

Decision

IN THE MATTER OF
D & N AUTO PARTS COMPANY, INC., ET AL. AND
BORDEN-AICKLEN AUTO SUPPLY CO., INC., ET AL.

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

Dockets 5767 and 5766. Complaints, May 1, 1950—Decision, Feb. 24, 1959

Order requiring two group buying organizations—in Memphis, Tenn., and Andalusia, Ala., respectively—and their 25 jobber members, to cease violating Sec. 2(f) of the Clayton Act by soliciting and accepting illegal price advantages from suppliers of automotive parts and supplies consisting of discounts ranging up to 20% based on the aggregate purchases of all members of each group in the preceding year.

Mr. Eldon P. Schrup for the Commission.

Mr. Frank J. Tipler, Jr., of Andalusia, Ala., for D & N Auto Parts Company, Inc., et al.

Taylor, Costen & Taylor, of Memphis, Tenn., by *Mr. Hillsman Taylor*, for Borden-Aicklen Auto Supply Co., Inc., et al.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

In the above proceedings Mid-South Distributors, a corporation, and its officers, directors and members named as respondents in Docket No. 5766; and Cotton States, Incorporated, a corporation, and its officers, directors and members named as respondents in Docket No. 5767, were charged with violation of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act. During the course of the hearings, it was agreed by all parties that these two proceedings be tried concurrently and considered as one case; that the testimony and other evidence introduced in each of these cases be considered as applying to the respondents in both cases; and that the hearing examiner issue one initial decision covering both cases.

These proceedings are now before the undersigned hearing examiner for final consideration, upon the complaints, answers thereto, testimony and other evidence, proposed findings of fact and conclusions submitted by counsel, and oral argument thereon. The hearing examiner has given consideration to the proposed findings of fact and conclusions submitted by all parties and oral argument thereon, and all findings of fact and conclusions of law proposed by the parties respectively, not hereinafter

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specifically found or concluded, are herewith rejected, and the hearing examiner having considered the record herein and being now fully advised in the premises, makes the following findings as to the facts, conclusions drawn therefrom and order:

1. Respondent Mid-South Distributors is a membership corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 387 South Front Street, Memphis, Tenn. At the time of the issuance of the complaint in this proceeding the members of said respondent Mid-South Distributors were the following:

(1) Respondent Borden-Aicklen Auto Supply Co., Inc., a Louisiana corporation with its principal office and place of business located in 613-17 Baronne Street, New Orleans, La.

(2) Respondent Central Electric Company a Mississippi corporation with its principal office and place of business located at 404-06 Main Street, Hattiesburg, Miss.

(3) Respondent Corpus Christi Hardware Co., Inc., a Texas corporation with its principal office and place of business located at 99 South Broadway, Corpus Christi, Tex.

(4) Respondent Crawford Co., Inc., a Louisiana corporation with its principal office and place of business located at 213-15 Crockett Street, Shreveport, La.

(5) Respondent Maurice G. Whitley and Lorraine C. Whitley, copartners trading as Fulton, Conway and Co. with their principal office and place of business located at 803-07 West Main Street, Louisville, Ky.

(6) Respondent A. S. Hatcher Co., Inc., a Georgia corporation, with its principal office and place of business located at 586-94 Third Street, Macon, Ga.

(7) Respondent Keith-Simmons Co., a Tennessee corporation with its principal office and place of business located at 201-314 10th Avenue, South, Nashville, Tenn.

(8) Respondent Mills-Morris Co., Inc., a Tennessee corporation with its principal office and place of business located at 171-187 South Dudley Street, Memphis, Tenn.

(9) Respondent Motor Supply Co., Inc., a Mississippi corporation with its principal office and place of business located at 2618 Fifth Street, Meridian, Miss.

(10) Respondent Motor Supply Co., Inc., a Louisiana corporation with its principal office and place of business located at Monroe, La.

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(11) Respondent Motor Supply Co., Inc., a Georgia corporation with its principal office and place of business located at 37 West Broad Street, Savannah, Ga.

(12) Respondents Sidney A. Robinson, Jr., Mrs. Elta A. Robinson and Mrs. Elta R. Posey, copartners trading as Robinson Brothers with their principal office and place of business located at 135-162 Amite Street, Jackson, Miss.

(13) Respondent Southern Auto Supply Co., Inc., a Tennessee corporation with its principal office and place of business located at 507-09 Broad Street, Chattanooga, Tenn.

(14) Tennessee Mill & Mine Supply Co., a Tennessee corporation with its principal office and place of business located at 404-12 State Street, Knoxville, Tenn.

(15) Respondent Voss-Hutton, Barbee Company, Inc., formerly known as Voss-Hutton Company, Inc., an Arkansas corporation with its principal office and place of business located at 400-04 West Spring Street, Little Rock, Ark.

(16) Respondent Wadel-Connally Hardware Company, Inc., a Texas corporation with its principal office and place of business located at 412 North Spring Street, Tyler, Tex.

(17) Respondent Williams Hardware Co., Inc., an Arkansas corporation with its office and principal place of business located at 100-06 South Fourth Street, Portsmouth, Ark.

All of the above-named respondent members have been members of said respondent Mid-South Distributors since its organization, August 16, 1936, until the present time, with the exception of respondents Corpus Christi Hardware Co., Inc.; A. S. Hatcher Co., Inc.; Motor Supply Co., of Savannah, Georgia, Tennessee Mill & Mine Co.; and Wadel-Connally Hardware Company, Inc., who were elected to membership subsequent to August 18, 1936, and who have continued as members to the present time.

2. Respondent Cotton States, Incorporated, is a membership corporation organized, existing and doing business under and by virtue of the laws of the State of Mississippi with its principal office and place of business located at Andalusia, Ala. At the time of the issuance of the complaint in this proceeding the members of said respondent, Cotton States, Incorporated, were the following:

(1) Respondent D & N Auto Parts Company, a Mississippi corporation with its office and principal place of business located at 420 Howard Street, Greenwood, Miss.

(2) Respondent Christian Auto Supply Co., Inc., a Mississippi

corporation with its principal office and place of business located at 529 Central Avenue, Laurel, Miss.

(3) Respondent Milton Supply Company a Mississippi corporation with its principal office and place of business located at 2712 Sixth Street, Meridian, Miss.

(4) Respondent Taylor Parts & Supply Co., Inc., a Florida corporation with its principal office and place of business located at Andalusia, Ala.

(5) Respondent William P. Barnes, trading as Barnes Motor Supply located at 1205 Main Street, Baton Rouge, La.

(6) Respondent Davis Motor Supply Co., Inc., an Alabama corporation with its principal office and place of business located at 260 St. Louis Street, Mobile, Ala.

(7) Respondent Hart Supply Co., Inc., a Mississippi corporation with its principal office and place of business located at 350 Broad Street, Columbia, Miss.

(8) Respondent Greiner Auto Parts Company, Inc., a Louisiana corporation with its principal office and place of business located at 2929 Magazine Street, New Orleans, La.

All of the above-named respondent members have been members of said respondent Cotton States, Incorporated, since its organization March 15, 1938, with the exception of respondent Greiner Auto Parts Company, Inc., which was subsequently elected to membership.

3. The above respondents who have been named as members of respondents Mid-South Distributors and Cotton States, Incorporated, are independent jobbers dealing principally in automotive parts, accessories and supplies. Since June 19, 1936, said respondent jobbers have been engaged in the purchase and resale of said automotive products, in interstate commerce, and have been and are now engaged in active and substantial competition with other corporations, partnerships, firms and individuals also engaged in the purchase and resale of such automotive products of like grade and quality, in interstate commerce, which have been purchased from the same or competitive sellers.

4. Respondent jobbers organized and have maintained, controlled and operated respondents Mid-South Distributors and Cotton States, Incorporated, for the purpose of inducing the granting or allowance of lower and more favorable prices by manufacturers and sellers of automotive parts, accessories and supplies. It was the regular procedure for the respondent jobbers acting through Mid-South Distributors or Cotton States, Incor-

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porated, to either notify or allow competing manufacturers of various lines of automotive parts, accessories or supplies—to submit prices and appear before the members of the group interested in purchasing such lines and present their lines of merchandise and the terms and conditions of sale they were prepared to allow. Thereafter, the members of the group organization to which such lines had been presented would consider the offers and vote to accept one of the lines to the exclusion of the lines of the seller's competitors. This, however, was not a rigid requirement in that the individual members could continue to handle competitive lines which they were already selling or for which they had a preference. In actual practice, most of the members of the group organizations sold and distributed the particular manufacturer's line accepted by the group.

5. Among the lines adopted by the members of respondent Mid-South were: the ignition line manufactured and sold by Standard Motor Products, Inc.; the fuel pump line sold by Hygrade Products Division of Standard Motor Products, Inc.; and leaf spring, coil spring and chassis parts lines manufactured and sold by Moog Industries, Inc. Among the lines adopted by the members of Cotton States, Incorporated, were: leaf spring, coil spring and chassis parts sold by Moog Industries, Inc.; the fuel pump line sold by Hygrade Division, Standard Motor Products, Inc.; the ignition line sold by C. E. Niehoff & Company; and the battery cable line sold by Whitaker Cable Corporation.

6. Representatives of the above sellers were called as witnesses in this proceeding, and these witnesses testified as to the pricing practices of the respective suppliers. The pricing plan followed by these particular sellers was more or less similar to that used by other sellers not named herein. The sellers from time to time issued their distributor or jobber price lists which listed the basic prices used by the seller in the sale and distribution of its various automotive parts, accessories and suppliers. In addition to various discounts, such as cash discount, and in some instances warehousemen's discount for resale to other jobbers, the sellers allowed a retroactive volume rebate to purchasers of their products. This plan involved a sliding scale of discounts based upon the volume purchased, and purchasers were granted and received rebates on all their individual purchases according to the rebate bracket applicable to their total annual purchases. Any individual purchase price was retroactively determined by the total of all purchases during the year

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according to the terms of the retroactive rebate plan. In the case of the respondent jobbers who were members of Mid-South Distributors and members of Cotton States, Incorporated, the retroactive volume discount allowed by the suppliers was based not on the total purchases of the individual respondent jobber, but instead was based upon the total purchases of all the members of Mid-South Distributors or Cotton States, Incorporated, as the case may be.

7. The purchase procedure followed by the respondent jobbers, as members of either Mid-South Distributors or Cotton States, Incorporated, provided for the forwarding of purchase orders by the individual respondent jobber member to the seller directly or through the group office. Monthly settlements were made between the supplier and the group office for the aggregate purchase orders of all the respondent jobber members so received, and each respondent jobber member also settled monthly with the group office for its individual purchases so made. The annual volume rebate allowed by the seller was based upon the aggregate purchases of the members of the group and was paid to the group office, which in turn distributed such volume rebate, less expenses, to its jobber members in proportion to the amount of such jobber's individual purchases. The rebates and discounts were granted and allowed by the sellers to each individual respondent jobber member of Mid-South Distributors and Cotton States, Incorporated, on the basis of the total purchases of all the members of the respective groups irrespective of whether or not the amount of such individual member's purchases met with the requirements of any particular bracket of the seller's volume rebate schedules set forth in the seller's contracts. The group buying organizations, Mid-South Distributors and Cotton States, Incorporated, were in reality bookkeeping devices for the collection of rebates, discounts and allowances received from sellers on purchases made by their jobber members. Such respondent jobbers in fact purchase their requirements of the seller's products direct from the seller and at the same time receive a more favorable price or a higher rebate based upon the combined purchases of all of the members.

8. The purpose of the respondent jobbers in organizing and maintaining respondents Mid-South Distributors and Cotton States, Incorporated, was to obtain a price lower than a jobber respondent could obtain on the amount of its purchases if made as a non-member of the group. The jobber respondents knew that

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the net prices obtained through the use of the group buying device were not based upon the quantities or other factors involved in any particular sale, but rather upon the combined dollar amount of all sales to them as purchasers and bear relation to factors other than actual costs of production or delivery. The method of purchase was substantially the same as if the jobber member had been operating individually instead of as a group member. Deliveries by the seller were made direct to the respondent jobber in the same manner as deliveries would have been made had respondent jobber been a purchaser independent of any group organization. Respondent jobbers further knew that they were getting a lower price through the means of the group organization than was obtained by jobbers competing with them in the resale of the supplier's products, in the same marketing area, where such competitors were not members of a buying group.

9. Illustrative of the monetary benefits derived by the respondent jobbers as members of the group buying organizations Mid-South Distributors and Cotton States, Incorporated, as opposed to those individual purchasers buying without the benefit of such group consolidation of purchases and as opposed to what the respondent jobber would have paid had it been operating without the benefit of the group consolidation of purchases, are the following tabulations taken from Commission Exhibits in Docket Nos. 5766 and 5767 as shown on the face of such tabulations:¹

10. The automotive parts industry is a highly competitive business involving small margins of profit. The net margin of profit of certain individual respondent jobbers was as low as 2 percent before taxes. The importance of the discriminatory prices allowed by the various suppliers is pointed up by the importance given by the respondent jobbers to the 2 percent cash discount as increasing their margin of profit and reducing the cost of acquisition of their merchandise. Through the lower cost of merchandise resulting from such discriminatory prices, the respondent jobbers obtained a competitive advantage over their competitors selling the same or comparable merchandise in the same trade area who receive discounts or rebates based upon their individual purchases.

11. The complaint in this proceeding named as respondents certain individuals who were described as officers and directors of Mid-South Distributors and Cotton States, Incorporated. Many

¹ See pages 1286-1293.

MID-SOUTH DISTRIBUTORS

RESPONDENT JOBBERS' "GROUP-BUYING" METHOD OF PURCHASING¹

Manufacturer's published discount schedule to trade		Member-jobbers	Actual Net relateable purchases each member jobber	Manufacturer's schedule discount rate applicable	Manufacturer's schedule discount amount due	Manufacturer's "group" discount rate	Manufacturer's "group" amount paid	Actual price discount difference
Net purchases	Retro- active rebate							
			1	2	3	4	5	6
				Percent		Percent		
Under \$1,800		Auto Bearings & Parts Co.	\$10,926.64	15	\$ 1,639.00		\$ 2,185.33	\$ 546.33
\$1,800 - \$2,400	3	Borden-Aicklen Auto Supply	4,883.52	7	341.85		976.70	634.85
\$2,400 - \$3,600	5	Central Electric Co.	19,813.71	15	2,872.06		3,962.72	990.66
\$3,600 - \$5,000	7	Corpus Christi Hdw. Co.	34,902.59	16	5,584.41		6,980.50	1,396.09
\$5,000 - \$6,500	9	Crawford Co.	2,107.24	3	63.22		421.45	358.23
\$6,500 - \$8,000	11	Fulton-Conway & Co.	34,578.28	16	5,532.52		6,915.65	1,383.13
\$8,000 - \$10,000	13	A. S. Hatcher Co.	2,432.54	5	121.63		486.54	364.91
\$10,000 - \$25,000	15	Keith Simmons Co.	44,263.35	None			52.67	52.67
\$25,000 - \$50,000	16	Mills Morris Co.	44,940.96	16	7,190.55		8,988.15	1,797.60
\$50,000 - \$75,000	17	Motor Supply Co. (Meridian)	8,312.32	13	1,080.60		1,662.47	581.87
\$75,000 - \$100,000	18	Motor Supply Co. (Savannah)	14,987.12	15	2,090.04		2,786.70	696.66
\$100,000 and over	20	Motor Supply Co. (Monroe)	4,888.97	7	315.06		899.99	584.93
		Robinson Bros.	11,386.24	15	1,707.94		2,277.43	569.49
		Tenn. Mine & Mill Supply	17,050.24	15	2,557.54		3,410.06	852.52
		Southern Auto Supply Co.	31,821.79	16	5,091.49		6,364.36	1,272.87
		Voss-Hutton Co.	16,638.77	15	2,495.82		3,327.75	831.93
		Ward-Connally Co.	5,803.64	9	522.33		1,160.75	638.42
		William Hardware Co.	17,307.94	15	2,596.19		3,461.61	865.42
Totals			281,604.25		41,902.25		56,320.83	14,418.58

¹ Compiled from Commission Exhibit No. 160, showing actual purchases from Standard Motor Products, Inc. during 1949 and comparison with Commission Exhibit Nos. 175-178, being the applicable Standard Motor Products, Inc. rebate contracts and endorsements. (Also, see Commission decision in D. 5721—Standard Motor Products, Inc.)

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MID-SOUTH DISTRIBUTORS

RESPONDENT JOBBERS' "GROUP-BUYING" METHOD OF PURCHASING ²

Manufacturer's published discount schedule to trade		Member-jobbers	Actual Net purchases each member jobber	Manufacturer's schedule discount rate applicable	Manufacturer's schedule discount amount due	Manufacturer's "group" discount rate	Manufacturer's "group" discount amount paid	Actual price difference
Net purchases	Non-retroactive rebate							
	Percent		1	2	3	4	5	6
				Percent		Percent		
		Central Electric Co.	\$419.69	None		10	\$41.97	\$41.97
		Corpus Christi Hdwe.	367.84	None		10	36.78	36.78
		Crawford Co., Inc.	423.06	None		10	42.31	42.31
		Fulton Conway Co.	2,285.10	5; 10	\$153.51	10	228.51	75.00
		A. S. Hatcher Co.	1,122.67	None		10	112.27	112.27
		Mills Morris Co.	5,681.47	5; 10	493.15	10	568.15	75.00
		Auto Rearing & Parts	1,715.80	5; 10	96.58	10	171.58	75.00
		Motor Supply Co. (Meridian)	176.61	None		10	17.66	17.66
		Motor Supply Co. (Montroe)	106.73	None		10	10.67	10.67
		Motor Supply Co. (Savannah)	2,876.51	5; 10	212.65	10	287.65	75.00
		Robinson Bros.	1,264.46	None		10	126.45	126.45
		Southern Auto Supply Co.	6,868.04	5; 10	611.80	10	686.80	75.00
		Tenn. Mill & Mine	1,873.53	5; 10	112.35	10	187.35	75.00
		Toss-Hutton Co.	365.25	None		10	36.53	36.53
		Wadel-Connelly Co.	364.90	None		10	36.49	36.49
		Williams Hardware	1,512.98	5; 10	76.30	10	151.30	75.00
\$1,500								
All above \$1,500								
Totals			27,424.64		1,756.34		2,742.47	986.13

² Compiled from Commission Exhibit No. 162, showing actual purchases from and comparison with Commission Exhibit No. 184, being the applicable rebate the Hygrade Products Division of Standard Motor Products, Inc. during 1949, contract of Hygrade Products Division of Standard Motor Products, Inc.

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MID-SOUTH DISTRIBUTORS

RESPONDENT JOBBERS' "GROUP-BUYING" METHOD OF PURCHASING³

Manufacturer's published discount schedule to trade	Member-jobbers	Actual Net purchases each member jobber	Manufacturer's schedule discount rate applicable	Manufacturer's schedule discount amount due	Manufacturer's "group" discount rate	Manufacturer's "group" discount amount paid	Actual price difference
			Percent	3	4	5	6
Net purchases							
Under \$1,000	Auto Bearing & Parts Co.	\$334.91	None		Percent		\$50.09
\$1,000 - \$2,999	Central Electric Co.	6,824.46	9	\$614.20	14.96	\$50.09	408.48
\$3,000 - \$4,999	Corpus Christi Hlwe. Co.	5,239.94	9	471.39	14.96	1,020.68	312.10
\$5,000 - \$7,999	Crawford Co.	402.94	None		14.96	783.69	60.26
\$8,000 - \$10,999	Fulton Conway & Co.	995.83	None		14.96	148.94	148.94
\$11,000 - \$14,999	A. S. Hatcher Co.	1,977.91	5	98.00	14.96	295.82	196.92
\$15,000 - \$19,999	Mills-Morris Co.	11,634.50	11	1,279.80	14.96	1,740.07	460.27
\$20,000 - \$24,999	Motor Parts & Supply Co.	19.57	None		14.96	2.93	2.93
\$25,000 - \$29,999	Motor Supply Co. (Meridian)	4,516.79	7	316.18	14.96	675.54	350.36
\$30,000 - \$34,999	Motor Supply Co. (Monroe)	2,587.10	5	129.46	14.96	386.93	237.37
\$35,000 and over	Motor Supply Co. (Savannah)	7,708.83	9	634.79	14.96	1,152.94	450.15
	Robinson Bros.	917.54	None		14.96	137.23	137.23
	Southern Auto Supply Co.	6,990.20	9	629.12	14.96	1,045.47	416.35
	Tenn. Mill & Mine Supply Co.	1,301.38	5	309.57	14.96	138.10	138.33
	Voss-Hutton Co.	4,333.89	7	307.70	14.96	648.18	344.81
	Wadel-Connelly Co.	6,308.79	9	507.70	14.96	943.55	375.76
	Williams Hlwe. Co.	4,535.19	7	317.46	14.96	678.29	360.83
Totals		66,719.77		5,491.13		9,978.71	4,487.58

³ Compiled from Commission Exhibit No. 164 A-B, showing the actual purchases of leaf springs, coil springs and chassis parts from Moog Industries, Inc. during 1950, and comparison with Commission Exhibit 128 A-D, being the applicable Moog Industries, Inc. rebate contract.

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MID-SOUTH DISTRIBUTORS

RESPONDENT JOBBERS' "GROUP-BUYING" METHOD OF PURCHASING⁴

Manufacturer's published discount schedule to trade	Member-jobbers		Actual Net purchases each member jobber	Manufacturer's schedule discount rate applicable	Manufacturer's schedule discount amount due	Manufacturer's "group" discount rate	Manufacturer's "group" discount amount paid	Actual price difference
	Net purchases	Retro-active rebate						
		Percent	1	2	3	4	5	6
Under \$1,000.....			\$1,369.08	Percent	\$68.45	Percent	\$260.13	\$191.68
\$1,000 - \$4,999.....		None	2,408.34		120.41	19	457.57	337.16
\$5,000 - \$9,999.....		7½	1,350.00	None	76.50	19	250.70	214.20
\$10,000 - \$14,999.....		10	2,383.87		129.75	19	111.33	111.33
\$15,000 - \$19,999.....		12	3,738.43		171.18	19	493.05	363.30
\$20,000 - \$24,999.....		14	6,756.06	7½	186.42	19	281.89	207.71
\$25,000 - \$29,999.....		16	2,740.68		137.90	19	708.41	521.99
\$30,000 - \$34,999.....		18	3,449.51		172.03	19	1,204.93	865.45
\$35,000 - \$39,999.....		19	1,492.70		74.64	19	323.72	386.36
\$40,000 - \$44,999.....		19	3,750.92	None	180.53	19	283.61	481.69
\$45,000 - \$49,999.....		18	3,610.53		53.60	19	49.67	208.37
\$50,000 - \$54,999.....		19	1,072.02		1,773.69	19	686.00	542.97
\$55,000 - \$59,999.....		19	33,182.88				203.68	150.08
Totals.....							6,361.75	4,588.06

⁴ Compiled from Commission Exhibit No. 143-E-F, showing the actual purchases of coil action line from Moog Industries, Inc. during 1948 and comparison with Commission Exhibit No. 128 A-D, being the applicable Moog Industries, Inc. rebate contract.

COTTON STATES, INCORPORATED

RESPONDENT JOBBERS' "GROUP-BUYING" METHOD OF PURCHASING¹

Manufacturer's published discount schedule to trade	Actual Net purchases each member jobber	Manufacturer's schedule discount rate applicable	Manufacturer's schedule discount amount due	Manufacturer's "group" discount rate	Manufacturer's "group" discount amount paid	Actual price difference
Net purchases	1	2	3	4	5	6
		Percent		Percent		
Under \$1,000.....	\$417.52	None		14	\$58.45	\$58.45
\$1,000 to \$2,999.....	3,094.92	7	\$216.64	14	\$433.29	\$216.65
\$3,000 to \$4,999.....	1,301.67	5	65.08	14	182.23	117.15
\$5,000 to \$7,999.....	5,671.96	9	510.48	14	794.07	283.59
\$8,000 to \$10,999.....	2,099.32	5	104.97	14	293.91	188.94
\$11,000 to \$14,999.....	3,373.71	7	236.16	14	472.32	236.16
\$15,000 to \$19,999.....	11,434.66	11	1,257.81	14	1,600.85	343.04
\$20,000 to \$27,499.....	1,864.97	5	93.25	14	261.10	167.85
\$27,500 to \$34,999.....	3,640.08	7	254.81	14	509.61	254.80
\$35,000 and over.....						
Totals.....	32,898.81		2,739.20		4,605.83	1,866.63

¹ Compiled from Commission Exhibit No. 3 showing actual purchases of leaf springs, coil springs, and chassis parts from Moog Industries, Inc. during 1950 and comparison with Commission Exhibit No. 43 being the applicable Moog Industries, Inc. rebate contract.

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COTTON STATES, INCORPORATED
RESPONDENT JOBBERS' "GROUP-BUYING" METHOD OF PURCHASING ²

Manufacturer's published discount schedule to trade	Member-jobbers	Actual Net purchases each member jobber	Manufacturer's schedule discount rate applicable	Manufacturer's schedule discount amount due	Manufacturer's "group" discount rate	Manufacturer's "group" discount amount paid	Actual price difference
Net purchases		1	2	3	4	5	6
			Percent		Percent		
	Alabama Auto Parts Co.	\$3.71	None		9.83	\$0.37	\$0.37
	Barnes Motor Supply	159.14	None		9.83	15.64	15.64
	Capital City Welding & Machine Works	111.75	None		9.83	10.98	10.98
	Christian Auto Supply	734.30	None		9.83	72.18	72.18
	Davis Motor Supply Co.	605.33	None		9.83	59.50	59.50
	Greiner Auto Parts Co.	230.87	None		9.83	22.69	22.69
	Hart Supply Co.	39.43	None		9.83	3.87	3.87
	Milton Supply Co.	1,427.59	None		9.83	140.32	140.32
	Motor Bearing Supply Co.	5.16	None		9.83	0.51	0.51
	Taylor Parts & Supply Co.	39.12	None		9.83	3.85	3.85
Totals		3,356.40				329.91	329.91

² Compiled from Commission Exhibit No. 4, showing actual purchases from comparison with Commission Exhibit No. 15 being the applicable Rebate Contract of Hygrade Products Division of Standard Motor Products, Inc. during 1949 and tract of Hygrade Products Division, Standard Motor Products, Inc.

COTTON STATES, INCORPORATED
RESPONDENT JOBBERS' "GROUP-BUYING" METHOD OF PURCHASING³

Manufacturer's published discount schedule to trade	Member-jobbers	Actual Net purchases each member jobber	Manufacturer's schedule discount rate applicable	Manufacturer's schedule discount amount due	Manufacturer's "group" discount rate	Manufacturer's "group" discount amount paid	Actual price difference
			2	3	4	5	6
Net purchases			Percent		Percent		
Up to \$1,200.....		\$8,375.56	10 - 5	\$1,190.56	10 - 7	\$1,332.11	\$141.55
\$1,200 to \$2,400.....		837.78	None		10 - 7	136.42	136.42
\$2,400 to \$3,600.....	Barnes Motor Supply.....	2,823.33	7	166.32	10 - 7	448.65	282.33
\$3,600 to \$6,000.....	Capital City Welding & Machine Works.....	11,676.67	10 - 6	1,665.73	10 - 7	1,748.74	83.01
\$6,000 to \$8,400.....	Christian Auto Supply.....	8,180.00	10 - 5	1,139.85	10 - 7	1,296.59	136.74
\$8,400 to \$12,000.....	D & N Auto Parts.....	12,477.78	10 - 7	1,961.43	10 - 7	1,961.43	126.28
\$12,000 and over.....	Davis Motor Supply.....	7,616.67	10 - 5	1,077.37	10 - 7	1,203.65	118.10
	Greiner Auto Parts.....	7,890.00	10 - 5	1,084.25	10 - 7	1,202.35	131.68
	Hart Supply Co.....	8,193.89	10 - 5	1,149.09	10 - 7	1,280.77	131.68
	Milton Supply Co.....						
	Taylor Parts & Supply.....						
Totals.....		68,076.68		9,454.60		10,610.71	1,156.11

³ Compiled from Commission Exhibit No. 9, showing the actual purchases from C. E. Niehoff & Co. during 1949, and comparison with Commission Exhibit No. 104 setting forth the applicable C. E. Niehoff & Co. rebate schedule.

Decision

Decision

COTTON STATES, INCORPORATED
RESPONDENT JOBBERS' "GROUP-BUYING" METHOD OF PURCHASING⁴

Manufacturer's published discount schedule to trade		Member-jobbers	Actual Net rebateable purchases each member jobber	Manufacturer's schedule discount rate applicable	Manufacturer's schedule discount amount due	Manufacturer's "group" discount rate	Manufacturer's "group" discount amount paid	Actual price difference
Net purchases	Non-retroactive rebate ⁵							
	Percent		1	2	3	4	5	6
\$600 or less.....	Percent	Alabama Auto Parts Co.....	\$3,385.70	(⁵) {0; 5; 7½; 10; 12½; 17½	\$514.29	Percent 20	\$7117.14	\$302.85
\$600 to \$1,000.....	None	Barnes Motor Supply.....	3,899.21	{0; 5; 7½; 10; 12½; 17½	584.22	20	779.85	195.63
\$1,000 to \$1,500.....	5	Capital City Welding & Machine Works.....	523.19	None		20	104.64	104.64
\$1,500 to \$2,000.....	7½	Christian Auto Supply.....	743.70	{0; 5; 7½; 10; 12½; 17½	14.37	20	148.74	134.37
\$2,000 to \$3,000.....	10	D & N Auto Parts.....	4,601.96	{0; 5; 7½; 10; 12½; 17½	742.94	20	920.41	177.47
\$3,000 and over.....	12½	Davis Motor Supply.....	2,494.70	{0; 5; 7½; 10; 12½	204.08	20	498.94	204.86
		Greiner Auto Parts Co.....	4,301.03	{0; 5; 7½; 10; 12½; 17½	675.23	20	860.19	184.96
		Hart Supply Co.....	2,233.32	{0; 5; 7½; 10; 12½	248.16	20	446.67	198.51
		Milton Supply Co.....	3,350.89	{0; 5; 7½; 10; 12½; 17½	461.45	20	670.18	208.73
		Motor Bearing & Supply Co.....	613.33	{0; 5; 7½; 10; 12½	31.33	20	122.67	91.34
		Taylor Parts & Supply Co.....	3,285.13	{0; 5; 7½; 10; 12½; 17½	445.53	20	657.02	211.49
Totals.....			29,632.16		4,011.60		5,926.45	1,914.85

⁴ Compiled from Commission Exhibit No. 1 showing actual purchases from setting forth the applicable Whitaker Cable Corporation rebate schedule.
Whitaker Cable Corporation and comparison with Commission Exhibit No. 112⁵ In addition a 5% discount on \$150 orders was paid.

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of the parties so named no longer serve in the capacity of either officers or directors of these group organizations, and since the officers and directors of said group organizations change from time to time, it is the opinion of the hearing examiner that no useful purpose would be served by the entry of an order against the individuals named in the complaint as officers and directors of Mid-South Distributors and Cotton States, Incorporated.

CONCLUSIONS

1. The lower prices granted to the respondent jobbers through the group buying device constituted discriminations in price within the intent and meaning of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act. The competitive opportunities of the less favored competitors of the respondent jobbers were injured when such competitors had to pay substantially more for a suppliers products than the respondent jobbers had to pay. The various Circuit Courts of Appeals in six cases have held that the granting of discounts or rebates by supplier's through group buying organizations, including respondents Mid-South Distributors and Cotton States, Incorporated, under the conditions and circumstances as herein found constituted a price discrimination in violation of Section 2(a) of the Clayton Act.²

2. The method of operation of the respondents Mid-South Distributors and Cotton States, Incorporated, including the adoption of the line of one seller to the exclusion of its competitors and the holding out to sellers the prospects of increasing their volume and obtaining new customers, served as an inducement to manufacturers and sellers of automotive parts, accessories and supplies to grant to the respondent jobbers a lower price than would have otherwise been obtained.

3. The price discriminations involved in this proceeding were substantial. The volume rebates, discounts and other allowances granted by the sellers in this proceeding were made in accordance with such sellers' published price lists distributed generally to their jobber customers. The volume rebates allowed to the respondent jobbers were in fact off scale prices based upon the

² Whitaker Cable Corporation v. Federal Trade Commission (C.C.A. 7) 239 F.2d 253; Moog Industries, Inc., v. Federal Trade Commission (C.C.A. 8) 238 F.2d 43; E. Edelmenn & Company v. Federal Trade Commission (C.C.A. 7) 239 F.2d 152; C. E. Niehoff & Co. v. Federal Trade Commission (C.C.A. 7) 241 F.2d 37; P. & D. Manufacturing Co., Inc. v. Federal Trade Commission (C.C.A. 7) 245 F.2. 281; P. Sorensen Manufacturing Co., Inc. v. Federal Trade Commission (C.C.A. D.C.) 246 F.2d 287.

aggregate purchases of all the members rather than upon the purchases of the individual member. Each of the respondent jobber members of Mid-South Distributors and Cotton States, Incorporated, knew, or should have known, that the discriminatory prices granted them by sellers in the form of a volume rebate based upon the aggregate purchases of all members could not be cost justified. They knew that they, as well as their competitors in the same trade area, were buying from the seller at the sellers' published price lists; that shipments of merchandise by the sellers were made direct to the jobber respondents in the same manner and in substantially the same quantities as to their competitors; and that they received a lower price by means of the group buying organization than their competitors were receiving and lower prices than they themselves would have received had the volume rebate been based upon their individual purchases instead of the aggregate purchases of all the members.

4. The jobber respondents knew that the rebates allowed were based not on the quantities or other factors involved in a particular sale, but rather upon the combined dollar amount of all sales to the group organization and bear relationship to factors other than the actual costs of production and delivery. In view of this, evidence introduced that the respondent jobbers relied upon statements made by suppliers as to cost justification must be rejected. The respondent jobbers were successful operators in a highly competitive market and knew the facts of life so far as the automotive parts market was concerned and knew that no cost justification could be maintained by the sellers since no difference in the cost of manufacture, sale or delivery was involved. Furthermore, the jobber respondents were placed upon notice as to the illegality of price discriminations received through the medium of group buying organizations, including Mid-South Distributors and Cotton States, Incorporated, by the initial decisions of the hearing examiners, and the decisions of the Federal Trade Commission and the Circuit Courts of Appeals in the following cases:

Whitaker Cable Corporation, initial decision, February 11, 1954; Commission affirmance, April 29, 1955; Court affirmance, 239 F. 2d 253 (C.C.A., 7, December 14, 1956).

Moog Industries, Inc., initial decision, March 8, 1954; Commission affirmance, April 29, 1955; Court affirmance, 238 F. 2d 43 (C.C.A., 8, November 5, 1956).

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E. Edelmann & Company, initial decision, March 5, 1954; Commission affirmance, April 29, 1955; Court affirmance, 239 F. 2d 152 (C.C.A., 7, December 14, 1956).

C. E. Niehoff & Co., initial decision, July 6, 1954; Commission affirmance, May 17, 1955; Court affirmance, 241 F. 2d 37 (C.C.A., 7, January 9, 1957).

P. & D. Manufacturing Co., Inc., initial decision December 21, 1954; Commission affirmance, April 26, 1956; Court affirmance, 245 F. 2d 281 (C.C.A., 7, April 30, 1957).

P. Sorensen Manufacturing Co., Inc., initial decision, February 2, 1956; Commission affirmance, June 29, 1956; Court affirmance, 246 F. 2d 687 (C.A.A., D.C., May 23, 1957).

Regardless of these various decisions which came to the attention of the respondent jobbers they had, up until the time of the close of the hearings in these proceedings, continued the practice of purchasing through the group buying organizations.

5. The acts and practices of the respondent jobbers in knowingly inducing and knowingly receiving discriminations in price through the use of the group buying organizations Mid-South Distributors and Cotton States, Incorporated, prohibited by subsection (a) of Section 2 of the Clayton Act, as herein found are in violation of subsection (f) of Section 2 of said Act.

ORDER

It is ordered, That D & N Auto Parts Company, Inc., a corporation; Christian Auto Supply Co., Inc., a corporation; Milton Supply Company, a corporation; Taylor Parts & Supply Co., Inc., a corporation; William P. Barnes, an individual, doing business as Barnes Motor Supply; Davis Motor Supply Co., Inc., a corporation; Hart Supply Co., Inc., a corporation; and Greiner Auto Parts Company, Inc., a corporation, and their respective officers, agents, representatives and employees, in connection with the offering to purchase or purchase of any automotive parts, accessories or supplies or other similar products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

(1) Knowingly inducing, or knowingly receiving or accepting, any discrimination in the price of such products by directly or indirectly inducing, receiving or accepting from any seller a net price known by respondents to be below the net price at which said products of like grade and quality are being sold by such

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seller to other customers where the seller is competing with any other seller for respondents' business or where respondents are competing with other customers of the seller.

(2) Maintaining, managing, controlling or operating respondent Cotton States, Incorporated, or any other organization of like character, as a means or instrumentality to knowingly induce, or knowingly receive or accept, any discrimination in the price of automotive parts, accessories and supplies, by directly or indirectly inducing, receiving or accepting from any seller a net price known by respondents to be below the net price at which said products and supplies of like grade and quality are being sold by such seller to other customers where the seller is competing with any other seller for respondents' business or where respondents are competing with other customers of the seller.

It is further ordered, That Borden-Aicklen Auto Supply Co., Inc., a corporation; Central Electric Company, a corporation; Corpus Christi Hardware Co., Inc., a corporation; Crawford Co., Inc., a corporation; Maurice G. Whitley and Lorraine C. (Mrs. M. G.) Whitley, copartners doing business as Fulton, Conway and Co.; A. S. Hatcher Co., Inc., a corporation; Keith-Simmons Co., a corporation; Mills-Morris Co., Inc., a corporation; Motor Supply Co., Inc., a Mississippi corporation; Motor Supply Co., Inc., a Louisiana corporation; Motor Supply Co., Inc., a Georgia corporation; Sidney A. Robinson, Mrs. Elta A. Robinson, and Mrs. Elta R. Posey, copartners doing business as Robinson Brothers; Southern Auto Supply Co., Inc., a corporation; Tennessee Mill & Mine Supply Co., a corporation; Voss-Hutton, Barbee Company, Inc., formerly known as Voss-Hutton Company, Inc., a corporation; Wadel-Connally Hardware Company, Inc., a corporation; and Williams Hardware Co., Inc., a corporation, and their respective officers, agents, representatives and employees, in connection with the offering to purchase or purchase of any automotive parts, accessories or supplies or other similar products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

(1) Knowingly inducing, or knowingly receiving or accepting, any discrimination in the price of such products by directly or indirectly inducing, receiving or accepting from any seller a net price known by respondents to be below the net price at which said products of like grade and quality are being sold by such seller to other customers where the seller is competing with any

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other seller for respondents' business or where respondents are competing with other customers of the seller.

(2) Maintaining, managing, controlling or operating respondent Mid-South Distributors, or any other organization of like character, as a means or instrumentality to knowingly induce, or knowingly receive or accept, any discrimination in the price of automotive parts, accessories and supplies, by directly or indirectly inducing, receiving or accepting from any seller a net price known by respondents to be below the net price at which said products and supplies of like grade and quality are being sold by such seller to other customers where the seller is competing with any other seller for respondents' business or where respondents are competing with other customers of the seller.

It is further ordered, That respondents Cotton States, Incorporated, a corporation and Mid-South Distributors, a corporation, and their respective members, officers, agents, representatives and employees, in connection with the offering to purchase, or purchase, of any automotive parts, accessories or supplies or other similar products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

(1) Knowingly inducing, or knowingly receiving or accepting, any discrimination in price of automotive parts, accessories and supplies, by directly or indirectly inducing, receiving or accepting from any seller a net price known by respondents to be below the net price at which said products and supplies of like grade and quality are being sold by such seller to other customers where the seller is competing with any other seller for respondents' business or where respondents are competing with other customers of the seller.

It is further ordered, That the complaint be dismissed as to the following individual respondents: Louis Post, P. E. Lewis, J. E. Caruthers, G. W. Christian, W. R. McKinley, Mrs. Lynne S. Milton, Charles R. Harris, Marion D. Taylor, James N. Taylor, II, Cecil Roy Straughn, Carl A. Davis, Mrs. Carl A. Davis, Harold W. Hart, Joseph C. Greiner, Joseph N. Greiner, and Mrs. Joseph C. Greiner, named as respondents in Docket No. 5767; and T. N. Hagel, K. P. Allen, U. V. Boland, A. H. Borden, E. B. Conn, O. J. Koepke, E. J. Crawford, A. S. Hatcher, Jr., W. M. Parrish, R. R. Meadows, R. O. Hale, W. C. Thompson, J. A. Bumpas, W. B. Gates, J. W. Ellis, W. F. Barbee, H. V. Lee, and Jack Williams, name as respondents in Docket No. 5766.

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For the purpose of determining the "net price" under the terms of this order, there should be taken into account discounts, rebates, allowances, deductions or other terms and conditions of sale by which net prices are effected.

OPINION OF THE COMMISSION

By KERN, Commissioner:

The complaints in these cases charge the respondents, respectively named therein, with violating Section 2(f) of the Clayton Act, as amended by the Robinson-Patman Act.¹ The respondents (except for certain individual respondents against whom the complaints were dismissed) have appealed from the initial decision of the hearing examiner covering both cases which holds that they have violated Section 2(f) and which contains an order to cease and desist the practices found to be unlawful.

These are "group buying" cases. The respondents in each include jobbers for automotive parts, accessories and supplies and a membership corporation. In Docket No. 5766, the membership corporation is Mid-South Distributors, Memphis, Tenn.; in Docket No. 5767, Cotton States, Incorporated, Andalusia, Ala. These corporate groups were organized and have been maintained for the apparent purpose of inducing and receiving lower prices on automotive products than would otherwise be obtainable by most of the member jobbers acting individually. Automotive suppliers such as Standard Motor Products, Inc., and Moog Industries, Inc., and others, sold their lines of products to the respondent jobbers and granted them volume rebates based on the aggregate purchases of all the group members. In many, if not in all instances, the volume rebates were made pursuant to a system or plan which involved a sliding scale of discounts based upon the volume purchased in the preceding year.

The main issue on this appeal, it appears, is whether counsel in support of the complaint has met the burden of proof required by Section 2(f) as interpreted by the Supreme Court of the United States in *Automatic Canteen Co. of America v. Federal Trade Commission*, 346 U.S. 61 (1953). The subsection reads as follows:

That it shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

¹ These cases have been tried concurrently and under an agreement of all the parties the two have been considered as one case.

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There is no question that respondent jobbers have been granted lower prices than some of their jobber competitors on goods of like grade and quality. This results from the discounts ranging up to 20% given by the various suppliers based on the aggregate purchases of all members of each group. The record shows that various competing jobbers did not purchase individually in sufficient volume to receive comparable discounts. There is likewise evidence of keen competition, small profit margins and other factors sufficient to justify a conclusion that the discounts may result in substantial injury to competition. It is also clear that respondents knew all such factors.

The *Automatic Canteen* case, *supra*, holds, however, that in order to establish a violation of Section 2(f), the Commission as a part of its case must show more than that the buyer knew of the price differentials and of their probable competitive effect. In other words, under the "balance of convenience" rule applied by the court, the burden is on counsel in support of the complaint to come forward originally with evidence that the buyer is not a mere unsuspecting recipient of the prohibited discriminations. Such evidence, under the Court's opinion, must include a showing that the buyer, knowing full well that there was little likelihood of a cost justification defense available to the seller, nevertheless induced or received the discriminatory prices. Just what evidence is necessary to make this showing, as the court indicated, will, of necessity, vary with the circumstances of each case. That trade experience in a particular situation can afford a sufficient degree of knowledge, however, is clear.

In this case, the record clearly shows that the buying groups were mere bookkeeping devices. There was nothing in their manner of operation which could possibly save a seller any significant amounts. The method of purchase was substantially the same and deliveries were made in the same manner and in substantially the same quantities as if each jobber member had been operating individually rather than as a group member. About the only saving a seller could expect would result from the fact that only one billing need be made instead of several separate billings. Cf. *C. E. Niehoff & Co. v. Federal Trade Commission*, 241 F. 2d 37 (1957). It is reasonable to conclude that where price differences are as great as those here shown, ranging up to 20%, any savings such as that on billing costs could not possibly justify the price discriminations.

Respondents obviously had knowledge of this fact. They knew that the jobber members generally would not be entitled to the higher discounts based on their individual purchases. They knew, or should have known, in addition, in view of their purchasing in substantially the same volumes and receiving shipments in the same manner as other jobbers, that any differences in the method of purchasing could not give rise to sufficient savings in cost to justify the price differentials.

Moreover, the price differences shown herein have their source in a rebate system based, not on quantities or other factors involved in any particular sale, but, rather, upon the combined dollar amount of all sales to a group made in the preceding year. Under such a system the prices necessarily bear relation to factors other than actual costs of production, sale or delivery, and the inevitable result is systematic price discrimination. *Moog Industries, Inc. v. Federal Trade Commission*, 238 F. 2d 43 (1956). Under such circumstances respondents are charged with the knowledge that the lower prices they received could not be cost justified.

If under the *Automatic Canteen* decision counsel in support of the complaint has the additional burden of producing evidence tending to show that respondent jobbers likewise knew or should have known that the "defenses" of fluctuating market conditions and bona fide attempts to meet lower competitive prices were not available to the sellers, the record is equally persuasive that this burden also has been met.

The last proviso of Section 2(a) exempts from the Act price changes from time to time where made in response to changing conditions affecting the market for or the marketability of the goods concerned. The substance of the proviso appears to be that a defense may be made out in occasional and temporary situations such as those set forth including imminent deterioration of perishable goods and obsolescence of seasonable goods. In view of this, respondents would have no reason to believe that the volume rebates they received based on aggregate annual purchases and continued from year to year could possibly have any relation to the aforesaid proviso.

The respondents also knew, or should have known, that the various sellers could not have defended the price discriminations on the basis of the proviso contained in Section 2(b). The respondents knew that the defense of cost justification was unavailable to the sellers for the reasons stated in preceding paragraphs, and for the same reasons knew that such a defense would

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not be available to any competing sellers granting preferential prices on the same basis. Knowing, therefore, of the illegality of the pricing systems involved, the respondents knew that the sellers could not defend such prices on the basis of meeting in good faith the equally low prices of competitors for the reason that the prices so met would not be lawful prices.

In the *Automatic Canteen* case, the court in a note stated as follows:

Our view that §2(b) permits consideration of conventional rules of fairness and convenience of course requires application of those rules to the particular evidence in question. Evidence, for example, that the seller's price was made to meet a competing seller's offer to a buyer charged under §2(f) might be available to a buyer more readily even than to a seller. (346 U.S. 61, note 23 at p. 79)

Therefore, while it has been shown sufficiently that respondents knew that the "defenses" of fluctuating market conditions and the meeting of lower competitive prices were not available to the sellers, it appears in the circumstances that counsel in support of the complaint does not have the burden of making such a showing. It seems to be quite clear that the court was referring to situations such as exist herein where the buyers would more readily have such evidence and would have the burden of coming forward with it.

Respondents further contend on this appeal that Mid-South Distributors and Cotton States, Incorporated, are cooperative associations, and, therefore, not prohibited from returning to their members the net earnings or surplus resulting from their trading operations, in proportion to purchases of the members of the association, citing Section 4 of the Robinson-Patman Act (49 Stat. 1528). It is our opinion that the reasoning of the court in *Quality Bakers of America v. Federal Trade Commission*, 114 F. 2d 393, 399-400 (1940), on this point in a Section 2(c) matter is equally applicable to a Section 2(f) matter. In other words, Section 4 does not authorize cooperative associations to engage in practices forbidden by Section 2(f), nor except them from its provisions.

Respondents also argue that the respondent jobber companies should not be ordered to cease and desist in their individual capacities the practices held illegal and request that the paragraphs in the order to this effect be stricken. The contention is that these respondent companies are charged with violating Section 2(f), by acting through Cotton States, Incorporated, and

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Mid-South Distributors, and that it is unfair to issue an order against them relative to their activities as individuals. It is sufficiently clear, we believe, that these proceedings have included the respondent jobbers as individual concerns and that this type of order is necessary to bring an end to the unlawful practices. The Commission, of course, is not limited to prohibiting the illegal practice in the precise form in which it was found to have existed in the past. *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470, 473 (1952).

Respondents' appeal is denied. Accordingly, the findings, conclusions and order contained in the initial decision are adopted as those of the Commission.

FINAL ORDER

These matters having come on to be heard upon the common appeal of the respondents, respectively named therein, excepting certain individual respondents, from the hearing examiner's initial decision; and

The Commission having rendered its decision, denying the appeal and adopting the findings, conclusions, and order contained in the initial decision:

It is ordered, That the respondents, except those against whom the complaints have been dismissed, 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 contained in the initial decision.

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IN THE MATTER OF
CRAFTSMAN INSURANCE COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 6394. Complaint, July 18, 1955—Order, Feb. 24, 1959

Order dismissing on jurisdictional grounds upon the authority of the Supreme Court's ruling in *Federal Trade Commission v. National Casualty Company* (357 U.S. 560), complaint charging a Boston insurance company with false advertising of its health and accident insurance.

Before Mr. Loren H. Laughlin, hearing examiner.

Mr. Donald K. King and Mr. J. W. Brookfield, Jr. for the Commission.

Mr. David S. Kunian, of Boston, Mass., for respondent.

ORDER GRANTING MOTION TO VACATE COMMISSION'S DECISION

This matter having come on to be heard upon respondent's request that the decision of the Commission entered on January 14, 1957, be vacated, which request is unopposed by counsel supporting the complaint; and

The Commission having reconsidered the matter in the light of the United States Supreme Court ruling in *Federal Trade Commission v. National Casualty Company*, 357 U.S. 560, decided June 30, 1958, subsequent to said decision of the Commission, and having concluded that this proceeding should be dismissed on jurisdictional grounds upon the authority of said ruling of the Supreme Court:

It is ordered, That this proceeding be reopened.

It is further ordered, That the decision of the Commission entered on January 14, 1957,¹ be, and it hereby is, vacated and set aside.

It is further ordered, That the complaint herein be, and it hereby is, dismissed.

¹ 53 F.T.C. 623.