

INLAND RUBBER CORPORATION

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

Docket 8052. Amended Complaint, Sept. 11, 1961—Decision, Feb. 25, 1963

Consent order requiring manufacturers in Mansfield, Ohio, to cease discriminating in price in violation of Sec. 2(a) of the Clayton Act in the sale of its automobile tires and tubes and repair materials by (1) granting rebates in price based on the annual volume of sales; (2) allowing various combinations of quantities of products to be made which resulted in differing prices;

and (3) charging some customers classified as "Warehouse Distributors" and including "group buyers", prices as much as 18% lower than it charged competing purchasers.

AMENDED COMPLAINT

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

PARAGRAPH 1. Respondent Inland Rubber Corporation, sometimes hereinafter referred to as respondent Inland, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 515 Newman Street, Mansfield, Ohio.

PAR. 2. Respondent Inland, for many years has been, and is now, engaged in the production, sale and nationwide distribution of automobile tire tubes and tire and tube repair materials. Its sales of such products have been substantial. It also sells and distributes on a nationwide basis valve products manufactured by others.

Respondent's customers are variously classified by it as "wholesalers" or "jobbers" and, since about May 1958, the classification of "warehouse distributors" has been added.

PAR. 3. Respondent Inland, in the course and conduct of its said business, has been, and is now, engaged in commerce, as "commerce" is defined in the Clayton Act, in that it has sold and distributed its products to purchasers thereof in States other than the State of origin of shipment and, either directly or indirectly, has caused such products, when sold, to be shipped and transported from the State of origin to purchasers located in other States, for use, consumption or resale within the United States. There is now and has been a constant course and flow of trade and commerce in such products between said respondent in the State of origin and purchasers thereof located in other States.

PAR. 4. In the course and conduct of its business in commerce as aforesaid, respondent Inland has sold, and now sells, its products to the said purchasers thereof, many of whom have been and are in competition with each other and with customers of competitors of respondent in the purchase and resale and distribution of such products.

PAR. 5. Respondent, either directly or indirectly, has been since at least 1956, and is now, discriminating in price between different purchasers of its tire and tube repair materials and valve products by

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selling such products to some purchasers at prices substantially higher than the prices at which respondent sells such products of like grade and quality to other purchasers, some of whom are engaged in competition with the less favored purchasers in the resale of such products.

Respondent, in connection with its sale of certain type automobile tire tubes of like grade and quality, has also discriminated in price between so-called group-buying purchasers and other purchasers as hereinafter more fully set forth and described.

In the sale of its tire and tube repair materials, prior to May 1958, respondent has, for example, granted different rebates in price based on the cumulative annual dollar volume of purchases. The following is a schedule of percentages of rebates granted to different purchasers by respondent depending on the annual dollar volume of its repair materials.

<i>Volume</i>	<i>Percentage</i>
\$1,000 to \$2,499-----	2
\$2,500 to \$4,999-----	3
\$5,000 to \$7,499-----	4
\$7,500 to \$9,999-----	5
\$10,000 to \$12,499-----	6
\$12,500 to \$14,999-----	8
\$15,000 and over-----	10

As a result of using the aforesaid volume discount schedule, said respondent has sold its tire and tube repair materials to some jobbers or wholesalers at prices higher than those charged to other competing jobbers or wholesalers for products of like grade and quality.

In addition, said respondent in computing the annual volume of purchases of its various individual customers, has allowed certain purchasers to combine their purchases so as to qualify for higher rebates in accordance with the above volume rebate schedule. Respondent has thus charged higher prices for such products of like grade and quality sold to other competing purchasers who have not been permitted to combine their individual purchases.

Also, prior to May 1958, respondent, in the sale of valve products, has allowed certain purchasers to combine their purchases of such valve products with their purchases of tire and tube repair materials so as to receive a larger rebate on repair materials than other competing purchasers of such products of like grade and quality.

Such favored purchasers who have been permitted to combine their quantities of purchases of such products, are commonly referred to collectively as "group buyers." They normally consist of jobbers or wholesalers of automotive parts and accessories who buy and resell respondent's repair materials and valve products, and have combined in these buying organizations for the purpose of qualifying for the

volume discounts or rebates which they would not otherwise receive in their individual capacities.

Since May 1958 respondent has discontinued its volume rebate schedule and has established a classification of customers called "warehouse distributors". Such customers consist of jobbers or wholesalers of automotive parts and accessories, who are to maintain a minimum inventory at all times of respondent's tire and tube repair materials and valve products in the amount of \$1,000. Said respondent has, since May 1958, sold its repair materials to those of its purchasers classed as warehouse distributors at net prices which were 18% lower than those charged to other jobber or wholesaler purchasers competing in the resale of such products of like grade and quality. During the same time respondent has sold valve products to those purchasers classed as warehouse distributors at net prices which were 5% below the wholesaler list prices charged to other jobber or wholesaler purchasers competing in the resale of such products of like grade and quality.

In qualifying a jobber or wholesaler as a warehouse distributor respondent has permitted those purchasers who are members of buying groups to combine their inventories of such products so as to reach the minimum of \$1,000 and thus receive the 18% discount on repair materials and the 5% discount on valve products, granted only to its warehouse distributor customers. Respondent has thus discriminated in price against those independent jobber or wholesaler purchasers who are not members of buying groups but who compete with purchasers classified as warehouse distributors and receiving the lower prices because of their buying-group affiliation.

In the sale of automobile tire tubes of a certain type respondent has, since May 1958, granted an extra discount of approximately 5% off the wholesaler list price to those jobber or wholesaler purchasers who order in quantities of 5000 tubes or more. In qualifying for such discount respondent has allowed certain jobber or wholesaler purchasers to combine their individual orders of such tubes as a group and thus respondent has allowed a 5% discount to the members of group buying organizations, resulting in preferential prices which are not granted or allowed to other jobber or wholesaler purchasers, some of whom are in competition with the preferred purchasers, members of the buying groups, in the resale of such products.

PAR. 6. The effect of the discrimination in price, alleged in Paragraph 5 herein, may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which the purchasers receiving the preferential prices are engaged, or to prevent, injure

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or destroy competition between and among said purchasers of such products from respondent.

PAR. 7. The discriminations in price, as hereinbefore alleged, are in violation of the provisions of Section 2(a) of the Clayton Act, as amended.

DECISION AND ORDER

This matter having come on to be heard by the Commission upon a record consisting of the Commission's amended complaint charging the respondent named in the caption hereof with violation of subsection (a) of Section 2 of the Clayton Act, as amended, and an agreement by and between the respondent and counsel supporting the complaint, which agreement contains an order to cease and desist, an admission by the respondent of all the jurisdictional facts alleged in the amended complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in the amended complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement and order contained therein and being of the opinion that the agreement provides an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Inland Rubber Corporation is a corporation existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 515 Newman Street, in the city of Mansfield, State of Ohio.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent, Inland Rubber Corporation, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale and distribution of tire and tube repair materials and valve products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from discriminating in price by selling such products of like grade and quality to any purchaser at net prices higher than those granted to any other purchaser, who in fact competes with the purchaser paying the higher price in the resale and distribution of such products;

It is further ordered, That respondent, Inland Rubber Corporation, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale and distribution of automobile tire tubes in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from discriminating in price by selling such products of like grade and quality to any purchaser at net prices higher than those granted to other competing purchasers, who are permitted to combine their purchases with those of other purchasers and are thereby granted lower prices.

For the purposes 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 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 this order.
