

Complaint

55 F.T.C.

IN THE MATTER OF
PARKS CANNING COMPANY, INC., ET AL.

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

Docket 7200. Complaint, July 18, 1958—Decision, Feb. 12, 1959

Consent order requiring three associated corporate packers of seafood products and their exclusive sales agent in Seattle, Wash., to cease violating the brokerage section of the Clayton Act (Sec. 2(c)) by making sales to certain chains at reduced prices arrived at by giving up all or a large part of the brokerage earned by said sales agent on the sales; and—in cases where said sales agent acted as a primary broker for outside packers—by passing on brokerage to certain buyers or their agents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have been and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents Parks Canning Company, Inc., H. M. Parks Company, Inc., and Western Fisheries Company, hereinafter sometimes referred to as corporate respondents, are corporations organized, existing and doing business under and by virtue of the laws of the State of Washington, with their principal office and place of business located at 309 Colman Building, Seattle, Wash.

Respondent North Pacific Seafoods, hereinafter sometimes referred to as partnership respondent, is a copartnership composed of corporate respondents H. M. Parks Company, Inc. and Western Fisheries Company under the laws of the State of Washington, with its office and principal place of business located at 312 Colman Building, Seattle, Wash. Said partnership was formed in 1946 to act as a primary broker or exclusive sales agent for the corporate respondents named herein in connection with the sale and distribution of their seafood products. In addition to acting as a primary broker or exclusive sales agent for the corporate respondents named herein this respondent also acts to some

extent as a primary broker for other seafood packers in connection with the sale and distribution of their seafood products.

PAR. 2. The above-named corporate respondents have been for the past several years and are now engaged in canning, packing, selling and distributing canned salmon, tuna, crab meat and clams, all of which are hereinafter referred to as seafood products. The canning operations are now being carried on as a joint venture by the corporate respondents named herein. The partnership respondent has been for the past several years and is now engaged in selling and distributing seafood products both as exclusive sales agents for the corporate respondents and as a primary broker for other seafood packers. Respondents are substantial factors in the seafood industry.

PAR. 3. In the course and conduct of their business, respondents for the past several years have sold and distributed and are now selling and distributing their seafood products in commerce, as "commerce" is defined in the aforesaid Clayton Act, to buyers located in the several States of the United States, other than the State in which respondents are located. Said respondents transport, or cause such seafood products, when sold, to be transported, from their place of business in the State of Washington or elsewhere, to buyers, or to the buyers' customers, located in various other States of the United States. There has been at all times mentioned herein a continuous course of trade in commerce in said seafood products across state lines between respondents and the respective buyers thereof.

PAR. 4. In the course and conduct of their business in commerce in the sale and distribution of their seafood products, the corporate respondents usually pay their primary broker or exclusive sales agent, respondent North Pacific Seafoods, a brokerage or commission usually at the rate of 5 percent of the net selling price of the merchandise sold. Respondent North Pacific Seafoods is likewise usually paid a 5 percent brokerage or commission when it represents outside packers as a primary broker, in the sale and distribution of their seafood products.

Respondent North Pacific Seafoods also employs field brokers located in the various parts of the United States where the buyers are located to negotiate sales for it, which field brokers are usually paid for their service in connection therewith at the rate of 21½ percent of the net selling price of the merchandise.

PAR. 5. In the course and conduct of their business, the cor-

Decision

55 F.T.C.

porate respondents named herein, acting on their own or by or through their partnership, North Pacific Seafoods, have made sales to certain chains at reduced prices which reflect brokerage or have granted discounts or allowances in lieu of brokerage to said buyers. On these particular sales the partnership respondent North Pacific Seafoods acting in coordination and with the knowledge of the corporate respondents named herein gave up all or a large part of its brokerage or commission earned in connection with said sales.

In other instances where respondent North Pacific Seafoods was acting as primary broker for outside packers in connection with the sale of their seafood products it granted or passed on brokerage to certain buyers, or the buyers' agents, as follows:

(a) Selling to certain buyers at net prices which were less than those accounted for to its packer-principals.

(b) Granting to certain buyers deductions from price by way of allowances or rebates, a part or all of which were not charged back to its packer-principals.

(c) Taking reduced brokerage or commissions on sales to certain buyers.

PAR. 6. The acts and practices of respondents, and each of them, as above alleged and described are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

Mr. Cecil G. Miles for the Commission.

Mr. Dale E. Sherrow of *Medley and Haugland*, of Seattle, Wash., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves alleged violations of §2(c) of the Clayton Act, as amended (U.S.C. Title 15, §13), it being charged in the complaint, in substance, that the corporate respondents named therein, acting on their own or by or through their partnership, North Pacific Seafoods, have made sales to certain chains at reduced prices which reflect brokerage, or have granted discounts or allowances in lieu of brokerage to said buyers by giving up all or a large part of the brokerage or commission earned by respondent North Pacific Seafoods in connection with said sales; and in other instances respondent North Pacific Seafoods, acting as primary broker for outside packers in connection with the sale of their seafood products, has granted or passed on

1202

Decision

brokerage to certain buyers, or the buyers' agents, by selling to them at net prices which were less than those accounted for to its packer-principals; granting deductions from price, as allowances or rebates, a part or all of which were not charged back to its packer-principals; and by taking reduced brokerage or commissions on sales.

On December 12, 1958, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order to Cease and Desist," which had been entered into by and between respondents and the attorneys for both parties, under date of November 23, 1958, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondents Parks Canning Company, Inc., H. M. Parks Company, Inc., and Western Fisheries Company are corporations existing and doing business under and by virtue of the laws of the State of Washington, with their office and principal place of business located at 309 Colman Building in the city of Seattle, State of Washington.

Respondent North Pacific Seafoods is a copartnership existing and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 312 Colman Building, in the city of Seattle, State of Washington.

2. Pursuant to the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, §13), the Federal Trade Commission, on July 18, 1958, issued its complaint in this proceeding against respondents, and a true copy was thereafter duly served on respondents.

3. 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.

4. This agreement disposes of all of this proceeding as to all parties.

Order

55 F.T.C.

5. Respondents waive:

(a) Any further procedural steps before the hearing examiner and the Commission;

(b) The making of findings of fact or conclusions of law; and

(c) All of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

6. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

7. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

8. This 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.

9. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order to Cease and Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order to Cease and Desist" that the Commission has jurisdiction of the subject matter of this proceeding and of each of the respondents herein; that the complaint states a legal cause for complaint under the provisions of §2(c) of the Clayton Act, as amended (U.S.C. Title 15, §13), against each of the respondents both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That Parks Canning Company, Inc., a corpora-

1202

Decision

tion, H. M. Parks Company, Inc., a corporation and as a copartner doing business as North Pacific Seafoods, Western Fisheries Company, a corporation and as a copartner doing business as North Pacific Seafoods, North Pacific Seafoods, a copartnership and respondents' officers, 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 allowing, 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, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of seafood products to such buyer for his own account;

2. 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 respondents on sales made for their 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 brokerage, or by any other method or means.

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 12th day of February 1959, become the decision of the Commission; and, accordingly:

It is ordered, That the above-named respondents 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

55 F.T.C.

IN THE MATTER OF
P. J. BURK PACKING CO., INC., ET AL.

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

Docket 7202. Complaint, July 22, 1958—Decision, Feb. 12, 1959

Consent order requiring two associated canners of salmon and other seafood products in Bellingham, Wash., to cease violating the brokerage provisions of the Clayton Act (Sec. 2(c)) by reducing their selling prices to certain direct buyers in the approximate amount of the brokerage fees which would have been due to brokers had they negotiated the sales.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have been 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, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent P. J. Burk Packing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington.

Respondent Burk Canning Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington.

Respondents P. J. Burk Packing Co., Inc., and Burk Canning Co., Inc., hereinafter sometimes referred to as corporate respondents, share common officers and both have their offices and principal places of business located at Port of Bellingham Municipal Dock, in the City of Bellingham, State of Washington. Corporate respondent Burk Canning Co., Inc., is a wholly owned subsidiary of corporate respondent P. J. Burk Packing Co., Inc., and leases its plant facilities from its said parent corporation. The business address of said corporate respondents is Post Office Box 660, Bellingham, Wash.

Respondent John G. Mitchell, hereinafter sometimes referred to as individual respondent, is president of both of said corporate respondents and directs and controls their affairs and policies, including their sales and distribution policies. The business ad-