

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

Commissioner MacIntyre concurring only in the result.

IN THE MATTER OF

UARCO, INC.

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

Docket 7087. Complaint, Mar. 13, 1958—Decision, Feb. 24, 1964

Order dismissing, for failure to establish a prima facie case, complaint charging the third largest producer of business form products in the United States, with discriminating in price in violation of Sec. 2(a) of the Clayton Act by allowing favored customers a concession from regular list prices, and by charging customers purchasing under special contracts, prices substantially lower than the prices charged others.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act,

approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Uarco, Inc., respondent herein, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 141 West Jackson Boulevard, Chicago, Illinois. Respondent's main plant is in Chicago, Illinois. Other plants of respondent are located at Deep River, Connecticut; Cleveland, Ohio; Watseka, Illinois; Paris, Texas; and Oakland, California. For sales purposes respondent company has set up eight regions in the United States: (1) New York City; (2) Hartford; (3) Chicago; (4) Great Lakes; (5) Midwest; (6) South-East; (7) South-West; and (8) West.

PAR. 2. Uarco, Inc., hereinafter sometimes referred to as Uarco or as respondent, is engaged in the manufacture, sale and distribution of various classes, types or descriptions of business forms products.

Uarco, Inc., is the third largest producer of business forms products in the United States, and its sales volume in 1955 was in excess of \$25 million. Approximately 98% of its sales are made through its own retail sales force to users. The remaining approximately 2% of its sales are made to dealers.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent is now engaged, and for a number of years past has been engaged, in commerce, as "commerce" is defined in the aforesaid Clayton Act, having sold its business forms products from its several plants located in the States of Illinois, Connecticut, Ohio, Texas and California, and transported or caused the same to be transported from its plants or other places of business in said states to purchasers that are users thereof located in other states of the United States, or in other places under the jurisdiction of the United States.

PAR. 4. In the course and conduct of its business as aforesaid, Uarco, Inc., is now and for a number of years past has been in substantial competition with others engaged in the manufacture, sale or distribution of business forms products in commerce between and among the various states of the United States, or other places under the jurisdiction of the United States.

PAR. 5. In the course and conduct of its business, as aforesaid, respondent Uarco has discriminated in price between different purchasers of its business forms products of like grade and quality by selling to some of its user customers at higher prices than to other of its user customers.

Various methods were employed to effectuate the discriminations practiced by respondent. Some of these were:

a. When the "Regular Method" of pricing is used, favored customers are allowed a concession or a cut from the computed list price. The unfavored customer is charged the regular list price without any concession or cut therefrom.

b. When the "Special Estimate" system is used, those customers who are favored by having their purchases priced according thereto are caused to pay a lower price than is charged to unfavored customers buying according to the "Regular Method" without a price concession.

c. Special contracts incorporate prices available to particular purchasers thereunder, which prices are substantially lower than the regular list prices charged to customers not under such contracts who buy according to the "Regular Method" without a price concession.

Examples of the discrimination in price alleged are as follows:

1. During 1955 respondent sold several kinds of its forms of varying characteristics to the Sieg Company at \$11.55 per M and at \$10.79 per M, whereas during the same period it sold to other customers similar forms of like grade and quality at higher prices, thereby resulting in concessionary differentials in price in excess of 20% in favor of the said Sieg Company, which has a special contract.

2. During 1956 respondent sold certain of its forms to Margo Kraft Distributors, Inc., at \$20.90 per M, whereas it sold similar forms of like grade and quality to other customers during the same period at higher prices, thereby resulting in concessionary differentials in price in excess of 20% in favor of the said Margo Kraft Distributors, Inc.

3. In 1956 respondent sold certain of its forms to Westinghouse Electric Corporation at \$32.44 per M, whereas it sold similar forms of like grade and quality to other customers during the same period at higher prices, thereby resulting in concessionary differentials in price in excess of 35% in favor of the said Westinghouse Electric Corporation.

4. During a portion of and since 1956, pursuant to special contracts covering "E-Z Out" and "Continuous" forms, respondent sold to Ford Motor Company and its several divisions, a variety of its forms at concessionary prices which were in most instances in excess of 35 to 40% below respondent's established list prices applicable to purchases of similar forms of like grade and quality by other of its customers. The said concessionary prices are not subject to in-

creases during the life of the contract, an advantage not accorded non-contract customers who purchase at list prices prevailing at the time of their particular sales transaction. During the contract period with Ford Motor Company, respondent did in fact increase its prices by varying upward the percentages applicable to specific forms, thereby effecting an increase in price to its customers not under special contract. Because of the aforesaid Ford contract provision, subsequent increases in price were not extended to the same forms purchasable by Ford, thus further accentuating the concessionary prices incorporated basically therein.

The foregoing examples are typical of the many price discriminations in transactions wherein respondent Uarco sold its business forms products of like grade and quality in commerce to different customers, favoring some customers with substantial price concessions and selling to others at list prices as computed from respondent's own price books.

Respondent Uarco's reduced prices and the consequent discriminations in price to its favored customers were sufficient to and did divert business from its competitors. Furthermore, such price reductions by respondent in these and other instances are sufficient to divert business from respondent's competitors to respondent in the future.

Said price concessions by respondent have been extremely harmful and injurious to respondent's competitors who have quoted prices according to their respective price books and have been thus foreclosed from opportunities to compete for the business on which respondent quoted concessionary prices substantially under respondent's own list prices and under the prices quoted by competitors.

PAR. 6. The effect of respondent's said discriminations in price as hereinabove alleged may be to substantially lessen competition or tend to create a monopoly in the line of commerce in which respondent is engaged, or to injure, destroy, or prevent competition with respondent.

PAR. 7. The discriminations in price, as hereinabove alleged and described, are in violation of subsection (a) of Section 2 of the aforesaid Clayton Act, as amended by the Robinson-Patman Act.

Mr. Herbert I. Rothbart for the Commission.

Dallstream, Schiff, Hardin, Waite & Dorschel, Chicago, Ill., by
Mr. W. Donald McSweeney; and

Mason, Mander & Harris, Washington, D.C., by *Mr. Lowell B. Mason*, for the respondent.

Initial Decision

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INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

AUGUST 7, 1962

1. The complaint in this matter, issued March 13, 1958, charges the respondent, Uarco, Inc., with discriminating in price in the sale of its products, in violation of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act. The hearing examiner to whom the case was originally assigned was the late and lamented Frank Hier. Upon Mr. Hier's death, in June 1959, the case was re-assigned to the present examiner. There have also been several changes in Commission counsel since the complaint was issued.

2. The case-in-chief in support of the complaint having been concluded, respondent has filed a motion to dismiss on the ground that a prima facie case has not been established. The motion has been ably briefed and argued orally by counsel for both parties.

3. In the present posture of the proceeding, the evidence and all inferences reasonably to be drawn therefrom must, under the Commission's rule, be viewed in the light most favorable to the complaint. Vulcanized Rubber and Plastics Company, D. 6222, 52 F.T.C. 553; Timken Roller Bearing Company, D. 6504, 54 F.T.C. 1909; Scott Paper Company, D. 6559, 55 F.T.C. 2050; Consolidated Foods Corporation, D. 7000, 56 F.T.C. 1663; Brillo Manufacturing Company, Inc., D. 6557, 56 F.T.C. 1672. While the hearing examiner does not agree with the rule, he is, of course, bound by it. (In the examiner's opinion the correct view is that set forth by Commissioners Tait and Kintner in their concurring opinion in Consolidated Foods).

4. Uarco, Inc. (frequently referred to hereinafter as Uarco), is an Illinois corporation, with its main office at 141 West Jackson Boulevard, Chicago, Illinois. It is engaged in the designing, manufacture and sale of business forms. The company is a large one, and sells its products throughout the United States. Its principal plant is located in Chicago and it has some six other plants at various points in the United States. Its approximate gross sales for the years 1955-1959 were: 1955, \$25,000,000; 1956, \$30,000,000; 1957, \$34,000,000; 1958, \$36,000,000; 1959, \$38,000,000.

5. Practically all of the company's sales—some 98 percent—are made direct to users through its own sales force. The remainder are made to dealers.

6. This is exclusively a "primary line" case. The only competitive injury charged in the complaint is in the line of commerce in which respondent itself is engaged. There is no charge of injury to competition among the purchasers of respondent's forms.

7. Essentially, the issues presented by the motion to dismiss are (1) whether the record establishes prima facie that the forms involved in the several instances of alleged price discrimination were of "like grade and quality", and (2) whether a prima facie case has been established on the issue of competitive injury.

8. The issue of like grade and quality is a very difficult one. Business forms, or at least those sold by respondent, are almost always tailored to the needs of the particular customer and made according to his specifications. There is opinion testimony from several persons in the trade that in the instances of alleged price discrimination disclosed by the record the forms involved were of like grade and quality. The opinions of the witnesses were based largely on the fact that in each instance the forms fell into one of the general categories recognized in the trade: (a) "E-Z Out" or "Snapout" forms, so called because they are designed in such a manner that the several parts or sheets may be separated from the carbon sheets and removed or "snapped out" easily; (b) "Control Punched Continuous" forms; (c) "Fanfold" forms; and (d) "Register" forms.

9. The hearing examiner has great difficulty with this theory. Within each of the categories mentioned there are innumerable variations as to design, size, shape, paper, carbon paper, number of parts (sheets), printing, manufacturing cost, selling price, etc. Moreover, there are contradictions among the witnesses as to some of the forms, and the reasonableness of some of the testimony is questionable when viewed in the light of the forms themselves.

10. Bearing in mind, however, the criterion adopted by the Commission—that at this stage of the proceeding the evidence and all reasonable inferences must be viewed in the light most favorable to the complaint—the hearing examiner is of the opinion that a prima facie case on the issue of like grade and quality has been established.

11. On the issue of competitive injury, there are some six instances disclosed by the record in which competitors of Uarco claimed to have lost business because of discriminatory pricing by Uarco. As indicated above, it is assumed for present purposes that in each instance the forms sold by Uarco at the higher and lower prices were of like grade and quality. The instances were:

(a) *Sale to Bostitch, Inc.* On April 15, 1958, Uarco sold to Bostitch, Inc., East Greenwich, Rhode Island, 11,000 E-Z Out forms for a total purchase price of \$517.99. The price per thousand was \$37.31, which represented a substantial reduction from Uarco's list price. While E-Z Out forms had previously been sold by Uarco to other customers at higher (list) prices, such sales were made in 1955

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and 1956, some two or three years prior to the sale to Bostitch. This lapse of time would seem to cast serious doubt upon the validity of the comparison.

The competitor witness who claimed to have lost this Bostitch order to Uarco was Harold F. Couch, Vice President of Allied Continuous Forms Company, Providence, Rhode Island. There is sharp dispute between counsel as to whether Mr. Couch's bid to Bostitch was on the form actually purchased by Bostitch. It appears that after bids were first requested by Bostitch there were changes in the specifications of the form, and counsel for respondent insist that Mr. Couch never did in fact make a bid on the revised form. For present purposes, however, it is assumed that he did, and that his bid was higher than Uarco's.

Prior to August 1957 Mr. Couch had been connected with Uarco, being its sales representative in Providence. Regarding Uarco's pricing policies, he testified that he was told by his superiors at Uarco that when competing for business against Uarco's principal competitors (Moore Business Forms, Inc., and Standard Register) to adhere pretty closely to Uarco's list prices, but that when competing against local jobbers to check with his home office in regard to offering a price concession. He also stated that these price concessions were "mostly to beat", rather than meet, competition. He further testified that now that he was one of Uarco's competitors he was feeling the effects of its pricing practices.

On cross-examination Mr. Couch conceded that his new company was "doing pretty good", that the company "definitely" was doing more business than when he became associated with it, and that on a number of occasions he had been successful in taking customers away from Uarco, several specific examples of such customers being given by him. As will be seen later, Mr. Couch is the only competitor witness whose testimony included any references to the matter of the effect or lack of effect upon the competitor of the claimed loss of business to Uarco; that is, to the matter of the competitor's general condition, whether its sales were increasing or decreasing, etc.

(b) *Sales to Sieg Company.* During October 1955 and February 1956, Uarco sold to the Sieg Company, Davenport, Iowa, and its subsidiary companies 425,000 E-Z Out forms at prices substantially less than those at which it was selling E-Z Out forms to certain other purchasers. The aggregate purchase price of the forms covered by the sales to Sieg, six in number, was \$4,773. It appears that Sieg had invited bids on all of the forms which it had estimated would be needed by it for an entire year. Uarco was the successful bidder and

the sales referred to above were made as a result of the acceptance by Sieg of Uarco's bid.

One of the unsuccessful (higher) bidders for the Sieg business was the Harris Business Forms Company, Moline, Illinois, one of whose executives, Mr. John H. Harris, testified as to the failure of his company to obtain the business.

(c) *Sale to Margo-Kraft Distributors, Inc.* On September 11, 1956, Uarco sold to Margo-Kraft Distributors, Inc., Minneapolis, Minnesota, 50,000 E-Z Out forms at \$1,045 or \$20.90 per thousand, which was substantially less than the price at which Uarco was selling E-Z Out forms to some other customers. In this instance the unsuccessful bidder was Holden Business Forms, Minneapolis, Minnesota, whose bid was \$24.48 per thousand. Testimony as to the loss of the business by Holden was given by one of its executives, Mr. R. B. Tiffany.

(d) *Sale to Minnesota Mining & Manufacturing Company.* In June, July and August 1956 Uarco sold to Minnesota Mining & Manufacturing Company 200,000 E-Z Out forms for a total purchase price of \$9,289, which represented a price per thousand substantially less than the price at which Uarco was selling E-Z Out forms to some of its other customers. Here the competitor who claimed to have lost the business because of Uarco's lower price was Arnell Business Forms, Inc., Minneapolis, Minnesota, one of whose officers, Mr. Ray Arnell, testified at the hearings.

(e) *Sales to Westinghouse Electric Corporation.* In June 1956 Uarco sold to Westinghouse Electric Corporation, Pittsburgh, Pennsylvania, two orders of E-Z Out forms aggregating 570,800 forms. The total purchase price was \$8,845, which represented as to each order a price per thousand substantially less than that at which E-Z Out forms were being sold by Uarco to some of its other customers. The competitor who claimed to have lost this business because of Uarco's lower price was Consolidated Business Forms Company, Pittsburgh, whose representative testifying at the hearings was Mr. William Ashby.

(f) *Contracts with Ford Motor Company.* Particular reliance is placed by Commission counsel on two contracts or agreements entered into by Uarco with Ford Motor Company, Detroit, Michigan. It appears that in the latter part of 1955 or the early part of 1956 Ford decided that instead of purchasing forms from time to time it would adopt a "package plan" under which it could, for one year, obtain at specified prices the forms which it might need during the year. Each of the package plans covered a particular type of form. The first of these package plans covered E-Z Out forms, and the

contract for supplying the forms was awarded to Uarco. The exact date of the agreement is not clear from the record, but it appears to have been entered into toward the end of 1955 or early in 1956.

Later in 1956 a second agreement, covering Control Punched Continuous forms was entered into between the same parties. The latter agreement appears to have covered the year beginning October 1, 1956 and ending September 30, 1957. Neither of the agreements precluded Ford from purchasing similar forms from other suppliers if it chose to do so. In fact, as will be seen later, Ford did purchase from at least one other supplier during the life of the agreements.

Generally speaking, the prices specified in the two agreements were substantially below prices at which Uarco was selling E-Z Out and Control Punched Continuous forms to some of its other customers.

The aggregate purchase price of the forms supplied by Uarco to Ford as a result of the agreements was very large (Com. Exs. 470 and 471, in camera. Com. Ex. 470 refers to the first contract, and Com. Ex. 471 to the second). The amounts were stated by one of Uarco's executives from memory and are approximate only, being subject to error of as much as 25 or 30 percent. After making allowance for this margin, the amounts still are very large.

The competitor involved in this instance is Business Forms Service, Detroit, two of whose representatives, Mr. Dan C. McKay and Mr. Jack F. Westmeier, testified at the hearings. During the years preceding the agreements between Ford and Uarco, Business Forms Service had sold substantial quantities of forms to Ford, the amounts being:

1952	-----	\$26, 617. 49
1953	-----	34, 695. 80
1954	-----	23, 529. 08
1955	-----	3, 157. 15

It will be observed that for the year 1955 the amount was much lower, dropping from \$23,529.08 in 1954 to \$3,157.15 in 1955.

The record further establishes that despite repeated efforts on the part of Business Forms Service to obtain some of the package-plan business, it was never invited by Ford to bid on the contracts. It seems clear that Ford did not wish to deal with Business Forms Service insofar as the package plan of purchasing was concerned.

In 1956, after the agreements between Ford and Uarco went into effect, Ford did purchase from Business Forms Service small quantities of forms aggregating some \$317, these purchases representing certain forms which Business Forms Service was able to supply on short notice.

In view of the fact that Ford apparently did not wish to deal with Business Forms Service at all on the package-plan contracts, it is difficult to see any causal connection between Uarco's lower prices to Ford and Business Forms Service's loss of the business. It seems clear that Business Forms Service would not have received the business in any event.

12. In summary, the record contains evidence of some six possible instances in which Uarco's different prices to different customers may have caused diversion of business to Uarco from its competitors. In only one of these instances is there any evidence whatever as to the effect of such diversion upon the competitor involved, and here the evidence is adverse to the case in support of the complaint. The competitor admittedly is doing well, his sales have increased substantially, and he is taking customers from Uarco.

13. In the other five instances the record is completely silent as to any effect on competition. There is no indication of any adverse effect either upon competition generally or upon any of the several competitors. The efforts of respondent's counsel to explore during cross-examination of the competitor witnesses the matter of the effect or lack of effect of the claimed loss of business were met by objections on the part of Commission counsel on the ground that such inquiry was beyond the scope of the direct examination; that is, that the direct examination was limited to inquiry regarding the specific instance of alleged loss of business, and that this precluded any inquiry by respondent as to the competitor's general condition, the increase or decrease in his volume of sales, etc.

14. The objections of Commission counsel were sustained by both the former and present hearing examiners on the ground stated—that the proposed inquiry was outside the scope of the direct examination of the witness. In sustaining the objections it was made clear to counsel by the present examiner that no inferences of any general effect upon competition or upon the particular competitor would be drawn by the examiner; that the testimony of each of the witnesses would be regarded as relating only to the loss of the specific item of business involved.

15. Thus the most established by the testimony of the competitor witnesses is that in some six separate, isolated instances sales have been lost to Uarco by the several competitors. If this is not the correct view—if any inferences of general adverse effect upon competition or upon any of the several competitors are to be drawn from the testimony—then it necessarily follows that very serious error was committed by both the present and former hearing examiners in

restricting respondent's cross-examination of the competitor witnesses.

16. Surely the burden of proof imposed by the Robinson-Patman Act is not met by showing merely the diversion of a few separate, isolated sales to a respondent from its competitors. It is injury to competition with which the statute is concerned, not merely the diversion of a few sales. And even if the test should be regarded as injury to a single competitor as distinguished from injury to competition, still the evidence is insufficient because there is a complete failure of the proof to show any substantial adverse effect upon any of respondent's competitors. There is no suggestion that the "competitive health"—the ability to compete—of any competitor has been at all impaired.

17. If the contracts with Ford Motor Company should be viewed in a different light than the other transactions because of the duration of the contracts and the large amounts involved, there still is a failure of proof as to competitive injury. This is so because, as pointed out above, no causal connection has been established between Uarco's lower prices to Ford and the competitor's failure to obtain the contracts.

18. While there is evidence of instances of discriminatory pricing by Uarco in addition to the six instances detailed above, such additional instances would appear to be immaterial in view of the fact that there is a complete absence of evidence that they resulted in any diversion of business to Uarco from its competitors. Consequently these additional instances are of no assistance in determining the issue of competitive injury.

19. The record also contains certain "statistical" evidence. Essentially this evidence consists of data as to (a) Uarco's size and its constantly increasing sales volume during recent years; (b) the ratio of Uarco's "price concessions" to its volume of sales; and (c) Uarco's market share.

20. As stated at the outset, Uarco is a large company, and its sales have shown steady and substantial increases during recent years. There is, however, no indication whatever in the record of any causal connection between Uarco's growth and its price discriminations. The fact of Uarco's size and growth would therefor seem to be wholly without probative value on the issue of competitive injury.

21. As for Uarco's "price concessions", this term indicates simply sales by Uarco "off list", that is, at less than list prices. Periodically Uarco compiles and places in the hands of its sales personnel pricing

manuals which show the list prices Uarco wishes to obtain for its products. Where the list price cannot be obtained the difference between the list price and the price actually obtained is termed a price concession. In each of the years 1953 through 1958 the ratio of total price concessions to total sales was: 1953, 4.7 percent; 1954, 5.9 percent; 1955, 6.2 percent; 1956, 5.7 percent; 1957, 6.5 percent; 1958, 9.7 percent.

22. Insofar as possible violation of the Robinson-Patman Act is concerned, the mere fact of price concessions obviously is meaningless unless such concessions are related to specific transactions. That is, it must be established that in specific instances sales at different prices were made to different purchasers, that the goods involved in the two sales were of like grade and quality, and that competitive injury resulted. As such evidence is lacking here, the data as to price concessions are of no assistance in resolving the issues in the proceeding.

23. Emphasis is placed by Commission counsel upon the fact that Uarco budgeted for its price concessions in advance. That is, that in making up its budget in anticipation of each year's operations, Uarco included an amount which it estimated would be required to cover the difference between the total sales at list prices and total sales at less than list prices. The hearing examiner sees nothing sinister or predatory in such action. It would appear to represent nothing more than an attempt by Uarco, in the light of its experience, to make allowance in advance for those instances in which it would be unable to sell at full list prices.

24. The data as to Uarco's market share appear in Commission Exhibits 410-414, all of which are in camera. The source of the figures is Business Forms Institute, which is an association comprised of manufacturers of business forms. Not all members of the Institute report their sales, and some manufacturers of business forms who are not members do report. Consequently the Institute's figures are not entirely reliable. Uarco does, however, regard the figures as providing at least some indication of its relative position in the industry.

25. The figures being in camera, they will not be set out here. As interpreted by the hearing examiner, the figures indicate that during the last several years Uarco has increased its market share somewhat as to certain types of forms, while sustaining losses as to other types. The over-all figures indicate modest gains by Uarco during the years, but it is apparent that Uarco is far from occupying a dominant or controlling position in the industry.

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26. In any event, there is an entire absence of evidence indicating any causal relationship between Uarco's market position and the price discriminations.

27. It is, of course, axiomatic that in a proceeding under the Robinson-Patman Act actual injury to competition need not be shown. The statute says "may be". But it is equally fundamental that these words do not open the door to speculation or conjecture. The test is reasonable probability. The present record fails to meet that test.

28. Even under the Commission's rule for appraising the evidence, it must be remembered that nothing less than substantial evidence will establish a prima facie case. Clearly such evidence is lacking here.

CONCLUSION

It is concluded that a prima facie case in support of the complaint has not been established.

ORDER

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

FINAL ORDER

This matter is before the Commission upon appeal by counsel supporting the complaint from the hearing examiner's initial decision. The hearing examiner, upon respondent's motion to dismiss made at the close of complaint counsel's case-in-chief, has concluded that a prima facie case in support of the complaint has not been established and has ordered that the complaint be dismissed.

In his initial decision, the hearing examiner correctly states the rule for judging whether respondent's motion should be granted or denied, that is, that the evidence and all inferences reasonably to be drawn therefrom must be viewed in the light most favorable to the complaint. Upon review of the initial decision, we conclude that the hearing examiner failed to properly apply this rule. Despite this error, however, we find from a careful review of the record in this proceeding that the examiner did not err in his conclusion that a prima facie case has not been established.

The complaint charges respondent with discriminating in price in the sale of business forms in violation of Section 2(a) of the Clayton Act, as amended. The only competitive injury charged is in the line of commerce in which respondent itself is engaged. The evidence, at most, discloses instances of sales below list prices by respondent to six customers with consequent loss of these sales by

respondent's competitors. It cannot reasonably be inferred from the evidence of record that these instances of off-list pricing have the adverse competitive effect proscribed by the statute. In addition, the evidence does not sustain an inference of predatory intent on the part of respondent in its sales at less than list price, as urged by counsel supporting the complaint. Moreover, with respect to evidence of general price concessions by respondent, we agree with the examiner's holding that "the mere fact of price concessions obviously is meaningless unless such concessions are related to specific transactions" and that such evidence is lacking in this record.

In our review of this record, we have noted that the evidence relates to sales made by respondent between the years 1955 and 1958, principally in 1955 and 1956. Under these circumstances, the Commission is of the opinion that remand of this proceeding for reception of additional evidence is not warranted.

It is, therefore, ordered, That the appeal of counsel supporting the complaint be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner be, and it hereby is, vacated and set aside.

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

Commissioner MacIntyre not concurring and Commissioner Reilly not participating for the reason that he did not hear oral argument