

corporation, the creation or dissolution of subsidiaries, or any other change in any corporation which may affect compliance obligations arising out of the order.

V

*It is further ordered*, That respondents, individually, within sixty (60) days after the effective date of this order, file with the Commission a report in writing setting forth in detail the manner and form in which each has complied with this order.

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IN THE MATTER OF  
LITTON INDUSTRIES, INC.

*Docket 8778. Order, May 16, 1973.*

Order reopening the proceeding solely for the purpose of re-examining the question of relief in its entirety; remanding the proceeding to an administrative law judge to conduct hearings on the question of relief; and denying respondent's request for oral argument on the petition for reconsideration. Commissioner Jones dissenting with statement.

DISSENTING STATEMENT

BY JONES; *Commissioner*:

Today, by its decision to remand the issue of relief to the administrative law judge, the Commission<sup>1</sup> has in effect reversed itself on its decision and order in the above-captioned case which held that Litton's acquisition of Triumph-Adler had violated Section 7 of the Clayton Act and ordered Litton to divest itself of Triumph-Adler. The Commission has taken this action in response to Litton's petition to the Commission for Reconsideration of the Order of Divestiture or Reopening of the Proceedings.

Under the Commission's Rules of Practice, Petition for Reconsideration filed under Rule 3.55 are required to be limited "to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Commission."<sup>2</sup>

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<sup>1</sup> The Commission's decision was participated in by Commissioners Jones, Dixon and Dennison with Commissioner MacIntyre abstaining. Commissioner MacIntyre is participating in the current Commission action and is concurring with it.

<sup>2</sup> Petition for reopening are covered by Rule 3.72(b)(2) which may be granted upon issuance by the Commission of an order to show cause if the Commission determines that changed conditions of fact or law or the public interest requires such reopening.

Litton's arguments for reconsideration or reopening proceed on the following grounds:

1. The opinion was premised on an erroneous view of the law that divestiture was mandatory.

2. The Commission in ordering divestiture failed to consider substantial evidence in the record to the effect that IBM and SCM are growing stronger, that all other competitors in the market as a result of this competition, devaluation and IBM's single element typewriter, have been and are continuing to suffer, that Royal cannot survive without Triumph-Adler and that divestiture will further worsen the competitive situation (Brief pp. 19-31).

3. A variety of arguments to the effect that the opinion placed too much emphasis on the structure rather than the history of the typewriter industry; that incorrect measurements were made of the markets and industry concentration (Commissioner Dennison's opinion is cited as to these points); that analysis of the office typewriter market and specifically the office manual market is incorrect; that Litton's economic experts were ignored; and that divestiture will have adverse effects on the industry and typewriter dealers.

None of these arguments raise new issues of law or fact and each was in fact considered by the Commission before reaching its decision in this case. Nowhere in the opinion, for example, is there any suggestion that divestiture is a mandatory relief provision. All of the circumstances surrounding the market position of IBM and SCM were thoroughly argued and considered in both the Initial Decision and the Commission's Opinion and add absolutely nothing new for the Commission to consider. All of the other Litton arguments in this petition proceed again on Litton's view of the market which was rejected by the Commission in its opinion. All were fully discussed in this opinion and therefore in no way constitute grounds for reconsideration or reopening.

Litton attached to its petition and brief various affidavits of Litton's executive board of directors which add little to the record with two exceptions. The submitted material indicates that Xerox is apparently on the verge of entering the automatic typewriter market having purchased, in 1971, the automatic typewriter division of ITEL Corporation (*See* Berry affidavit, pp. 7-8; Spelhaug affidavit pp. 2-3). It also indicates that the worsening monetary crises has allegedly made foreign

typewriters less price competitive with IBM than before. (Mills affidavit p. 2). I see nothing in either of these "facts" which affect the Commission's order to divest Triumph-Adler. In fact, it could be argued that IBM's market position will now be challenged by Xerox thus lessening the need for Royal's survival which Litton contends is needed to challenge IBM.

I can find nothing in Litton's petition to reconsider which was not already considered by the Commission. Nor can I find anything in its petition demonstrating either that Triumph-Adler cannot be viably divested nor that some relief short of divestiture offers any possibility of redressing the competitive imbalance and restraint which the Commission found was the consequence of the merger and the basis for its illegality under Section 7. For this reason, I do not believe that the requisite showing has been made out under our rules to warrant the remand now ordered by the Commission.

ORDER REOPENING PROCEEDING TO RECONSIDER  
THE ISSUE OF RELIEF

This matter is before the Commission upon respondent's Petition for Reconsideration of the Order of Divestiture or Reopening of Proceedings, filed with the Secretary of the Commission on April 9, 1973.

Upon consideration of all the papers before it, the Commission has determined that the above-captioned proceeding should be reopened solely for further consideration of the question of relief. Accordingly,

*It is ordered,* That the above-captioned proceeding be, and it hereby is, reopened solely for the purpose of re-examining the question of relief in its entirety.

*It is further ordered,* That the above-captioned proceeding be, and it hereby is, remanded to an administrative law judge to conduct hearings on the question of relief. In conducting this inquiry, the administrative law judge shall examine the question of appropriate relief in its entirety, and upon completion of the hearings, he shall furnish the Commission with his findings on the issue of relief and his recommendations.

*It is further ordered,* That respondent's request for oral argument before the Commission on the instant petition be, and it hereby is, denied.

Chairman Engman not participating, and Commissioner Jones voting in the negative.

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Order

IN THE MATTER OF  
AMERICAN HOME PRODUCTS CORPORATION, ET AL.*Docket 8918. Order, May 16, 1973.*

Order denying respondents' (1) petition for extraordinary review of the administrative law judge's orders denying respondents' motion for a more definite statement and refusing to make a determination allowing an immediate appeal, and (2) motion for stay of respondents' time to answer the complaint; and granting respondents' motion for stay of time to answer the complaint up to and including five days after service of the order.

ORDER DENYING PETITION FOR EXTRAORDINARY REVIEW,  
APPLICATION FOR INTERLOCUTORY REVIEW AND RULING UPON  
MOTION FOR STAY

On March 29, 1973, respondents filed with the administrative law judge a motion for a more definite statement of the allegations contained in the administrative complaint. By order filed on April 12, 1973, the administrative law judge denied respondents' motion. On April 18, 1973, respondents filed a request with the administrative law judge for a determination allowing an immediate appeal from his order of April 12, 1973, and for a stay of the proceedings. The administrative law judge denied both the application for a determination allowing an immediate appeal and the application for a stay by an order filed on April 20, 1973.

On April 25, 1973, respondents filed with the Commission (1) a petition for extraordinary review by the Commission, of the administrative law judge's orders denying respondents' motion for a more definite statement and refusing to make a determination allowing an immediate appeal; (2) an application for interlocutory review of the administrative law judge's order denying respondents' motion for a more definite statement; and (3) a motion for stay of respondents' time to answer the complaint. On May 2, 1973, complaint counsel filed a reply to the respondents' petition.

Upon consideration of the foregoing documents filed by respondents, the reply filed by complaint counsel and upon consideration of the administrative law judge's order filed on April 12, 1973, the Commission has determined that respondents have not made a sufficient showing for the granting of an interlocutory review or appeal under either Section 3.23(a) or Section 3.23(b) of the Commission's Rules of Practice. Accordingly,

*It is ordered*, That the aforesaid petition and application filed by respondents be, and the same hereby are, denied.

In view however of the circumstance that the time allowed for filing respondents' answer has expired,

*It is further ordered*, That respondents' motion for stay of time to answer the complaint be granted up to and including five (5) days after service of this order.

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IN THE MATTER OF

GEORGIA-PACIFIC CORPORATION

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

*Docket C-2402. Complaint, May 16, 1973—Decision, May 16, 1973.*

Consent order requiring a Portland, Oregon, manufacturer of a wide variety of products including wood, paper, pulp, chemicals and wood products, among other things to cease engaging in unfair methods of competition by systematically using its purchasing power to obtain sales to its actual or potential suppliers. Respondent is further required to destroy certain statistical data and maintain certain other records as set out in the order.

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 Georgia-Pacific Corporation, a corporation, hereinafter referred to as the respondent, has violated the provisions of said Act, 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 as follows:

PARAGRAPH 1. Respondent Georgia-Pacific Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at 900 S.W. Fifth Avenue, Portland, Oregon. It owns a controlling interest in approximately forty subsidiary corporations.

PAR. 2. Respondent is now, and for some time last past has been engaged in the manufacture, sale and distribution of a wide variety of products including, but not limited to, wood, paper, paperboard, converted paper products, pulp, chemicals, plywood, gypsum, hardboard, flakeboard, particleboard, doors, aluminum,

mill work and furniture. In 1971 respondent had approximately 200 plants and more than 100 product distribution centers located throughout the United States. Respondent's total assets are approximately \$1.8 billion.

PAR. 3. In connection with its manufacturing and distribution operations, respondent purchases a substantial volume of raw materials, products or services from various suppliers located throughout the United States, many of which use, or can use, raw materials or products sold and distributed by respondent. During the period 1964 through 1971, respondent's annual purchases increased from approximately \$300 million to in excess of \$700 million, most of which were for substantial quantities of supplies and materials used for production of its manufactured goods throughout the United States and in the operation of its plants and offices. Respondent's annual net sales increased substantially during the period 1964 to 1971, from approximately \$500 million to \$1.4 billion.

PAR. 4. In the course and conduct of its business respondent is, and has been, engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that it has sold its materials and products to purchasers located in various States of the United States, and caused such materials and products, when sold, to be transported from its facilities in various States of the United States to such purchasers located in various other States of the United States.

PAR. 5. Except to the extent that competition has been frustrated, hindered, foreclosed, lessened or eliminated as hereinafter set forth, respondent has been and is now, in competition with firms, partnerships or corporations engaged in the business of manufacturing, distributing and selling wood, pulp, paper, gypsum, chemicals or other products in commerce.

PAR. 6. In the course and conduct of its business as described above respondent has, for a number of years and is now, engaged in unfair methods of competition and unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act in that respondent has systematically utilized its purchasing power to obtain or attempt to obtain sales of its products, services, or raw materials to certain of its actual or potential suppliers.

PAR. 7. In order to utilize its purchasing power as described above respondent has engaged in one or more of the following acts and practices, but not limited thereto:

A. Compiled data on purchases from various suppliers and

sales to various suppliers and has collated certain such purchase and sales data of certain suppliers.

B. Disclosed statistical data or other information relating to its actual or potential purchases from certain companies to its sales personnel or its employees with purchasing and sales responsibilities.

C. Disclosed statistical data or other information relating to its actual or potential sales to certain companies to its purchasing personnel.

D. Disclosed specific purchasing or sales data, or other information to sales personnel for their use in selling or attempting to sell respondent's products to certain companies.

E. Utilized statistical sales or purchase data or other information in order to determine which suppliers should be favored or the extent to which suppliers should be permitted to participate in supplying respondent.

F. Communicated with its actual or potential suppliers regarding purchases or sales, in order to ascertain, develop, facilitate, or further a relationship of sales and purchases between respondent and the suppliers or another company.

G. Purchased or attempted to purchase from certain companies or their designees on the understanding that such companies would purchase from respondent or another company.

H. Sold or attempted to sell to certain companies or their designees on the understanding that such companies would sell to respondent or another company.

I. Refused to buy or reduced purchases from certain suppliers who did not purchase, maintain or increase purchases from the respondent or another company.

J. Purchased from certain companies in order to induce such companies to purchase from respondent or another company.

K. Sold or attempted to sell to certain companies in order to induce such companies to sell to respondent or another company.

L. Established a director of purchasing and trade relations whose responsibilities included but were not limited to, developing and coordinating respondent's trade relations with other supplying and buying corporations in order to stimulate or increase its sales.

PAR. 8. The acts and practices of respondent, described above in Paragraphs Six and Seven, have had and still have the capacity, tendency, and effect of (a) foreclosing the sale of substantial quantities of various products, services, or raw

materials to respondent by various actual or potential suppliers of such products, services, and raw materials, (b) foreclosing competitors of respondent in the sale of substantial quantities of various products, services, or raw materials, (c) giving respondent an unfair competitive advantage over its competitors, or (d) depriving its competitors or actual or potential suppliers of full and free competition in the market place.

PAR. 9. The acts and practices of respondent as herein alleged, were and are to the prejudice and injury of the public and respondent's competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair acts and practices in commerce 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 Seattle Regional Office 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 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 respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Georgia-Pacific Corporation is a corporation



organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 900 S.W. Fifth Avenue, Portland, Oregon.

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

For the purposes of this order, the definitions below shall apply, although words of inclusion used herein are not words of limitation:

“Respondent” includes Georgia-Pacific Corporation, a corporation, its subsidiaries, successors and assigns.

“Company” includes any business entity.

“Purchase” and “purchases” include (a) any receipt of products, services or raw materials from another company in exchange for money, products, services or raw materials, and (b) the leasing of anything of value from another company.

“Sell” and “sales” include any conveyance of products or raw materials to, or any performance of services for another company in exchange for money, products, services or raw materials.

#### I

*It is ordered*, That respondent, its officers, directors, employees, agents and representatives, directly or through any corporate or other device, shall forthwith cease and desist from:

A. Purchasing or entering into or adhering to any agreement or understanding to purchase from an actual or potential supplier on the understanding that any of such purchases are conditioned upon or related to any sales by respondent or any other company;

B. Selling or entering into, or adhering to any agreement or understanding to sell to an actual or potential customer on the understanding that any of such sales are conditioned upon or related to any purchases by respondent or any other company;

C. Purchasing in order to promote or induce sales to another company;

D. Selling in order to promote or induce sales by another company;

E. Communicating to another company that:

1. purchases by respondent or relative positions on respondent's bidder lists will or may be conditioned upon or related to sales by respondent or another company;

2. sales by respondent or relative positions on respondent's bidder lists will or may be conditioned upon or related to purchases by respondent or another company;

F. Discussing, comparing, or exchanging statistical data or other information with another company in order to ascertain, develop, facilitate or further any relationship between purchases and sales of the nature prohibited by this order;

G. Preparing or maintaining statistical data which compares or otherwise relates purchases by respondent from a company to sales by respondent to such company;

H. Causing or permitting any of respondent's personnel holding any of the positions listed in Appendix 1, hereof, to influence, request, or suggest to any of respondent's personnel holding any of the positions listed in Appendixes 2 or 3, hereof, to consider respondent's actual or potential sales to any company as a factor in any decision to purchase from such company;

I. Causing or permitting any of respondent's personnel who are primarily and directly engaged in promoting or obtaining sales on behalf of respondent, including, but not limited to, respondent's personnel holding any of the positions listed in Appendix 2, hereof, to:

1. engage in purchasing;
2. obtain statistical data or other information which shows the amount of actual or potential purchases by respondent from any company;
3. attend any meeting, a purpose of which is the discussion of respondent's purchases or its purchasing strategy;
4. specify or recommend, because of the status of any company as an actual or potential customer of respondent, that purchases could or should be made from such company;

*Provided, however,* That nothing contained in this subparagraph shall prohibit any of respondent's personnel holding any of the positions listed in Appendix 2, hereof, and followed by brackets ([ ]), from:

- a. purchasing items for resale by the divisions of

respondent for which such individual is assigned sales and purchasing responsibilities;

b. obtaining statistical data or other information which shows the amount of actual or potential purchases of items for resale by the divisions of respondent for which such individual is assigned sales and purchasing responsibilities;

c. attending any meeting, the purpose of which is the discussion of respondent's purchases of items for resale or its strategy for purchasing such items;

J. Causing or permitting any of respondent's personnel who are primarily and directly engaged in purchasing on behalf of respondent, including, but not limited to, respondent's personnel holding any of the positions listed in Appendix 3, hereof, to:

1. engage in obtaining sales;
2. obtain statistical data or other information which shows the amount of actual or potential sales by respondent to any company;
3. attend any meeting, a purpose of which is the discussion of respondent's sales, or its strategy for obtaining sales;
4. specify or recommend, because of the status of any company as an actual or potential supplier to respondent, that sales could or should be made to such company;

*Provided, however,* That nothing contained in this subparagraph shall prohibit any of respondent's personnel holding any of the positions listed in Appendix 3, hereof, and followed by brackets ([ ]), from:

a. selling items purchased for resale by the divisions of respondent for which such individual is assigned purchasing and resale responsibilities;

b. obtaining statistical data or other information which shows the amount of actual or potential sales of items purchased for resale by the divisions of respondent for which such individual is assigned purchasing and resale responsibilities;

c. attending any meeting, the purpose of which is the discussion of respondent's sales of items purchased for resale by respondent or its strategy for selling such items.

## II

*It is further ordered,* That respondent shall, within thirty (30) days subsequent to the date of this order, destroy:

A. All statistical data in its possession, custody, or control which compares or otherwise relates purchases from another company to sales to such company;

B. All statistical data and other information, which shows the amount of actual or potential purchases by respondent from any company, and which is in the possession, custody or control of any of respondent's personnel holding any of the positions listed in Appendix 2, hereof;

C. All statistical data and other information which shows the amount of actual or potential sales by respondent to any company, and which is in the possession, custody, or control of any of respondent's personnel holding any of the positions listed in Appendix 3, hereof.

## III

*It is further ordered,* That respondent shall, within sixty (60) days subsequent to the date of this order:

A. Issue a copy of Attachment A, hereof, to each of respondent's personnel listed on its then-current Key Personnel List A or Key Personnel List B;

B. Insert and maintain the language of Attachment A hereof within all manuals and other such documents which set out respondent's policies or procedures for purchasing or for obtaining sales, or its policies relating to the compilation or distribution of statistical purchase or sales data.

## IV

*It is further ordered,* That respondent shall, beginning within sixty (60) days of the date of this order and for a period of one (1) year subsequent to such beginning date, mail or otherwise distribute copies of Attachment B, hereof, together with a copy of this order, exclusive of all appendixes, in the following manner:

A. Attached to each purchase order or substitute document issued by respondent to any supplier for any purchase in excess of \$5,000 documented thereby if such attachment has not previously been provided to such supplier in compliance with this paragraph;

B. Attached to each invoice or substitute document issued

by respondent to any customer for any sale made by respondent in excess of \$5,000 if such attachment has not previously been provided to such customer in compliance with this paragraph; *Provided, however*, in lieu of the requirement stated in this subparagraph B, for all sales made by respondent through its distribution division only, respondent may, in the alternative make a single distribution by mail of copies of said Attachment B and of this order (exclusive of all appendixes), to each of its customers listed on its then-current computerized distribution division customer list.

The above provisions of this Paragraph IV notwithstanding, respondent shall, within sixty (60) days subsequent to the date of this order, mail a copy of Attachment B, hereof, together with a copy of this order (exclusive of all appendixes), to each company which is a party with respondent to any contract or agreement of the nature described in Paragraph XI, below.

## V

*It is further ordered*, That respondent notify the Federal Trade Commission:

A. At least thirty (30) days prior to any proposed change in its corporate structure, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respondent which may affect compliance obligations arising out of this order;

B. Annually of all positions with responsibility for sales or purchases. For purposes of compliance with this subparagraph respondent shall furnish to the Federal Trade Commission at the end of each year a list of all such positions and the names of the employees holding each such positions.

## VI

*It is further ordered*, That respondent shall, within sixty (60) days subsequent to the date of this order, file with the Federal Trade Commission a written report setting forth in detail the manner and form in which it has complied with this order including, but not limited to, the name of each individual to whom a copy of Attachment A, hereto, was issued pursuant to Paragraph III, above.

## VII

*It is further ordered*, That respondent shall, within ninety (90) days subsequent to the first (1st) anniversary of the date of this order, provide the Federal Trade Commission with the name of each company to which copies of Attachment B, hereof, and this order were mailed or otherwise distributed pursuant to Paragraph IV, above.

## VIII

*It is further ordered*, That respondent shall, within sixty (60) days of the third (3rd) anniversary of the date of this order:

A. Cause each of its then-current personnel who, at such third (3rd) anniversary date of this order, hold any of the positions listed in Appendix 1, hereof, to complete and furnish to respondent's legal department a sworn statement in the form of Attachment C, hereof;

B. Cause each of its then-current personnel who, at such third (3rd) anniversary date of this order, hold any of the positions listed in Appendix 2, hereof, other than those positions preceded by an asterisk (\*), to complete and furnish to respondent's legal department a sworn statement in the form of Attachment D, hereof;

C. Cause each of its then-current personnel who, at such third (3rd) anniversary date of this order, hold any of the positions listed in Appendix 3, hereof, other than those positions preceded by an asterisk (\*), to complete and furnish to respondent's legal department a sworn statement in the form of Attachment E, hereof.

## IX

*It is further ordered*, That respondent shall:

A. Request each of its personnel who, at any time subsequent to the date of this order, has held any of the positions listed in Appendix 1, hereof, and who leaves the employ of respondent prior to the third (3rd) anniversary of the date of this order, to complete and furnish to respondent's legal department, within ten (10) days preceding such termination of employment, a sworn statement in the form of Attachment C, hereof;

B. Request each of its personnel who, at any time subsequent to the date of this order, has held any of the positions listed in Appendix 2, hereof, other than those

positions preceded by an asterisk (\*), and who leaves the employ of respondent prior to the third (3rd) anniversary of the date of this order, to complete and furnish to respondent's legal department, within ten (10) days preceding such termination of employment, a sworn statement in the form of Attachment D, hereof;

C. Request each of its personnel who, at any time subsequent to the date of this order, has held any of the positions listed in Appendix 3, hereof, other than those positions preceded by an asterisk (\*), and who leaves the employ of respondent prior to the third (3rd) anniversary of the date of this order, to complete and furnish to respondent's legal department, within ten (10) days preceding such termination of employment, a sworn statement in the form of Attachment E, hereof.

## X

*It is further ordered,* That respondent shall submit to the Federal Trade Commission:

A. Within ninety (90) days subsequent to the third (3rd) anniversary of the date of this order, all sworn statements which it has received pursuant to Paragraph VIII, above;

B. Within ninety (90) days subsequent to the first (1st) anniversary of the date of this order, and annually thereafter for a period of two (2) years, all sworn statements which it has received pursuant to Paragraph IX, above, together with the name and address of each individual who would have been required by Paragraph IX, above, but did not complete a sworn statement at any time in the one (1) year period immediately prior to such submission.

## XI

*It is further ordered,* That nothing contained in this order shall prohibit respondent from:

A. Entering into or adhering to any contract or agreement pursuant to which respondent shall purchase from another party any products which respondent also produces in exchange for the purchase from respondent by such other party of an approximately equal volume or value of like or similar products in any stage of process;

B. Entering into or adhering to any contract or

