

Pursuant to Section 4.19 of the Commission's Rules of Practice effective June 1, 1962, the initial decision of the hearing examiner shall, on the 13th day of April 1963, become the decision of the Commission.

IN THE MATTER OF

THE B. F. GOODRICH COMPANY AND TEXACO, INC. (FORMERLY THE TEXAS COMPANY)

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT

Docket 6485. Complaint, Jan. 11, 1956—Decision, Apr. 15, 1963

Order requiring (1) Goodrich, one of the four leading United States manufacturers of rubber products, including tires and inner tubes, and engaged also in the purchase and resale of batteries, automotive parts and accessories (TBA products), with total net sales in 1954 exceeding one-half billion dollars, and (2) Texas, a large producer of petroleum products, with net sales of more than one and one-half billion dollars in 1954, selling its petroleum products to more than 42,000 service stations, a substantial number of which sold TBA products—

To cease entering into such restrictive contracts as those under which Texas agreed to promote the sale of Goodrich's TBA products to service stations and distributors selling Texas petroleum products and Goodrich paid Texas

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Complaint

- an "override" commission ranging from 5% to 10% on such sales in return for Texas' aid in promoting them;
- Requiring Texas to cease accepting anything of value for promoting such TBA sales, using its relationship with its outlets to induce them, intimidating or coercing its dealers to comply, and preventing them from dealing in TBA products of their own independent choice; and
- Requiring Goodrich to cease paying anything of value to Texas or any other marketing oil company for promoting the sale of TBA products to Texas' dealers or reporting to Texas concerning such sales.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The B. F. Goodrich Company, and The Texas Company, hereinafter referred to as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Sec. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent, The B. F. Goodrich Company, hereinafter sometimes referred to as "Goodrich", is a corporation organized, existing and doing business under the laws of the State of New York, with its principal office and place of business located at 500 Main Street, Akron, Ohio.

Respondent, The Texas Company, sometimes hereinafter referred to as "Texas", is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and place of business located at 135 East 42d Street, New York 17, New York.

PAR. 2. Goodrich, one of the four leading manufacturers of rubber products in the United States, is engaged in the manufacture and sale of a great variety of rubber and associated products, including tires and inner tubes. It is also engaged in the purchase, resale and distribution of batteries, automotive parts and accessories and other items referred to as Car and Home Merchandise. Goodrich sells its various products directly to the consuming public through more than 500 company owned and operated retail outlets, and to other retailers and wholesalers having places of business located in the various States of the United States. Its total net sales in 1954 were more than one-half billion dollars.

Certain of Goodrich's said products; namely, tires, inner tubes, batteries, automotive parts and accessories, and certain Car and Home Merchandise items, are known in the trade as "TBA" products (an

abbreviation for tires, batteries and accessories) and will hereinafter be so referred to in this complaint.

PAR. 3. Texas is a large producer and distributor of petroleum products. Directly, or through its wholly owned or controlled subsidiaries, Texas is engaged in substantially all branches of the petroleum industry. It produces crude oil from its wells, cracks and refines gasoline, and refines and produces lubricants and a wide range of other petroleum products. Sales of said products are made to many types of customers, including petroleum wholesalers (hereinafter referred to as "distributors") and service stations. In 1954 its net sales totaled more than one and one-half billion dollars. Texas also acts as an agent in promoting the sale of the TBA products of certain companies, including those of respondent Goodrich, in the manner hereinafter described.

PAR. 4. In the course and conduct of their said businesses respondents are now and for many years have been engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that they ship said products, including said TBA products, or cause them to be shipped from the States in which said products are manufactured or warehoused to purchasers thereof located in other States of the United States and the District of Columbia.

PAR. 5. In the course and conduct of their said business of selling, and promoting the sale of, TBA products in commerce, respondents are now and for many years have been engaged in competition with other corporations, partnerships, individuals and firms.

PAR. 6. Goodrich sells said TBA products directly and through wholesalers to many classes of customers, including service stations who purchase for resale to consumers for replacement use in their automobiles. Service stations, by the nature of their business, are particularly well adapted to be outlets for the sale of TBA products to the motorist consumer. They constitute a large and increasingly important market for TBA products.

Texas sells its petroleum products, directly and through distributors, to more than 42,000 service stations. In addition to petroleum products, a substantial number of these stations sell TBA products.

PAR. 7. In connection with Goodrich's sale of TBA products in commerce, it has entered into a contract with Texas under which Texas agrees to promote the sale of Goodrich's TBA products to the service stations and distributors selling Texas' petroleum products. Texas has also entered into a substantially similar agreement with the Firestone Tire & Rubber Company (hereinafter referred to as Firestone) as to the stations and distributors selling its petroleum products.

Under said contract Goodrich pays Texas an "override" commission, ranging from 5% to 10% on the net sales of TBA products to service stations and distributors selling Texas' petroleum products in return for the influence and aid given by Texas in promoting said sales. Texas has a large number of service stations and distributors affiliated with it which sell only its petroleum products and, pursuant to its agreements with Goodrich and Firestone, in various ways, urges, recommends and persuades the operators of these outlets to purchase the TBA products of Goodrich or Firestone. Said stations and distributors at no time authorized or requested Texas to find for them, or commit them to, a source of supply for TBA products. Said stations and distributors do not receive any part of the override commission.

Said service stations and distributors are operated ostensibly as independently owned business enterprises. However, their relationship with Texas is such that they are subject to its control. Such control is inherent in the power Texas has by virtue of the various types of contracts of employment, leases, purchase contracts, credit card contracts, franchises and other agreements between it and said service stations and distributors with respect to petroleum products and the occupancy, operation, use and tenure of the stations, other premises, facilities and equipment. Said agreements are for short terms and may be terminated or cancelled by Texas without reason at the end of the term or prior thereto for nonperformance of certain provisions. Some of said provisions are so broad and general as to be susceptible of arbitrary interpretation and thus afford a basis for termination of the agreement by Texas.

Thus, the economic welfare of said service stations and distributors is largely dependent upon Texas. If Texas chooses, for whatever reason or no reason, to terminate said franchise or other agreements the operator of the service station or distributor either loses his business entirely or must change to a different brand of petroleum products or change location or both depending upon the type of lease arrangement involved. Such termination would result in great financial loss and irreparable injury to the operator, such as loss of his business, customer goodwill, sales, profits and cost of relocation.

By virtue of these circumstances, Texas can greatly influence and control the purchasing and marketing activities of said service stations and distributors. Such influence and control has been and is being exercised by Texas over its affiliated service stations and distributors by recommending, urging, persuading and causing them to purchase a substantial quantity of TBA products from Goodrich and Firestone, the sellers designated by it.

PAR. 8. By virtue of said override commission agreement which

Texas has entered into with Goodrich, the latter has sold substantial quantities of TBA products in commerce to said service stations and distributors. Goodrich has been increasingly successful in selling TBA products to said service station and distributor market controlled by Texas. For example, Goodrich made such sales, under said agreement, amounting to \$8,868,751 in 1951 and approximately \$13,000,000 in 1952 on which it paid Texas commissions of \$700,000 and \$1,100,000, respectively, for those years.

Also, under the agreement between Texas and Firestone, as described hereinbefore, the latter has sold substantial quantities of TBA products to said service stations and distributors. Firestone made such sales amounting to \$26,973,539 in its fiscal year 1952 and \$31,248,557 in its fiscal year 1953, on which it paid Texas commissions of \$2,286,632 and \$2,723,890, respectively, for those years.

PAR. 9. In addition, Goodrich has entered into the same or a substantially similar override agreement with five other oil companies. Said oil companies exercise control over the service stations and distributors which purchase their petroleum products in the same manner and for the same reasons as hereinabove alleged as to Texas. By virtue of said agreements, Goodrich has been and is increasingly successful in selling TBA products to the service station and distributor market controlled by oil companies. For example, under such agreements Goodrich's sales increased from \$5,500,000 in 1946 to more than \$16,500,000 in 1952.

PAR. 10. Many competitors of Goodrich and Firestone are unable to sell their TBA products to a substantial number of said distributors and service stations because of said override agreements. Many of these competitors do not pay override commissions to any oil company.

PAR. 11. Among the effects of the adoption and use by respondents of said override commission agreements, and each of them, under the circumstances and in the manner hereinabove alleged are that they have:

1. Foreclosed a large and substantial amount of business to manufacturers, distributors, wholesalers and other vendors who compete with Goodrich and Firestone in the sale of TBA products.

2. Injured, lessened, prevented and destroyed competition between Goodrich and Firestone and between each of them and other manufacturers, distributors, wholesalers and other vendors of TBA products in the sale of said products.

3. Increased substantially the amount of TBA products business done by Goodrich and Firestone.

4. Deprived a substantial number of petroleum distributors and service station operators of their right to act as independent business-

men by denying them freedom of choice as to the TBA products which they may purchase and stock for resale.

5. Deprived the consuming public of equal access to the TBA products of competitors of Goodrich and Firestone and other advantages which would result from the natural and unobstructed flow of commerce in said products under conditions of free competition.

PAR. 12. Said agreements between respondents and said agreements between a respondent and others not parties herein, and the acts and practices of respondents thereunder, as hereinabove alleged, are all to the prejudice of the public, have a dangerous tendency to and have unduly frustrated, hindered, suppressed, lessened, restrained, prevented and eliminated competition in the sale of TBA products in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products; and constitute unfair methods of competition and unfair acts and practices, in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. Peter J. Dias for the Commission.

White & Case, of New York, N.Y., by *Mr. Edgar E. Barton*, for respondent The B. F. Goodrich Company;

Royall, Koegel, Harris & Caskey, of New York, N.Y., by *Mr. Kenneth C. Royall*, for respondent The Texas Company.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

SEPTEMBER 24, 1962

This proceeding is based upon a complaint brought under Section 5 of the Federal Trade Commission Act, charging as unlawful, certain contracts entered into by the respondents, The B. F. Goodrich Company and The Texas Company, whereby The B. F. Goodrich Company agreed to pay The Texas Company a sales commission on all tires, batteries and accessories sold by The B. F. Goodrich Company to service stations and other outlets of The Texas Company. The complaint further charged that respondent, The B. F. Goodrich Company, had entered into similar contracts with certain oil companies other than The Texas Company, and that The Texas Company had entered into a similar contract with The Firestone Tire & Rubber Company.

The B. F. Goodrich Company and The Texas Company are engaged in business in practically the entire United States. Counsel supporting the complaint selected five trading areas as being typical of the

general operations of respondents under the sales commission contract. Pursuant to this selection, testimony was taken in the Chicago, Omaha, Lincoln, Dallas and Atlanta areas.

After the completion of the taking of testimony, the hearing examiner filed his initial decision on October 23, 1959, dismissing the complaint as to The B. F. Goodrich Company, but holding that The Texas Company, by acts of coercion and intimidation had forced a substantial number of its dealers to purchase sponsored TBA, in violation of Section 5 of the Federal Trade Commission Act. Both sides appealed from the initial decision, and on March 9, 1961 [58 F.T.C. 1176, 1183], the Commission issued its order remanding this proceeding to the hearing examiner "for the reception of such further evidence concerning the competitive effects of the respondents' practices as may be offered in conformity with the views expressed in the accompanying opinion of the Commission."

In its opinion accompanying said order of remand, the Commission stated:

Although there is evidence in the record tending to show that Texaco has in fact coerced its dealers to purchase sponsored TBA through use of threats of lease cancellation or other retaliatory action, we find that Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics. The determination of whether Texaco's exercise of such economic power in favor of Firestone and Goodyear [sic] under the oil company's sales commission contracts with these rubber companies constitutes an unfair method of competition depends, therefore, upon the competitive effects of these sales commission contracts; not upon whether Texaco has exercised its power to implement such contracts through the use of overt coercive tactics, or by more subtle, but equally effective, means.

In its opinion, the Commission reversed the conclusions of the hearing examiner that respondent, The B. F. Goodrich Company, should be dismissed because of the absence of evidence that The B. F. Goodrich Company engaged in, or participated in, any acts or practices designed to force dealers and distributors of The Texas Company to purchase Goodrich TBA products. The opinion further pointed out that the issue in this proceeding was the legality of the particular method of distribution of TBA used by The Texas Company and The B. F. Goodrich Company, known as the sales commission plan. The decision of the Commission and the matters contained in its opinion remanding this case, are binding upon this hearing examiner.

Pursuant to said order of remand, the hearing examiner set hearings to begin July 17, 1961, which hearings were cancelled, to be reset after disposition of a petition for an injunction to restrain the hearing examiner from proceeding with further hearings in this case, which

was filed by respondents in the District Court for the District of Columbia.

Thereafter, on June 19, 1962, the Court denied respondents' petition for injunction and entered its order for summary judgment which, in effect, requires the hearing examiner to complete the taking of testimony and other evidence, and issue his initial decision by October 2, 1962 [7 S. & D. 488]. Respondents immediately filed an appeal with the U.S. Court of Appeals for the District of Columbia, and in addition, filed a petition for preliminary injunction which was denied by said Court on June 22, 1962 [7 S. & D. 494].

Upon disposition of the various motions before the U.S. District Court and Court of Appeals, the hearing examiner set this case down on July 16, 1962, to proceed with consecutive hearings until final completion of this case. Hearings were held and case closed July 19, 1962.

This proceeding is now before the hearing examiner for final consideration in accordance with the remand of the Commission, upon the complaint, answer thereto, testimony and other evidence, proposed findings of fact and conclusions submitted by the parties and briefs in reply thereto. The hearing examiner has given consideration to the proposed findings of fact, conclusions and briefs in support thereof, submitted by the parties, and all findings of fact and conclusions of law proposed by the parties respectively not herein specifically found or concluded are herewith rejected.

In its order of remand, the Commission did not vacate or set aside the initial decision, nor does the order or opinion take issue with the factual findings made, but disagreed with certain conclusions reached by the hearing examiner. For the purpose of clarity, the hearing examiner hereby adopts and incorporates into this initial decision, the findings of fact set out in the previous decision. The hearing examiner hereby strikes the conclusions and order contained in said original initial decision and makes additional findings of fact based upon the record herein and the evidence adduced, subsequent to the remand.

FINDINGS OF FACT ADOPTED FROM INITIAL DECISION ISSUED PRIOR TO
REMAND

1. Respondent, The B. F. Goodrich Company (hereinafter sometimes referred to as "Goodrich"), is a corporation organized, existing and doing business under the laws of the State of New York with its principal office and place of business located at 500 Main Street, Akron, Ohio. Said respondent, among other things, is engaged in

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the sale and distribution in interstate commerce of tires, batteries, accessories and supplies (hereinafter referred to as "TBA").

2. Respondent, The Texas Company (hereinafter sometimes referred to as "Texas" or "Texaco"), is a corporation organized, existing and doing business under the laws of the State of Delaware with its principal office and place of business located at 135 East 42nd Street, New York 17, New York. Said respondent is engaged in the production and in the sale and distribution in interstate commerce of petroleum products, including gasoline and lubricants sold to petroleum wholesalers and service stations.

3. There are a large number of service stations and distributors which sell principally the petroleum products of The Texas Company. These service stations which purchase Texaco products for resale at retail to the consuming public are classified as "C" stations and "D" stations. A "C" station is one that is either owned or leased by The Texas Company, and in turn leased by it to the dealer. A "D" station, which is sometimes called a contract station, is either owned by the operator or leased by him from someone other than The Texas Company.

4. Sales to service stations are made by The Texas Company either direct with delivery from company-operated bulk plants or through consignees, who are designated as "B" accounts. A consignee is one who operates a bulk plant owned by The Texas Company or, in some instances, by the consignee. The Texas Company stocks the plant with its petroleum products, and the consignee delivers the products and is compensated by commissions. He is a wholesaler performing the same function that a Texas Company-operated plant would perform. The Texas Company also sells its petroleum products to distributors designated as "E" accounts, who operate bulk storage plants, purchase Texaco products, and sell such products to service station dealers and consumers.

5. The number of Texaco accounts in the various classifications during the past few years were as follows:

- (a) Texaco Lease ("C") stations—
 - 1951—11,570
 - 1952—11,858
 - 1953—12,070
 - 1954—12,674
 - 1955—13,366
 - 1956—13,764 (as of June 1956)
- (b) Texaco contract ("D") stations—
 - 1952—17,708
 - 1953—16,913

1954—16,853

1955—16,806

1956—(June) Not available.

(c) Texaco consignee ("B") accounts—

1951—1,225

1952—1,172

1953—1,128

1954—1,124

1955—1,150

1956—(June) Not available.

(d) Texaco distributors ("E") accounts—

1951—687

1952—664

1953—652

1954—697

1955—711

1956—(June) Not available.

6. The usual form of lease entered into by the respondent Texas with its lessee dealers or "C" stations was for a term of one year, and thereafter from year to year, subject to termination by either party at the end of the first or any subsequent year on ten days' prior written notice. Rental provided by the lease was usually a flat rental, plus a cents-per-gallon charge, dependent upon the location of the station, financial condition of the lessee, and potential income. Such lease contained so-called "house-keeping" provisions relating to the use, maintenance and general appearance of the station. Breach of any of the terms, conditions or covenants of the lease by the lessee constituted ground for immediate termination by The Texas Company without notice to the lessee.

7. In addition to the lease, The Texas Company entered into an "Agreement of Sale" with its dealers. These agreements provided for the purchase of an annual minimum and maximum quantity of Texaco gasoline, oils and greases at the current posted price at the time delivery was made. These agreements were usually for a period of one year, and from year to year thereafter, and could be terminated at the end of the initial term, or any anniversary thereof, by giving thirty days' written notice, with automatic termination upon termination of lease of property. These agreements also provided for a quantity discount or rebate, payable at the end of the year.

8. Tires, batteries and accessories have become a necessary and integral part of the business operation of the Texaco dealer. He cannot progress in his business unless he has the revenue from that portion of his business and also be in a position to serve his customers com-

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pletely. It is to the interest of The Texas Company to have its dealers engaged in the sale of TBA as this builds a stronger dealer organization and increases the sale of gasoline.

9. On March 1, 1940, The Texas Company entered into a sales commission agreement with The B. F. Goodrich Company which provided for the payment of commissions to Texas on the sales by Goodrich of its tires, tubes, batteries and auto and home supplies to Texaco outlets, including service stations, distributors and consignees, in consideration of the services to be rendered by the Texas sales organization in promoting the sale of these products. This agreement was modified from time to time and was later superceded by contract dated November 23, 1943, which provided, among other things, for the payment of a commission of 10 percent on sales to "C" and "D" stations, and 7½ percent on sales to "B" and "E" stations by Goodrich. The Texas Company also entered into a similar sales commission agreement with The Firestone Tire & Rubber Company.

10. The services which were performed by The Texas Company pursuant to its contract with Goodrich and Firestone in promoting the sale of TBA products consisted principally of the following:

(a) Texas personnel, when interviewing prospective dealers for new or established service stations, advised them of the importance of TBA and recommended the TBA products of Goodrich and Firestone, and when dealer was selected would at times notify Goodrich or Firestone of such selection and introduce the new dealer to sales representatives of Goodrich or Firestone and assist the new dealer in setting up an adequate TBA inventory.

(b) Texas salesmen were encouraged by Texas management to write up orders for sponsored TBA without waiting for a formal request from a dealer.

(c) Texas frequently conducted dealer meetings and provided training courses for dealers, both of which included suggestions for the displaying and merchandising of TBA, in some instances with the active participation of Goodrich and Firestone.

(d) Texas incorporated suggestions on merchandising TBA in its dealer magazines and arranged for advertising and promotions, which included TBA products of Goodrich and Firestone, and participated in promotions instituted by Goodrich and Firestone.

(e) Texas made TBA products available to credit card holders, including merchandise sold on deferred payments without carrying charge.

11. Both Goodrich and Firestone have sold substantial quantities of their TBA products to Texaco outlets. Sales by both Goodrich

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and Firestone during the years 1952 to 1956 to the various classes of accounts were as follows:

Classes of Accounts

Year	Rubber company	"C"	"D"	"E"	"B"	Total
1952-----	G-----	\$5,803,896	\$1,911,638	\$1,605,665	\$3,425,084	\$12,746,283
	F-----	13,838,565	6,210,771	3,030,989	6,509,406	29,589,731
1953-----	G-----	6,832,705	1,807,688	1,804,391	3,480,551	13,925,335
	F-----	15,843,023	5,634,766	3,210,938	6,310,907	30,999,634
1954-----	G-----	7,698,833	1,826,738	1,726,499	3,571,274	14,823,344
	F-----	16,441,762	5,326,669	3,070,478	5,905,508	30,744,417
1955-----	G-----	9,444,122	2,151,778	2,003,965	4,334,376	17,934,244
	F-----	19,464,784	6,036,009	3,731,307	6,330,072	35,562,172
1956-----	G-----	10,515,043	2,159,457	1,947,333	4,310,815	18,932,648
	F-----	23,547,120	6,569,198	3,386,318	6,376,622	39,879,258
Totals-----		\$129,429,853	\$39,634,712	\$25,517,883	\$50,554,615	\$245,137,066

12. Based upon the foregoing sales, Goodrich and Firestone paid Texas the following annual sales commissions:

Year	Rubber company	Commission
1952-----	G-----	\$1,090,583
	F-----	2,557,991
1953-----	G-----	1,215,084
	F-----	2,704,976
1954-----	G-----	1,310,738
	F-----	2,678,005
1955-----	G-----	1,597,800
	F-----	3,197,654
1956-----	G-----	1,736,811
	F-----	3,743,852
Total-----		\$21,833,494

13. It is the contention of counsel supporting the complaint that because of the relationship, contractual and otherwise, between Texas and its station operators, consignees and distributors, the adoption of the Sales Commission Plan of selling and promoting the sale of TBA entered into by Texas with Goodrich and Firestone has a tendency to lessen, restrain, prevent or eliminate competition in the sale of TBA, and has foreclosed other suppliers of TBA from a substantial portion of the TBA business of the Texaco petroleum outlets.

14. In support of the charges of the complaint, eight former Texaco dealers were called to testify in this proceeding. Five of these

dealers testified to pressure being placed upon them relative to the purchase and display of nonsponsored TBA, and two claimed that TBA was involved in the cancellation of their leases. Except for these two dealers, three of the dealers voluntarily left their stations, and the leases of the remaining three were cancelled for reasons not involving the sale of TBA. The testimony relative to pressure and cancellation is summarized as follows:

(a) James S. Zaloudek, a Texas lessee from 1948 to 1954, testified on direct examination that he expected his lease to be cancelled for handling nonsponsored TBA. On cross-examination he admitted that cancellation might have resulted from difficulties arising from the sale of tires to a customer on credit card without mounting the tires, as required. He eventually had to make good on this sale as the customer resold the tires and defaulted in making payment. This witness further testified to controversies and arguments with Texas representatives relative to the carrying and display of nonsponsored TBA items. He testified that he had been told to get rid of a certain nonsponsored antifreeze; that he had been required to take certain nonsponsored filters off display and put them in the back room; that he had been told to remove Armstrong tires from the display rack and certain accessories from the shelves, which he refused to do; and that he was forced by Texas representatives to take out some Auto-Lite batteries he had purchased. With reference to the items of TBA which he continued to purchase, he was told by Texas representatives that he should not have them in his station, and finally in 1953 he dealt exclusively with Firestone with the exception of some nonsponsored waxes, polishes and filters; and in 1954 carried 92 percent Firestone and Texaco, the other 8 percent consisting of chains, antifreeze, filters, oil, polishes and waxes. The Texas salesman denied that he told Zaloudek that he could not handle, and should remove, the various TBA items.

(b) C. F. Sanford, Jr., a Texas lessee from 1953 to 1955, who purchased gasoline from an independent consignee of The Texas Company, testified that shortly after taking over the station he put in a stock of Continental batteries and was informed by a Texas representative that he would either handle Firestone or expect not to renew his lease; that he continued to handle these batteries and was subsequently notified of the cancellation of his lease. It further appears from the testimony in this proceeding that Sanford's operation of the station was generally poor; that he was in financial difficulties and gave bad checks to the consignee for the payment of gasoline. It also appears from the record that due to a highway change about 30 or 40 percent of the business of the station would be

lost, and that because of Sanford's financial condition the Texas representative was of the opinion that Sanford would not be able to survive, and that this was the primary factor in recommending the cancellation of the lease and that TBA was not involved.

(c) Harvey G. Talley, a Texas lessee from 1938 to 1951, testified that in 1945 the Texas representative asked him not to display Dayton tires but to place them in the back room. He later disposed of the Dayton tires and carried only Firestone until the end of his lease. He displayed Southern batteries and a few Willard batteries, but no objection was made to these batteries. Lease was cancelled because he could not stay open twenty-four hours a day, which was required at that particular location.

(d) Richard E. Tidwell, a Texas lessee from October 1953 to March 1955, testified that he consulted with a Texas salesman about handling a cheaper tire, but was told that the company would be more lenient and would look with favor upon dealers who were loyal. He did not take on the cheaper tire on a stocking basis, and when he found out that Texas Company desired him to carry only one line he endeavored to work along with them. He did carry a cheaper battery, but did not display it. Tidwell voluntarily gave up the station because of a desire to go back into flying.

(e) John D. Scott, a Texas lessee three years, bought only Goodrich TBA, except odds and ends from competitors. Carried Goodrich tires only and Goodrich recapping until about a year before testifying, when he changed recapping to another concern, owned by a friend of his, without any objection from Texas. He also carried Goodrich batteries, only, until about 8 months prior to hearing, when he put in a line of cheaper batteries, but did not display them. Lease was cancelled for reasons other than TBA including controversies over the clock and Coca-Cola machine and excessive drinking on the premises.

(f) Herman Gilbert, Earl M. Gause and H. Arpin Koehler carried Goodrich or Firestone exclusively except for some minor items purchased to meet competition. Their leases were cancelled for reasons not involving TBA.

15. Certain representatives of suppliers of TBA, who were selling in competition with respondent Goodrich, were called as witnesses in this proceeding. These parties testified generally that they had difficulty in selling TBA to Texaco stations and testified specifically as to reasons given by certain Texaco dealers for not buying or selling their TBA items. This testimony as to reasons given by Texaco dealers for not purchasing competitive TBA was allowed under the authority of *Lawlor vs. Loewe*, 235 U.S. 522. This latter testimony

was received not as proof of the truth of the facts recited, but for the purpose of showing the state of mind of the dealer. This testimony, however, is competent to show that dealers did not purchase a substantial amount of competitive nonsponsored TBA because of their feeling that they were required to purchase Goodrich or Firestone TBA.

16. In the course of its defense to this proceeding, The Texas Company introduced the testimony of 54 Texaco dealers and 5 ex-Texaco dealers who came from 13 of the 15 sales divisions of Texas in the United States. With the exception of 1 ex-dealer witness, who had handled Firestone prior to becoming a Texas dealer and who was completely sold on the Firestone line, all of these witnesses testified to displaying and selling nonsponsored TBA without objection or complaint by Texas.

17. The hearing examiner recognizes that present dealers appearing to testify were under considerable pressure because they were naturally interested in not jeopardizing the renewal of their leases. The record, as a whole, shows that there were no exclusive dealers in the sense that they confined themselves entirely to sponsored TBA, as all dealers carry some nonsponsored TBA to satisfy demands of their customers either in varying amounts or on a pickup basis. Many of the stations do not have the space or finances to stock a complete line of tires and batteries, but instead purchase nonsponsored as well as sponsored items on a pickup basis to satisfy customer demand. In some instances there was some confusion as to the definition of accessories among the dealers, as some included as accessories items generally known as repair parts, as distinguished from accessories, and some dealers testified to carrying nonsponsored items which were, in fact, not supplied by Firestone or Goodrich. Many of the dealers called maintained a high sales volume in gasoline gallonage, and also oil, and Texas would not jeopardize this gallonage by pressure tactics sufficient to irritate or alienate such dealers. This is also true as to those dealers in outlying locations where station operators are not readily available, but where it is important to Texas to maintain service.

18. As a result of an antitrust suit filed against Standard Oil Company of California, Walter Hochuli, General Sales Manager of The Texas Company, on June 1, 1948, issued a so-called policy letter to the territorial managers, which was subsequently disseminated down the chain of command to salesmen. This letter advised the personnel that they were to consider a Texaco dealer as an independent businessman; that he should be encouraged to expand his business by purchasing TBA; that the personnel have a right to recommend certain

lines, but that Texas has neither the right nor the desire to dictate to the dealer or influence him in any way as to the type of merchandise he should handle, or the source from which he should purchase it; that the Texaco dealer must be permitted to operate as an independent businessman and anyone who violates this policy would be subject to immediate dismissal.

19. The Texas policy was restated to its personnel in 1952 and 1953, and in 1955 it was incorporated in the portfolios of each salesman so that the salesman would have the statement of policy for ready reference, although by this time it did not carry with it the threat of immediate dismissal. This policy was not transmitted to the Texas dealers except on occasion, and then orally, by salesmen or other personnel, and it was only after the dealer sold a sufficient amount of lubricating oil to warrant the payment of a discount or rebate that he was informed by letter that he was free to select any brand of TBA merchandise which he might elect and that the only interest Texas had was to help him market that merchandise at a profit so that his business would be more successful in every way.

20. The dealer witnesses called by Texas all testified that they were familiar with, and knew, the Texas policy with reference to the sale of TBA and considered themselves independent businessmen, free to purchase TBA as they might see fit. Many testified that when they were interviewed as prospective dealers they were told that they could purchase TBA wherever they might wish. The ex-dealers called in support of the charges of the complaint testified that when they were interviewed as prospective dealers they were told that they could purchase either Goodrich or Firestone with no indication that they might purchase from other suppliers. It would be unusual to expect that Texas salesmen would vigorously insist to a dealer that he had a right to buy wherever he might wish when the salesman's compensation was based, in part, upon commission on sales of sponsored TBA.

21. After giving consideration to the testimony of the various witnesses appearing in this proceeding and giving consideration to their demeanor and credibility, it is the opinion of the hearing examiner that the record in this proceeding as a whole indicates that coercion and pressure was, in fact, brought on a substantial number of dealers to induce them to purchase sponsored TBA and to discontinue the purchase or display of nonsponsored items.

22. The use of credit cards in connection with the sale of Goodrich TBA was instituted by The Texas Company in March 1940. This was discontinued as of May 6, 1942, due to credit regulations issued by the Federal Reserve Board. The use of credit cards was again

resumed on January 1, 1948. From that date until January 1, 1955, there were no restrictions with regard to brands of TBA that might be purchased on credit, but commencing January 1, 1955, Texas specifically restricted the use of its credit card in connection with TBA purchases to Goodrich and Firestone products. It was on this date that Texas instituted the practices of selling TBA products on credit cards on a deferred payment basis, allowing 3 months for payment of purchases of \$30 or more, and 6 months for purchases of \$50 or more, with no service or carrying charge being made. The record shows that Texas dealers have from time to time continued to charge non-sponsored TBA items on the regular monthly settlement basis. It is logical for Texas to limit sales of TBA on deferred payment, without interest or carrying charge, to those products on which Texas receives a commission, as this would, in part, indemnify it for the expense in connection with the deferred payment plan.

SUPPLEMENTAL FINDINGS

23. Goodrich manufactures tires and tubes of all kinds, sizes, varieties and price. It buys and resells batteries, which carry the "B. F. Goodrich" brand and which similarly comprise a variety of lines of differing prices, sizes and quality. B. F. Goodrich sells a full line of automotive accessories, including fan belts, radiator hose and other rubber products of its own manufacture and nonrubber accessories which it buys and resells under the nationally advertised brand names of the manufacturers of those products.

24. Goodrich operates five tire manufacturing plants across the country located in Ohio, Pennsylvania, Alabama, Oklahoma and California. Its tires are shipped from these plants to 15 company-operated merchandising warehouses (also known as master warehouses) in major metropolitan centers over the nation. These plants and master warehouses in turn ship tires to 31 Goodrich district office-warehouses all around the country. The manufacturers from which B. F. Goodrich purchases its batteries have plants strategically located over the country from which they ship to the same master and district warehouses. The accessories B. F. Goodrich purchases from other national brand manufacturers also go to the master and district warehouses.

25. Goodrich sells tires, batteries, accessories and supplies to specialized tire dealers, new car dealers, garages, service stations and in every channel of trade where tires are sold. In addition to these independent distributors and dealers, it also sells through its own company-operated B. F. Goodrich Stores. Some of these independent distributors and The B. F. Goodrich Stores, located in the various

States of the United States, are supplied primarily from the master warehouses and district office-warehouses or occasionally from the manufacturing plants of Goodrich or the other concerns from which it purchases the batteries and accessories which it does not manufacture itself.

26. Goodrich has sales commission arrangements with Texas, Continental Oil Company (hereinafter "Conoco"), The Ohio Oil Company (hereinafter "Ohio-Marathon"), Shell-American Petroleum Company (hereinafter "Shell-American"), Jenney Manufacturing Company (hereinafter "Jenney") and Emblem Oil Company (hereinafter "Emblem"). There are written contracts with Texas, Conoco, and Ohio-Marathon but there are no formal contracts with the other three oil companies, which are smaller, local concerns generally with only service station customers selling at the retail level but without wholesale outlets such as consignees, jobbers or distributors. With those exceptions, the terms and conditions of the arrangements with Shell-American, Jenney and Emblem, and their responsibilities thereunder, are the same as those of the oil companies which are parties to formal contracts, and their outlets are similarly served by Goodrich.

27. The typical service station requires unique services not required by the large-volume tire dealers directly served by Goodrich and others. Because of the comparatively small volume of its TBA business, limited capital, and restricted storage space in relation to the multiplicity of types, sizes, qualities and prices of tires and batteries now in demand, the service station generally stocks few if any of these items in the TBA line and consequently requires a fully stocked source of supply close at hand and prepared to make quick, small deliveries of items already ordered by a customer of the station.

28. Goodrich satisfies the need of service stations for quick delivery through numerous supply points located across the country. Generally these supply points are independent distributors, but in a few instances where independent distributors with the necessary facilities are not available, B. F. Goodrich Stores handle supply point distribution. Whenever Goodrich enters into a sales agreement or starts selling to an outlet of an oil company with which it has a sales commission arrangement, Goodrich usually designates a supply point nearest to the service station. The service station operator is not limited to the designated supply point, but is free to deal with any Goodrich supply point he may prefer.

29. These independent distributors have played an increasingly important role in the operation of B. F. Goodrich's sales commission programs with the various contracting oil companies. Of the total number of outlets of all the contracting oil companies on which Good-

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rich paid commissions, the percentage supplied by independent distributors from 1950 through mid-1956 was as follows:

As of	Total outlets on which commission was paid	Supplied by independent distributors	Percentage by independent distributors
12/31/50-----	2, 040	442	22%
12/31/51-----	2, 469	820	33%
12/31/52-----	4, 075	1, 876	46%
12/31/53-----	5, 065	2, 486	49%
12/31/54-----	6, 065	3, 127	52%
12/31/55-----	7, 042	3, 908	55%

The same trend is even more pronounced for Texas outlets, for which figures are available for two additional years:

As of	Total outlets on which commission was paid	Supplied by independent distributors	Percentage by independent distributors
12/31/50-----	1, 974	438	22%
12/31/51-----	2, 245	743	33%
12/31/52-----	2, 763	1, 228	44%
12/31/53-----	3, 189	1, 664	52%
12/31/54-----	3, 864	2, 172	56%
12/31/55-----	4, 444	2, 636	59%
12/31/56-----	4, 935	2, 954	60%
12/31/57-----	5, 059	3, 156	62%

30. In addition to Texaco, Goodrich also entered into a sales commission contract with Continental Oil Company (Conoco) in 1952. From 1952 to the end of 1955, the number of Conoco leased stations increased from 1,138 to 1,745.¹ Sales by Goodrich to Continental were substantial as is indicated by the following tabulation of total tire and tube sales for the years 1954-1957:

1954 -----	\$5, 328, 882
1955 -----	6, 413, 852
1956 -----	5, 911, 274
1957 -----	5, 613, 348 (RX 83)

31. In the year 1955, there was a total of 182,097 service stations in the United States.² In the same year, Texaco had 13,366 (C) stations and 16,806 (D) stations, for a total of 30,172 stations which would be subject to the sales commission contract. Taking the (C)

¹ CX 215

² RX 86F

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and (D) stations only of Texaco, this would amount to 16.5% of the service stations in the United States. The service stations controlled by the additional oil companies having sales commission contracts with Goodrich during the years 1953-1955 were as follows:

	12-31-53	12-31-54	12-31-55
Conoco.....	1, 061	1, 272	1, 508
Shell.....	53	66	804
Jenney Mfg.....	138	188	201
Ohio Oil.....	594	666	60
Emblem.....	30	9	25
	1, 876	2, 201	³ 2, 598

³ CX 136

32. A second method of distributing TBA to oil companies was the purchase resale plan. This was generally limited to tires and tubes and usually involved the supplying of private brand tires. The following oil companies market private brand tires under this plan:

Oil company	Tire supplier	Tire brand
American Oil Co.....	Mansfield Tire & Rubber Co.	Amoco
Cities Service Oil Co. (Del.)..	U.S. Rubber Co.....	Cities Service
Cities Service Oil Co. (Pa.)..	Dayton Tire Co.....	Cities Service
Billups Petroleum Co.....	U.S. Rubber Co.....	Billups
Esso Standard Oil Co.....	U.S. Rubber Co.....	Atlas
Humble Oil & Refining Co....	General Tire Co.....	Atlas
Standard Oil Co. of Calif....	Mansfield Tire & Rubber Co.	Atlas
	U.S. Rubber Co.	
Standard Oil Co. (Ind.).....	U.S. Rubber Co.....	Atlas
Standard Oil Co. (Ky.).....	U.S. Rubber Co.....	Atlas
Standard Oil Co. (Ohio).....	Cooper Tire & Rubber Co.	Atlas
	Seiberling Tire Co.	
General Petroleum Corp.....	Goodyear.....	Mobil
Magnolia Petroleum Corp.....	Goodyear.....	Mobil
Socony-Mobil Oil Co.....	Goodyear.....	Mobil
Phillips Petroleum Co.....	Lee Rubber & Tire Corp.....	Phillips
Pure Oil Co.....	Mansfield Tire & Rubber Co..	Pure
Tidewater Oil Co.....	U.S. Rubber Co.....	Flying "A"
Blakely Oil Co.....	Mansfield Tire & Rubber Co.	Pharis
	The B. F. Goodrich Co.	Brunswick
Century Oil Co.....	U.S. Rubber Co.....	Fisk

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33. During the course of the hearing upon remand, the respondent, The B. F. Goodrich Company offered in evidence copies of Crowell-Collier Automotive Survey for the years 1946 through 1955, which said respondent relied upon and utilized in the course of its business. This survey shows the percentage of replacement tire purchases by automobile owners from the companies listed during the period of time set out as follows:

Replacement Tire Purchases by Automobile Owners

	1946 (per- cent)	1947 (per- cent)	1948 (per- cent)	1949 (per- cent)	1950 (per- cent)	1951 (per- cent)	1952 (per- cent)	1953 (per- cent)	1954 (per- cent)	1955 (per- cent)
Goodyear.....	21.3	20	18.2	20	21	21	19.5	18.3	21.4	20.4
Firestone.....	19.5	20	17.6	18	18	16	16.9	16.8	15.3	17.6
U.S.....	9.4	9	8.7	9	8	10	8.9	8.0	7.4	8.2
Goodrich.....	10.7	10	8.9	8	10	9	10.2	7.2	8.9	7.0
Sears.....	5.8	6	6.6	8	9	8	10.8	11.7	10.7	12.1
Atlas.....	5.0	7	7.5	7	6	6	6.1	6.3	6.0	5.6
General.....	3.7	3	2.3	2	2	2	2.9	3.0	2.4	2.6
Riverside.....	2.9	3	4.5	4	5	4	3.8	4.5	4.2	3.9
Lee.....	2.4	2	3.2	2	2	3	2.0	2.7	2.7	1.9
Springfield.....	2.1	1	1.8	2	2	2	2.0	1.6	1.2	1.0
Ford.....	4.4									
Others.....	16.6	12	14.1	16	9	10	10.4	11.0	9.6	10.1
Davis.....		3	2.5	2	2	2	2.2	3.1	2.2	2.2
Fisk.....		2	1.7	2	2	1	0.5	0.5	1.0	0.9
Seiberling.....		1	1.4		2	2	1.0	1.6	1.5	1.2
Dunlop.....		1	1.0		1	2	1.4	0.7	1.6	0.8
Mobil.....					1	2	1.4	0.9	1.6	1.1
Armstrong.....								1.2	1.0	2.0
Gulf.....								0.9	1.3	1.4

34. There are at least 18 manufacturers of automotive tires in the United States, 10 of which also offer lines of batteries and accessories. Those selling batteries and accessories in addition to producing and selling tires are:

- (1) The Goodyear Tire & Rubber Company
- (2) The Firestone Tire & Rubber Company
- (3) United States Rubber Company
- (4) The B. F. Goodrich Company
- (5) Cooper Tire & Rubber Co.
- (6) Dunlop Rubber Co.
- (7) Gates Rubber Co.
- (8) General Tire & Rubber Co.
- (9) Lee Rubber & Tire Corp.
- (10) Seiberling Rubber Co.

Those companies which produce and sell only tires are:

- (11) Armstrong Rubber Co.

- (12) Corduroy Rubber Co.
- (13) Dayton Rubber Co.
- (14) Denman Rubber Manufacturing Co.
- (15) Mansfield Tire & Rubber Co.
- (16) McCreary Tire & Rubber Co.
- (17) Mohawk Rubber Co.
- (18) Schenuit Rubber Co.

CONCLUSIONS

1. Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA, even without the use of coercive tactics. Such economic power exists independent of any particular method of distributing TBA which Texaco might use.

2. For the purpose of inducing the purchase of sponsored TBA by Texaco dealers, Texas representatives have, in fact, attempted to and did coerce and force Texaco dealers to purchase substantial quantities of Goodrich and Firestone TBA and respondent, Goodrich, had the benefits of such practices. These acts of coercion consisted of demands that dealers discontinue the purchase or display of non-sponsored TBA under the threats of lease cancellation or other coercive acts. Such coercion need not be 100% effective in order to constitute an unfair method of competition or an unfair act or practice in violation of the Federal Trade Commission Act.

3. The hearing examiner is bound by the decision of the Commission and the only issue left for consideration of the hearing examiner under the terms of the Commission's opinion and order of remand, is the competitive effects of the sales commission plan used by Goodrich with The Texas Company, and whether Texaco's exercise of such economic power in favor of Goodrich and Firestone under their sales commission contracts have sufficient competitive effect to constitute an unfair method of competition or an unfair act or practice.

4. The use of the sales commission method of distribution by Goodrich was designed to take advantage of the economic control which Texaco had over its dealers, and by such use, Goodrich was able to obtain an unfair advantage over its competitors in selling to Texaco stations and in addition, aided and abetted Texaco in removing from the open market a substantial number of new and established Texaco dealers by causing them to purchase Goodrich TBA exclusively or in substantial quantities, and thereby excluding competitors of Goodrich who might otherwise have been able to sell their TBA to a substantial number of such Texaco dealers.

5. Representatives of practically all of the competitors of Goodrich in the selected trade areas in which testimony was taken, testified generally that they had difficulty in selling TBA to Texaco stations and testified specifically as to the reasons given by certain Texaco dealers for not buying or selling their TBA items. This testimony shows that Texaco dealers did not purchase a substantial amount of competing nonsponsored TBA because of their feeling or understanding, that they were required to purchase Goodrich or Firestone TBA.

6. Informing new dealers of the commission arrangement with Goodrich and Firestone as to TBA and the recommendation of these companies by Texaco, carried with it an implication that Texaco dealers were required to purchase their TBA from either Goodrich or Firestone and resulted in the exclusion of TBA of the competitors of these companies.

7. Analysis of the tabulation of replacement tire purchases set out in supplemental findings, show that the market share of Goodrich in the sale of replacement tires during the years 1946 to 1955 has varied from year to year with a high of 10.7% in 1946 and a low of 7.0% in 1955, and averaging approximately 9% for the entire period. Respondent maintains that those percentages indicate no injury to competition. In considering this contention, it must be considered that the basis upon which these percentages were figured has increased considerably from 1946 to 1955. For example, during approximately the same period 1948 to 1955, passenger car registration increased 56.3%,⁴ which indicates a much larger market for replacement tires in 1955, and also indicates a possible doubling of gross income during that period by Goodrich. The hearing examiner is of the opinion that the percentages shown in said tabulation fully complies with the requirement of substantiality. The effect upon competition of the Goodrich sales commission contracts is greatly augmented by the cumulative effects of the sales commission contracts of Firestone, Goodyear and U. S. Rubber who use the sales commission plan of distribution extensively. These three rubber companies together with Goodrich are known as the "big four" and account for more than 50% of the tire sales in the replacement market.

8. The above share of the market percentages are not controlling on the question of injury to competition, but of more importance, is the fact that the sales of Goodrich to all classes of accounts of Texaco increased from \$12,746,283 in 1952 to \$18,923,649 in 1956, and the payments of commission by Goodrich to The Texas Company on the sales commission contract, increased from \$1,090,583 in 1952 to \$1,736,811 in 1956.

⁴ RX 55(b)

9. Subsequent to the issuance of the initial decision in this proceeding, the U.S. Court of Appeals on July 11, 1960, issued its opinion in *S. Kriete Osborn v. Sinclair Refining Company*, 286 F. (2d) 832. The facts in this case were substantially the same as in the present case. Goodyear had executed a sales commission agreement with Sinclair similar in all respects to the Goodrich agreement with Texaco. The contract of Sinclair with its dealers was similar to the Texaco dealers agreement, and the general method of doing business was substantially the same. Based upon these similar facts, the Court held that the agreement between Sinclair and its dealers constituted a tying arrangement which affected a substantial part of commerce, solely for Sinclair's economic benefit and was unjustified by the nature of the products. Referring to this situation, the Court in its opinion said:

The perniciousness of the imposed tie-in is aggravated by the fact that the defendant is not even in the business of selling the tied products, but is employing its economic power in the gasoline industry to force his dealers to do business with a supplier in another industry under an arrangement that yields the defendant an extraneous revenue. The defendant in this case goes a step further than the supplier in the usual tie-in case, for here the tied product is not even handled or sold by the defendant, but it farms out to another, for a price, its coercive economic power.

Even if it be considered that the facts in this case are not sufficient to constitute a tying contract under the terms of the Clayton Act, it must nevertheless be concluded that the facts in this case are contrary to the spirit of the Clayton Act and as such, constitute a violation of the Federal Trade Commission Act. A tying agreement is not required to be 100% effective to constitute a violation of the Clayton Act and the Federal Trade Commission Act. The participation of Goodrich in these practices by means of the sales commission contract, gives Goodrich an unfair competitive advantage over its smaller competitors in the sale of TBA products to Texaco outlets and other oil company outlets.

10. The use of the sales commission plan of distribution of TBA by the respondents, The Texas Company and The B. F. Goodrich Company as herein found, has a tendency and capacity to restrict, restrain or lessen competition in the sale of TBA products and constitutes an unfair method of competition and an unfair act and practice in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent, The Texas Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device in connection with the pro-

motion, offering for sale, or sale and distribution of tires, inner tubes, batteries, and automotive accessories and supplies (hereinafter referred to as "TBA products") in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Entering into or continuing in operation or effect any contract, agreement or combination, express or implied, with The B. F. Goodrich Company, or with any other rubber company or tire manufacturer, or any other supplier of tires, batteries, or accessories, whereby The Texas Company receives anything of value in connection with the sale of TBA products to any wholesaler or retailer of Texas petroleum products by any marketer or distributor of TBA products other than The Texas Company;
2. Accepting or receiving anything of value from any manufacturer, distributor, wholesaler, or other vendor of TBA products, for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing, or promoting the sale of TBA products, directly or indirectly, by any such vendor to any wholesaler or retailer of The Texas Company petroleum products;
3. Using or attempting to use any contractual or other device, such as, but not limited to, agreements, leases, training programs, promotions, dealer meetings, dealer discussions, service station identification, credit cards, and financial loans, to sponsor, recommend, urge, induce, or otherwise promote the sale of TBA products by any distributor or marketer of such products other than The Texas Company to or through any wholesaler or retailer of The Texas Company petroleum products;
4. Employing any method of inspecting, reporting, or surveillance or using or attempting to use, in any manner, its relationship with Texas outlets to sponsor, recommend, urge, induce, or otherwise promote the sale of any specified brand or brands of TBA products by any distributor or marketer of such products other than The Texas Company to any wholesaler or retailer of Texas petroleum products;
5. Intimidating or coercing or attempting to intimidate or coerce any wholesaler or retailer of The Texas Company petroleum products to purchase any brand or brands of TBA products;
6. Preventing or attempting to prevent any wholesaler or retailer of The Texas Company petroleum products from purchasing and reselling, merchandising, or displaying TBA products of his own independent choice.

It is further ordered, That respondent, The B. F. Goodrich Company, a corporation, and its officers, agents, representatives and em-

ployees, directly or through any corporate or other device, in connection with the promotion, offering for sale or sale and distribution of tires, inner tubes, batteries and automotive accessories and supplies (hereinafter referred to as "TBA products") in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly:

1. Entering into or continuing in operation or effect any contract, agreement or combination, express or implied, with The Texaco Company or with any other marketing oil company whereby The B. F. Goodrich Company, directly or indirectly, pays or contributes anything of value to any such marketing oil company in connection with the sale of TBA products by The B. F. Goodrich Company or any distributor of Goodrich products to any wholesaler or retailer of petroleum products of such marketing oil company;

2. Paying, granting or allowing, or offering to pay, grant or allow, anything of value to The Texas Company or to any other marketing oil company for acting as sales agent or for otherwise sponsoring, recommending, urging, inducing or promoting the sale of TBA products, directly or indirectly, by The B. F. Goodrich Company or any distributor of Goodrich products to any wholesaler or retailer of petroleum products of such marketing oil company;

3. Reporting or participating in the reporting to The Texas Company or to any other marketing oil company concerning sales of TBA products to wholesalers or retailers of petroleum products, individually or by groups, of any such marketing oil company.

DECISION AND ORDER

APRIL 15, 1963

This matter is again before the Commission on respondents' appeal from the revised initial decision of the hearing examiner issued September 24, 1962.

Respondents contend that the tables, surveys, and matters officially noticed by the examiner on remand were improperly admitted both because they are inappropriate objects for official notice and because respondents were afforded inadequate opportunity to rebut them.

It is not necessary to pass upon the correctness of these contentions, since the Commission excludes from its present decision any reliance upon the challenged evidence. It finds that the other evidence of record amply supports the conclusions and the order of the hearing

Complaint

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examiner. The legal principles relevant to this decision need not be reexamined here because they are set forth at length in the opinion of the Commission in *Goodyear Tire & Rubber Co., et al.*, Docket 6486, March 9, 1961 [58 F.T.C. 309], and *Firestone Tire & Rubber Co., et al.*, Docket 6487, March 9, 1961 [58 F.T.C. 371]. Accordingly,

It is ordered, That the findings of fact numbered 32, 33 and 34 and conclusion number 7 of the revised initial decision be, and they hereby are, stricken.

It is further ordered, That, as so modified, the initial decision and order be, and they hereby are, adopted as the decision and order of the Commission.

It is further ordered, That respondents B. F. Goodrich Co. and Texaco, Inc., 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.

Commissioner Anderson not concurring for the reason that the command of the remand order of March 9, 1961 [58 F.T.C. 1176], has not been met and complied with; and Commissioner MacIntyre not participating.