IN THE MATTER OF

GENERAL ELECTRIC COMPANY

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

Docket C-1251. Complaint, June 30, 1967—Decision, June 30, 1967

Consent order requiring a major manufacturer of electrical equipment with headquarters in Schenectady, N.Y., to cease conditioning its promotional payments to builders and contractors upon restrictive purchase agreements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the corporation listed above in the caption hereof and more particularly described and referred to hereinafter as respondent, has violated the provisions of Section 5 of the said Act (U.S.C., Title 15, Section 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent General Electric Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 1 River Road, Schenectady, New York.

PAR. 2. Respondent is now and for a number of years has been engaged in the manufacture, distribution and sale of numerous household or consumer products and appliances, such as, but not limited to, ranges, refrigerators, freezers, dishwashers, disposalls, washers, dryers, water heaters, air conditioners and other equipment of various description.

Respondent is also presently engaged in the manufacture, distribution and sale of electric furnaces and resistance heating cables for homes heated by electricity.

Respondent's consumer goods and products are generally sold through its General Electric Supply Company Division, with offices and branches nationwide, and through independent distributors.

Respondent is the largest producer of such household or con-

sumer products and appliances in the United States and its volume of business in the sale and distribution of such products and appliances is substantial.

PAR. 3. In the course and conduct of its business, respondent General Electric Company has been for some time past, and is now, engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that it has shipped and sold its products, or caused them to be transported from its place of manufacture and business for sale to customers with places of business located in the several States of the United States.

PAR. 4. Except to the extent that competition has been frustrated, hindered, lessened and eliminated as hereinafter set forth, respondent is, and has been for a substantial time in the past in competition with firms, partnerships and corporations engaged in the aforesaid business of manufacturing, distributing and selling residential electric heating equipment and major household appliances to residential accounts in commerce between and among various of the States of the United States.

PAR. 5. Respondent initiated a program in 1956 known as the Live Better Electrically program. Said program consisted of an advertising campaign aimed at the promotion and sale of electric home heating, lighting and appliances. In connection therewith respondent applied to the United States Patent Office for registration of certification marks, obtaining Mark Number 674342 on February 17, 1959, and Mark Number 692579 on February 2, 1960. Each of said Marks was used to certify that the home to which the Mark was applied, or the plans and specifications therefor, conformed to minimum standards set by the respondent as to home electrification; that is, lighting, wiring, and number of major electrical appliances. Respondent thereafter used said Marks as an incident to its Medallion Home Program, under which many of the leading electric utilities in the United States were appointed as agents of respondent to administer its said program and to grant the right to affix said Mark to homes which qualified by meeting said minimum standards.

On April 29, 1960 respondent made an assignment of all rights, title and interest in said Marks to the National Electrical Manufacturer's Association, hereinafter sometimes referred to as NEMA, under which it was agreed that respondent has the right to demand, and NEMA agreed to reassign to respondent all property rights herein conveyed, should NEMA thereafter cease to administer said program in the manner as outlined in a "Manual

for Utilities" prepared by respondent, and made a part of said assignment.

PAR. 6. In conjunction with this industry program, respondent initiated in 1960 its own medallion programs, administered by both its Major Appliance and Hot Point Divisions. The purpose of respondent's medallion programs has been and is to promote the offering for sale and sale of General Electric products for use and installation in medallion homes.

The program administered by respondent's Major Appliance Division is presently known as the "Construction Market Development Operation," hereinafter sometimes referred to as CMDO. The program administered by respondent's Hot Point Division is known as the "Local Medallion Allowance Plan," and it is substantially identical to the CMDO program.

PAR. 7. In the course and conduct of its business, respondent, through its aforesaid medallion homes programs, has been and is now engaged in unfair methods of competition and unfair acts and practices in that it has adopted, placed into effect and has been and is carrying out a policy, plan or scheme under which it has entered into restrictive arrangements, agreements or understandings with home and apartment builders or contractors whereby such builders or contractors are, expressly or impliedly, required to restrict their purchases of major household appliances, radiant heating equipment and wiring devices for use and installation in homes and apartments constructed for speculation to respondent's products, and prohibited from purchasing such products from competitors.

Such restrictive arrangements, agreements or understandings have been and are, expressly or impliedly, contained in the terms and conditions of respondent's medallion homes programs. For example, in promoting the offering for sale and sale of its major household appliances, radiant heating equipment and wiring devices to a substantial number of home and apartment builders or contractors, respondent's CMDO program contains and imposes requirements which are as follows:

1. A Bronze Medallion home—any home which includes a minimum of four major General Electric Appliances, one of which must be a range; Textolite (where applicable); and meets the local electric utility's lighting and "Full House Power" requirements.

2. A Bronze Medallion home (special)—any home which includes a minimum of four major General Electric appliances, one

of which must be a range; a General Electric gas or oil furnace; Textolite (where applicable); and meets the local electric utility's lighting and "Full House Power" requirements.

3. A Bronze Medallion home (plus)—any home which includes a minimum of four major General Electric appliances, one of which must be a range; a General Electric gas or oil warm air furnace plus central air conditioning; Textolite (where applicable); and meets the local electric utility's lighting and "Full House Power" requirements.

4. A Gold Medallion Home—any total electric home which includes all the maximum requirements in the Bronze Medallion category plus a service entrance panel of 150 or 200 amp. capacity as required, and a General Electric electrical heating and air conditioning system.

Under the express or implied terms and conditions of the aforesaid CMDO program, a home and apartment builder or contractor is required to purchase packages of four or more products sold by respondent including as a part thereof certain specifically designated appliances, equipment and devices, and to refrain from purchasing the designated appliances, among other products, from competitors of respondent.

Thus, respondent's competitors and others have been, and are now, unable to make sales to home and apartment builders or contractors which they could have made but for the restrictive arrangements, agreements or understandings described herein.

PAR. 8. As part and in furtherance of the aforesaid policy, plan or scheme, respondent has afforded and given to home and apartment builders or contractors who have entered into the restrictive arrangements, agreements or understandings, heretofore described, special treatment and valuable benefits which are not granted or afforded to other builders or contractors. The valuable benefits furnished by respondent include, among other things, contributions to the builder or contractor of substantial amounts of money for advertising. For example, in one instance alone, a builder who entered into the restrictive arrangements, agreements or understandings, heretofore described, received from respondent a contribution in excess of $900,000 for advertising as consideration for purchasing over $8,000,000 worth of respondent's electrical equipment and products for installation in a single housing development.

PAR. 9. The purpose, intent or effect of the aforesaid methods, acts and practices of the respondent has been, is, or may be,

substantially to lessen, hinder, restrain and suppress competition in the manufacture, distribution and sale of major household appliances, radiant heating equipment and wiring devices in interstate commerce, to cause a substantial number of builders or contractors to refrain from buying major household appliances, radiant heating equipment and wiring devices for use and installation in homes and apartments from competitors; to exclude, or tend to exclude competitors or potential competitors of respondent from selling major household appliances, radiant heating equipment and wiring devices to a substantial number of home and apartment builders or contractors; to foreclose competitors or potential competitors of respondent from a substantial share of the home and apartment construction market in various trade areas; to appropriate to respondent the exclusive right to supply and sell substantially the entire major household appliance, radiant heating equipment and wiring devices requirements of a substantial number of home and apartment builders or contractors; and to enhance further the dominant position of respondent in the electrical products industry and thereby to tend to create a monopoly in respondent in the sale of major household appliances, radiant heating equipment and wiring devices for use and installation in newly constructed homes and apartments in interstate commerce.

PAR. 10. The acts and practices of respondent, as alleged in this complaint, are to the prejudice of competitors of respondent and of the public; have a tendency to hinder and prevent, and have actually hindered and prevented, competition in the purchase and sale of major household appliances, radiant heating equipment and wiring devices; have a tendency to obstruct and restrain, and have actually obstructed and restrained such commerce in major household appliances, radiant heating equipment and wiring devices; and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of

Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing, *inter alia,* a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondent has violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent General Electric Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1 River Road, in the city of Schenectady, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent, General Electric Company, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of radiant electric heating equipment and major household appliances, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from conditioning the granting of any promotional allowance or discount in lieu thereof to any home or apartment builder or contractor purchasing any such product from respondent by requiring that said home or apartment builder or contractor, in order to qualify for and/or receive such promotional allowance or discount in lieu thereof, must purchase at the same time two or more separate and dissimilar General Electric products.

Provided, however, That the above *"It is ordered"* paragraph shall not apply to any such allowance or discount in lieu thereof made by General Electric Company, its officers, representatives, agents and employees within the period terminating two years from the effective date of this order, if, and only if, such allowance or discount in lieu thereof is pursuant to the provisions of an agreement, arrangement or understanding which was entered into prior to the entry of this order.

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

Commissioners Elman and Reilly did not concur in the issuance of the complaint.

INTERLOCUTORY, VACATING, AND MISCELLANEOUS ORDERS

AMERICAN CYANAMID COMPANY ET AL.

Docket 7211. Order, Jan. 3, 1967

Order denying motion by Olin Mathieson Chemical Corporation that proceedings against it in connection with the price aspects of this case be dismissed.

ORDER DENYING MOTION TO DISMISS

Respondent Olin Mathieson Chemical Corporation, by motion filed December 27, 1966, having requested that further proceedings against it in connection with the price aspects of this matter be dismissed without prejudice and, in the alternative, having suggested that this part of the case be considered separately from the patent aspects, with separate briefing schedule and oral argument; and

The Commission having already determined that all contested issues of fact and law presented by the entire record will be considered and having set the time for the filing of briefs on such issues:

It is ordered, That the motion filed by respondent Olin Mathieson Chemical Corporation be, and it hereby is, denied.

Commissioner Dixon not participating.

ALLEGHANY PHARMACAL CORP. ET AL.

Docket 7176. Order, Jan. 6, 1967

Order denying complaint counsel's request for permission to file interlocutory appeal from rulings complained of.

ORDER DENYING REQUEST FOR PERMISSION TO FILE INTERLOCUTORY APPEAL

This matter is before the Commission upon complaint counsel's request for permission to file an interlocutory appeal from the

ruling of the hearing examiner requiring complaint counsel to put on rebuttal witnesses on December 9, 1966, rather than January 24, 1967, and refusing to receive the offer of testimony of two additional witnesses whom complaint counsel wished to put on the stand. Respondents filed their answer and supplementary answer in opposition on December 22 and December 27, 1966, respectively. The Commission has reviewed the order of the examiner and has determined that the request for permission to file an interlocutory appeal should be denied. The hearing examiner's rulings on the scope of rebuttal testimony should not be unduly restrictive.[1] Nevertheless, upon a review of his ruling, the Commission cannot say at this time that the hearing examiner has abused his discretion in this regard. Accordingly, the Commission is unable to find that there are here extraordinary circumstances requiring it to consider at this time the objections raised to the examiner's order in complaint counsel's request for permission to file an interlocutory appeal. Accordingly:

It is ordered, That complaint counsel's request for permission to file an interlocutory appeal from the rulings complained of, be, and it hereby is, denied.

INTER-STATE BUILDERS, INC., ET AL.

Docket 8624. Order, Jan. 13, 1967

Order granting respondents' motion to file brief with respect to procedural issues of the case.

ORDER ON RESPONDENTS' MOTION

This matter is before the Commission on a motion by respondents to file a brief in the appeal herein limited to the procedural issues involved in the Commission's Order Directing Remand dated April 22, 1966 [69 F.T.C. 1152]. Complaint counsel submits that the motion should be denied, although contending that the Commission is now in a position to dispose of the matter on its merits.

Respondents in this matter were charged with making false and deceptive statements in advertising in connection with the sale of home improvement materials to the public. After full evidentiary hearings the examiner issued an initial decision on January 21, 1965, sustaining the allegations of the complaint and

[1] See *Modern Methods, Inc., et al.*, 60 F.T.C. 309, 339 (1962); *Foster-Milburn Co., et al.*, 51 F.T.C. 369, 371 (1954).

ordering respondents to discontinue the practices with which they had been charged.

Respondents appealed from this decision both on the substantive issues in dispute relating to the allegedly deceptive practices and on the ground that the examiner had erred in refusing to inspect certain interview reports to determine whether they were required to be provided for purposes of impeaching complaint counsel's consumer witnesses.

The Commission, not reaching the merits of the case, sustained respondents' claim with respect to the examiner's failure to make the requested inspection of interview reports and remanded the matter to the examiner with directions to:

(1) examine the interview reports made with respect to each of the witnesses (other than Milton S. Gottesman) called by counsel supporting the complaint to determine by appropriate procedures, including a hearing if necessary, whether or not such reports contain pre-hearing statements which should be made available to respondents' counsel under the "Jencks rule" as described in the Commission's opinion of this date;

(2) deliver to respondents' counsel any of such reports or portions thereof found by him to be statements within the meaning of the "Jencks rule" and to be relevant for the purposes of cross-examination;

(3) if requested by respondents' counsel reconvene the hearing-in-chief to permit respondents' counsel to utilize such reports or portions thereof for the purpose of cross-examining any of such witnesses whom respondents' counsel requests be recalled for such purpose; and

(4) issue a new initial decision which should include specific findings with respect to the issues presented on this remand.

Pursuant to this order a hearing was held on August 15, 1966, at which complaint counsel produced copies of field reports with respect to each of the eighteen consumer witnesses who had testified in support of the complaint. The examiner inspected each of these reports "in camera" to determine whether any or all of said reports contained "Jencks statements." Complaint counsel and counsel for respondents each advised the examiner that they would waive the refiling of proposed findings of fact, conclusions of law and order, which had originally been submitted prior to the original decision of January 21, 1965.

The examiner thereupon issued an initial decision filed on September 9, 1966 [72 F.T.C. 370, 373], which was identical to his previous decision except that he inserted a brief additional conclusion that the investigator's reports of interviews with the eighteen consumer witnesses were mere summaries and none contained a "Jencks statement." Respondents have appealed.[1]

[1] On October 15, 1966, respondents were granted an extension of time to file their appeal brief until December 22, 1966, the date on which the present motion papers were filed.

In the motion considered herein respondents contend that the examiner "failed to follow the Commission's directions on remand and that this threshold procedural matter should be resolved initially, prior to briefing and arguing the appeal on the additional substantive issues raised in the record in its present state." Respondents have also submitted a brief limited to the simple issue of the propriety of the procedure followed by the examiner in conducting the hearing on remand.

Complaint counsel disputes respondents' contention that the examiner failed to follow the Commission's directions on remand but takes the position that since no new facts have been introduced, no new conclusions have been reached and the order is identical to that originally proposed by the examiner, the Commission should now dispose of the matter on its merits.

In our opinion it would be improper to hear and decide the issues in the case on a piecemeal basis, since such a procedure would serve only to prolong the final determination of the matter and to cause unnecessary duplication of effort in the consideration of the cause. However, since the parties have filed briefs with respect both to the substantive and to the procedural issues in dispute, there would appear to be no valid reason why the case could not be presented to the Commission on the basis of the briefs submitted in connection with this motion as well as the briefs filed on the original appeal herein.

Accordingly, respondents will be permitted to file their brief limited to the procedural issues in the case, but the request that the Commission confine its consideration of the case to this single issue will be denied. With respect to the substantive issues the parties may rely on their briefs previously filed or file supplementary briefs incorporating any additional arguments on the merits which they may wish to make. Although respondents' time for filing their appeal brief has expired, they will be granted an additional period of time to file such supplementary brief. It is therefore

Ordered, That

1. Respondents' motion to file a brief with respect to the procedural issues it has raised be and it hereby is granted.

2. Respondents' request that the Commission dispose of these procedural issues prior to consideration of the substantive issues in the case be and it hereby is denied.

3. In presenting the case to the Commission on the appeal herein the parties may rely in whole or in part on the briefs submitted herein as well as the briefs filed in connection with respondents' appeal from the hearing examiner's initial de-

cision dated January 21, 1965. Any additional brief filed by respondents shall be filed within twenty days after service of this decision upon them and any answering brief by complaint counsel shall be filed within ten days after service upon him of respondents' brief. Respondents shall advise the Secretary within seven days after service of this order upon them whether or not they intend to file such supplementary brief.

Commissioner Elman not concurring.

BEST & CO., INC.

Docket 8669. Order, Jan. 13, 1967

Order adopting the findings of the hearing examiner that complaint counsel not be barred from further participation in this proceeding.

ORDER RULING ON CERTIFICATION OF EXAMINER'S FINDINGS AND RECOMMENDATIONS ON INTERLOCUTORY MATTER

This matter was remanded to the examiner by the Commission's order of June 23, 1966 [69 F.T.C. 1193], directing him to make findings on respondent's charges against complaint counsel raised by respondent's motion to suspend and bar complaint counsel from further participation in this proceeding.

The examiner held a hearing to resolve the issues raised by respondent's motion. On the basis of the testimony adduced in the course of that hearing, he concluded:

> It is the conclusion and finding of the examiner that the record fails to establish that Ronald D. Schwartz, or any other member of complaint counsel's staff, made any misstatements or concealed any facts of the nature set forth in respondent's motion, or any similar statements or material facts, with the intent of preventing respondent from gaining access to information to which it was entitled in the files of Majestic Specialties, Inc.; and further, that the record fails to establish that the communication by complaint counsel with counsel for Majestic prevented respondent from obtaining information which it sought and to which it was entitled.

The Commission has decided to adopt the findings contained in the examiner's certification of October 24, 1966 [70 F.T.C. 1793], to which respondent's counsel has not taken exception, and concludes that the charges against Commission counsel are groundless. Accordingly,

It is ordered, That the findings in the hearing examiner's certification filed October 24, 1966, be, and they hereby are, adopted by the Commission.

It is further ordered, That the request to file an interlocutory appeal from the hearing examiner's order of May 10, 1966, refusing to bar and suspend complaint counsel from further participation in this proceeding, be, and it hereby is, denied.

THE CROWN CORK & SEAL COMPANY, INC.

Docket 8687. Order and Opinion, Jan. 13, 1967

Order denying Continental Can's appeal from hearing examiner's quashing of its subpoena requiring production of certain documents.

OPINION OF THE COMMISSION

BY REILLY, *Commissioner:*

This matter is before the Commission on the appeal of Continental Can Company pursuant to Section 3.17 (f) of the Commission's Rules from denial by the hearing examiner on November 30, 1966, of Continental's motion to limit or quash subpoena duces tecum issued October 11, 1966, directed to Continental at the instance of respondent Crown Cork & Seal Company, Inc.

The Commission's complaint in this matter, issued May 31, 1966, alleges violation by Crown of Section 7 of the amended Clayton Act in the acquisition on November 13, 1963, of Mundet Cork Corporation. Both Crown and Mundet at the time of the acquisition were manufacturers of metal crowns commonly used as closures on beer and soft drink bottles and cans.

The adverse competitive effect alleged in the complaint is a lessening of competition in the manufacture and sale of metal crowns.

Respondent Crown contends that metal crowns do not comprise an appropriate line of commerce within which to test the competitive effect of the merger. It contends that other types of closures and containers for beer and soft drink bottles and cans are functionally interchangeable with metal crowns and thus sales of these products should figure in any delimitation of the relevant line of commerce.

Accordingly, at respondent's request, subpoenas duces tecum were directed by the hearing examiner to 33 manufacturers of cans, bottles and closures requiring sales data of specified products for years before and after the acquisition of Mundet by Crown. Thirty producers have complied. Three of the largest, Continental, American Can Company, and National Can Company, have not

complied pending the outcome of this appeal. American and National have stipulated with respondent that they will submit data to the same extent Continental is required to submit it.

Continental appeals from the adverse ruling of the examiner urging that a ruling on the question should be made by the Commission before the conclusion of the hearings because substantial rights of Continental are involved and justice requires that a determination of the correctness of the examiner's ruling be made now because a later determination of error cannot retrieve secrecy lost by virtue of the examiner's denial of Continental's motion to quash or limit.

We can rule at the outset that Continental has made sufficient showing under Section 3.17(f) of the Commission's Rules, and accordingly we entertain its appeal.

The subpoena in pertinent part calls for:

A. Such records as will disclose for each of the calendar years 1960, 1961, 1962, 1963, 1964, 1965, and the first six months of the calendar year 1966 for (a) beer and (b) soft drinks in (i) dollars and (ii) units,

1) cans sold by your company;
2) * * *
3) * * *
4) * * *
5) tear-type cans sold by your company;
6) crown-type bottle closures sold by your company;
7) tear-type bottle closures sold by your company;
8) screw-type bottle closures sold by your company;
9) other types of bottle closures sold by your company.

As to the remainder of the data called for, Continental is either ready to furnish it substantially as demanded or has agreed with respondent for a form of submission satisfactory to both.

Furthermore, as to all categories in dispute except A.(6), crown-type bottle closures, respondent will forego 1966 data, thus requesting data only for the years 1960 to 1965.

For its part, Continental stands ready to provide data for categories A(1), A(7), A(8) and A(9) for the years 1960 to 1964. It will provide data under A(6) for 1960 to 1965. As to A(5) it will agree only to submit data for the years 1960 to 1962.

In short, Continental urges limitation of the subpoena to the years 1960 to 1964 except that data for tear-type cans should be limited to 1960 to 1962 and for crown-type bottles to 1960 to 1965. Respondent wants the period to cover 1960 to 1965 for all categories except crown-type closures for which it asks for data covering the first 6 months of 1966 also.

In support of its motion and appeal, Continental directs its argument to the questions of relevancy and irreparable injury:

On the question of relevancy it argues first that information on sales of products other than crown-type bottle closures is not relevant to a charge that the merger will adversely affect metal crowns as a relevant market; and it cites *United States* v. *Von's Grocery,* 384 U.S. 270 (1966), to the effect that if competition is substantially lessened "* * * in a discernible market" it is irrelevant under Section 7 that competition in a larger market of which the lesser market is a part is relatively unaffected.

This argument must be rejected because it begs the question. Respondent's proposed defense, as we understand it from its memorandum brief in opposition to Continental's appeal, is that metal crowns is not a relevant line of commerce or submarket in the present context, that the sole relevant market is the larger market embracing all bottles, cans and closures. We note parenthetically that in rejecting Continental's argument in this connection we intimate no opinion as to the validity of respondent's proposed defense. We hold only that if it is argued that there is one indivisible line of commerce here involved embracing all containers and closures, industry universe figures for such containers and closures is relevant to this argument.

Secondly, regarding relevancy, Continental questions the propriety of respondent seeking data for years subsequent to the acquisition on November 13, 1963, arguing that "* * * post-acquisition evidence is of little, if any, relevance where a violation of Section 7 of the Clayton Act is charged because the mere probability of a lessening of competition at the time of the transaction complained of is sufficient to establish a violation," citing *F.T.C.* v. *Consolidated Foods,* 380 U.S. 592, 598 (1964).

Again, without ruling on the merits of respondent's defense prior to adjudication of the matter, we can nevertheless state that in supporting its argument that there can be no injury to competition in metal crowns because product obsolescence afflicts the industry and there has been a trend to other types of closures, it is relevant for respondent to project the trend beyond the acquisition date by examining post-acquisition sales. This, solely for the purpose of showing the fact of obsolescence.

Continental's principal argument in seeking to limit the data required under the subpoena is that recent and current sales data are business secrets which in the hands of a competitor would seriously disadvantage Continental. Expecially regarding the 1966 metal crown data sought by respondent, Continental argues that data which is that current "* * * goes to the very heart of Continental's competitive position and its disclosure would cause irreparable injury." The data relating to tear-type cans is also