

aminer 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.

IN THE MATTER OF
PONCA WHOLESALE MERCANTILE COMPANY
ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(a) OF THE CLAYTON ACT

Docket 7864. Complaint, Apr. 18, 1960—Decision, Feb. 24, 1964

Order dismissing—for the reason that respondent wholesaler's challenged cigarette sales in the Roswell and Albuquerque, N. Mex., markets were within the "meeting competition" sanction of Sec. 2(b) of the Clayton Act—complaint charging discrimination in price among competing retailer purchasers, in violation of Sec. 2(a) of the Act.

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 the provisions of subsection (a) of Section 2 of the Clayton Act (U.S.C.A.

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