

IN THE MATTER OF
BOOTH FISHERIES CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 4883. Complaint, Dec. 31, 1942—Decision, June 29, 1945

Where a corporation which was engaged in competitive interstate sale and distribution of fresh and salt water fish and sea food products, dealt chiefly, however, in frozen fish, prices of which are relatively stable as compared with those of the fresh, and maintained packing plants in various sections of the United States including those at Boston, Mass., and Portland, Oreg., and sold its products through more than fifteen distributing branches throughout the United States and Canada to wholesalers, jobbers, chain stores, and independent retailers—

Discriminated in price between different purchasers by selling products of like grade and quality to some at lower prices than it sold to other customer competitors; including, among other discriminations, sales through its Sioux Falls, Iowa branch of its frozen fish products to two operators of 28, and 105, retail outlets, respectively, and to other special volume customers, at prices per pound substantially lower than granted to others competitively engaged with said favored customers in the resale of such products, and at prices which permitted the aforesaid favored retail outlets to advertise and sell said frozen fish at less than the cost paid it for fish of like grade and quality by independent competitors; and, lacking any consistent price structure or policy, discriminated similarly and frequently in sales to many other customers;

Effect of which discriminations in price might be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory price was engaged, and to injure, destroy, and prevent competition between those purchasers receiving the benefit of said discriminatory prices and those to whom they were denied:

Held, That such discriminations in price, under the circumstances set forth, constituted violations of subsection (a) of Sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. A. H. Forkner for the Commission.

Levinson, Becker & Peebles, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint against the said respondent, stating its charges as follows:

PARAGRAPH 1. Respondent, Booth Fisheries Corporation, is a corporation, organized and existing by virtue of the laws of the State of Delaware, with its principal office and place of business located at 309 West Jackson Boulevard, Chicago, Ill.

PAR. 2. Respondent is engaged in the sale and distribution of a variety of fish products including fresh, frozen, salt, smoked, ocean, lake and river fish, oysters and sea food. Respondent maintains packing plants in various sections of the United States where the different kinds of fish are available including salt water fish plants located at Boston, Mass. and Portland, Oreg. Respondent maintains more than fifteen distributing or sales branches throughout the United States and Canada. Respondent sells its fish products through its various distributing branches to wholesalers, jobbers, chain stores and independent retailers. That, while respondent sells many varieties of fish and sea food, the major volume of respondent's business is the sale of frozen fish products and the market prices of frozen fish products are relatively stable in comparison with fresh fish market prices. Said fish products are sold and distributed by respondent for use, consumption and resale within the various States of the United States, and in the same States and places as and in competition with various other sellers of fish products.

PAR. 3. In the course and conduct of its said business, respondent sells and distributes its fish products, in commerce, to purchasers thereof located in the various States of the United States, and causes said fish products to be shipped and transported across State lines from its various packing plants to the purchasers thereof who are located in the various States of the United States other than the States of origin of shipments. There is, and has been, at all times mentioned herein, a constant current of trade and commerce in said products, between respondent's plants of origin of said products and its customers located in the various other States of the United States.

PAR. 4. In the course and conduct of its business as hereinabove described, since June 19, 1936, respondent has been and is now discriminating in price between different purchasers of its fish products of like grade and quality by selling such products to some of its customers at lower prices than it sells to others of its customers, many of whom are competitively engaged, one with another, in the resale of such products within the United States.

Specifically, among such discriminations, the respondent has sold, through its Sioux Falls, Iowa branch, its frozen fish products to the Dakota Distributing Company which operates twenty-eight retail outlets known as K&K Stores, to Tolliver & Warfield Company, which operates 105 retail outlets known as Council Bluff Stores and to other of its special volume customers at a price per pound substantially lower than it has granted and allowed to other purchasers of such products, of like grade and quality, some of such other purchasers being engaged competitively with said favored customers in the resale of such products.

Illustrations of the foregoing discriminations in price are as follows:

1. That respondent during the months of July and August, 1938, sold to one Frederick Donaldson Corporation, an independent retailer, located at 300 East Third Street, Yankton, S. D., frozen bulk haddock at 18¢ per pound, frozen halibut at 18¢ per pound and frozen black cod at 15¢ per pound, and during the same period sold such frozen fish of like grade and quality to the Dakota Distributing Company operating a K&K store in Yankton, S. D., and in the same trading area at lower prices, which lower prices permitted the latter store to advertise and sell said frozen fish purchased of respondent at less than the cost of said frozen fish of like grade and quality purchased of respondent by said Frederick Donaldson corporation.

2. The respondent, during the month of December, 1937 sold to one Peder Larsen, an independent retailer of Centerville, S. D., frozen black cod at 15¢ per pound and during the same period sold frozen black cod of like grade and quality to Tolliver & Warfield Company operating a Council Bluff store in Centerville, S. D., and in the same trading area at a lower price, which lower price permitted the latter store to resell said frozen fish purchased of respondent at 14¢ per pound, or at less than the cost price of frozen black cod of like grade and quality purchased of respondent by said Peder Larsen.

3. That respondent, during the month of June, 1938, sold to the Piggly Wiggly Store at Sioux Falls, S. D., one ten-pound box of frozen perch at 12¢ per pound, being one of two items sold to said Piggly Wiggly Store by respondent during the entire month, and on August 1, 1938, respondent sold to Jessie S. Lewis, an independent grocer whose store is located in Sioux Falls, S. D., directly across the street from said Piggly Wiggly Store, one ten-pound box of frozen perch of like grade and quality at 16¢ per pound.

4. That respondent, during the years 1938 and 1939 sold to Retail Grocery Company, an independent retailer located at 201 North Main Street, Sioux Falls, S. D., frozen bulk haddock at 18¢ per pound and during the same period sold such frozen bulk haddock of like grade and quality to Economy Center Markets, Inc., a special volume retailer operating a retail store in Sioux Falls, S. D., in the same trading area, at 12-1/4¢ per pound, which lower price permitted the latter store to advertise and sell said frozen bulk haddock purchased of respondent at less than the cost of said frozen fish of like grade and quality purchased of respondent by said Retail Grocery Company.

Respondent has no consistent price structure or policy and discriminations of a similar character to those above described have frequently occurred since June 19, 1936, in connection with respondent's sales to many other of respondent's customers.

PAR. 5. The effect of the aforesaid discriminations in price among respondent's customers may be, has been, and is substantially to lessen competition and tend to create a monopoly in said line of commerce and to injure, destroy and prevent competition between respondent and its competitors and among the customers of respondent.

PAR. 6. The foregoing alleged acts and practices of said respondent, as set forth herein, constitute violations of the provisions of Section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936 (U.S.C. Title 15, Sec. 13).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid act, the Federal Trade Commission, on December 31, 1942, issued and subsequently served its complaint upon the respondent, Booth Fisheries Corporation, a corporation, charging it with violating the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act. After the issuance of said com-

plaint and the filing of respondent's answer thereto, the Commission by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Booth Fisheries Corporation, is a corporation, organized and existing by virtue of the laws of the State of Delaware, with its principal office and place of business located at 309 West Jackson Boulevard, Chicago, Ill.

PAR. 2. Respondent, since June 16, 1936, has been engaged in the sale and distribution of a variety of fish products, including fresh, frozen, salt, smoked, ocean, lake and river fish, oysters, and sea food. Respondent maintains packing plants in various sections of the United States where the different kinds of fish are available, including salt water fish plants located at Boston, Massachusetts, and Portland, Oregon. Respondent maintains more than fifteen distributing or sales branches throughout the United States and Canada. Respondent sells its fish products through its various distributing branches to wholesalers, jobbers, chain stores, and independent retailers. While respondent sells many varieties of fish and sea food, the major volume of respondent's business is the sale of frozen fish products and the market prices of frozen fish products are relatively stable in comparison with fresh fish market prices. Said fish products are sold and distributed by respondent for use, consumption, and resale within the various States of the United States in competition with various other sellers of fish products.

PAR. 3. In the course and conduct of its said business, respondent sells and distributes its fish products in commerce to purchasers thereof located in the various States of the United States, and causes said fish products to be shipped and transported across State lines from its various packing plants to the purchasers thereof who are located in the various States of the United States other than the States of origin of shipments. There is, and has been at all times mentioned herein, a constant current of trade and commerce in said products between respondent's plants of origin of said products and its customers located in the various other States of the United States.

PAR. 4. In the course and conduct of its business as hereinabove described, since June 19, 1936, respondent has been, and is now, discriminating in price between different purchasers of its fish products of like grade and quality by selling such products to some of its customers at lower prices than it sells to other of its customers who are competitively engaged, each with the other, in the resale of such products within the United States.

Specifically, among such discriminations the respondent has sold, through its Sioux Falls, Iowa, branch, its frozen fish products to the Dakota Distributing Company, which operates twenty-eight retail outlets

known as K & K Stores; to Tolliver & Warfield Company, which operates 105 retail outlets known as Council Bluff Stores; and to other of its special volume customers at a price per pound substantially lower than it has granted and allowed to other purchasers of such products of like grade and quality, some of such other purchasers being engaged competitively with said favored customers in the resale of such products.

Illustrations of the foregoing discriminations in price are as follows:

1. That respondent, during the months of July and August, 1938, sold to one Frederick Donaldson Corporation, an independent retailer, located at 300 East Third Street, Yankton, S. D., frozen bulk haddock at 18¢ per pound, frozen halibut at 18¢ per pound, and frozen black cod at 15¢ per pound, and during the same period sold such frozen fish of like grade and quality to the Dakota Distributing Company operating a K & K Store in Yankton, S. D., and in the same trading area, at lower prices, which lower prices permitted the latter store to advertise and sell said frozen fish purchased of respondent at less than the cost of said frozen fish of like grade and quality purchased of respondent by said Frederick Donaldson Corporation.

2. The respondent, during the month of December, 1937, sold to one Peder Larsen, an independent retailer of Centerville, S. D., frozen black cod at 15¢ per pound and during the same period sold frozen black cod of like grade and quality to Tolliver & Warfield Company operating a Council Bluff store in Centerville, S. D., and in the same trading area, at a lower price, which lower price permitted the latter store to resell said frozen fish purchased of respondent at 14¢ per pound, or at less than the cost price of frozen black cod of like grade and quality purchased of respondent by said Peder Larsen.

3. That respondent, during the month of June, 1938, sold to the Piggly Wiggly Store at Sioux Falls, S. D., one ten-pound box of frozen perch at 12¢ per pound, being one of two items sold to said Piggly Wiggly Store by respondent during the entire month, and on August 1, 1938, respondent sold to Jessie S. Lewis, an independent grocer whose store is located in Sioux Falls, S. D., directly across the street from said Piggly Wiggly Store, one ten-pound box of frozen perch of like grade and quality at 16¢ per pound.

4. That respondent, during the years 1938 and 1939, sold to Retail Grocery Company, an independent retailer located at 201 North Main Street, Sioux Falls, S. D., frozen bulk haddock at 18¢ per pound, and during the same period sold such frozen bulk haddock of like grade and quality to Economy Center Markets, Inc., a special volume retailer operating a retail store in Sioux Falls, S. D., in the same trading area, at 12½¢ per pound, which lower price permitted the latter store to advertise and sell said frozen bulk haddock purchased of respondent at less than the cost of said frozen fish of like grade and quality purchased of respondent by said Retail Grocery Company.

Respondent has no consistent price structure or policy, and discriminations of a similar character to those above described have frequently occurred since June 19, 1936, in connection with respondent's sales to many other of respondent's customers.

PAR. 5. The Commission finds that the effect of the discriminations in price described herein may be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory price is engaged and to injure, destroy, and prevent competi-

tion between those purchasers receiving the benefit of said discriminatory prices and those to whom they are denied.

CONCLUSION

The discriminations in price by the respondent, as herein found, constitute violations of subsection (a) of Section 2 of an act of Congress entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an act of Congress approved June 19, 1936 (Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of the respondent, in which answer respondent admits all the material allegations of said complaint and in which it states that it waives all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of subsection (a) of Section 2 of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by Act approved June 19, 1936 (Robinson-Patman Act).

It is ordered, That the respondent, Booth Fisheries Corporation, a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device in connection with the sale of its fish products in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such fish products of like grade and quality as among purchasers when the differences in price are not justified by differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such fish products are sold or delivered and when the differences in price are not made in response to changing conditions affecting the market for, or the marketability of, the fish products concerned, such as, but not limited to, actual or imminent deterioration of perishable fish products.

By selling such fish products to some customers at prices different from the prices charged other customers who in fact compete in the sale and distribution of such fish products when the effect of such differences in price may be substantially to lessen competition or to injure, destroy, or prevent competition among such customers.

It is further ordered, That the respondent, Booth Fisheries Corporation, shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

IN THE MATTER OF

ALLIED PAPER MILLS ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3760. Complaint, Apr. 13, 1939—Decision, June 30, 1945

While an individual manufacturer can no doubt more conveniently quote prices by means of a base price and some system of price differentials to translate the base price into a price for any of the many possible variations of the products sold, such fact does not warrant the various book paper manufacturing concerns and their associates in uniting upon a common set of such differentials to be used, and used, by all, regardless of their application to the particular circumstances of each manufacturer, and under which, as provided by the association through the adoption of a common base and price differentials or "trade customs" for addition thereto or subtraction therefrom, coupled with geographical delivered price zones, uniform prices were automatically reached for the many variations in grade, color, quality, finish, size, packing, etc. of the product concerned.

Where an association of book paper manufacturers; its executive committee, which, following its organization in 1933 under the National Industrial Recovery Act, constituted the executive authority of the Book Paper Division of the Paper Industry for the administration of its subordinate Code; 14 individuals, who were its officers or Committee members; and 45 corporate association members or former members—comprising about one-half of all the domestic manufacturers of book paper and representing approximately 80 percent of the book paper capacity of the whole industry—engaged in the manufacture and, except as below set forth, competitive interstate sale and distribution of book paper, which, with its many types, sizes, weights, colors, grades, and special characteristics for particular uses, they made and sold to users and to merchants for resale, through negotiated contracts and through spot transactions, and under the practice prevalent for a long period of years, of quoting the many variations above indicated, in terms of price differentials from some designated standard unit, which, at the time of the N.R.A. or National Recovery Administration varied in different sections and as among different manufacturers, along with their application:

Following the period of said N.R.A., during which a committee of the association prepared a standard schedule of price differentials for coated, uncoated, and offset papers which, adopted by the association and published, provided a basic selling price on a given paper subject to arbitrary differentials or so-called "Trade Customs" for all variations from the standards established; and thereby made simple and exact the filing of prices with said code authority—

- (a) Continued said differentials or "Trade Customs" adopted and published in 1933, until their revision and consolidation in 1936 into one pamphlet, which followed the association's adoption and recommendation of a revised set of "trade customs" including substantial additions and changes;
- (b) Continued, after the dissolution of N.R.A., a geographic zoning system adopted in 1933 by the association as a part of its recommendations to N.R.A. for inclusion in the Code of the Book Paper Division, which, in lieu of the manufacturers' theretofore varying practice, required the filing of prices upon a delivered basis, and under which zone system or plan the Zone I price made the base price, with successive price differentials added for each of three other zones, and under which, while purchasers were allowed to take delivery in any quantities by any means of transporta-