

Complaint

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IN THE MATTER OF
MINUTE MAID CORPORATION

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

Docket 6466. Complaint, Nov. 21, 1955—Decision, July 27, 1956

Consent order requiring a producer of frozen food products to cease paying some of its customers compensation for advertising its products while not making such payments available on proportionally equal terms to their competitors.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Andrew C. Goodhope and *Mr. Fredric T. Suss* for the Commission.

Mr. William E. Speeler, of New York City, 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, Minute Maid Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 488 Madison Avenue, New York 22, New York.

PAR. 2. Respondent is now and has been engaged in the production, sale and distribution of a number of frozen food products. The principal brand names under which respondent's products are sold are "Minute Maid" and "Snow Crop." Respondent sells its products throughout the United States through food brokers and distributors, and respondent also sells directly to retail grocery stores, including retail chain store organizations. Sales made by the respondent of its products are substantial, amounting to \$37,118,000 in the year 1954.

PAR. 3. In the course and conduct of its business, respondent has engaged in commerce, as "commerce" is defined in the Clayton Act, as amended. Respondent ships its products, or causes them to be transported, across state lines from the State of manufacture to customers located in other States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent has paid, or contracted for the payment of, something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, during the year 1955 respondent contracted to pay and did pay \$5,750 to the Food Fair Stores, Inc., of Philadelphia, Pennsylvania, and \$250 to the Giant Food Shopping Center, Inc., of Washington, D.C., as compensation or as an allowance for advertising or other service or facility furnished by or through such customers in connection with their offering for sale or sale of products sold them by the respondent. Such compensation or allowances were not offered or otherwise made available by respondent on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products with Food Fair Stores, Inc., or Giant Food Shopping Center, Inc.

PAR. 6. The acts and practices of the respondent, as alleged above, violate subsection (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of subsection (d) of section 2 of the Clayton Act (15 U.S.C. 13), as amended by the Robinson-Patman Act, the Federal Trade Commission on November 21, 1955, issued and subsequently served its complaint in this proceeding against respondent Minute Maid Corporation, a corporation existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 488 Madison Avenue, New York 22, New York.

At the initial hearing on June 11, 1956, there was submitted to the undersigned hearing examiner an agreement between respondent and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, respondent admits all the jurisdictional facts alleged in the complaint; agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; and agrees that the answer of respondent herein to the complaint shall be considered as having been withdrawn. By such agreement, respondent waives any further procedural steps before the hearing examiner

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and the Commission; waives the making of findings of fact and conclusions of law; and waives all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding as to all parties; that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondent, and, when so entered, it 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 may be used in construing the terms of the order.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent, Minute Maid Corporation, is a corporation existing and doing business under the laws of the State of Florida, with its office and principal place of business located at 488 Madison Avenue, New York 22, New York.

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

ORDER

It is ordered, That respondent Minute Maid Corporation, a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the sale of frozen food products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any advertising or other service or facilities furnished by or through such customer, in connection with the handling, offering for sale, or resale of products sold to him by re-

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spondent, unless such payment is affirmatively offered or otherwise made available to all competing customers on proportionally equal terms.

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 27th day of July, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein 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 to cease and desist.

IN THE MATTER OF
MAIN FISH COMPANY, INC.

ORDER OF DISMISSAL IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (C)
OF THE CLAYTON ACT

Docket 6386. Complaint, June 30, 1955—Order, July 30, 1956

Order dismissing complaint charging a seller in Seattle, Wash., of fresh fish it purchased in boat-load quantities, filleted, and resold to retailers, restaurants, and wholesalers, with violating Sec. 2(a) of the Clayton Act by favoring one direct buyer with prices lower than those charged all other purchasers by the amount of the commissions paid brokers for effecting sales to its indirect customers.

Mr. Peter J. Dias for the Commission.

Jones & Grey, of Seattle, Wash., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Respondent Main Fish Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at Pier 49, Seattle, Washington. It is now and for a number of years last past has been engaged in the business of purchasing fresh fish in boatload lots, processing and selling them to retailers, restaurants and wholesalers. In the course and conduct of its business, the respondent has sold and transported or caused such fish to be transported from its place of business in the State of Washington to the places of business of said customers, many of which are located in various other States of the United States.

The complaint charges that respondent is now and for several years last past has been selling fish directly to one large customer, the Pacific California Fish Company of Los Angeles, California (hereinafter referred to as Pacific), at net prices lower than those charged other customers by the same or substantially the same amount as the 5% brokerage which respondent pays brokers for effecting sales to other of its customers, and that thereby respondent has granted to Pacific something of value as a commission, brokerage or other compensation or discount in lieu thereof, in violation of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13).

Respondent denied these charges, alleging in its answer that any lower price charged Pacific "was either justifiable because of cost