

KADIAK FISHERIES COMPANY ET AL.

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

Docket 7562. Complaint, Aug. 6, 1959—Decision, July 13, 1960

Consent order requiring Seattle packers of canned salmon and other sea food products to cease violating Sec. 2(c) of the Clayton Act by such practices

Complaint

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as giving reductions in price to certain buyers or their agents which were offset in whole or in part by reduction of either the primary or field broker's commission earned on such sales.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and 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, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents Kadiak Fisheries Company and Chignik 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 offices and places of business located at 1826 Exchange Building, Seattle, Wash.

Respondent Leo T. Krielsheimer, hereinafter sometimes referred to as individual respondent, is an individual and is president and sales manager of both of the corporate respondents. He directs and controls their business practices and policies, including their sales and distribution policies. His principal office and place of business is the same as that of the corporate respondents.

PAR. 2. All of the said respondents, both corporate and individual, have been for the past several years and are now engaged in the business of packing, selling and distributing canned salmon and other seafood products, all of which are hereinafter referred to as seafood products, to various buyers located in the several States of the United States. They sell and distribute their products through primary brokers, generally located in Seattle, Wash., and through field brokers located in various market areas throughout the United States.

When selling through primary brokers said respondents pay these brokers a commission or brokerage fee for their services, usually at the rate of 5% of the net selling price of the merchandise sold. When selling through field brokers respondents do not utilize a primary broker; instead, they pay a commission or brokerage fee usually at the rate of 2½% of the net selling price of the merchandise sold.

Respondents' annual volume of business during the past several years has been substantial.

PAR. 3. In the course and conduct of their business respondents, both corporate and individual, for the past several years have sold and distributed and are now selling and distributing seafood prod-

ucts 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 of Washington in which respondents are located. Respondents, and each of them, transport or cause such seafood products, when sold, to be transported from their place of business in the State of Washington to such 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 of said products.

PAR. 4. In connection with the sale and distribution of their seafood products in commerce, the corporate respondents, under the control and direction of the individual respondent, have made grants or allowances in substantial amounts in lieu of brokerage, or have made price concessions which reflect brokerage to certain buyers of said seafood products. One method used by respondents in making such grants or allowances, but not necessarily limited to this one method, was to give reduction in prices to certain buyers, or agents of buyers, which reductions were coupled with or were offset in whole or in part by a reduction of either the primary or field broker's commission or brokerage fee earned on said sales.

PAR. 5. The acts and practices of respondents, both corporate and individual, as alleged and described herein, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Mr. Cecil G. Miles, Mr. Charles D. Gerlinger and Mr. Franklin A. Snyder for the Commission.

Bogle, Bogle & Gates, of Seattle, Wash., by *Mr. Robert W. Graham* for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding, issued August 6, 1959, charges violation of Section 2(c) of the Clayton Act, as amended, in connection with the packing, selling, and distributing of canned salmon and other seafood products by respondents Kadiak Fisheries Company and Chignik Fisheries Company, Washington corporations, with their principal offices and places of business located at 1826 Exchange Building, Seattle, Wash., and individual respondent Leo T. Kreielsheimer, named in the complaint as Leo T. Krielsheimer, President and Sales Manager of both of said corporations and located at the same address as the corporate respondents.

After the issuance of the complaint, respondents entered into an agreement containing consent order to cease and desist with counsel

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in support of the complaint, disposing of all the issues as to all parties in this proceedings, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation.

It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all the jurisdictional facts alleged in the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with the allegations.

By said agreement, the parties expressly waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

Respondents further agreed that the order to cease and desist, issued in accordance with said agreement, shall have the same force and effect as if made after a full hearing.

It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the complaint herein may be used in construing the terms of the order issued pursuant to said agreement; and that said order may be altered, modified or set aside in the manner prescribed by the statute for orders of the Commission.

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and, in consonance with the terms of said agreement, the hearing examiner finds that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and issues the following order:

ORDER

It is ordered, That Kadiak Fisheries Company, a corporation, and its officers, Chignik Fisheries Company, a corporation, and its officers, and Leo T. Krielsheimer, named in the complaint as Leo T. Krielsheimer, individually and as an officer of said respondent corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the sale

of seafood products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

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.

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 13th day of July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That Kadiak Fisheries Company, a corporation, and Chignik Fisheries Company, a corporation, and Leo T. Kreielsheimer, named in the complaint as Leo T. Krielsheimer, individually and as an officer of said corporations, 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.
