

Decision

IN THE MATTER OF

P. & D. MANUFACTURING CO., INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2 (a) OF THE CLAYTON ACT

Docket 5913. Complaint, Aug. 9, 1951—Decision, Apr. 26, 1956

Order requiring a manufacturer of automotive products in Long Island City, N. Y., to cease discriminating in price through allowing certain purchasers rebates or discounts off its jobber price lists (1) of 5% to 15% based on total monthly purchases, in lieu of the usual 2% cash discount granted all its customers; (2) of 20% and 2% on all purchases without regard to size of monthly purchases; or (3) of 20% and 2% on the aggregate group purchases to jobber manufacturers of two group buying organizations regardless of the value of purchases made by each individual; which practice resulted in eight different buying prices on sales of its ignition line and four different buying prices on sales of its fuel pump line.

Mr. Eldon P. Schrup and Mr. Francis C. Mayer for the Commission.

Halfpenny & Hahn, of Chicago, Ill., for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the undersigned Hearing Examiner for final consideration upon the complaint, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel.

The complaint in this proceeding was issued August 9, 1951, charging the respondent, P. & D. Manufacturing Co., Inc., a corporation, with having violated the provisions of subsection (a) of the Clayton Act as amended.

Testimony and other evidence in support of the allegations of the complaint were introduced before Webster Ballinger, a duly designated hearing examiner of the Commission. At the close of the testimony in support of the complaint the respondent made a motion to dismiss the complaint for failure to establish a prima facie case, which motion was denied by the Hearing Examiner, Webster Ballinger, on the record on April 5, 1954. It then appearing that said Hearing Examiner Webster Ballinger would become unavailable to the Commission by reason of his retirement from Government service on May 31, 1954, counsel for the respondent advised that he would not be in a position to complete the respondent's defense within that time and agreed to the appointment of a substitute hearing examiner to go forward with the case and

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hear the full defense offered by the respondent and make a decision on the whole record just as though he had heard the whole case. Subsequent thereto, on April 12, 1954, the Commission issued its order designating Earl J. Kolb as Hearing Examiner in this proceeding to take testimony and receive evidence in the place and stead of Hearing Examiner Webster Ballinger. Thereafter, counsel for respondent made certain motions before the undersigned Hearing Examiner renewing his motions to dismiss and to strike certain testimony. These motions having been denied, the case for the respondent was closed without the introduction of any testimony in opposition to the charges of the complaint.

The general system of pricing used by the respondent, as developed by the record, and the variations therefrom in the case of group buyers is not disputed by the respondent, but instead the respondent relied upon the contention that counsel in support of the complaint had failed to establish the violation of law alleged in the complaint by reliable, probative and substantial evidence. Evidence in this proceeding, with reference to the charges of the complaint as to primary line injury to competition between respondent and its competitors and tertiary line injury to competition between customers of respondent's purchasers, is not sufficient to warrant any finding, and consideration of this matter must be limited to secondary line injury between competing customers of the respondent. Consequently, the issues to be determined in this proceeding are reduced to the following:

- (a) Does the record contain reliable, probative and substantial evidence that respondent's pricing plan constitutes discriminations in price between competing purchasers of its automotive products of like grade and quality?
- (b) Does the record contain reliable, probative and substantial evidence that the effect of respondent's pricing plan may be substantially to lessen, injure, destroy, or prevent competition between competing purchasers from the respondent?

FINDINGS AS TO THE FACTS

1. Respondent P. & D. Manufacturing Co., Inc., is a corporation organized under the laws of the State of New York with its principal office and place of business located at 19-02 Steinway Street, Long Island 5, New York.

2. Respondent is now and for several years last past has been engaged in the business of the manufacture, sale and distribution of automotive products and supplies, principally ignition parts, fuel pump parts, carburetor parts and other related items, in interstate

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commerce in competition with other concerns who were also engaged in the sale and distribution of similar products in interstate commerce.

3. In the course and conduct of its business the respondent has been and is now marketing its automotive products of like grade and quality under its own brand name throughout the United States, maintaining warehouse space in the cities of Los Angeles, California; Kansas City, Missouri; Chicago, Illinois; Atlanta, Georgia; and Dallas, Texas. In offering its products for sale respondent classifies its products generally into two lines—ignition line, including carburetor kits and parts, and fuel pump line and related items. At all times since 1936 respondent has offered and sold an ignition line to its purchasers, adding the fuel pump line in 1950.

4. The respondent, during the time mentioned herein, has sold its products to jobbers who were designated by the respondent as distributors who resold such products to garages, service stations, fleet owners and other jobbers. From time to time respondent issued its jobbers price list on each of these lines which listed the basic prices used by respondent in the sale and distribution of its various automotive parts. Any discounts, allowances or rebates were off said jobbers price list. Respondent also from time to time issued suggested resale price lists for use by distributors and dealers in the resale of respondent's products.

5. The net purchase price paid by distributors for respondent's products is the purchase price paid subject to and following all applicable rebates, discounts and allowances. The automotive products sold and distributed by respondent were all of one grade and quality. Respondent sold such products of like grade and quality to its distributors at varying net prices. Such distributors of respondent were competitively engaged in the resale of respondent's automotive products in the various territories and places where such distributors carried on their businesses.

6. Respondent's pricing plan involved the granting of monthly volume rebates which were incorporated in and made a part of its various distributors franchise and rebate agreements. During the year 1950, respondent distributed its automotive products on the basis of applicable jobbers price lists subject to rebates or discounts provided for in franchise and rebate agreements with its distributors and other customers. The Distributor's Rebate Agreements used by respondent in connection with the sale of its ignition line provided for the following monthly rebates in lieu of the usual 2 percent cash discount granted all its customers:

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Net purchases during each month:	Monthly rebate
\$100 to \$149 -----	5%
150 to 199 -----	7%
200 to 299 -----	10%
300 to 399 -----	13%
400 and over -----	15%

The Distributor's Fuel Pump Rebate Agreement used by respondent in connection with the sale of fuel pumps provided for the following monthly rebates in addition to the usual 2 percent cash discount:

Net purchases during each month:	Monthly rebate
\$0 to \$199 -----	10%
\$200 and over -----	15%

Under the above rebate plans, purchasers were granted and received rebates applicable to their total monthly purchases, differing in amounts according to the total of their monthly purchases.

7. In the sale of both of the above-described lines, respondent further entered into Distributors Franchise Agreements on its ignition line and Distributor's Fuel Pumps Franchise Agreements on its fuel pump line with some of its customers providing for cash discounts of 20 percent and 2 percent on all purchases without regard to, or any limitation upon, the size of the monthly purchases of the franchise distributors. This agreement further provided that the distributor must sell more than 80 percent at wholesale and maintain a complete stock of respondent's parts.

8. As a result of its sales of ignition line, respondent offered its customers eight different buying prices ranging from sales upon which no monthly rebate was granted but only the 2 percent cash discount allowed, to the 20 percent and 2 percent cash discount granted to the franchise distributors, irrespective of the distributor's monthly volume of purchases. In the sale of its fuel pump line respondent granted its purchasers four different buying prices ranging from its jobber's list price without any rebate but subject to the 2 percent cash discount for prompt payment, to the 20 percent monthly rebate, plus 2 percent cash discount, allowed to its franchise distributors, regardless of the total monthly purchases of those customers.

9. During the year 1950 respondent sold its automotive products to approximately 700 accounts with total domestic sales of approximately \$1,685,059.00. In the ignition line the sales were distributed on the basis of rebates and discounts as follows: 60 jobbers purchasing \$8,364.00 received the 2 percent cash discount; 258 jobbers,

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purchasing \$299,417.00 received rebate of 5 percent to 7 percent; 92 jobbers, purchasing \$134,619.00, received a rebate of 10 percent; 86 jobbers, purchasing \$168,570.00, received a rebate of 15 percent; and 186 jobbers, purchasing \$1,054,638.00, received 20 percent, plus 2 percent cash discount. As to the fuel pump customers, there were 56 jobbers who purchased \$19,451.00 who received 10 percent to 15 percent, plus 2 percent cash discount.

10. During the year 1950, respondent sold its products to jobber manufacturers of two group buying organizations—Six-State Associates, Boston, Massachusetts, and Warehouse Distributors, Inc., Chattanooga, Tennessee—who entered into franchise agreements with respondent as distributors.

11. The purchase procedure in a group buying operation provided for the forwarding of purchase orders by the individual jobber member to the seller directly or through the group office. Merchandise so ordered was shipped by the respondent direct to the individual jobber member with billing for same being directed to the group office. Monthly settlements were made between the respondent and the group office for the aggregate purchase orders of all the jobber members so received, and each jobber member also settles monthly with the group office for his own individual purchases so made. Such rebates, discounts and allowances as are collected from the seller by the group office on the aggregate of the purchases thus made are distributed by the group office to each individual jobber purchaser in proportion to the amount of such individual jobber's purchases so made. The rebates and discounts as shown by the tabulations in evidence were granted and allowed by respondent on the purchases of each individual member of said buying group irrespective of whether or not the amount of such individual member's purchases met with the requirements of any particular bracket of respondent's rebate schedules set forth in respondent's rebate agreements. The group buying organization was in reality a bookkeeping device for the collection of rebates, discounts and allowances received from sellers on purchases made by its jobber members. Such jobber members, in fact, purchase their requirements of respondent's products direct from the respondent and at the same time receive a more favorable price or higher rebate based upon the combined purchases of all of the members.

12. In following the pricing practices hereinabove described, respondent has discriminated in price by means of rebates allowed by it in the sale of its various automotive products and related items as between respondent's competing distributors and also between respondent's distributors and competing group buying jobbers, and

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the effect of such discriminations may be to substantially lessen, injure, destroy or prevent competition between customers receiving the benefit of said discriminations and the customers who do not receive the benefit of such discriminations. The respondent did not grant exclusive territory to any of its customers and has had more than one distributor in various trade areas who were, in fact, in competition with each other and also in competition with group buying jobbers, who sold respondent's automotive parts to dealers and other purchasers in their respective trade areas. The price discriminations received by some distributors as compared with others competing with them in the same trade area as the result of respondent's pricing plan is shown by a number of tabulations taken from respondent's books and records which were received in evidence as Commission's Exhibits 46 through 48. These tabulations show the prices paid and the rebates received by purchasers located in various trade areas throughout the United States during the year 1950. For example, testimony was taken of distributors who were in competition with each other in the sale of respondent's products in the trade area which includes the cities of Scranton, Wilkes-Barre and Kingston, Pennsylvania. The amounts purchased by the distributors in this area and the rebates and discounts received by them on both the ignition line and the fuel pump line are as follows:

Ignition line

Name of purchaser	Net purchases	Amount of rebate	Percentage of rebate
Ackerson-Weinberg Co.....	\$107.14	\$2.19	2.04
Daves Auto Parts.....	208.66	0	0
Charles B. Scott Co.....	2.77	.06	2.17
Hy-Grade Tire Supply.....	511.92	51.21	10.00
N. & W. Auto Parts and Associates.....	559.59	81.66	14.59
Penn Auto Parts Co.....	804.91	119.05	14.79
Sterling Auto Supply.....	1,508.00	146.55	9.72
Shapiro Auto Supply Co.....	149.47	21.74	14.55
Kitsee Auto Store.....	2,021.08	241.76	11.96
Stull Brothers.....	3,219.56	476.77	14.81

Fuel pump line

Name of purchaser	Net purchases	Amount of rebate	Percentage of rebate
Daves Auto Parts.....	\$48.59	0	0
N. & W. Auto Parts and Associates.....	198.96	\$32.14	16.15
Shapiro Auto Supply Co.....	49.27	11.96	24.27
Blackman Auto Parts Co.....	294.89	45.03	15.27

There is nothing in the record to indicate that the above trading area is unique or different from other trading areas where respond-

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ent sells its automotive parts at differing prices. It is therefore, concluded that competitive conditions shown to exist in this area with respect to the purchase and resale of respondent's automotive parts is typical and representative of the other areas of the United States and that respondent's distributors reselling respondent's products in the same trading area are in competition with each other in the resale of such products.

13. The record, based upon the tabulations in evidence in this proceeding, disclosed substantial differences in the net purchase prices paid by competing purchasers of respondent's products for resale. The substantiality of the amount represented by such price differences with relation to the purchasers' net profit margin is conclusively shown when compared with the competitive effect of the amount represented by the 2 percent cash discount. Distributors of respondent, who testified in this proceeding, stated that they invariably took advantage of the 2 percent cash discount as being essential in the conduct of their respective businesses, and that such discount reduced the cost of acquisition of respondent's products. This 2 percent reduction in cost of acquisition is substantial and may account for a substantial portion of the margin of profit. By the very nature of the business operated by the various jobber customers of respondent their profit was necessarily based upon an accumulation of small margins of profit on many items. Some of the witnesses handled from 40 to 300 lines, involving an aggregate of thousands of items. Practically all of respondent's jobber customers extend the same cash discount they receive to their customers, however, on a mark-up of acquisition cost, the discount actually given by such customer to its purchaser on resale will be greater than the 2 percent cash discount.

14. In the testimony of at least one witness it was indicated that the jobber is not too concerned about differing prices among competitors for the reason that all sell at the suggested resale price in his territory. The fact that price competition may have been eliminated in some areas because of uniformity of resale prices does not eliminate the question of injury to competition. Any saving or advantage in price obtained by one competitor as against another increases his margin of profit, permits additional services to be extended to customers, the use of additional salesmen, the carrying of larger and more varied stocks, and the establishment of branch houses for expansion of the business. While price competition among customers was more or less non-existent, except in isolated instances, in the areas where testimony was taken, the possibility of price competition is ever present where lower prices to certain competing customers exists.

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15. It was also contended by the respondent that the automotive parts sold by it to competing customers have not been shown to be of like grade and quality, and as a basis for this contention respondent has taken the position that such parts to be of like grade and quality, under Section 2 (a) of the Clayton Act, must pass the test of interchangeability. This would, in effect, be saying that merchandise to be of like grade and quality must be identical. If Congress had intended to so require, it would have said so. We do not have here different grades of merchandise designed to sell at different price levels, such as first quality line and second or inferior quality line. All of respondent's products are of the same grade and quality.

16. Respondent's distributors purchased respondent's automotive parts not as individual items, but as part of a line designed to supply the needs of garages and others engaged in the repair of motor vehicles. The respondent has grouped its automotive parts for discount purposes into two separate categories which are referred to as respondent's ignition line and fuel pump line. As each of these lines carries a separate and different monthly volume rebate, respondent has made the selection of the parts to go into the various lines and the rebates granted to purchasers of such lines apply to each and every item in the line. Having grouped its parts for discount purposes, the respondent cannot logically contend that items within the group are not of like grade and quality or that distributors in the same trade area, who purchase items within the group for resale, are not in competition.

17. The Robinson-Patman Act is an antitrust statute designed to preserve equal competitive opportunity. Respondent's contention of interchangeability places the existence of like grade and quality solely on functional similarity and thereby ignores the effect of competitive opportunity. When the respondent sells automotive parts classified into the two lines described above to its distributors who resell in competition with each other in their respective trade areas, the functional similarity of the individual items in each class is no longer of consequence because from a competitive standpoint they are all of like grade and quality. Distributors in order to supply the needs of their garage and other customers would purchase substantially all of the items in respondent's various lines over a period of time, their purchases of the items being dependent upon the demands of their customers. It must accordingly be concluded that the discriminations in price herein found were, in fact, made in connection with the sale and distribution of merchandise of like grade and quality and that the defense that such products must pass the test of interchangeability is without merit.

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The aforesaid discriminations in price by respondent, as herein found, constitute violations of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

ORDER

It is ordered, That the respondent P. & D. Manufacturing Co., Inc., and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale for replacement of automotive products and supplies in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating directly or indirectly in the price of said automotive products and supplies of like grade and quality:

1. By selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price, in the resale and distribution of respondent's products.

OPINION OF THE COMMISSION

By ANDERSON, Commissioner.

Complaint was issued in this matter on August 9, 1951, charging respondent, P. & D. Manufacturing Co., Inc., of Long Island City, New York, with having discriminated in price in connection with its sale of ignition and fuel pump lines of automotive replacement parts to competing purchasers in violation of Section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act [15 U.S.C.A., Sec. 13].

After introduction of testimony and other evidence in support of the complaint, respondent moved to dismiss on the ground that a *prima facie* case had not been established. This was denied by the Hearing Examiner. Subsequent thereto, the Hearing Examiner became unavailable for further participation in the proceedings. Thereafter another Hearing Examiner was substituted by agreement of counsel. The motion to dismiss the complaint was renewed and other motions were made by respondent to strike certain testimony. These were denied. Thereafter, except for two exhibits, (1) a debit memorandum, and (2) a copy of its motion to dismiss, respondent failed to introduce testimony or other evidence in opposition to the allegations in the complaint or in justification of the differing prices charged their competing customers which had been placed in the record by counsel supporting the complaint. On

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December 20, 1954, the Hearing Examiner issued his initial decision upholding the position of counsel supporting the complaint.

The matter is now before the Commission on respondent's appeal from the Hearing Examiner's initial decision. The initial decision includes seventeen numbered paragraphs of findings as to the facts; a conclusion that the discriminations found constitute violations of Sec. 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act; and an order that respondent cease and desist from discriminating in price:

By selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price, in the resale and distribution of respondent's products.

In the respondent's appeal, exceptions have been taken as follows: (1) to the Hearing Examiner's findings in paragraphs 5, 8, 9, 12, 13, 14, 15, 16 and 17 of the initial decision; (2) to the Hearing Examiner's conclusions of law; (3) to the failure of the Hearing Examiner to make certain findings and conclusions; (4) to procedural rulings of the Hearing Examiner (a) on the admission of evidence, (b) on the motions to dismiss, and (c) denying a motion to require counsel in support of the complaint to make certain elections and specifications from the evidence; and (5) to the substance, form and constitutionality of the proposed order to cease and desist.

Although the complaint alleged injury to competition in other lines of commerce, we are of the opinion that the Hearing Examiner was correct in his initial decision in finding that the evidence of record limits consideration to that of injury in the secondary line of commerce between distributors and jobbers who are customers of respondent.

The following questions are raised by the respondent's exceptions to the rulings of the Hearing Examiner and the appeal taken from the initial decision:

1. Did the Hearing Examiner err in his procedural rulings?
2. Is there reliable, substantial and probative evidence that (a) there were price differentials to (b) competing customers in their purchase of (c) commodities of like grade and quality?
3. If there were price differentials to competing customers on their purchases of commodities of like grade and quality, is there reliable, probative and substantial evidence that the effect of these may be substantially to lessen competition between such competing purchasers?
4. Is the proposed order in the initial decision, in form and substance, in compliance with the standards of definiteness and reasonableness required by due process of law under the Fifth Amendment to the Constitution?

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These questions were all raised and decided in the matter of *Moog Industries, Inc.* (Docket No. 5723), a companion case, in which the Commission issued its order to cease and desist on April 29, 1955, and which is now pending on appeal in the Court of Appeals for the Eighth Circuit. The pattern of pricing and the character of the evidence presented by the record in the *Moog* case were substantially the same as in this matter.

The rulings of the Hearing Examiner in admitting Commission's Exhibits 46-A through 48 were not prejudicial error. These are tabulations which were prepared by the accounting staff of the Commission. The preparation of these tabulations was in connection with a two months' study and examination at respondent's offices of the customers' debit and credit memoranda, invoices, cash books, sales journals and freight bills for the year 1950. From these books and records of respondent, tabulations were made of (1) the names and locations of customers in numerous trading areas, (2) each of such customer's total billing, parcel post and insurance, freight allowances, net items, total sales subject to rebate and discount, (3) the separate total purchases by each of said customers of the ignition and fuel pump lines with separately itemized amounts and percentages of rebates and discounts allowed, and (4) the combined total rebates and discounts allowed each of them.

Respondent does not challenge the accuracy of these tabulations. Respondent's objections are that (1) the tabulations do not reflect differing prices on purchases of commodities of like grade and quality, rejecting the arguments of counsel supporting the complaint that separate designation and tabulation of the two lines, ignition and fuel pump, satisfy this requirement, (2) that since individual items within a line are not comparatively designated, respondent is not able to present defense testimony and evidence, and is, therefore, denied due process of law, and (3) that the tabulations do not prove the existence of competition between the customers listed.

The tabulations were not offered to show competition. They were offered to illustrate the pricing pattern of respondent in the sale of the two lines to different customers in a number of trading areas throughout the United States.

Respondent grouped its individual automotive replacement parts into two categories, the ignition line and the fuel pump line. Arrangements for distributorships were provided in the "Distributors Fuel Pumps Franchise Agreement" and the "Distributor's Fuel Pump Rebate Agreement"; and, as to the ignition line, "Distributor's Rebate Agreement" and "Jobbers Contract." Terms of sale includ-

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ing discounts and rebates are set out in the agreements and apply to the line involved in the contract.

Respondent's salesmen check the inventory of the distributors and jobbers in making their rounds and present the list of deficiencies to the customer from which a single order is made for a number of varied items within the line purchased. William O. Nickel, Manager of The Kitsee Auto Store, Wilkes Barre, Pennsylvania, testified as follows:

A. We make up this order, these sizes, for a couple of reasons. The first reason, there might be times we might order something we might need in a hurry, something that we can't wait for. In the lines that we carry with P & D, I made a recount here recently. We found that there are 507 items in the P & D line that we attempt to carry.

The P & D people have representatives out. Those men are out not to get orders as much as to be of service to us. We don't have the time to check over our complete inventory personally, so we depend on the road man to check the inventory for us as an accommodation. When he gets through, he has a recap, so naturally, when you go through 507 items, you are bound to come up with an order that exceeds better than \$100. The only time when we will order anything less than that—and that's a very rare case—is when we don't have the time to go through this whole inventory. * * *

Invoices are submitted on single purchase orders of a number of individual items within the line involved. At the end of the month, total purchases in each line are separately figured to determine the total monthly discounts or rebates due to individual purchasers.

Thus it is clear that respondent sells and prices its automotive parts in two lines. There is a single grade and quality of each item in each line. Respondent's customers do not necessarily purchase all of the items at one time, but in order to meet the demands of the trade they carry the line or lines involved.

Respondent has sought to have the Commission adopt the theory of interchangeability, i.e., that the only way "commodities of like grade and quality" may be shown for the purposes of the act is that the identical individual items in each of these lines be segregated and separately considered in connection with their sale to different customers. We find that respondent has prevented any practical application of this test through its method of selling, invoicing, pricing and receiving payment through the grouping of the two categories, ignition and fuel pump parts. We do not find here different grades of merchandise designed to sell at different price levels, such as first quality line and second or inferior quality line. All of respondent's products are of the same grade and quality.

The conclusion is, therefore, inescapable that respondent's sales of the ignition line to two distributors who resell the lines in the

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same trading area are sales of "commodities of like grade and quality" within the meaning of Sec. 2 (a) of the Clayton Act, as amended. The Commission so found as to the similar practice of grouping automotive parts by lines in the *Moog* case.

We are of the opinion that Commission's Exhibits 46-A through 48 are tabulations showing differing net prices to customers in a number of respective trading areas on their purchases of commodities of like grade and quality.

Any difficulties of presenting respondent's defense to the facts presented in Commission's Exhibits 46-A through 48 are the result of respondent's method of offering for sale, selling and pricing its products by lines. These difficulties are not increased by the method of presenting the facts in tabular form in lieu of the heavy volume of source materials from respondent's files. Respondent has not, as contended, been denied due process of law by admission of these documents to the record.

The Hearing Examiner did not err in overruling respondent's motions to dismiss the complaint on the ground that counsel supporting the complaint had not established a *prima facie* case. The points raised in those motions are substantially the same as those we consider here on appeal.

The Hearing Examiner was correct in his denial of the motion of respondent that counsel supporting the complaint elect and specify certain evidence from the record relied upon to show respondent's violations of the statute. Respondent contended that counsel supporting the complaint had, by placing voluminous documentary evidence in the record, including the 1950 tabulations of price differences to customers in a number of trade areas, placed an insurmountable burden of analysis and proof upon them by requiring a breakdown of thousands of invoices and cost allocations.

We were faced with exceptions by respondent in the *Moog* matter to similar rulings by the Hearing Examiner in denial of a similar motion. There, as here, tabulations of price differences to different customers in a number of trading areas on lines of automotive replacement parts, based on respondent's records, were placed in the record. We find no different facts which would support a different ruling here. Respondent was fully apprised of the issues herein and counsel supporting the complaint has included tabulations, the nature of which, in our opinion, is responsive to the respondent's method of doing business.

The respondent had a fair and impartial hearing.

In disposing of respondent's exceptions to procedural rulings by the Hearing Examiner, we have found that respondent sold its commodities of like grade and quality to different customers in a

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number of trading areas throughout the country. Respondent contends that there is no evidence in the record that the different prices were to competing customers.

Respondent did not grant exclusive territory to any of its customers and has had more than one distributor in various trade areas. We find these distributors were, in fact, in competition with each other and in competition with group-buying jobbers in their respective trade areas.

Seven automotive parts jobbers who sell respondent's automotive parts in the general trading area of Scranton and Wilkes Barre, Pennsylvania, testified at the call of counsel supporting the complaint. One of the seven, Selig Shapiro, a partner in Shapiro Auto Supply, Wilkes Barre, Pennsylvania, testified in part as follows:

Q. In what general area do you offer your products for sale?

A. Our men cover a radius of approximately fifty miles, but we confine most of our efforts to the Wilkes Barre general trading area.

Q. With what other type of automotive businesses do you compete in the resale of your products?

* * * * *

A. Any business that would be in the wholesaling of parts, accessories or equipments.

Q. Would you name for me by name several of the companies in your area?

A. Yes. We compete with Stull Brothers of Kingston; Kitsee Auto Stores of Wilkes Barre; Franconi Auto Supply of Kingston; K & K of Wilkes Barre and Scranton; Klein Auto of Wilkes Barre. I think I just about covered the field.

Q. To what class of customers do you offer your products for sale?

A. Well, we wholesale to garages, car dealers, gas stations, and we also cover some sub-jobbers.

Q. Did you purchase any products for resale during the year 1950 from the P & D Manufacturing Company of New York?

A. Yes, sir, I did.

Mr. Shapiro purchased both lines of automotive parts from respondent.

Two of those named by Mr. Shapiro as competitors testified. Howard A. Stull, partner in Stull Brothers, testified that his company competes in the same areas for customers' business, having a radius of about 50 miles from Kingston, Pennsylvania, which includes Wilkes Barre, Pennsylvania;¹ and that he purchased the P. & D. ignition line in 1950.

The second competitor named who testified was William O. Nickel, manager of The Kitsee Auto Stores, Wilkes Barre, Pennsylvania. He testified in part as follows:

¹ This would also include Scranton, Pennsylvania, which is shown by the Rand McNally road map to be about 20 miles to the northeast of Kingston.

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Q. In what general area do you offer your goods for sale?

A. We cover Luzerne County, Wyoming County, part of Wyoming, part of Columbia.

* * * * *

Hearing Examiner BALLINGER. Will you state what companies are selling in the same area that you are selling in—that is, comparable products.

The WITNESS. Any jobber, you can go through the list. You can pick up any jobber. They all handle ignition parts. Everybody handles ignition parts. * * * You can name all—Klein, K & K, Franconi Auto Parts; you can name Stull Brothers; you can name Rudolph Auto Electric; Ritter Electric; you can name Penn Parts; you can name Shapiro. They are competitors, but we don't recognize them as too big of a competitor. Kingston Auto Parts. That covers the majority of them.

Q. Mr. Nickel, to what class of trade do you offer your automotive products for sale?

A. We offer our merchandise to gas stations, garages, car dealers * * *.

Q. What products of the respondent P & D did you purchase for resale during 1950?

A. We purchased * * * ignition parts * * *.

The other witnesses from the Scranton area testified likewise.²

The words "competitor" and "competition" have been judicially defined within the meaning of the Robinson-Patman Price Discrimination Act. In *Russelville Canning Company v. American Can Company*, 87 F. Supp. 484, the court held that where plaintiff and another buyer of defendant's cans did not pack the identical products, but they both canned packed vegetables, sold them in the same markets, and products of both of them often appeared on the same shelf in the same grocery store, they were "competitors" within the meaning of the statute. The court further held that competition is the effort of two or more parties, acting independently to secure the business of a third person by the offer of the most favorable terms. See also *Simmons v. Johnson*, 11 So. 2d 710; *Silbert v. Kerstein*, 62 N.E. 2d, 109; *Shill v. Remington Putman Book Co.*, 17 A. 2d 175; *Stockton Dry Goods Co. v. Girsh*, 221 P. 2d 186; *Ferd Heim Brewing Co. v. Belinder*, 71 S.W. 691; *United States v. American Linseed Oil Co.*, 262 U.S. 371 ("* * * the play of contending forces ordinarily engendered by an honest desire for gain."); and *Lipson v. Socony Vacuum Corporation*, 87 F. 2d 265.

The tabulations prepared for 1950 list the details of the purchases of the aforementioned witnesses and others from the Scranton area showing varying net prices on their purchases from P. & D. of "commodities of like grade and quality."³

² Allen G. Smith, Sterling Auto Supply, Scranton, Pa. (Tr. 339, 340); Jesse Levy, Hi-Grade Auto and Supply Company, Scranton, Pa. (Tr. 347, 348); Sol Goosay, Penn Auto Parts, Scranton, Pa. (Tr. 355, 356); and David Rubin, Dave's Auto Parts (Tr. 362, 363).

³ CX 46-C (Stull Brothers, Kingston, Pa.); CX 46-D (Dave's Auto Parts, Ackerson-Weinberg Company, Chas. B. Scott Co., Hi-Grade Auto Parts & Accessories, Penn Auto Parts Co., and Sterling Auto Supply, all from Scranton, Pa.; and Shapiro Auto Supply Company, Kitsee Auto Store, and Blackman Auto Parts Co., all of Wilkes Barre, Pa.).

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We therefore find that there is reliable, probative and substantial evidence that respondent sold commodities of like grade and quality at different net prices to competing customers.

Is there reliable, probative and substantial evidence that the effect of these may be substantially to lessen competition between such competing customers?

The differing net purchase prices in the two lines of automotive parts resulted from the application by respondent of its monthly rebate volume discount schedules to the net purchase prices of such products. On the ignition line, the following monthly rebates were granted in lieu of the usual 2 percent discount for payment within ten days granted all customers:

Net purchases during each month:	Monthly rebate
\$100 to \$149 -----	5%
150 to 199 -----	7%
200 to 299 -----	10%
300 to 399 -----	13%
400 and over -----	15%

On the fuel pump line the following monthly rebates in addition to the usual 2 percent cash discount resulted in different net purchase prices to competing customers of respondent:

Net purchases during each month:	Monthly rebate
\$0 to \$199 -----	10%
\$200 and over -----	15%

Respondent has agreed to and does grant some of its customers discounts of 20 percent and 2 percent cash on all purchases without limitation or regard for the size of their monthly purchases. Those customers who receive this rate of discount agree to handle a complete stock of P. & D. automotive parts and must sell at least 80 percent of their products as wholesalers.

This method of pricing reflected respondent's offer of eight different net purchase prices of its ignition line, ranging from no monthly rebate but only the 2 percent cash discount, to the 15 percent monthly rebate based on the various sizes of total monthly purchases, and from there to the 20 percent and 2 percent cash discount to its franchised distributors without regard to the size of their purchases. In the fuel pump line, four different buying prices were offered, ranging from the jobber's price list without rebate but subject to the 2 percent cash discount for payment within 10 days, to the 15 percent monthly rebate depending on the size of the total monthly purchases, and from there to the 20 per-

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cent monthly rebate, plus 2 percent cash discount, to its franchised distributors on all purchases irrespective of the total amounts involved in same.

Regardless of the dollar amount, size, or the number of individual purchase transactions of a customer, the discounts or rebates granted by respondent are based upon the total aggregate dollar amount of that customer's monthly purchases.

Respondent also entered into agreements with group-buying organizations through which jobber members of the organizations individually purchased the two lines of automotive parts and through which each received higher discount rates than would normally apply to their separate monthly purchase volumes. This was accomplished by applying the volume discount rate to the aggregate volume of all the individual purchases of the members of the group. During the sample year chosen, 1950, there were two such group-buying organizations—Six State Associates, Boston, Massachusetts, and Warehouse Distributors, Inc., Chattanooga, Tennessee, who participated on behalf of their members in purchases of respondent's lines of automotive parts under this plan.

The group-buyer arrangements were no more than bookkeeping devices for the collection of rebates and discounts received by the jobber members of the group on their individual purchases. The result was that some of such purchasers received a more favorable price or higher rebate than other competing purchasers outside of the group.

With a total business in 1950 of approximately \$1,685,059 and approximately 700 accounts, respondent granted its rebates and discounts under this method of pricing as follows: 60 jobbers purchasing \$8,364.00 received the 2 percent cash discount; 258 jobbers, purchasing \$299,417.00 received rebate of 5 percent to 7 percent; 92 jobbers, purchasing \$134,619.00, received a rebate of 10 percent; 86 jobbers, purchasing \$168,570.00, received a rebate of 15 percent; and 186 jobbers, purchasing \$1,054,638.00, received 20 percent, plus 2 percent cash discounts. As to the fuel pump customers, there were 56 jobbers who purchased \$19,451.00 who received 10 percent to 15 percent, plus 2 percent cash discount.

The following details illustrate the results of respondent's pricing method in 1950 in the trade area which includes the cities of Scranton, Wilkes Barre, and Kingston, Pennsylvania, in which testimony was taken of distributors who were in competition with each other:

Ignition line

Name of purchaser	Net purchases	Amount of rebate	Percentage of rebate
Ackerson-Weinberg Co.....	\$107.14	\$2.19	2.04
Daves Auto Parts.....	208.66	0	0
Charles B. Scott Co.....	2.77	.06	2.17
Hy-Grade Tire Supply.....	511.92	51.21	10.00
N. & W. Auto Parts and Associates.....	559.59	81.66	14.59
Penn Auto Parts Co.....	804.91	119.05	14.79
Sterling Auto Supply.....	1,508.00	146.55	9.72
Shapiro Auto Supply Co.....	149.47	21.74	14.55
Kitsee Auto Store.....	2,021.08	241.76	11.96
Stull Brothers.....	3,219.56	476.77	14.81

Fuel pump line

Name of purchaser	Net purchases	Amount of rebate	Percentage of rebate
Daves Auto Parts.....	\$43.59	0	0
N. & W. Auto Parts and Associates.....	198.96	\$32.14	16.15
Shapiro Auto Supply Co.....	49.27	11.96	24.27
Blackman Auto Parts Co.....	294.89	45.03	15.27

There is no reason of record from which it may be inferred that the Scranton-Wilkes Barre-Kingston, Pennsylvania, trading area is unique or different from other trading areas which are listed in the tabulations which set out the details of varying net prices granted by respondent in its sale of the two automotive parts lines in 1950. We therefore conclude that the competitive conditions which are shown in the above table to exist in that area are typical of those throughout the country with respect to the purchase and resale of respondent's automotive parts.

The significance of the substantial differences in net purchase prices offered and granted by respondent to competing customers on their purchases of its lines of automotive parts of like grade and quality is shown by direct customer testimony. These customers testified that the 2 percent cash discount is essentially important to them in the conduct of their business.⁴ For example, Mr. Louis A. Roazen, Treasurer of Standard Auto Gear Co., Inc., Brookline, Massachusetts, testified in part as follows:

Q. Mr. Roazen, in the purchase of merchandise for resale, is the cash discount of 2 percent important to you?

* * * * *

The WITNESS. The answer is yes. * * * The amount that you are able to show as a profit which the company realizes is by availing yourself of the cash discounts. It is quite often the difference between a profit and a loss in any particular year.

Mr. Sol Goosay, copartner of Penn Auto Parts, Scranton, Pennsylvania, testified as follows:

⁴ Similar testimony was considered on the same points by the Commission in Docket No. 3200, *H. O. Brill Company, Inc.*, 26 FTC 666, *FTC v. Morton Salt Company*, 334 U.S. 37.

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Q. Do you take advantage of the cash discounts offered to you by your various suppliers?

A. We do.

Q. Why is that?

A. For a number of reasons, one it's necessary to reduce your costs, increase your profits, to meet your competition.

Respondent contends that, since these customers also testified that because resale prices are maintained they were not injured by the varying net purchase prices, there can be no finding of the Commission that there is reliable, probative and substantial evidence that the effect of respondent's varying net purchase prices may be substantially to lessen competition in the secondary line of commerce.

We cannot agree. Certainly if, as respondent's customers testified, the 2 percent cash discount is essentially important to them, it cannot be gainsaid that the substantially higher discounts or rebates reflected in the varying net purchase prices are even more important to them.

In order for a wholesaler or distributor of automotive parts to successfully compete, he must not only be in a position to meet or beat his competitors' prices, which respondent would have the Commission use as the sole test here, but he must maintain a superior sales force, warehousing and delivery facilities, and advertising and promotional activities, and in other ways be able to present his product.⁵ This is especially true here, since, as in the Scranton-Wilkes Barre area, the purchasers of respondent's lines of automotive parts cover a rather wide geographic trading area.

Testimony by respondent's customers as to adherence in their trading territory to the suggested resale prices does not support respondent's exception to the examiner's finding that the effect of respondent's different prices of commodities of like grade and quality to competing customers may be substantially to lessen competition. In *Corn Products Refining Co. v. Federal Trade Commission*, 324 U.S. 726, 742, the Supreme Court stated:

But it is asserted that there is no evidence that the allowances ever were reflected in the purchasers' resale prices. This argument loses sight of the statutory command. As we have said, the statute does not require that the discriminations must in fact have harmed competition, but only that there is a reasonable possibility that they "may" have such an effect. We think that it was permissible for the Commission to infer that these discriminatory allowances were a substantial threat to competition.

⁵ See also Docket No. 5771, *In the Matter of Namsco, Inc.*, March 17, 1953, in which it was found that "price competition is but one form of competition. Additional service to customers, additional salesmen to call on them, carrying a larger and more varied stock, branch houses, proximity to customers—all aid respondent's customers to stay in business and to prosper. The institution or expansion of these competitive aids depends directly on operating profit margin, a major factor in which, on this record, is cost of merchandise."

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We think that it was the intent of Congress that the Commission should take such elements into consideration in determining the question of whether or not the effects of such a pattern of pricing may be substantially to lessen competition. In House Report No. 2287, 74th Congress, 2nd Session, which was the report of the House Committee on the Judiciary on the bill which, among other things, resulted in the present language of Section 2 (a) of the Clayton Act, as amended, the Committee stated in part:

Section 2 (a) attacks directly the problem of price discrimination. Like present section 2 of the Clayton Act, it contains a general prohibition against such price discriminations, from which certain exceptions are then carved.

Section 2 (a) attaches to competitive relations between a given seller and his several customers. It concerns discrimination between customers of the same seller. It has nothing to do with fixing prices nor does it require the maintenance of any relationship in prices charged by a competing seller.

Discriminations in excess of sound economic differences between the customers concerned, in the treatment accorded them, involve generally an element of loss, whether only of the necessary minimum of profits or of actual costs, that must be recouped from the business of customers not granted them.

As in the *Moog* case, where, as to this same issue of injury, there was similar evidence, we find that there is reliable, probative and substantial evidence that the effect of respondent's varying net purchase prices which it granted in the sale of its lines of automotive parts of like grade and quality to competing distributors and jobbers may be substantially to lessen competition in the secondary line of commerce.

The order which we entered in the *Moog* case (Docket No. 5723) is identical with the order proposed in the initial decision herein. As in the *Moog* case, respondent here takes exception to the form and substance of the order, contending that it is too general, that the price discrimination statute as construed and applied by the examiner is unconstitutional and fails to comply with the standards of definiteness and reasonableness required by due process of law under the Fifth Amendment to the Constitution; and that the Commission's enforcement of the proposed order will constitute a denial of due process. For the same reasons which we gave in the *Moog* case, these exceptions of the respondent are denied. See *F.T.C. v. Ruberoid Company*, 343 U.S. 470; *Engineers Public Service Company v. Securities and Exchange Commission*, 138 F. 2d 936.

It is our opinion that the hearing examiner decided this matter correctly. The appeal of the respondent and the exceptions of the respondent, including those to the procedural rulings of the examiner, the findings of the examiner, the failure of the examiner to make certain findings, and to the form, substance and constitutionality of the proposed order are denied. The examiner's

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findings, conclusions and order are adopted as the findings, conclusion and order of the Commission.

Commissioner Kern did not participate in the decision in this matter.

Commissioner Mason dissented.

DISSENTING OPINION

By MASON, Commissioner.

The question of competitive injury here is the same as in the *Moog* case.¹

The evidence here is of like ilk. There is, in my opinion, no competitive injury, nor any reliable, probative and substantial evidence to support the finding of injury enunciated by the majority.

I am against it.

FINAL ORDER

Respondent P. & D. Manufacturing Co., Inc., having filed on March 7, 1955, its appeal from the initial decision of the hearing examiner in this proceeding; and the matter having been heard by the Commission on briefs and oral argument; and the Commission having rendered its decision denying the appeal and adopting as its own the findings, conclusion and order contained in the initial decision:

It is ordered, That respondent P. & D. Manufacturing Co., Inc., shall, within sixty (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 contained in said initial decision.

Commissioner Kern not participating, and Commissioner Mason dissenting.

¹ In the Matter of Moog Industries, Inc., Docket No. 5723.

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IN THE MATTER OF

DETRA WATCH COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 6421. Complaint, Sept. 23, 1955—Decision, Apr. 26, 1956.*

Consent order requiring sellers in New York City to cease misrepresenting the gold carat fineness of their "Detra" watches by marking the cases with the phrase "14 K" or "10 K" on the back and inside, when the cases were manufactured from gold of 13 $\frac{1}{8}$ and 9 $\frac{1}{8}$ carat fineness, respectively.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. Frederick McManus for the Commission.

Halperin, Natanson, Shivitz, Scholer & Steingut, of New York City, for respondents.

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 Detra Watch Company, Inc., a corporation, and Joseph H. Levine, Arthur D. Natanson and William Levites, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Detra Watch Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 106 West 46th Street, New York 36, New York.

Individual respondents Joseph H. Levine, Arthur D. Natanson and William Levites are the president, treasurer and secretary, respectively, of said corporation and formulate, direct and control the policies, acts and practices of said corporate respondent. Said individual respondents have their office at the same place as the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the business of selling and distributing gold watch cases under the brand name "Detra" to retailers and jobbers for sale to the purchasing public.

PAR. 3. In the course and conduct of their business, respondents now cause and for some time last past have caused their watch cases, when sold, to be transported from their place of business in the State of New York to distributors and jobbers for resale to the general public located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said watches in commerce between and among the various States of the United States.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the purchase of their said watches, respondents have sold and distributed, and do now sell and distribute in commerce as aforesaid, said watch cases with the phrase "14 K" and "10 K" appearing on the back and on the inside of said gold watch cases.

By means of said marking, respondents represent directly and by implication that said gold watch cases marked 14 K are manufactured from gold of 14 carat fineness and that said gold watch cases marked 10 K are manufactured from gold of 10 carat fineness. In truth and in fact the said gold watch cases sold by respondents and marked 14 K are not manufactured from gold of 14-carat fineness but are manufactured from gold of $13\frac{1}{8}$ -carat fineness; the said gold watch cases sold by respondents and marked 10 K are not manufactured from gold of 10-carat fineness but are manufactured from gold of $9\frac{1}{8}$ -carat fineness.

PAR. 5. In the course and conduct of their business respondents are in direct and substantial competition with other corporations, firms and individuals engaged in the sale, in commerce, of gold watch cases.

PAR. 6. The practice of respondents, as aforesaid, in selling and distributing their above described gold watch cases in commerce with the phrases "14 K" and "10 K" appearing on their said gold watch cases has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said watches are manufactured from gold of 14 carat fineness or 10 carat fineness and into the purchase of substantial quantities of said gold watch cases because of such mistaken and erroneous belief.

PAR. 7. The acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

On September 23, 1955, the Federal Trade Commission issued its complaint in this proceeding, charging the Respondents with unfair and deceptive acts and practices and unfair methods of competition in commerce by the use of false, misleading and deceptive representations as to the carat fineness of the gold from which their watch cases are manufactured, in violation of the Federal Trade Commission Act.

On November 2, 1955, all Respondents except Joseph H. Levine submitted their answer to the complaint herein. On January 11, 1956, at the opening of the initial hearing in New York, N. Y., counsel informed the Hearing Examiner that they and Respondents had reached tentative accord upon an Agreement Containing Consent Order To Cease And Desist which would, when executed, dispose of this proceeding without the necessity of presenting evidence; whereupon the hearing was concluded. Thereafter, on February 28, 1956, all Respondents except Joseph H. Levine entered into an agreement with counsel supporting the complaint, and, pursuant thereto, submitted to the Hearing Examiner, on March 13, 1956, an Agreement Containing Consent Order To Cease And Desist, disposing of the proceeding as to all Respondents signatory thereto; stating that Joseph H. Levine, named in the complaint as president of the corporate Respondent, is no longer an officer thereof nor connected therewith in any capacity whatsoever, and that he does not in any manner formulate, control, or direct the acts and practices of the corporate Respondent; and recommending that all charges with respect to him be dismissed. Counsel supporting the complaint, concurring in this recommendation, states that the public interest does not require further proceedings against Respondent Levine. In view of the foregoing facts, the complaint will be dismissed as to Respondent Joseph H. Levine.

Respondent Detra Watch Company, Inc. is identified in the agreement as a New York corporation, with its office and principal place of business located at 106 West 46th Street, New York 36, New York, and Respondents Arthur D. Natanson and William Levites as individuals and officers thereof, having their office at the same place as the corporate Respondent, the policies, acts and practices of which they formulate, control and direct.

Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

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Respondents, in the agreement, waive any further procedure before the Hearing Examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance therewith. All parties agree that the answer heretofore filed by all Respondents except Respondent Joseph H. Levine shall be considered as having been withdrawn, and for all legal purposes it will hereafter be so regarded; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; and that the agreement is for settlement purposes only and does not constitute an admission by Respondents that they have violated the law as alleged in the complaint.

The agreement sets forth that the order to cease and desist contained therein shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; and that the complaint herein may be used in construing the terms of said order.

After consideration of the charges set forth in the complaint, the agreement, and the provisions of the proposed order, the Hearing Examiner is of the opinion that such order will safeguard the public interest to the same extent as could be accomplished by an order issued after full hearing and all other adjudicative procedure waived in said agreement. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the Respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That respondents Detra Watch Company, Inc., a corporation, and Arthur D. Natanson and William Levites, individually and as officers of Respondent Detra Watch Company, Inc., and their agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of any articles composed in whole or in part of gold or an alloy of gold in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Stamping, branding, engraving, or marking any article with any phrase or mark such as 14 K or 10 K, or otherwise representing directly or by implication that the whole or a part of any article is composed of gold or an alloy of gold of a designated fineness, unless the article or part thereof so marked or represented is com-

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posed of gold of the designated fineness within the permissible tolerances established by the National Stamping Act (15 U. S. Code, Sections 294, et seq.).

It is further ordered, That the complaint herein, insofar as it relates to Respondent Joseph H. Levine, be, and the same hereby is, dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 26th day of April 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Detra Watch Company, Inc., a corporation and Arthur D. Natanson and William Levites, individually and as officers of said corporation, shall, within sixty (60) 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 the order to cease and desist.

Complaint

IN THE MATTER OF
TETLEY TEA COMPANY, INC.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2 (d) OF THE CLAYTON ACT

Docket 6462. Complaint, Nov. 21, 1955—Decision, Apr. 26, 1956

Consent order requiring a food supplier in New York City—charged with giving special allowances to Food Fair Stores, Inc., of Philadelphia, and Giant Food Shopping Center, Inc., of Washington, D. C. for promotion of anniversary sales—to cease granting such allowances unless it made them on a proportionally equal basis to all competing customers.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Andrew C. Goodhope for the Commission.

Cleary, Gottlieb, Friendly & Ball, of Washington, D. C., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly described, has violated the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Tetley Tea Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 483 Greenwich Street, New York, New York.

PAR. 2. Respondent is now and has been engaged in the sale and distribution of tea and tea bags as its principal products and which are sold under the trade name "Tetley". Respondent sells its products through grocery jobbers and directly to retail customers, including retail chain store organizations. Sales made by respondent of its products are substantial, amounting to in excess of \$11,000,000 annually.

PAR. 3. In the course and conduct of its business respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act as amended. Respondent sells and causes its products to be shipped from its principal place of business in the State of New York across state lines to customers located in States other than the State of New York and in the District of Columbia.