

Complaint

57 F.T.C.

IN THE MATTER OF  
AUTOMOTIVE SOUTHWEST, INC., ET AL.

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

*Docket 7687. Complaint, Dec. 10, 1959—Decision, Sept. 8, 1960*

Consent order requiring a corporate buying group and its 15 members, jobbers of automotive products and supplies in the States of Texas, Louisiana, and Oklahoma, to cease violating Sec. 2(f) of the Clayton Act by demanding and receiving from suppliers discriminatory prices on their individual purchases on the basis of their aggregate group purchasing power—in which connection they usually replaced suppliers not acceding to their demands by others who did.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (f) 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), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Automotive Southwest, Inc., hereinafter sometimes referred to as respondent ASI, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2801 Commerce Street, Dallas, Tex.

Respondent ASI, although utilizing corporate form, is a membership organization, organized, maintained, managed, controlled, and operated by and for its members. The membership of respondent ASI is composed of corporations, partnerships, and individuals whose business consists of the jobbing of automotive products and supplies.

Respondent ASI, as constituted and operated, is known and referred to in the trade as a buying group.

PAR. 2. The following respondent corporations and individuals, sometimes hereinafter referred to as respondent jobbers, constitute respondent ASI:

Respondent American Gear & Parts Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2801 Commerce Street, Dallas, Tex.

Respondents Robert L. Sanders, Wesley A. Browder, W. Luther Browder and John W. Farley are copartners doing business under

the firm name and style of Automotive Supply Company, a partnership with their office and principal place of business located at 500 Harrison Street, Amarillo, Tex.

Respondent Howard F. Barrett is a partner doing business under the firm name and style of Barrett's Automotive, a partnership with his office and principal place of business located at 1012 17th Street, Lubbock, Tex.

Respondent Gabbert Auto Supply, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1013 Highway Avenue, McAllen, Tex.

Respondent Kennedy Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 101 Milam Street, Shreveport, La.

Respondent Miller Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1300 Franklin Avenue, Waco, Tex.

Respondent Moore Brothers Electric Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2003 Clay Avenue, Houston 2, Tex.

Respondent J. T. Davis is a partner doing business under the firm name and style of Motor Parts Company, a partnership with his office and principal place of business located at 202 N. Mesquite Street, Corpus Christi, Tex.

Respondents Kindel Paulk and Roger H. Paulk are copartners doing business under the firm name and style of Paulk's, a partnership with their office and principal place of business located at 1111 Lamar Street, Wichita Falls, Tex.

Respondent Mountjoy Parts Company of Houston, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1504 St. Emanuel Street, Houston, Tex.

Respondents Mrs. Otto Davis, Tom Davis and Guy Davis are copartners doing business under the firm name and style of Davis Auto Supply Company, a partnership with their office and principal place of business located at 23d and Washington Streets, Bryan, Tex.

Respondent East Texas Auto Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 213 S. Broadway Street, Tyler, Tex.

Respondent Motor Inn Auto Supply of Pampa, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 416 W. Foster Street, Pampa, Tex.

Respondent Wayne Bull is a sole proprietor doing business under the firm name and style of Wayne Bull Auto Parts, with his office and principal place of business located at 445 Ninth Street, San Antonio, Tex.

Respondent Automotive Parts & Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 2626 E. 11th Street, Tulsa, Okla.

PAR. 3. The respondent jobbers set forth in Paragraph Two have purchased and now purchase in commerce from suppliers engaged in commerce numerous automotive products and supplies for use, consumption, or resale within the United States. Respondent jobbers and said suppliers cause the products and supplies so purchased to be shipped and transported among and between the several States of the United States from the respective State or States of location of said suppliers to the respective different state or states of location of the said respondent jobbers.

PAR. 4. In the purchase and the resale of said automotive products and supplies, respondent jobbers are in active competition with independent jobbers not affiliated with respondent ASI; and the suppliers selling to respondent jobbers and to their independent jobber competitors are in active competition with other suppliers of similar automotive products and supplies.

PAR. 5. Respondent ASI, since its formation in 1946, has been and is now maintained, managed, controlled, and operated by and for the respondent jobbers set forth in Paragraph Two and each said respondent has participated in, approved, furthered, and cooperated with the other respondents in the carrying out of the procedures and activities hereinafter described.

In practice and effect, respondent ASI has been and is now serving as the medium or instrumentality by, through, or in conjunction with, which said respondent jobbers exert the influence of their combined bargaining power on the competitive suppliers hereinbefore described. As a part of their operating procedure said respondent jobbers direct the attention of said suppliers to their aggregate purchasing power as a buying group and, by reason of such, have knowingly demanded and received, upon their individual purchases, discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale. Suppliers not acceding to such de-

mands are usually replaced as sources of supply for the commodities concerned and such market is closed to them in favor of such suppliers as can be and are induced to afford the discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale so demanded.

Respondent jobbers demand that those suppliers who sell their products pursuant to a quantity discount schedule shall consider their several purchases in the aggregate as if made by one purchaser and grant quantity discounts, allowances, or rebates on the resultant combined purchase volume in accordance with said suppliers' schedule. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing independent jobbers whose quantity discounts, allowances, or rebates from such suppliers are based upon only their individual purchase volumes. From other suppliers the respondent jobbers demand the payment or allowance of trade discounts, allowances, or rebates which such suppliers do not ordinarily pay or allow to jobber customers. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing independent jobbers who are not afforded such trade discounts, allowances, or rebates.

When and if a demand is acceded to by a particular supplier, the subsequent purchase transactions between said supplier and the individual jobber respondents have been and are billed to, and paid for through, the aforesaid organizational device of respondent ASI. Said corporate organization thus purports to be the purchaser when in truth and in fact it has been and is now serving only as agent for the several respondent jobbers and as a mere bookkeeping device for facilitating the inducement and receipt by the afore-described respondent jobbers of the price discriminations concerned.

PAR. 6. Respondents have induced or received from their suppliers, in the manner afore-described, favorable prices, discounts, allowances, rebates, terms and conditions of sale which they knew or should have known constituted discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

PAR. 7. The effect of the knowing inducement or receipt by respondents of the discriminations in price as above alleged has been and may be substantially to lessen, injure, destroy, or prevent competition between suppliers of automotive products and supplies and between respondent jobbers and independent jobbers.

PAR. 8. The foregoing alleged acts and practices of respondents in knowingly inducing or receiving discriminations in price prohib-

ited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, are in violation of subsection (f) of Section 2 of said Act.

*Mr. Eldon P. Schrup, Mr. Lars E. Janson and Mr. John Perechinsky, supporting the complaint.*

*Howrey, Simon, Baker & Murchison by Mr. David C. Murchison of Washington, D.C., for respondents.*

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 10, 1959, charging that respondents knowingly induced or received discriminations in net prices of numerous automotive products and supplies purchased from various suppliers in violation of sub-section (f) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

On June 21, 1960, there was submitted to the undersigned hearing examiner agreements between the above-named respondents, their counsel, and counsel supporting the complaint providing for the entry of a consent order.

Under the terms of the agreements, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the documents include a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreements further recite that they are for settlement purposes only and do not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreements meet all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner having considered the agreements and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreements are hereby accepted, and it is ordered that said agreements shall not become a part of the official record unless and until they become a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondent Automotive Southwest, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas. with its office and principal place of business located at 2801 Commerce Street, Dallas, Tex.

2. Respondent American Gear & Parts Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2801 Commerce Street, Dallas, Tex.

3. Respondents Robert L. Sanders, Wesley A. Browder, W. Luther Browder and John W. Farley are copartners doing business under the firm name and style of Automotive Supply Company, a partnership with their office and principal place of business located at 500 Harrison Street, Amarillo, Tex.

4. Respondent Howard F. Barrett is a partner doing business under the firm name and style of Barrett's Automotive, a partnership with his office and principal place of business located at 1012 17th Street, Lubbock, Tex.

5. Respondent Gabbert Auto Supply, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1013 Highway Avenue, McAllen, Tex.

6. Respondent Kennedy Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 101 Milam Street, Shreveport, La.

7. Respondent Miller Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1300 Franklin Avenue, Waco, Tex.

8. Respondent Moore Brothers Electric Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 2003 Clay Avenue, Houston 2, Tex.

9. Respondent J. T. Davis is a partner doing business under the firm name and style of Motor Parts Company, a partnership with his office and principal place of business located at 202 N. Mesquite Street, Corpus Christi, Tex.

10. Respondents Kindel Paulk and Roger H. Paulk are copartners doing business under the firm name and style of Paulk's, a partnership with their office and principal place of business located at 1111 Lamar Street, Wichita Falls, Tex.

11. Respondent Mountjoy Parts Company of Houston, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 1504 St. Emanuel Street, Houston, Tex.

12. Respondents Tom Davis and Guy Davis are copartners doing business under the firm name and style of Davis Auto Supply Com-

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pany, a partnership with their office and principal place of business located at 23d and Washington Streets, Bryan, Tex.

13. Respondent East Texas Auto Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 213 S. Broadway Street, Tyler, Tex.

14. Respondent Motor Inn Auto Supply of Pampa, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 416 W. Foster Street, Pampa, Tex.

15. Respondent Wayne Bull is a sole proprietor doing business under the firm name and style of Wayne Bull Auto Parts, with his office and principal place of business located at 445 Ninth Street, San Antonio, Tex.

16. Respondent Automotive Parts & Supply Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located at 2626 E. 11th Street, Tulsa, Okla.

17. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents and the proceeding is in the public interest.

## ORDER

*It is ordered,* That respondents Automotive Southwest, Inc., a corporation; American Gear & Parts Company, Inc., a corporation; Robert L. Sanders, Wesley A. Browder, W. Luther Browder, and John W. Farley, copartners doing business under the firm name and style of Automotive Supply Company, a partnership; Howard F. Barrett, partner doing business under the firm name and style of Barrett's Automotive, a partnership; Gabbert Auto Supply, Inc., a corporation; Kennedy Supply Company, Inc., a corporation; Miller Company, Inc., a corporation; Moore Brothers Electric Company, Inc., a corporation; J. T. Davis, partner doing business under the firm name and style of Motor Parts Company, a partnership; Kindel Paulk and Roger H. Paulk, copartners doing business under the firm name and style of Paulk's, a partnership; Mountjoy Parts Company of Houston, Inc., a corporation; Tom Davis, and Guy Davis, copartners doing business under the firm name and style of Davis Auto Supply Company, a partnership; East Texas Auto Supply Company, Inc., a corporation; Motor Inn Auto Supply of Pampa, Inc., a corporation; Wayne Bull Auto Parts, a sole proprietorship; and Automotive Parts & Supply Company, Inc., a corporation; and respondents' agents, representatives and employees,

directly or through any corporate or other device, in connection with the offering to purchase or purchase of any automotive products or supplies in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Knowingly inducing or knowingly receiving or accepting any discrimination in the price of such products 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.

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

*It is further ordered*, That the complaint be, and the same hereby is, dismissed as to Mrs. Otto Davis, deceased, a former partner in Davis Auto Supply Company, 23d and Washington Streets, Bryan, Tex.

#### 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 8th day of September, 1960 become the decision of the Commission; and, accordingly:

*It is ordered*, That the respondents ordered to cease and desist in the initial decision herein 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.

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