
IN THE MATTER OF
PERFECT EQUIPMENT CORP.

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

Docket 7707. Complaint, Dec. 22, 1959—Decision, Jan. 12, 1961

Consent order requiring a manufacturer in Kokomo, Ind., selling automobile repair parts, supplies, and tools for replacement purposes, to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act by granting cumulative annual rebates based on volume of purchases to independent jobbers and group jobbers, as a result of which practice independent jobbers buying in lesser volume were charged higher and less favorable net prices than their competitors buying greater quantities.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating 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, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Perfect Equipment Corp., respondent herein, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana with its office and principal place of business located at 804 West Morgan Street, Kokomo, Indiana.

PAR. 2. Respondent is engaged in the manufacture and sale of automobile repair parts, supplies and tools including wheel weights, knee action shims, idler arm kits, coil spacers and tools for installing the parts produced. Respondent's total annual sales in 1957 exceeded \$1,800,000.

PAR. 3. Respondent, at all times referred to herein, manufactured its products in its plant in Indiana and sold and shipped products to customers located in each of the States of the United States and in the District of Columbia. Respondent has at all times relevant herein been, and is now, engaged in commerce as "commerce" is defined in the amended Clayton Act.

PAR. 4. The principal purchasers of respondent's products are automobile repair parts wholesalers, who are commonly referred to in the trade as jobbers. Such jobbers normally and principally resell to retailers such as repair garages, car dealers and gasoline service stations. Respondent sells its products to more than 2,000 such jobbers.

Among respondent's jobber customers are many who are banded together into organizations commonly referred to as "buying groups". Such customers are hereinafter referred to as "group jobbers" and those not affiliated with a buying group are referred to as "independent jobbers".

PAR. 5. In the sale and distribution of its products, respondent is, and at all times mentioned herein, has been, in substantial and continuous competition with other sellers of similar products.

In many trade areas respondent's independent jobber customers compete with each other and with respondent's group jobber customers.

PAR. 6. In the course and conduct of its business in commerce respondent has been, and is now, in each of several trading areas, discriminating in price in the sale of its products of like grade and quality by selling them to some independent jobbers at higher and less favorable prices than it sells them to other independent jobbers and group jobbers with whom the non-favored independent jobbers compete.

More particularly, during 1956 and 1957, respondent effected discriminations between independent jobbers by granting or paying to such purchasers a cumulative, fully retroactive volume rebate in accordance with the following schedule:

<i>Annual Purchases</i>	<i>Rebate</i>
\$ 100 to \$ 999 -----	0
1000 to 1999 -----	2%
2000 to 2999 -----	3%
3000 to 3999 -----	4%
4000 to 4999 -----	5%
5000 to 5999 -----	6%
6000 and over -----	7%

Through the operation of respondent's pricing and rebate system as above described, independent jobbers buying in lesser volume were charged higher and less favorable net prices than other competing independent jobbers buying in greater volume.

Moreover, during 1956 and 1957 respondent effected discriminations in price between its group jobber customers and many of its independent jobber customers by paying or granting to said group jobbers a rebate in accordance with the schedule set out above but computed upon the aggregated total annual purchases of all members of each particular group. Thus, all of respondent's group jobber customers were allowed the maximum rebate of 7% without regard to their individual annual purchase volume.

PAR. 7. In further particularity, respondent, in 1958, revised its pricing policies and placed into effect the unlawful program currently in use. The volume rebate pricing system, hereinbefore described, was discontinued as of January 1958, but all customers who received the top volume bracket rebate of 7% in 1957 were granted, and still receive, a 7% discount from published list prices. Such favored customers are allowed to deduct the 7% discount from their remittances. Customers who did not receive the 7% rebate in 1957 are not allowed any discount and must pay the higher prices contained on respondent's published price lists. Through the operation of this phase of respondent's pricing program many of its independent jobber customers are required to pay higher net prices than other larger independent jobber customers and all group jobber customers.

PAR. 8. Moreover, respondent's revision of its pricing program in 1958 included the institution of an additional unlawfully discriminatory pricing method. It designated many of its larger independent jobber customers and the "group headquarters" maintained by many of its group jobber customers as "Warehouse Distributors." Customers designated as "Warehouse Distributors" are allowed discounts from published list prices of no less than 20%. The customers

selected by respondent as "Warehouse Distributors" are not true warehouse distributors as that term is understood in the automotive after-market and do not, for the most part, redistribute or resell goods purchased from respondent to other jobbers but resell them in competition with other jobber customers of respondent.

PAR. 9. The effect of respondent's discriminations in price, as above alleged, may be substantially to lessen, injure, destroy or prevent competition between respondents and competing sellers of similar automotive products and between and among respondent's independent and group jobber customers.

PAR. 10. The acts and practices of respondent, Perfect Equipment Corp., as above alleged, constitute violations of subsection (a) of Section 2 of the Clayton Act (U.S.C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

Richard B. Mathias, Esq., supporting the complaint.

John C. Butler, Esq., of *Kirkland, Ellis, Hodson, Chaffetz, and Masters*, of Chicago, Ill., for respondent.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

The complaint was issued in this proceeding on December 22, 1959 charging respondent with violating §2(a) of the Clayton Act as amended by the Robinson-Patman Act (U.S.C. Title 15, §13) by discriminating in the price at which it sells its products, of like grade and quality, in interstate commerce, by selling them to some independent jobbers at higher and less favorable prices than it sells them to other independent jobbers and group jobbers with whom the non-favored independent jobbers compete. A true and correct copy of the complaint was served upon respondent as required by law. Thereafter respondent appeared by counsel and agreed to dispose of this proceeding without a formal hearing pursuant to the terms of an agreement dated October 31, 1960, containing consent order to cease and desist. The agreement was submitted to the undersigned hearing examiner on November 18, 1960, in accordance with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The agreement purports to dispose of this proceeding as to the respondent and contains the form of a consent cease-and-desist order which the parties have represented is dispositive of the issues involved in this proceeding. The agreement has been signed by the secretary-treasurer of respondent corporation and by the attorneys for the parties and has been approved by the Associate Director and the Director of the Bureau of Litigation of the Federal Trade Commission. In said agreement respondent admits all of the jurisdictional facts alleged in the complaint and agrees that the record

may be taken as if findings of jurisdictional facts had been made in accordance with such allegations. In the agreement the respondent waives: (a) any further procedural steps before the hearing examiner and the Commission; (b) the making of findings of fact or conclusions of law; and (c) all rights respondent may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement.

The parties further agree, in said agreement, that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Federal Trade Commission; that the order to cease and desist entered in this proceeding by the Commission may be entered without further notice to respondent, and when so entered such order will have the same force and effect as if entered after a full hearing. Said order may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

The parties have covenanted that the said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order which is approved in and by said agreement disposes of all the issues presented by the complaint as to all of the parties involved, said agreement is hereby accepted and approved as complying with §§3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings. The undersigned hearing examiner, having considered the agreement and proposed order and being of the opinion that the acceptance thereof will be in the public interest, makes the following findings and issues the following order:

FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;
2. Respondent Perfect Equipment Corp. is a corporation existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 804 West Morgan Street, in the City of Kokomo, State of Indiana;
3. Respondents are engaged in commerce as "commerce" is defined in the Federal Trade Commission and the Clayton Acts;

4. The complaint filed herein states a cause of action against the respondent under both the Federal Trade Commission and the Clayton Acts; and this proceeding is in the public interest. Now, therefore,

It is ordered, That respondent Perfect Equipment Corp., a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in or in connection with the sale for replacement purposes of automobile repair parts, supplies and tools in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any one purchaser at net prices higher than the net prices charged to any other purchaser who, in fact, competes with the purchaser paying the higher price in the resale or distribution of respondent's products.

It is further ordered, That the term "purchaser" as used in this order shall include any purchaser buying directly or indirectly from respondent by means of group buying or any related device, but shall not be construed in this proceeding to include original equipment manufacturers purchasing automotive parts from respondent for replacement use or sale.

It is further ordered, That the allegation in the complaint that the effect of respondent's discriminations in price may be substantially to lessen, injure, destroy or prevent competition between respondent and competing sellers of similar automotive products, be dismissed.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission having considered the hearing examiner's initial decision, filed November 23, 1960, accepting an agreement containing a consent order to cease and desist, theretofore executed by the respondent and counsel in support of the complaint; and

It appearing that although the respondent is charged only with having violated subsection (a) of Section 2 of the Clayton Act, as amended, the initial decision recites that the complaint states a cause of action under both the Federal Trade Commission Act and the Clayton Act, and further, that the respondent is engaged in commerce, as "commerce" is defined in both of said Acts; and

The Commission being of the opinion that these misstatements should be corrected:

It is ordered, That the initial decision be, and it hereby is, modified by striking therefrom paragraphs "3" and "4" of the section entitled "Findings."

MURRAY HILL HOUSE

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Findings

It is further ordered, That the initial decision as so modified shall, on the 12th day of January, 1961, become the decision of the Commission.

It is further ordered. That the respondent, Perfect Equipment