

It is ordered, That respondents 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.

IN THE MATTER OF

T. W. HOLT & COMPANY, INC.

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

Docket 8371. Complaint, Apr. 21, 1961—Decision, Oct. 24, 1961

Consent order requiring the distributor of "Flaga" dried peas and beans, and rice, in Jacksonville, Fla., to cease violating Sec. 2(d) of the Clayton Act by paying promotional allowances to some customers but not to all their competitors on proportionally equal terms, such as a preferential payment of \$250 made to Winn-Dixie Stores, Inc., a retail grocery chain with headquarters in Jacksonville.

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 (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act (USC Title 15, section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, T. W. Holt & Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its office and principal place of business located at 2222 Harper Street, Jacksonville, Florida.

PAR. 2. Respondent is now and has been engaged in the packaging, sale and distribution of dried peas and beans, and rice, under the trade name "Flaga". Respondent sells and distributes its products to wholesalers and to retail chain store organizations.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of Florida to customers located in other states of the United States. There has been at all times mentioned herein a continuous course of trade in said products in commerce as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in con-

sideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. For example, in the year 1960, respondent contracted to pay and did pay to Winn-Dixie Stores, Inc., a retail grocery chain with headquarters in Jacksonville, Florida, the amount of \$250.00 as compensation or as an allowance for advertising or other services or facilities furnished by or through Winn-Dixie Stores, Inc., in connection with its offering for sale or sale of respondent's products. Such compensation or allowance was not made available on proportionally equal terms to all other customers competing with Winn-Dixie Stores, Inc., in the sale and distribution of respondent's products.

PAR. 6. The acts and practices of respondent, as alleged, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. David J. McKean for the Commission;

Milam, Le Maistre, Ramsay & Martin, by *Mr. George W. Milam*, Jacksonville, Fla., for the respondent.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on April 21, 1961, charging Respondent with violation of Section 2(d) of the Clayton Act as amended by the Robinson-Patman Act (U.S.C. Title 15, Section 13) by the payment of something of value as compensation or in consideration for services or facilities furnished by or through some of its customers, such payments not being made available to all other customers competing in the sale and distribution of Respondent's products.

Thereafter, on August 10, 1961, Respondent, its counsel, and counsel supporting the complaint herein entered into an Agreement Containing Consent Order To Cease And Desist, which was approved by the Director of the Commission's Bureau of Restraint of Trade, and thereafter, on August 17, 1961, submitted to the Hearing Examiner for consideration.

The agreement identifies Respondent T. W. Holt & Company, Inc. as a Florida corporation, with its office and principal place of business located at 2222 Harper Street, Jacksonville, Florida.

Respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondent waives any further procedure before the Hearing Examiner and the Commission; the making of findings of fact and conclusions of law; and all of the rights it may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree 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 order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the 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.

After consideration of the allegations of the complaint, and the provisions of the agreement and the proposed order, the Hearing Examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Cease And Desist; finds that the Commission has jurisdiction over the Respondent and over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondent T. W. Holt & Company, Inc., its officers, agents, representatives or employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of grocery products, including dried peas and beans, and rice, in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of any of Respondent's products sold or offered for sale by such Respondent unless such payment or consideration is available on proportionally equal terms to all of its other customers competing in the distribution of such products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing

examiner shall, on the 24th day of October, 1961, become the decision of the Commission; and, accordingly: