

Complaint

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IN THE MATTER OF
EDWARD B. McGOVERN TRADING AS
McGOVERN AND McGOVERN

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

Docket 6980. Complaint, Dec. 12, 1957—Decision, July 3, 1958

Consent order requiring a broker of canned salmon and other sea food in Seattle, Wash., to cease granting illegal rebates and allowances to certain buyers which were taken from his own brokerage fees, in violation of Section 2(c) of the Clayton Act, by such practices as: (1) payment of all or a part of the freight charges, and granting "trade discounts" and "promotional allowances"; and (2) selling at a net price lower than that accounted for to his packer-principal.

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, has violated and is now violating the provisions of subsection (c) 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, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Edward B. McGovern is an individual trading and doing business as McGovern and McGovern, with his office and principal place of business located at 675 Colman Building, Seattle, Wash.

PAR. 2. Respondent is now, and for many years prior hereto has been engaged in the business of distributing canned seafood (chiefly salmon, and to a lesser extent tuna, crab, and clams). Respondent distributes as both a trader for his own account, and as a primary broker negotiating sales for the accounts of a number of packers located in various areas within and beyond the continental United States, including the Puget Sound and Columbia River areas, and British Columbia and Alaska. When negotiating sales for the account of his principal, respondent receives for his services, a commission or brokerage fee of 5% of the net selling price of the merchandise sold. When selling through secondary or field brokers who negotiate sales for him respondent pays them for their services a commission or broker-

age fee generally at the rate of $2\frac{1}{2}\%$ of the net selling price of the merchandise sold.

PAR. 3. Respondent is a substantial factor in the sale and distribution of canned seafood in the United States, and sells and distributes such products directly, and through secondary or field brokers in various marketing areas, to buyers for resale, located throughout the United States. Respondent, as both a trader for his own account and as a primary broker, has directly or indirectly caused said canned seafood so sold to be transported from the places of business of the respective packers thereof, or from their warehouses, to buyers thereof located in various states of the United States other than the state of origin of such canned seafood. Thus respondent is, and has been for many years prior hereto, engaged in a continuous course of trade in commerce, as "commerce" is defined in the Clayton Act, as amended by the Robinson-Patman Act.

PAR. 4. In the course and conduct of his business in commerce as a trader for profit, respondent has received and accepted and is now receiving and accepting from various packers, brokerage fees, or commission allowances, or discounts in lieu thereof, on canned seafood purchased by respondent for his own account for resale.

In the course and conduct of his business in commerce as a primary broker for his respective packer-principals, respondent has granted and allowed payments in substantial amounts in lieu of brokerage to certain buyers of said canned seafood by granting various allowances and rebates to said buyers which were not charged back to the various packer-principals but which were, on the contrary, taken from respondent's brokerage. Among and including, but not necessarily limited to, the methods or means employed by respondent in paying or granting such amounts out of his brokerage to certain buyers, were the following:

- (a) The payment of all or a part of the freight charges;
- (b) The granting of amounts designated as a "trade discount";
- (c) The granting of amounts designated as a "promotional allowance";
- (d) Selling to the buyer at a net price lower than that accounted for to the packer-principal.

PAR. 5. The acts and practices of respondent as hereinabove alleged and described constitute a violation of the provisions of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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Mr. Cecil G. Miles and *Mr. John J. McNally* supporting the complaint.

Mr. Richard T. Olson, of Seattle, Wash., for respondent.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The complaint herein was issued on December 12, 1957, charging respondent with the violation of Section 2(c) of the Clayton Act as amended by the Robinson-Patman Act in connection with the sale of seafood products.

After being served with the complaint, respondent entered into an agreement dated April 11, 1958, containing a consent order to cease and desist disposing of all the issues in this proceeding, without hearing, which agreement has been duly approved by the assistant director and the director of the Bureau of Litigation. Said agreement has been submitted to the undersigned, heretofore duly designated to act as hearing examiner herein, for his consideration in accordance with Section 3.25 of the Rules of Practice of the Commission.

Respondent, pursuant to the aforesaid agreement has admitted all of the jurisdictional allegations of the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waives all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, that said agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint, that said order to cease and desist 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.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing the consent order, and it appearing that the order and agreement cover all of the allegations of the complaint and provide for

appropriate disposition of this proceeding, the agreement is hereby accepted and ordered filed upon this decision and said agreement becoming part of the Commission's decision pursuant to Sections 3.21 and 3.25 of the Rules of Practice, and the hearing examiner accordingly makes the following findings, for jurisdictional purposes, and order:

1. Respondent Edward B. McGovern is an individual doing business as McGovern and McGovern under and by virtue of the laws of the State of Washington, with his office and principal place of business located at 675 Colman Building, Seattle, Wash.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Clayton Act, as amended by the Robinson-Patman Act. This proceeding is in the interest of the public.

ORDER

It is ordered, That Edward B. McGovern, individually and doing business as McGovern and McGovern, or under any other name, and his agents, representatives, or employees, directly or through any corporate, partnership, or other device in connection with the sale of seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Paying, granting, or passing on, either directly or indirectly to any buyer, or to anyone acting for or in behalf of or who is subject to the direct or indirect control of such buyer, brokerage earned or received by respondent on sales made for his packer-principals, by allowing to buyers lower prices which reflect all or any part of such brokerage, or by granting them allowances or rebates which are in lieu of such brokerage, or by any other methods or means.

2. Receiving or accepting, directly or indirectly, from any seller anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of seafood products by respondent for his own account.

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 3d day

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of July 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

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IN THE MATTER OF
THE SALMON AND TUNA SALES COMPANY ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(C) OF THE CLAYTON ACT*Docket 6981. Complaint, Dec. 12, 1957—Decision, July 3, 1958*

Consent order requiring brokers of canned salmon and other seafood products in Seattle, Wash., to cease making allowances in lieu of brokerage in violation of Section 2(c) of the Clayton Act by such practices as (1) selling at net prices lower than those accounted for to their packer-principals; (2) granting deductions from price by way of allowances or rebates, a part or all of which were not charged back to the packer-principals; and (3) taking reduced brokerage on sales which involved price concessions.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and herein-after more particularly designated and described, have violated and are now violating the provisions of subsection (c) 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, The Salmon and Tuna Sales Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington. Respondent B. Lou Thrailkill is an individual and is president of said corporation and formulates, directs and controls the acts, practices and policies of the said corporate respondent. The principal office and place of business of said corporate and individual respondents is located at 1018 Second Avenue, Seattle, Wash.

PAR. 2. Respondents, and each of them, are now, and for many years prior hereto have been engaged in the business of distributing food products, including canned salmon. Respondents distribute as primary brokers, negotiating sales for the accounts of a number of packers located in various areas within and beyond the continental United States, including the Puget Sound area and the Territory of Alaska.

PAR. 3. Respondents, and each of them, are a substantial factor in the sale and distribution of canned salmon in the United States, and sell and distribute such food products generally