46. The record fails to establish that, during any particular period and with respect to any specific market area, the proportion of scrap tied up by Luria as a result of any exclusive or preferential agree-

ment or arrangement, express or implied, has been substantial in relation to the market as a whole; nor is there any other evidence from which it can be found or inferred that Luria's loan practices have had, or are likely to have, a substantial adverse competitive effect. It is concluded and found that counsel supporting the complaint have failed to establish by reliable, probative and substantial evidence that Luria has acquired substantial domination and control over competing dealers and brokers through the making of loans and advances, or that it has engaged in the practice of making loans and advances to dealers for the purpose or with the effect of substantially lessening and suppressing competition or creating a monopoly in any market area where it has engaged in such practice.

### (2) *Stock Acquisitions*

1. The complaint charges Luria with having acquired all or a substantial part of the capital stock of six other corporations. It is alleged that these corporations are and were large brokers or dealers in ferrous scrap in their respective market areas, and have occupied an important position in such areas. Such acquisitions are challenged both as an unfair method of competition, in violation of Section 5 of the Federal Trade Commission Act, and as stock acquisitions in violation of Section 7 of the Clayton Act.

2. The challenged stock acquisitions occurred in the period between July 1946 and April 1951. During this period there was a substantial increase in Luria's market position, both nationally and in various regional markets, as will hereafter more fully appear. It is contended by counsel supporting the complaint that this growth was due in part to Luria's stock acquisitions in competitors. Set forth below are the facts with respect to each of the stock acquisitions which are challenged by the complaint.

#### *Pueblo Compressed Steel Corporation*

3. Pueblo Compressed Steel Corporation (referred to herein as PCS) is a scrap yard operation located in Pueblo, Colorado. The company was incorporated under the laws of the State of Colorado on August 3, 1942. It was and is engaged in interstate commerce.

4. On August 29, 1942, PCS entered into an agreement with The Colorado Fuel and Iron Corporation (CF&I) pursuant to which it undertook to have a baling press owned by it from St. Louis, Missouri, and to install it in a scrap yard on land leased to it by CF&I. The agreement provided that for a term of 5 years from the date of installation of the equipment in Pueblo, PCS would sell to CF&I, and the latter would buy, all bundled scrap compressed by PCS in its yard, and

all other scrap which PCS offered to CF&I. PCS had the right, under the agreement, to ship such scrap directly to CF&I or through brokers. CF&I agreed that all bundled scrap originating within a radius of 200 miles of Pueblo would be purchased only from PCS. The 5-year agreement went into effect in October 1942, after installation of the equipment was completed.

5. As has previously been found, in the spring of 1946, while the above agreement with CF&I and PCS was still in effect, Luria entered into an arrangement with CF&I to act as the exclusive broker for CF&I's Minnequa Works at Pueblo. The agreement between Luria and CF&I was originally limited to scrap of dealer-broker origin, but later was extended to cover all scrap. Formal announcement of this arrangement was made to the trade on June 1, 1946.

6. On July 3, 1946, Luria acquired 75 shares of the 150 issued and outstanding shares of stock of PCS. The stock was acquired in the name of Samuel Claster, brother of Joel Claster, who was then Luria's president, for \$25,000. Samuel Claster's shares in PCS were later transferred to Luria, and an additional five shares of the outstanding stock of PCS was acquired by Luria on August 31, 1947, giving it the controlling interest in PCS. The balance of the PCS stock was acquired by Luria on May 21, 1957. Luria's purpose in acquiring control of PCS was apparently twofold, (1) to assure itself that there would be no conflict between its exclusive brokerage arrangement with CF&I and the existing agreement between CF&I and PCS (which required CF&I to purchase all scrap offered to it by PCS and not to purchase bundled scrap within a radius of 200 miles from Pueblo from anyone other than PCS), and (2) to acquire PCS's facilities in Pueblo, including one of the few baling presses in the area, thereby placing Luria in a better position to fulfill its obligation to supply CF&I with dealer scrap and decrease the latter's reliance on the more expensive grades of railroad scrap.

7. In 1945, the year before Luria acquired an interest in PCS, the latter had not sold any of its scrap to Luria. In 1946, the year in which Luria acquired an interest in PCS, the latter sold 61% of its scrap to Luria. In the succeeding years for which there are figures in the record, 1947 to 1954, PCS sold substantially all of its scrap to Luria, except for the year 1948 when it sold 79% of its scrap to Luria. Its sales to Luria were made in the latter's capacity as a broker. Substantially all of the scrap sold by PCS to Luria was shipped to CF&I, except for minor amounts which Luria shipped to Anaconda Copper Company and a few small foundries.

8. In 1945 PCS sold directly to CF&I for its Minnequa Works approximately 6,500 net tons of scrap, out of 219,000 tons purchased

by the latter. This was approximately 3% of the scrap purchased by CF&I from all sources. However, since CF&I purchased most of its scrap from railroads and other nondealer sources in 1945, in terms of the approximately 53,000 tons which CF&I purchased from dealers and brokers in 1945, PCS supplied approximately 11% of CF&I's purchases of broker-dealer scrap. A substantial part of the scrap purchased by CF&I from PCS consisted of scrap bundles.<sup>80</sup>

9. As has been previously noted in connection with the discussion of the exclusive brokerage arrangement between Luria and CF&I, in 1947, the first full year in which the exclusive agreement was in effect, Luria supplied all of the purchased scrap consumed by CF&I's Minnequa Works. During that year approximately 11% of the scrap supplied to CF&I by Luria came from PCS. The percentage of scrap supplied by PCS to Luria for shipment to CF&I in the succeeding years varied from a low of 5.6% in 1949 to a high of 19% in 1953.<sup>81</sup>

10. According to the Bureau of Mines' figures, as appearing in the Yearbook for 1946, there were 345,895 tons of purchased scrap consumed in Colorado in that year.<sup>82</sup> PCS processed 27,782 gross tons of scrap in that year, or approximately 8% of the total purchased scrap consumed in Colorado. In most of the remaining years up to 1954, PCS's scrap sales represented between 4% and 8% of the total purchased scrap consumed in the State of Colorado.

11. In 1945 Luria made no sales of scrap in the Rocky Mountain area. In 1946, the first year of its exclusive arrangement with CF&I, its sales in that area were approximately 111,000 tons, or 89.9% of all scrap purchased by mills in the area. In the succeeding years, from 1947 to 1954, Luria's sales of scrap to consuming mills in the Rocky Mountain area have generally exceeded 90%, except for 1954 (when they were 87.2%), and have been as high as 99.3%.

12. At the time Luria acquired PCS there were four other dealers in the Pueblo area and a somewhat larger number in the Denver area. PCS had the only baling press in the Pueblo area, and a dealer in the Denver area, Compressed Steel Company, had the only press in the latter area. After Luria acquired PCS, the latter began to expand

<sup>80</sup> Several years prior to Luria's acquisition of PCS, CF&I had notified other dealers in the area that it would only purchase its scrap bundles from PCS and would discontinue the purchase of baling scrap from other dealers.

<sup>81</sup> The above percentages are computed on the assumption that substantially all of the scrap sold to Luria by PCS was shipped to CF&I. The following are the percentages which the scrap sold to Luria by PCS represents of Luria's total scrap shipments to CF&I: 1947—11%; 1948—8.6%; 1949—5.6%; 1950—7.5%; 1951—7.0%; 1952—9.4%; 1953—19%; 1954—9.0%.

<sup>82</sup> The Bureau of Mines' Yearbooks are not in evidence in this proceeding. The above figures have been cited by Luria in its proposed findings. No objection thereto has been raised by counsel supporting the complaint. As official figures published by an agency of the United States Government, and there being no objection thereto, the hearing examiner may appropriately take official notice of such figures.

its activities so as to process other heavier grades of scrap, as well as baling scrap. As a result, one of the Pueblo dealers, Pueblo Iron & Metal Company, which had handled mainly the heavier grades of scrap, went out of the scrap business in 1947 and remained out until 1955 because, among other things, it found itself unable to compete with PCS. A dealer in the Denver area who was considering installing a press was advised by a Luria representative not to install one since there was already one in the Denver area, and that since the latter dealer was staying out of the heavy scrap business, the dealer in question should "stay out of the press business" (R. 9874).

13. While there are about 15 dealers in the Denver-Pueblo area, most of them are small by eastern standards. The volume of even the larger dealers is generally under \$100,000 a year. PCS was among the largest of the dealers in the area when it was acquired by Luria. Its sales in 1945, the year before it was acquired by Luria, were \$256,724. In 1946, the year during which Luria made the acquisition of PCS's stock, its sales increased to \$379,621. In the succeeding two years, 1947 and 1948, there was a further increase to \$858,826, and \$1,201,663, respectively. While there was some decline in PCS's sales thereafter, its sales in most years were substantially higher than during the pre-Luria era. The only other dealer of comparable size, as to whom there is any evidence in the record, is National Iron & Metal Co. of Denver, whose sales were \$386,371 in 1956, as compared to \$141,632 in 1953.

14. CF&I is the largest single consumer of scrap in the Rocky Mountain area, particularly on the eastern slope. During most of the period from 1946 to 1954 it purchased over half of the purchased scrap consumed in the State of Colorado, and in several years its purchases amounted to almost two-thirds of the purchased scrap consumed in the state. Luria, as CF&I's exclusive broker, occupied a dominant position in the scrap industry in the Rocky Mountain area. Its position as exclusive supplier to CF&I was later fortified by its exclusive arrangements with other mills and foundries in the Intermountain Area, as has previously been noted. There can be no question that in this setting its acquisition of control in PCS was of material aid in augmenting its competitive position in the area.

15. Respondent Luria contends that its acquisition of control in PCS was of no material competitive significance because of (a) the lack of competition between the two companies at the time of the stock acquisitions and (b) PCS' relative insignificance as a competitive factor in the market. In the opinion of the examiner neither of these arguments has any merit. When Luria made its first purchase of PCS stock in July 1946 it was already supplying CF&I with scrap and had been doing so since the spring of that year. It was in actual and

potential competition with PCS, both in buying scrap in the area and in selling scrap to CF&I. In fact one of the reasons it acquired PCS was to eliminate a conflict which existed between its arrangement with CF&I and the latter's agreement with PCS.

While it is true that PCS was not a dominant supplier, and accounted for only 8% or less of the purchased scrap consumed in Colorado, it was nevertheless an important factor in the local scrap industry, and its importance increased when it came into the hands of the dominant factor in the industry. It supplied that factor with not insubstantial quantities of the scrap which the latter was supplying to CF&I, and helped it to decrease CF&I's reliance on railroad scrap. While PCS may have accounted for a relatively small fraction of the total scrap consumed in Colorado, it was nevertheless one of the largest factors in the market area, which was characterized by many small scrap suppliers. As the owner of one of the few baling presses in the area, it occupied a strategic position in the market.

It seems clear, therefore, and is so found, that Luria's acquisition of control of PCS was calculated to have a substantial competitive effect on the local scrap market, and to materially aid Luria in becoming the dominant factor in the market.

16. With respect to the charge that Luria held out PCS as being an independent company, the evidence discloses merely that Luria made no public announcement of its stock interest in PCS. There is no evidence as to whether dealers and others were under the impression that the two companies were unrelated after 1947. Furthermore, the record fails to establish that Luria was able to obtain an unfair competitive advantage in buying or selling scrap by reason of the fact that its stock interest in PCS was not known in the trade.

*A. M. Wood and Company*

17. A. M. Wood and Company, Inc. (referred to herein as Wood), was a Delaware corporation which operated as a scrap broker, with its office in Philadelphia, Pennsylvania. It did not own a scrap yard or any preparation facilities. The company, which was organized in 1913, was engaged in interstate commerce.

18. The authorized capital stock of the Wood Company consisted of 1,000 shares, of which 396 shares were issued and outstanding in 1947. The owners of the stock were A. M. Wood and Kate Wood. A. M. Wood was over 80 years of age in 1947 and was the broker for his company. On April 1, 1947, the Wood Company employed one Joseph D. Bardon to help conduct the brokerage activities of the company. Bardon was to receive a percentage of the gross profits and a monthly drawing account. The agreement pursuant to which Bardon

was hired gave him an option to purchase the total outstanding stock of the company, at book value plus \$4.00 a share.

19. In October 1947 Wood died and Bardon sought to exercise his option to purchase the Wood stock. Not having sufficient funds to pay for the stock, Bardon arranged to finance the purchase through George Stout, a Luria vice president, who was an old and close friend of Bardon. Stout induced the Luria organization to enter into an arrangement with Bardon, pursuant to which Luria agreed to advance the necessary funds to Bardon to pay for the stock, with the understanding that the latter would thereafter transfer his stock interest in the Wood Company to Luria.<sup>83</sup> Bardon did not transfer his stock interest in the company to Luria until October 30, 1947, but prior thereto, on October 10, 1947, an agreement was entered into between Luria (as the ostensible owner of the Wood stock) and Bardon, pursuant to which Luria hired Bardon to operate the Wood Company.

20. The sources from which the Wood Company purchased scrap are not disclosed by the record. However, the record of its sales to customers are disclosed in the statistics which are in evidence. The following table discloses the customers of the Wood Company during the period from 1945 to 1947:

*Sales A. M. Wood, 1945-1947*

[In gross tons]

	1945	1946	1947
Total sales.....	28,709	20,663	12,745
CF&I (Claymont, Del.).....	8,221	3,904	1,344
Alan Wood Steel Co. (Conshohocken, Pa.).....	1,567	1,573	130
Henry Disston & Son (Philadelphia, Pa.).....	586		
Unidentified customers.....	18,335	15,186	11,271

Since the record identifies all of the steel mills and major foundries in the United States that purchased scrap from A. M. Wood during the period 1945 to 1947, it may be assumed that the unidentified customers were mainly small foundries.

21. The record does not reveal the extent to which A. M. Wood competed with Luria prior to the acquisition. However, it does appear that among the respondent mills Luria competed with Wood only in sales to CF&I's Claymont plant, which was actually owned by Worth Steel Co. until 1951. In 1945, 1946, and 1947, Luria sold 35.0%, 45.4%, and 64.9% of the scrap purchased by this plant.

<sup>83</sup> There is no indication in the record as to the amount actually paid for the Wood stock. Although Bardon's option agreement provided for payment of book value, plus \$4.00 a share, there is no indication of what the book value was and as to the actual consideration paid.

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Wood's sales to Claymont during this period amounted to 7.7%, 4.9%, and 0.9%, respectively. Since the record reveals no purchases from Wood by the other steel companies or major foundries, it may be inferred that Luria and Wood competed in the sale of scrap only with respect to Alan Wood Steel Co. and Henry Disston, among the nonrespondent steel companies and large foundries. Disston represented a minute consumer of scrap, and the Wood Company sold to it only in 1945, two years before its acquisition by Luria. Alan Wood was a more substantial consumer of scrap, its scrap purchases in 1945 amounting to 176,713 tons, compared to 4,331 tons purchased by Disston. Luria's sales to Alan Wood between 1945 and 1947 accounted for between one-quarter and one-half of the scrap purchased by the Conshohocken plant. A. M. Wood's sales to the plant during this period were 0.9%, 1.1%, and 0.07%, respectively. There is no indication of the extent to which Luria and Wood competed in sales to other customers.

22. The record contains no information as to the territory within which A. M. Wood bought or sold scrap, nor as to its relative standing in the market. Since its office was located in Philadelphia, and the partial information in the record concerning the location of some of its customers indicates that at least one-third of its sales was made in the eastern Pennsylvania and nearby Delaware area, it may be inferred that this was the primary area within which it operated.<sup>54</sup> While it is not possible to determine its precise standing in this market, such information as there is in the record indicates that it was microscopic in size when control of the company was acquired by Luria. Thus even if it were assumed that all of its sales were made in the eastern Pennsylvania market, this would represent only 0.78% of the scrap purchased by the steel mills and major foundries in the area in 1947.

23. The only significant change in the customers of A. M. Wood after its acquisition by Luria involved a substantial increase in its sales to Luria. Between 1945 and 1947 Wood's sales to Luria amounted to between \$2,300 and \$9,700. Beginning in 1948, its sales to Luria increased to approximately \$179,000 and thereafter continued to remain substantially larger than during the preacquisition period. The percentage of Wood's sales to Luria beginning in 1948 were as follows: 1948, 26%; 1949, 15%; 1950, 14%; 1951, 14%; 1952, 23%; 1953, 31%; and 1954, 22%. Outside of its sales to Luria, Wood continued to sell the balance of its scrap to the small foundries which had been its primary outlet for scrap prior to 1947.

<sup>54</sup> The record also indicates sales by several dealers in the Philadelphia-Camden area to Wood.

24. No public announcement of Luria's acquisition of A. M. Wood was made to the trade. Prior to the issuance of the complaint in this proceeding, dealers in the area who sold to both Luria and Wood were not aware of their common ownership.

25. In view of the lack of evidence as to the existence of substantial competition between Luria and Wood in the buying or selling of scrap in any relevant market, and in the light of the evidence concerning Wood's minuscule size and moribund state at the time its stock was acquired, there is no basis for any finding that Luria's acquisition of control of Wood was calculated to result in a substantial lessening of competition, or to restrain commerce in any section of the community, or to create a monopoly in any line of commerce. While it does appear that some dealers were not aware that Wood was controlled by Luria, the record fails to establish that Luria used its unpublicized control of Wood to gain any unfair competitive advantage in the buying or selling of scrap.

*Lipsett, Inc., and Lipsett Steel Products, Inc.*

26. Lipsett, Inc. (referred to herein as Lipsett), was incorporated under the laws of the State of New York on February 8, 1933. The record is not clear as to the nature of Lipsett's business prior to the acquisition of its stock by Luria in May 1948. It does appear that after such acquisition Lipsett engaged in demolition and construction work. However, whether it was engaged in these activities at the time Luria acquired control is not clear from the record. The fact that it sold scrap to Luria prior to its acquisition suggests that it was doing demolition work at that time. The fact that Lipsett formed a subsidiary company, Randall Iron & Steel Corporation, on June 1, 1946, to perform certain specific demolition contracts also suggests that it was in the demolition business prior to 1948. Lipsett is now engaged in interstate commerce. However, it does not appear from the record whether it was so engaged when its stock was acquired by Luria.

27. Lipsett Steel Products, Inc. (referred to herein as Lipsett Steel), was incorporated on January 13, 1948, under the laws of the State of New York. The corporation was apparently owned and controlled by the same interests as owned the stock of Lipsett. The record does not disclose the nature of the business of Lipsett Steel, if any, prior to its acquisition by Luria, which occurred less than 5 months after it was organized.

28. Luria acquired all of the outstanding stock of Lipsett, Lipsett Steel, and Randall on May 4, 1948, for a consideration of \$1,553,042. The consideration was apportioned as follows: \$1,377,180 to the stockholders of Lipsett, \$113,665 to the stockholders of Lipsett Steel, and

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\$62,196 to the stockholders of Randall. Simultaneously with the stock acquisitions, there was executed an agreement whereby Morris E. Lipsett, then "chief executive officer" and a principal stockholder of Lipsett, agreed to continue as general manager and as president of the company under Luria ownership and control.

29. Subsequent to the acquisition of its stock by Luria, Lipsett engaged in the demolition and construction business. Its subsidiary, Randall, did no further business and was dissolved on August 30, 1950. As a result of its demolition activities Lipsett generated various quantities of scrap metal which it sold either to Lipsett Steel or to Luria. The earliest year for which there is any statistical evidence in the record is 1951, during which Lipsett's sales to Luria amounted to \$422,971, out of total sales of \$730,318. Its sales to Luria in the following years were: 1952, \$387,969 (out of total sales of \$610,709); 1953, \$169,365 (out of total sales of \$751,325); and 1954, \$255,371 (out of total sales of \$633,233). Most of the scrap not sold to Luria directly was sold to Lipsett Steel.

30. About 2 years after its acquisition of the stock of Lipsett Steel, Luria began to operate the company as a scrap dealer. Lipsett Steel first acquired a scrap yard in Brooklyn, N.Y., along the waterfront in 1950. The yard had previously been occupied as a scrap yard by another dealer up to 1942, but had apparently not been active since that time. Its main value lay in the fact that it had a loading dock for loading scrap for shipment by barge. This is important since in order for scrap to be shipped to steel mills from Brooklyn it must go by water. The yard had cranes, shears, and other cutting equipment, but had no baling press until sometime subsequent to 1956. A competitive yard was operated about 3 miles away by Schiavone-Bonomo which, until Lipsett Steel came into the area, had the sole yard with facilities for loading scrap in the area.

31. Lipsett Steel also opened a yard in the Los Angeles area in the latter part of 1950 or early in 1951, as part of the agreement by which Luria became the broker for Bethlehem Pacific's Los Angeles mill. The Los Angeles yard is a substantial operation. The total cost of equipping the yard, as of the end of 1951, was \$309,513 and, by 1957, the cost had reached a total of \$861,431. In addition to the Brooklyn and Los Angeles yards, Lipsett Steel acquired a scrap yard in Chicago on January 1, 1957, from Max Schlossberg, a dealer in that city. During the first 6 months of 1957 the Chicago yard processed 9,000 gross tons of scrap per month. It has a capacity for handling 12,500 gross tons a month.

32. As previously noted, the record contains no information as to

what business, if any, Lipsett Steel was in prior to its acquisition by Luria or, particularly, whether and to what extent it bought or sold scrap prior to that time.<sup>85</sup> Since 1950, the earliest year for which there are any figures in the record, Lipsett Steel has sold to Luria substantially all of the scrap from the several yards which it opened beginning in 1950, except for the year 1953 when it sold approximately 90% of its scrap to Luria. Its sales to Luria have ranged from a low of \$1,280,536 in 1950 to a high of \$5,916,742 in 1954.

33. No public announcement was made of Luria's interest in the Lipsett companies. There is no evidence in the record as to whether dealers were or were not otherwise informed, or knew that Lipsett or Lipsett Steel were affiliated with the Luria organization.

34. The record fails to establish that there was any substantial competition between Luria and the Lipsett companies at the time Luria acquired control of the companies in 1948. While the record suggests that Lipsett was in the demolition business and that it generated scrap as a result thereof, some of which it sold to Luria, there is no evidence as to the extent of its scrap sales or as to its standing in any relevant market. Insofar as it sold scrap to Luria which resulted from its demolition business, it was a supplier to, and not a competitor of, Luria. There is no evidence that Luria competed with Lipsett in the demolition business or that, if it did, it was in substantial competition with Lipsett.

In the case of Lipsett Steel, there is no evidence as to what business it was engaged in up to 1950, when it opened its yard in Brooklyn. There is every indication that it was not much more than a corporate shell when it was acquired by Luria. The portion of the consideration paid which was allocated to Lipsett Steel, hardly suggests that it was a substantial operation, whatever its business. While Lipsett Steel did become a substantial scrap yard dealer beginning in 1950, there is nothing to show that it reached this status as a result of any special competitive value which it had at the time Luria acquired it. So far as appears from the record, Luria could just as well have established additional yards in its own name or in that of a newly formed subsidiary. The fact that it did so in the name of Lipsett Steel does not provide a basis for retroactively imputing adverse competitive implications to the initial acquisition, absent some showing that the

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<sup>85</sup> Counsel supporting the complaint cite the testimony of a Luria official that his company had previously bought scrap from "the Lipsett companies" (R. 374), as indicating that both companies were in the scrap business at the time Luria acquired their stock. However, the witness' testimony indicates that Luria bought from only one of the companies, and the witness could not state "which one." The probabilities are that Luria bought demolition scrap from Lipsett, Inc., and did not buy from Lipsett Steel, since the latter was not organized until shortly before it was acquired by Luria.

original corporate shell had certain special characteristics which made it a natural or logical vehicle for Luria's subsequent plans.

It is concluded and found that the evidence fails to establish that Luria's acquisition of the controlling stock interest in the Lipsett companies was calculated to result in a substantial lessening of competition, or to restrain commerce in any section of the community, or to create a monopoly in any line of commerce. The record also fails to establish that Luria's failure to publicize its acquisition of control of the Lipsett companies gave it any substantial unfair competitive advantage in the buying or selling of scrap, by diverting scrap to said companies which would not otherwise have been diverted.

*Southwest Steel Corporation*

35. Southwest Steel Corporation (referred to herein as Southwest) is a scrap broker, with its office and principal place of business in Pittsburgh, Pa. The company was originally organized under the laws of the State of Arkansas in 1939, under the name of Southwest Compressed Tin Company. It underwent several name changes and, on July 17, 1947, was incorporated in the State of Pennsylvania under its present name. It was and is engaged in interstate commerce.

36. Southwest's original office was in Little Rock, Ark., where it operated a scrap yard, and it had two branch yards at Texarkana, Ark., and Monroe, La. In 1941 it opened a scrap yard in Memphis, Tenn., and a brokerage office in Pittsburgh, Pa. In 1943 it opened a scrap yard in Glassport, Pa., and in the same year acquired an existing yard in McKeesport, Pa., both communities being located within 10 miles of Pittsburgh.

37. In 1943 or 1944 Southwest developed a working arrangement with Continental Iron & Steel Corporation (referred to herein as Continental), a scrap broker located in New York City, whereby Continental purchased scrap for Southwest in the New York area. Pursuant to an agreement which had previously been made with the principal stockholder of Continental, one David Strauss, Southwest acquired a controlling interest in Continental on or about December 1, 1948, by purchasing the stock held by Strauss upon his death.

38. On February 1, 1950, Luria purchased all of the issued and outstanding stock of Southwest, pursuant to various agreements and negotiations which had begun in May 1949. Simultaneously with the execution of the agreement pursuant to which Luria acquired control of Southwest, it entered into agreements of employment with Leonard H. Krieger and Robert Amper, the stockholders and officers of Southwest, pursuant to which such individuals agreed to remain in the em-

ployment of Southwest and to perform such duties and hold such offices as Luria should determine. Krieger became president and a director of Southwest, and Amper became a vice president and a director after Luria acquired control of their company.

39. No public announcement was made of Luria's acquisition of control of Southwest. It was, however, widely rumored in the industry that Luria had obtained control of Southwest. Southwest did inform a number of its customers of the fact, including U.S. Steel, Jones & Laughlin, and Pittsburgh Steel. Luria advised its main customer, Bethlehem Steel. With the exception of Southern Scrap of New Orleans, which sold scrap to both Luria and Southwest, it does not appear that any dealer would have been reluctant to sell to Southwest if he had known it was controlled by Luria.

40. Following Southwest's acquisition by Luria, Southwest opened another brokerage office in Portsmouth, Ohio, later in 1950. In 1951 Southwest abandoned its yard at McKeesport. In 1954 Luria gave up its Pittsburgh yard and began using the facilities of Southwest's Glassport yard. In August 1955 Southwest turned over its yard in Memphis, Tenn., to Luria, which now operates it. Southwest acquired the balance of the outstanding stock of its affiliate, Continental, on July 20, 1953, and that company was dissolved on December 29, 1953, a number of its employees going to work for Luria which took over various Continental accounts.

41. Prior to the acquisition of Southwest's stock by Luria, the two companies had competed, both in the purchase and in the sale of scrap. A substantial part of Southwest's purchases were made in the South and Southwest, particularly from points along the Mississippi River where it had yards, such as Memphis, Tenn. While the record does not disclose the precise extent to which Luria purchased scrap from that area, the record is clear that the area was not an insignificant source of scrap for Luria. Since Luria's acquisition of Southwest it has, as above noted, taken over the Memphis yard of Southwest. Buying in that area is now done largely through Luria's Memphis yard. The two companies had formerly also competed for scrap in the Pittsburgh area, where both had yards. However, as noted above, Luria ceased to operate its Pittsburgh yard in 1954, and Southwest began to handle scrap for both companies from its Glassport yard. In the New York area both companies had likewise competed for scrap, Southwest making purchases through its affiliate, and later its subsidiary, Continental. Following the acquisition of control of Southwest by Luria, Continental's personnel were absorbed by Luria's office in

New York, and scrap from the area has since been obtained by Southwest through Luria. As a result of the acquisition of Southwest's stock by Luria, competition between the companies in the buying of scrap has been largely eliminated.

42. Although Southwest purchased scrap in a wide area of the United States, its sales of scrap have been made principally in the western Pennsylvania-eastern Ohio area, between Pittsburgh and Youngstown. This area is referred to in the record as the Pittsburgh-Youngstown district, and may appropriately be considered to be the relevant geographic or market area for purposes of determining the relative market positions of Southwest and Luria and the competitive impact of the former's acquisition.<sup>86</sup> In 1949, the year before Southwest was acquired by Luria, Southwest sold 220,666 tons of scrap to the mills and major foundries located in the area, as to which there are purchase figures in the record.<sup>87</sup> In terms of the total amount of scrap purchased by such mills and foundries from broker-dealer sources, Southwest's sales represent 5.9% of the market. This was somewhat smaller than Southwest's market shares in 1947 and 1948, which were 7.8% and 6.3%, respectively. Following Southwest's acquisition by Luria, its share of the broker-dealer market increased as follows: 1950, 14.3%; 1951, 11.9%; 1952, 14.3%; 1953, 13.3%; and 1954, 8.8%.

43. Luria's sales of scrap to the same group of mills and foundries (referred to for convenience as the reporting mills) were 987,317 tons

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<sup>86</sup> Brokers and dealers with offices in the Pittsburgh area described this as being generally the area within which they sold scrap. Figures of scrap purchases by United States Steel, which are in the record, were maintained by that company on a unitary basis for all of its plants operating within this geographic area, which it designated as its Pittsburgh district. It may be that the area could be more narrowly drawn so as to include a smaller geographic area around Pittsburgh which would not extend into the Ohio area. However, such a delineation would not materially affect the market share information in the record. If anything, the geographic area used above tends to understate Southwest's market position, since it operated on a smaller scale in the extreme western part of Pennsylvania and in the eastern part of Ohio, than it did in the immediate Pittsburgh area. Respondent Luria also suggests a market area which is even wider than the Pittsburgh-Youngstown district, and would include all of western Pennsylvania, eastern Ohio, West Virginia, and Virginia. This, in the opinion of the hearing examiner, is not an appropriate market area for measuring the competitive impact of Luria's acquisition of Southwest.

<sup>87</sup> The record contains figures for substantially all of the steel mills in the area and for a number of foundries operated by industrial fabricators. Respondent Luria contends that the figures are not complete because they do not include the scrap purchases of certain of the smaller foundries in the area. However, the examiner is satisfied that such omission does not substantially affect the computations revealed above. There is no reason to believe that if the figures of these foundries were included, they would change the trend above indicated. On the contrary, since Southwest sold to "a great many small foundry accounts" (R. 9562), it seems probable that if the scrap purchases of these foundries were included they would, if anything, tend to increase Southwest's share of the market.

in 1949. This represented 26.2% of the scrap purchased by these customers from broker-dealer sources. In the succeeding years, from 1950 to 1954, Luria's share of the Pittsburgh-Youngstown broker-dealer market fluctuated from a low of 20.3% in 1951 to a high of 27.2% in 1954. The combined share of Luria and Southwest increased from 32% in 1949, the year before their merger, to 37.2% in the year 1950. While their combined share declined to 32.2% in 1951, in the succeeding three years it increased to 35.4%, 36.5%, and 36%, respectively.

44. It is contended by Luria that it is not proper to measure its, and Southwest's, share of the market in terms merely of the scrap purchased by the reporting mills from brokers and dealers, and that a proper reflection of their relative percentages should take into account all scrap purchased by these mills irrespective of the source. While the examiner considers it appropriate to measure market shares in terms of the broker-dealer segment of the market, it makes little practical difference which method is used in view of the fact that scrap of broker-dealer origin accounts for the great bulk of the scrap purchased by the mills. In 1949 Luria's share of the market was 24.2%, in terms of the scrap purchased by the reporting mills from all sources, as compared to its share of 26.2% when measured in terms of scrap purchased from broker-dealer sources. Southwest's share of the market in 1949 was 5.4% when measured in terms of total scrap purchased, as compared to 5.9% on the basis of broker-dealer scrap only. The figures in the succeeding years, on the basis of the method of computation urged by respondent Luria, similarly reflect a slightly smaller market share percentage for both Southwest and Luria. However, a computation on this basis does not significantly affect the conclusions which may be drawn from the figures in evidence. On either basis, it is the opinion of the examiner that respondents Luria and Southwest both occupied a significant position in the Pittsburgh-Youngstown market at the time Luria acquired control of Southwest.

45. It is further argued by respondent Luria that, irrespective of the percentage which each had of the market, actual competition between the two companies was on a very limited basis. Luria points out that Southwest and itself both made sales to only six plants (actually seven), plus the plants of U.S. Steel, out of the 39 reporting mills in the Pittsburgh-Youngstown district, and that in only three instances were there any substantial tonnages involved in the competition between the two companies. The record discloses sales by both Luria and Southwest to the same plants in 1949, as follows:

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*Sales by Luria and Southwest to same mills in 1949*

Company and plant	Southwest		Luria	
	Tonnage	Percent- age <sup>88</sup>	Tonnage	Percent- age <sup>89</sup>
United States Steel, Pittsburgh District	98,745	<sup>89</sup> 14.8	13,033	<sup>89</sup> 2.0
A. M. Beyers, Harmony, Pa.	2,491	35.2	185	2.8
Allegheny-Ludlum, Brackenridge, Pa.	88	0.1	37,886	31.5
Copperweld Steel, Warren, Ohio	165	0.1	35,843	20.5
Jones & Laughlin, Pittsburgh, Pa.	86,089	81.9	1,423	1.4
Mesta Machine, W. Homestead, Pa.	2,130	13.4	3,240	20.4
Pittsburgh Steel, Monessen, Pa.	30,752	19.3	8,205	5.2
Sharon Steel, Farrell, Pa.	391	0.1	7,208	2.7

<sup>88</sup> The percentage figures are computed in terms of total purchases of scrap by each mill from dealer-broker sources.

<sup>89</sup> In terms of scrap purchases from all sources, which is the method suggested by Luria in its proposed findings, the above percentages for U.S. Steel would be reduced slightly, to 13.8% and 1.8%, respectively. The percentages for the other mills would likewise be somewhat smaller if this method were used.

46. The fact that substantial tonnages were involved only in sales to U.S. Steel, Pittsburgh Steel, and Jones & Laughlin does not, as Luria contends, mean that competition between Luria and Southwest was of a limited nature. Both respondents were active in the market and were in potential competition throughout the area. The fact that at any particular time they both made sales to only a few of the same mills in the area is not a true indicator of the competition, actual and potential, between them. For example, while only Luria sold to Armco Steel's plant at Butler, Pa., in 1949, supplying 79,078 tons, or 44.4% of its broker-dealer scrap, Southwest had been a supplier of that plant in 1945, 1946 and 1957. Its sales in 1946, for example, were 14,067 tons, or 9.4% of the scrap purchased by Armco from broker-dealer sources, compared to 50,247 tons, or 33.5%, purchased from Luria. While Southwest's sales to Allegheny-Ludlum's Brackenridge plant were negligible in 1949 (amounting to only 88 tons), in 1948 it had sold 4,000 tons to that company, constituting 3.1% of its broker-dealer scrap, compared to 64,000 tons, or 50%, sold by Luria. In 1949 Southwest sold Copperweld Steel only 165 tons of scrap. Prior to that, however, it had sold to Copperweld 6,150, 4,370, and 13,000 tons, in 1946, 1947, and 1948, respectively. It is apparent, therefore, that since the two companies sold substantial quantities of scrap within the same general area, they were actual and potential competitors throughout the area, even though at any particular time they did not sell to a substantial number of the same customers. Furthermore, the fact that both sold substantial quantities to the plants of U.S. Steel, Jones & Laughlin, and Pittsburgh Steel during most of the 1945-1949 period is itself sufficient to demonstrate that substantial competition existed between them. U.S. Steel, it should be noted, was the largest single purchaser of dealer-broker scrap in the Pittsburgh district, with

purchases of 665,000 tons in 1949. The next largest purchaser was National Steel's plant at Weirton, W. Va., to which Luria was the exclusive broker and to which Southwest made no effort to sell.

47. In addition to competing in the Pittsburgh-Youngstown area, Southwest and Luria also competed in the Harrisburg, Pennsylvania, area, where both sold scrap to the Harrisburg plant of respondent Phoenix Iron & Steel Company (formerly Central Iron & Steel). In 1948 and 1949 Southwest sold 41,100 tons and 24,880 tons, respectively, to this company as compared with 127,115 tons and 85,966 tons sold by Luria. Southwest's sales represented 17.4% and 21.7%, respectively, of the broker-dealer scrap purchased by the Harrisburg plant in these 2 years, compared with Luria's share of 53.8% and 74.9%, respectively. Next to Bethlehem Steel, the Harrisburg plant was the largest consumer of scrap in the eastern Pennsylvania area. Southwest's sales to that plant in 1949 constituted 2% of the scrap consumed by the reporting mills in the entire eastern Pennsylvania area. Luria's sales in the eastern Pennsylvania market in 1949 represented 49.9% of the scrap purchased by the reporting mills from all sources.

48. Southwest and Luria also competed in sales to the Borg-Warner plant at Franklin, Pa., north of the Pittsburgh-Youngstown district (Southwest's sales being made through its subsidiary, Continental Iron & Steel). Luria's sales to Borg-Warner in 1947, 1948, and 1949 were 6,440 tons, 6,810, and 800 tons, respectively, representing 20.7%, 16.5% and 4% of the plant's scrap purchases. Southwest's sales in these years were 4,279, 3,600, and 2,200 tons, respectively, representing 13.8%, 8.8%, and 10.8% of the plant's scrap purchases.

49. It is suggested by Luria that the existence of a large number of other brokers in the Pittsburgh-Youngstown area, in which Southwest conducts its primary operations, and the fact that the sales of many of these brokers have increased since 1949, militate against any finding that Luria's acquisition of Southwest could have had any significant effect on the market. Respondent Luria refers, in this connection, to the names of 14 brokers purporting to do business in the Pittsburgh area, and to the testimony of one broker who stated that: "I could rack my brain and think of dozens of brokers around here" (R. 8138).

If there are "dozens of brokers" in the Pittsburgh area, other than those specifically named in the record, there is no evidence as to who they are or that they are substantial factors in the market. So far as appears from the record, the brokers specifically referred to by the witnesses in the area, most of whom were called to testify by counsel supporting the complaint, constitute the principal competitors of Southwest and Luria in the Pittsburgh-Youngstown area. These

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are: Luria Steel & Trading, Tube City Iron & Metal Co., Max Solomon Co., Samuel G. Keywell Co., Inc., Columbia Iron & Metal Co., David J. Joseph Co., The M. N. Landy Company, Luntz Iron & Metal Co., and M. W. Singer & Company (Grant Steel Company, successor).<sup>90</sup>

50. An analysis of the sales of these nine brokers reveals that none of them approaches Southwest Steel in size. Their combined sales in the Pittsburgh area in 1949 were in the approximate ratio of 3 to 2, to the sales of respondent Southwest alone. The latter's scrap sales in 1949 amounted to approximately \$22,000,000, consisting of 1,014,369 tons of scrap. The scrap sales of the nine brokers named above were approximately \$32,600,000, broken down as follows:

Luria Steel & Trading-----	<sup>91</sup> \$10,762,422
Samuel Keywell-----	4,679,816
Tube City-----	4,388,388
Singer (Grant Steel)-----	<sup>92</sup> 4,350,000
Max Solomon-----	4,026,364
M. N. Landy-----	2,130,490
Columbia Iron & Metal-----	<sup>93</sup> 990,382
David Joseph-----	<sup>94</sup> 919,793
Luntz-----	<sup>95</sup> 355,830

<sup>90</sup> In addition to the above companies, Luria refers to M. Glosser & Sons, Inc., M. Cohen & Sons Co., Rochester Iron & Metal Co., and several others as operating in the Pittsburgh area. In the case of Rochester Iron & Metal and M. Cohen, the only evidence in the record pertaining to these two companies indicates that they operate in the Buffalo, N.Y., area and Cleveland area, respectively (CX 126). As far as M. Glosser is concerned it is located in Johnstown, Pa., on the extreme eastern fringe of the Pittsburgh district, and its main customer has been Bethlehem's Johnstown plant. Most of Glosser's sales in the immediate Pittsburgh area have been to other brokers, including Southwest, Luria, Columbia, and Joseph. Southwest, to which Glosser made the bulk of its Pittsburgh area sales between 1948 and 1950, was more of a customer than a competitor of Glosser's in that area.

<sup>91</sup> The LS&T sales figures are actually its 1951 sales, that being the earliest year for which figures were available. Since this involved a period of peak demand during the Korean War, based on the pattern of sales of other brokers over the same period it is reasonable to assume that the above figure is at least several million dollars higher than LS&T's actual sales in 1949. To this extent the figure of the total sales of Southwest's competitors is also somewhat inflated.

<sup>92</sup> Singer's sales were approximately 150,000 tons. The record contains no information as to the total dollar sales of Singer in 1949. The above figure is a computed figure, based on an average price of \$29 a ton. The average price per ton sold by Southwest in 1949 was \$21.50 per ton. The average selling price of No. 1 heavy melting steel in the Pittsburgh market in 1949, as reported in Iron Age magazine, was \$29.08 (Annual Review, January 5, 1950, page 287). The \$29 multiple used by the examiner is undoubtedly somewhat high, since the price of No. 1 heavy melting is one of the highest prices paid for scrap. To this extent the above sales figures of Singer, and those of other competitors of Southwest where the same formula is used, are somewhat inflated.

<sup>93</sup> The Columbia Iron & Metal sales figures do not include sales of \$5,120,000 made in the Portsmouth, Ohio, area, which is served by Columbia's Pittsburgh office, but is outside the Pittsburgh-Youngstown district.

<sup>94</sup> The record does not contain any information as to Joseph's total dollar sales. Its tonnage sales amounted to 31,717 gross tons. Using the same \$29 per ton figure referred to above, the dollar sales figure has been computed for this broker.

<sup>95</sup> The record does not contain any information as to the total dollar sales made by Luntz in the Pittsburgh market. It does appear that it sold 12,270 gross tons in 1949. The above dollar sales figure has been computed on the basis of the \$29 per ton figure referred to above.

As will be observed from the above figures, Southwest was far and away the largest single factor in the Pittsburgh-Youngstown area in 1949, outside of Luria. The company which was next largest in terms of sales, LS&T, had only about one-half or less of the business of Southwest, and has since left the market. The next four largest brokers in the area, Keywell, Tube City, Solomon, and Singer, each had less than 20% of Southwest's sales. If LS&T were omitted, the combined sales of all the remaining brokers of any size in the area would be less than those of Southwest alone. It thus appears that in acquiring Southwest, Luria acquired the second largest broker in the Pittsburgh-Youngstown area, and that that broker was substantially larger than any of the other brokers operating in the area. It may be noted, in this connection, that while denying in its answer that it occupies a "dominant" position in any area, respondent Southwest admits "it is normally one of the leading scrap brokers in the Pittsburgh area".

51. Respondent Luria places considerable emphasis on the fact that, with the possible exception of M. N. Landy, all of the brokers whose figures are in evidence experienced an increase in sales in the years following Luria's acquisition of Southwest. Presumably Luria would infer from this a lack of probability that the acquisition had any substantial adverse competitive impact. It should be noted, in this connection, that the test of legality under the statute, as will hereafter be more fully discussed, is prospective rather than retrospective. The fact that competitors may have been able to ride out the effects of an acquisition does necessarily preclude a finding of probable adverse competitive impact. In any event, to the extent that events *ex post facto* are relevant to a determination of the probabilities of competitive injury, there is nothing about the figures cited by Luria to preclude an adverse finding with regard to the Southwest stock acquisition.

While it is true that a number of the brokers experienced an increase in sales during the period from 1950 to 1953, there can be no doubt that this was due in large part to the very marked increase in scrap consumption following the inception of the Korean war in mid-1950, and continuing until 1953. The year 1949 represented a low-water mark in steel production, scrap consumption, and scrap prices in the United States (CX 783-M and RX 92-A). In this setting, the acquisition by Luria, the largest broker operating in the Pittsburgh market, of the second largest competitor in that market obviously posed a serious threat to other smaller competitors in the area. The onset of the Korean war a few months later was providential, in that it created such a marked increase in the demand for scrap as to enable many of the competitors to weather the storm created by the acquisition of Southwest by Luria.

The ending of the Korean War and the return to a peacetime economy saw a marked decline in the sales of a number of the brokers in the Pittsburgh area. Some of them found their sales approaching the 1949 level and, in some instances, even going below 1949. Thus, Tube City, whose sales in the Pittsburgh market were \$4,388,388 in 1949, and which reached a peak of \$19,454,125 in 1952, saw its sales drastically reduced in 1954 when they were \$5,155,570. M. N. Landy, whose sales were \$2,130,490 in 1949 and increased modestly to \$2,942,882 in 1952, experienced a substantial decline by 1954 to \$1,765,443. The M. W. Singer Company which sold 149,895 tons in 1949 and experienced a slight increase in 1950 and 1951 to 165,531 tons and 153,764 tons, saw its sales decline to 125,319 tons in 1952. The sales of its successor, Grant Steel Company, reached a low of 86,003 tons in 1953, although its sales began to increase again thereafter. S. G. Keywell, whose sales were \$4,679,816 in 1949, experienced an increase to \$6,513,296 in 1953 and then a decline to \$3,857,730 in 1954.

At least three other companies which were in business in 1949 have left the Pittsburgh market since then, for reasons which cannot be determined from the record. Thus LS&T, whose sales in 1951 were \$10,762,422 and declined to a low of \$1,742,321 in 1954, only to increase again in 1955 to over \$7,000,000, went out of the market in April 1956.<sup>96</sup> A. Shaw, which had made only occasional sales in the Pittsburgh market prior to 1951, became active in the market between 1951 and 1955. However, since 1955 it has made only isolated sales in the area. N. B. Speer & Company, which is listed by Luria as one of its competitors in the Pittsburgh market, went out of the scrap business around 1953.

52. On the whole, the experience of Southwest and Luria in the Pittsburgh-Youngstown market has been better than that of most of their competitors during the same period. Southwest's sales increased from \$21,881,080 in 1949 to \$62,121,072 in 1952 and \$57,120,464 in 1953. In terms of its sales to the reporting mills in the area, Southwest's share of the broker-dealer scrap purchased by such mills increased from 5.9% in 1949 to 14.3% in 1952 and to 13.3% in 1953. Luria's sales to the same mills increased from 987,317 tons in 1949 to 1,290,125 tons in 1952 and 1,257,417 tons in 1953. While both companies experienced a decline in sales in the area in 1954, their share of the market still exceeded that in 1949. Southwest's share of the broker-dealer scrap purchased by the reporting mill was 8.8% in 1954,

<sup>96</sup> As had been previously noted (p. 300), at or about this time LS&T also closed its offices in Detroit, Cleveland, and Buffalo. Respondent Luria contends that LS&T gave up a number of its brokerage offices because it became more active in the construction business, while counsel supporting the complaint contend that competitive difficulties with Luria caused LS&T to look for other lines of endeavor. There is not sufficient evidence in the record to establish either contention.

as compared with 5.9% in 1949. Luria's share was 27.2% in 1954, as compared with 26.2% in 1949. Their combined share was 36.0% in 1954, compared to 32.0% in 1949.<sup>97</sup>

53. From the evidence as a whole, including the substantial share of the market held, respectively, by Luria and Southwest when the acquisition occurred; the adverse conditions in the industry when the acquisition took place; the relative size and strength of Luria and Southwest in comparison with their competitors in the market; the substantial additional entree which the acquisition afforded Luria into the Pittsburgh district plants of U.S. Steel (the largest single purchaser of scrap in the market), as well as into the plants of other substantial customers, such as Jones & Laughlin and Pittsburgh Steel, to which Southwest was a substantial supplier; and from the other facts and circumstances discussed above indicative of the potentialities which the acquisition had for curtailing competition between the two respondent brokers both in the buying and selling of scrap, it is concluded and found that Luria's acquisition of the stock of Southwest was calculated to result in a substantial lessening of competition between the two companies, and to restrain commerce in the Pittsburgh-Youngstown market and other markets, and tended to create a monopoly in Luria in said market and other markets. The record fails to establish, however, that Luria's failure to publicize its acquisition of control of Southwest gave it any substantial unfair competitive advantage in the buying or selling of scrap.

*Apex Steel and Supply Company*

54. The last of the stock acquisitions challenged by the complaint involves Apex Steel and Supply Company (referred to herein as Apex), a scrap dealer in Chicago. It is alleged that in April 1951 Luria acquired one-half of the outstanding stock of this company and of an affiliate company, Cermack-Laffin Corporation (which owned the land on which Apex's yard was located), as security for a loan to Charles A. Mogilner, owner of an interest in Apex and Cermack-Laffin. It is alleged that as a result of such stock acquisition, as well as another loan made directly to Apex, Luria has obtained "substantial working control" of Apex.

55. The evidence discloses that by agreement dated April 27, 1951, Luria loaned Mogilner, who then owned half of the stock of Apex and Cermack-Laffin, the sum of \$272,500 for the purpose of enabling him to acquire the remaining one-half of the stock in these two companies. Under the agreement, Luria had the right to take title to

<sup>97</sup> Even on the basis of the method for measuring market shares urged by Luria (viz. purchases from all sources, rather than merely from broker-dealer sources), the combined share of Luria and Southwest increased from 29.6% in 1949 to 31.7% in 1954.

one-half of the stock in these companies in satisfaction of the loan, and Mogilner had the right to tender the stock in payment of his debt. In addition to the personal loan to Mogilner, Luria also loaned Apex \$272,500, which was evidenced by a note dated May 1, 1951, calling for repayment of the loan, with 3% interest, at the rate of \$25,000 a year or 50% of net profits, whichever is larger.

56. The loan made to Apex has since been repaid by periodic payments made from April 30, 1952, to April 30, 1954. In December 1954 Mogilner made a payment of \$125,000, on account of the personal loan to him. Since the making of the loan, Luria has advised Mogilner, the date of such advice not being revealed by the record, that it does not intend to exercise its option to take title to the stock in satisfaction of his debt.

57. Prior to the making of the loans to Mogilner and Apex, Luria was purchasing substantial quantities of scrap from Apex. In 1949 and 1950 such purchases ranged between \$100,000 and \$200,000. In the period from 1951 to 1953 such purchases were between \$900,000 and \$1,400,000. In 1954 they declined to \$490,000. There is nothing to indicate whether the increase after 1950 represented a proportionate increase in Apex's sales to Luria or merely reflected an overall increase in Apex's business during the Korean War. It does not appear that Apex sold Luria all or even the bulk of its scrap at any period.

58. When the assets of the old Luria were transferred to the new Luria in October 1955, old Luria repurchased certain of its assets, among which was the balance of \$147,500 due under the original promissory note executed by Mogilner. It is asserted by Luria that this balance has since been repaid. However, there is no evidence in the record to support this assertion.

59. It is not clear whether counsel supporting the complaint have abandoned the charge that Luria acquired control of Apex. They have not proposed any findings with respect thereto in that portion of their proposed findings dealing with the stock acquisitions of competitors. Their discussion of the Apex situation is restricted to that portion of their proposed findings dealing with new Luria's acquisition of the assets of another Chicago dealer, Max Schlossberg Company, allegedly in substitution of the interest in Apex which was retained by old Luria.

60. Whatever may be the position of counsel supporting the complaint concerning the alleged Apex stock acquisition, it is clear that the record is lacking in reliable, probative, and substantial evidence to sustain the allegations of the complaint with respect thereto. Luria never, in fact, owned any of Apex's stock. It had an option to buy

a half interest therein, as well as in that of the real estate company Cermack-Laffin, in order to satisfy Mogilner's debt. This option was never exercised and was subsequently given up by Luria. The record fails to establish that during the period it had such option Luria tried to, or did, exercise control over Apex. The mere fact that Apex's sales to Luria increased in 1951-1953 does not establish that Luria controlled Apex.

61. Insofar as the acquisition of the Schlossberg yard is concerned, which took place after the issuance of the complaint herein and was made by new Luria, there is not a scintilla of evidence in the record to support the assertion that it was made as a substitute for old Luria's alleged interest in the Apex yard. However, even assuming that it was, and overlooking the fact that the acquisition is not challenged in the complaint, there is not a scintilla of evidence to support any finding as to the illegality of this acquisition. Outside of the fact that Luria paid a consideration of \$675,000 for the yard and that the yard has a capacity for handling 12,500 tons of scrap a month, there is no evidence indicative of Schlossberg's standing in the Chicago market when its assets were acquired; nor is there any evidence of Luria's position in the market nor of competitive conditions in the area. There is, accordingly, no record basis for any finding as to the probable competitive impact of Luria's acquisition of Schlossberg's assets.

#### *E. Conspiracies With Respect to Scrap Exports*

1. The complaint, in Paragraph 12 of Count I, charges that respondent Luria and respondent Neu and others (unnamed) entered into certain understandings, agreements, combinations and conspiracies to restrain and suppress competition in the purchase and sale of scrap in interstate and foreign commerce. It is alleged that such arrangements tended to create a monopoly in these respondents "in the sale of scrap from the continental United States to customers located in other countries". The only agreement or combination specifically alleged in Paragraph 12 is one involving Luria, Neu and five Japanese mills. It is alleged that Neu and Luria agreed to become and did become the exclusive or substantially exclusive supplier, for these mills, of scrap from the continental United States.

2. While the complaint refers specifically only to an export conspiracy with the Japanese mills, counsel supporting the complaint during the course of the proceeding contended that there were other combinations and conspiracies relating to the exportation of scrap to other countries. The examiner, over objection of respondent Luria, permitted counsel supporting the complaint to offer evidence concerning other countries, in view of the fact that the Japanese conspiracy

was alleged as illustrative of the broad charge of combinations and agreements involving the export field. Evidence was offered pertaining to various European countries and Argentina. Such evidence involved only Luria, among the respondents, and not respondent Neu.

*Agreement With the Japanese Mills*

3. The complaint does not charge, nor does the evidence purport to show, any direct agreement between Luria and the Japanese mills. What is involved is an agreement between respondent Neu and certain Japanese mills, in which Luria later participated to the extent of supplying scrap under a separate arrangement with respondent Neu.

4. Respondent Neu, as has already been indicated, is engaged in the import-export business, involving principally metals. For several years prior to 1953 Neu had been selling scrap to the Japanese from Okinawa and Korea. No shipments had been made by Neu from the United States because, as previously noted, the export of scrap from continental United States was prohibited until October 16, 1953. In early 1953, when it began to appear that the scrap needs of domestic producers would taper off due to the cessation of hostilities in Korea, agitation began among brokers and dealers in the United States for the lifting of export controls. In anticipation of the eventual lifting of controls, Neu entered into negotiations with the representatives of various Japanese mills to supply them with scrap from the continental United States.

5. On July 3, 1953, in advance of the actual relaxation of export controls, Neu entered into a memorandum agreement to supply scrap from the continental United States to five Japanese mills. Two of the mills, Yawata Iron & Steel Company, Ltd., and Fuji Iron & Steel Company, Ltd., ranked among the three principal steel producers in Japan. The third company in the ranks of the big three, Nippon Kokon Steel Company, Ltd., was not a party to the agreement. The other steel companies who were parties to the agreement with Neu were Kawasaki Steel Corp., Kobe Steel Works Ltd., and Sumitomo Metal Industry Co., Ltd. The relative standing in the Japanese steel industry of the latter three companies does not appear from the record.

6. The agreement of July 3, 1953, provided for the purchase by the Japanese mills of "up to a total" of 150,000 tons of steel scrap, shipment of which was to be completed within 6 months after the granting of licenses by the United States Government which would permit Neu to ship scrap from the continental United States to Japan under the agreement. The agreement also contained the following provisions, which counsel supporting the complaint cite in support of their contention that the agreement was intended to "prevent the stimulation of competition in the American market," and as providing the

basis for counsel's claim that Luria became an indirect party to the agreement:

(1) It is agreed that in order to assure the orderly purchase of American scrap now and in the future for the use in Japan, the Steel Mills of Japan will purchase jointly in order to assure the purchasing to take place without disturbing the American scrap steel prices nor the supply position in the various areas.

(2) For this reason the Mills establish the Hugo Neu Corporation as an exclusive channel and agent for all negotiations and purchase of any kind of scrap steel originating from the Continental United States used by them. While this agreement is limited as to tonnage and time, it is the intention of both parties to negotiate about further extensions should both parties be satisfied with the results of this procedure.

\* \* \* \* \*  
(7) The Hugo Neu Corporation is authorized to cooperate in the performance of this agreement with other scrap dealers in the United States in any way which appears advisable.

7. After export controls were relaxed in October 1953, Neu endeavored to buy scrap in fulfillment of its contract with the Japanese mills. Neu's first efforts were directed to dealers on the West Coast, since this was the natural shipping point for scrap to Japan due to more favorable freight rates. However, Neu ran into difficulty in obtaining scrap, particularly in the southern California area where the dealers' association was reported to be united in their opposition to selling scrap to Neu for shipment to Japan. This opposition was apparently due, in part at least, to the dealers' desire to sell scrap directly to the Japanese mills, rather than through Neu.

8. In November 1953, after several earlier contacts between the two companies, Luria and Neu entered into an oral agreement whereby Luria was to supply scrap under Neu's agreement with the Japanese mills. Under the arrangement between Luria and Neu it was agreed that Luria would supply scrap to Neu and would share in the profits under the latter's contract with Japanese mills.<sup>98</sup> The agreement did not require Luria to supply any specific amount of tonnage, but gave Neu the right to call upon Luria for whatever tonnage it saw fit. The memorandum agreement of July 1953 between Neu and the Japanese mills was not shown to Luria, but Luria was advised as to the total tonnage called for under the agreement, the price to be paid for the scrap and the fact that delivery under the agreement had to be completed within 6 months after export controls were lifted.

<sup>98</sup> According to the Neu witness, Luria was to share only in the profits from scrap which Luria supplied. The Luria representative testified that it was his understanding that Luria was to share in the profits on the entire tonnage shipped under the agreement. No evidence was offered as to the actual basis on which the profits were, in fact, divided. In view of the confused state of the record, no finding can be made as to the basis on which profits were to be divided.

9. Luria supplied a total of 90,000 tons under its agreement with Neu, and the latter obtained the balance of 60,000 tons from other sources. In supplying scrap under its arrangement with Neu, Luria billed the scrap to Neu at cost, which in turn supplied the scrap to the Japanese mills. Luria's first shipment under the contract was made on February 7, 1954. Prior thereto, in the early part of November 1953, Neu had already purchased 16,000 tons of scrap from The Learner Company of San Francisco and 10,000 tons from Southern Scrap Materials Ltd. of New Orleans, for shipment under the contract. Luria made its last shipment of scrap under the Neu agreement on July 9, 1954. The scrap which Luria supplied was purchased by it in the San Francisco, Los Angeles, New York, and Norfolk areas. Neu obtained its portion of the scrap from San Francisco, New Orleans, and Florida.

10. The agreement between Neu and the Japanese mills was not extended or renewed after the last shipment thereunder was made in July 1954. The joint venture between Luria and Neu thereupon came to an end. While both later sold scrap to various Japanese mills, they did so separately and not as part of any joint venture or so-called partnership agreement.

11. In January or February 1955, Luria sent a representative to Japan to explore the possibilities of selling scrap to the Japanese mills on a long-term basis. There is no evidence as to what proposal, if any, the Luria representative made to the Japanese mills on this occasion, other than rumors which were reported in the newspapers and which do not furnish the basis for any finding of fact. Whatever proposal was made, it was not accepted. In April 1955 several Luria representatives again went to Japan and proposed to supply the Japanese steel industry with 500,000 tons of scrap over a 12-month period. A proposed contract covering the Luria offer was submitted to representatives of the Japanese steel industry. The proposed agreement did not contain any provision requiring the Japanese mills to purchase their scrap exclusively from Luria. The proposed contract was not accepted by the Japanese mills and was never entered into. Luria did, however, subsequently receive individual orders for cargoes of scrap from the central buying agency representing the Japanese mills, and did make shipments under the individual orders from time to time to various Japanese mills.

12. Counsel supporting the complaint contend that by agreeing to supply a portion of the scrap under Neu's agreement with the five Japanese mills and to share in the profits under the arrangement, Luria became, in effect, a partner to the agreement. It is further contended that while the agreement with the mills was not renewed, it

was not voluntarily abandoned by Luria but that Luria continued with its efforts to tie up the Japanese mills, albeit such efforts were not successful.

13. The examiner does not regard Luria's arrangement with Neu as making it a partner to the agreement between Neu and the mills. While Luria did share in the profits, this was as a result of a private arrangement between Luria and Neu, and did not make Luria privy to the agreement between Neu and the Japanese mills. The clause in the agreement between Neu and the mills, authorizing Neu "to cooperate \* \* \* with other scrap dealers" in the performance of the contract does not, as suggested by counsel supporting the complaint, operate to make Luria a party to the agreement. The examiner interprets this clause not as authorizing Neu to enter into agreements with American dealers or brokers on behalf of the Japanese mills, but merely as authorizing Neu to obtain scrap in fulfillment of its agreement from other scrap dealers, under any arrangement it saw fit to make. This clause was apparently inserted at Neu's request in order to make it clear that it was not to be foreclosed from obtaining scrap from secondary sources, i.e., brokers and dealers, rather than merely from primary sources, such as industrial fabricators and railroads. In making shipments under the contract, Luria invoiced the scrap to Neu which, in turn, was designated as the shipper of the scrap to Japan. Luria was, in effect, another supplier of scrap to Neu, albeit a large one. The fact that Neu, in order to induce Luria to sell scrap to it, had agreed to cut Luria in on its profits, does not operate to make Luria a party to the agreement between Neu and the Japanese mills.

14. Statistical evidence in the record, based on U.S. Department of Commerce reports of ferrous scrap shipments from the United States in amounts exceeding \$500, discloses that in the last 3 months of 1953, there was exported to Japan from the United States approximately 23,750 tons of scrap. In 1954, the first full year after the lifting of controls, scrap exports to Japan amounted to approximately 278,000 tons, and in 1955 to 700,000 tons. Using these figures counsel supporting the complaint contend that shipments by Luria to Japan, under the contract with the Japanese mills, constituted 78.4% of all scrap exported to Japan (except for shipments under \$500) in the last 3 months of 1953, and 54.0% of the scrap exported to Japan in the first 7 months of 1954, during the period when Luria was still shipping under the Neu contract with the Japanese mills.

The percentage figures cited by counsel supporting the complaint do not correctly reflect Luria's participation in scrap shipments to the Japanese mills. During the last 3 months of 1953 it actually shipped no scrap to Japan. The shipments of 18,590 tons of scrap referred to

by counsel supporting the complaint were made entirely by Neu, since Luria did not make any shipments under its arrangement with Neu until February 1954. During the first 7 months of 1954 Luria shipped approximately 90,000 tons, rather than 130,437 tons, as contended by counsel supporting the complaint. The percentage of scrap shipped to Japan by it during this period was approximately 37%, rather than 54%. During 1955, when Luria was selling scrap to the Japanese mills pursuant to individual orders, Luria's share of Japanese scrap imports was approximately 18.9%. During the first 4 months of 1956, when it was likewise on individual orders, it shipped 24.1% of the scrap shipped to Japan.

15. The record contains no definitive evidence as to Neu's relative position in the scrap industry. The fact that it could not fulfill its contract with the Japanese mills for 150,000 tons of scrap without sharing some of its profits with Luria, would hardly appear to indicate that it was a dominant or major factor in the industry. There is no record basis for concluding that, insofar as Neu alone was concerned, its agreement with the Japanese mills had or was likely to have any adverse competitive effect, either on the domestic market or the export scrap market. Insofar as Luria is concerned, since it had no exclusive arrangement with the Japanese mills, there is no taint of illegality attached to the fact that it shipped substantial quantities of scrap under Neu's contract, during the first 7 months of 1954. There is no evidence that Neu entered into the original arrangement with the Japanese mills on Luria's behalf, or in contemplation of Luria's becoming a party to the agreement. The mere fact that Luria, at Neu's request, thereafter agreed to supply unspecified quantities of scrap and to share in the profits, does not make it a party to any exclusive arrangement. Moreover, in the light of the relative quantities of scrap involved and the limited duration of the arrangement, there is no basis for any finding that Luria's participation was calculated to restrain competition in any relevant market.

*The OCCF Combination*

16. In 1951 a number of nations in Western Europe banded together in order to coordinate their economic activities into what was intended to become a common market for Western Europe. This was known as the Schuman Plan. The first efforts at coordination revolved about the coal and steel industries of the participating nations, and in 1952 there was formed the European Coal and Steel Community, consisting of West Germany, France, Italy, and the Benelux Countries (Belgium, the Netherlands and Luxemburg). The coal and steel activities of these nations were placed under the overall supervision of a High

Authority, with representatives from the various nations comprising the community.

17. In late 1953 or early 1954 there was set up a central buying office to handle the buying of scrap for the steel mills associated with the European Coal and Steel Community. The office, called the Office Commun des Consommateurs de Ferraille (General Bureau of Scrap Consumers), and known by its initials as OCCF, had its headquarters in Brussels, Belgium. It had its own general manager, with advisors from the steel industry of each country, but was subject to the regulations of the High Authority.

18. During April 1954 the OCCF invited representatives of three American scrap companies to attend a meeting to discuss the matter of supplying scrap to the mills affiliated with it. The three companies were respondent Luria, Schiavone-Bonomo, and Western Steel International Corporation. The head of Western Steel had previously contacted various officials of steel mills in Germany and Italy, to which it had previously sold scrap originating from other parts of the world, and had discussed with them the possibility of his company becoming the sole agent to purchase scrap for the European Coal and Steel Community in the Western Hemisphere. He was advised by an Italian steel official, who was expected to be appointed general manager of the OCCF, that the OCCF had decided to select "two, three or four brokers in America" since it needed so much scrap that Western Steel could not do the job alone (R. 4153).

19. Discussions were had during the latter part of April 1954 and the early part of May 1954, between representatives of the OCCF and representatives of the three American companies, regarding the supplying of scrap by them to the OCCF. Each of the American companies was seeking to become the sole agent for the OCCF in buying scrap from the United States and the Western Hemisphere. Western Steel had made such an attempt earlier but, as has already been noted, it had been unsuccessful. The then Luria vice president, Ralph Ablon, discussed the matter in a separate conference with an OCCF official in an effort, as Ablon testified, "to see if there wasn't some way whereby I could get all the business" (R. 3091). However, he was advised that the situation was very complex because of the number of different countries involved and the fact that representatives of some of the countries had certain people in mind whom they wished to favor. Eventually agreement was reached among the interested parties that OCCF would purchase its requirements of scrap originating in the United States and certain contiguous areas jointly from Luria, Schiavone-Bonomo and Western Steel. Schiavone-Bonomo was apparently included in the triumvirate at the insistence of the Italian mills, and Western Steel at the urging of the German mills. Luria

was apparently included because of its reputation as one of the largest suppliers in the American market. The French mills apparently had urged the inclusion of a fourth company (whose identity was not established by the record), but the agreement was finally limited to the three companies mentioned.

20. A proposed contract was signed by the Luria group on May 4, 1954, and submitted to the OCCF, which did not sign it until July 14, 1954. The contract placed the joint obligation to supply scrap to the OCCF from the United States and certain nearby areas in Latin America upon the three suppliers. It was agreed that all scrap purchased by the OCCF within these areas would be purchased under the agreement. The amount of scrap covered by the contract was specified as being not less than 15,000 metric tons and not more than 250,000 metric tons, with individual orders to be issued periodically by the mills buying through OCCF. The term of the contract was expressed as covering material shipped on or before December 31, 1954. The grades of scrap were limited to No. 1 and No. 2 heavy melting steel, which were the grades generally preferred and used by the European mills. However, the agreement provided that if OCCF did purchase other grades from the area covered by the contract, it would purchase such scrap only from the group. The price to be paid for the scrap was to be either the cost of the scrap to the group or the composite price listed in the latest issue of "Iron Age", whichever was lower. To this was to be added loading and transportation costs, plus \$2.00 per ton as profit to the three suppliers.

21. Pending the signing of the contract by OCCF, an order was placed with the Luria group on May 31, 1954, calling for the delivery of two cargoes of scrap (18,000-20,000 tons). This purchase was made substantially in accordance with the terms of the agreement signed by the Luria group on May 4, 1954, except that the group was permitted to fill one-third of the order with No. 1 bundles, in addition to No. 1 and No. 2 heavy melting steel.

22. As the needs of the OCCF for scrap from the Western Hemisphere began to crystallize, it proposed to the Luria group that the latter undertake to deliver at least 15 cargoes of scrap, or if possible more, by September 30, 1954. The Luria group responded by requesting that the OCCF execute the contract which the Luria group had signed on May 4, 1954, and proposed that the OCCF agree to certain modifications of that contract of which the most important were, (a) that the Luria group be permitted to ship No. 2 bundles to the extent of one-third of each cargo, (b) that the price formula be based solely on their cost (rather than cost or the "Iron Age" composite, whichever was lower), except that in the case of No. 2 bundles the cost

was guaranteed not to exceed the Iron Age composite price, and (c) that Canada be included as within the area covered by the contract. The OCCF, by letter dated July 19, 1954, agreed to the modifications proposed, with the further modification that 4 of the 16 cargoes which it was then estimated would be shipped by September 1954, would contain no No. 2 bundles. It had also, in the meantime, on July 14, 1954, executed the original contract.

23. While the contract between the Luria group and OCCF was in writing, there was no written agreement between the three members of the group, providing for the manner in which they would participate in the contract and share in its profits. In actual operation, Western Steel shipped very little scrap, but acted mainly as agent for the other two participants in maintaining day-to-day contact with the OCCF and the participating mills. Scrap under the contract was shipped mainly by Luria and Schiavone-Bonomo, the record not disclosing the distribution of scrap shipments as between the latter two companies. Profits from the sales to OCCF were divided among the three participating companies on a substantially equal basis, with some adjustment being made for the additional expenses incurred by some of the participants in the performance of the agreement.

24. Although the contract with the OCCF estimated the quantity involved as being not less than 15,000 tons and not more than 250,000 tons, the Luria group actually shipped 543,000 tons of scrap during the balance of 1954. The shipments by the Luria group constituted 90.4% of the total amount of scrap shipped from the United States to OCCF countries in 1954, the total shipments to such countries from the United States amounting to approximately 601,000 tons. The record does not indicate who supplied the balance of approximately 58,000 tons in 1954. It may have consisted of scrap purchased by the OCCF prior to May 1954, when the first arrangements were made with the Luria group, and/or of alloyed steel scrap and other special grades which the mills purchased directly.

25. In anticipation of the expiration of the contract with OCCF on December 31, 1954, Luria wired OCCF on October 13, 1954, urging "extension of our present contract thru 1955" in order to be in a position to continue purchases and accumulations of scrap, and maintain port facilities for handling shipments. The OCCF responded by letter dated October 20, 1954, advising that in view of the fact continuation of joint buying by the European countries through OCCF had not been assured beyond March 21, 1955, it could not extend the existing contract beyond that date. The contract was, accordingly, extended until March 31, 1955, with the understanding that approximately 25 cargoes would be shipped before the end of

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February, of which 6 were to be comprised entirely of heavy melting steel, without any bundles.

26. In December 1954 further meetings were held between members of the Luria group and the OCCF with regard to an extension of the existing arrangement beyond the first 3 months of 1955. The Luria group submitted a report of its accomplishments and urged an extension of the existing contract until the end of 1955. The report stressed the fact that the arrangement between OCCF and the Luria group had enabled the latter to purchase scrap "in a manner calculated not to disturb the American mill supply" and stated further (CX 396-B):

\* \* \* it is unnecessary to point out how quickly this would change, both in relation to price and effect on American supply *were many buyers competing for the same scrap instead of our group*. From our knowledge of the American market and from our close association with American consumers, we are convinced that your *present method of buying is the only way to secure the quantity and quality which you desire without seriously and adversely affecting the price and without generating unnecessary opposition to export by American consumers*. We urge that our contract be extended for the balance of 1955. [Emphasis supplied.]

The report also discussed the matter of shipment of No. 2 bundles, which the OCCF members were somewhat reluctant to accept, and promised that in the last three quarters of 1955, the group would supply one cargo out of four without any bundles, with the other cargoes to average not over 20% bundles, which would result in an overall average of 15% No. 2 bundles. It also promised that the group would attempt to reduce even this percentage by seeking to obtain Canadian scrap without bundles. However, it was emphasized that:

This program can only be carried out with the requested extension of our contract, with the maintenance of our present accumulations, and *without the interference of other buyers for O.C.F.* [Emphasis supplied.]

27. Following a further meeting with the Luria group on December 16, 1954, at Dusseldorf, the OCCF by letter dated December 22, 1954, agreed to a three-month extension of the existing arrangement, from March 31, 1955 to June 30, 1955. It was indicated that the OCCF could not grant an extension beyond June 30 since the High Authority of the European Steel and Coal Community had not given it authorization to continue joint scrap buying beyond that date. However, it reserved the option to decide by February 28, 1955, whether it would extend the contract for the balance of 1955. The letter also contained certain modifications of the existing arrangement, a number of which had been requested by the Luria group. It is unnecessary at this time to allude to these modifications, except

to note that with respect to the matter of No. 2 bundles the agreement was that cargoes for the balance of the year would "not contain more than 10% of No. 2 bundles in the average" (CX 389-A).

28. In accordance with the option reserved in its letter of December 22, 1954, the OCCF, in February 1955, agreed to an extension of the contract with the Luria group for another 6 months, until December 31, 1955. During the year 1955, the Luria group shipped 1,970,000 tons to the OCCF countries. This constituted 95.3% out of total shipments to the OCCF countries of 2,065,000 tons.

29. Before discussing further developments in the arrangements between the OCCF and the Luria group beyond 1955, it is well at this point to consider the efforts of other American brokers to sell scrap to the OCCF, particularly in view of what appears to be the contention of Luria that other brokers were unwilling to sell scrap on an acceptable basis, and the suggestion implicit in Luria's argument that the OCCF had no alternative except to deal with the Luria group. The evidence discloses that at or about the time the Luria group became active in seeking business from the OCCF in the spring of 1954, and even prior thereto, other brokers and scrap metal exporters from the United States were seeking to obtain business from the OCCF. Among such firms were Luria Steel and Trading, Commercial Steel & Chemical Company and the Richard Nathan Corporation. The efforts of these and other firms to sell to OCCF are described below.

30. A representative of LS&T had communicated with OCCF officials as early as October 1953 and was advised that the OCCF, which was still in the organizational stage, was not yet prepared to come into the American market, but that when it did LS&T would be advised. In April 1954, at or about the time the Luria group had been invited to meet with the OCCF, LS&T was also requested to send a representative. An appointment, which was then arranged for LS&T, was later cancelled. In June 1954 LS&T, upon learning that OCCF was contemplating buying scrap in the United States, sent a cable requesting an opportunity to make an offer. The OCCF replied by letter dated June 19, 1954, in which it advised that its present needs for scrap were limited "to a few cargoes and this quantity has been placed". It further stated that it was "not yet in a position to discuss a longer term contract" (CX 350). The OCCF reference to a "few cargoes" was apparently to the order it had placed with the Luria group in May. However, its statement that it was "not yet in a position to discuss a longer term contract" does not square with the fact that it was about to sign a contract with the Luria group.

In June 1954 Commercial Steel & Chemical Corporation of New York, through its Italian agent, made a specific proposal to the OCCF

of 10,000 to 20,000 tons of scrap per month, with a minimum of 50% No. 1 heavy melting steel and the balance No. 2 heavy melting steel, at the average Iron Age composite price for the preceding month. This proposal was not accepted.

31. In the fall of 1954, when the contract with the Luria group was about to expire, a number of other brokers began to actively solicit the OCCF for business. During the first week of November 1954 a representative of LS&T conferred with officials of the OCCF in Brussels and offered to sell a minimum of 250,000 tons of scrap over the next 9 months. He was advised that the OCCF had an exclusive arrangement which could not be broken and that, in any event, they were not sure what their future requirements would be. Unknown to the LS&T representative, the OCCF, in October 1954, had already extended its arrangement with the Luria group for a 3-month period ending March 31, 1955. LS&T nevertheless confirmed in writing its offer to sell at least 250,000 tons of scrap, consisting of one-third each No. 1 steel (including No. 1 bundles), No. 2 steel and No. 2 bundles. The offer indicated that LS&T was prepared to increase the tonnage "to whatever extent is mutually agreed". The price quoted was "on the basis of your present form of contract [with the Luria group] except that we offer 60¢ per gross ton reduction for the No. 1 steel and the No. 2 steel and \$1.00 per gross ton reduction for the No. 2 bundles" (CX 338-A).

The OCCF replied by letter dated November 20, 1954 that "our present engagements cover our needs to the end of the first quarter of next year, beyond that, a decision from our committee is not to be expected for the next few days or weeks" (CX 339). The letter also noted that the LS&T offer was "not an improvement on our present commitments", but suggested that there might be a possibility of doing business on the basis of an offer of No. 1 and No. 2 steel and No. 1 bundles, without any No. 2 bundles. To this LS&T replied, both by cable and letter, pointing out that its price quotations were below that of the Luria group, and indicating that it was willing "to negotiate in regard to tonnage and grades provided we are treated equally on all conditions with other competitors" (CX 340).

Further correspondence between OCCF and LS&T ensued between November 29, 1954 and December 21, 1954, in which the OCCF stated that it was committed until the end of April 1955, but that it would be interested in offers thereafter which did not include No. 2 bundles, to which LS&T replied that if export shipments did not include any No. 2 bundles the American mills would ask for the reimposition of restrictions on exports, but nevertheless indicating a willingness to meet and negotiate the terms of a satisfactory contract with OCCF.

The final reply of OCCF on December 21, 1954, advised that in view of the fact that the High Authority had extended OCCF's operations only until June 30, 1955, OCCF had decided to extend the existing contract with the Luria group to that date. The letter also stated that the extension had been accomplished with the addition of an understanding, with the Luria group, that (CX 345)—

\* \* \* \* the dealers [i.e., the Luria group], as our agents, are willing to accept all quantities for us from other scrap dealers, if the offers meet our requirements as to quantity, grade, prices, etc.

32. Other brokers and scrap exporters from the United States had experiences similar to that of LS&T. This included Commercial Steel & Chemical Corporation, the Richard Nathan Corporation, Hugo Neu and the Harcon Company of Boston. Commercial Steel & Chemical which, as already noted, had made earlier unsuccessful efforts to sell to the OCCF, renewed its efforts in the early fall of 1954 only to be told that the OCCF could not accept material from the United States until after March 31, 1955, because of an existing agreement with a "dealer group" in the United States (R. 4006). Following this, Commercial Steel, Richard Nathan and Hugo Neu each received substantially similar letters from the OCCF in the latter part of November 1954, advising them that the OCCF was reconsidering its supply program in scrap from the United States for the last 9 months of 1955. The letters indicated that the OCCF was interested in filling its requirements with No. 1 and No. 2 steel, and No. 1 bundles, without any No. 2 bundles, and asked these brokers for their opinion as to whether any difficulties might be expected from the United States Government regarding scrap exports. The replies of the American brokers were somewhat similar, each indicating that it wished to supply scrap to the OCCF but that there might be some practical difficulties experienced if No. 2 bundles were to be excluded since it might result in pressure for the reinstatement of export controls. However, each expressed its willingness to negotiate the details of any offer with the OCCF. Commercial Steel specifically offered to supply the OCCF with 20,000 to 30,000 tons a month; Hugo Neu offered to ship four to six cargoes a month "without disturbing the [American] market"; and Richard Nathan offered to ship 50,000 tons monthly.

All of these offers met with a similar response. The brokers each received a letter from the OCCF dated December 21, 1954, which was substantially identical with the letter of the same date addressed to LS&T, previously referred to, viz, that the existing contract had been extended to the end of June 1955, but that the Luria group as "agents" of OCCF would be willing to receive offers from other dealers.

33. The characterization of the Luria group as "agents" for the OCCF is apparently based on the fact that when the original arrangement with the Luria group was extended, it was done with the specific understanding that the contract "has the character of a pure service contract" and that the group would "purchase for use [OCCF] in the future the quantities of scrap offered by all other dealers". Luria apparently regards this language as giving the aura of legitimacy to its arrangement with the OCCF. The evidence discloses that the impetus for the inclusion of this clause came from Luria, rather than the OCCF, it being suggested as one of the modifications in the existing arrangement by the Luria report of December 1954, referred to above. The idea was apparently conceived that the existing arrangement would be less subject to question as to its legality under the antitrust laws if it were called a service contract, rather than a supply contract, and if the Luria group were regarded as mere agents rather than suppliers of the OCCF. However, the change in terminology does not, in the opinion of the examiner, hide the true nature of the arrangement. The Luria group was acting as suppliers to the OCCF in the same way as Luria and other brokers act as suppliers to the domestic mills. Offering other brokers an opportunity to sell scrap to the OCCF through the Luria group did not place such brokers in a competitive position equal to that enjoyed by the Luria group.

34. Luria seeks to justify the decision of the OCCF not to buy scrap offered by brokers outside the group on the ground that the other brokers did not submit bids responsive to the specifications set by the OCCF, since their offers included No. 2 bundles. However, these offers were based upon the awareness by these brokers that the Luria group was shipping No. 2 bundles to the OCCF, and their conviction (shared also by the Luria group) that any effort to eliminate No. 2 bundles entirely would result in saturating the American market with this less desirable grade of scrap, which might result in pressure from the American mills for the reimposition of controls.<sup>99</sup> Furthermore, while suggesting the advisability and practical reasons for the inclusion of No. 2 bundles in their offers, the other brokers indicated a willingness to discuss and negotiate all points of difference. This they were not afforded an opportunity to do, since the OCCF had decided to continue its arrangement with the Luria group. The latter's offer likewise included No. 2 bundles, albeit the amount was to be cut from one-third to 15% and was later cut to 10% by the OCCF. It

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<sup>99</sup> In negotiating the original contract Luria sought to have No. 2 bundles included because, among other things, it was seeking to "avoid the impression that deliveries to [OCCF] mills [were] especially selected to the detriment of American consuming mills" (CX 393). It had received word that the American mills were "concerned about export of [the] best grades without No. 2 bundles" (CX 394).

seems clear, therefore, that the OCCF decision to deal only with the Luria group was not based on the fact that other brokers had not offered to sell it substantial quantities of scrap on a competitive basis.

35. Returning to the chronology of the development of dealings between the OCCF and the Luria group, meetings were held in the early fall of 1955 to discuss an extension, through 1956, of the existing arrangement which was to expire December 31, 1955. These discussions finally culminated in the OCCF advising Luria that the existing arrangement would not be continued in 1956 because the High Authority had decided the OCCF should not award any exclusive contract.<sup>100</sup>

36. The evidence indicates that prior to the action of the High Authority, some sort of agreement had been reached between the OCCF and Luria on extending the exclusive arrangement into 1956. However, by letter dated October 28, 1955, OCCF advised Luria that "the High Authorities have not backed up our Paris negotiations", but indicated that the OCCF would endeavor to confer further with the members of the High Authority in an effort to persuade it to the contrary (CX 1074). Responding to this letter on November 3, 1955, Luria noted its apprehension that "repercussions" from the discontinuance of the existing arrangement "could endanger the supply to the members of the OCCF", and expressed the hope that the OCCF would be successful in its efforts to convince the High Authority. The letter further stated that the three companies constituting the group would be willing, in the meantime, to continue purchasing scrap for the OCCF, but that the price provision to the effect that the billing price could not exceed the Iron Age composite would have to be modified if the existing arrangement were abandoned, since it might result in prices above the composite (CX 1073).

In its reply dated November 14, 1955, the OCCF advised the Luria group that (CX 1073)—

The OCCF is in principle entitled to purchase within the realms of commercial usage, without the High Authority releasing any purchasing restrictions. There does prevail, however, one restriction inasmuch as *we of the OCCF are not authorized to close any exclusive contracts, or contracts governing a certain percentage of our demands*, and furthermore, we have to accept and investigate each and every offer.

<sup>100</sup> Luria contends that this was due to political differences between the High Authority and the mills comprising the OCCF. Counsel supporting the complaint contend that the political differences, if any, arose out of the influence exerted by the U.S. Department of State, Congressional investigations and, possibly, the present proceeding. The examiner finds it unnecessary to resolve these differing contentions, although he regards it quite likely that the hue and cry created in the United States over the existing exclusive arrangement with the OCCF was a probable factor in the decision of the High Authority not to permit the purchase of scrap on an exclusive basis.

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Upon careful perusion of these regulations, you will note, gentlemen, that *they still leave a great leeway allowing us to pay tribute to the good relationship between us in the past*, as well as the mutual confidence in our purchasing and your supply ability. Thus, the deciding factor for future relations between you and us as the representatives of the OCCF will be the mutual trust, justified by past experiences, and I plead that you preserve this confidence in the future as much as you can be assured of our goodwill for further good cooperation. [Emphasis supplied.]

The letter concluded with a statement that if the group decided to continue to supply scrap "under the usual terms and conditions, i.e., cost price or composite plus commission" it would be necessary for the group to "guarantee the composite price to be the maximum in any case."

37. Following the expiration of the existing agreement in December 1955, the OCCF began placing orders with other brokers. However, the bulk of its orders were placed with the Luria group, and it followed a policy of preferring them wherever possible.<sup>101</sup> It continued to place orders with the Luria group under substantially the same terms and conditions as had applied under the contract which had expired. The record contains no figures of scrap shipments to the OCCF countries beyond April 1956. However, the figures which are in evidence disclose that for the first 4 months of 1956 (during which the formal exclusive arrangement was no longer in effect) the Luria group shipped 638,000 tons, or 82.1% out of approximately 777,000 tons shipped to the OCCF countries.

38. The OCCF continued to deal with the Luria group on the same informal basis until October 30, 1956, when it entered into another agreement with Luria providing for the purchase of scrap from the United States, Canada and the Caribbean area. The agreement, which was in the form of a letter (CX 1070), provided for the issuance of individual orders by the mills affiliated with the OCCF, and contained no provision for maximum or minimum tonnages. It provided that the scrap supplied by Luria would consist of No. 1 and No. 2 steel, but that No. 2 bundles could be included by mutual consent. The price was to be the lower of cost or composite, plus loading and freight expenses, plus \$1.25 per ton commission. The agreement contained the further provisions that, "for good order's sake", the OCCF reserved the right to place orders with other suppliers. It also contained a provision that it could be cancelled upon

<sup>101</sup> A letter dated January 14, 1956, from the OCCF to Luria indicates that the latter had advised OCCF 50,000 tons would be available for shipment from Canadian ports, and requested the OCCF not to place orders with others for such scrap. The OCCF stated that it could not decline other offers to purchase scrap and had actually received offers on the Canadian scrap. However, in requesting Luria to submit a detailed offer, it stated (CX 527): "We can assure you we shall always try to give you the preference". [Emphasis supplied.]

the giving of three months' notice. While the agreement was entered into with Luria alone, it was understood that the former members of the group would participate in its performance on an equal basis. Orders received under the agreement were apparently filled by each of the members of the group supplying a substantially equal portion of the scrap. The record does not disclose how much scrap was supplied to the OCCF under this arrangement.

39. On September 30, 1957, the OCCF gave notice that it elected to cancel the existing agreement, effective December 31, 1957, and the agreement came to an end on the latter date. In October 1957 the OCCF issued a public announcement of its intention to purchase scrap from the United States on the basis of sealed bids to be submitted by interested dealers, brokers and exporters in the United States. Approximately 75 bids were filed with the OCCF, including a joint bid by Luria and Western Steel. The latter were advised by letter dated November 25, 1957, that they had submitted the "best proposal" and would receive orders for "about 70%" of the OCCF's requirements of scrap from the United States during the first six months of 1958 (RX 96). Four other companies, which had submitted the next best bids, were given the opportunity to meet the Luria bid. These were Schiavone-Bonomo, Harcon, Associated Metals & Minerals, and Benjamin Schwartz Company. The record does not disclose in what manner the remaining 30% of the OCCF's requirements were distributed among the last-named companies.

40. The latest information in the record concerning the purchase of scrap by the OCCF is that on March 28, 1958, it again advertised for bids to sell scrap to it for the third quarter of 1958, with the possibility that any award made might be extended to December 31, 1958. The award under this invitation was to be made May 7, 1958. There is no evidence as to what the result of such invitation was.

41. There can be no question that until December 31, 1955, as a result of the exclusive arrangement with the OCCF, the Luria group had a tight monopoly on substantially all scrap exports to the OCCF countries from the United States and other areas in the Western Hemisphere. During these 2 years the shipments of the Luria group accounted for 90.4% and 95.3%, respectively, of all scrap shipped to the OCCF countries from the United States. Even after the contract had expired, and at least during the first 4 months of 1956, the OCCF in practice continued to favor the Luria group to the extent of 82.1% of the scrap imported from the United States.

42. Luria suggests that the concentration of OCCF purchases with the Luria group was not unlike that of purchases of scrap made by the United Kingdom from Luria Steel & Trading and a group of other

American firms which, during 1954, sold 162,000 tons to that country, while Luria sold nothing. However, unlike the Luria group, the other companies referred to did not act in combination and pursuant to any exclusive agreement with the United Kingdom, but each acted separately and, so far as appears from the record, in competition with one another in selling scrap to the United Kingdom and in purchasing such scrap in the United States. In any event, the fact that trade-restraining practices may have been used by others in another area is immaterial.

43. Respondent Luria also argues that the fact that OCCF did not purchase from others during 1954 and 1955, but limited its purchases substantially to the Luria group, was a matter of choice by the OCCF rather than something which Luria had sought. This, however, is not in accordance with the evidence. As already noted, the Luria vice president who handled the negotiations stated (R. 3091) :

I went the next day and met Dr. Rehua [the OCCF official in charge] privately and tried my best to see if there wasn't some way whereby I could get all the business.

The other participants in the Luria group were accepted by sufferance because certain of the OCCF mills with whom they had contacts insisted on their inclusion. Other brokers and exporters were never given an opportunity to compete on an equal basis.

As has been already noted, each time the arrangement came up for renewal Luria sought to induce the OCCF to limit its awards to the small tight group of which it was the obvious leader, pointing out to the OCCF the dire consequences which would follow if other firms were permitted to bid for scrap on behalf of the OCCF. It succeeded three times in obtaining extensions of the arrangement, first until the first quarter of 1955, then for the second quarter and finally for the balance of the year. When the formal arrangement finally came to an end, due in part at least to the pressure built up by the firms which had been excluded, Luria had so entrenched itself with the OCCF group that it managed to continue to obtain the lion's share of OCCF's business even without an exclusive contract.

44. The arrangement between the OCCF and Luria represented an alliance between two groups having similar economic interests. In coming into the American market the OCCF was aware that the purchase of the substantial quantities of scrap contemplated by it could, unless carefully controlled, have adverse repercussions in that market to its own disadvantage. It was understandably concerned that purchases made on its behalf might drive up the price of scrap in the Eastern United States, which was the natural area from which scrap for Europe would be drawn because of the more favorable freight

rates. This would result in it paying more for scrap and might also arouse the ire of American mills, causing the latter to clamor for the reimposition of export controls. One of the largest factors in purchasing scrap in the Eastern United States is respondent Bethlehem, whose substantially exclusive broker is respondent Luria. As broker for OCCF Luria would have a natural interest in not competing with itself as broker for respondent Bethlehem.

45. Indicative of Luria's efforts to minimize competition between itself as broker for OCCF and as broker for Bethlehem is the relatively small amount of its shipments out of the Port of Baltimore, which is the site of Bethlehem's Sparrows Point plant and is a major area from which Bethlehem draws its scrap for delivery to Sparrows Point. In 1954 Luria shipped only 7,800 tons from the port of Baltimore to the OCCF countries, which was the smallest amount it shipped from any port in the Eastern United States. This may be compared to shipments of 235,000 tons from the Port of New York and 56,000 tons from New England ports. In 1955 Luria shipped no scrap whatsoever out of Baltimore to the OCCF countries or to any other country.

46. While there is no direct evidence in the record that there was any understanding between the OCCF and Luria to minimize shipments out of Baltimore, there is evidence that the OCCF instructed at least two other brokers which were trying to sell it scrap after the expiration of the exclusive agreement with the Luria group, that it did not wish to disturb the mills in the Eastern United States. One of these brokers was specifically instructed in writing that the OCCF did not wish scrap which had been ordered from him "loaded in the Port of Baltimore" (CX 774), and was later advised orally by an OCCF official that the OCCF did not think it "politic to ship scrap out of Baltimore while you have a substantial steel operation, steel mill in the Port of Baltimore" (R. 7691).<sup>102</sup> Luria itself, on at least one occasion, indicated that it was "concerned about [the] Bethlehem situation" in taking an order from a European customer to be filled on the East Coast (CX 395). It will also be recalled that in urging the OCCF to renew the exclusive arrangement, which was about to expire in December 1954, Luria stated to the OCCF that (CX 396-B) :

An important aspect of the OCCF method of buying is our purchasing for you in a manner calculated not to disturb the American mill supply.

While undoubtedly Luria did buy substantial quantities of scrap in the Eastern United States, as it points out in its proposed findings,

<sup>102</sup> Counsel for Luria has suggested that there are certain inconsistencies and contradictions in the testimony of the above-mentioned broker witnesses and that their testimony should not be accepted. The examiner found these witnesses to be generally worthy of credit and there is nothing about the testimony referred to by Luria which would warrant not accepting their testimony.

this was inevitable since this was the natural area from which it had to supply the OCCF. However, it did so in such a manner as to cause the least possible repercussions among its mill customers in that area, particularly respondent Bethlehem.

47. It is argued by Luria that the failure of counsel supporting the complaint to introduce "price data" in evidence prevents the making of any finding that Luria had the power to control prices. Presumably it would have the examiner infer from this that the arrangement between the OCCF and the Luria group was without any effect, price-wise, on the American market. It is not entirely clear what price data Luria claims should have been adduced. Since a formal, exclusive arrangement between the OCCF and the Luria group was in effect for almost 2 years, and a preferential arrangement for a substantial period of time thereafter, it is difficult to speculate what would have happened to prices had such arrangements not been in operation.

48. While there is no precise basis for comparing what was and what might have been the situation, price-wise, there can be no doubt that the purpose of the arrangement was to restrict competition in the purchase of scrap for the OCCF so as to control, as far as possible, the price of scrap sold to the OCCF. The evaluation of its performance by the Luria group, after the arrangement had been in effect for approximately 6 months, would certainly indicate that a reasonable amount of success had been achieved in meeting the objective. Thus it was pointed out that by its being able to accumulate scrap for the OCCF under an extended arrangement "the composite price has dropped approx. 2 dollars within the past few months despite increased American scrap consumption and increased foreign buying" (CX 396-C). There was also the admonition that the situation would quickly change "both in relation to price and effect on American supply, were there many buyers competing for the same scrap instead of our group."

Luria contends that these statements were mere "salesmen's talk." The examiner does not see how they can be so regarded. Considering the substantial quantities of scrap involved, they impress the examiner as being an expression of the natural operation of fundamental economic laws. They were apparently taken seriously enough by the OCCF to warrant further extensions of the arrangement.

*Conclusions as to OCCF*

48. It is concluded and found that the agreement between the Luria group and the OCCF had the purpose and effect of restraining competition in the purchase of scrap in the United States for sale to the OCCF. Given Luria's position in the domestic market and the sub-

stantiality of the OCCF scrap program, the arrangement clearly tended to create a monopoly in Luria in the export of scrap.

It is argued by Luria that Schiavone-Bonomo would hardly have participated in such an arrangement if its purpose was "to create a monopoly in Luria." The short answer to this argument is that Schiavone-Bonomo had little choice in the matter. Unless it joined with Luria it could not have sold scrap to the OCCF. Not to have joined would not have prevented the augmentation of Luria's position. On the contrary, Luria would then have become practically the sole participant, since Western Steel supplied no scrap and was something of a satellite of Luria's. Schiavone-Bonomo accordingly made the best deal it could in a situation over which it had no control.

It is also argued that Luria itself had no choice in the matter since the OCCF made the decision as to whom it would deal with. However, as already noted, Luria initially sought an exclusive contract for itself alone, and all that the OCCF did was to expand the exclusive nature of its supply situation to include two additional parties. The OCCF decision relieved somewhat what would otherwise have been a starkly exclusive arrangement with Luria. However, the basic structure and purpose of the arrangement remained anti-competitive.

#### *Exports to Other Countries*

49. The record discloses that between 1954 and 1956, the period mainly involved in the evidence offered by counsel supporting the complaint, Luria shipped scrap to a number of other countries, in addition to Japan and the OCCF countries. The only transactions which counsel supporting the complaint cite as purporting to fall within the allegations of the complaint are those involving shipments to Argentina, Spain, and Yugoslavia. Before discussing the evidence relied upon by counsel supporting the complaint, it may be noted that it fails to establish any agreement between Luria and anyone else to restrain competition in the sale of scrap from the United States to any of these countries. In general, the evidence involves individual awards for the sale of scrap by these countries, on which Luria shipped some of the scrap, either as the successful bidder or as a joint venturer with another broker which was the successful bidder.

#### *Argentina*

50. The evidence pertaining to Argentina discloses that in the spring of 1954 both Luria (through its subsidiary Livingston & Southard) and a competitor, Associated Metals & Minerals Company, had submitted bids in response to an invitation for bids by the Argentine government for the sale of 50,000 metric tons of scrap from the United States. Luria was apparently the lowest bidder. However, certain

complications developed due to the fact that Argentina was not able to pay for the scrap in American dollars. Associated Minerals, through a subsidiary in Argentina, was in a position to handle the financial end of the award through a complicated series of transactions involving frozen pesos belonging to the American motion picture industry. While Luria's subsidiary was technically the lowest bidder, Associated could be considered as having submitted a more acceptable bid because of its ability to arrange for payment in a manner acceptable to the Argentine government. The dispute was finally resolved by Luria's agreeing to let Associated take the award, and the two companies agreed to enter into a joint venture in supplying scrap pursuant to the Argentine award. The bulk of the scrap was to be supplied by Luria, with Associated reserving the right to ship one cargo itself. The profits were to be divided among Livingston & Southard, Associated and the Richard Nathan Corporation, (the latter having previously made a separate contract with Associated to participate in the award). Four-fifths of the scrap was actually shipped by Luria, which received \$1.00 a ton profit above the cost of the scrap.

51. The record does not establish over what period of time scrap was shipped pursuant to the award made by the Argentine government. However, it does appear that Luria shipped approximately 35,500 gross tons to Argentina in 1954, accounting for 52.9% of the shipments to that country. In 1955 it shipped approximately 16,000 tons, accounting for 17.2% of shipments to that country. The evidence fails to establish that the agreement between Luria and Associated was entered into for the purpose of suppressing competition in the sale of scrap to Argentina. So far as appears, they had submitted the best bids in response to a bona fide invitation to bid, and had joined forces thereafter in order to facilitate payment under the award.

#### *Spain*

52. The evidence pertaining to Spain involves a single award made by the Spanish Government in 1954 for approximately 26,000 tons of scrap. The Spanish Government had originally issued a tender dated February 24, 1954, inviting bids for an award to be made of a quantity up to 39,000 tons. Luria submitted a bid pursuant to this tender on March 22, 1954. Western Steel International, which later became a joint venturer with Luria on the OCCF contract, had also submitted a bid pursuant to the Spanish tender. The tender was apparently later withdrawn and a new tender issued pursuant to which Luria (through Livingston & Southard) and Western Steel both again submitted bids. On May 10, 1954, an award for 26,423 metric tons was

made to Western Steel. On May 13, 1954, Western entered into a joint venture with Luria, which agreed to supply "approximately 26,000 tons" of scrap under the award made by the Spanish Government (CX 402).

53. Counsel supporting the complaint seek to have the examiner find that the withdrawal of the original tender and the subsequent award to Western Steel were part of a sub rosa arrangement between Western Steel and Luria with certain Spanish officials to eliminate bids by other competitors and to secure an award to Western Steel in which Luria would participate. In support of such a finding counsel rely on a letter written by a Western Steel agent to Ralph Ablon of Luria, relating certain efforts which the former was allegedly making to persuade the Spanish Government to alter the terms of its tender, and on a later letter written to Livingston & Southard by Western Steel stating that it had succeeded in having the original tender called off. Lacking any reliable evidence of a pre-existing agreement or understanding between Luria and Western Steel, at the time these letters were written, they have no probative value in establishing Luria's participation in the alleged efforts made by Western Steel. The record fails to establish that the efforts, if any, made by Western Steel to call off the original tender were made with the consent or agreement of Luria or as part of any over-all understanding between them to prevent competitors from receiving the award which was ultimately made.

54. The evidence discloses that in 1954 Luria shipped approximately 23,600 tons of scrap to Spain, constituting 48.6% of the scrap shipped to that country. In 1955 it shipped 13,300 tons, constituting 58.4% of the scrap shipped to Spain. It does not appear to what extent, if any, shipments in 1955 were made pursuant to the original award made to Western Steel in May 1954, in which Luria had become a joint venturer. The evidence does disclose that in January 1955 Luria had an order for 15,000 tons of scrap for shipment to Spain on which it had obtained an agreement from Schiavone-Bonomo to supply 50% of the scrap. Whether this involved an award from the Spanish Government directly to Luria, or its participation in a joint venture with Western Steel cannot be determined from the record.

#### *Yugoslavia*

55. The evidence pertaining to Yugoslavia involves two efforts to sell scrap to that country between February and April 1954. In both instances it is contended that Luria (through its subsidiary Liv-

ington & Southard) collaborated with a competitor in endeavoring to obtain an award from the Yugoslav Government. In the first instance, both Luria and Western Steel had submitted bids in response to an invitation from the central buying agency of Yugoslavia, with Luria's bid being somewhat higher than Western Steel's. It is contended that Luria's bid was collusive and nongenuine, and was made for the purpose of enabling Western Steel to get the award for which other American exporters were competing. Assuming that Luria did permit Western Steel to submit a lower bid, the evidence fails to establish how this could prevent other competitors from obtaining an award. The maneuver, if it occurred, was in fact unsuccessful since neither Luria nor Western Steel obtained an order.

56. The second transaction cited involves a joint venture between Luria, Richard Nathan and Associated Metals & Minerals Corporation to supply scrap to Yugoslavia. Richard Nathan had already secured an order for approximately 10,000 tons from Yugoslavia (on which it had a joint venture with Associated Metals), and had submitted a bid on an award for an additional 10,000 tons. Luria likewise had submitted a bid to supply the latter scrap. Pursuant to a joint venture agreement entered into in the latter part of April or early May 1954, Luria agreed to supply the scrap under the first award and that if Nathan was the successful bidder on the second award, it would supply scrap on substantially the same basis. Apparently the Nathan bid on the second order was 50¢ a ton lower than Luria's, and the latter upon being apprised of this fact when it entered into the joint venture agreement undertook not to modify its bid.

Counsel supporting the complaint cite the latter fact as evidence of collusive bidding. The examiner does not regard this evidence as relevant to the charge in the complaint. Since the parties were about to enter into a joint venture there was nothing improper in Luria's committing itself not to submit a lower bid after Nathan had confided to it the nature of its bid. In any event, there is nothing to show that Luria's agreement not to lower its bid was made for the purpose of preventing competitors from obtaining the award.

57. The evidence discloses that in 1954 Luria supplied 9,500 tons of scrap to Yugoslavia, constituting 24.2% of the scrap shipped to that country. In 1955 it shipped no scrap to Yugoslavia.

*Conclusions as to Export Conspiracy Charge*

58. Counsel supporting the complaint offered evidence in support of paragraph 12 of the complaint, purporting to show that Luria had entered into certain understandings, agreements, combinations and

conspiracies for the purpose and with the effect of restraining competition in the sale of scrap to various foreign countries, viz, Japan, the OCCF countries, Argentina, Spain and Yugoslavia. Only in the case of the agreements and combinations pertaining to the OCCF countries does the evidence support the charge in the complaint.

### III. THE CHANGE IN LURIA'S MARKET POSITION

#### A. *The Domestic Market*

1. Counsel supporting the complaint offered statistical evidence purporting to show a very marked improvement in Luria's domestic market position between 1945 and 1954, both nationally and in various regional markets. Counsel seek to attribute this change, in large part, to the exclusive arrangements between Luria and the various respondent mills, and also to Luria's alleged use of the various trade-restraining practices previously discussed. Luria has challenged the reliability of the figures used by counsel supporting the complaint because of certain alleged omissions therefrom. Before discussing the statistical evidence and its implications, consideration will be given at this point to the soundness of the objections raised by Luria.

2. The argument of counsel supporting the complaint, insofar as it is based on the statistical evidence, involves basically a comparison of the proportion of scrap purchased from Luria by a number of steel mill consumers during the 10-year period from 1945 to 1954. Luria contends that the figures used by counsel supporting the complaint are unreliable and do not present an accurate picture of Luria's market position because, (a) they fail to take into account the mills' purchases of pig iron which, it is contended, is a competitive product to scrap, and (b) they are based on the scrap purchases mainly of steel mills and do not take into consideration scrap purchases of other categories of consumers.

3. Insofar as the contention of Luria is based upon the failure to take into consideration the purchase of pig iron by the mills, it is wholly without merit. As has previously been noted, pig iron and scrap each make up roughly one-half of the metal which is fed into the furnace in the making of steel, with scrap slightly exceeding pig iron in the proportion of use. The proportion of each which is used has remained relatively stable over the years. Set forth below is a table demonstrating the proportion of the metallics charge represented by scrap and pig iron consumed in the iron and steel industry during the years 1948 to 1954. In the case of scrap, the table reflects the pro-

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portion which is home scrap and the proportion which is purchased from outside sources:

*Proportion of scrap and pig iron consumed in United States, 1948-54*

[In percent]

	1948	1949	1950	1951	1952	1953	1954
Scrap:							
Home.....	25.9	27.0	26.6	26.2	26.7	26.8	27.6
Purchased.....	26.1	23.4	24.9	25.6	26.2	24.0	23.5
Total scrap.....	52.0	50.4	51.5	51.8	52.9	50.8	51.1
Pig iron.....	48.0	49.6	48.5	48.2	47.1	49.2	48.9

As is apparent from the above table, the proportion of scrap used in relation to pig iron has been quite stable over the years. The range has been only 2.5% over a period of 7 years. The smallest percentage of purchased scrap used was in the year 1949 when it was 23.4%, and the largest percentage was in 1952 when it was 26.2%. The average for the 7-year period was 24.8%.

4. While it is true that pig iron and scrap iron are to some extent substitutable, there are significant limitations on their substitution. Because scrap has already been refined by going through a furnace, it has less carbon and fewer other impurities than pig iron. It is therefore sought after for use in certain types of furnaces, such as electric furnaces, in preference to pig iron. In certain sections of the country, e.g., on the West Coast where few of the mills have blast furnaces, there are very limited amounts of pig iron available and transportation costs tend to minimize shipments from the East. In these cases a very high proportion of the melt used in making steel consists of scrap.<sup>103</sup>

5. Aside from these factors, the fact that the proportion of scrap and pig iron has remained relatively stable over the years is itself evidence of the practical limitations on the substitutability of one for the other. It may be that unusually sharp price fluctuations in one or the other of these products could cause a greater use of one as against the other, but there is a considerable area within which each may fluctuate in price as a result of market conditions peculiar to it, without there being any significant repercussions in the market in

<sup>103</sup> When he testified in July 1957, the Bethlehem Pacific official in charge of scrap purchases indicated that the Seattle plant of Bethlehem Pacific, which was then using a substantial proportion of pig iron in its open hearth furnace, intended to install electric furnaces, which would result in its discontinuing the use of pig iron entirely and replacing it with scrap (R. 11,074). In the Los Angeles plant of Bethlehem Pacific, which has an electric furnace, the charge consists entirely of scrap. An official of the Iron and Steel Scrap Institute indicated that in electric furnaces "the charge is pretty much scrap" (R. 12,865).

which the other product sells. It may be noted, in this connection, that whereas scrap prices are subject to rapid and wide fluctuations, prices of pig iron are reasonably steady.

6. There can be no doubt that scrap has sufficiently distinct and peculiar characteristics, and that the scrap market is sufficiently different from the pig iron market, as to constitute each a different product for purposes of determining competitive influences in each market. While there is a certain amount of interchangeability, this does not gainsay the fact that each is sufficiently different and distinctive as to justify consideration of Luria's market position in terms of the scrap industry alone.

7. Turning to Luria's objections based upon the alleged incompleteness of the figures used by counsel supporting the complaint, these are based, (1) on the failure to include scrap purchases of all consumers of scrap, the most important of the omissions referred to being foundries, nonintegrated blast furnaces and other miscellaneous consumers and, (2) the incompleteness of the figures used by counsel supporting the complaint for certain years, particularly 1945 and 1946. Turning to the first of these objections, there is no doubt that the figures used by counsel supporting the complaint exclude from the total "universe" with which purchases made from Luria are compared, the purchases of most foundries, nonintegrated blast furnaces and other miscellaneous categories of scrap consumers. However, such omission does not, in the opinion of the examiner, significantly affect the market-share percentages reflected in the figures used by counsel supporting the complaint and, more importantly, does not affect the trend revealed by such figures. The reason for these conclusions will become apparent from the following discussion of the method used by counsel supporting the complaint in establishing Luria's relative market position.

8. It may be noted, preliminarily, that the simplest method for determining Luria's market position, at least on a national basis, would have been to secure figures of Luria's total ferrous scrap sales, and to compare these with the total amount of ferrous scrap purchased or consumed annually by scrap consumers, as revealed by the official figures of the United States Bureau of Mines. However, while the record contains figures on Luria's total sales, these figures do not reveal what proportion of its sales are accounted for by ferrous scrap. Since Luria is engaged in other activities, including the sale of new steel, used machinery and railroad equipment, and nonferrous scrap, its total sales figures are not useful in determining its market position in ferrous scrap. Furthermore, its figures are computed in terms of dollars, whereas the Bureau of Mines figures are in terms of tons of scrap. Luria officials indicated that it was not possible for them to supply

figures from which there could be computed the proportion of their total sales which were accounted for by sales of ferrous scrap.

9. Accordingly, the method pursued by counsel supporting the complaint, in attempting to establish Luria's relative market position, was to obtain statistics from the principal consumers of scrap indicating the total amount of scrap purchased by them, the amount of such scrap which was purchased from brokers and dealers, and the amount purchased from Luria and its affiliates. Such information was obtained from all of the respondent mills and from 53 ingot producers in the United States, the latter constituting substantially all of the remaining ingot producers in the United States.<sup>104</sup> The mills which reported their scrap purchases, referred to in the record as the "reporting mills", represented between 97.8% (as of 1945) and 99.3% (as of 1954) of the total ingot capacity of the steel industry in the United States.

10. While purchase figures were obtained from some of the larger foundries, including those operated by respondents, the figures used by counsel supporting the complaint did not include any data from approximately 3,000 small foundries and nonintegrated blast furnaces, and certain other miscellaneous consumers of scrap, because of the prohibitive magnitude of the task of obtaining figures from these relatively small consumers. Counsel supporting the complaint and counsel for Luria are in agreement that the scrap consumers as to which there are no data in the record account for between one-fourth and one-third of the total scrap purchased by domestic consumers. It is contended by counsel supporting the complaint that the omission of figures from this segment of scrap consumers does not significantly affect the market-share percentages which are revealed by the record. It is the position of Luria that, in the absence of specific evidence to the contrary, it must be assumed that substantially all of the scrap purchased by the consumers whose figures are not accounted for was purchased from sources other than Luria, and that therefore Luria's share of the market is significantly less than that contended for by counsel supporting the complaint.

11. In the opinion of the examiner the position taken by Luria is without merit. While there is no detailed evidence in the record concerning Luria's sales to the over 3,000 foundries and other miscellaneous users at issue, there is sufficient evidence from which it may be inferred that Luria is a substantial supplier to this category of

<sup>104</sup> One of the few ingot producers from whom information was not obtained was Louis Berkman Co., the smallest integrated producer in the United States with an ingot capacity of 0.1% as of January 1, 1954. While information as to scrap purchases was requested from this producer, its records were incomplete and its plant had recently been sold.

consumers, particularly to some of the larger companies.<sup>105</sup> Furthermore, the sampling of its position which is in evidence, involving consumers who account for between two-thirds to three-fourths of the scrap purchased in the industry, is sufficiently large and balanced to afford a realistic basis for concluding that its position in the industry as a whole is not significantly different. Even if the proportion of scrap sold by Luria to the remaining segment of the industry was not quite as large as that revealed by the figures which are in evidence, the fact that the segment which is unaccounted for represents at most one-third of the industry, suggests that the market share percentages revealed by the evidence would at most be decreased by a few percentage points. In fact, even if it were assumed that Luria sold no scrap whatsoever to the remainder of the industry, its market position and the trend revealed by a computation made on this basis would still remain impressive, as will hereafter be noted.

12. The second objection raised by Luria, based on the alleged incompleteness of the figures in evidence, relates to the incompleteness of the figures for certain years, even in the case of the data obtained from the so-called "reporting mills", i.e., the 17 respondents and the 53 nonrespondent ingot producers. The most significant omission referred to involves respondent Bethlehem. While it was able to supply figures as to its total scrap purchases for the years 1945 to 1954, it was unable to indicate how much of its scrap was purchased from brokers and dealers and from respondent Luria in the years 1945 and 1946. Counsel supporting the complaint contend that such omission does not prejudice Luria since, in all instances where the figures supplied by a mill did not reveal what proportion was purchased from brokers and dealers, they treated such purchases as having all been made from brokers and dealers, thereby increasing the broker-dealer "universe" against which Luria's share of the market was measured, and thus tending to minimize Luria's share of the market.

13. While it may be, as counsel supporting the complaint have indicated, that the method used by them has tended to understate Luria's share of the market, this does not answer the objection raised by Luria. Where the omissions are concentrated in certain years, mainly 1945 and 1946, the method used by counsel supporting the complaint tends to show that the increase in Luria's share of the market in later years has been somewhat greater than it actually was. While this does not significantly affect the trend revealed by the figures as a whole, or the

<sup>105</sup> The record reveals that Luria has been a substantial supplier of scrap to at least the following foundries and other miscellaneous consumers of scrap: American Manganese Steel Division of American Brake Shoe, Pacific Coast States Cast Iron Pipe Company, Electron Corporation, American Locomotive Company (Alco Products Inc.), Erie Forge & Steel Corporation, American Steel Foundries, Scullin Steel Company, General Steel Castings Corporation, Buckeye Steel Castings Company and a number of other Ohio-area foundries (see p. 410). It opened its Erie yard to better serve foundries in that area.

market-share data on a national basis, it does tend to distort the figures for certain regional markets. For example, the method used by counsel supporting the complaint purports to show that Luria's share of the Eastern Pennsylvania market in 1945 and 1946 was approximately 33%, that it increased to 48.5% in 1947, and reached 83.3% in 1954. Since the largest consumer of scrap in this market is Bethlehem and since the figures submitted by it contained no breakdown of its purchases from brokers and dealers and no figures on purchases from Luria prior to 1947, it seems evident that the market-share percentages computed by counsel supporting the complaint for 1945 and 1946 are unrealistic. Luria has proposed that all market-share computations should start with the year 1947, since that is the earliest year for which the record contains substantially complete information for the reporting mills as to their purchases from brokers and dealers and from Luria. In the opinion of the examiner the objection raised by Luria is sound, and the method proposed by it of beginning the market-share computations with 1947 is the desirable method to be used.

14. Set forth below is a series of three tables which disclose Luria's position as a supplier to the reporting mills. As already noted, these mills include all of the respondent mills and 53 nonrespondent mills which, together, represent 97.8% to 99.3% of the ingot capacity of the United States and account for from two-thirds to three-fourths of all the scrap purchased domestically. The data obtained from such mills affords a reasonable and adequate basis for gauging Luria's relative market position. The first table reflects Luria's position as a supplier to all of the reporting mills, and the second and third tables contain a breakdown of this information as between respondent and nonrespondent mills. Luria's share of the market is shown both as a percentage of the scrap purchased from all sources and as a percentage of the scrap purchased from broker-dealer sources.

TABLE I.—Purchases of scrap by all reporting mills from (a) all sources, (b) brokers and dealers, and (c) Luria and subsidiaries, 1947-54

	(a) Total purchases— 1,000 gross tons	(b) From brokers and dealers		(c) From Luria and subsidiaries		
		1,000 gross tons	Percent of total	1,000 gross tons	Percentage of—	
					Total	Broker-dealer
1947----	17, 224	15, 931	92. 5	2, 730	15. 8	17. 1
1948----	18, 741	17, 319	92. 4	3, 258	17. 4	18. 8
1949----	14, 173	12, 756	90. 0	2, 848	20. 1	22. 3
1950----	19, 791	18, 235	92. 1	5, 369	27. 1	29. 5
1951----	20, 444	18, 232	89. 2	5, 719	28. 0	31. 4
1952----	22, 367	20, 620	92. 2	6, 875	30. 7	33. 3
1953----	21, 897	19, 935	91. 0	7, 281	33. 3	36. 5
1954----	15, 807	14, 099	89. 2	4, 751	30. 1	33. 7

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TABLE II.—Purchases of scrap by respondent mills<sup>106</sup> from (a) all sources, (b) brokers and dealers, and (c) Luria and subsidiaries, 1947-54

	(a) Total purchases— 1,000 gross tons	(b) From brokers and dealers		(c) From Luria and subsidiaries		
		1,000 gross tons	Percent of total	1,000 gross tons	Percentage of—	
					Total	Broker-dealer
1947-----	5, 153	4, 829	93. 7	1, 736	33. 7	35. 9
1948-----	5, 150	4, 757	92. 4	1, 883	36. 6	39. 9
1949-----	4, 494	3, 802	84. 6	1, 866	41. 5	49. 1
1950-----	5, 742	5, 110	89. 0	3, 128	54. 5	61. 2
1951-----	6, 285	5, 665	90. 1	3, 837	61. 0	67. 7
1952-----	6, 786	6, 281	92. 6	4, 540	66. 9	72. 3
1953-----	7, 358	6, 531	88. 8	4, 963	67. 5	76. 0
1954-----	4, 784	4, 030	84. 3	3, 164	66. 1	78. 5

<sup>106</sup> In the case of respondents U.S. Steel and Bucyrus-Erie, the above figures include only the purchases at their respective plants at Geneva, Utah and Erie, Pa., since these are the only plants at which it is contended these respondents had an exclusive arrangement with Luria.

TABLE III.—Purchases of scrap by nonrespondent reporting mills<sup>107</sup> from (a) all sources, (b) brokers and dealers, and (c) Luria and subsidiaries, 1947-54

	(a) Total purchases— 1,000 gross tons	(b) From brokers and dealers		(c) From Luria and subsidiaries		
		1,000 gross tons	Percent of total	1,000 gross tons	Percentage of—	
					Total	Broker-dealer
1947-----	12, 071	11, 102	92. 0	994	8. 2	9. 0
1948-----	13, 590	12, 561	92. 4	1, 375	10. 9	10. 9
1949-----	9, 679	8, 954	92. 5	982	10. 1	11. 0
1950-----	14, 049	13, 125	93. 4	2, 242	16. 0	17. 1
1951-----	14, 159	12, 567	88. 8	1, 882	13. 3	15. 0
1952-----	15, 581	14, 339	92. 0	2, 335	15. 0	16. 3
1953-----	14, 539	13, 404	92. 2	2, 318	15. 9	17. 3
1954-----	11, 023	10, 068	91. 3	1, 588	14. 4	15. 8

<sup>107</sup> Purchases by respondents U.S. Steel and Bucyrus-Erie at plants other than Geneva, Utah and Erie, Pennsylvania, are reflected in the above table since, insofar as their other operations are concerned, they are in the position of nonrespondents.

15. Tables I to III above reveal the following facts of significance. Firstly and preliminarily, they indicate that both respondent and nonrespondent mills in almost every year purchased at least 90% of their scrap from broker-dealer sources. This tends to establish that the broker-dealer segment of the market (as distinguished from direct suppliers, such as industrial fabricators and railroads) is the major factor in influencing market conditions, including price and supply. It is evident, therefore, that Luria's standing in this segment of the market is of paramount significance in determining its over-all market position. However, since scrap moving through the broker-dealer

segment of the market accounts for the great bulk of the scrap sold to the principal domestic steel mill consumers, it actually makes little practical difference whether Luria's position is measured in terms of its share of the total scrap market or the broker-dealer segment thereof.

Secondly, Table I reveals a significant rise in Luria's market position nationally, between 1947 and 1954, insofar as the mills accounting for between two-thirds to three-fourths of the scrap purchased domestically are concerned. Its share of this market doubled, irrespective of whether it is measured in terms of total scrap purchases or of purchases from dealers and brokers. By 1953 it had acquired a position of supplying roughly one-third of the scrap purchased by the principal domestic mills.<sup>108</sup> However, as Tables II and III reveal, the improvement in its position is accounted for largely by its heavy sales to the respondent mills, which account for less than one-third of the scrap purchased by all the reporting mills. While the proportion of scrap purchased from Luria by the non-respondent mills increased modestly, from somewhat under 10% in 1947 to around 15% in 1953-1954, the proportion of their scrap purchased from Luria by the respondent mills increased from approximately 33% in 1947 to 66% in 1954. In terms of scrap purchased from broker-dealer sources, the respondent mills by 1954 were purchasing over three-fourths of their scrap from Luria. The contrast between Luria's position with the respondent mills, vis-a-vis its position with the nonrespondent mills, strongly suggests that the exclusive brokerage arrangements which it has with the former have been a vital factor in Luria's achieving its present substantial market position.

#### *Luria's Position in Regional Scrap Markets*

16. The statistical evidence offered by counsel supporting the complaint affords a basis for analyzing the changes in Luria's market position not only on a national basis, as has already been done, but in various regional markets. These are: (a) the North Atlantic area, (b) the Eastern Pennsylvania area, which is a subdivision of the North Atlantic area, (c) the Rocky Mountain area, and (d) the Pacific Coast area. The record also contains statistical evidence with respect to Luria's market position in the Pittsburgh and St. Louis areas, each of which will hereafter be separately discussed.

17. Respondent Luria has criticized the use of the above geographic area by counsel supporting the complaint for purposes of measuring

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<sup>108</sup> Even utilizing the method of computation urged by Luria, based on the purchases of all scrap consumers and the assumption that Luria sold no scrap to the nonreporting mills, it enjoyed a significant rise and had achieved a substantial market share by 1953-1954. From a position of supplying 10.4% of the scrap purchased by all consumers in 1947, it was supplying 24.3% and 20.6% by 1953 and 1954, respectively.

Luria's market position. While recognizing that these are the areas where Luria's mill customers are highly concentrated, Luria contends that its market position must be considered not merely in terms of the areas to which it supplies scrap, but also with reference to the areas from which it draws scrap. Luria points out, in this connection, that certain of the mills reach out beyond the above geographic areas to acquire portions of the scrap which they consume.

18. While it is true that there are significant movements of scrap across the geographic lines drawn by counsel supporting the complaint, they do, in the opinion of the examiner, represent realistic market areas against which to measure Luria's market position. For example, a number of the smaller respondent mills located in the Eastern Pennsylvania area acquire the greater portion of their scrap within this area. While some of the larger mills, particularly respondent Bethlehem, move up to the New York metropolitan area and to the New England area for substantial quantities of scrap which they consume, certainly the North Atlantic area as a whole supplies the overwhelming bulk of their scrap requirements on a regular basis. As has been previously noted, because freight costs are a significant item in the cost of scrap, steel mills tend to buy their scrap as close to home as possible. Only in times of peak capacity do they reach out for substantial quantities of scrap beyond the general geographic areas used by counsel supporting the complaint. The periodic importation of scrap from more remote areas does not obliterate the fact that the above-mentioned geographic areas are the basic areas from which the mills draw the bulk of their scrap year in and year out.

19. Before discussing in detail Luria's market position in each of the market areas involved, there is set forth below a table which portrays, graphically, Luria's comparative position in each market. The top column, "United States—Total", is merely a recapitulation of the information in Tables I to III, and is included so that a ready comparison may be made between the various regional markets and the United States as a whole. As in the case of Tables I to III, Luria's position is shown in terms of all the reporting mills as a group, and then in terms of respondent mills and nonrespondent mills, separately. Luria's position is measured in relationship to the purchases of scrap from all brokers and dealers. While this does not include purchases made from direct suppliers, such purchases, as has already been noted, account for approximately 10% or less of the scrap consumed by the mills. The exclusion of such purchases may tend to increase Luria's market share slightly, but does not detract from the over-all validity of the figures used or the trend which they reveal.

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IRON AND STEEL SCRAP  
COMPARISON OF PURCHASES BY REPORTING MILLS FROM LURIA BROTHERS AND SUBSIDIARIES WITH TOTAL FROM ALL BROKERS AND DEALERS, BY DESIGNATED AREAS

Area	1947			1948			1949			1950		
	Total brokers and dealers (1,000 gross tons)	Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)	Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)	Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)	Luria Brothers and Subsidiaries	
		1,000 gross tons	Percent-age									
United States, total	15,931	2,730	17.1	3,258	18.8	12,756	2,848	22.3	18,235	5,369	29.4	
Nonrespondents <sup>109</sup>	11,102	994	9.0	1,375	10.9	8,954	982	11.0	13,125	2,242	17.1	
Respondents	4,829	1,736	35.9	1,883	39.6	3,802	1,866	49.1	5,110	3,128	61.2	
Pacific Coast, total	1,005	2	.2	(*)	(**)	906	60	6.6	894	104	11.7	
Nonrespondents	603	2	.3	(*)	(**)	566	44	7.8	530	32	6.0	
Respondents	403					340	15	4.5	364	72	19.9	
Rocky Mountain, total	231	230	99.3	287	94.0	287	283	98.6	355	338	95.2	
Nonrespondents												
Respondents	231	230	99.3	287	94.0	287	283	98.6	355	338	95.2	
North Atlantic, total	3,229	1,103	34.1	1,187	38.1	1,988	931	46.8	2,713	1,480	54.6	
Nonrespondents	644	159	24.7	140	21.1	499	125	25.0	698	190	27.2	
Respondents	2,586	943	36.5	1,048	42.6	1,490	806	54.1	2,015	1,290	64.0	
Eastern Pennsylvania, total	1,620	786	48.5	842	51.8	1,015	592	58.3	1,323	958	72.4	
Nonrespondents	296	123	41.5	133	42.1	189	86	45.5	281	147	52.2	
Respondents	1,324	663	50.1	710	54.2	826	506	61.2	1,043	811	77.8	

See footnotes at end of table.

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Area	1951			1952			1953			1954		
	Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)	Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)	Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)	Luria Brothers and Subsidiaries		Total brokers and dealers (1,000 gross tons)
	1,000 gross tons	Percent age		1,000 gross tons	Percent age		1,000 gross tons	Percent age		1,000 gross tons	Percent age	
United States, total.....	18,232	31.4	20,620	33.3	6,875	33.3	19,935	7.281	36.5	14,099	4,751	33.7
Nonrespondents <sup>109</sup> .....	12,567	15.0	14,339	16.3	2,335	16.3	13,404	2,318	17.3	10,068	1,588	15.8
Respondents.....	5,665	31.4	6,281	31.4	4,540	31.4	6,531	4,963	31.4	4,030	3,164	31.4
Pacific Coast, total.....	1,202	25.5	1,278	33.1	424	33.1	1,066	488	45.8	821	416	50.6
Nonrespondents.....	686	8.6	713	15.3	109	15.3	517	74	14.4	421	94	22.3
Respondents.....	516	37.9	565	37.9	315	37.9	549	414	37.9	400	322	37.9
Rocky Mountain, total.....	450	39.3	357	39.3	323	39.3	222	212	39.3	214	211	39.3
Nonrespondents.....	450	39.3	357	39.3	323	39.3	222	212	39.3	214	211	39.3
Respondents.....	450	39.3	357	39.3	323	39.3	222	212	39.3	214	211	39.3
North Atlantic, total.....	3,280	2.034	3,776	68.8	2,596	68.8	4,196	3,069	73.1	2,145	1,597	74.5
Nonrespondents.....	771	29.9	896	31.1	257	31.1	866	219	25.3	426	99	23.2
Respondents.....	2,509	72.7	2,880	72.7	2,339	72.7	3,330	2,850	85.6	1,719	1,498	87.1
Eastern Pennsylvania, total.....	1,644	1.187	1,873	72.2	1,387	72.2	2,038	1,625	78.9	1,015	845	83.3
Nonrespondents.....	330	181	400	54.7	224	54.7	425	194	45.6	162	86	53.1
Respondents.....	1,314	1,006	1,473	78.6	1,163	78.6	1,613	1,431	87.6	853	759	89.0

United States Steel Corp., except its Columbia-Geneva Steel Division, Utah District, and by Bucyrus-Erie, except its plants located in Erie, Pa.  
<sup>109</sup> All percentage figures throughout table were calculated before tonnage figures were rounded to thousands.

\* Less than 500 gross tons.  
 \*\* Less than 0.05 percent.  
<sup>109</sup> Data shown for "nonrespondents" throughout table include purchases by the

*North Atlantic Area*

20. The North Atlantic area includes the six New England States, plus New York, New Jersey, Delaware, Maryland, the District of Columbia and Eastern Pennsylvania. It is one of the major scrap-producing and scrap-consuming areas in the United States. The respondent mills located in this area purchased between 15 to 20% of the total broker-dealer scrap purchased by the reporting mills throughout the country during the period from 1947-1954. The average for the 8-year period was somewhat in excess of 18%.

21. The respondent mills located in the North Atlantic area are: Baldwin-Lima-Hamilton, Phoenix and Central, Colorado Fuel & Iron (except for the plant at Pueblo, Colorado), Columbia Malleable Castings, Lukens Steel, Hanna Furnace, a subsidiary of National Steel, and Bethlehem Steel (except for the latter's plant at Johnstown, Pennsylvania). The nonrespondent reporting mills having plants located in the North Atlantic area are: Alan Wood Steel, Allegheny Ludlum, Armco Steel, Borg-Warner, Carpenter Steel, Crucible Steel, Eastern Stainless Steel, Harrisburg Steel, Henry Disston & Sons, International Harvester, Merritt-Chapman & Scott, Midvale Company, Northeastern Steel, Republic Steel, Washburn Wire, and United States Steel.

22. As revealed by the above table, Luria's position as a supplier to the reporting mills located in the North Atlantic area has increased substantially from 1947 to 1954. In 1947 it supplied 34.1% of the scrap purchased by such mills from broker-dealer sources, and by 1954 the proportion of scrap supplied by it had increased to 74.5%. Most of this improvement was due to the increase in its sales to the respondent mills, which account for approximately 80% of the scrap purchased by the reporting mills in the North Atlantic area. As indicated by the table, the percentage of scrap supplied to the nonrespondent mills by Luria remained fairly static during this period. It was 24.7% in 1947, reached a peak of 31.1% in 1952 and then declined to 23.2% in 1954. In contrast to this, the percentage purchased by the respondent mills, with whom Luria had exclusive brokerage arrangements, increased from 36.5% in 1947 to 87.1% in 1954. It is worthy of note that the most significant part of Luria's rise occurred during the period from about 1949 to 1951, when its relationship with Bethlehem was forming. Thus, whereas it was supplying 38.1% of the broker-dealer scrap purchased by the reporting mills in 1948, its share had increased to 54.6% by 1950 and to 62% by 1951.

23. As previously noted, Luria questions the figures used by counsel supporting the complaint because they are limited to scrap of broker-dealer origin. However, even if scrap purchases made from direct

sources were included, the results would not be significantly different. Thus, the computations suggested by Luria reveal that its share of purchases by the respondent mills from all sources in 1947 was 34%, which is not substantially lower than the figure used by counsel supporting the complaint, viz, 36.5%, and that its share increased to 72% in 1953, compared to the 85.6% figure used by counsel supporting the complaint. In 1954, as a result of increased purchases by the mills from direct sources, Luria's share of total purchases declined to 65%, compared to its share of broker-dealer purchases of 87.1% in the same year. However, on either basis it is apparent that Luria has obtained the lion's share of the market in the North Atlantic area and has experienced a phenomenal rise since 1947.

24. Luria also argues that, aside from the failure to include direct purchases, the above figures do not properly reflect its position because they do not include purchases by foundries and other consumers not covered by the survey made by counsel supporting the complaint. It is contended that such consumers accounted for 35% of the purchased scrap in the North Atlantic area in 1953 and 50% in 1954. Based on the assumption that such consumers purchased no scrap from Luria, it is contended that Luria's share of the market was 47% in 1953 and 37% in 1954. As previously noted, there is no basis for the assumption that Luria did not sell substantial quantities of scrap to the nonreporting mills and foundries. However, even accepting the figures used by Luria, its position in the North Atlantic area remains impressive, albeit not as overwhelming as the percentages reflected by the survey introduced in evidence by counsel supporting the complaint.

#### *Eastern Pennsylvania Area*

25. The Eastern Pennsylvania area is a subdivision of the larger North Atlantic area. It is the area where Luria originated, both as a dealer and as a broker, and where it has reached one of its strongest relative positions in the United States. The area includes one of the largest concentrations of steel mills and scrap consumers in the United States west of the Pittsburgh-Youngstown area. Geographically, it includes that part of Pennsylvania which is located east of the following counties: McKean, Cameron, Clearfield, Cambria and Somerset. Located within this area are the Bethlehem and Steelton plants of respondent Bethlehem, the Phoenixville and Harrisburg plants of Phoenix, the Burnham and Eddystone plants of Baldwin-Lima-Hamilton, the Coatesville plant of Lukens, CF&I's blast furnace at Birdsboro and the Columbia Malleable foundry at Columbia. Also located within the area are the plants of the following nonrespondent mills whose scrap figures are in evidence: Alan Wood, Carpenter,

Henry Disston, Harrisburg Steel, Merritt-Chapman & Scott, Midvale and U.S. Steel (Fairless Works).<sup>111</sup>

26. Scrap purchases by the reporting mills located in the eastern Pennsylvania area represented approximately one-half of the purchases of broker-dealer scrap by the reporting mills in the North Atlantic area as a whole. The great bulk of such purchases was accounted for by the respondent mills. The purchases of the respondent mills located in the eastern Pennsylvania area represented from 78.6% to 84.0% of the purchases of all the reporting mills located in the area.

27. As the above table reveals, Luria's share of broker-dealer scrap purchases by the reporting mills in the eastern Pennsylvania area increased from 48.5% in 1947 to 83.3% in 1954. The major portion of this increase is accounted for by the increase in its sales to the respondent mills, particularly to Bethlehem and Phoenix. Its share of broker-dealer purchases by the respondent mills increased from 50.1% in 1947 to 89.0% in 1954, compared to its share of nonrespondent broker-dealer purchases of 41.5% in 1947 and 53.1% in 1954.

28. Even on the basis of scrap purchases by the reporting mills from all sources and not merely from brokers and dealers, the method of computation which respondent Luria proposes, the figures disclose that Luria has been able to achieve a dominant position in the eastern Pennsylvania area. Its share of total scrap purchases by the reporting mills increased from 47.9% in 1947 to 73% in 1954. Breaking the figures down as between respondent and nonrespondent mills, its share of the scrap business of the respondent mills increased from 48% in 1947 to 76% in 1954, compared to an increase from 41% to 52%, in the case of the nonrespondent mills, during the same period.

29. As previously noted, Luria also argues that the figures used by counsel supporting the complaint do not properly reflect its position because they do not account for the scrap purchases of foundries and other miscellaneous uses of scrap. In 1953 such consumers purchased 578,000 gross tons of scrap, as compared to 2,298,000 gross tons purchased by the reporting mills in the Eastern Pennsylvania area. In 1954 such consumers purchased 404,000 gross tons, as compared to 1,163,000 gross tons purchased by the reporting mills. The purchases by such consumers thus represented 20% of the total scrap purchased in the Eastern Pennsylvania area in 1953 and approximately 26% in 1954. Luria, as already noted, assumes that substantially all of such

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<sup>111</sup> U.S. Steel's plant at Fairless, which is treated as a nonrespondent (as are all its other plants except for Geneva), did not begin to buy scrap until 1952 and, except for 1953, was not a large buyer of scrap. Its purchases were 51,000 gross tons in 1952; 193,000 in 1953; and 19,000 in 1954.

scrap was purchased from sources other than itself, a fact which is not supported by the record. However, even accepting Luria's position, arguendo, the figures used by it disclose that in 1953 it supplied 57% of the scrap purchased in the Eastern Pennsylvania area and in 1954 it supplied 54%, which still leaves it a major factor in the market. While no precise comparison can be made with the earlier years because the record contains no equivalent information for such years, if it be assumed that the purchases of the consumers which are unaccounted for were in substantially the same proportion to the reporting mills as during the 1953-1954 period, there can be no doubt that Luria's position in 1953-1954 was substantially above that of the earlier period.

*Pacific Coast Area*

30. The Pacific Coast area consists of the States of California, Oregon and Washington. The only respondent operating plants in the area is Bethlehem Pacific, which has plants in the Los Angeles and San Francisco areas, and in Seattle, Washington. It purchases more scrap than any other single scrap consumer in the area. In some years it has purchased almost as much or more scrap from brokers and dealers than all the rest of the reporting mills. Thus, in 1953 it purchased 549,000 gross tons compared to 517,000 gross tons by the nonrespondent mills, and in 1954 it purchased 400,000 gross tons compared to 421,000 by the nonrespondent mills.

31. The nonrespondent mills include U.S. Steel, which operates plants at Torrance and Pittsburg in California. Other companies with mills in California are Kaiser Steel, Judson Steel, National Supply, and Pacific States Steel. The other nonrespondent reporting mills on the West Coast are Oregon Steel Mills of Portland, and Isaacson Iron Works and Northwest Rolling Mills of Seattle. The only nonrespondent mills which have purchased substantial quantities of scrap from Luria are Kaiser, U.S. Steel and Pacific States Steel.

32. As has been previously noted, Luria did not operate any offices or yards in the Pacific Coast area until 1948, when it opened a brokerage office in San Francisco. In late 1950 or early 1951, through its subsidiary Lipsett Steel Products, Inc., it opened a scrap yard at Vernon City, California, adjacent to the Los Angeles area plant of Bethlehem Pacific. In 1951 Luria opened additional brokerage offices in Los Angeles and Seattle.

33. Prior to 1949 Luria had sold only insignificant tonnages to the reporting mills. In 1949 it sold only 6.6% of the broker-dealer scrap purchased by the reporting mills. In that year its sales to the nonrespondent mills amounted to 44,000 tons, compared to 15,000 tons sold to Bethlehem Pacific. Of the scrap sold to nonrespondent mills, 41,000 tons was accounted for by sales to Kaiser. By 1954 its sales

to the reporting mills had reached 50.6% of the scrap purchased by them from brokers and dealers. While there was a significant rise in its share of broker-dealer scrap purchased by the nonrespondent mills, from 7.8% in 1949 to 22.3% in 1954, there was an even sharper increase in its position as a supplier to respondent Bethlehem Pacific. Its share of the latter's purchases from brokers and dealers increased from 4.5% in 1949 to 80.4% in 1954.

34. Luria's rise from a negligible position to that of supplying approximately half of the broker-dealer scrap on the Pacific Coast was due primarily to its exclusive arrangement with Bethlehem Pacific. In 1951, the year immediately following the exclusive arrangement at Los Angeles, it supplied 37.9% of Bethlehem Pacific's scrap of broker-dealer origin. In the following 2 years, as the arrangement began to spread to Bethlehem Pacific's other plants, the percentage of scrap supplied by Luria increased to 55.7% and 75.4%. As it became entrenched on the Pacific Coast, buttressed by its arrangement with Bethlehem Pacific, Luria was in a better position to supply other large consumers, albeit not on an exclusive basis. This was particularly true of U.S. Steel's California plants and Kaiser Steel which, after Bethlehem Pacific, are the two largest purchasers of broker-dealer scrap on the west coast. From supplying 17.9% of Kaiser's broker-dealer scrap in 1951, Luria was supplying 52.9% by 1954; and from supplying 9.3% of U.S. Steel's Pacific Coast needs of broker-dealer scrap in 1951, Luria was supplying 36.7% by 1954. It was also able to improve its position as a supplier to Pacific States Steel, the third largest scrap purchaser, from 7.4% in 1951, to 17.3% in 1953 and 13.6% in 1954.

35. As in the case of the other areas discussed, Luria objects to the failure of counsel supporting the complaint to include purchases by consumers other than the reporting mills. Such consumers in the Pacific Coast area, account for 30% to 40% of purchased scrap consumed by scrap users. Overlooking the erroneous factual assumption by Luria previously adverted to, viz, that it sold no scrap to the other consumers, the computations made by Luria disclose that its share of scrap sold to all consumers increased from 5% in 1949 to almost 30% in 1954. While this increase is not as large as that indicated by the figures restricted to the reporting mills, it is, nevertheless, impressive.

#### *Rocky Mountain Area*

36. The Rocky Mountain area consists of the States of Arizona, Colorado, Utah, Idaho, Montana, and Wyoming. There are only two reporting mills operating within this area, both operated by respondents. These are the mill of CF&I at Pueblo, Colorado, and the mill of U.S. Steel at Geneva. There are also a number of foundries

operating within the area, the principal ones of which are operated by Kennecott Copper Company at Salt Lake City, Utah; Electron Corporation at Littleton, Colorado; and Pacific States Cast Iron Pipe Company at Provo, Utah.

37. As already noted, Luria became the exclusive broker for CF&I's Pueblo plant in 1946, when it opened a brokerage office in Pueblo and acquired the controlling interest in Pueblo Compressed Steel Company, which operated a scrap yard in Pueblo, Colorado. Likewise, as has been noted, Luria became the exclusive broker for the Geneva plant of U.S. Steel in October 1948. Geneva did not purchase any outside scrap until 1947, when it purchased only 1,710 gross tons, none of it from Luria. 1948 was Geneva's first year of substantial outside scrap purchases.

38. Prior to 1946 Luria was not a substantial supplier in the Rocky Mountain area. In 1946, when Luria was supplying only CF&I among the reporting mills, it supplied 89.9% of the broker-dealer scrap purchased by that mill. In 1949, the first full year after it had entered into the exclusive brokerage arrangement with Geneva, it supplied 98.6% of the broker-dealer scrap purchased by the two principal consumers of scrap in the Rocky Mountain area. In 1954, the last year for which there are figures in the record, Luria supplied 98.9% of the broker-dealer scrap purchased by these mills.

39. As in the other areas discussed, Luria contends that the figures received from the reporting mills cover only a portion of the scrap consumed in the area and therefore do not accurately portray Luria's market position. However, unlike some of the other areas discussed, there is specific affirmative evidence that Luria supplies a very substantial portion of the scrap purchased by a number of nonreporting mills. Thus the evidence discloses that Luria is the exclusive or substantially exclusive broker for Electron Corporation, Kennecott Copper, and Pacific States Cast Iron Pipe Company. These companies, together with CF&I and Geneva, constitute the largest consumers of scrap in the Rocky Mountain area.

#### *Pittsburgh-Youngstown Area*

40. The Pittsburgh-Youngstown area is a hexagon-shaped territory extending from Johnstown, Pennsylvania on the east, through Monessen and Washington, Pennsylvania (south of Pittsburgh); then northwest through Steubenville, Ohio, Weirton, West Virginia, and Youngstown, Ohio to Warren, Ohio; then east through Sharon, Pennsylvania, and back to Johnstown through Butler, Pennsylvania. The respondent mills located within the area are National, with a plant at Weirton, West Virginia; Edgewater, with a plant at Pittsburgh; and Bethlehem, with a plant at Johnstown. The largest scrap consumer in the

area is U.S. Steel, which is not considered a respondent with respect to its mills in this area. The second largest consumer is also a nonrespondent, Republic Steel. The third largest consumer of purchased scrap is respondent National. These three consumers, together, account for at least 42% of the broker-dealer scrap purchased by the reporting mills in the Pittsburgh-Youngstown area. Other substantial consumers among the nonrespondent reporting mills within the area are: Allegheny-Ludlum Steel, Armco Steel, Copperweld Steel, Crucible Steel, Jones & Laughlin, Pittsburgh Steel, Sharon Steel, Timken Roller Bearing, Wheeling Steel and Youngstown Sheet & Tube.

41. Respondent Luria has operated a brokerage office in Pittsburgh since 1910 and a scrap yard since 1920. As previously noted, respondent Southwest has also been active in the Pittsburgh area since 1941, and was acquired by Luria on February 1, 1950. Prior to its acquisition by Luria, Southwest had yards at both Glassport and McKeesport, Pennsylvania, near Pittsburgh.

42. Unlike the statistical data for some of the other sections of the country, the record contains reasonably reliable data of scrap purchases from Luria by the reporting mills in the Pittsburgh-Youngstown area, beginning in 1945, rather than in 1947. The only exception to this is the data of respondent Bethlehem's Johnstown plant, which does not show how much scrap was purchased from Luria prior to 1947. However, since the scrap purchases of this mill represent only about 5% or less of the scrap consumed by the reporting mills in the area, the inclusion of its figures would not significantly affect Luria's relative position in 1945 and 1946. A comparison may therefore be made of Luria's position in the Pittsburgh-Youngstown area beginning with 1945, rather than 1947.

43. In 1945 Luria supplied 15.2% of the scrap purchased by the reporting mills in the Pittsburgh-Youngstown area from broker-dealer sources. Between 1946 and 1948 its percentage of the broker-dealer scrap market fluctuated within a narrow range, between 20.4% and 20.9%. In 1949, the year in which negotiations for its acquisition of Southwest occurred, its share of the broker-dealer market had increased to 26.2%. During the period from 1945 to 1949 Southwest's share of the market fluctuated between 4.7% and 7.8%. In 1949 it sold 5.9% of the broker-dealer scrap in the area. Thus the combined sales of the two companies in 1949 represented 32.0% of the broker-dealer scrap market, as reflected by the purchases of the reporting mills in the area. By 1954 the combined percentage of the two companies had reached 36.0%, with Luria's share representing 27.2% and Southwest's 8.8%.

44. The improvement of Luria's position in the Pittsburgh-Youngstown area, while substantial, was not as great as in certain other areas for the simple reason that the mills with which it had exclusive brokerage arrangements accounted for a much smaller portion of the scrap consumed in the area, than in the areas previously discussed. Thus, in 1945 the combined purchases of respondents National, Edgewater and Bethlehem from broker-dealer sources represented only about 19% of the broker-dealer scrap purchased by the reporting mills in the area, and in 1954 about 17%. Nevertheless, the percentage increase achieved by Luria between 1945 and 1954 is not inconsequential. A growth of from approximately 15% to 36% cannot be considered *de minimis*. There can be no doubt that this growth was aided, in significant part, by the exclusive arrangement with the respondent mills in the area and by its acquisition of Southwest.

45. As in the case of the other areas discussed, Luria contends that the figures used do not accurately portray its position because they do not include data from foundries and other miscellaneous users. However, the examiner is satisfied from the record that Luria and its subsidiary Southwest are substantial suppliers to such other consumers of scrap. There is no reason to believe that if statistical data were available from such consumers it would significantly change the market-share data and trends revealed by the figures in the record. For example, the figures of the Alco Products, Inc. (American Locomotive Company), which operates a foundry at Latrobe, Pennsylvania, which are in evidence reveal that Luria supplied between 14% and 45% of the broker-dealer scrap purchased by this plant. The evidence also discloses that Luria serves a number of foundries in eastern Ohio and western Pennsylvania on an exclusive basis.

46. Luria also contends that a much wider geographic area should be used for measuring its market share. The area used by counsel supporting the complaint consists of most of western Pennsylvania, except for the area around Erie, and a portion of eastern Ohio between Steubenville and Warren, including Youngstown, Ohio and Weirton, West Virginia (the latter being across the Ohio river from Steubenville). Luria contends that the geographic market area should include not only all of western Pennsylvania and eastern Ohio, but all of West Virginia and Virginia.

In the opinion of the examiner there is no record basis for adopting the geographic market area proposed by Luria. Moreover, the method used by it for measuring its market share in this area is improper since it compares Luria's sales within the narrower Pittsburgh-Youngstown area with the scrap purchases made by all mills and other consumers in the broader four-state area. This assumes that Luria

made no sales in the broader area, a fact which is not supported by the record.

If anything, the area used by counsel supporting the complaint is somewhat too broad. It may be that an appropriate subdivision could have been made as between the Pittsburgh area and the Eastern Ohio area. This was not feasible because the figures of the largest consumer in the area, U.S. Steel, could not be broken down between the two areas. Its Pittsburgh district includes not only plants in western Pennsylvania but plants in eastern Ohio, and its purchase statistics are compiled for the district as a whole. However, there is no reason to believe that if the two areas were separated the figures would disclose any smaller market share by Luria. If anything, a separate compilation for western Pennsylvania would tend to show that its subsidiary Southwest's share was somewhat greater than the figures discussed above disclose, since that is the area in which its activities are concentrated and in which it serves a large number of foundries. As far as the Eastern Ohio area is concerned, the record discloses that it is served by Luria's Cleveland office, which is one of its most active offices, and that it serves on an exclusive or substantial basis a number of the foundries which operate extensively throughout the area.

*St. Louis District*

47. The St. Louis district includes the metropolitan area of St. Louis and the adjacent areas in Missouri and Illinois. The only respondent mill doing business in this area is Granite City Steel, which is located at Granite City, Illinois. It and Laclede Steel, which operates steel mills at Alton and Madison, Illinois, are by far the largest consumers of scrap in the area. There are also three large foundries in the area: American Steel Foundries Corporation with plants at Granite City and East St. Louis; Scullin Steel Company in St. Louis; and General Steel Castings Corporation of Granite City. Unlike most of the other areas, the record contains statistical evidence of the scrap purchases of these three foundries, as well as of the two ingot producers. There are also some 40 to 50 other scrap consumers in the area, but they are relatively small and, together, account for less than 20% of the broker-dealer scrap purchased in the area.<sup>112</sup>

48. Luria opened a brokerage office in St. Louis in 1945. At that time it was a relatively small supplier of scrap in the area. In 1945 it sold only 8,470 gross tons of scrap to Granite City, constituting 3.4% of

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<sup>112</sup> Indicative of the relatively small size of the other consumers, which are mainly foundries, is the fact the largest of the foundries whose figures are in evidence purchased only 18,000 tons of scrap from brokers and dealers in 1954, while the smallest purchased only 8,000 tons. This may be compared with purchases by the two ingot producers of 275,000 tons and 313,000 in the same year.

that company's total scrap purchases. In the years from 1946 to 1949 its sales to Granite City were even smaller, constituting 0.3% or less of its scrap purchases. In 1946, the first year for which data is available, Luria supplied 4,775 gross tons of scrap to Laclede, constituting 2.5% of that company's scrap purchases. In the succeeding years, 1947-1949, Luria's sales to Laclede increased somewhat reaching a peak of 38,745 tons in 1949, which represented 16.4% of that company's total scrap purchases, and 16.7% of its purchases from brokers and dealers. The record does not contain any data as to the extent to which Luria was a supplier to the other scrap consumers in the area prior to 1949. However, from the fact that Granite City and Laclede together accounted for approximately 82% of the scrap purchased by the five largest consumers in the area from brokers and dealers in 1949, it may be assumed that up to 1949 Luria was a relatively small factor in the St. Louis market.

49. Set forth below is a table which reflects Luria's position as a supplier of scrap in the St. Louis area from 1949 to 1954 to the five largest consumers, Granite City Steel, Laclede Steel, American Steel Foundries, Scullin Steel and General Steel Castings. The computations are based on the purchases of such consumers from brokers and dealers.

SCRAP PURCHASES FROM BROKERS AND DEALERS BY FIVE MAJOR CONSUMERS,  
ST. LOUIS DISTRICT, 1949-54

	1949	1950	1951	1952	1953	1954
Total all companies.....	603,716	909,178	920,549	889,268	796,188	630,272
Percent from Luria.....	16.5	31.0	51.7	42.5	51.6	45.4
Total Granite City.....	261,895	407,054	408,754	349,119	397,771	274,640
Percent from Luria.....	0.3	59.5	100.0	100.0	100.0	100.0
Total nonrespondents.....	341,821	502,124	511,795	540,149	398,417	355,632
Percent from Luria.....	28.7	7.9	11.1	5.4	3.3	3.1

50. As is evident from the above table, Luria has substantially increased its position as a supplier in the St. Louis district. Starting with 16.5% of the broker-dealer scrap purchased by the five largest consumers in 1949, it more than trebled its share of the market by 1950, reaching over 51% in both 1951 and 1953, before declining somewhat to 45.4% in 1954. Since substantially all of the scrap purchased by the two largest consumers, Granite City and Laclede, is purchased through brokers and dealers, it may be assumed that the percentages revealed in the above table substantially reflect Luria's position as a supplier of scrap from all sources in the market. As is also apparent from the table, the increase in Luria's position has been achieved entirely as a result of its exclusive arrangement with Granite City which, except for the year 1954, has been by far the largest consumer of scrap in the

area.<sup>113</sup> In the case of the other major consumers, Luria's position as a supplier began to decline after 1950, when it became Granite City's exclusive broker. The decline was particularly acute in the case of Laclede and Scullin, to which Luria had supplied 16.7% and 65.0%, respectively, of their broker-dealer scrap in 1949.

51. Luria contends that the proper market area for measuring its market position is not the St. Louis district, but a broader seven-state area consisting of Missouri, Illinois, Iowa, Indiana, Arkansas, Kentucky and Tennessee. The record contains no substantial evidence to support a finding that this is a proper market area. The primary purpose of market share information in this instance is to provide a basis for determining the probable competitive impact of the Luria-Granite City exclusive. Granite City's principal competitors for scrap are the four other consumers located within the St. Louis district. It and the other consumers are or have been served principally by brokers and dealers located in the St. Louis district. While some of these suppliers periodically obtain scrap from certain of the areas referred to by Luria, the principal part of their requirements are obtained within the industrial complex known as the St. Louis district.

#### B. *The Export Market*

1. As has already been found, following the lifting of export controls on October 16, 1953, Luria became an exclusive supplier to the OCCF in a joint venture with Western Steel and Schiavone-Bonomo. In 1954 Luria, either alone or as a joint venturer, exported 751,813 gross tons of scrap, of which 543,219 gross tons were exported to the OCCF. In 1955 it exported 2,150,217 gross tons of scrap, of which 1,967,635 gross tons were exported to the OCCF countries.

2. In 1954 and 1955, largely as a result of the exclusive arrangement with the OCCF, Luria became the dominant exporter of scrap from the United States. In 1954 shipments by Luria and its joint venturers accounted for 60.4% of the 1,244,132 gross tons of scrap shipped to foreign countries, other than Canada and Mexico (which had not been included in the export embargo applicable up to October 1953). In 1955 shipments by the Luria group accounted for 54.4% out of total shipments of 3,952,047 gross tons to such countries. If Canada and Mexico are included, shipments by Luria represented 50.5% of total exports in 1954, and 47.1% in 1955.<sup>114</sup>

3. Shipments by the Luria group represented the major portion of shipments made from certain United States customs districts, as well

<sup>113</sup> In 1954 Laclede purchased 312,797 gross tons from brokers and dealers, compared to 274,640 gross tons purchased by Granite City. In the remaining years Granite City's purchases were generally 30,000 to 100,000 tons greater than Laclede's.

<sup>114</sup> The above computations do not include minor export shipments under \$500.00.

as the major portion nationally. Thus, in 1954 shipments by Luria from Custom District Ten (primarily the Port of New York) amounted to 78.3% of scrap shipments from that district, and in 1955 they represented 79.1% of the shipments. Shipments made from the Port of New York, in turn, accounted for 31.6% of the total scrap shipped from the United States in 1954 and 30.8% in 1955. Luria also shipped approximately half of the scrap shipped from the New England ports in 1954 and 1955, the proportion shipped in these years being 50.5% and 48.9%, respectively. Luria's shipments from the Port of Philadelphia represented 77.2% of the scrap exported from that port in 1954 and 47.5% in 1955.

4. While Luria's shipments to Japan have been found not to have been made pursuant to any exclusive agreement, it may be noted that in 1954 it shipped approximately 90,000 tons or 32% of the scrap exported to Japan (not including shipments by Hugo Neu), and in 1955 it shipped 132,467 tons or 18.9% of the scrap exported to Japan. It may also be noted, in considering Luria's position on the West Coast where it had an exclusive brokerage arrangement with Bethlehem Pacific, that it shipped 57,445 gross tons to Japan from California ports in 1954, constituting 39% of the scrap shipped to Japan from such ports. Its total export shipments from California ports in 1954 were 117,653 gross tons, constituting 50% of the scrap shipped from such ports. Its exports in 1955 from California ports were 124,888 gross tons, or 27.3% of the scrap shipped from such ports.

#### IV. CONCLUSIONS

##### A. *As to the Facts*

1. Up to the early 1940's Luria's operations were confined mainly to the Eastern United States. From a modest beginning around 1890 in the Eastern Pennsylvania area, the company gradually expanded its operations, first as a dealer and then as a broker, into other areas of the Eastern United States. By the 1930's it was doing business in certain of the adjacent Midwest areas, including Detroit, Chicago and Cleveland. However, the bulk of its scrap was obtained from, and sold in, the Eastern United States.

2. During the 1940's and particularly after World War II, Luria began to extend its operations into other areas of the country, including Houston, Texas; Birmingham, Alabama; St. Louis, Missouri; the Rocky Mountain States and California. In the 1950's it moved into other areas, including Seattle, Washington and Montreal, Canada, and began to do a very large export business. During this period it also acquired the stock of its largest competitor in the Pittsburgh area, respondent Southwest.

3. While Luria was a substantial factor in the scrap business around 1945, its influence was restricted largely to the Eastern United States. However, in the succeeding years it became a dominant factor in a number of other sections of the country, including the St. Louis area, the Rocky Mountain area, and the West Coast. Likewise, from being the major, but not necessarily dominant, factor in the Eastern United States, it began to out distance its competitors until by the middle 1950's, it was far and away the dominant factor in the scrap business in the eastern part of the United States.

4. Its sales to the steel mills comprising approximately 98% or more of the ingot capacity in the United States increased from approximately 2,700,000 gross tons in 1947 to a peak of over 7,000,000 gross tons by 1953, although they declined somewhat in 1954 to 4,750,000 gross tons, following the end of the Korean War. From a position of supplying approximately 17% of the scrap purchased by such mills from brokers and dealers in 1947, it reached the position of supplying over one-third of such scrap in both 1953 and 1954. While its sales to the nonrespondent mills increased somewhat during this period, it was mainly because of its sales to the respondent mills that Luria was able to substantially improve its over-all industry position.

5. The improvement in Luria's position was particularly pronounced in those sections of the country where the respondent mills are the principal or major factors in the use of scrap. For example, in the North Atlantic area Luria's position as a supplier of scrap to the major ingot producers whose scrap purchase figures are in evidence increased from 34.1% of the scrap purchased by these producers from brokers and dealers in 1947 to 74.5% in 1954. In other words, from a position of supplying approximately one-third of the broker-dealer scrap purchased by these mills in 1947 Luria, by 1954, was supplying almost three-fourths of such scrap. This increase was due mainly to the increase in Luria's sales to the respondent mills, whose purchases account for approximately 80% of the scrap purchases of the producers in question. In the Eastern Pennsylvania area, which lies geographically within the greater North Atlantic area, Luria increased its position from 48.5% of the broker-dealer scrap purchases of the principal mills in the area in 1947 to 83.3% in 1954. This increase, again, was accomplished mainly by the increase in its sales to the respondent mills, whose purchases account for between 79% and 84% of the scrap purchases of the principal mills in the area.

6. Other areas which saw major increases in Luria's position were the Pacific Coast, the Rocky Mountain and the St. Louis areas. From a position of less than one percent in 1947, Luria increased its share of the broker-dealer scrap purchased by the ingot producers on the

Pacific Coast to over 50% in 1954. This was due largely to the increase in its sales to respondent Bethlehem Pacific, the largest purchaser of scrap on the West Coast. In the Rocky Mountain area, where it had practically no sales in 1945, it increased its relative position to almost 90% of the broker-dealer scrap purchased by the ingot producers in 1946 and to almost 99% in 1954. This was the result of its sales to respondents CF&I and U.S. Steel. In the St. Louis area it increased its position as a supplier to the five principal scrap consumers from 16.5% of the broker-dealer scrap purchased by such consumers in 1949 to 45.4% in 1954. This improvement was due almost entirely to its sales to respondent Granite City.

7. The only area covered by the evidence which did not show as dramatic an increase as those indicated above was the Pittsburgh-Youngstown area, where Luria's position expanded from approximately 15.2% of the broker-dealer scrap purchased by the principal ingot producers in 1945 to 27.2% in 1954. This however, was augmented by an additional 8.8% representing the share of its subsidiary, Southwest Steel, which was acquired in 1950. One reason that Luria's rise in the Pittsburgh area was not as sharp as in some of the other areas discussed above is the fact that there are relatively few of the respondent mills located within this area. The respondent mills in the area account for approximately 17%-19% of the scrap purchased by the principal mills from broker-dealer sources.

8. In addition to the marked improvement in Luria's position as a supplier to the domestic mills, the recent years have also seen it become the largest exporter of scrap. In 1954, the first full year after the lifting of export controls, Luria shipped a total of 752,000 gross tons of scrap abroad, representing 50.5% of total export shipments amounting to 1,488,000 gross tons. In 1955 its exports amounted to 2,150,000 gross tons or 47.1% of total exports of 4,565,000 gross tons. In 1954, 72% of the scrap exported by Luria (including some exported by co-venturers) was exported to the countries affiliated with the European Coal and Steel Community buying through the common buying office known as OCCF. In 1955, 91% of the scrap shipped by Luria went to the so-called OCCF countries.

9. While the improvement in Luria's position has no doubt been due in part to the excellence of its management and to its good financial standing, the examiner is satisfied from the record as a whole that the principal factor in Luria's rise in recent years has been the series of exclusive arrangements which it has had with a number of the domestic mills. It is these arrangements at which the complaint is primarily directed, most of the other practices charged being an outgrowth thereof or having been made possible by the economic power resulting therefrom. Pursuant to these arrangements a number of the

mills have bought substantially all of their scrap from Luria and its subsidiaries, while others have bought from the Luria organization substantially all of their brokerage scrap, such scrap constituting the bulk of their scrap purchases in most instances.

10. Luria has been the exclusive scrap broker for several of the smaller of the respondent mills for a number of years. Thus, Luria has been the exclusive broker for respondent Lukens since about 1929 or 1930. It has been the exclusive broker for the Standard Steel Works Division of respondent Baldwin-Lima-Hamilton since the 1930's. It has been the sole broker and scrap supplier for respondent Columbia Malleable (now known as Grinnell Corporation) since 1936. In the case of a number of the other respondents, Luria was originally a substantial supplier and later became the exclusive supplier or exclusive broker to such mills. In the case of others of respondents, Luria was not originally a substantial supplier but during the late 1940's or early 1950's became an exclusive supplier or exclusive broker for such mills. Most of the exclusive arrangements were entered into during the period from 1946 to 1951.

11. The most important of the mills with which Luria has an exclusive arrangement is respondent Bethlehem, which is the largest purchaser of scrap in the Eastern United States. Its four plants in the North Atlantic area accounted for 54% of the scrap purchased by the principal scrap consumers in that area from brokers and dealers in 1953, and 44% in 1954. Its two plants in the Eastern Pennsylvania area accounted for 43% of the scrap purchased by the principal scrap consumers in that area from brokers and dealers in 1953, and 31% in 1954. Bethlehem has been a purchaser of scrap from Luria for a great many years. In 1947 Luria was Bethlehem's largest single supplier of scrap but Bethlehem also purchased substantial quantities of scrap from other brokers and dealers, as well as from direct suppliers of scrap, including industrial fabricators and railroads. In the following years, particularly between 1949 and 1951, Bethlehem substantially increased its purchases from Luria and reduced its purchases from others until, by about 1951, Luria had become Bethlehem's substantially exclusive scrap broker.

12. Around the latter part of 1950 Luria also entered into an arrangement to supply scrap to Bethlehem Pacific, the West Coast subsidiary of Bethlehem Steel Corporation, parent company of respondent Bethlehem. Prior thereto Luria had not been a substantial supplier to Bethlehem Pacific. While this arrangement was originally limited to the Los Angeles plant of Bethlehem Pacific, it was gradually extended to cover the other plants of the company on the West Coast, and Luria became the substantially exclusive broker for Bethlehem Pacific. Bethlehem Pacific is the largest consumer of scrap on the

Pacific Coast. Its purchases accounted for 51% of the scrap purchased from brokers and dealers by the principal scrap consumers in the area in 1953, and 49% in 1954. The evidence establishes that the arrangement between Bethlehem Pacific and Luria on the Pacific Coast was an outgrowth of the arrangement between Bethlehem and Luria on the East Coast, and was the result of a coordinated policy decision made at the top echelons of the Bethlehem companies, including the parent company, respondent Bethlehem Steel Corporation.

13. Another important consumer of scrap in the East with which Luria entered into an exclusive scrap arrangement is respondent Phoenix. This company, after Bethlehem, is the largest single user of scrap in the important Eastern Pennsylvania area. During the period from 1950 to 1954 Phoenix's scrap purchases generally accounted for around 20% or more of the scrap purchased from brokers and dealers by the principal scrap consumers in the area. Its predecessor, respondent Central, entered into an arrangement to buy its scrap requirements exclusively from Luria and Southwest in 1948, and the arrangement was later extended to the plant subsequently acquired by respondent Phoenix in 1949. After Luria acquired respondent Southwest in 1950, it became the sole supplier to the plants of Phoenix.

14. Luria entered the Rocky Mountain area for the first time in 1946, when it became the exclusive broker and exclusive supplier for respondent CF&I's plant at Pueblo, Colorado. This arrangement was later extended to other plants acquired by CF&I in the East. Luria's position in the Rocky Mountain area was further augmented when it became the substantially exclusive broker for the Geneva, Utah plant of respondent U.S. Steel in 1948. The plants of the two companies in the Rocky Mountain area, viz, at Pueblo and Geneva, are the principal consumers of scrap in the area.

15. Luria became the largest factor in the St. Louis market in 1950, when it became the exclusive broker for respondent Granite City. Prior to that time it had supplied scrap to several scrap consumers in the area, but was not a dominant factor in the market. In 1949 it supplied 16.5% of the broker-dealer scrap purchased by the five largest mills in the area. In 1951, the first year after it became Granite City's exclusive broker and substantially exclusive supplier, it sold 51.7% of the broker-dealer scrap purchased by the five major mills in the area. Its sales thereafter represented between 43% and 51% of the St. Louis broker-dealer market, as reflected in the purchases of the principal scrap consumers in the area.

16. Luria's most important customer in the Pittsburgh-Youngstown area is respondent Weirton, which is the third largest consumer

in the area. In 1954 its scrap purchases represented 14% of the purchases by the principal consumers in the area from brokers and dealers. Luria is Weirton's substantially exclusive broker and supplies Weirton with from approximately 65% to 84% of its total purchased scrap requirements. Luria is the largest scrap broker in the Pittsburgh-Youngstown area, and its subsidiary respondent Southwest is the second largest in the area.

17. As an incident to the exclusive brokerage charge, the complaint also charges that the respondent mills (a) notified other suppliers that Luria was their exclusive broker, (b) informed Luria of offers received from other suppliers and required such suppliers to offer their scrap through Luria, and (c) denied permission to other suppliers to sell to them except through Luria or on terms dictated by Luria. The evidence discloses that a number, but not all, of the respondents engaged in each of these practices. There is evidence that some of the respondents engaged in some of the practices charged, but not in all of them. To the extent there is evidence that any of the respondents engaged in such practices specific findings have already been heretofore made. However, it may be observed here that the examiner regards such practices primarily as evidentiary indicia of the existence of the exclusive brokerage arrangement and not as unfair practices in themselves. Any order which issues with respect to the exclusive arrangements will take care of these practices without including specific prohibitions as to these or other indicia of the exclusive arrangements.

18. The complaint also charges the respondent mills and Luria jointly, and Luria separately, with engaging in a series of miscellaneous practices generally in pursuance of the exclusive arrangements or as an outgrowth thereof. These charges, which have already been heretofore discussed in detail, involve such practices as coercing railroads to sell scrap to Luria, selling new steel on condition that scrap resulting therefrom will be sold to Luria, tie-in purchases of scrap, purchasing scrap at preclusive prices, operation of punitive scrap yards, holding out Luria-controlled companies as independent, elimination of competitors or pirating their key personnel, and making loans and advances to scrap dealers on condition that they will sell their scrap to Luria. Such charges have already been heretofore discussed in detail. In general, the evidence fails to support the charges. It may be observed, however, that while the charges have not been sustained, the evidence concerning certain of the practices discloses the economic power which the exclusive arrangements with the mills have conferred upon Luria, and the anticompetitive potentialities of the arrangements.

19. The evidence adduced in connection with the preclusive-buying

charge is indicative of the anticompetitive potentialities inherent in the exclusive arrangements. The theory of this charge is that in order to obtain control of certain market areas Luria sometimes paid prices for scrap so high that it could only be resold at a loss. There is evidence that Luria sometimes paid prices above those of competitors but the record fails to establish that such scrap was resold at a loss or that the payment of the higher prices in these instances was part of an effort to secure control of the particular markets involved. Nevertheless, the fact that Luria was able to outbid competitors is indicative of the economic power conferred on it by the exclusive arrangements. Since it was assured of a home for substantial quantities of scrap as a result of the exclusive arrangements with the mills, it was in a position, where necessary, to bid more strongly for scrap than competitors who were not similarly favored. While the evidence fails to establish that Luria actually used its economic power to overwhelm its competitors in any particular market, it cannot be gainsaid that the power to wage price warfare exists, and that it has an advantage by reason of the vast market available to it as a result of its exclusive brokerage arrangements.

20. Another example of the economic advantage conferred on Luria by its exclusive arrangements with the mills involves the sale of new steel. The complaint charges that the mills and Luria have used new steel to obtain commitments from industrial fabricators and others to sell their scrap to Luria. The evidence fails to establish that new steel was sold on a "steel for scrap" basis, as contended by counsel supporting the complaint. However, the fact that Luria was able to obtain new steel from certain of the respondent mills during a time of steel shortage bespeaks the close working relationship between these mills and Luria, and demonstrates the type of service which brokers and dealers not privy to such exclusive arrangements were unable to offer suppliers of scrap. While the evidence fails to establish that Luria resold the new steel subject to the conditions or understandings charged in the complaint, there can be no doubt that the "favors" which it thus admittedly did for those in need of new steel did not go unnoticed when the latter had scrap for sale.

21. Still another example of how the exclusive arrangements encouraged other practices of the type complained about, and tended to give Luria an economic advantage, involves the making of loans and advances. The complaint charges that Luria made loans to dealers, expressly or impliedly on condition that they sell all of their scrap to it, and that it did so for the purpose or with the effect of lessening or suppressing competition. There is no dispute as to the fact that Luria has made a number of loans and advances to dealers, some of the

loans being in very substantial amounts, and that in a number of instances such loans have been made expressly or impliedly on condition that the dealers would sell their scrap to it. However, as already noted, the record is lacking in evidence as to the substantiality of the scrap tied up by such understandings in any particular market, or in other evidence from which the likelihood of competitive injury can be inferred. Nevertheless, it seems clear that there is a definite relationship between the exclusive arrangements and the making of such loans and advances. To the extent that Luria is assured of a reasonably steady home with the respondent mills for substantial quantities of scrap, it is encouraged to offer inducements to dealers, in the form of loans and advances, in an effort to insure their selling their scrap to it. Brokers lacking such assurance must, perforce, be more conservative in their loan policy. While the evidence fails to establish any undue liberality on Luria's part, the potentiality exists of destroying competitors by the excessive use of loans and advances, so long as Luria is assured exclusive access to such a vast market.

22. Finally, there is the matter of tie-in purchases. It is charged that Luria purchased certain grades of scrap on condition that dealers sell it other grades. Here again the evidence fails to sustain the charge. What the evidence does disclose in this connection is that in certain markets Luria was able to buy all or most grades from dealers because it was the exclusive broker for a key mill or mills, and not because it insisted on any tie-in sales. Thus in St. Louis, respondent Granite City is the largest user of No. 2 bundles. Dealers who produce this grade generally sell it to Luria and they inevitably tend to sell it their other grades as well. Similarly in the Rocky Mountain area, CF&I is the largest user of dealer grades of scrap. Dealers in the Denver-Pueblo area generally sell such scrap to Luria, including also whatever heavy melting scrap they accumulate. Luria's position is further fortified by its arrangement with U.S. Steel's Geneva plant and with several of the foundries in the area. Another such situation exists in the case of dealers in the Baltimore area, where Bethlehem's Sparrows Point mill is the major consumer of bundles and other dealer grades. A number of dealers in the area tend to sell all or the major part of their scrap to Luria, mainly for shipment to Sparrows Point. Thus there is a situation akin to a tie-in, not because of any actual requirement by Luria, but because the economics of the situation arising out of Luria's exclusive relationship with the major mill or mills in the area make it inevitable that the dealers in such areas sell most of their grades to it.

23. Luria's exclusive arrangement with the OCCF in the export market is an example of an arrangement which was anticompetitive in

its own right and, at the same time was an outgrowth of the exclusive arrangements involving the domestic market and had its repercussions in the domestic market. In 1954 and 1955 Luria's exports (including some shipments by its two joint venturers) accounted for 50.5% and 47.1%, respectively, of total scrap exports. This strong position was made possible in large measure by its exclusive arrangement with the OCCF. The OCCF market is the largest scrap export market, accounting for 40.5% of total scrap exports in 1954 and 45.3% in 1955. Substantially exclusive access to this important market also gave Luria an entree into other export markets, albeit not on an exclusive basis.

24. Some idea of the order of magnitude of the scrap involved in the OCCF exclusive, in relationship to the domestic market, may be gained by comparing shipments to the OCCF with the purchases of the principal domestic mills with which it was competing for scrap. Approximately two-thirds of Luria's scrap exports to the OCCF were shipped from ports lying within the North Atlantic area of the United States. Presumably all but a small portion of such scrap originated within the North Atlantic area. In 1954 Luria's shipments to the OCCF, which did not begin until May of that year, amounted to 352,114 tons. This is the equivalent of 16.4% of the scrap purchased from brokers and dealers by the principal domestic consumers located in the North Atlantic. Purchases of such order of magnitude obviously are of substantial significance in the domestic market. No such comparison can be made for 1955, the first full year of the OCCF arrangement, since figures of purchases by the domestic mills in the area are not in evidence. However, since Luria's shipments to the OCCF from North Atlantic ports tripled in that year, while total purchases of all domestic mills increased by only about 55%, it may be inferred that Luria's shipments to the OCCF from North Atlantic ports in 1955 represented an even larger proportion of the scrap purchases of the domestic mills in the North Atlantic area in that year than in 1954.

25. Luria's access to European markets of the substantial size above indicated gave it considerable economic power in buying in the United States, particularly when coupled with similar arrangements with a number of important domestic mills. The two sets of arrangements were mutually reciprocal. As the major or dominant supplier to the mills in the Eastern United States, it was to Luria's interest to prevent any undue disturbance of the domestic supplies or prices of scrap. This fitted in with the needs of the OCCF, which was interested in buying in such a manner as not to upset the domestic mills, lest this result in a reimposition of export controls or an increase in the price of scrap

which it had to pay. An exclusive arrangement involving the buyer for the principal European consumers of domestic scrap and the broker acting as exclusive broker for many of the principal American mills, particularly those in the Eastern United States, could not help but further restrict competition in the domestic market.

26. The evidence establishes that aided in large measure by the exclusive arrangements which it has with the respondent mills Luria has become the most important single factor in the scrap industry in the United States, and the only company which is truly national in scope. In some sections of the country it enjoys monopoly or near monopoly power, and in others it is the dominant or major factor in the area. In certain sections, through its exclusive access to the principal mill or mills, it holds the power of life or death over the dealers operating within the area. It can reward or punish dealers, and deprive competing brokers of access to sources of scrap. The complaint charges that it abused its economic power in various specific ways. While there is some suggestion of abuse in connection with some of its activities, the evidence as a whole is not sufficiently substantial to sustain these charges. It may be noted, in this connection, that most of the period covered by the evidence was one of expanding demand and general well-being in the industry, during which it was to Luria's self-interest to deal fairly with its dealer suppliers. Whether it would conduct itself with the same degree of restraint in a period of a falling market is something as to which one can only speculate. In any event, the fact that it holds such tremendous power is something which cannot be ignored. It is also clear that the exclusive arrangement with the OCCF helped enhance Luria's already dominant position, and was calculated to restrain competition by virtue of its own operation.

27. In addition to the exclusive arrangements to which Luria is a party and the various miscellaneous unfair practices adverted to above, the complaint also charges Luria separately with having acquired control of various of its competitors. In only two instances, those involving Luria's acquisition of the stock of Pueblo Compressed Steel Corporation and respondent Southwest, does the evidence sustain the charge in the complaint. Pueblo Compressed Steel was one of the largest dealers in the Rocky Mountain area at the time its stock was acquired by Luria in 1946, and its acquisition was of material aid to Luria in carrying out its exclusive arrangement with CF&I's Pueblo plant and in becoming the dominant factor in the market. Southwest was the second largest factor in the Pittsburgh-Youngstown market in 1950 when its stock was acquired by Luria. Its acquisition has materially aided Luria, which was already the largest single factor in that market, in far outdistancing all its other competitors in the

market. From a position of supplying 26.2% of the broker-dealer scrap purchased by the principal mills in the area in 1949 Luria, as a result of its acquisition of Southwest, controlled 36% of the same market in 1954. The acquisition also strengthened Luria's position in the industry generally since the Pittsburgh-Youngstown market is one of the most important in the country, accounting for approximately one-fourth of the broker-dealer scrap purchased by the principal mills in the United States. Luria's acquisition of the stock of Pueblo Compressed Steel and Southwest Steel was calculated to result in a substantial lessening of competition between it and each of these two companies, and to restrain competition in the markets where it and they both did business, and tended to create a monopoly in Luria.

B. *As to the Questions of Law*

*Exclusive Dealing*

1. The basic legal question presented with respect to Count I of the complaint involves the exclusive arrangements between Luria and each of the respondent mills. These arrangements are challenged as unfair methods of competition within the meaning of Section 5 of the Federal Trade Commission Act. As Luria and most of the mill respondents recognize, Section 5 of the Federal Trade Commission Act "minimally \* \* \* registers violations of the Clayton and Sherman Acts". *Times-Picayune Publishing Co. v. U.S.*, 345 U.S. 594, 609 (1953). However, the respondents contend that the arrangements between Luria and the various mills do not constitute a violation of either of these Acts. Before discussing these contentions further, it is well to underscore the word "minimally" in the *Times-Picayune* decision. Section 5 has been held to encompass not merely violations of the Clayton and Sherman Acts, but incipient violations of these Acts and of the common law. In addition, it covers acts and practices beyond these, which have not yet been specifically defined. In short, unfair methods of competition is a "flexible" concept, "to be defined with particularity by the myriad of cases from the field of business". *FTC v. Motion Picture Advertising Service Co.*, 344 U.S. 392, 394 [5 S.&D. 498, 500] (1953); see also *FTC v. Keppel & Bro.*, 291 U.S. 304, 310-312 [2 S.&D. 259, 262, 263] (1934).

2. Section 3 of the Clayton Act makes illegal a sale or contract for the sale of commodities "on the condition, agreement or understanding" that the purchaser will not use the goods of a competitor of the seller, where the effect thereof "may be to substantially lessen competition or tend to create a monopoly in any line of commerce". Respondents contend that the individual arrangements between each of the mills and Luria do not violate Section 3 because they do not constitute agree-

ments to deal exclusively with Luria and, further, because in a number of instances the evidence fails to disclose any probability of competitive injury.

3. The position of respondents that the arrangements with Luria do not constitute exclusive dealing agreements within the meaning of Section 3 of the Clayton Act is based on their contention that that section requires, as a sine qua non of violation, a showing that the arrangements involved constitute binding legal agreements prohibiting the mills from purchasing their scrap from competitors of Luria. It is argued that, absent any legal obligation by the mills to purchase their scrap exclusively from Luria, they are free to deal with whom-ever they choose even though, at any given time, some of them may happen to be purchasing all of their scrap from Luria or using Luria as their exclusive broker. Cited, in this connection is *U.S. v. Colgate*, 250 U.S. 300, 307 (1919) and other authorities, purporting to uphold the "long recognized" right of a person in business "freely to exercise his own independent discretion as to the parties with whom he will deal."

4. The position of counsel supporting the complaint is not entirely clear. They state on the one hand that "the exclusive dealings between respondent brokers and each of the respondent mills is based upon agreements," their argument implying that they are using the term "agreement" in the same sense as respondents, viz, a legally binding contract. However, their later contention that "[c]onspiracies seldom take the form of legally enforceable contracts" suggests that they concede the agreements, arrangements or understandings here involved do not fall into the category of binding legal agreements.

5. In any event, whatever may be counsel's position, there can be no doubt that, except for the contract involving the Los Angeles plant of Bethlehem Pacific and the cancelled CF&I contract, the exclusive agreements, arrangements or understandings between Luria and the mills cannot be classified as legally binding contracts. They do not, obviously, have a number of the basic features of a normal long-term supply contract, such as a stated term, a specification of the types of scrap involved, specific prices or a price formula provision, terms of payment, etc. The only binding contracts are the individual orders, after acceptance by Luria, and the terms of these may vary from order to order. However, as already found, the arrangements between Luria and the mills involve more than the casual, order-to-order buying of scrap. They are based on stable, long-range relationships in which the mills look to Luria as their exclusive broker (having in some instances announced this fact to the trade), and the latter understands that it has the responsibility for supplying the mills as their exclusive broker.