IN THE MATTER OF

CHRYSLER CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9072. Complaint, Feb. 10, 1976—Decision, Jan. 9, 1981

This consent order requires, among other things, Aurora Chrysler-Plymouth, Inc., a Seattle, Wash. automobile dealership, to adopt and adhere to the "Repossessed Vehicle Surplus/Deficiency system" established by Chrysler Corporation pursuant to the disposition of Docket 9072 as to Chrysler Corporation. The firm is further required to establish to the reasonable satisfaction of the Commission that it has paid all surpluses realized from February 10, 1973 from repossessed vehicles returned to the company; corrected all prior erroneous credit reports; and provided credit reporting agencies with corrected information.

Appearances

For the Commission: *Dean Fournier, Bruce D. Carter, Sharon S. Armstrong, David Bricklin* and *Stevan Phillips.*

For the respondent: *Louis D. Peterson, Hillis, Phillips, Cairncross & Martin,* Seattle, Wash.

COMPLAINT

The Federal Trade Commission, having reason to believe that Chrysler Motors Corporation, Chrysler Credit Corporation, and Aurora Chrysler-Plymouth, Inc., corporations, have violated the provisions of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint.

PARAGRAPH 1. *Respondents.* Respondent Chrysler Motors Corporation ("Chrysler Motors") is a Delaware corporation with its office and principal place of business at 12000 Oakland Ave., Highland Park, Michigan. It is a wholly-owned subsidiary of Chrysler Corporation.

Respondent Chrysler Credit Corporation ("Chrysler Credit") is a Delaware corporation with its office and principal place of business at 16250 Northland Drive, Southfield, Michigan. It is a wholly-owned subsidiary of Chrysler Financial Corporation, which is wholly-owned by Chrysler Corporation.

Respondent Aurora Chrysler-Plymouth, Inc. ("Aurora") is a Delaware corporation with its office and principal place of business

at 13733 Aurora Ave. North, Seattle, Washington. It is a wholly-owned subsidiary of Chrysler Motors Corporation.

Allegations stated below in the present tense include the past tense.

PAR. 2. *Respondents' Business.* Chrysler Motors manufactures, distributes and sells motor vehicles, including automobiles and trucks. It also owns all or part of the voting stock of various retail dealers of its vehicles, whose business operations and policies it controls. It is responsible for the acts and practices of Aurora and its other wholly- or partially-owned dealers.

Wholly- or partially-owned as well as independent retail Chrysler dealers are referred to below as "Chrysler dealers."

Chrysler Credit is a finance company which provides retail financing to customers of Chrysler dealers for their retail installment contract purchases of new and used motor vehicles. It also provides wholesale financing for inventories held by Chrysler dealers.

Aurora is a wholly-owned Chrysler dealer selling new and used motor vehicles.

PAR. 3. *Commerce.* Each of respondents participates in some or all phases of the sale, distribution and repossession of motor vehicles, and in the transmission across state lines of contracts, monies, and other business papers related to the extension and enforcement of credit obligations. Respondents each maintain a substantial course of trade in motor vehicles and motor vehicle credit in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. *Retail Installment Contract Sales.* Aurora and most other Chrysler dealers arrange financing through Chrysler Credit or other lenders for retail sales of motor vehicles to their customers. Most of the sales to be financed by Chrysler Credit are executed on a printed "retail installment contract" form provided by Chrysler Credit, naming the customer as buyer and the dealer as seller. This "retail installment contract" form indicates that the contract is to be assigned to Chrysler Credit for value, that the buyer is to be indebted to the dealer or its assignee, and that the dealer or its assignee is to be a secured party holding security interest in the vehicle sold. In the event the buyer defaults, Chrysler Credit and Aurora and other retail Chrysler dealers have also undertaken the obligation, by express or implied representations in their retail installment contracts, to account to the defaulting buyer for any surplus arising from the resale of repossessed collateral. This obligation is reaffirmed after default in notices sent to defaulting buyers by Chrysler

Credit. These representations have the tendency and capacity to lead buyers to a reasonable expectation that Chrysler Credit will refund any surplus.

PAR. 5. *Statutory Duty to Account for Surplus.* The respective rights and duties of the defaulting buyer and secured party after repossession are defined by state commercial law, derived by almost every state from Article Nine of the Uniform Commercial Code, and the retail installment contract. State law requires the secured party, after repossessing and/or disposing of the collateral, to account to the defaulting buyer for any surplus of proceeds from the sale or disposition in excess of the amount needed to satisfy all secured indebtedness, reasonable expenses of retaking, holding, preparing for sale, selling, and the like, and allowable legal costs and fees.

PAR. 6. *Post-Default Procedures Determined by Master Agreement.* In instances where Chrysler Credit as secured party declares a default, it usually repossesses or causes repossession of the vehicle. The procedures followed by Chrysler Credit and the dealer after repossession are determined by a master vehicle financing agreement between Chrysler Credit and the dealer, as well as by the terms of the assignment of each retail installment contract to Chrysler Credit. A substantial majority of the agreements executed between Chrysler Credit and Chrysler dealers in the United States are repurchase or similar agreements (hereinafter "repurchase" agreements).

PAR. 7. *Repurchase Transfer and Payoff.* Pursuant to the agreements described in Paragraph Six, Chrysler Credit in most instances returns the repossessed vehicle to the repurchase dealer and receives from the dealer a payoff, consisting of the unpaid balance of the retail installment contract adjusted by applicable charges and credits. The dealer then resells the vehicle to a third party.

PAR. 8. *Joint Liability.* Under applicable state law, a dealer who receives a transfer of collateral from a secured party pursuant to a repurchase agreement has a duty to properly dispose of the collateral and to account to the defaulting buyer for any surplus. Chrysler Credit also is obligated to ensure that a proper disposition of the collateral is made and that a proper accounting for any surplus is given to the defaulting buyer. Chrysler Credit shares this obligation jointly with the dealer because (1) it continues to be the secured party and continues to be a fiduciary with respect to the defaulting buyer's equity interest; (2) Chrysler Credit, as assignor of the contractual duties of a secured party, continues to be liable for performance of those duties; (3) Chrysler Credit has dictated, controlled and acted jointly with the repurchase dealer in executing

relevant aspects of the credit transaction; and (4) Chrysler Credit has made representations to buyers, as set forth in Paragraph Four, that these duties would be properly performed.

PAR. 9. *Failure to Account for Surpluses.* In a substantial number of instances Chrysler Credit, Aurora, and other Chrysler repurchase dealers, have (1) failed to institute or follow correct procedures for determining the existence or amounts of surpluses realized from the sale of repossessed vehicles, (2) failed to disclose the existence of these surpluses to defaulting buyers, and (3) wrongfully retained such surpluses in violation of the defaulting buyers' statutory and contractual rights. The failure to identify and disclose surpluses has concealed their existence from these consumers and consequently few have asserted their rights under applicable state law. The failure to remit surpluses has deprived numerous consumers of substantial amounts of money rightfully theirs and has unjustly enriched Chrysler Credit and its repurchase dealers. These practices are therefore unfair and deceptive.

PAR. 10. *Misrepresentation of Right to Deficiency.* Chrysler Credit provides to dealers and Chrysler dealers make use of retail installment contracts which represent that the seller or its assigns shall seek any deficiency due on a retail installment contract. In many instances state law limits or denies this right. These representations have the tendency and capacity to induce defaulting buyers to pay sums to which the dealer, Chrysler Credit, or its assigns is not entitled or otherwise to change their position to their detriment. Therefore, use of these misleading contracts is unfair and deceptive.

PAR. 11. *Failure to Disclose Material Facts Concerning Redemption.* Chrysler Credit and its repurchase dealers fail, in some instances, to inform defaulting buyers of facts necessary to their exercise of the right of redemption granted by state law, including but not limited to (1) the nature and duration of the right to redeem, and (2) the amount required to redeem. This failure to disclose material facts has the tendency and capacity to hinder defaulting buyers in exercising the right to redeem and is therefore an unfair and deceptive act or practice.

PAR. 12. *Owned Chrysler Dealers Using Non-Chrysler Credit Financing.* Aurora and a number of other wholly- or partially-owned Chrysler dealers engage in the acts and practices ascribed to dealers in Paragraphs Nine, Ten and Eleven, in instances where retail installment financing for their customers is obtained from finance institutions other than Chrysler Credit. These acts and practices, for the reasons stated above, are unfair and deceptive.

PAR. 13. *Conclusion.* The acts and practices of respondents set

forth in Paragraphs Nine, Ten, Eleven and Twelve are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER AS TO AURORA CHRYSLER-PLYMOUTH, INC.

The Commission having heretofore issued its complaint charging Aurora Chrysler-Plymouth, Inc. and others with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint together with a proposed form of order; and

Respondent Aurora Chrysler-Plymouth, Inc., its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by said respondent of the jurisdictional facts set forth in the 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 the complaint, and waivers and other provisions in accordance with the Commission's Rules; and

The Secretary of the Commission having thereafter, in accordance with Section 3.25(c) of its Rules, withdrawn this matter from adjudication as to Aurora Chrysler-Plymouth, Inc.; and

The Commission having considered the matter 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 3.25(5) of its Rules, the Commission makes the following jurisdictional findings and enters the following order:

1. Respondent Aurora Chrysler-Plymouth, Inc. is a Delaware corporation with its principal place of business at 13733 Aurora Ave. North, Seattle, Washington.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding as to Aurora Chrysler-Plymouth, Inc., and of said respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That respondent Aurora Chrysler-Plymouth, Inc., a corporation, and its successors, assigns, officers, agents, representatives and employees, and any corporation, subsidiary, division or

device through which they act directly or indirectly, shall forthwith (A) adopt and adhere to the "Repossessed Vehicle Surplus/Deficiency" system established by Chrysler Corporation pursuant to the disposition of Docket 9072 as to Chrysler Corporation, and (B) deliver a copy of the Repossessed Vehicle Surplus/Deficiency system to all appropriate supervisory personnel.

II.

It is further ordered, That respondent shall, no later than 60 days after service of this Order:

A. Establish to the reasonable satisfaction of the Commission that (1) all surpluses generated from repossessed vehicles returned to respondent between February 10, 1973 and the date of service of this Order have been paid, and (2) for each such surplus, corrected information has been provided to any credit reporting agency to which respondent had previously reported the existence of a deficiency.

B. File with the Commission a written report setting forth in detail the manner and form in which respondent has complied with this Order.

III.

It is further ordered, That respondent notify the Commission at least 30 days prior to any dissolution or other proposed change in the corporate respondent (such as assignment or sale resulting in the emergence of a successor corporation or corporations), or any other corporate change (including the creation or dissolution of subsidiaries) which may affect compliance obligations arising out of this Order.

IN THE MATTER OF

INTERNATIONAL TELEPHONE & TELEGRAPH CORPORATION, ET AL.

Docket 9000. Interlocutory Order, Jan. 21, 1981

Granting complaint counsel leave to withdraw and dismissing "Motion for Disciplinary Action."

ORDER

On October 15, 1980, complaint counsel in this matter filed a "Motion For Disciplinary Action," asking that the Commission take "appropriate steps" against respondent's counsel for allegedly improper conduct. They asked the Commission to direct Administrative Law Judge Miles J. Brown to make certain findings under Rule of Practice 4.1(e) in a show cause hearing, and they asked the Commission to defer any disciplinary action until it had the results of the ALJ's investigation. The ALJ earlier denied complaint counsel's motion that he conduct such a hearing.

Very briefly, the subject of the requested investigation and the alleged cause for disciplinary action is a sequence of events over the course of discovery in this matter from 1976 to 1980. Those events, described in some detail in the pleadings, generated questions by complaint counsel about a) the thoroughness of respondent's search for and production of documents responsive to a 1976 subpoena and b) the duty of respondent and its counsel to supplement that subpoena response with additional material that was either newly discovered or, as suggested, intentionally withheld.

On December 1, 1980, respondent's counsel filed their "Opposition," accompanied by an affidavit. They denied that there was any improper conduct or any basis for disciplinary action, and they explained the questioned circumstances in detail. They also indicated that they had been engaged in extensive discussions with Bureau of Competition attorneys since the October 15 motion was filed and that the information they had provided would lead complaint counsel to withdraw their motion for disciplinary action. Still, respondent's counsel alleged that charges contained in the motion were made without adequate investigation, that they were incorrect, and that they had received damaging publicity. Therefore, respondent's counsel request that the Commission issue a press release stating its reasons for dismissing complaint counsel's motion.

As respondent's counsel indicated, on December 1, 1980, complaint counsel filed a "Reply" to the "Opposition" in which they withdrew

their request for a hearing and their request for disciplinary action. In so doing, however, complaint counsel recommended that the Commission consider and adopt policy positions or rules regarding certain enumerated discovery issues. Furthermore, complaint counsel state that the matter before us is not mooted by their withdrawal, since there are still unfulfilled discovery duties incumbent upon respondent and its counsel.

A brief, general outline of the salient facts described in the pleadings is necessary. In 1974, the respondent produced certain documents in private litigation, some of which later appeared to relate to the same subject matter as an FTC subpoena. In 1976, respondent produced further documents in response to an FTC subpoena, *not* including at least one relevant document believed to have surfaced in the 1974 private litigation. Thus, this controversy concerned pre-existing documents responsive to the 1976 subpoena, not discovered in 1976 and only later discovered (in subsequent phases of the private discovery) and thereupon produced to the Commission. There is no question that respondent's counsel did come forward with the lately discovered information, although there were questions about the timing of that production, which have been resolved. Furthermore, a subsequent Commission subpoena in 1979 yielded other documents said to be responsive to the 1976 subpoena which existed in 1976 but were not previously discovered or produced.

While questions of ethical conduct arising from this sequence of events are no longer before us, complaint counsel separately assert that respondent had a continuing obligation after 1976 to go back to various document sources, including the document production in the private litigation, in order to search for and produce documents responsive to the 1976 subpoena. In fact, complaint counsel claim that respondent's counsel have still not searched the contents of twelve boxes of Continental Baking Company documents which are duplicates of those produced in the private litigation and likely to contain responsive documents. We note that, despite claims of prejudice to complaint counsel's case, the ALJ has reopened the record to allow introduction of the lately discovered and produced documents. Therefore, with complaint counsel's withdrawal of the request for Commission disciplinary action, complaint counsel's residual concern focuses on the lack of an analog to Federal Rules of Civil Procedure 26(e) in the Commission's Rules of Practice and the ambiguity of responsibility thus created.

Rule 26(e), FRCP, imposes upon parties and their lawyers a duty to amend a prior discovery response if they obtain new information

that indicates 1) that the response was incorrect when made or 2) that the response was correct when made but is no longer true *and* that failing to amend the response would be a knowing concealment. Complaint counsel contend that the duty to supplement prior responses to Commission discovery orders includes 1) the obligation to submit documents that were responsive to a prior discovery order and in the custody, control or knowledge of the party at the time production was made but that were not furnished at that time, as well as 2) the obligation to produce, under certain circumstances, newly acquired information or documents. They say that the lack of a Rule 26(e) analog in the Commission's Rules of Practice makes this duty ambiguous. Consequently, complaint counsel, in withdrawing their motion, recommend that the Commission "consider" certain enumerated issues arising from this ambiguity. Furthermore, they recommend that the Commission adopt certain policies regarding the duty to supplement prior discovery responses, by which we assume that complaint counsel recommend promulgation of corresponding changes in our Rules of Practice.

Our response must necessarily be limited, for contrary to complaint counsel's suggestion, we regard the instant controversy as moot with the withdrawal of the motion for disciplinary action, which we allow. As for complaint counsel's request that respondent's counsel search through the twelve boxes of documents assembled for the private litigation to find pre-existing documents responsive to the 1976 subpoena, we believe that this matter should be left to the administrative law judge. In fact, the matters suggested by complaint counsel as the subjects of specific rules changes, such as entitlement to a subsequent discovery order when there is reason to believe that documents responsive to a prior order have not been produced, are matters presently reposed in the authority and discretion of the administrative law judges. See Rules of Practice Section 3.38.

As for the recommendation that the Commission "consider" certain discovery-related issues, because of the mootness of the specific request before us, we decline the opportunity to discuss generally any reasons for or effects of the absence of an express analog to FRCP 26(e) in our Rules of Practice. Therefore,

It is hereby ordered, That we grant complaint counsel leave to withdraw, and we hereby dismiss the October 15, 1980, "Motion For Disciplinary Action." Accordingly, the requests for Commission action and the specific questions of ethical conduct raised therein are rendered moot. We think that the press release requested by respondent's counsel is unnecessary.

IN THE MATTER OF

E.I. DUPONT de NEMOURS & CO.

Docket 9108. Interlocutory Order, Jan. 21, 1981

ORDER EXTENDING IN CAMERA TREATMENT

On January 16, 1980, E.I. DuPont de Nemours and Company ("DuPont") requested a three year extension of *in camera* treatment for certain documents in the record of this proceeding. By order of October 20, 1980, the Commission ordered that *in camera* protection of all documents so designated should continue until certain questions on which the Commission requested additional information are resolved. Respondent has submitted its response to that order and the Commission is now prepared to rule on the requested extension.

The Commission's standards for *in camera* protection of exhibits in adjudicative proceedings are clearly expressed in *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184 (1961); *Bristol-Myers Company*, 90 F.T.C. 455 (1977); and *General Foods Corporation*, Docket No. 9085, Order of March 10, 1980. Despite respondent's arguments to the contrary, the provisions of the F.T.C. Improvements Act of 1980 (Pub Law 96-252) governing treatment of confidential information do not alter the long-established fact that Section 6(f) of the Federal Trade Commission Act does not absolutely bar disclosure of business data as evidence in our adjudicatory proceedings.[1]

The standard for *in camera* treatment is one of "clearly defined, serious injury." *H.P. Hood & Sons, Inc.*, 58 F.T.C. at 1188. We pointed out in *Bristol-Myers Co.*, 90 F.T.C. at 457 and in our March 10 Order in *General Foods* that the secrecy and materiality of the business information sought to be protected comprise the two elements of the serious injury analysis. As aids in the determination of secrecy and materiality, the Commission in *Bristol-Myers* cited six factors mentioned in the Restatement of Torts. 90 F.T.C. at 457. Furthermore, we have acknowledged that the showing of serious injury does not necessarily require a specific demonstration of the manner in which other firms would use material to the disadvantage of the firm

[1] New Section 21(d)(2) of the FTC Act provides that

> [a]ny disclosure of relevant and material information in adjudicative proceedings to which the Commission is a party shall be governed by the rules of the Commission for adjudicative proceedings . . . except that the rules of the Commission shall not be amended in a manner inconsistent with the purposes of this section.

Discussing what ultimately was enacted as Section 21(d)(2), the Senate Report on S.1991 stated specifically that the Commission should maintain the procedures in Rules 1.18(b) and 3.45 for granting *in camera* treatment. Senate Report No. 96-500 at pp. 27-28 (1979).

whose information is at issue. Rather, we have said that it is proper to infer, without a specific showing of how a competitor would use it, that disclosure of allegedly sensitive information would seriously affect the firm's commercial position.[2] Underlying this analysis is a general concern for the seriousness of injury to a firm's commercial or competitive position. Of course, the injury contemplated in *Hood* and its successors is not limited to "commercial" injury in any strict or exclusive sense, nor is such injury confined to the precise type under consideration in *Hood,* but our precedents appear to distinguish it from the kind of injury arising from potential tax liability envisioned by respondent.

In essence, respondent argues that certain earnings data should be given extended *in camera* treatment because of the possibility that disclosure would result in increased tax liability for the firm. In *Hood,* the Commission weighed the possibility that disclosed data might give rise to and be used in private treble-damage actions, and it concluded that such an eventuality was not the kind of injury that should govern its determination of whether to disclose the information. As such, it appears that respondent's potential tax liability is more like the potential private damage liability in *Hood* and less like the type of direct business injury contemplated by our *in camera* standards. Nevertheless, it is unnecessary for us to make a definitive determination on this point inasmuch as respondent advances an independent, and we think valid, ground for continued *in camera* treatment of the same information to which its tax argument applies.

The exhibits in question contain valuable, secret and material investment, earnings, profit, operative return and cost information about respondent's titanium dioxide and pigments business, the release of which might enable DuPont's competitors to construct an accurate financial model of DuPont's business, to its detriment. While it appeared to the Commission that certain information in question had been previously disclosed in public exhibits, respondent points out that the *in camera* data in question are *actual* while the previously disclosed data were only projections and forecasts. DuPont asserts, and we are persuaded, that the actual data were expensive to compile, are more sensitive and secret than the projections and are more likely to result in injury to respondent's business if released.

The Commission also asked DuPont for clarification of the status of certain *in camera* information that appeared to be too old to be of

[2] General Foods Corporation, Docket No. 9085, Order of August 1, 1980, pp. 1-2.

competitive concern. Respondent has persuaded us that, despite its age (1975), the actual data in question—trends of profits, earnings, unit costs and sales volumes of titanium dioxide—might enable competitors to extrapolate an accurate model of its current business. We also asked for further argument concerning certain comparisons of costs of production by plant. DuPont asserts that this information is more recent, more detailed and more accurate than similar information apparently disclosed in other exhibits and that this information is highly proprietary and sensitive, having been developed at substantial expense to DuPont. The Commission finds this a sufficient ground for extending *in camera* protection for the plant data. Finally, the Commission inquired about certain lists of prices for 1976, 1977 and 1978. Respondent contends that these exhibits contain indexed averages of actual discounted prices which are secret and which would assist its competitors if released. We are persuaded that this group of documents should also be given continued *in camera* treatment.

Having disposed of the specific groups of documents discussed in our October 20 Order, we now move to the whole *in camera* record of this proceeding. We have found it unnecessary to disclose any of the *in camera* information in writing our opinion in this case, which is a primary consideration in determining whether to grant *in camera* treatment to adjudicative information or to disclose it, 58 F.T.C. at 1187. Moreover, we have carefully reviewed each of the documents for which respondent seeks extended *in camera* treatment and are satisfied that all of them meet the criteria set out in the holdings cited above. Therefore,

It is ordered, That all exhibits presently in the *in camera* record of Docket No. 9108 shall remain *in camera* for three years from the date of this order, at which time respondent may show cause why those documents should not be made public.

IN THE MATTER OF

THE CENTRAL FLORIDA ELECTRICAL BID DEPOSITORY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9132. Complaint, Nov. 28, 1979—Decision, Jan. 22, 1981

This consent order requires, among other things, a Winter Park, Fla. corporation operating a non-profit electrical bid depository service, and nine individuals to cease engaging in any course of action, conspiracy or agreement which has the purpose or effect of fixing, maintaining, stabilizing, or tampering with the price of electrical contracting services, including: encouraging or requiring members or signatories to exchange relevant bid information prior to bid opening time; barring them from negotiating or submitting bids after the bid filing deadline; requiring them to function exclusively through the bid depository; and penalizing those who fail to do so. Further previously suspended recalcitrants must be reinstated, and the corporation is required to promptly amend its rules and regulations so as to conform with the terms of the order.

Appearances

For the Commission: *Truett M. Honeycutt* and *David R. Flowerree.*

For the respondent: *William A. Harmening, Stanley, Harmening, Lovett & Cohen.* Orlando, Fla.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Central Florida Electrical Bid Depository, Inc., a corporation, and David Perry, Robert Behe, Larry Poirier, and Fred Newton, individually and as officers and directors of said corporation, and Charles Mayo, Helmuth Eidel, Donald Burchnell, Patrick Kelly, and Lynn Harden, individually and as directors of said corporation, hereinafter sometimes referred to as respondents, have 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 in that respect as follows:

I. DEFINITIONS

1. For the purposes of this complaint the term "*bid filing deadline*" shall mean the time set by The Central Florida Electrical Bid Depository, Inc., for the receipt by the depository of final bids from electrical contractors to general contractors for a specific job.

2. For the purposes of this complaint the term "*bid shopping*" shall mean the practice of a general contractor seeking to obtain an offer, after the bid filing deadline but either before or after the award of the prime contract, from an electrical contractor to perform work at a price lower than that submitted by that electrical contractor or another electrical contractor bidding through The Central Florida Electrical Bid Depository, Inc.

3. For the purposes of this complaint the term "*bid peddling*" shall mean the practice of an electrical contractor offering, after the bid filing deadline but either before or after the award of the prime contract, to perform work at a price lower than that submitted by himself or another electrical contractor bidding through The Central Florida Electrical Bid Depository, Inc.

II. PARTIES

PAR. 1. Respondent The Central Florida Electrical Bid Depository, Inc., (hereinafter sometimes referred to as corporate respondent, or CFEBD) is a nonprofit corporation, organized and existing under the laws of the State of Florida, with its principal office and place of business located at 707 Nicolet Ave., Winter Park, Florida.

Respondents David Perry, Robert Behe, Larry Poirier and Fred Newton are the officers and directors of the corporate respondent, and Charles Mayo, Helmuth Eidel, Donald Burchnell, Patrick Kelly, and Lynn Harden are directors of said corporation (hereinafter sometimes referred to as individual respondents). They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondent CFEBD was organized for, and serves its members and users as, an instrumentality which promotes cooperative activity among member and user contractors, collects business data from such contractors, and generally purports to assist them in the operation of their businesses. One of the functions of respondent CFEBD is the operation of a bid depository. Said respondent CFEBD's members and users represent a substantial, if not dominant, part of the construction industry contractors in the central area of the State of Florida.