

Complaint

IN THE MATTER OF

MINUTE MAID CORPORATION ET AL.

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

Docket 7517. Complaint, June 11, 1959—Decision, Mar. 7, 1962

Consent order requiring The Coca-Cola Company, legal successor through merger to Minute Maid Corp., processors and packers of citrus fruit, to cease violating Sec. 2(c) of the Clayton Act by paying a brokerage or commission to brokers and other buyers on purchases for their own accounts for resale, usually at the rate of 10 cents per 1% bushel box and 5 cents per half box of fresh fruit and 3% of the net selling price of frozen citrus concentrates and frozen foods.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have been and are now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Minute Maid Corporation 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 1200 West Colonial Drive, Orlando, Fla.

Respondent Minute Maid Groves Corp. 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 also located at 1200 West Colonial Drive, Orlando, Fla. Respondent Minute Maid Groves Corporation is a wholly owned subsidiary of respondent Minute Maid Corporation and both respondents operate from the same principal office.

Minute Maid Groves Corporation is presently considered and operates as the Fresh Fruit Division of the Parent Company, Minute Maid Corporation; and for the past few years has been doing business, for all intents and purposes, in the same manner as, and in many instances in the name of, the parent corporation. No particular effort is made by the two corporations in the course of doing business to distinguish the subsidiary from the parent corporation. Respondent Minute Maid Corporation exercises authority and control over respondent Minute Maid Groves Corporation, including its sales and distribution policies. Therefore both respondents will hereinafter be referred to jointly in this complaint as seller respondents or as respondents.

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PAR. 2. Respondents, and each of them, are now, and for the past several years have been, engaged in the business of growing, packing, selling and distributing fresh citrus fruit, such as oranges, tangerines and grapefruit, as well as frozen citrus fruit concentrates and frozen foods, all of which are hereinafter sometimes referred to as food products. They sell and distribute these food products both through brokers and direct to customers located throughout the United States and in Canada.

Respondents operate refrigerated warehouses and processing plants as well as fresh fruit packing plants in the various cities or other places in the State of Florida. They also operate a plant at Lewiston, Idaho, for processing frozen food products. Respondents also maintain refrigerated warehouses throughout the country from which local deliveries are made to distributors. Respondents are substantial factors in the sale and distribution of fresh citrus fruits, frozen citrus concentrates and frozen foods, with gross sales well in excess of \$100,000,000 annually.

PAR. 3. Respondents sell and distribute their food products through brokers, commission merchants, on consignment, and to some customers direct. In the sale of fresh fruit through brokers, the brokers are paid for their service at the rate of 10 cents per box for a full $1\frac{3}{8}$ bushel Bruce box and 5 cents for a $\frac{4}{8}$ bushel Bruce box, or half box. In the sale of frozen citrus concentrates and frozen foods through brokers, the brokers are paid for their services usually at the rate of 3% of the net selling price of the particular product.

PAR. 4. In the course and conduct of their business over the past several years, respondents, and each of them, have sold and distributed and are now selling and distributing their food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, to buyers for resale located in the several states of the United States other than the State of Florida in which respondents are located. Respondents, and each of them, transport or cause such food products, when sold, to be transported from their place of business warehouses, or packing plants in the State of Florida, or elsewhere, to such buyers located in various other states of the United States. There has been at all times mentioned herein a continuous course of trade in commerce in said food products across state lines between said respondents and the respective buyers of such food products.

PAR. 5. In the course and conduct of their business as aforesaid, respondents, and each of them, have made substantial sales to some, but by no means all, of their brokers, as well as other buyers, who were and are purchasing for their own account for resale, and on a large

number of these sales respondents paid, granted or allowed, and are now paying, granting or allowing to these brokers and other buyers on said purchases, a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

PAR. 6. The acts and practices of respondents as above alleged and described are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Sec. 13).

Mr. *Cecil G. Miles* for the Commission.

Gurney, Gurney & Handley, by Mr. *J. Thomas Gurney*, of Orlando, Fla., for the respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on June 11, 1959, issued its complaint herein, charging the above-named respondents with having violated the provisions of § 2(c) of the Clayton Act, as amended (U.S.C., Title 15, § 13), in certain particulars, and respondents were duly served with process.

On January 22, 1962, there was submitted to the undersigned hearing examiner of the Commission, for his consideration and approval, an "Agreement Containing Consent Order To Cease And Desist", which had been entered into by and between respondents and counsel for both parties, under date of January 22, 1962, subject to the approval of the Bureau of Restraint of Trade of the Commission, which had duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with § 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, dated March, 1960, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondent Minute Maid Corporation, at the time complaint was issued by the Commission on June 11, 1959, was a corporation 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 1200 Colonial Drive, in the city of Orlando, State of Florida. On December 30, 1960, respondent Minute Maid Corporation merged with The Coca-Cola Company, a Delaware corporation with its principal office located at 515 Madison Avenue, New York, N.Y., and since that time Minute Maid Corporation has ceased to be a corporation and has been operating as Minute Maid Company, a division of The Coca-Cola Company. However, its place of business for the sale and distribution of fresh citrus fruit remained at 1200 West Colonial Drive,

Orlando, Fla. The Coca-Cola Company, as the legal successor of Minute Maid Corporation, herewith and hereby assumes all of the obligations and duties of Minute Maid Corporation, including compliance with the order to cease and desist contained herein.

2. Respondent Minute Maid Groves Corporation is a corporation 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 1200 West Colonial Drive, in the city of Orlando, State of Florida. Since December 30, 1960, respondent Minute Maid Groves Corporation has been operating as a wholly-owned corporate subsidiary of The Coca-Cola Company, with address and principal office remaining at 1200 West Colonial Drive, Orlando, Fla.

3. The Coca-Cola Company, as legal successor of Minute Maid Corporation, hereby waives amendment of the complaint and service of process and agrees that the service of the complaint on Minute Maid Corporation shall have the same legal force and effect as though it were served upon The Coca-Cola Company.

4. Respondents admit all the jurisdictional facts alleged in the complaint and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

5. This agreement disposes of all of this proceeding as to all parties.

6. Respondents waive:

(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 of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement.

7. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint, this agreement, and the attached stipulation which is made a part of this agreement by reference the same as if quoted herein verbatim.

8. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

9. This agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

10. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It 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.

11. For the purpose of this proceeding, it is agreed that the allegation of paragraph 3 of the complaint relating to the sale of frozen citrus concentrates and frozen foods cannot be supported by substantial evidence and is not included in or covered by the order contained herein.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist", the hearing examiner approves and accepts this agreement, and finds that the Commission has jurisdiction of the subject matter of this proceeding and of the respondents herein; that the complaint states a legal cause for complaint under § 2(c) of the Clayton Act, as amended (U.S.C., Title 15, § 13), against the respondents, both generally and in each of the particulars alleged therein, except the allegation contained in paragraph 3 of the complaint; that this proceeding is in the interest of the public; that the order proposed in said agreement is appropriate for the just disposition of all the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

It is ordered, That respondents The Coca-Cola Company (successor through merger to Minute Maid Corporation, and operating through Minute Maid Company, a division of The Coca-Cola Company) and Minute Maid Groves Corporation, a corporation, and respondents' officers, agents, representatives and employees, directly or through any corporate or other device in connection with the sale of citrus fruit or fruit products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying, granting or allowing, directly or indirectly, to any buyer, or to anyone acting for or in behalf of, or who is subject to the direct or indirect control of such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any sale of citrus fruit or fruit products to such buyer for his own account.

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 7th day of March 1962, become the decision of the Commission; and, accordingly:

It is ordered, That respondents The Coca-Cola Company, a corporation, successor to respondent Minute Maid Corporation, and Minute

