

3. Using book samples for demonstration purposes, the covers of which are unlike and superior to the books actually sold without clearly disclosing such fact to the purchasers of the publications and services.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
INTERNATIONAL MILLING COMPANY

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

Docket 7136. Complaint, Apr. 30, 1958—Decision, Nov. 6, 1963

Order dismissing, for lack of proof to sustain the allegations, complaint charging a Minneapolis miller and processor of flour, feed and cereal by-products—the third largest company in the industry—with discriminating in price and demonstration services in violation of Secs. 2(a) and (e) of the Clayton Act, between different purchasers of its “family flour” in an area comprising some 24 counties in eastern North Carolina.

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 subsections (a) and (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936, (U.S.C. Title 15, Sec. 13) hereby issues its complaint stating its charges with respect thereto as follows:

COUNT I

Charging violation of subsection (a) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. International Milling Company, respondent herein, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its general

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offices and principal place of business located in the Investors Building, Minneapolis, Minnesota.

PAR. 2. Respondent is engaged principally in the business of milling, processing, distributing and selling flour, feed and cereal by-products.

A substantial portion of respondent's business consists of the production, processing, distribution and sale of "family flour," both self-rising and plain phosphated.

The term "family flour," as used herein, denotes flour that is prepared for sale and sold generally in convenient size packages for domestic use in the home.

Respondent's family flour is marketed under a number of trade names, including "Robin Hood," "Silver Mist" and "Town Crier." Respondent sells family flour to wholesalers for resale to retailers and in some instances it sells through its own salesmen direct to retailers, including chain stores, making deliveries from its production mills or from warehouses.

Respondent's assets as of August 31, 1956, exceeded \$86,000,000. Respondent owns and operates 17 flour mills located in nine states and has a production capacity in the United States of 7,170,000 pounds of flour daily. Between 1940 and 1957 the number of mills owned, operated and controlled by respondent, both in and outside the United States, increased from eight to twenty-nine. In 1947 respondent company was fourth in point of capacity among flour milling companies. In 1956 it became, and still is, the third largest company in said industry. The three largest milling companies now control in excess of 33 per cent of the combined daily production capacity of flour in this country. Respondent company, by reason thereof, has the capacity and is financially able to engage in the acts and practices hereinafter alleged, and to withstand losses or added costs incurred while planning and engaging in such acts and practices.

PAR. 3. International Milling Company, in the course and conduct of its business, has been and is now selling and distributing its family flour in a constant stream of commerce from the several states and places of manufacture to its customers and purchasers located in states other than the states of manufacture of said products, and there is now and has been for many years a constant current of trade in commerce, as "commerce" is defined in the Clayton Act, in said products between and among the various states of the United States.

PAR. 4. Respondent, in the course and conduct of its business, is now, and during the times mentioned herein has been, in sub-

stantial competition with others engaged in the manufacture, sale and distribution of family flour.

Many of respondent's customers are in competition with one another at their respective levels of trade.

PAR. 5. Respondent, in the course and conduct of its business, has discriminated in price between different purchasers of its family flour of like grade and quality by reducing its prices to its customers in certain geographical areas while at the same time maintaining and charging substantially higher prices to other of its customers outside such geographical areas.

One of the geographical areas utilized by respondent in its pattern of aggressive discrimination, and cited herein as being typical thereof, consists of substantially 24 counties in Eastern North Carolina. In this area, commencing in September 1956, and continuing for approximately two months thereafter, respondent substantially reduced its prices for Robin Hood self-rising family flour packaged in 5 and 25-pound bags. During this period, respondent reduced its wholesale price for the 5-pound package from 46.8¢ per bag, or \$9.36 per cwt., to 31.5¢ per bag or \$6.30 per cwt., or a reduction of 32.7 per cent. The wholesale price for the 25-pound bag was reduced from \$1.84 per bag, or \$7.36 per cwt. to \$1.515 per bag or \$6.06 per cwt., or a reduction of 17.7 per cent. During the entire time of this price reduction, respondent maintained in adjacent and other geographical areas the higher prices which had previously been charged in the price reduction area.

To make effective this reduction in price respondent caused the bags containing the said flour to be imprinted prominently with retail consumer prices, 39¢ for the 5-pound bag of Robin Hood family flour, and \$1.79 for the 25-pound bag. The imprinting of the retail prices to consumers rendered impossible, from a practical standpoint, the retailer charging a higher price than that which had been imprinted by respondent on its family flour bags, and the retailer's margin of profit on said flour was such as to discourage said retailer from selling said flour at prices lower than those imprinted on the bags.

During the periods and throughout the areas wherein respondent discriminated in prices, and pursuant thereto reduced the prices of its family flour, purchasers thereof were encouraged to buy and stock, and in many instances did buy and stock, substantial quantities of such flour at respondent's reduced prices, thereby foreclosing such portion of the family flour market from respondent's competitors, including the local and regional millers, during and subsequent to the time of such price reduction. Said discriminations

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in price have had a substantial tendency to cause respondent's competitors to lose flour business in these areas or to make sales therein at no profit or at a loss.

PAR. 6. Respondent, in the course and conduct of its business, has also discriminated and is now discriminating in price between different purchasers of its family flour of like grade and quality by selling said flour to some of its retail customers at higher prices than are charged to other competing retailers.

In a number of trading areas, of which the cities of Moultrie, Sylvester, Nashville and Fitzgerald, Georgia, are typical, respondent has discriminated in price in the sale of family flour of like grade and quality by granting to certain favored retailer customers discounts, rebates or free packages of flour with certain size purchases, while at the same time withholding, denying and refusing to grant such price concessions to other retailer customers who compete with the favored customers in the resale of said products. Thus, those retail customers who do not receive the benefit of said price concessions are required to pay higher and less favorable net prices than their competitors for family flour of like grade and quality.

PAR. 7. The effect of respondent's discriminations in price, as above alleged, has been, or may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged or in the line of commerce in which its customers are engaged or to injure, destroy, or prevent competition with respondent or to injure, destroy, or prevent competition with respondent's customers.

PAR. 8. The foregoing alleged discriminations in price by respondent International Milling Company are in violation of subsection (a) of Section 2 of the Clayton Act, as amended.

COUNT II

Charging violation of subsection (e) of Section 2 of the Clayton Act, as amended, the Commission alleges:

PAR. 9. Paragraphs One through Four of Count I hereof are hereby set forth by reference and made a part of this Count as fully and with the same effect as if contained herein verbatim.

PAR. 10. In the course and conduct of its business in commerce; respondent International Milling Company has discriminated in favor of some of its purchasers, and against other of its competing purchasers, who buy respondent's family flour for resale, by contracting to furnish or by furnishing or by contributing to the furnishing of services or facilities connected with the handling,

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sale or offering for sale of such flour so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

As illustrative of such practices, respondent, from time to time, has furnished certain of its retailer customers the services of one or more salesmen or demonstrators for the purpose of rendering assistance to favored retailers in the sale of respondent's brand of flour. Said salesmen or demonstrators carry out promotions in the stores of such favored retailers, in the course of which they hold contests or drawings or give away to consumers premiums, merchandise or gifts supplied for such occasions by respondent. The foregoing services and facilities have not been made available nor accorded to competing retailers on proportionally equal terms.

PAR. 11. The acts and practices as alleged in Paragraphs Nine and Ten above are in violation of subsection (e) of Section 2 of the aforesaid Clayton Act, as amended.

Mr. Peter J. Dias and Mr. Stanley M. Lipnick, for the Commission.

Donovan Leisure Newton & Irvine, New York, N.Y., by Mr. Walter R. Mansfield and Mr. Donald L. Crowley, for the respondent.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER
July 8, 1963

1. The respondent, International Milling Company, is charged in the Commission's complaint with violating Sections 2(a) and 2(e) of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Sec. 13). 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, and the case is now before the hearing examiner for final consideration. Any proposed findings or conclusions not included herein have been rejected as not material or as not warranted by the evidence.

2. Respondent is a Delaware corporation, with its general offices and principal place of business in Minneapolis, Minnesota. It is engaged in the business of milling, processing, and selling flour, feed, and cereals. It is a large enterprise, being probably the third largest in the industry. It owns, operates, or controls some 22 manufacturing plants located in some 9 states of the United States and in Canada.

3. There is no issue in the present proceeding as to jurisdiction. Respondent is engaged in commerce as that term is defined in the Clayton Act, and the particular transactions which constitute the subject matter of the proceeding were likewise in commerce within the meaning of the Act.

4. The specific commodity here involved is "family flour;" that is, flour manufactured, packaged, and sold for use in the home, as distinguished from flour used by commercial baking establishments. Family flour is usually packaged in 2, 5, 10, or 25-pound bags. The bags themselves are usually made of specially processed paper, although as will be seen later, not infrequently cloth bags are used. Almost invariably family flour reaches the consumer through retail grocery stores or supermarkets. The retail grocer usually obtains his flour from a wholesaler, except in the case of large retailers or chains which may buy from the manufacturer direct.

5. The Commission's complaint is in two counts. Count I charges "area" price discrimination by respondent in violation of Section 2(a) of the Clayton Act as amended. Count II charges that respondent has violated Section 2(e) of the Act by furnishing to some of its retailer customers salesmen or demonstrators for the purpose of conducting sales or promotions in the stores of such retailers, and that such services or facilities have not been made available by respondent to competing retailers on proportionally equal terms.

6. Upon motion of respondent at the conclusion of the Commission's case-in-chief, Count II of the complaint was dismissed by the hearing examiner by order dated December 5, 1960, on the ground that a prima facie case in support of that count had not been established.

7. In connection with Count I, attention should be called to the fact that there is no substantial evidence supporting Paragraph Six of that count, which charges price discrimination by respondent among certain of its competing retailer customers, with consequent injury to the nonfavored retailers. It was recognized by Commission counsel that this charge had not been sustained, and respondent was informed by the hearing examiner that no evidence need be offered in defense of the charge (Tr. 2310-11).

8. Thus the case resolves itself into an area price discrimination case in which the only competitive injury charged is in the "primary" line of commerce, the line in which respondent itself is engaged; that is, the only persons alleged to have been injured are respondent's own competitors.

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9. The area involved is a part of North Carolina, comprising some 24 counties in the eastern part of that state. A map showing the area in detail appears in the record as Commission Exhibit 26. This area is a part of respondent's Southeastern Division, which has its headquarters in Atlanta, Georgia.

10. For some three years immediately preceding 1956, respondent's volume of business in the Southeastern Division, and particularly in eastern North Carolina, had been on the decline. In 1955 Mr. George W. Blair of respondent's home office organization in Minneapolis was appointed Sales Manager of the Southeastern Division. After conferences between Mr. Blair and Mr. John T. Lynch, the company's General Sales Manager, it was decided to make a major change in the company's method of distribution. Prior to that time it had been the policy of the company to sell to only one wholesaler in a given territory. This proved to be unsatisfactory for a number of reasons. One was that while respondent under its policy was bound to the wholesaler, the wholesaler was in no sense bound to respondent. The wholesaler frequently handled other flours which competed with respondent's, and also frequently the wholesaler pushed such competing flours to the neglect of respondent's. It was also found that many wholesalers were failing to realize the sales potential in their respective territories, making little or no effort to sell some of the more important retailers in the territory.

11. Under the new policy, which is still in effect, respondent sells as many wholesalers as it can, despite the fact that the sales territories of the wholesalers may overlap.

12. The brand of family flour sold by respondent in eastern North Carolina is "Robin Hood." This is what is known in the trade as a "premium" or high grade flour. During the spring and summer of 1956 respondent's sales of this flour in eastern North Carolina had declined, and there was a very sharp decline in June and July 1956 as compared with the same months in 1955. The exact figures are:

	1955	1956
June-----	4319 cwts.	2595 cwts.
July-----	4215 cwts.	2818 cwts.

(Tr. 868)

13. This decline in sales was attributed by respondent's executives not only to lower prices, as such, which were then prevailing on certain competing flours in that area, but also to the prevalence of special deals and promotions on competing flours throughout the area. These deals were almost innumerable and of almost unlimited variety.

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They included "free goods" such as 5 pounds of flour or sugar free with each 25-pound bag of flour purchased; premiums given with or actually packed in the sack of flour, such as silverware, chinaware, mixing bowls, steak knives, etc.; "pillow case bags," that is, flour packed in cloth bags which could be used as pillow cases; television sets and charcoal grills given to a wholesaler or retailer who purchased a stated amount of flour.

14. In an effort to meet this competitive situation and regain its lost sales volume in the eastern North Carolina area, respondent decided to put on a special promotion of its Robin Hood flour in that area. In the latter part of September 1956 respondent reduced the wholesale price of its 5-pound bag from 46.8 cents per bag or \$9.36 per hundredweight to 31.5 cents per bag or \$6.30 per hundredweight. The wholesale price of the 25-pound bag was reduced from \$1.84 per bag or \$7.36 per hundredweight to \$1.515 per bag or \$6.06 per hundredweight.

15. The first shipments of the lower priced flour were made on September 22, 1956. As seven to ten days were required for the flour to move from respondent's mills at Greenville, Texas, or Salina, Kansas, to the wholesaler, the flour did not reach the retailer until at least October 1, 1956. The promotion was planned to last and did in fact last only about eight weeks. By December 1, 1956, the reduced prices were no longer in effect.

16. Respondent also limited the quantity of flour which would be sold at the reduced prices. The maximum amount contemplated was 20,000 hundredweights, and that was in fact the approximate amount shipped. The promotion appears not to have been accompanied by any special advertising campaign; during the period respondent kept within its customary advertising budget for that area.

17. The bags of flour were "pre-marked" or "pre-priced" by respondent to show the prices at which they would be sold by the retailer to the consumer. Allowing for the customary mark-up of the wholesaler and the retailer, respondent imprinted on the 5-pound bag a price of 39¢ and on the 25-pound bag a price of \$1.79. The purpose in imprinting the retail prices on the bags was to make sure the consumer, rather than the wholesaler or the retailer, would receive the benefit of the price reduction.

18. At about the time respondent's pre-marked bags appeared in the grocery stores, similarly marked bags of competing flours also appeared. Harris Milling Company's "Cream" and "Famo" brands in 25-pound bags were priced at \$1.79, and New Era Milling Company's "Polar Bear" was at \$1.80. It appears that the 25-pound

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bag was by far the most popular size in the eastern North Carolina area.

19. It is impossible to determine from the record whether respondent's or its competitors' pre-marked bags appeared on the market first. Actually it seems that all of them appeared practically simultaneously.

20. However, long before the appearance of any of the pre-marked bags, premium flours competitive with respondent's Robin Hood were being offered in the grocery stores in that area at \$1.79 or lower for 25 pounds. This was a rather frequent occurrence during the spring and summer of 1956. And during this same period Valley City Milling Company, Portland, Michigan, was selling its "Roller Champion," a premium flour widely known in the eastern North Carolina area, under a free goods deal, giving 5 pounds of flour or sugar free with each 25-pound bag of flour purchased.

21. It is undisputed that during the period respondent's reduced prices were in effect in the eastern North Carolina area respondent was selling identical flour (Robin Hood) at substantially higher prices in other market areas in its Southeastern Division.

22. Two defenses are asserted by respondent to the proceeding. It is urged, first, that the record fails to establish any substantial injury to competition or any reasonable probability thereof; and, second, that respondent's lower prices in the eastern North Carolina area were made in good faith to meet equally low prices of competitors.

23. There is no doubt that respondent's sales in the area increased substantially during the price reduction period. The following table, submitted by Commission counsel, shows respondent's shipments of family flour, by months and by hundredweights, into eastern North Carolina during the years 1955-1959:

	1955	1956	1957	1958	1959
Jan.....	3,394	4,932	2,804	7,907	7,401
Feb.....	4,679	6,212	6,220	5,278	5,009
March.....	7,138	2,656	5,331	4,881	3,229
April.....	2,430	4,402	8,165	4,192	4,224
May.....	4,059	4,606	2,800	7,199	5,385
June.....	4,319	2,595	8,425	5,051	3,823
July.....	3,400	2,805	6,672	4,983	5,025
Aug.....	6,230	6,400	3,612	2,087	4,129
Sept.....	1,800	9,204	4,828	3,045	5,141
Oct.....	3,400	7,112	4,212	4,057	4,421
Nov.....	6,832	6,478	2,000	2,372	1,180
Dec.....	4,200	4,401	3,006	3,100	4,225
Total.....	51,882	61,903	58,075	54,162	53,192

(Page 15, Commission Counsel's Proposed Findings.)

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It will be observed that the shipments in the months of September and October 1956 were very much larger than in the corresponding months of 1955, and that the total shipments in 1956 exceeded by some 10,000 hundredweights, or approximately 20 per cent, the total for 1955.

24. The table, however, would seem to raise serious doubt as to whether any substantial permanent advantage accrued to respondent as a result of the price reduction. After 1956, total sales in the area decreased steadily, those during 1958 and 1959 being only slightly in excess of the low year 1955.

25. Other figures, prepared from the above table and submitted by Commission counsel, show respondent's total sales, in hundredweights, in the area for the months of September, October, and November during the years 1955-1959:

1955	1956	1957	1958	1959
12,033	22,794	11,040	9,474	10,742

(Page 15, Commission Counsel's Proposed Findings.)

While this table shows a great increase in respondent's sales during the price reduction period in 1956, it also seems to cast even greater doubt than did the former table upon the question of any permanent gain to respondent. The totals for the three months in question in 1957, 1958, and 1959 are all below those for the same months in 1955.

26. All of the witnesses for both parties testifying on the point agree that during the last ten years or so there has been a decline in the sale of family flour in the eastern North Carolina area. The witnesses attribute the decline largely to the increasing popularity of "canned" biscuits, "brown and serve" rolls, cake mixes, etc.

27. As already indicated, the family flour market in eastern North Carolina is highly competitive. There are at least 28 millers selling in the area, their different brands of flour totaling some 120 brands. Some of the brands, such as those of General Mills and Pillsbury, are nationally advertised.

28. Data on sales in the area of the respective millers, or some of them, appear in the proposed findings filed by counsel. Some of the data, at the request of the various companies affected, were received in camera, and in such cases counsel have sought as best they could to preserve the confidential status of the figures. The hearing examiner will do likewise.

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(The data appear on pages 14-31 of Commission counsel's proposed findings and pages 42-84, Volume I of respondent's proposed findings and particularly pages 1-19, Volume II of respondent's proposals, which includes, among other things, the in camera material.)

29. Respondent is not the leading seller in the area. Harris Milling Company, Owosso, Michigan, with its Cream and Famo brands sells about twice the amount of family flour sold by respondent in that area. While Harris sold less in 1956 than in 1955 the decrease was insubstantial in comparison with the total amounts for the years. (Pages 1, 4, Volume II, Respondent's Proposed Findings.)

30. Valley City Milling Company, Portland, Michigan, also sells much more family flour in eastern North Carolina than respondent. Valley City's principal brand, Roller Champion, is widely known in the area. Valley City's sales in the area appear to have increased slightly in 1956 over 1955 but to have declined in 1957 (Pages 1, 4-5, Volume II, Respondent's Proposed Findings).

31. In volume of total sales of all products throughout the country respondent is outranked by both General Mills and Pillsbury. However, both sold less family flour in eastern North Carolina in 1955 and 1956 than respondent. And both sold less in 1956 than in 1955 (Pages 1, 5-7, Volume II, Respondent's Proposed Findings).

32. Roanoke City Mills, Roanoke, Virginia, sells family flour in Virginia, West Virginia, North Carolina, and South Carolina. Its most important market in point of volume is the local market within 100 miles of Roanoke. In the market area here involved (eastern North Carolina), its approximate sales in 1955 and 1956, in hundred-weights, were:

	1955	1956		1955	1956
Jan.....	5,265	4,786	Aug.....	6,093	5,134
Feb.....	4,756	5,101	Sept.....	5,755	2,802
March.....	5,677	4,487	Oct.....	4,232	3,885
April.....	7,018	5,564	Nov.....	4,344	3,333
May.....	6,290	5,183	Dec.....	4,975	1,728
June.....	5,872	3,802			
July.....	4,726	5,332	Total.....	65,003	51,237

(Page 17, Commission Counsel's Proposed Findings.)

It will be observed that Roanoke City's sales during September-December 1956 were much less than sales during the same months in 1955. However, during most of the earlier months in 1956 (before

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respondent's price reduction) sales were also below the same months in 1955.

33. Reference has already been made to a price reduction on "Polar Bear" flour during the same period respondent's price reduction was in effect. This flour is a product of New Era Milling Company, Arkansas City, Kansas. New Era's total sales of the flour in eastern North Carolina during the years 1954-1957 were:

1954.....	15,564 cwts.
1955.....	17,076 cwts.
1956.....	18,084 cwts.
1957.....	17,009 cwts.

(Pages 1, 7-8, Volume II, Respondent's Proposed Findings.)

It will be observed that sales in 1956 were slightly higher than in 1955, and that 1957 was about the same as 1955.

34. The sales of Piedmont Mills, Lynchburg, Virginia, in eastern North Carolina during the years 1955 and 1956 were:

1955.....	40,182.25 cwts.
1956.....	38,466.41 cwts.

(Page 9, Volume II, Respondent's Proposed Findings.)

35. Sales of Page Milling Company, Luray, Virginia, in eastern North Carolina during 1955 and 1956, in hundred-weights, were:

	1955	1956		1955	1956
Jan.....	2,452	1,280	Aug.....	1,630	1,192
Feb.....	1,514	1,542	Sept.....	1,339	900
March.....	1,822	1,450	Oct.....	1,400	1,092
April.....	1,745	1,412	Nov.....	1,396	742
May.....	1,493	904	Dec.....	1,288	506
June.....	1,622	1,200			
July.....	1,330	1,620	Total.....	19,031	13,840

(Page 27, Commission Counsel's Proposed Findings.)

It will be noted that there was a sharp drop in total sales in 1956 as compared with 1955. Here again, however, it appears that during most of the months in 1956 preceding respondent's reduced prices, Page was selling less than in 1955.

36. The data as to sales in eastern North Carolina of Statesville Flour Mills, Statesville, North Carolina, are in camera and therefore will not be set out there. The sales in 1955 and 1956 were approximately the same. In 1957 there was a substantial increase. (Pages 2, 10-11, Volume II, Respondent's Proposed Findings.)

37. Stevens and Company, Broadway, North Carolina, sells to retailers in the lower half of eastern North Carolina.

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Its total sales in that area for the years 1955-1958 were:

1955.....	9,938 cwts.
1956.....	11,744 cwts.
1957.....	10,356 cwts.
1958.....	11,286 cwts.

(Pages 2, 14, Volume II, Respondent's Proposed Findings.)

38. North State Milling Company, Greensboro, North Carolina, had sales in eastern North Carolina during the years 1954-1958 as follows:

1954.....	7,300 cwts.
1955.....	11,550 cwts.
1956.....	12,100 cwts.
1957.....	11,650 cwts.
1958.....	12,800 cwts.

(Pages 3, 15, Volume II, Respondent's Proposed Findings.)

39. Sales of W. A. Davis Milling Company, High Point, North Carolina, during the years 1954-1958 in eastern North Carolina were:

1954.....	20,562 cwts.
1955.....	20,218 cwts.
1956.....	18,880 cwts.
1957.....	14,098 cwts.
1958.....	17,228 cwts.

(Pages 3, 16, Volume II, Respondent's Proposed Findings.)

40. Sales of McLamb Flour Mill, Dunn, North Carolina, during the years 1955-1957 in the area in question were:

1955.....	23,000 cwts.
1956.....	19,000 cwts.
1957.....	15,000 cwts.

(Pages 3, 16-17, Volume II, Respondent's Proposed Findings.)

41. Lillington Roller Mills, Lillington, North Carolina, also had sales in the area during the years 1954-1958. The figures are in camera. It appears, however, that there has been a substantial increase each year since 1954. (Pages 3, 17, Volume II, Respondent's Proposed Findings.)

42. Sales of Broadway Roller Mills, Sanford, North Carolina, in the area were:

1955.....	19,642 cwts.
1956.....	19,110 cwts.
1957.....	18,566 cwts.

(Pages 3, 17, Volume II, Respondent's Proposed Findings.)

43. Shawnee Milling Company, Shawnee, Oklahoma, appears to have had only one customer in eastern North Carolina. While the

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sales figures are in camera, sales during each of the years 1956, 1957, and 1958 were slightly higher than in 1955. (Pages 3, 18, Volume II, Respondent's Proposed Findings.)

44. Sales of Crown Mills, Portland, Oregon, in eastern North Carolina during the period July 1952 through June 1958 were:

July 1952 through March 1953.....	27,629 cwts.
July 1953 through March 1954.....	24,030 cwts.
July 8, 1954 through June 23, 1955.....	24,577 cwts.
July 1955 through June 1956.....	19,210 cwts.
July 1956 through June 6, 1957.....	10,400 cwts.
July 3, 1957 through June 19, 1958.....	10,500 cwts.

(Pages 3, 18-19, Volume II, Respondent's Proposed Findings.)

45. King Milling Company, Lowell, Michigan, had sales in eastern North Carolina during the years 1954-1958 as follows:

1954.....	8,079 cwts.
1955.....	5,866 cwts.
1956.....	5,564 cwts.
1957.....	3,997 cwts.
1958.....	1,813 cwts.

(Pages 3, 19, Volume II, Respondent's Proposed Findings.)

46. Alabama Flour Mills, Decatur, Alabama, had sales in eastern North Carolina during the years 1954-1958 as follows:

1954.....	1,219 cwts.
1955.....	1,219 cwts.
1956.....	1,293 cwts.
1957.....	1,006 cwts.
1958.....	1,691 cwts.

(Pages 2, 14, Volume II, Respondent's Proposed Findings.)

47. The foregoing review covers all of the data on competitors' sales which in the hearing examiner's opinion are sufficiently complete to have substantial probative value.

48. Does the evidence establish substantial injury to competition or a reasonable probability of such injury? In the examiner's opinion it does not. In the case of some of the competitors there was actually an increase in sales rather than a decrease. In other cases, sales remained about the same as formerly. In still other cases, where there was a decrease in sales during the last three months of 1956, there had also been decreases during the earlier months of the year, long before respondent's price reductions went into effect.

49. There is no indication here of any predatory intent on the part of respondent. Its price reductions were not directed at any

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particular competitor. It was not seeking to cripple any competitor or drive him from the market. On the contrary, respondent appears merely to have been trying to regain lost sales volume, to protect itself in a highly competitive market.

50. Of particular significance is the complete absence of any indication that the "competitive health"—the ability to compete—of any competitor has been impaired. The most that can be said is that in the case of some competitors there was a temporary loss of sales. So far as the record discloses, all of respondent's competitors in the area are still in business and doing well.

The hearing examiner knows of no primary line case under the Robinson-Patman Act in which either the Commission or the courts have held that mere temporary diversion of sales from some competitors to another is sufficient to meet the criterion of competitive injury established by the statute. It is injury, and *substantial* injury, to competition with which the Act is concerned, not the mere temporary diversion of sales among competitors.

51. Another fatal deficiency in the record is its failure to establish any substantial causal relationship between respondent's price reductions and the loss of sales by competitors. Not only during the period of respondent's price reductions but for several months prior thereto there were many deals, promotions, and price reductions by various sellers throughout the eastern North Carolina market. There is no substantial basis for concluding that the loss of sales by some competitors was due to respondent's price reductions rather than to the deals and price reductions of other sellers.

52. It is therefore concluded that the complaint has not been sustained. First, because the record fails to establish substantial injury to competition or any reasonable probability thereof; and second, because, assuming injury to competition, the record fails to establish that such injury was due to the acts of respondent.

53. The conclusions reached on these points render unnecessary any ruling on respondent's defense that its price reductions were made in good faith to meet equally low prices of competitors.

ORDER

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

DECISION OF THE COMMISSION

The hearing examiner on July 8, 1963 filed his initial decision and order dismissing the complaint. The effective date of the initial

Complaint

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decision was stayed by the Commission's order of August 19, 1963; and

The Commission now having considered the matter and determined that the initial decision should be modified:

It is ordered, That the initial decision be modified by striking therefrom paragraphs 49 to 53 on pages 1136 and 1137 and substituting therefor the following:

49. The proof in the record is insufficient to sustain the allegations of the complaint.

It is further ordered, That the initial decision as modified be, and it hereby is, adopted as the decision of the Commission.

By the Commission. Commissioner Elman, being of the opinion that the case should not be placed on the Commission's own docket