

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
ALBERT EHLERS, INC.

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

Docket 7663. Complaint, Nov. 24, 1959—Decision, Apr. 27, 1960

Consent order requiring a Brooklyn, N.Y., distributor of coffee, tea, spices, extracts, and dried foods to wholesale jobbers, chain stores, restaurants, etc., to cease discriminating in price between competing customers—

In violation of Sec. 2(a) of the Clayton Act by means of (1) three classifications of price lists with the lowest applied to customers taking warehouse deliveries, the next to those taking delivery by drop shipment, and the highest to other independent retail grocers, and with additional discounts for cash to the first two classes, but none at all to others; (2) 2% payable quarterly for warehousing in addition to aforesaid lower prices; (3) end of year quantity rebates; (4) advertising and promotional allowances; (5) a coordinating discount of 1% of total purchases to customers stocking a full line of respondent's products; and (6) granting substantial quantities of free goods upon the opening of new stores; and In violation of Sec. 2(d) of the Clayton Act by paying sums of money as

compensation for advertising furnished in connection with the sale of its products—such as \$20,000 paid to Food Fair Stores, Inc., Linden, N.J.; \$14,500 paid to Grand Union Co., Paterson, N.J.; and \$10,000 paid to Wakefern Food Corp., Elizabeth, N.J.—without making comparable allowances available to competitors of said favored customers.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter particularly described and designated has violated the provisions of subsections (a) and (d), Section 2, of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936, (U.S.C. Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto, as follows:

COUNT I

PARAGRAPH 1. Respondent Albert Ehlers, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 1300 Flushing Avenue, Brooklyn, New York.

PAR. 2. Respondent is now, and for many years has been, engaged in the wholesale distribution of coffee, tea, spices, extracts, and dried foods. Respondent's annual sale volume of said products is approximately \$14,000,000. Within the New York and New Jersey area, respondent sells its products directly to chain stores, voluntary co-operative associations of retail grocers, other independent retail grocers, and restaurants. Beyond the New York-New Jersey area, the respondent sells its products to wholesale jobbers and chain stores.

PAR. 3. In the course and conduct of its business, respondent has engaged in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, having shipped its products or caused said products to be shipped or transported from its place of business located in the State of New York to its purchasers with places of business located in various states of the United States other than the State of New York.

PAR. 4. Respondent, in the course and conduct of its business, as above described, has been for many years, and is now, discriminating in price, directly or indirectly, between different purchasers of food products, who are in competition with each other, by selling said products of like grade and quality to some of such purchasers at substantially higher prices than to other of such purchasers.

PAR. 5. Among the many methods by which respondent discriminates between said purchasers are the following:

During the years 1956 through 1959, inclusive, respondent has sold its products to competing purchasers on a basis of three classifications of price lists. The lowest price lists applied to those purchasers who took warehouse deliveries; the next higher price lists applied to those purchasers who took deliveries by drop shipments; and the highest price lists applied to other independent retail grocer purchasers.

Additional cash discounts for payment within ten days were allowed to the first two classes of purchasers in the amount of 2% on coffee, tea and spice purchases and 1% on packaged rice and beans. No such discounts were allowed to other competing retail grocer purchasers although they paid cash on delivery.

Additional discounts were granted on purchases of spices and extracts as follows:

Warehousing: 2% payable quarterly in addition to the lower prices quoted to warehouse receivers;

End of year quantity rebates:

<i>Discount On Purchases Of</i>	
1% -----	\$3,500 and over
2% -----	5,000 and over
3% -----	10,000 and over
5% -----	20,000 and over

Advertising allowance, 3% of purchases; promotional allowance, 5% on all purchases for each of twelve yearly promotions.

In addition to all of the above discounts, respondent also has been, and is now, granting a coordinating discount of 1% of total purchases of all products, to those purchasers who stock respondent's major products including coffee, tea, spices, extracts and dried foods. This coordinating discount is not granted to those purchasers who do not stock the full line of respondent's major products regardless of the quantity or number of such products which they may purchase during the year.

Respondent has also granted price discriminations to some favored customers in the form of free goods upon the opening of new stores. During the year 1958, such free goods in the amount of approximately \$700 were given to each of the following favorite customers in the State of New Jersey: United Super Markets, Newark; Farmingdale Super Markets, Farmingdale; Green's Discount Market, Keyport; Hollywood Food Center, Asbury Park; Mayfair Super Market, Plainfield; National Grocery Company, Elizabeth; Park Food Town, Newark. No such free goods allowances were granted to respondent's purchasers who compete with the purchasers so favored.

PAR. 6. The effects of such discriminations in price as alleged

herein may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its customers are respectively engaged; or to injure, destroy or prevent competition with respondent or with purchasers therefrom who receive the benefit of such discrimination.

PAR. 7. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936, (U.S.C. Title 15, Section 13).

COUNT II

PAR. 8. The allegations of paragraphs 1, 2 and 3 of Count I of this complaint are hereby adopted and incorporated herein by reference and made a part of this Count II as if they were repeated herein verbatim.

PAR. 9. In the course and conduct of its business in commerce, respondent 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 and facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by said respondent, and such payments were not made available on proportionately equal terms to all customers competing in the distribution of respondent's products.

PAR. 10. For example, during the year 1958, respondent paid to the following:

Food Fair Stores, Inc., Linden, New Jersey, \$20,000 as compensation or as an allowance for advertising or other service or facility furnished by or through Food Fair Stores, Inc. in connection with the offering for sale or sale of products sold to Food Fair Stores by respondent. Such compensation or allowance was not offered or otherwise made available on proportionately equal terms to all other customers in competition with Food Fair Stores in the sale of respondent's products.

Grand Union Company, Paterson, New Jersey, \$14,500 as compensation or as an allowance for advertising or other service or facility furnished by or through Grand Union Company in connection with the offering for sale or sale of products sold to Grand Union Company by respondent. Such compensation or allowance was not offered or otherwise made available on proportionately equal terms to all other customers in competition with Grand Union Company in the sale of respondent's products.

Wakefern Food Corporation, Elizabeth, New Jersey, \$10,000 as compensation or as an allowance for advertising or other service

or facility furnished by or through Wakefern Food Corporation in connection with the offering for sale or sale of products sold to Wakefern Food Corporation by respondent. Such compensation or allowance was not offered or otherwise made available on proportionately equal terms to all other customers in competition with Wakefern Food Corporation in the sale of respondent's products.

PAR. 11. The acts and practices alleged in paragraphs 9 through 10 were and are in violation of subsection (d) of Section 2 of the aforesaid Clayton Act, as amended.

Mr. Frederic T. Suss for the Commission.

Breed, Abbott & Morgan, of New York, N.Y., for the respondent.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On November 24, 1959, the Federal Trade Commission issued its complaint against the above-named respondent charging it with violating the provisions of subsections (a) and (d) of Section 2 of the Clayton Act, as amended in connection with the sale and distribution of food products. On February 15, 1960, the respondent and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondent admits the jurisdictional facts alleged in the complaint and agrees, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondent of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not constitute an admission by the respondent that it has violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of Section 3.25(b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Section 3.21 of the Rules of Practice; and in consonance with the terms of said agree-

1316

Order

ment, the hearing examiner makes the following jurisdictional findings and order.

Subparagraph 2 of the following order to cease and desist is not intended to require uniform prices throughout the country nor to limit or enlarge the statutory defenses available to the respondent under 15 U.S.C. 13 (a) and (b).

1. Respondent Albert Ehlers, Inc. is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1300 Flushing Avenue, Brooklyn, New York.

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 subsections (a) and (d) of the Clayton Act, as amended.

ORDER

It is ordered, That respondent Albert Ehlers, Inc., its officers, employees, agents and representatives, directly or through any corporate or other device, in connection with the sale or distribution of food products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from discriminating directly or indirectly in the price of such products of like grade and quality:

1. By selling such products to any purchaser at net prices higher than the net prices charged any other purchaser competing in the resale or distribution of such products.

2. By selling such products to any purchaser at a price which is lower than the price charged any other purchaser engaged in the same line of commerce, where such lower price undercuts the price at which the purchaser charged the lower price may purchase such products of like grade and quality from another seller.

It is further ordered, That respondent Albert Ehlers, Inc., its officers, employees, agents and representatives, directly or through any corporate or other device, in the course of its business 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 services or facilities furnished by or through such customer, in connection with the handling, resale or offering for resale of products manufactured, sold, or offered for sale by respondent, unless such payment or consideration is affirmatively offered or otherwise made available on proportionally equal

terms to all other customers competing in the resale or distribution of such products.

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 April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report