

Complaint

IN THE MATTER OF
LITTON INDUSTRIES, INC.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
CLAYTON ACT, SECTION 7

*Docket 8778. Complaint, April 10, 1969—Decision, March 13, 1973.**

Opinion and order requiring a Beverly Hills, California, large conglomerate corporation with a broadly diversified product area and a worldwide operation, among other things to divest itself of its stock interest in Triumph-Werke Nurnberg, A.G. and Adlerwerke A.G.; and to cease and desist for a period of ten years from making acquisitions in the typewriter or typewriter parts or accessories manufacturing industry within the United States without prior Federal Trade Commission approval.

COMPLAINT

The Federal Trade Commission, having reason to believe Litton Industries, Inc., a corporation subject to the jurisdiction of the Commission, has acquired 98.5 percent of the stock of Triumph-Werke Nurnberg, A. G., 82 percent of the stock of Adlerwerke A. G., and all of the stock of their associated companies (hereinafter collectively referred to as "Triumph-Adler") in violation of Section 7 of the Clayton Act (15 U.S.C. Section 18), hereby issues this Complaint stating its charges in those respects as follows:

I

DEFINITIONS

1. Typewriters are manual and electric, office and portable machines for writing in characters similar to those produced by printer's type by means of key-board-operated types.

2. (a) *Standard Typewriters* are typewriters designed primarily for ordinary office typewriter uses, excluding special purpose typewriters such as office composing, stencil-cutting, reproduction and continuous form handling typewriters.

*By order issued April 20, 1973, the Commission extended the effective date of the decision and order for seven days until March 20, 1973, and tolled for seven days until May 24, 1973, the statutory time period within which respondent may petition for review of the Commission's decision and order. The same order granted complaint counsel an extension of time until April 27, 1973, within which to file a reply to respondent's petition and brief for reconsideration of the order of divestiture. See p. 1424 herein.

(b) *Office Electric Typewriters* are standard typewriters powered by electric motors.

(c) *Office Manual Typewriters* are standard typewriters powered manually.

3. Portable typewriters are typewriters designed primarily for non-commercial consumer users, generally sold with a case as a method of carrying or storing.

II

LITTON INDUSTRIES, INC.

4. Litton Industries, Inc. (hereinafter "Litton"), the respondent herein, is a corporation organized and doing business under the laws of the State of Delaware with its principal office and place of business located at 9370 Santa Monica Boulevard, Beverly Hills, California.

5. Litton ranks among the largest industrial corporations in the United States. In the year ended July 31, 1968, its sales and service revenues totaled \$1.9 billion and its assets were \$1.2 billion. In that year Litton reported profits of \$102 million before taxes and enjoyed a cash flow of more than \$103 million.

6. Litton's growth has been achieved in large part through a series of mergers and acquisitions. Litton represents that the direct contribution of acquired firm sales accounted for nearly half of its sales in 1967. Acquisitions and mergers secured for Litton leading positions in a number of industries, several of which are concentrated among relatively few firms. Litton ranks among the nation's eight largest sellers of cash registers, office calculating machines, power transmission equipment, A.C. electric motors, trading stamps, military and commercial ships, seismic surveys, store fixtures and refrigeration equipment, medical X-Ray equipment, elementary and high school textbooks, and a number of other products.

7. Litton represents that its multi-industry, multiple-disciplinary structure offers dramatic opportunities for new technical solutions and product innovations. Litton also represents that it is organized to create, develop and offer a flow of innovative products resulting from economies of technological scale.

8. In 1965, Litton acquired Royal McBee Corporation (hereinafter "Royal"), the second largest firm in the typewriter industry with 1964 sales of \$114 million. Royal held a strong position

in portable typewriters, had made advances in the office electric typewriter market, and dominated the office manual typewriter market. Litton represented that its experience combined with that of Royal in electromechanical technology would facilitate product innovation and development.

9. In 1967, Litton ranked first in domestic sales of office manual typewriters, with 40.8 percent; second in office electric typewriters, with 11.2 percent; and second in portable typewriters, with 23.1 percent. In total typewriter sales, Litton ranked second with a market share of 19.5 percent.

10. Litton recognized in 1965 a requirement for basic improvement in the typewriter products of Royal. Its response was to choose expedients that avoided commitment to original research and development. Acquisitions have been among the expedients chosen.

(a) In office electric typewriters, Litton replaced Royal's successful "GA" machine with its Models 550 and 660 typewriters differing from the "GA" largely in style and weight. By 1968, Litton recognized again the unfilled need for original research on a new office electric typewriter. It has estimated that an expenditure of \$3.6 million would be required to develop, start and tool for a machine based on patent licenses to replace its existing models. The acquisition of Triumph-Adler is an alternative to original research and to developing a suitable machine based on the present state of the art.

(b) Litton acquired Imperial Typewriter Company, Ltd. in 1966, discontinuing the latter's production of office electric and portable manual typewriters. Litton continues to produce as the "Model 80" Imperial's office manual typewriter.

(c) In portable typewriters, Litton introduced in 1966 an all-electric "Ultronic" portable developed by Royal. In 1966, it acquired Willy Fieler, GmbH, to obtain a similar typewriter known as the "All Electric." Litton has also obtained world-wide distribution rights on a low cost manual portable typewriter.

11. It all times relevant herein, Litton sold and shipped its products in interstate commerce throughout the United States; hence, Litton was, and is, engaged in commerce, as "commerce" is defined in the Clayton Act.

III

TRIUMPH-ADLER

12. Triumph-Adler is the collective designation for Triumph-Werke Nurnberg, A. G., a German corporation with its principal office and place of business in Frankfurt, Germany; Adlerwerke, A. G., a corporation owned or controlled by Triumph-Werke Nurnberg, A. G., and subsidiary corporations of each, including Adlerwerke vorm. Heinrich Kleyer A. G., a manufacturing unit, Grundig Burotechnik GmbH., a distributing company, Grundig Business Machines, Inc., USA, Grundig Bureau-equipment SARL, France, and Grundig Business Machine Pty., Ltd., Australia. Triumph-Adler has its principal office and place of business located at Kurgartenstrasse 37 Furth/Bay, Germany, and is headquartered in the United States at 355 Lexington Avenue, New York, New York.

13. Triumph-Adler manufactures office manual and electric typewriters and portable typewriters and ranks among the leading international typewriter companies. Its sales in 1967 were approximately \$52 million, and its operations are profitable.

14. Triumph-Adler introduced its standard office typewriters and manual portable typewriters in the United States in the late 1940's. In 1967, Triumph-Adler ranked sixth in typewriter sales in the United States, accounting for about 2.3 percent of all typewriter sales. Triumph-Adler's share of office electric typewriter sales in the United States has grown to 2.6 percent of all such United States sales following introduction of its new model.

15. By 1968 Triumph-Adler accounted for 3.8 percent of manual office typewriter sales, 2.6 percent of electric office typewriters and nearly 1 percent of portable typewriter sales. Triumph-Adler announced a new portable electric typewriter to the trade in June 1968, and intended to market this product in the United States.

16. Triumph-Adler had recognized a requirement for basic development and engineering in the development of an office electric typewriter. Its development efforts culminated in 1962 with the introduction of an office electric typewriter judged by Litton to be superior to competitive machines. Triumph-Adler has continued a program of basic engineering development, spending proportionally more than Litton for typewriter research

and development efforts. Its research staff is judged by Litton to out-rank its own. Triumph-Adler is in advanced development stages of basic innovation for additional office electric typewriters, portable typewriters.

17. At all times relevant herein, Triumph-Adler sold or shipped its products in interstate commerce throughout the United States; hence Triumph-Adler was, and is, engaged in commerce, as "commerce" is defined in the Clayton Act.

IV

TRADE AND COMMERCE

18. Trade and commerce in typewriters is substantial, amounting to about \$569 million in 1967. Very high levels of concentration have prevailed in the typewriter industry over the last three decades, with the four and eight largest firms accounting for more than 75 percent and 99 percent of typewriter shipments respectively. Entry barriers into the typewriter industry are high, and the number of companies engaged in producing typewriters and parts therefor declined from 23 in 1947 to 17 in 1963. In recent years the principal source of new entry has been foreign typewriter producers.

19. Office typewriters constitute the largest segment of typewriter sales, representing \$403 million in 1967. Concentration in this segment of the industry is high. The acquisition by second ranked Litton of sixth ranked Triumph-Adler results in a combined market share of 20.9 percent of such sales, and, on the basis of 1967 data, increases concentration of such sales among the two largest firms from 64.3 percent to 67.1 percent.

20. Sales of manual office typewriters were \$93 million in 1967, with the two largest firms accounting for 68.9 percent of such sales. Combined first-ranked Litton and sixth-ranked Triumph-Adler hold 44.6 percent of such sales, increasing concentration among the two largest firms to 72.7 percent of such sales.

21. Office electric typewriters are a fast growing segment of the typewriter industry, with 1967 sales of about \$310 million. Combined, second ranked Litton and sixth ranked Triumph-Adler hold 13.8 percent of such sales, increasing concentration among the two largest firms to 73.8 percent of such sales. Triumph-

Adler was one of the few new entrants in the sale of standard office electric typewriters in the last six years.

22. Sales of portable typewriters, both manual and electric, totaled \$166 million in 1967. The combination of second-ranked Litton with Triumph-Adler results in a market share of about 24 percent of such sales, increasing the share of the two largest firms to about 67.5 percent of such sales. Triumph-Adler, a significant actual and potential competitor, was one of few firms exerting a restraining influence on competition in portable electric office typewriter sales.

V

THE ACQUISITION

23. On or about January 3, 1969, Litton acquired substantially all of the outstanding stock of Triumph-Adler for a consideration of approximately \$51 million.

VI

EFFECTS OF THE ACQUISITION

24. The effect of acquisition of Triumph-Adler by Litton may be substantially to lessen competition or to tend to create a monopoly in the sale of typewriters generally and in particular kinds of typewriters, throughout the United States, or sections thereof, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18). These effects may occur in the following, among other ways:

(a) Substantial, actual and potential competition between Triumph-Adler and Litton may be eliminated;

(b) The restraining influence of Triumph-Adler as an actual or potential competitor may be eliminated;

(c) The competitive benefits of internal expansion and innovation by Litton in the development of improved standard office electric and portable typewriters of the kind manufactured by Triumph-Adler may be eliminated;

(d) Litton may be entrenched in its leading position in office manual typewriters;

(e) Already high barriers to the entry of new competition in the typewriter industry, or in segments thereof, may be heightened and increased;

(f) Members of the purchasing public and the ultimate consumer may be denied the benefits of free and open competition;

(g) The cumulative effect of the violation charged, separ-

ately and in the context of the series of acquisitions alleged in Paragraph 10 may be to entrench or increase already high levels of concentration by encouraging tendencies for combination and merger by actual and potential competitors.

VII

THE VIOLATION CHARGED

25. Consummation of the acquisition of substantially all of the stock of Triumph-Adler by Litton constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18).

Mr. Richard B. Lavine, Mr. Don M. Kaminsky and Mr. Murray L. Lyon supporting the complaint.

Howrey, Simon, Baker & Murchison by *Mr. J. Wallace Adair, Mr. Francis A. O'Brien, Mr. Edward W. Gass, Mr. Ralph Gordon,* Washington, D.C., and *Mr. Theodore F. Craver,* Litton Industries, Inc., Beverly Hills, California for respondent.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER
FEBRUARY 3, 1972

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The Federal Trade Commission, on April 10, 1969, issued the complaint herein charging that the acquisition, on or about January 3, 1969, by Litton Industries, Inc., a corporation, of 98.5 percent of the stock of Triumph-Werke Nurnberg, A. G., 82 percent of the stock of Adlerwerke, A. G., and all of the stock of their associated companies for a consideration of approximately \$51,000,000 violated Section 7 of the Clayton Act (15 U.S.C. Section 18). The complaint states in part:

4. Litton Industries, Inc. (hereinafter "Litton"), the respondent herein, is a corporation organized and doing business under the laws of the State of Delaware with its principal office and place of business located at 9370 Santa Monica Boulevard, Beverly Hills, California.

5. Litton ranks among the largest industrial corporations in the United States. In the year ended July 31, 1968, its sales and service revenues totaled \$1.9 billion and its assets were \$1.2 billion. In that year Litton reported profits of \$102 million before taxes and enjoyed a cash flow of more than \$103 million.

6. Litton's growth has been achieved in large part through a series of mergers and acquisitions. Litton represents that the direct contribution of acquired firm sales accounted for nearly half of its sales in 1967. Acquisitions and mergers secured for Litton leading positions in a number of industries, several of which are concentrated among relatively few firms. Litton ranks among the nation's eight largest sellers of cash registers, office calculating machines, power transmission equipment, A.C. electric motors, trading stamps, military and commercial ships, seismic surveys, store fixtures and refrigeration equipment, medical X-Ray equipment, elementary and high school textbooks, and a number of other products.

* * * * *

8. In 1965, Litton acquired Royal McBee Corporation (hereinafter "Royal"), the second largest firm in the typewriter industry with 1964 sales of \$114 million. Royal held a strong position in portable typewriters, had made advances in the office electric typewriter market, and dominated the office manual typewriter market. Litton represented that its experience combined with that of Royal in electromechanical technology would facilitate product innovation and development.

9. In 1967, Litton ranked first in domestic sales of office manual typewriters, with 40.8 percent; second in office electric typewriters, with 11.2 percent; and second in portable typewriters, with 23.1 percent. In total typewriter sales, Litton ranked second with a market share of 19.5 percent.

10. Litton recognized in 1965 a requirement for basic improvement in

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the typewriter products of Royal. Its response was to choose expedients that avoided commitment to original research and development. Acquisitions have been among the expedients chosen.

(a) In office electric typewriters, Litton replaced Royal's successful "GA" machine with its Models 550 and 660 typewriters differing from the "GA" largely in style and weight. By 1968, Litton recognized again the unfilled need for original research on a new office electric typewriter. It has estimated that an expenditure of \$3.6 million would be required to develop, start and tool for a machine based on patent licenses to replace its existing models. The acquisition of Triumph-Adler is an alternative to original research and to developing a suitable machine based on the present state of the art.

(b) Litton acquired Imperial Typewriter Company, Ltd. in 1966, discontinuing the latter's production of office electric and portable manual typewriters. Litton continues to produce as the "Model 80" Imperial's office manual typewriter.

(c) In portable typewriters, Litton introduced in 1966 an all-electric "Ultronic" portable developed by Royal. In 1966, it acquired Willy Fieler, GmbH, to obtain a similar typewriter known as the "All Electric". Litton has also obtained world-wide distribution rights on a low cost manual portable typewriter.

* * * * *

12. Triumph-Adler is the collective designation for Triumph-Werke Nurnberg, A.G., a German corporation with its principal office and place of business in Frankfurt, Germany; Adlerwerke, A.G., a corporation owned or controlled by Triumph-Werke Nurnberg, A.G., and subsidiary corporations of each, including Adlerwerke vorm. Heinrich Kleyer A.G., a manufacturing unit, Grundig Burotechnik GmbH., a distributing company, Grundig Business Machines, Inc., USA, Grundig Bureau-equipment SARL, France, and Grundig Business Machine Pty., Ltd., Australia. Triumph-Adler has its principal office and place of business located at Kurgartenstrasse 37 Furth/Bay, Germany, and is headquartered in the United States at 355 Lexington Avenue, New York, New York.

13. Triumph-Adler manufactures office manual and electric typewriters and portable typewriters and ranks among the leading international typewriter companies. Its sales in 1967 were approximately \$52 million, and its operations are profitable.

14. Triumph-Adler introduced its standard office typewriters and manual portable typewriters in the United States in the late 1940's. In 1967, Triumph-Adler ranked sixth in typewriter sales in the United States, accounting for about 2.3 percent of all typewriter sales. Triumph-Adler's share of office electric typewriter sales in the United States has grown to 2.6 percent of all such United States sales following introduction of its new model.

15. By 1968 Triumph-Adler accounted for 3.8 percent of manual office typewriter sales, 2.6 percent of electric office typewriters and nearly 1 percent of portable typewriter sales. Triumph-Adler announced a new portable electric typewriter to the trade in June 1968, and intended to market this product in the United States.

* * * * *

24. The effect of acquisition of Triumph-Adler by Litton may be substantially to lessen competition or to tend to create a monopoly in the sale of typewriters generally and in particular kinds of typewriters, throughout the United States, or sections thereof, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. Sec. 18). These effects may occur in the following, among other ways:

(a) Substantial, actual and potential competition between Triumph-Adler and Litton may be eliminated;

(b) The restraining influence of Triumph-Adler as an actual or potential competitor may be eliminated;

(c) The competitive benefits of internal expansion and innovation by Litton in the development of improved standard office electric and portable typewriters of the kind manufactured by Triumph-Adler may be eliminated;

(d) Litton may be entrenched in its leading position in office manual typewriters;

(e) Already high barriers to the entry of new competition in the typewriter industry, or in segments thereof, may be heightened and increased;

(f) Members of the purchasing public and the ultimate consumer may be denied the benefits of free and open competition;

(g) The cumulative effect of the violation charged, separately and in the context of the series of acquisitions alleged in Paragraph 10 may be to entrench or increase already high levels of concentration by encouraging tendencies for combination and merger by actual and potential competitors.

The answer of the respondent, filed on June 23, 1969, denied the material charges of the complaint and, as an affirmative defense, states in part:

26. Acquisition by respondent of Triumph-Adler will substantially enhance competition and be in the public interest; disapproval will substantially impede, injure and destroy competition in the typewriter industry.

27. The predominant typewriter market is the office electric market in which the overwhelming bulk of all typing is done. The state of this market is such that without some effective competition, IBM, which now has a virtual monopoly, will increase its lead and will gain a complete monopoly. By all judicially approved antitrust indicia, that company already possesses monopoly power. With the quality of its products, research programs, new product introductions, and the effectiveness of its sales and service organization, it has the power to sweep aside the few remaining weak obstacles to its complete monopoly of the office market. Neither respondent nor Triumph-Adler acting separately is or can become a realistic competitive force in the office market against this dominant concern.

28. Entry barriers to both domestic and foreign companies into the office market are virtually insurmountable.

29. Respondent's Royal Typewriter operations are sustaining heavy losses: \$6½ million in fiscal 1968 and at least \$6 million in fiscal 1969 ending July 31, 1969. Its sales organization has been declining through resignations of dealers, salesmen and servicemen. Triumph-Adler's United States business is barely profitable: less than 1½ percent in fiscal 1968. Only by the joint

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efforts of respondent and Triumph-Adler will respondent have any opportunity to continue in the typewriter business.

30. Triumph-Adler has an office electric typewriter which, from a quality standpoint, compares favorably with the older IBM basket-type office electric. Neither Triumph-Adler nor respondent has a machine comparable to or directly competitive with the IBM single element "Selectric" machine or the even newer IBM Magnetic Tape Selectric Typewriter (MT/ST). It is the hope of respondent that, by introducing the Triumph-Adler office electric into the Royal line in competition with IBM, Royal will be able to slow the continuing substantial decline of its sales of office electric typewriters and the decline of its sales and service organization and thereby obtain a base from which to develop products competitive with the IBM Selectric, the new MT/ST and other products inevitably to be introduced.

31. Only in this way can respondent remain in the typewriter business, gain the time required, and justify the expense of attempting to develop machines competitive to IBM's. If respondent is denied this opportunity, it will have no alternative but to withdraw completely from the typewriter business and leave the market to IBM, thus further enhancing and accelerating the trend towards complete monopoly. Disapproval of the Triumph-Adler acquisition by the Commission will have this effect.

32. Not only does respondent deny that the effects of its acquisition of Triumph-Adler will have a tendency to substantially lessen competition, but it affirmatively alleges that for the reasons herein pleaded to require respondent to divest Triumph-Adler would, itself, substantially lessen competition and tend to create a monopoly contrary to the intent and purpose of Section 7 of the Amended Clayton Act.

* * * * *

44. Prior to World War II, the world typewriter industry was centered in the United States and was dominated by United States manufacturers. Since then, however, typewriter production outside of the United States has increased substantially and imports of typewriters into the United States have also increased. The effect of typewriters imported into the United States by foreign manufacturers, however, has been limited primarily to portables sold in the home market through mass merchandising and discount chains. In the office electric typewriter market, the effect of machines imported by foreign manufacturers has been significantly less because of the necessity of selling through independent typewriter dealers, which, in turn, is dictated, among other things, by the prohibitive cost of building nationwide direct sales organizations.

45. Concurrently with the growth of foreign typewriter manufacturers, United States manufacturers increasingly have been establishing foreign production in order to compete successfully with the foreign manufacturers. In the home market, United States based manufacturers are finding it impossible to compete cost and pricewise against Japanese manufactured machines. All United States typewriter manufacturers, except one, have now ceased United States production of portable manuals. Respondent was the latest to stop when, on April 29, 1969, it closed its Springfield, Missouri plant. Although this was a relatively modern plant only 10 years old, it

sustained losses of \$3 million in fiscal year 1968 and would have lost approximately \$3.3 million in fiscal 1969 if operated for the entire year.

* * * * *

49. By the turn of the century the visible front strike basket design typewriter had been achieved. This upright manual typewriter was a mechanical device depending upon finger power for operation. For the next forty years the industry remained essentially static. By the mid-1920's and until World War II approximately 80 percent of domestic industry sales were concentrated in four companies: Underwood, Remington, Smith-Corona and Royal.

* * * * *

52. With the advent of World War II the major typewriter companies were required by the government to suspend all typewriter manufacture to concentrate on war production. Only IBM, located outside the critical war production zone and having successfully advanced the proposition that one IBM electric typewriter could do the work of two manual typewriters thus saving materials and labor, was permitted to continue its electric typewriter production, then in its infancy. IBM obtained raw material priorities for the manufacture of electric typewriters and placed tens of thousands of machines with government agencies and American industry.

53. This head-start during World War II has had the most profound and lasting impact upon the post-war developments of the office typewriter market. The advantages accruing to IBM as a result of the war years were many and important. IBM used its established product and nationwide sales and service organization to preempt the office market for electric typewriters. Introduction of IBM electric typewriters was accelerated; widespread public acceptance was obtained during the war. The old-line manual companies faced an uphill fight in returning to the market. They had to re-establish their production facilities and undertake substantial re-training of their work force. In addition, their product, manual office typewriters, had lost substantial favor in office use to the newer, faster electric IBM machines. Moreover, they had none of the new skills required to break into the electric typewriter market.

On July 10, 1969, counsel for the parties met with the hearing examiner in a reported non-public prehearing conference. As a result thereof, an agreed order was issued which was to control the subsequent course of the proceeding unless modified to prevent manifest injustice. Each party was required to file (and thereafter did file) trial briefs containing (a) a summary of the issues of fact and law; (b) the name and address of each witness whom it intends to call at the hearings, together with a statement of the nature of the witness' testimony; and (c) a list of the documentary exhibits to be offered. Thereafter, and before the commencement of formal hearings, a series of prehearing conferences were held, at which time matters relating to the conduct of the proceeding, including the receipt of documents in evidence, discovery, and the times and places of hearings, were discussed and resolved.

On June 5, 1969, upon request of complain counsel, the hearing examiner issued a subpoena *duces tecum* directed to respondent Litton, calling for the production of certain documents. Respondent filed a motion to quash the subpoena *duces tecum* on two grounds: first, that it was improper as seeking a post-complaint investigation; and second, that the documents called for were not in its possession, but in the custody of the German companies. Further, it was contended that the enforcement of the subpoena *duces tecum* would violate German law prohibiting improper disclosure of corporate information. At the first prehearing conference on July 10, 1969, the examiner, after hearing oral argument, denied the motion to quash and directed the parties to attempt to negotiate informal compliance (Tr. 19-21, 32). At a prehearing conference on September 23, 1969, counsel for the parties reported that they had conferred and were working out a procedure which would effect the production of the documents sought by complaint counsel.

Subsequent thereto, after a trip to Germany by one of respondent's counsel, who had discussions with the key officials¹ and the attorneys of the acquired companies, which resulted in an arrangement whereby the requested documents would be produced and the persons whose testimony may be needed would appear voluntarily, the hearing examiner, on December 5, 1969, authorized the taking of depositions² on behalf of Commission counsel in support of their case-in-chief, and the respondent in connection with its defense, at Frankfurt, Germany, and at London, England. On application of the hearing examiner, the Commission, on December 23, 1969, issued orders authorizing

¹ Mr. Gerd E. Weers, the managing director of the acquired companies, in a letter dated October 27, 1969 (attached to the application of the parties for the taking of depositions) to one of the complaint counsel, said in part:

"To the extent that any of the documents called for or testimony to be given may include confidential information, however, I am advised by my German counsel that under German law the information divulged must be accorded confidential treatment. In discussing the requirements of German law with Mr. Adair, he has informed me that the Federal Trade Commission procedures provide for *in camera* treatment of confidential information. With the understanding that confidential treatment will be afforded any documents or testimony which require confidential treatment under German law, such information will be made available at the depositions."

² In the application for the taking of the depositions, it is stated:

"Since the persons whose depositions are required herein will not be available for the ultimate hearing on the merits, both parties believe that the presence of the hearing examiner at the deposition proceeding is necessary and desirable so that he can observe the demeanor and credibility of the witnesses and, to the extent of his authority, make appropriate rulings."

and requesting the Consul or Vice Consul of the United States in Frankfurt, Germany, and in London, England, to administer the oath or affirmation to the individuals to be deposed and to appoint the hearing examiner to preside at the taking of the depositions.

Depositions were taken in Frankfurt, Germany, from April 12 to April 24, 1970, and in London, England, from April 29, 1970 to May 1, 1970, at which times twelve witnesses testified and numerous documents were identified and received. The depositions taken in Germany and reported on typewritten pages numbered 1 through 964, and those taken in England and reported on typewritten pages numbered 1 through 287, together with the documents, were subsequently received into the record of this proceeding (Tr. 9233-38, 9248).

On January 14, 1971, four days before the commencement of formal hearings on the complaint, the Federal Trade Commission brought an action against Litton in the Federal District Court in Los Angeles (*United States v. Litton Industries*, C.A. 71-113-FW) to compel Litton to comply with Section 6(b) orders to file Special Reports in the Commission's Conglomerate Investigation, File No. 691 0629. The orders seek the production of certain information relating to Litton's growth by acquisition and its position as a conglomerate firm. Due to the pendency of this complaint, which contains allegations relating to the size of Litton, its alleged growth through mergers and acquisitions, its behavior as a conglomerate, and its acquisition of typewriter companies other than Triumph-Adler (Complaint, Pars. 5, 6, 8, 10), Litton elected not to furnish the information requested pursuant to the Commission's Section 6(b) orders on the grounds that its production would jeopardize Litton's position in the pending proceeding.³

Litton contends that the Commission's role as investigator, prosecutor and adjudicator, inherently, and as exercised in this case, has deprived it of due process of law in contravention of the Fifth Amendment of the Constitution of the United States, the Administrative Procedure Act, and the Rules of Practice of

³ During the trial of this matter, Commission counsel introduced documents (CXs 10, 48, 299), and testimony relating to aspects of Litton's conglomerate activities to which respondent's counsel objected, and Commission counsel have proposed numerous findings with regard to Litton's financial size in relation to other United States industrial corporations and its growth by acquisitions unrelated to the typewriter business (CCF 3-4, 6-8, 9, 28-57).

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the Commission, and that any decision rendered by the Commission in this proceeding in the future cannot be the result of consideration by a fair and impartial tribunal based on the official record.

Commission counsel deny that they have injected into this proceeding the issues or evidence involved in the Commission's Conglomerate Investigation and that the conduct of the Commission's Conglomerate Investigation of Litton concurrently with this case would prejudice Litton in this case. However, Commission counsel have made the following contentions as to the relevancy of respondent's conglomerate history, organization and behavior to the issues in this case:

Respondent introduced evidence * * * to rebut whatever inferences may be drawn from the allegations of the complaint and the evidence offered by complaint counsel regarding Litton's financial size, behavior as a conglomerate and growth through acquisition * * * (Brief, pp. 5-6).

The inferences we urge from this evidence are the following: Litton is one of the largest, most diversified and most powerful corporations ever put together in the United States. On the basis of this record (CCF 1-14), it would tax the imagination to conceive of a mechanical or electro-mechanical or electronic venture which Litton could fail to undertake successfully if it were willing to allocate sufficient funds and resources. [Footnote omitted.]

Litton has acquired successful companies where that suited its purpose. And Litton has acquired unsuccessful companies and injected managerial capability, money and other resources to effect success where that has suited its purpose. Where Litton has encountered competitive and other resistance to its vigorous aggressive policies, it has time and time again overcome such resistance through the application of its huge reservoir of organization, talent, and money. (CCF 1-84; RPF 12-20).

This record shows that whatever serious mistakes may have been made in Litton's typewriter business, they are directly attributable to Litton management and not to some mythical intervention by outside forces.

* * * * *

In short, the inference that should be drawn from "Litton's financial size, behavior as a conglomerate and growth through acquisition" (Brief, p. 5), is that it is inconceivable, as a matter of fact and of law, that this \$2 billion company could not build an adequate office electric typewriter if it needed one, providing it was willing to take the internal initiative to do so and devote the necessary money and manpower to the task [CCR 18-19, 21].

The hearing examiner concludes that the issue raised by respondent in this connection creates a serious question as to the Commission's procedure in this case. The hearing examiner,

