

Complaint

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examiner shall, on the 10th day of January 1962, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

IN THE MATTER OF

MUELLER CO.

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

Docket 7514. Complaint, June 10, 1959—Decision, Jan. 12, 1962

Order requiring a Decatur, Ill., manufacturer of water and gas distribution service products designed for use in municipal and industrial gas and water plants—with factories in Illinois, California, and Tennessee and with gross sales in 1957 in excess of \$25,000,000—to cease discriminating in price among its competing customers in violation of Sec. 2(a) of the Clayton Act by its practice of giving only a 15% discount on items accounting for about 40% of all sales to its “regular” jobbers but giving 25% on such items to others classified as “limit” jobbers.

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 (U.S.C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent named herein is the Mueller Co. Respondent is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business at 512 West Cerro Gordo Street, Decatur, Ill.

PAR. 2. Respondent is engaged in the business of manufacturing, distributing and selling of water and gas distribution and service products throughout the United States. These products include a complete line of valves, fittings, tools and machines and related items and parts and accessories therefor which are specially designed and particularly suitable for use in municipal and industrial gas and water plants.

Respondent's business is substantial with gross sales in excess of \$25,000,000 for the year 1957.

PAR. 3. Respondent owns, maintains and operates manufacturing plants in the States of Illinois, California, and Tennessee from which it sells and distributes water and gas distribution and service products of like grade and quality to purchasers located throughout the various states of the United States and other places under the jurisdiction of the United States.

PAR. 4. In the course and conduct of its business respondent is now, and for many years past has been, engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, transporting its water and gas distribution and service products, or causing the same to be transported from the state or states in which such products are manufactured to purchasers located in other states of the United States and in other places under the jurisdiction of the United States in a constant current of commerce.

PAR. 5. Respondent sells approximately fifty percent of the water and gas distribution and service products manufactured by it to purchasers who are engaged in the business of reselling such products to the ultimate users thereof. For purposes of brevity these purchasers shall hereinafter be referred to as jobber purchasers.

Many of the aforesaid jobber purchasers of respondent's products compete with other jobber purchasers of respondent's products within their respective areas of trade in the resale of respondent's products to the ultimate users thereof.

PAR. 6. In the course and conduct of its business in commerce, as aforesaid, respondent is now discriminating, and for several years past has discriminated in price in the sale of its water and gas distribution and service products of like grade and quality by charging different prices to different and competing purchasers of such products.

PAR. 7. The following practice on the part of respondent is set out as an example of the discriminations alleged in paragraph 6.

Respondent classifies all its jobber purchasers into two categories. Those in the first category are known as "limit jobbers," while those in the second category are known as "regular jobbers." Respondent grants a 25 percent discount from the prices set out in its published price lists for certain specific items on sales made to "limit jobbers." On the same specific items respondent grants a 15 percent discount from its published price lists on sales made to "regular jobbers." As a result of this practice those jobbers in the "regular" category must pay 10 percent higher prices for a substantial portion of their purchases from respondent than other jobbers in the "limit" category.

In very nearly every instance each of respondent's "regular jobbers" is in competition with one or more of respondent's "limit jobbers" in the resale of respondent's products to the ultimate users thereof.

PAR. 8. The effect of the discriminations alleged herein has been and may be substantially to lessen, injure, destroy or prevent competition between respondent's jobber purchasers paying higher prices and competing jobber purchasers paying lower prices to respondent for respondent's water and gas distribution and service products.

PAR. 9. The discriminations in price as herein alleged are in violation of subsection (a) of Section 2 of the Clayton Act, as amended.

Mr. James R. Fruchterman for the Commission.

Bell, Boyd, Marshall & Lloyd, of Chicago, Ill., by *Mr. John T. Loughlin*; and *Webber, Webber & Welsh*, of Decatur, Ill., by *Mr. A. G. Webber III* for the respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

1. The respondent, Mueller Co., is charged with price discrimination in violation of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act. Hearings have been held at which evidence both in support of and in opposition to the complaint was received. Proposed findings and conclusions have been submitted by the parties, oral argument not having been requested, and the case is now before the hearing examiner for final consideration. Any proposed findings or conclusions not included herein have been rejected.

2. Respondent, an Illinois corporation, has its main office and principal plant in Decatur, Ill. It is engaged in the manufacture and sale of water and gas distribution and service products, the products being used by municipalities and private companies engaged in constructing and operating water and gas distribution systems. The products are of almost unlimited variety, ranging from small valves and fittings to large and expensive machines and appliances. Respondent is one of the largest and best known producers in the industry.

3. Respondent sells its products both direct to the ultimate users—municipalities and private companies operating gas and water works systems—and to jobbers, who resell to such users. Water products account for some 60 percent of respondent's business, gas products some 40 percent. Practically all of the gas products are sold direct to users. Sales of water products are divided about equally as between sales direct to users and sales to jobbers. The evidence in the present proceeding relates almost entirely to water products.

4. The case arises out of the fact that respondent maintains two categories of jobbers, and on certain items grants to jobbers in one category a larger discount from list prices than is granted jobbers in the other category. The two categories are "limit jobbers" and "regular jobbers". In the case of regular jobbers, most of their purchases are drop shipped by respondent to the ultimate user, that is, the municipality or privately owned utility. And limit jobbers have many of their purchases drop shipped to the ultimate user. On all drop shipments jobbers in both categories receive exactly the same discount. And on numerous items shipped to the jobbers direct the discount is the same, regardless of the category in which the jobber may fall.

5. There are, however, a number of items shipped to the jobbers direct on which the discount is 25 percent to limit jobbers, 15 percent to regular jobbers. These items for the most part consist of the smaller, most commonly used products—those which are needed most frequently by the ultimate user, often to meet an emergency.

6. The reason for the difference in discounts is that the limit jobber maintains an adequate inventory of such items and can supply them to the user immediately upon request. The regular jobber, on the other hand, maintains little or no inventory and can supply the needs of the user only by special order to respondent or to a limit jobber. The added 10 percent discount is a functional discount granted the limit jobber as compensation for the services performed by him in maintaining an adequate inventory of the items in question. The discount is not allowed on any other items, whether carried in stock or not.

7. Warehouses for the purpose of stocking the items in question were formerly maintained by respondent in several principal cities throughout the country. It was found, however, that the expense of maintaining the warehouses was too great and they were discontinued. In their stead, respondent adopted its present plan of allowing an extra 10 percent discount to jobbers who are willing to perform the warehousing function. The plan appears not to have been originated by respondent; it was already in use by others in the industry. Jobbers who perform the warehousing function are frequently referred to in the industry as "stocking jobbers", and the accompanying discount is known as a "stocking discount".

8. The increased discount of 10 percent is no greater than is necessary to reimburse respondent's limit jobbers for the function they perform. The undisputed evidence is that it costs at least 10 percent, and probably more, to maintain an inventory of goods such as are here involved and supply them to users when needed.

9. The evidence as to existence of competition between the limit jobbers and regular jobbers is not strong, but probably is sufficient. And the evidence as to competitive injury to the regular jobbers probably would be sufficient in the ordinary secondary line price discrimination case. In fact, a difference in discounts of 10 percent is so substantial that it would appear that ordinarily, in a secondary line case, no specific evidence of competitive injury would be required.

10. But this is not an ordinary case. Rather, it is a case in which purchasers receiving the larger discount perform a very definite, substantial and valuable function which otherwise would have to be performed by the seller. An the increased discount is no greater than is necessary to compensate the purchaser for the services rendered.

11. The leading Commission case on functional discounts appears to be that of Doubleday and Company, Inc., (1955) Docket No. 5897, 52 F.T.C. 169, in which the Commission, at page 209, said:

In our view, to relate functional discounts solely to the purchaser's method of resale without recognition of his buying function thwarts competition and efficiency in marketing, and inevitably leads to higher consumer prices. It is possible, for example, for a seller to shift to customers a number of distributional functions which the seller himself ordinarily performs. Such functions should, in our opinion, be recognized and reimbursed. Where a businessman performs various wholesale functions, such as providing storage, traveling salesmen and distribution of catalogues, the law should not forbid his supplier from compensating him for such services. Such a legal disqualification might compel him to render these functions free of charge. The value of the service would then be pocketed by the seller who did not earn it. Such a rule, incorrectly, we think, proclaims as a matter of law that the integrated wholesaler cannot possibly perform the wholesaling function; it forbids the matter to be put to proof.

On the other hand, the Commission should tolerate no subterfuge. Only to the extent that a buyer actually performs certain functions, assuming all the risks and costs involved, should he qualify for a compensating discount. The amount of the discount should be reasonably related to the expenses assumed by the buyer. It should not exceed the cost of that part of the function he actually performs on that part of the goods for which he performs it.

12. The facts in the present case seem clearly to bring it within the principles announced in the Doubleday case.

13. It also seems clear that there is a failure of proof as to competitive injury, either actual or potential, in view of the fact that respondent's limit jobbers receive the higher discount only on certain goods actually warehoused by them, and the further fact that the cost of such service equals or exceeds the difference in discounts. In these circumstances it is difficult to see how there can be any substantial injury to the regular jobbers.

14. No arbitrary limitation is maintained by respondent on the number of limit jobbers. On the contrary, any reputable dealer who has a satisfactory credit rating can become a limit jobber, provided he is willing to maintain a reasonably adequate inventory of the items in question. Not infrequently respondent's regular jobbers change their status to that of limit jobbers, and, conversely, limit jobbers sometimes prefer to discontinue the maintenance of an inventory and become regular jobbers. Of respondent's total sales of all products, less than 2 percent are to regular jobbers.

15. In summary, it is concluded that the higher discount granted by respondent on certain of its sales to limit jobbers is a functional discount representing no more than reasonable compensation for services and facilities actually supplied by such jobbers; that in the circumstances here present there is no substantial competitive injury, nor any reasonable probability thereof, to respondent's regular jobbers; and that therefore no violation of the statute has been established.

ORDER

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

OPINION OF THE COMMISSION

By KERN, *Commissioner*:

Respondent herein is charged with price discrimination in violation of Section 2(a) of the Clayton Act, as amended. The hearing examiner in his initial decision held that the charge had not been sustained by the evidence and ordered that the complaint be dismissed. The matter is now before the Commission on the appeal of counsel supporting the complaint from this decision.

Respondent is engaged in the manufacture and sale of products used by privately owned companies and municipalities in constructing and operating water and gas distribution systems. Virtually all of the gas distribution products are sold by respondent directly to the ultimate users. The waterworks products, accounting for about 60% of respondent's business, are sold by respondent to the ultimate users and to jobbers who resell to such users.

The jobbers to whom respondent sells its products are classified by respondent as "limit" and "regular" jobbers. On all purchases made for drop shipment to ultimate users, jobbers in both categories are granted the same discount from prices in respondent's published price lists. The same discount also applies to many items shipped direct to the jobber, regardless of its classification. However, there are a num-

ber of items, accounting for about 40% of all sales of waterworks products, on which the discount is 25% when shipped to the "limit" jobber and 15% when shipped to the "regular" jobber. It is this difference in discounts which has given rise to the present charge of illegal price discrimination.

The first point raised on the appeal of counsel supporting the complaint concerns the failure of the hearing examiner to include in the initial decision a finding that respondent had discriminated in price between different purchasers in sales made in interstate commerce. We agree that the initial decision is deficient in this respect. The record fully supports a finding that "limit" and "regular" jobbers located in Kansas and Missouri were charged different prices for goods of like grade and quality sold to them from respondent's place of business in Decatur, Illinois. These price differences are price discriminations within the meaning of Section 2(a). *Federal Trade Commission v. Anheuser-Busch, Inc.*, 363 U.S. 536 (1960).

Counsel supporting the complaint has also taken exception to the hearing examiner's conclusion that no injury would result from the price discriminations involved herein and contends that certain findings on which this conclusion is based are neither accurate nor pertinent to the issue of whether respondent's price differential may have the requisite effect on competition. He further contends that the hearing examiner erred in his application of certain "principles" enunciated in the Commission's opinion in the matter of *Doubleday & Company, Inc.*, 52 F.T.C. 169 (1955), to the facts of this case.

The hearing examiner found, in this connection, that the "limit" jobber maintains an adequate inventory of the items on which it receives a 25% discount, whereas the "regular" jobber maintains little or no inventory, making almost all of its purchases for drop shipment. He further found that the added 10% discount received by the "limit" jobber is a functional discount granted as compensation for the services performed by this jobber in maintaining an adequate inventory of certain items, a function which would otherwise be performed by respondent, and that such discount is no greater than necessary to reimburse the jobber for performing this function. He concluded that the evidence as to competitive injury to the "regular" jobber "probably would be sufficient in the ordinary secondary line price discrimination case" and that "a difference in discounts of 10 percent is so substantial that it would appear that ordinarily, in a secondary line case, no specific evidence of competitive injury would be required." He held, however, that this is not an ordinary case in that the higher discount received by the "limit" jobber is a functional discount and that a determination of the legality thereof would be governed by the Commission's decision in *Doubleday, supra*. Relying

on this decision, the hearing examiner further held that since the higher discount is granted only on the purchase of certain goods actually warehoused by the "limit" jobber and since the cost of such service equals or exceeds the difference in discounts, there is no reasonable probability of substantial injury to respondent's "regular" jobbers.

The language in *Doubleday*, which the hearing examiner considered to be controlling, is as follows:

In our view, to relate functional discounts solely to the purchaser's method of resale without recognition of his buying function thwarts competition and efficiency in marketing, and inevitably leads to higher consumer prices. It is possible, for example, for a seller to shift to customers a number of distributional functions which the seller himself ordinarily performs. Such functions should, in our opinion, be recognized and reimbursed. Where a businessman performs various wholesale functions, such as providing storage, traveling salesmen and distribution of catalogues, the law should not forbid his supplier from compensating him for such services. Such a legal disqualification might compel him to render these functions free of charge. The value of the service would then be pocketed by the seller who did not earn it. Such a rule, incorrectly, we think, proclaims as a matter of law that the integrated wholesaler cannot possibly perform the wholesaling function; it forbids the matter to be put to proof.

On the other hand, the Commission should tolerate no subterfuge. Only to the extent that a buyer actually performs certain functions, assuming all the risks and costs involved, should he qualify for a compensating discount. The amount of the discount should be reasonably related to the expenses assumed by the buyer. It should not exceed the cost of that part of the function he actually performs on that part of the goods for which he performs it.

Although the initial decision is not quite clear on this point, it appears that the hearing examiner interpreted the above quoted language as either holding that a price differential granted as compensation for services performed by a purchaser for the seller will not result in injury to competition or as holding that a price differential granted for this purpose is permissible regardless of injury to competition. There is nothing in the amended Clayton Act or in the applicable case law, however, to support either of these propositions. The latter interpretation would add a defense to a *prima facie* violation of Section 2(a) which is not included in either Section 2(a) or Section 2(b). The other interpretation, that injury will not result from a functional discount "reasonably related to the expenses assumed by the buyer", ignores the fact that the favored buyer can derive substantial benefit to his own business in performing the distributional function paid for by the seller. Consequently, we disagree with both interpretations and, insofar as the language in *Doubleday* stands for either of them, it is rejected. We might add in this connection that the views expressed in *Doubleday* with respect to functional pricing

were, in effect, overruled by the Commission in a later decision. In the matter of *General Foods Corporation*, 52 F.T.C. 798 (1956), the Commission stated:

While the Robinson-Patman Act does not mention functional pricing, it was written nevertheless against the background of the distribution system then in effect. As pointed out by respondent, a seller is not forbidden to sell at different prices to buyers in different functional classes and orders have been issued permitting lower prices to one functional class as against another, provided that injury to commerce as contemplated in the law does not result. * * *

* * * The law permits the seller to pay for services or facilities furnished in the resale of goods. If he elects to do so, however, the payments must be in accordance with the terms and conditions laid down in Section 2(d). To hold that the rendering of special services ipso facto gives him a separate functional classification would be to read Section 2(d) out of the Act.

We are also of the opinion that the hearing examiner erred in holding that there was a failure of proof as to competitive injury. It appears that he based this conclusion on "the fact that respondent's limit jobbers receive the higher discount only on certain goods actually warehoused by them, and the further fact that the cost of such service equals or exceeds the difference in discounts." We do not agree that these "facts" are supported by the record or that, even if true, they would support the hearing examiner's conclusion.

The record discloses with respect to the first finding that in some instances "limit" jobbers have received the 25% discount on goods which they purchased from respondent after having first received orders for such goods from their own customers. This merchandise, although received by the jobber at its warehouse, has been shipped directly to the jobber's customer without having been "actually warehoused" or stocked. As to the second "fact" found by the hearing examiner, we think the evidence adduced by respondent concerning the cost of warehousing its products is inconclusive. Some of the testimony on this point is contradictory. Moreover, all of the witnesses called by respondent testified as to the over-all cost of doing business on all products which they warehouse, not as to the cost of warehousing respondent's products. And there is testimony that warehousing costs vary from item to item.

As stated above, however, even if these findings were correct they would not support the conclusion that respondent's price discriminations do not have the proscribed effect on competition. These findings mean only that respondent has subsidized in whole or in part the "limit" jobbers' warehousing of certain products. This much, at least, it has done. By doing so, respondent has given this class of custom-

ers a substantial competitive advantage in the resale of such products. In this connection, the items on which the higher discount is given are, as found by the hearing examiner, the smaller, most commonly used products—those which are needed most frequently by the ultimate user, often to meet an emergency. That a jobber who has products of this type on hand is in a more favorable position than the jobber who does not is so obvious as to require little comment. Respondent, however, points up this advantage in its brief. In an attempt to distinguish the facts of this case from those of *Morton Salt*,¹ it states that in the sale of waterworks products “service is as important as the product”. It then comments as follows: “In *Morton Salt* both favored and unfavored classes of purchasers carried the salt in stock. Obviously, when a housewife wants a package of salt she is going to buy it from stock or not at all; and if a merchant told a housewife that he was going to have the salt drop shipped from a factory in Chicago, he would be considered *non compos mentis*.” We think that this reasoning applies with at least equal force to a situation where service is important and where the product is frequently needed to meet an emergency.

The hearing examiner has also made certain findings concerning the availability of the higher discount granted by respondent which suggest that each of respondent’s customers has the choice of being a “limit” jobber and receive this discount or of being a “regular” jobber and receive the lower discount. The record discloses, however, that this is not the case. Respondent, and respondent alone, decides whether “limit” jobber status will be conferred on a customer. In making this decision, respondent takes into consideration such factors as the customer’s credit rating, its location, and its ability to properly represent respondent and to maintain an adequate inventory of respondent’s products. It is only when the customer is acceptable to respondent that respondent will grant it “limit” jobber status. And the record shows that some of respondent’s “regular” jobbers were not acceptable. As illustrative of this point, the following letter was received by one of respondent’s “regular” jobbers who had asked respondent to give it the “limit” jobber discount:

In your letter dated March 6 you refer to the 15% discount mentioning that you feel you are entitled to 25% because you plan to stock several items which should qualify you as a stocking distributor.

We cannot see our way clear to change your 15% discount, for we do not have a 20% discount. We do have a greater one, however it applies only to those large stocking jobbers who place hundreds of orders with us throughout the year, totaling thousands of dollars.

¹ *Federal Trade Commission v. Morton Salt Co.*, 334 U.S. 37 (1948).

Findings and Order

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These old established jobbers, who have been carrying MUELLER goods in large quantities for a number of years, are entitled to this protection, and until there might be some major change in your State and surrounding states, it will be necessary to continue the same differential that we have been allowing you.

For the foregoing reasons, it is our opinion that, in many instances, the 25% "limit" jobber discount was not available to jobbers classified by respondent as "regular" jobbers.

In the brief filed in answer to the present appeal, respondent argues in effect that its practice of compensating customers for furnishing certain services and facilities complies with the requirements of Section 2(d) of the amended Clayton Act and consequently should not be held to be in violation of Section 2(a). We are not impressed with this contention for respondent's practice would not have been in compliance with Section 2(d) if this section were applicable. The added 10% discount granted "limit" jobbers, if regarded as an allowance for services furnished by said jobbers in connection with the processing, handling, sale or offering for sale of certain products, was not made available on proportionally equal terms to all other customers competing in the distribution of such products. As stated above, the discount for performing these services was not made available to the "regular" jobbers, nor was a discount or "allowance" for performing alternative services offered or made available to them.

From our consideration of the entire record, it is concluded that respondent has discriminated in price between different purchasers in the sale of certain of its products in commerce and that the effect of such discriminations may be substantially to injure, destroy or prevent competition with purchasers receiving the benefit of such discriminations. The appeal of counsel supporting the complaint is granted. The initial decision of the hearing examiner is vacated and set aside, and we are issuing our own findings, conclusions and order to cease and desist in lieu thereof.

FINDINGS AS TO THE FACTS, CONCLUSIONS AND ORDER

Pursuant to the provisions of an Act of Congress, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U.S.C., Sec. 13), the Federal Trade Commission on June 10, 1959, issued and subsequently served upon the respondent named in the caption hereof its complaint in this proceeding, charging said respondent with having violated subsection (a) of Section 2 of

said Clayton Act, as amended. The respondent's answer to the complaint was filed on August 24, 1959. Hearings were thereafter held before a duly designated hearing examiner of the Commission, and testimony and other evidence in support of and in opposition to the allegations of the complaint were received into the record. In an initial decision filed March 10, 1961, the hearing examiner found that the charge had not been sustained by the evidence and ordered that the complaint be dismissed.

The Commission having considered the appeal of counsel supporting the complaint from the initial decision and the entire record in this proceeding and having determined that the appeal should be granted and that the initial decision should be vacated and set aside, now makes its findings as to the facts, conclusions drawn therefrom and order to cease and desist which, together with the accompanying opinion, shall be in lieu of the findings, conclusions and order contained in the initial decision.

FINDINGS AS TO THE FACTS

1. Respondent, Mueller Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 512 West Cerro Gordo Street, Decatur, Ill.

2. Respondent is engaged in the business of manufacturing, distributing and selling water and gas distribution service products throughout the United States. These products include a complete line of valves, fittings, tools and machines and related items and parts and accessories therefor which are specially designed and particularly suitable for use in municipal and industrial gas and water plants. Respondent's business is substantial, with gross sales in excess of \$25,000,000 for the year 1957.

3. Respondent owns, maintains and operates manufacturing plants in the States of Illinois, California, and Tennessee, from which it sells and distributes gas distribution and service products of like grade and quality to purchasers located throughout the various States of the United States and other places under the jurisdiction of the United States.

4. In the course and conduct of its business, respondent has been and now is engaged in commerce, as "commerce" is defined in the Clayton Act, as amended.

5. Respondent sells a substantial portion of its products to jobbers who resell such products to privately owned companies and municipi-

palities for use in constructing and operating water and gas distribution systems. These jobbers are classified by respondent into two categories, one category being known as "limit" jobbers and the other as "regular" jobbers. On all purchases made for drop shipment to ultimate users, jobbers in both categories are granted the same discount from prices in respondent's published price lists. The same discount also applies to many items shipped direct to the jobber, regardless of its classification. However, there are a number of items, accounting for about 40% of all sales of waterworks products, on which the discount is 25% when shipped to "limit" jobbers and 15% when shipped to "regular" jobbers. These items are for the most part products most frequently needed by the ultimate users, often to meet emergencies.

6. Products sold by respondent to "limit" jobbers at 25% discount are ordinarily stocked by such jobbers and respondent claims that the price differential between products purchased for shipment to the jobber and products drop shipped to the ultimate user is to compensate the jobber for performing this stocking or warehouse function. In some instances, however, "limit" jobbers have received the 25% discount on the purchase of products which were not actually stocked by them.

7. The aforesaid products have been sold by respondent at 25% discount from list prices to "limit" jobbers who were in fact competing with "regular" jobbers who purchased said products from said respondent at 15% discount from the same list prices. The effect of these price discriminations may be substantially to injure, destroy or prevent competition with jobbers receiving the higher discount.

8. Respondent claims that it granted the higher discounts to "limit" jobbers for the purpose of meeting in good faith equally low prices of competitors and further claims that its lower prices to "limit" jobbers were cost justified. It has failed to establish either of these defenses on the record, however.

9. On the basis of the record herein, the Commission finds that respondent has discriminated in price between different purchasers in the sale of certain of its products in commerce and that the effect of such discrimination may be substantially to injure, destroy or prevent competition with purchasers receiving the benefit of such discriminations.

CONCLUSIONS

The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent. The aforesaid acts

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and practices of respondent, as herein found, constituted violations of subsection (a) of Section 2 of the Clayton Act, as amended.

ORDER

It is ordered, That respondent, Mueller Co., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the sale of its water and gas distribution and service products in commerce, as "commerce" is defined in the Clayton Act, as amended, 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 purchaser at net prices higher than the net prices charged any other purchaser competing in fact with such unfavored purchaser in the resale and distribution of such products.

It is further ordered, That respondent, Mueller Co., shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.