

Syllabus

IN THE MATTER OF

ERIE SAND AND GRAVEL COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF THE
CLAYTON ACT

Docket 6670. Complaint, Oct. 30, 1956—Order, Jan. 4, 1962

Order dismissing—following the Third Circuit's vacating of the Commission's order of divestiture (56 F.T.C. 437) and remand of the case for further consideration (291 F. 2d 279)—complaint charging illegal acquisition of competitor.

ORDER DISMISSING COMPLAINT

The Commission having placed this matter on its own docket for reconsideration in the light of the opinion of the United States Court of Appeals for the Third Circuit vacating the order of divestiture entered by the Commission October 26, 1959, and remanding the cause to the Commission for such purpose; and

It appearing in the light of additional information obtained by the Commission that respondent no longer retains any substantial part of the assets of the company it acquired which formed the basis for this proceeding; and

The Commission having determined that the case is now in essence moot and that, in the circumstances, it would not be in the public interest to take any further action in the matter:

It is ordered, That the complaint in this proceeding be, and it hereby is, dismissed.

IN THE MATTER OF

AUTOMOTIVE JOBBERS, INC., ET AL.

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

Docket 7590. Complaint, Sept. 21, 1959—Decision, Jan. 4, 1962

Order requiring a Texas association of jobbers of automotive products and supplies—which was simply a bookkeeping device and served as agent through which members were billed and made settlement for purchases—and its 19 members, to cease violating Sec. 2(f) of the Clayton Act by inducing and receiving from suppliers what they knew were “discriminatory and illegal prices, discounts, allowances and rebates” resulting from their combined bargaining power and not available to their competitors.

Complaint

60 F.T.C.

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 sub-section (f) 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. Respondent Automotive Jobbers, Inc., hereinafter sometimes referred to as respondent AJI, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 2050 Irving Boulevard, Dallas, Tex.

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

Respondent AJI, 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 AJI:

Respondent Mrs. Neva Baker is a sole proprietor doing business under the firm name and style of Baker Auto Supply, with her office and principal place of business located at Hillsboro, Tex.

Respondent E. L. Bauer is a sole proprietor doing business under the firm name and style of Bauer Auto Supply, with his office and principal place of business located at 3000 West Lancaster Street, Fort Worth, Tex.

Respondent Blue Ribbon Auto Supply, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Oklahoma, with its principal office and place of business located at 1457 N.E. 23rd Street, Oklahoma City, Okla.

Respondent H. B. Braden, Jr., is a sole proprietor doing business under the firm name and style of Braden's Automotive, with his office and principal place of business located at 209 East Main Street, Waxahachie, Tex.

Respondents J. W. Mitchell and W. L. Brown are copartners doing business under the firm name and style of Brown Auto Supply, a

partnership with their office and principal place of business located at 114 Avenue D, N.W., Childress, Tex.

Respondent John M. Carter is a sole proprietor doing business under the firm name and style of Carter Auto Supply, with his office and principal place of business located at 2050 Irving Boulevard, Dallas, Tex.

Respondent James Lacey is a sole proprietor doing business under the firm name and style of Central Grinding and Auto Supply with his office and principal place of business located at 3710 Commerce Street, Dallas, Tex.

Respondent Thomas Clark is a sole proprietor doing business under the firm name and style of Clark Auto Parts Supply with his principal place of business located at Coleman, Tex.

Respondent Ralph Clark is a sole proprietor doing business under the firm name and style of Ralph Clark Company with his principal place of business located at 218 East Main Street, Grand Prairie, Tex.

Respondents C. E. Holder and M. W. Edgmon are copartners doing business under the firm name and style of Edgmon-Holder Motor Supply, a partnership with their office and principal place of business located at 1012 Scott Street, Wichita Falls, Tex.

Respondent Eugene Straach is a sole proprietor doing business under the firm name and style of Grove Auto Supply with his office and principal place of business located at 7930 Lake June Road, Dallas, Tex.

Respondent Rex Grove 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 principal office and place of business located at 4527 East Belknap Street, Fort Worth, Tex.

Respondents M. R. Walker, B. C. McKinley and J. O. Thompson are copartners doing business under the firm name and style of Jobbers Warehouse Service, a partnership, with their office and principal place of business located at 217 North Walnut Street, Sherman, Tex.

Respondent Sam Murphy is a sole proprietor doing business under the firm name and style of Murphy Automotive Supply with his office and principal place of business located at 626 West Garland Avenue, Garland, Tex.

Respondent L. E. Shafer is a sole proprietor doing business under the firm name and style of Senior Auto Parts with his office and principal place of business located at 208 East Second Street, Odessa, Tex.

Respondents Phil Crawford, O. J. Chase and R. R. Crawford are copartners doing business under the firm name and style of Texas

Automotive Supply, a partnership, with their office and principal place of business located at 3004 West Davis Street, Dallas, Tex.

Respondent Vernon Pennington is a sole proprietor doing business under the firm name and style of Vernon Parts Company with his office and principal place of business located at 1701 Marshall Street, Vernon, Tex.

Respondent James E. Walker is a sole proprietor doing business under the firm name and style of Walker Auto Parts with his office and principal place of business located at 409 East Third Street, Big Spring, Tex.

Respondents Ethel Waugh and Guy V. Cope are copartners doing business under the firm name and style of A. G. Waugh Company, a partnership, with their office and principal place of business located at 1392 Lubbock Highway, Lamesa, Tex.

Respondent Madie E. Wood is a sole proprietor doing business under the firm name and style of Wood Tire & Supply Company with his office and principal place of business located at Huntsville, Tex.

PAR. 3. The respondent jobbers set forth in paragraph 2 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 AJI; 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 AJI, since its formation in 1954, 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 AJI 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 demands 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.

Respondents 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 AJI. 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 prohibited 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 and *Mr. John Perry* supporting the complaint.

Clark, Reed & Clark, of Dallas, Tex., by *Mr. Ramsey Clark* and *Mr. William L. Keller* for respondents.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the respondents herein, charging them with knowingly inducing or receiving discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, in violation of subsection (f) of Section 2 of said Act.

This proceeding is before the hearing examiner for final consideration upon the complaint, answer, testimony and other evidence, and proposed findings of fact and conclusions filed by counsel supporting the complaint. Consideration has been given to the proposed findings of fact and conclusions submitted by counsel supporting the complaint, and all proposed findings of fact and conclusions not hereinafter specifically found or concluded are rejected, and the hearing examiner, having considered the entire record herein, makes the following findings as to the facts, conclusions drawn therefrom and order:

FINDINGS AS TO THE FACTS

1. Respondent Automotive Jobbers, Inc. (hereinafter sometimes referred to as respondent AJI), is a Texas corporation with its principal office and place of business located at 2050 Irving Boulevard, Dallas, Tex.

2. Respondent AJI, although using corporate form, is a membership organization, organized, maintained, managed, controlled, and operated by and for its members. The membership of respondent AJI is composed of corporations, partnerships, firms and individuals whose business consists of the jobbing of automotive products and supplies. As constituted, respondent AJI is known and referred to in the trade as a buying group.

3. At the time of issuance of the complaint in this proceeding, or for a substantial period of time since its organization, the members of respondent AJI were as follows:

Respondent Mrs. Neva Baker, a sole proprietor doing business under the firm name and style of Baker Auto Supply, with her office and principal place of business located at Hillsboro, Tex.

Respondent E. L. Bauer, a sole proprietor doing business under the firm name and style of Bauer Auto Supply, with his office and principal place of business located at 3000 West Lancaster Street, Forth Worth, Tex.

Respondent Blue Ribbon Auto Supply, Inc., an Oklahoma corporation with its principal office and place of business located at 1457 N.E. 23rd Street, Oklahoma City, Okla.

Respondent H. B. Braden, Jr., a sole proprietor doing business under the firm name and style of Braden's Automotive, with his office and principal place of business located at 209 East Main Street, Waxahachie, Tex.

Respondents J. W. Mitchell and W. L. Brown, copartners doing business under the firm name and style of Brown Auto Supply, a partnership, with their office and principal place of business located at 114 Avenue D, N.W., Childress, Tex.

Respondent John M. Carter, a sole proprietor doing business under the firm name and style of Carter Auto Supply, with his office and principal place of business located at 2050 Irving Boulevard, Dallas, Tex.

Respondent Thomas Clark, a sole proprietor doing business under the firm name and style of Clark Auto Parts Supply with his office and principal place of business located at Coleman, Tex.

Respondent Ralph Clark, a sole proprietor doing business under the firm name and style of Ralph Clark Company with his office and principal place of business located at 218 East Main Street, Grand Prairie, Tex.

Respondents C. E. Holder and M. W. Edgmon, copartners doing business under the firm name and style of Edgmon-Holder Motor Supply, a partnership, with their office and principal place of business located at 1012 Scott Street, Wichita Falls, Tex.

Respondent Eugene Straach, a sole proprietor doing business under the firm name and style of Grove Auto Supply with his office and principal place of business located at 7930 Lake June Road, Dallas, Tex.

Respondent Rex Grove Auto Supply Company, Inc., a Texas corporation with its principal office and place of business located at 4527 East Belknap Street, Fort Worth, Tex.

Respondents M. R. Walker, B. C. McKinley and J. O. Thompson, copartners doing business under the firm name and style of Jobbers Warehouse Service, a partnership, with their office and principal place of business located at 217 North Walnut Street, Sherman, Tex.

Respondent Sam Murphy, a sole proprietor doing business under the firm name and style of Murphy Automotive Supply with his office and principal place of business located at 626 West Garland Avenue, Garland, Tex.

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Respondents Phil Crawford, O. J. Chase and R. R. Crawford, copartners doing business under the firm name and style of Texas Automotive Supply, a partnership, with their office and principal place of business located at 3004 West Davis Street, Dallas, Tex.

Respondent Vernon Pennington, a sole proprietor doing business under the firm name and style of Vernon Parts Company with his office and principal place of business located at 1701 Marshall Street, Vernon, Tex.

Respondent James E. Walker, a sole proprietor doing business under the firm name and style of Walker Auto Parts with his office and principal place of business located at 409 East Third Street, Big Spring, Tex.

Respondents Ethel Waugh and Guy V. Cope, copartners doing business under the firm name and style of A. G. Waugh Company, a partnership, with office and principal place of business located at 1392 Lubbock Highway, Lamesa, Tex.

Respondent Madie E. Wood, a sole proprietor doing business under the firm name and style of Wood Tire & Supply Company with his office and principal place of business located at Huntsville, Tex.

The respondent, James Lacey, was the sole proprietor doing business under the firm name and style of Central Grinding and Auto Supply with his office and principal place of business located at 3710 Commerce Street, Dallas, Tex. Shortly prior to the issuance of the complaint herein, this respondent was deceased, and the order which follows dismisses the complaint as to this respondent.

4. Respondent AJI, since its formation in 1954, has been and is now maintained, managed, controlled and operated by and for the respondent jobber members above-named, and each said respondent actively

participated in, approved, furthered and cooperated with the other respondents in carrying out the acts and practices hereinafter found which were knowingly designed and intended to induce the granting of discriminatory and illegal prices, discounts, allowances, rebates, terms and conditions of sale to the respondent jobber members. Such participation included serving as officers and directors of respondent AJI, and as members of various committees of said group organization.

The By-Laws of respondent AJI state:

The purpose of this association shall be to purchase from manufacturers goods, wares and merchandise for such of its members who desire the same, in order to receive quantity discounts or prices.

The corporate charter of respondent AJI states that it was formed "for the purpose of purchasing from manufacturers, automotive goods, wares, and merchandise for such of its members who desire the same in order to receive quantity discounts, or prices."

5. The respondent jobber members of respondent AJI have purchased and now purchase in interstate commerce from suppliers engaged in interstate commerce numerous automotive products and supplies for use, consumption or resale within their trade areas. Respondent jobbers and said suppliers cause the automotive 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 states of location of the respondent jobbers.

The respondent jobber members of respondent AJI, in the purchase and resale of said automotive products and supplies, are and have been in active and substantial competition with other corporations, partnerships, firms and individuals who are also engaged in the purchase and resale of such automotive products and supplies of like grade and quality, in interstate commerce, which automotive products and supplies have been purchased from the same and competitive sellers. The suppliers selling to respondent jobbers and their competitors are also in active and substantial competition with other suppliers of like or similar automotive products and supplies in interstate commerce.

6. Respondent jobbers organized, and have maintained, controlled and operated, respondent AJI for the purpose of inducing the granting or allowance of lower and more favorable prices by manufacturers and sellers of automotive products and supplies. It is a membership corporation serving only jobber members. Participation of respondent jobber members in the net income of respondent AJI is based on a percentage of their individual purchases through the group organi-

zation. This is in line with the Amended Articles of Incorporation of respondent AJI which states as one of its purposes:

To return to members the whole or any part of the net earnings or surplus resulting from its trading operations in proportion to their purchases from the corporation.

The same Amended Articles of Incorporation state that the products purchased by respondent AJI are only for "resale and distribution to its members."

7. It was the regular procedure for the respondent jobbers, acting through respondent AJI, to either notify or allow competing manufacturers of various lines of automotive products and supplies to submit prices and appear before the members of the group, or a committee named for that purpose, who would consider the offers and vote to accept one or more of the lines to the exclusion of the lines of the seller's competitors. A majority vote of the jobber members of respondent AJI was necessary before a seller's line was approved and adopted as a group line. Although it was not a rigid requirement that the jobber members handle all the group lines, in actual practice, the members of the group purchased and sold most of the particular manufacturers' lines accepted and handled by the group.

The warehouse manager for respondent AJI described the procedure followed by the members in changing over to the group lines. He described how he spent a few days helping a group member change over all the lines in an outlet which that member had recently purchased.

8. When and if a demand is acceded to by a particular supplier, the subsequent purchase transactions between the supplier and the individual jobber respondents have been, and are, billed to and paid for through the organizational device of respondent AJI. 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 bookkeeping device for facilitating the inducement and receipt by the respondent jobbers of the price discriminations concerned.

The respondent jobbers order their group lines from their suppliers by using a standard form of order blank. The suppliers grant the respondents discounts and rebates on their purchases in various ways. Some deduct the discount and bill respondent AJI at "net price." Some give the discounts on the face of the invoice. Some allow rebates at various intervals of time. Respondent AJI in turn bills its members or remits rebates in the same manner as the suppliers bill respondent AJI or remit rebates to respondent AJI. This procedure is used when

the suppliers "drop ship" products to the jobber members of respondent AJI as well as when the members buy from or through the group warehouse.

9. When a seller's line was accepted by respondent AJI, notice was sent to all jobber members giving full information as to the contract terms agreed upon. These notices were in the form of "Approval Sheets" which were supplied to the jobber members. Also, respondent AJI distributed catalogs, price sheets, etc., to its jobber members, which items were sent to respondent AJI by its suppliers. On lines not handled by respondent AJI, the jobber members deal directly with the suppliers.

10. There are approximately 140 suppliers selling the group lines to respondents. The purchases of the group from group suppliers throughout the years have been substantial, ranging from \$555,956.00 in 1955 to \$1,019,268.00 in 1959. The rebates and discounts received from the various suppliers by respondents are also substantial. In 1957 the total rebates and discounts were \$162,147.30 compared to \$914,146.52 of purchases.

11. Not all the lines handled by the group were stocked in the group warehouse. A warehouse line refers to those lines which were actually carried in the AJI warehouse. When a jobber member wished to purchase products from a warehouse line, an order was sent to respondent AJI, who either procured the merchandise from the supplier or filled the order from its own warehouse stock. When a delivery had been made, respondent AJI billed the jobber member receiving the merchandise. Sometimes a jobber member would receive a so-called "slot" shipment. This meant that when a supplier shipped merchandise to the AJI warehouse, it would be immediately shipped to the jobber member in the same package. Many suppliers also "drop ship" directly to the jobber members. Between 35 percent and 50 percent of the members' purchases through respondent AJI are "drop shipped" to the members. Each jobber member settled monthly with respondent AJI for his own individual purchases. The group office in turn made monthly settlements with the suppliers for the aggregate purchases of all jobber members, and annually or periodically distributed to the jobber members all discounts and rebates received, less operating expenses, in proportion to the amount of each member's individual purchases. The jobber members of respondent AJI are charged a warehouse fee of 5 percent on purchases made from the group warehouse, and 2 percent on "slot" shipments. These fees are to help offset the cost of operating the warehouse.

Initial Decision

60 F.T.C.

12. Following is an analysis of the individual purchases of each jobber member of products purchased from or through the group warehouse for the year 1959, taken from the 1959 Annual Report of respondent AJI:

AUTOMOTIVE JOBBERS, INC.

MEMBER PURCHASES ANALYSIS

YEAR 1959

	<i>Direct and Slot</i>	<i>From Warehouse</i>	<i>Total Purchases</i>	<i>Percent from Whse.</i>
Jobbers Warehouse Service..	\$72,847.14	\$20,483.24	\$93,330.38	21.95
Senior Auto Parts.....	69,679.39	22,545.84	92,225.23	24.45
Tillman Auto Parts.....	60,568.50	29,506.91	90,075.41	32.76
Wood Tire & Supply.....	51,987.13	25,067.16	77,045.29	32.54
McDonald Automotive.....	53,850.15	21,548.83	75,398.98	28.58
Rex Grove Auto Supply.....	30,591.49	27,478.33	58,069.82	47.32
Brown Auto Supply.....	34,431.26	21,095.17	55,526.43	37.99
McKissack Auto Supply Co..	39,014.22	15,838.86	54,853.08	28.88
Carter Auto Supply.....	15,395.31	33,051.61	48,446.92	68.22
City Motor Supply.....	30,510.51	10,192.05	40,702.56	25.04
Hutson Automotive.....	22,735.22	17,422.53	40,157.75	23.05
Texas Automotive.....	20,577.13	15,171.91	35,749.04	42.44
The Murphy Co.....	19,337.72	14,768.11	34,105.83	43.30
A. G. Waugh Co.....	20,794.68	13,148.67	33,943.35	38.74
The Bauer Co.....	18,410.14	12,543.09	30,953.23	40.52
Economy Auto Supply.....	19,298.60	10,700.98	29,999.58	35.67
Ralph Clark Co.....	14,224.39	10,342.81	24,567.20	42.10
Clark Auto Parts Supply....	13,547.98	10,938.35	24,486.33	44.67
Suit's Auto Supply.....	15,741.70	4,433.89	20,175.59	21.98
Grove Auto Supply.....	8,082.46	6,301.84	14,384.30	43.81
Central Grinding Auto Supply.....	9,585.02	4,236.19	13,821.21	30.65
H. Brown Supply House.....	7,649.72	4,441.93	12,091.65	36.74
Capitol Auto Supply.....	6,013.69	5,042.47	11,056.16	45.61
Baker Auto Supply.....	4,007.36	4,095.39	8,102.75	50.54
	658,871.91	360,396.16	1,019,268.07	35.43

13. 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. They demand to be classified as a warehouse distributor. This procedure effects a discrimination in price on goods of like grade and quality between respondent jobbers and competing jobbers who are not afforded such trade discounts, allowances, or rebates.

14. The volume rebate granted by certain suppliers to respondent jobber members was a retroactive volume rebate based upon the aggregate purchases of all the jobber members. Typical of such practices is the agreement with Standard Motor Products, Inc., which generally maintains a sliding scale of volume rebates on net amount purchased per year as follows:

	Percent
Under \$1,800 -----	3
\$2,800 -----	5
\$4,200 -----	10
\$7,200 -----	12
\$9,000 -----	13
\$12,000 -----	15
\$25,000 -----	16
\$50,000 -----	17
\$75,000 -----	18
\$100,000 -----	20

In the case of Automotive Jobbers, Inc., these rebates were not based on the purchases of the individual respondent jobber member, but instead were based upon the total purchases of all the members of the group organization.

15. When respondent AJI made payment to Standard Motor Products, Inc., for purchases made during the month by the respondent jobber members, it was permitted to deduct the maximum rebate of 20 percent on paying the invoices. While the aggregate purchases of the jobber members reached the maximum volume of \$100,000 required for the 20 percent discount, no individual jobber member purchased near this amount. In fact, in 1959 the purchases of only two jobber members reached the 15 percent bracket, and four members earned no discount whatever, and yet all members received the maximum 20 percent volume rebate. In the same trading area there were competitors of respondent jobbers purchasing merchandise of like grade and quality from Standard Motor Products, Inc., who received no discount, or a lower discount, based upon the actual amount of their purchases as provided by Standard's volume rebate discount schedule.

16. The warehouse distributor's discount was a discount paid to distributors on automotive products resold to other jobbers. A warehouse distributor usually maintained at least a minimum stock of the suppliers' automotive products in his warehouse. Sales made to other jobbers were generally made at jobber's list price and the distributor relied upon the warehouse distributor discount for his compensation. In granting this discount to the respondent jobbers, the supplier treated the respondent AJI as a purchaser and reseller to respondent jobber members, and granted the discount or rebate on all products purchased by the respondent jobber members through the respondent AJI. This warehouse distributor's rebate on the aggregate purchases of the respondent jobbers was paid over to respondent AJI who, in turn, distributed the net after deduction of operating expenses to the jobber members in proportion to their individual purchases. In the same trading area there were competitors of respondent jobbers, purchasing products of like grade and quality from the same, and other, suppliers, and who received no discount as warehouse distributors.

17. In practice and effect, respondent AJI 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, respondent jobbers direct the attention of 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 and rebates. Suppliers not acceding to such demands 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 and rebates so demanded.

18. The respondent jobbers knew they were receiving discriminatory and illegal prices, discounts, allowances and rebates from their suppliers. They know that the rebates allowed them were based not on the quantities or other factors involved in a particular sale, and not upon quantities sold by them to other jobbers, but rather upon the combined dollar amount of all sales to the respondent jobber members through the group organization and bear relationship to factors other than the actual costs of sale and delivery. They were successful operators in a highly competitive market and knew that no cost justification could be maintained by the sellers, since in many instances no difference in the cost of sale or delivery was involved.

Furthermore, the respondent jobber members were placed upon notice as to the illegality of price discriminations received through the medium of group-buying organizations similar to Automotive Jobbers, Inc., through knowledge of Federal Trade Commission orders involving other buying groups and various suppliers of those groups who were also suppliers of respondent AJI and its members. Those cases were discussed by the respondent jobbers at various times. The minutes of the meetings of the members are replete with such discussions. Aside from imputed knowledge, there is substantial evidence of actual knowledge shown in the record.

19. The automotive parts industry is a highly competitive business, involving small margins of profit. The net margin of profit of a number of respondent jobber witnesses, as well as non-member jobber witnesses, who testified, was from one (1) percent to four (4) percent after taxes. The importance of the discriminatory prices allowed by the various suppliers is pointed up by the importance given by respondent jobbers, and non-member jobbers, to the 2 percent cash discount allowed by their suppliers as increasing their margin of profit and reducing the cost of acquisition of their merchandise. Through the lower cost of merchandise, resulting from such discriminatory prices, the respondent jobbers obtained a substantial competitive advantage over their competitors who sell the same and comparable merchandise in the same trade areas and who received discounts or rebates based only upon their own individual purchases.

CONCLUSIONS

1. Respondents have induced and received from their suppliers, as herein found, discriminatory prices, discounts, allowances, rebates and terms and conditions of sale which they know, or should have known, constituted price discriminations prohibited by Section 2(a) of the Clayton Act, as amended.

2. The acts and practices of the respondent jobbers in knowingly inducing and receiving discriminations in price through the use of the group-buying organization, Automotive Jobbers, Inc., prohibited by Section 2(a) of the amended Clayton Act, as herein found, are in violation of Section 2(f) of the amended Clayton Act.

ORDER

It is ordered, That respondent Automotive Jobbers, Inc., a corporation; Mrs. Neva Baker, doing business under the firm name and style of Baker Auto Supply, a sole proprietorship; E. L. Bauer, doing

business under the firm name and style of Bauer Auto Supply, a sole proprietorship; Blue Ribbon Auto Supply, Inc., a corporation; H. B. Braden, Jr., doing business under the firm name and style of Braden's Automotive, a sole proprietorship; J. W. Mitchell and W. L. Brown, copartners doing business under the firm name and style of Brown Auto Supply; John M. Carter, doing business under the firm name and style of Carter Auto Supply, a sole proprietorship; Thomas Clark, doing business under the firm name and style of Clark Auto Parts Supply, a sole proprietorship; Ralph Clark doing business under the firm name and style of Ralph Clark Company, a sole proprietorship; C. E. Holder and M. W. Edgmon, copartners doing business under the firm name and style of Edgmon-Holder Motor Supply; Eugene Straach, doing business under the firm name and style of Grove Auto Supply, a sole proprietorship; Rex Grove Auto Supply Company, Inc., a corporation; M. R. Walker, B. C. McKinley and J. O. Thompson, copartners doing business under the firm name and style of Jobbers Warehouse Service; Sam Murphy, doing business under the firm name and style of Murphy Automotive Supply, a sole proprietorship; L. E. Shafer, doing business under the firm name and style of Senior Auto Parts, a sole proprietorship; Phil Crawford, O. J. Chase and R. R. Crawford, copartners doing business under the firm name and style of Texas Automotive Supply; Vernon Pennington, doing business under the firm name and style of Vernon Parts Company, a sole proprietorship; James E. Walker, doing business under the firm name and style of Walker Auto Parts, a sole proprietorship; Ethel Waugh and Guy V. Cope, copartners doing business under the firm name and style of A. G. Waugh Company; and Madie E. Wood, doing business under the firm name and style of Wood Tire & Supply Company, a sole proprietorship; 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, as amended, 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.

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Complaint

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 herein be, and it hereby is, dismissed as to James Lacey, now deceased.

FINAL ORDER

By its order of November 28, 1961, the Commission extended until further order the date on which the initial decision of the hearing examiner herein would become the decision of the Commission; and

The Commission now having concluded that said initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed October 13, 1961, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That all of the 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.
