

IN THE MATTER OF
NATIONAL FIRE HOSE CORP., ET AL.

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

Docket C-2935. Complaint, Nov. 1, 1978—Decision, Nov. 1, 1978

This consent order requires a Compton, Calif. manufacturer and seller of fire hose and accessories to cease, in connection with the sale and distribution of their products, from entering into agreements, or taking any other action that would impose territorial or customer restrictions on their distributors.

Appearances

For the Commission: *John Hankins.*

For the respondent: *Earl P. Willens, Buchalter, Nemer, Fields & Savage, Los Angeles, Calif.*

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 parties listed in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent National Fire Hose Corp. is a corporation organized under the laws of the State of California, with its executive office, plant, and principal place of business located at 516 East Oaks St., Compton, California.

PAR. 2. Respondent Raymond L. Pepp is Chairman of the Board of Directors of respondent corporation. Together with the other individual respondent, respondent Raymond L. Pepp has been and continues to be responsible for establishing, supervising, directing and controlling the business activities and practices of corporate respondent, including those hereinafter set forth. Mr. Pepp's office address is the same as that of respondent corporation.

PAR. 3. Respondent Dudley H. Pepp is an officer of respondent corporation. Together with the other individual respondent, respondent Dudley H. Pepp has been and continues to be responsible for establishing, supervising, directing and controlling the business activities and practices of corporate respondent, including those

hereinafter set forth. Mr. Pepp's office address is the same as that of respondent corporation.

PAR. 4. Respondent corporation is engaged in the manufacture, distribution and sale of fire hose to distributors located throughout the United States. These distributors in turn resell to others, including users of fire hose such as fire departments and industrial customers. For the purposes of this proceeding, a "distributor" is defined as any person or firm which buys fire hose directly from respondent corporation for the purpose of resale.

PAR. 5. In the course and conduct of its business of manufacturing and distributing fire hose, respondent corporation ships or causes such products to be shipped from its plant in the State of California to customers in various other States throughout the United States. The respondent corporation is therefore engaged in "commerce" and the business of respondent corporation affects "commerce" as commerce is defined in the Federal Trade Commission Act.

PAR. 6. Except to the extent that competition has been restrained by reason of the practices hereinafter alleged, respondent corporation's distributors, in the course and conduct of their business of distributing, offering for sale, and selling fire hose purchased from respondents, are in substantial competition in or affecting commerce with one another and with other firms or persons engaged in the distribution and sale of other brands of fire hose; and respondent corporation is likewise in substantial competition in or affecting commerce with other persons or firms engaged in the manufacture, sale and distribution of fire hose.

PAR. 7. In the course and conduct of their business, respondents have engaged and continue to engage in the unfair methods of competition, and unfair acts and practices, in or affecting commerce, enumerated in this paragraph:

1. Respondents have established agreements, understandings or arrangements with their distributors whereby such distributors are granted exclusive territories in which to market respondents' fire hose;

2. Respondents have contacted distributors selling respondents' fire hose outside these defined territories and have attempted by various means to coerce such distributors to refrain from making further sales outside their assigned territories; as a result of such coercion respondents' distributors have agreed to refrain from selling respondents' fire hose outside their assigned territories;

3. Respondents have acted in concert with their distributors to foreclose the entry of new distributors into competition with respondents' distributors; and

4. Respondents have established agreements, understandings or arrangements whereby their distributors refrain from selling to particular customers.

PAR. 8. In the manner above described, respondents have entered into and maintained agreements with their distributors which have had and do have the tendency of unduly hindering and restraining competition between such distributors in the sale of respondents' products. Said agreements and respondents' acts and practices in furtherance of them have had and now have the following effects among others:

1. Distributors have been deprived of their freedom to act as independent businessmen;
2. Distributors have refrained from selling respondents' fire hose outside the distributors' assigned territories thereby eliminating or severely restricting competition between such distributors in the sale of respondents' products;
3. Willing buyers and sellers of respondents' fire hose have been prevented from consummating sales;
4. Competition among distributors of respondents' fire hose and companies dealing in other brands of fire hose has been restricted;
5. Buyers of fire hose have been deprived of the benefits of free competition.

PAR. 9. The aforesaid acts, practices and methods of competition have the tendency unduly to restrict and restrain competition and have injured, hindered, suppressed, lessened or eliminated actual and potential competition, are to the prejudice and injury of the public, and constitute unfair methods of competition and unfair acts or practices in or affecting commerce, within the intent and meaning 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 respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Denver Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act;

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent National Fire Hose Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 516 East Oaks St., Compton, California.

Respondent Raymond L. Pepp is a director of said corporation. Respondent Dudley H. Pepp is an officer of the corporation. Together, they formulate, direct and control the acts and practices of the corporation. Their address is the same as that of the corporation.

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

ORDER

I

It is ordered, That respondents National Fire Hose Corp., its subsidiaries, successors, assigns, officers and directors, and Raymond L. Pepp and Dudley H. Pepp individually and as officers or directors of National Fire Hose Corp., and respondents' agents, representatives and employees, directly or indirectly, or through any corporate or other device, in connection with the manufacturing, distribution, offering for sale or sale of fire hose or fire hose accessories (hereinafter "products") in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

1. Entering into, maintaining, preserving or enforcing any contract, agreement, combination, or understanding which fixes, establishes, limits or restricts the territory in which a distributor may sell any of respondents' products;

2. Requiring any distributor or potential distributor to enter into a written or oral agreement or understanding, concerning the

territory in which such distributor or potential distributor may sell any of respondents' products, as a condition to receiving or retaining a distributorship;

3. Refusing to sell, delaying shipment, threatening to refuse to sell or to delay shipment, or taking any other action to limit or restrict the territory in which a distributor may sell any of respondents' products;

4. Consulting or communicating with any distributor of respondents' products concerning the establishment of a new distributorship;

5. Entering into, maintaining, preserving or enforcing any contract, agreement, combination, or understanding which limits or restricts the customers to whom a distributor may sell any of respondents' products;

6. Restricting or attempting to restrict, in any manner, the customers to whom a distributor may sell any of respondents' products or the territory in which a distributor may sell such products.

II

It is further ordered, That respondents, for a period of three years from the date of service upon them of this order, establish and maintain a file of all records referring or relating to respondents' refusal to sell any product to any distributor or respondents' termination of any distributor, which file shall contain a copy of any written communication to any such distributor concerning such refusal to sell or such termination. The file shall be made available for Commission inspection upon reasonable notice.

III

It is further ordered, That respondents shall, within thirty days after service upon them of this order, distribute a copy of the order to each of the corporate respondent's operating divisions, to its present corporate officers, to its present sales representatives, and to its future corporate officers and sales representatives within five days of their assumption of office or employment with respondent corporation.

IV

It is further ordered, That respondents shall:

1. Within thirty days after service upon them of this order, distribute a copy of the letter attached as Appendix "A" to each

existing distributor who has purchased municipal type fire hose from respondents within the past three years;

2. Distribute a copy of the letter attached as Appendix "A" to each newly established distributor who purchases municipal type fire hose from respondents within the three year period commencing from the date of service of this order upon respondents; this letter to be distributed prior to the first such sale;

3. The distribution of copies of the letter attached as Appendix "A" as provided in this part of the order shall not be construed as a limitation on the other parts of this order.

V

It is further ordered, That respondents shall notify the Commission at least thirty days prior to any proposed change in the organization of the corporate respondent, 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 corporation which may affect compliance obligations arising out of this order.

VI

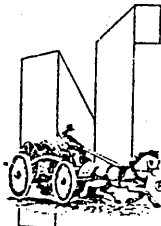
It is further ordered, That each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment. In addition, for a period of ten years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the manufacture, distribution or sale of fire hose or fire hose accessories or of his affiliation with a new business or employment in which his own duties and responsibilities involve the manufacture, distribution or sale of fire hose or fire hose accessories. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That the respondents herein shall within sixty days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Custom Manufacturers of Municipal and Industrial Fire Hose

APPENDIX A

NATIONAL FIRE HOSE CORP.



Date:

TO: ALL DISTRIBUTORS OF MUNICIPAL HOSE

National Fire Hose and the Federal Trade Commission have been engaged in discussions concerning the Company's distribution practices as they relate to certain of our distributors. While the Company has continued to defend its practices in light of relevant factors in the marketplace, we have determined that it is in the best interests of National and you, our distributor, that the matter be put to rest in as simple a fashion as possible causing the least disruption to our distributors and to customers of our distributors. Therefore, for settlement purposes only and without admitting that any acts to this date have violated any law, we have consented to an order issued by the Commission prohibiting us from:

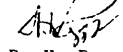
1. Imposing territorial restrictions on our distributors or coercing distributors in any manner to limit the territory in which they sell National's products;
2. Restricting the customers to whom distributors may sell National's products;
3. Communicating or consulting with our distributors concerning the establishment of new distributors.

If, in the future, you believe that National has engaged in any of the practices listed above, you should report the details in writing to:

Federal Trade Commission
Washington, D.C. 20530

All of us at National look forward to serving you on all of your fire hose requirements in the years to come. Your continuing support of National products and policies is greatly appreciated.

Very truly yours,


D. H. Pepp

IN THE MATTER OF
GOLD BULLION INTERNATIONAL, LTD., ET AL.

ORDER CLARIFYING AND MODIFYING OPINION IN REGARD TO
ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND
HOBBY PROTECTION ACTS

Docket 9094. Decision, July 25, 1978 — Modifying Order, Nov. 3, 1978

This order clarifying and modifying the opinion of the Commission, 92 F.T.C. 196, deletes any finding of liability with respect to the 10 Mark 1887 Kaiser Wilhelm I coin, and deletes the words "by respondents" at the appropriate places, to make clear that the only relationship of individual respondents to the importation of the offending coins was in their roles as owners, officers, and directors of the respondent corporation.

ORDER CLARIFYING AND MODIFYING OPINION OF THE
COMMISSION

By motion filed November 1, 1978, respondents have requested that the Commission modify its opinion in two respects, neither of which affects the final order previously entered. Complaint counsel have not objected to the requested modifications. The first requested modification would delete any finding of liability with respect to the German 10 Mark 1887 Kaiser Wilhelm I coin, on grounds that there is record proof of only one specimen of the coin having been imported. (In its opinion the Commission concluded that no liability should be found for another coin, the German 20 Mark 1887 Kaiser Wilhelm I, for the same reason; the change would, therefore, treat the two coins consistently.) The second modification relates to the role of the individual respondents, making clear that their only relationship to the importation of the offending coins was in their roles as owners, officers, and directors of Gold Bullion. The modifications appear warranted. Therefore,

It is ordered, That this matter be reopened, and that the opinion of the Commission be modified in the following two respects:

1. The conclusion at p. 15 of the Commission's opinion (first paragraph) is modified to delete reference to the 10 Mark Wilhelm I (1887) coin, and that coin is dropped from consideration as a basis for the Commission's finding of liability, for the same reasons noted with respect to the 20 Mark Wilhelm I (1887) coin discussed at p. 5, n. 5 of the Commission's Opinion.
2. On p. 23 of the initial decision, the words "by respondents" are deleted from findings 3-5 of the "Summary" of the administrative law judge, and Finding 2 on p. 23 is modified to read:

Clarifying and Modifying Order

92 F.T.C.

Gold Bullion International, Ltd. imported into the United States for sale and distribution in commerce, copies of gold coins that were manufactured after November 29, 1973, the effective date of the Hobby Protection Act. The individual respondents did not import coins into the United States in their individual capacities. Insofar as Messrs. Bogart, Costello and Thompson (along with Mr. Mayer) controlled the acts and practices of Gold Bullion or had the ability to exercise such control by virtue of their ownership of the respondent corporation and/or of their roles as officers and/or directors, they are responsible for the importation of coins by Gold Bullion for purposes of enforcement of the Hobby Protection Act by the Federal Trade Commission.

Commissioner Pitofsky did not participate.

Complaint

IN THE MATTER OF

BORDEN, INC.

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

Docket 8978. Complaint, July 2, 1974 — Decision, Nov. 7, 1978

This order, among other things, requires a New York City firm to cease attempting to hinder, restrain or eliminate competition in the processed lemon juice market by granting improper price reductions and promotional allowances to its customers; or by selling its product, ReaLemon, below cost or at unreasonably low prices.

Appearances

For the Commission: *W.M. Rice, K.H. Richman, John M. Peterson, Robert C. Goldberg and William J. Tabor.*

For the respondent: *Elroy H. Wolff, David J. Lewis, H. Blair White and Charles W. Douglas, Sidley & Austin, Chicago, Ill. and Washington, D.C.*

COMPLAINT

The Federal Trade Commission having reason to believe that Borden, Inc., hereinafter referred to as Borden or respondent, has violated Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

I. DEFINITIONS

PARAGRAPH 1. For the purposes of this complaint the following definitions shall apply:

(a) "Reconstituted lemon juice" means a product manufactured by adding water to a lemon concentrate base, which product, either bottled or canned, can be stored without refrigeration for long periods of time.

(b) "ReaLemon" refers to the brand name of the reconstituted lemon juice product of ReaLemon Foods which is part of the Borden Foods Division of Borden, Inc.

II. RESPONDENT

PAR. 2. Borden is a corporation organized and existing under and

by virtue of the laws of the State of New Jersey with its executive offices located at 277 Park Ave., New York, New York. [2]

PAR. 3. ReaLemon Foods is a part of the Borden Foods Division of Borden, Inc. Borden acquired ReaLemon-Puritan Co., Chicago, Illinois, in 1962. As a separately operated entity in the Borden Foods Division, ReaLemon Foods processes, packs, distributes, and sells reconstituted lemon juice.

PAR. 4. In 1972, Borden's total sales exceeded \$2 billion, net income after taxes was approximately \$66 million, and total assets were approximately \$1.3 billion. In 1973, ReaLemon Foods' total sales were approximately \$28 million. ReaLemon Foods' sales of reconstituted lemon juice were approximately \$22 million and substantially all of its net income of \$3.5 million was derived from such sales.

III. NATURE OF TRADE AND COMMERCE

PAR. 5. The relevant market is the sale and distribution, for resale, of reconstituted lemon juice in the United States and regions thereof.

PAR. 6. Borden, through ReaLemon Foods, dominates the reconstituted lemon juice market. In 1972, industry sales of reconstituted lemon juice were approximately \$25 million; Borden accounted for approximately 90 percent of such sales. In 1973, industry sales of reconstituted lemon juice were approximately \$25 million; Borden accounted for approximately 80 percent of such sales.

PAR. 7. Approximately 20 firms are presently engaged in the reconstituted lemon juice market. Of these 20 firms, only five firms, in addition to Borden, sell a full range of bottle sizes of reconstituted lemon juice. After ReaLemon Foods, the next largest firm accounted for approximately five percent of sales of reconstituted lemon juice in 1972 and twelve percent of sales in 1973.

IV. JURISDICTION

PAR. 8. In the course and conduct of its business, Borden has sold or caused to be sold reconstituted lemon juice to customers located throughout the United States. There is now and has been for many years a constant substantial flow of Borden's ReaLemon reconstituted lemon juice in [3] "commerce" as that term is defined in the Federal Trade Commission Act. Except to the extent that competition has been hindered, frustrated, lessened and eliminated by the acts and practices hereinafter alleged in this complaint, Borden has been and is in competition with other corporations, partnerships, individuals or firms engaged in the sale and distribution of reconstituted lemon juice.

V. ACTS AND PRACTICES

PAR. 9. Borden, the largest processor, distributor and seller of reconstituted lemon juice in the United States, has used its dominant position, size and economic power to frustrate the growth of smaller reconstituted lemon juice processors and distributors; to reduce their opportunities for business survival; and to prevent, hinder, or lessen competition in the processing, distribution and sale of reconstituted lemon juice. Thus, Borden has been, and is now, engaging in various monopolistic or other unfair acts, practices or methods of competition in maintaining a monopoly in the processing, distribution or sale of reconstituted lemon juice.

More particularly, respondent, since at least 1965, has adopted and placed into effect and carried out various policies, acts and practices to lessen, restrain, eliminate and prevent the distribution or sale of reconstituted lemon juice by others engaged in the processing, distribution and sale of such product in the United States. Among such monopolistic policies, acts and practices, respondent engaged in the following:

(a) Granting selective price reductions which have resulted in different net prices among Borden's ReaLemon customers;

(b) Selling its reconstituted lemon juice below its cost or at unreasonably low prices under circumstances where the effect was, and is, to injure, suppress or destroy competition in the processing, distribution or sale of reconstituted lemon juice; [4]

(c) Granting selective promotional allowances or concessions under circumstances where the effect was, and is, to injure, suppress or destroy competition in the processing, distribution or sale of reconstituted lemon juice;

(d) Disparaging personnel and products of its competitor.

(e) Erecting barriers to entry into the reconstituted lemon juice market through extensive trademark promotion and advertising which has artificially differentiated Borden's reconstituted lemon juice from comparable products of its competitors;

(f) Inducing selected customers to reduce their retail prices on Borden's reconstituted lemon juice by granting special price reductions and/or special promotional allowances or concessions on Borden's reconstituted lemon juice.

VI. EFFECTS

PAR. 10. Borden has engaged and is engaging in acts, practices and

methods of competition as hereinbefore alleged, the effects of which have included:

- (a) Monopolizing the reconstituted lemon juice market;
- (b) Preserving, maintaining, and furthering a highly concentrated market structure;
- (c) Hindering, restraining, foreclosing and frustrating competition in the reconstituted lemon juice market;
- (d) Increasing entry barriers in the reconstituted lemon juice market;
- (e) Depriving consumers of the benefits of free and open competition. [5]

VII. VIOLATIONS

PAR. 11. Through each act or practice, hereinbefore alleged in Paragraph 9(a)-(f), respondent has maintained monopoly power over the production, distribution or sale of reconstituted lemon juice in the relevant market in violation of Section 5 of the Federal Trade Commission Act.

PAR. 12. Respondent, through unfair methods of competition, has restrained trade and maintained a noncompetitive market structure in the distribution and sale of reconstituted lemon juice in the relevant markets in violation of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY DANIEL H. HANSCOM, ADMINISTRATIVE
LAW JUDGE

AUGUST 19, 1976

I

STATEMENT OF THE CASE

Allegations of Complaint

The complaint in this proceeding issued in July 1974 charging respondent Borden, Inc. with maintaining monopoly power over the marketing and [2] sale of reconstituted lemon juice through ReaLemon Foods, a unit of its Borden Foods Division, in violation of Section 5 of the Federal Trade Commission Act. More specifically, the complaint charged respondent Borden with using its dominant position, size and economic power to frustrate the growth of smaller reconstituted lemon juice marketers, to reduce their opportunities for survival, and to prevent, hinder and lessen competition in the

sale of reconstituted lemon juice. As a consequence of the foregoing and other enumerated acts and practices, respondent Borden was charged with (a) monopolizing the reconstituted lemon juice market, (b) preserving, maintaining, and furthering a highly concentrated market structure, (c) hindering, restraining, foreclosing, and frustrating competition in the reconstituted lemon juice market, (d) increasing entry barriers in the reconstituted lemon juice market, and (e) depriving consumers of the benefits of free and open competition.

The "relevant market," as indicated, was alleged to be the marketing and sale of reconstituted lemon juice in the United States and regions thereof. Industry sales of reconstituted lemon juice were stated to be approximately \$25,000,000 in 1973, and respondent's RealLemon brand was alleged to account for approximately 80 percent of such sales.

Borden's answer, filed August 22, 1974, denied all allegations of unlawful competitive conduct or that it had violated Section 5 of the Act. Respondent denied that reconstituted lemon juice was a relevant product market, that it had engaged in any of the specific acts and practices alleged, or that it had restrained trade or maintained a noncompetitive market structure in the sale of reconstituted lemon juice. [3]

Procedural History

Pretrial proceedings commenced shortly after the filing of Borden's Answer with a conference held August 28, 1974, and continued thereafter with extensive discovery and trial preparations by both sides. A number of motions were filed and ruled upon by the law judge, and several additional pretrial conferences were held to iron out various problems which developed. Hearings on the merits were originally scheduled for February 18, 1975, but that date proved to be impractical and they were reset for May 27, 1975. The case-in-chief commenced on that date in Chicago, Illinois, and thereafter hearings were held there and in Washington, D.C. and Los Angeles, California.

The trial required in all seven weeks of actual hearings, including rebuttal which was concluded on February 3, 1976. Many industry and other witnesses were called, and both sides presented extensive expert economic and marketing testimony. Complaint counsel called Dr. Michael Mann, Professor of Economics at Boston College and former Director of the Bureau of Economics of the Commission, and Drs. Warren Greenberg and Daniel P. Kaplan, economists from the Commission's Bureau of Economics. Respondent Borden called Dr.

William F. Massy, Professor of Business Administration and Vice-Provost for Research at the Graduate School of Business, Stanford University, and Dr. Morton Kamien, Professor of Managerial Economics at the Graduate School of Management, Northwestern University. In all 74 witnesses testified. When hearings were completed the transcript amounted to 6,189 pages, and twelve binders of exhibits had been accumulated numbering several thousand pages. The record was closed February 23, 1976. The initial decision was originally due May 21, 1976, but the complexity of this matter combined with another decision then being completed by the undersigned necessitated extensions of time which were granted by the Commission. [4]

The proceeding is now before the undersigned for decision based upon the allegations of the complaint, the answer, the evidence and the proposed findings of fact, conclusions and legal authority filed by both sides. All proposed findings of fact, conclusions and arguments not specifically found or accepted herein, are rejected. The law judge, having considered the entire record, and all the contentions of respondent Borden and complaint counsel, makes the following findings and conclusions, and issues the order set out at the end hereof:

II

FINDINGS OF FACT

Respondent

1. Respondent Borden is a New Jersey corporation with its executive offices at 277 Park Ave., New York, New York. Among its divisions is the Borden Foods Division which is headquartered in Columbus, Ohio (Complaint and Answer, Paragraph Two; Dillon, Tr. 4840).

2. The ReaLemon-Puritan Company, based in Chicago, Illinois, was acquired by Borden in 1962, and thereafter has been operated as ReaLemon Foods, a separate unit of the Borden Foods Division. The principal product of ReaLemon Foods is ReaLemon brand of reconstituted lemon juice (Complaint and Answer, Paragraphs Three and Four).

3. Respondent Borden, Inc. is a major U.S. corporation with total sales of over \$2 billion annually, total income after taxes of \$66 million in 1972 and assets of around \$1.3 billion. In 1973, total sales of ReaLemon Foods were approximately \$28 million of which \$22

million was reconstituted lemon juice (Complaint and Answer, Paragraph Four). [5]

4. At all times relevant herein, Borden has sold reconstituted lemon juice in various parts of the United States and was, and is now, engaged in "commerce" as "commerce" is defined in the Federal Trade Commission Act (Complaint and Answer, Paragraph Eight).

Market Definition

As a predicate for determining whether respondent Borden, as charged in the complaint, has "maintained monopoly power over the production, distribution or sale of reconstituted lemon juice," it is obviously necessary first to identify both the "relevant geographic market" and the "relevant product market."

Geographic Market

5. The geographic market within which to test the allegations of the complaint is the United States as a whole. Respondent Borden's ReaLemon bottled lemon juice is marketed nationally and competed with similar products in most of the country. Although valid geographic submarkets may exist, the record clearly establishes the existence and validity of a national geographic market (see, for example, CX 1, pp. 638-39; CX 2, pp. 660, 678, 707; CX 3, p. 740; CX 258).

Product Market

6. From the inception of this proceeding the composition of the relevant product market has been a paramount issue. Respondent Borden has contended throughout that any relevant market definition must include fresh lemons at a minimum. A major part of the case was devoted to documentary and testimonial evidence, some of it highly complex econometric analysis, on this issue. Complaint counsel, on the other hand, maintain that, although the "outer boundaries" of a broad product market may include [6] fresh lemons, a variety of practical factors, including product characteristics and "economic and commercial realities," establish that "processed lemon juice," described later herein, constitutes a valid submarket. After thorough consideration of the evidence and applicable legal principles on this question, the law judge, in accordance with the findings and reasoning set out hereinafter, has concluded that complaint counsel's contention is correct and that processed lemon

juice is, at the least, a proper submarket within which to test respondent Borden's competitive conduct.

Fresh Lemons

7. Little need be said about fresh lemons, they are known to all. Unlike other citrus fruit, however, fresh lemons are used mainly for their juice and as a garnish. Fresh lemons grow the year around, and are available at all seasons (Lee, Tr. 5079; Bohrens, Tr. 5071). California is a principal producer, although lemons are also grown elsewhere, including Arizona and Florida. Fresh lemons are perishable in a relatively short time. Estimates of the shelf-life of unrefrigerated lemons ranged from 5 to 7 days up to three or four weeks (Goldberg, Tr. 2630; Heller, Tr. 5018; Greenberg, Tr. 1202-1203; Imming, Tr. 4603), and under refrigeration at the proper temperature, six to eight weeks (Lemmerman, Tr. 981). Dollar sales of fresh lemons approximate \$200,000,000 yearly (Fey, Tr. 3970).

Processed Lemon Juice

8. Processed lemon juice includes the following different varieties: reconstituted lemon juice, frozen reconstituted lemon juice, processed fresh lemon juice, frozen fresh lemon juice, and imitation lemon juice (Dr. Greenberg, Tr. 2801). As indicated earlier, the complaint alleged the relevant product [7] market to be "reconstituted lemon juice," but during the proceeding, and later in proposed findings and briefing, complaint counsel shifted to "processed lemon juice" which describes a slightly broader product market. Significant market share data is in terms of processed lemon juice (CX 239), although most of the evidence offered by complaint counsel relates to reconstituted lemon juice. Bottled reconstituted lemon juice, which is the product marketed by respondent under its ReaLemon brand, is overwhelmingly the dominant type of processed lemon juice, and comprises the bulk of the processed lemon juice category (see the testimony of Dr. Greenberg, particularly Tr. 2794 through 2806, Tr. 2846-47, CX 239, and CX 1 through 4 generally). Whether the relevant market is formulated in terms of "reconstituted lemon juice" or "processed lemon juice" makes no material difference in the outcome of this proceeding. Both of the foregoing terms, as well as "bottled lemon juice," were used to describe the industry in respondent's ReaLemon Marketing Plans (CX 1-4), and have been used in writing this decision.

9. Reconstituted lemon juice is manufactured by adding water, a preservative or preservatives, and lemon oil to pure lemon juice

