MOORE BUSINESS FORMS, INC.

Docket 7086. Order, Mar. 1, 1961

Interlocutory order reversing hearing examiner's rulings which quashed specifications regarding respondent's sales from subpoena duces tecum in price discrimination case.

Counsel supporting the complaint having filed an appeal from the hearing examiner's rulings of November 15, 1960, whereby he granted the respondent's motion to quash specifications 2, 3, 4, 6, 7, 8 and 9 of the subpoena duces tecum which issued on October 11, 1960, and limited specifications 1, 5 and 10 in certain respects; and

It appearing that the information excluded from the specifications' requirements under such rulings includes, among other things, data relating to annual and monthly net sales of respondent's business forms products for certain years, classified by customers, sales divisions and products, together with information respecting total sales by the respondent at prices below its list prices; and

It appearing that such excluded information pertains, among other things, to the conduct and scope of the respondent's business and its capacity to compete, and thus is relevant to the issues raised by the complaint in this proceeding which charges discriminations in price resulting or likely to result in injury to competition in the line of commerce in which the respondent is engaged; and

The Commission having determined that counsel supporting the complaint are entitled to production of all of the information specified in the subpoena duces tecum and that the appeal should be granted:

It is ordered, That the rulings of the hearing examiner which quashed or limited the specifications of said subpoena be, and they hereby are, reversed.

UARCO, INC.

Docket 7087. Order, Mar. 1, 1961

Interlocutory order reversing hearing examiner's exclusion of exhibits including tabulations of respondent's sales, and denying appeal from rejection of other documents in price discrimination case.

Counsel supporting the complaint having filed an interlocutory appeal from certain rulings by the hearing examiner which counsel contend erroneously rejected three series of documentary exhibits offered in evidence; and

It appearing that one series of the documents include tabulations by the respondent of its net sales for certain years classified by customers and by types of forms and data as to sales by it at prices

below list prices and that counsel supporting the complaint contend that those documents show, among other things, increasing annual sales, together with disproportionately increased sales by the respondent at prices below its list prices and enhanced ability to compete; and

The hearing examiner having stated that such information will be of no assistance in resolving whether competitive injury has or likely may result from any price discriminations proved and having ruled that such documents would not be received unless like sales data for some of the respondent's competitors are also to be offered; and

It appearing to the Commission that in situations involving alleged discriminations in price and alleged primary line injury the scope of the seller's marketing activities and his sales and financial progress or decline necessarily are relevant factors in the over-all competitive situation and are relevant and material to determinations here of past or probable future competitive effects; and

The Commission having therefore determined that the rulings excluding the first series of documents, namely, Commission Exhibits for Identification 397 through 403(b), should be reversed as contravening §3.14(b) of the Commission's Rules of Practice which prescribes that relevant, material and reliable evidence shall be received in its adjudicative proceedings; and

It further appearing as to a second series of documents containing statements of the respondent's earnings for certain years that the hearing examiner deferred final rulings, and the Commission, though regarding its above ruling as also controlling to the admissibility of this series of documents, having determined that this aspect of the appeal should be denied as premature; and

The hearing examiner having rejected the third series of documents as too remote for the reason that the industry sales data therein relate primarily to sales of machines or office equipment other than the business forms products relevant here, and there being no showing in the appeal that the hearing examiner's analysis is erroneous; and

Counsel supporting the complaint having further contended that the hearing examiner erroneously ruled that certain exhibits which were received in evidence constituted a complete response to specification 10 of the subpoena duces tecum which issued in this proceeding, but it appearing that the specific rulings cited by counsel do not relate to the question of whether the subpoena has been complied with; and

The Commission having further determined that the memoranda filed in support of and in opposition to the appeal suffice for in-

formed decision of the appeal and that the respondent's request for oral argument should be denied:

It is ordered, That hearing examiner's rulings excluding Commission Exhibits for Identification 397 through 403(b), be, and they