

Syllabus

IN THE MATTER OF
KRAFT-PHENIX CHEESE CORPORATION

COMPLAINT, OPINION, AND ORDER OF DISMISSAL IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1938

Docket 2935. Complaint, Sept. 30, 1936—Order, July 17, 1937

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, SUBSEC. (A)—“COMMERCE”—RETAILER PURCHASER OF PRODUCER SELLER'S JOBBERS UNDER PRODUCER SELLER'S INTEGRATED NATION-WIDE PRICING SYSTEM AND PLAN, WHERE DIRECT PRODUCER SELLER TO RETAILER CONTACT, SOLICITATION AND SERVICE AND UNINTERRUPTED FLOW FROM WAREHOUSE TO JOBBER TO RETAILER, AS “PURCHASER.”

Complaint charged with unlawful discrimination in violation of aforesaid section, respondent, engaged on a nation-wide scale in distributing and selling its extensively advertised processed cheese, packaged cheese and salad dressing from its various warehouses to jobbers and wholesalers for resale to retailers, contacted by its salesmen, serviced by it, and supplied by continuous flow and current of commerce in its products from factories to warehouses and from warehouse to retailer over regularly established routes to known retailers, business of which, as aforesaid, it personally solicited, and as to which it made effective price policies and schedules of its own:

Held, Respondent, in setting up and putting into effect, as aforesaid, its said price system to retailers, engaged in interstate commerce, and sales of its products to retailers likewise in course of such commerce, and retailer, purchasing its said goods from jobbers and wholesalers, equally “purchaser” under act with retailer buying direct.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, SUBSEC. (A)—QUANTITY AND VOLUME DISCOUNTS AND DIFFERENTIALS—COSTS—WHERE PRACTICAL IMPOSSIBILITY OF ACCURATE ALLOCATIONS TO EACH KIND AND AMOUNT OF PRODUCT FROM SAME DELIVERING INSTRUMENTALITY, BUT REASONABLE PRESUMPTION OF SUPPORTING DIFFERENCE.

Where any reasonable allocation of delivery cost would unquestionably leave a difference large enough to support a given difference in price on the basis of certain varying quantity purchases and delivery methods, and there is a reasonable presumption that such difference would justify entire price differential, practical impossibility of making accurate allocation of costs to each kind and amount of product delivered from same truck is no ground for ignoring such reasonable inference.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, SUBSEC. (A)—QUANTITY AND VOLUME DISCOUNTS AND DIFFERENTIALS—WHERE REASONABLE IN PURPOSE AND AVAILABILITY AND ADVERSE COMPETITIVE EFFECT ON PRODUCER SELLER'S COMPETITORS NEITHER INTENDED NOR EVIDENT, NOR INJURY PERCEPTIBLE AS BETWEEN FAVORED AND NON-FAVORED RETAILER PURCHASERS

Where, on complaint charging respondent, engaged as aforesaid, with unlawful discrimination in violation of section in question in allowing from one-half cent to two and one-half cents discount, as case might be,

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on certain quantity purchases of loaf cheese, and five per cent discount upon weekly purchases of \$5.00 worth of package cheese or salad products, subject to certain delivery limitation (and extended to group purchasers contracting for \$100.00 or more of such products), it appeared, among other things, as respects the effect on producer seller's competitors, that use of such discounts was prevalent in the industry, no adverse competitive effect was intended or evident, nor ground to apprehend one, and, as respects differentials and effect on favored and unfavored retail sellers of its said products, that such discounts, as case might be, were reasonable in purpose, and reasonably open to all, were justified by cost, and benefit conferred, and did not operate prejudicially to any perceptible extent as between those who received or failed to receive particular discount, or as between those falling within certain different discount ranges:

Held, That price differentials established by it in sales of its said products to retailers did not tend to create a monopoly in it or to lessen or injure competition between it and its competitors, nor to injure competition between retailers reselling its said products, no violation of aforesaid section, and order of dismissal should issue.

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. Allen C. Phelps and *Mr. James I. Rooney* for the Commission.

Nicholson, Snyder, Chadwell & Fagerburg, of Chicago, Ill.,
Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C.
and *Mr. Robert Gordon*, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" as amended by an Act of Congress, approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C., title 15, section 13), and for other purposes", the Federal Trade Commission, having reason to believe that Kraft-Phenix Cheese Corporation is violating and has been violating the provisions of Section 2 (a) of said Act, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Kraft-Phenix Cheese Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 400 Rush Street, Chicago, Ill. Respondent corporation maintains five division or branch offices located as follows: Eastern Division Office, New York, N. Y.; Southeastern Division Office, Atlanta, Ga.; Southwestern Division Office, Denison, Tex.; Central Division Office, Chicago, Ill.; and Western Division Office, San Francisco, Calif.

PAR. 2. Said respondent corporation is and has been prior to June 19, 1936, engaged in the business of manufacturing, processing, offering for sale, selling and distributing cheese, cheese products, and salad products. Respondent sells and distributes said products in commerce between and among the various States of the United States and the District of Columbia, causing said products to be shipped and transported from the respective places of origin or concentration thereof, located in various States of the United States, to purchasers of such products, located in all States of the United States and the District of Columbia, and there is and has been, at all times herein mentioned, a continuous current of trade and commerce in said products between respondent's factories, processing plants, branch offices, and distributing points and purchasers located in all of the States of the United States and the District of Columbia; that said commodities are so sold and distributed for use, consumption, and resale within all of said States and the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now and during the time herein mentioned, has been in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of manufacturing, processing, offering for sale, selling, and distributing cheese, cheese products and salad products in commerce between and among the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business as above described, respondent since on or about August 29, 1936 has discriminated in price and is now discriminating in price between different purchasers buying such products of like grade and quality for resale to consumers, by giving and allowing to some of its said purchasers of cheese, cheese products and salad products lower prices than those given or allowed other of its said purchasers competitively engaged one with the other in the resale of said products to the consumer within the United States. Said discriminations consist in the following:

1. In connection with the offering for sale and sale of Kraft Loaf Cheese in five pound boxes, in the granting of an allowance of a one cent discount from the unit pound price set for lots of 5 pounds to 29 pounds of such product for purchases in lots of 30 pounds to 149 pounds; in the allowance of a one cent per pound discount from the price set for lots of 30 pounds to 149 pounds for purchases of lots from 150 pounds to 749 pounds; in the allowance of a one-half cent per pound discount from the price set for lots of 150 pounds to 749 pounds for purchases of 750 pounds or over.

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2. In connection with the offering for sale and selling of Kraft package cheese and cheese products, except loaf cheese:

(a) In the allowance of a five percent discount on all specific purchases of such products amounting to \$5.00 or more in which one delivery is required;

(b) In the allowance of a five percent discount to all group purchasers contracting for \$100.00 or more of such products per week, where store-door delivery is made and one billing only required.

3. In connection with the offering for sale and selling of Kraft salad products:

(a) In the allowance of a five percent discount on all specific purchases of such products amounting to \$5.00 or more in which one delivery is required;

(b) In the allowance of a five percent discount to all group purchasers contracting for \$100.00 or more of such products per week, where store-door delivery is made and one billing only required.

PAR. 5. That the purchasers of such commodities from respondent, so bought and sold in interstate commerce, are in competition in the resale of such products to the consumer with other such purchasers in the different States of the United States in which said purchasers are respectively located and engaged in business; that the effect of such discriminatory prices is to enable some of said purchasers to purchase such commodities at a lower price than competing purchasers can buy the same products, solely because of the variation of volume of resale trade done in such products by the different purchasers thereof.

PAR. 6. The general effect of said systematic discriminations in price, made by said respondent as above set forth has been or may be to substantially lessen competition or to injure, destroy, or prevent competition in the sale and distribution of cheese, cheese products and salad products, between the said respondent and other manufacturers and distributors of similar products engaged in interstate commerce, and also between the said favored purchasers of said products receiving such discriminatory prices and other unfavored competing purchasers of said products not receiving said discriminatory prices; and the effect of said discriminations has been or may be to tend to create a monopoly in respondent in said line of commerce and also in the said favored purchasers receiving said discriminatory prices from said respondent, in the resale of said products in different localities or trade territories in the United States in which such purchasers respectively operate.

PAR. 7. The foregoing alleged acts of the said respondent are in violation of Section 2 (a) of said Act of Congress, approved June 19,

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1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. title 15, section 13), and for other purposes."

MEMORANDUM OPINION

Pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes," the Federal Trade Commission, on September 30, 1936, issued and served its complaint in this proceeding upon the respondent Kraft-Phenix Cheese Corp., charging it with violating the provisions of Subsection A of Section 2 of said Act as amended. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Allen C. Phelps, attorney for the Commission, before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Nicholson, Snyder, Chadwell & Fagerburg, attorneys for said respondent; and said testimony and other evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for consideration by the Commission on the said complaint, the answer thereto and the testimony and other evidence constituting the record herein; and the Commission having considered the same and being fully advised in the premises, issues this memorandum statement of pertinent facts deduced from the record and the conclusions which it has drawn therefrom.

Respondent Kraft-Phenix Cheese Corporation, individually and through subsidiaries, manufactures and distributes on a nationwide scale a line of processed cheese, package cheese, and salad dressing. Respondent itself ships these products across State lines from factories to warehouses and the products are usually distributed from warehouses to retailers by truck by sales subsidiaries of respondent or independently owned jobbers and wholesalers. The distribution from the warehouses to retailers is usually within the confines of a single State, although in some cases this distribution crosses State lines. Respondent advertises its products extensively to the pur-

chasing public and maintains a force of salesmen who contact retailers, most of whom buy Kraft products from independent jobbers. There is a continuous, uninterrupted flow and current of commerce in respondent's products from the factories to warehouses and from the warehouses over regularly established routes to retailers, whose identity is known in advance. The course of such commerce runs between, among, across, and within all the States of the United States and the District of Columbia.

Considered in their character as interstate commerce, respondent's products, upon reaching the warehouse, do not become mixed with or a part of the general mass of property within the State in which such warehouse is located. On the contrary, such warehouses are clearing houses or distributing points, serving one function in respondent's system of making its perishable products available for sale by retailers to the ultimate consumer, the purchasing public. Respondent's advertising, its solicitation of retailers, and the facilities which it provides for the sale and distribution of its products to the retailer, are all vital and essential elements in the process of marketing these commodities.

The purpose and intent of respondent in manufacturing and processing its products, in transporting them to warehouses, and in selling them directly and indirectly to retailers, is from beginning to end to reach through the channels of interstate commerce retailers who sell to consumers. Respondent's plan of doing business is an integrated whole and, in so far as its character as interstate commerce is concerned, cannot be separated into parts. The various steps by which this plan and policy as a whole are made workable and successful are inextricably commingled and intertwined. Respondent's products in a large majority of cases, cross State lines from the factory to the warehouse, and the interstate character of this commerce continues, under the facts and circumstances in this case, down to and including the sale and delivery of such products to the retailer.

Respondent admits that it attempts to make its prices and discounts available to all retailers by one means or another, and that its efforts are in the main successful. It issues price lists to jobbers and wholesalers to be used by them in selling retailers. The evidence shows that respondent exercises a control over the distributing channels through which its products move. This control is made effective until such products come into the hands of the retailer where the control ends. The passing of the naked legal title to the goods from respondent to a jobber in the course of this flow of commerce before the products reach their ultimate destination, the retailer, is

not determinative of the question as to where the flow stops. In fact, in this case the current of commerce in respondent's products terminates when and only when the merchandise reaches the retailer.

Respondent is charged with unlawful price discrimination in the use of quantity discounts and volume discounts in sales to retailers. A 5 percent discount upon package cheese and cheese products, other than loaf cheese, is available to retailers who buy more than \$5.00 worth in a single purchase, and to group buyers who buy more than \$100 worth in a single week and who are billed jointly. The same discounts are available upon the same conditions to retailers who buy salad products. Buyers of loaf cheese receive a discount of one cent for purchases of from 30 to 149 pounds, an additional cent for purchases of from 150 to 749 pounds, and an additional half cent for purchases of 750 pounds or over.

Discounts are made unlawful by the Clayton Act, as amended by the Robinson-Patman Act, when their effect may be substantially to lessen competition or to tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with those who grant or receive the discounts. Evidence introduced relevant to the charge of a lessening of competition or a tendency toward monopoly as between respondent and its competitors indicates generally that the use of discounts similar to those used by respondent is prevalent in the industry. Moreover, the evidence indicates that respondent's products are sold to the retailer at prices which in most cases exceed those of its competitors. While respondent sells a very considerable proportion of the loaf and packaged cheese and salad dressings sold in the United States, there is no reason to infer from the evidence that the system of discounts set up by respondent are used to unfairly deprive competitors of business or that it is promotive of monopoly. Nor does such system of discounts appear to have been used to effect a lessening of competition between respondent and its competitors or to injure such competition.

There remains the question of the effect of such differentials in price on competition between favored and unfavored retailers reselling Kraft-Phenix products.

The five percent discount upon \$5.00 worth of package cheese and cheese products or salad products is denied only to those concerns which are unable or unwilling to handle \$5.00 worth of the respondent's products within a period of two or three weeks.

In an effort to preserve the freshness of its products and to encourage their use, respondent undertakes to exchange new goods for any of its products which may have deteriorated in the retailer's stock. Consequently, in spite of the perishable character of cheese

and salad products, a retailer who wishes to do so may safely buy a two or three weeks' supply at one time without fear of spoilage.

Although, even under these conditions, an appreciable number of retailers do not obtain the discount, the Commission does not believe that respondent is required by law to make no distinction between these and other retailers. Respondent maintains a system of truck delivery to retailers designed to insure the freshness of the product when delivered, to facilitate the return of products which are not fresh, and to stimulate the retailer's interest in cheese. This system of deliveries is by nature expensive, its cost averaging about 13 or 14 percent of the gross value of sales so made. Witnesses for the respondent testified that the respondent's ability to use such a delivery system without loss depends upon the size of the average sale, and that the discount for \$5.00 purchases was intended to make sales large enough to justify such a method of delivery. The evidence shows, too, that the freshness and uniformity of packaged cheese and salad products to which this system of merchandising contributes has been the cause of a considerable increase in the use of such products. To encourage the purchase of packaged cheese and salad products in quantities sufficient to make this system of distribution economically possible is a reasonable policy in the promotion of competition.

Moreover, the discount by which such purchase is encouraged does not appear to inflict any perceptible injury upon those who do not receive it. The prices of the more frequently sold package cheese items at retail vary by as much as two or three cents; whereas the difference in the purchase price of such cheese products because of the five percent discount would amount to $\frac{3}{4}$ of a cent a package or less. Concerns which do not receive a discount are among those with the lowest retail prices, and concerns which do receive a discount among those with the highest. The retail price depends so much upon the character of the store, the buying power of its customers, the importance of its cheese trade, and the nearness of other competing stores that there is no basis for concluding that the price of these products is governed by the receipt of the discount. Considerable evidence in the record indicates that there is no appreciable diversion of trade in cheese products even where a two or three cent price difference exists; but, apart from this evidence, diversion of trade, which is one of the elements of injury to competition, can only be attributed to price differentials, if such differentials exercise a perceptible influence upon retail prices.

Evidence of injury to competition by impairment of the profits of some competitors is likewise absent. The profit margins of retail-

ers who receive no discount are apparently adequate. The general testimony of such retailers that they are satisfied is reinforced by the fact that their operating margins in sales of cheese are roughly equivalent to the average margin in the sale of grocery products, in spite of the fact that the turnover of cheese products is more rapid than the average. The effect of failure to receive the discount is not the necessity of selling at a loss, but at most the receipt of a somewhat smaller profit than is received by others who pursue the same price policy. But even this effect upon profits is negligible. To a concern purchasing \$5.00 worth of Kraft packaged cheese products every two weeks throughout the year the aggregate annual discount would be \$6.50. Such remote and minute effects upon the income of certain competitors can not be regarded as injurious to competition within the meaning of the Statute.

The discount to group buyers who buy more than \$100 worth of products in a week is alternative to the discount upon individual purchases of \$5.00 worth. Its effect, therefore, is to make the discount available to certain groups when individual purchases are so low that they would not earn the discount. Instead of increasing, it reduces the disparities in purchase price which follow from the individual purchase discount already considered. The fact that this reduction operates only on behalf of group buyers means that such buyers are treated more favorably than certain stores which do not engage in group buying. Nevertheless, the considerations already set forth apply to this discount also, and lead to the conclusion that it does not work an injury to competition.

The range of discounts upon loaf cheese is greater than upon package cheese and salad products. The buyer who falls in the highest of four quantity brackets pays $2\frac{1}{2}$ cents a pound less than his competitor who falls in the lowest. However, respondent's method of delivering to buyers in the two upper brackets differs from that to buyers in the two lower brackets. Purchasers of 150 pounds or more of loaf cheese receive it direct from the warehouse at a delivery cost of about $7\frac{1}{2}$ cents per hundred pounds, which is roughly equivalent to $\frac{1}{16}$ of 1 percent of the sale price. Purchasers of less than 150 pounds receive it from the same truck which delivers package cheese and salad products. If the cost of loaf cheese deliveries from such trucks were considered equal to the average cost of delivery of all products by this means, the difference in cost between the two methods would be about \$3.70 per hundred pounds. Although there might well be argument that the delivery of loaf cheese is less expensive than the average, any reasonable allocation of cost would unquestionably leave a difference large enough to support the difference

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in price of one cent per 100 pounds which has been established between those who buy less than 150 pounds and those who buy 150 pounds or over. Indeed, there is a reasonable presumption that this difference in cost would justify the entire difference of $2\frac{1}{2}$ cents per pound between the prices paid by those who buy 750 pounds or more of loaf cheese and those who buy less than 30 pounds. The practical impossibility of making an accurate allocation of costs to each kind and amount of product delivered from the same truck is no ground for ignoring this reasonable inference.

Since the difference in price between those who buy loaf cheese in the two upper brackets and those who buy it in the two lower brackets is justified by cost, there is no need to examine further the question of competitive injury which may arise from this difference. There remain, however, price differences between the lowest and next lowest brackets and the highest and next highest brackets. These differences are not accounted for by differences in method of delivery. The discount of one cent a pound which becomes available to those who buy 30 pounds or over is roughly analogous to the five percent discount upon purchases of \$5.00 worth of package cheese, but amounts to less than 5 percent. The considerations pertinent to the question of injury to competition are not different in the case of this loaf cheese from those already raised about package cheese. Therefore, this discount can not be held injurious. The discount to buyers of 750 pounds or more of loaf cheese is only $\frac{1}{2}$ a cent a pound. This smaller rate of discount may be presumed to be of even less significance as a possible source of injury to competition, and nothing appears in evidence to counteract this presumption.

The Commission concludes that respondent, in setting up its pricing system to retailers and putting it into effect by the means which it uses, is engaged in interstate commerce and that the sales of its products to retailers are likewise made in the course of such commerce. A retailer who purchases respondent's goods from jobbers and wholesalers is considered by the Commission to be a "purchaser" within the meaning of the Robinson-Patman Act as well as retailers buying direct. This is because of the fact that respondent recognizes the retailers buying through jobbers as customers by personally soliciting them and by making effective its price policies and schedules as applied to them. A retailer is none the less a purchaser because he buys indirectly if, as here, the manufacturer deals with him directly in promoting the sale of his products and exercises control over the terms upon which he buys.

The Commission further concludes that the price differentials established by the respondent in the sales of its products to retailers do

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not tend to create a monopoly in respondent or to lessen or injure competition between respondent and its competitors. The Commission also concludes that such price differentials do not tend to injure competition between retailers reselling said products.

For the reasons herein stated the Commission is of the opinion that respondent is not violating subsection (a) of Section 2 of the Clayton Act, as amended, as charged in the complaint herein, and that an order of dismissal should issue.

ORDER DISMISSING COMPLAINT

This matter coming on to be heard by the Commission, and the Commission having duly considered the record herein and being now fully advised in the premises;

It is ordered that the complaint herein be, and the same hereby is dismissed, for the reasons set forth in a memorandum opinion filed simultaneously herewith.

IN THE MATTER OF
BIRD & SON, INC., BIRD FLOOR COVERING SALES CORPORATION, MONTGOMERY WARD & COMPANY, INC.

COMPLAINT, OPINION, AND ORDER OF DISMISSAL IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 2937. Complaint, Sept. 30, 1936—Decision, July 17, 1937

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, SUBSEC. (a)—SELECTION OF CUSTOMERS—ACT'S SCOPE

The Act declares that nothing in it "shall prevent persons engaged in selling goods, wares, and merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade." So the Act does not purport to interfere with the right of a seller to select his customers. He may discriminate in the choice of his customers. Not until there is a discrimination in price among those chosen does Section 2 (a) of the Act have any application.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, SUBSECS. (a) AND (f)—SELECTION OF CUSTOMER—CHANGE OF POLICY AND TRANSITION PERIOD—WHERE SUPPORTING COSTS FOR DIFFERING PRICES AND BUSINESS INVOLVED NEGLIGIBLE

Where, on complaint charging respondent manufacturer of hard-surfaced felt base floor coverings sold as yard goods or in form of rugs under trade names "Neponset" and "Economy," and its sales subsidiary, with unlawfully discriminating in price in prices allowed to mail-order houses as compared with prices allowed to competitively engaged retailers, in violation of subsec. (a) of Sec. 2 of aforesaid act, and respondent mail-order house with violation of subsec. (f) of said Sec. 2, in knowingly receiving from said first described seller respondents such discrimination, it appeared that (1) at time of passage of aforesaid amending act only about 1 percent of all sales of said seller respondents was made to ordinary retailers direct, as a result of change in sales policy inaugurated about a year and a half prior to said time, and not long thereafter such seller respondents had discontinued all their warehouses and sales agents, no goods were sold direct to retailers, and jobbers and mail-order houses were sold at same net prices; (2) difference between cost of selling direct to ordinary retailers during period of discrimination concerned and cost of selling to mail-order houses exceeded difference in alleged unlawful discriminatory prices involved; (3) new sales policy of seller respondents was not one of discrimination in price between or among the two classes of customers which, exclusively, they had selected to sell to in order to reduce distribution costs; and (4) any discrimination involved was only during four months' period of transition of policy of selling ordinary retailers direct, to one of supplying them through sales made to jobbers, and was incidental thereto and involved negligible proportion and amount of seller respondents' business:

Held, No violation by seller respondents and, case failing against them, so does case against buyer respondent, and entry of order for dismissal of complaint and termination of proceeding directed.