ings before conclusion of the trial would better serve the interests of justice; and

The Commission being of the opinion that the appeal is not one to be granted under §3.20 of the Rules of Practice:

It is ordered, That the aforesaid appeal be, and it hereby is, denied.

SNAP-ON TOOLS CORPORATION

Docket 7116. Order and Opinion, Jan. 21, 1960

Interlocutory order reversing as erroneous, dismissal of a charge of maintenance of exclusive territories along with a ruling that prima facie cases were established with respect to resale price maintenance agreements.

ON APPEAL FROM RULING OF HEARING EXAMINER GRANTING IN PART A MOTION TO DISMISS

By the COMMISSION:

This matter is here for consideration of an interlocutory appeal, filed by counsel in support of the complaint, from an order of the hearing examiner granting in part the respondent's motion to dismiss the complaint, made at the close of the case-in-chief. The correctness of the order insofar as it denied the motion to dismiss is not in question.

The complaint charges the respondent with engaging in unfair acts and practices or an unfair method of competition in commerce in violation of Section 5 of the Federal Trade Commission Act. This is done, it was alleged, through and by means of written contracts with retail dealers providing, among other things, (1) that the dealer will not sell any of the products purchased from the respondent at a price varying from the price fixed by the respondent, (2) that he shall sell such products only within the geographical limits of a territory described in the agreement, (3) that he shall not sell to certain persons or firms specified in the agreement, and (4) that in the event of termination of his contract he will not for a period of one year thereafter engage in a similar business within the state in which he has been operating.

Treating the validity of each of these contract provisions as a

separate issue, the hearing examiner in ruling on the motion to dismiss held (1) that the complaint states a cause of action, (2) that on the issues of resale price maintenance agreements and the imposition of restrictions against former dealers engaging in a similar business, prima facie cases have been established, and (3) that on the issues of maintaining exclusive territories and restrictions against dealers selling to certain specified parties, prima facie cases have not been established. The appeal is from the ruling with respect to the maintenance of exclusive territories, the contention of counsel in support of the complaint being that any limitation by a manufacturer on the territory in which an independent dealer is permitted to sell his own products is unlawful *per se*.

This, however, is not a question that has to be decided in this case. The complaint, after setting forth the terms and conditions of the dealer contracts and a general description of the respondent's related activities, further alleges that each of the agreements, conditions and activities "either individually or collectively," is in undue restraint of trade. Thus, the complaint, in addition to challenging the legality of each of the conditions and limitations included in the contracts, strikes generally at the respondent's overall course of dealing and places in issue the broad question of whether the respondent's entire method of doing business, including the imposition on its dealers of all of the terms and conditions of the contracts and the use of all of the acts and practices engaged in pursuant thereto, considered together, constitute a restraint of trade in violation of the Federal Trade Commission Act.

Viewed in this light, it is immediately apparent that the ruling of the hearing examiner, based on considerations relating to separate fragments of the broad issue so presented, rather than to the issue as a whole, is erroneous. If, as the examiner held, a prima facie showing of illegality has been made with respect to the respondent's resale price maintenance agreements and its practice of restricting former dealers from engaging in similar businesses, either separately or collectively, the motion to dismiss the complaint should have been denied in toto. Assuming that the prima facie case is not rebutted, the subsidiary question of whether the maintenance of exclusive territories and the respondent's related practices, either or both, contribute to the illegality of the arrangement is one to be considered in final disposition of the case.

The ruling appealed from will be reversed with the direction that the respondent's motion to dismiss the complaint be denied.

ORDER

Counsel in support of the complaint having filed an interlocutory appeal from the hearing examiner's order of October 5, 1959, grant-

ing in part the respondent's motion to dismiss the complaint in this proceeding; and

The Commission, for the reasons set forth in the accompanying opinion, having determined that the hearing examiner was in error:

It is ordered, That the appeal be, and it hereby is, granted.

It is further ordered, That the order appealed from be, and it