

Complaint

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divestiture is fully effected, submit to the Commission a detailed written report of its actions, plans, and progress in complying with the provisions of this order and fulfilling its objectives.

Commissioner Reilly not participating for the reason that he did not hear oral argument.

IN THE MATTER OF

PROCINO-ROSSI CORPORATION

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

Docket C-765. Complaint, June 30, 1964—Decision, June 30, 1964

Consent order requiring an Auburn, N.Y., manufacturer of macaroni and macaroni products, egg products, sauces and other food products—selling to a large number of wholesalers, independent and chain retailers, and institutions, principally in Massachusetts, New York, Ohio, Pennsylvania, and Vermont—to cease discriminating in price between different purchasers of its products by such practices as granting rebates to a retail food chain and giving certain purchasers merchandise for which no charge was made, while not giving rebates or free goods to competitors of customers so favored, thus violating Sec. 2(a) of the Clayton Act; by paying certain customers an allowance for advertising based on total purchases of certain of its products, granting a large Pennsylvania retail food chain a special allowance of \$200 per three-month period for additional advertising services, including in-store display, furnished by the customer, and by making payments to certain customers for advertising in catalogs, newspapers and on radio, while not making such allowances available on proportionally equal terms to all competitors of the favored customers, in violation of Sec. 2(d) of the Clayton Act; and by installing special “demonstrators” in the places of business of certain customers while not making such services available on proportionally equal terms to all other purchasers competing with such favored customers, in violation of Sec. 2(e) of the Clayton 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, and is now violating the provisions of subsections (a), (d) and (e) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Procino-Rossi Corporation is a corporation organized, existing, and doing business under and by virtue of the

laws of the State of New York, with its office and principal place of business located at 48 Washington Street, Auburn, New York.

PAR. 2. Respondent has been and is now engaged in the manufacture, sale and distribution of macaroni, macaroni products, egg products, sauces and other food products. Respondent sells its products to a large number of customers located principally in the states of Massachusetts, New York, Ohio, Pennsylvania and Vermont, purchasing such products for use, consumption, or resale. Respondent's customers include wholesalers, independent retailers, retail chain stores, and institutions. Respondent's sales of its products are substantial, exceeding \$3,300,000 in 1961.

PAR. 3. Respondent sells and causes its products to be transported from its manufacturing plant and principal place of business in the State of New York to purchasers located in other States of the United States. There has been at all times mentioned herein a continuous course of trade in said products in commerce, as "commerce" is defined in the Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, respondent sells its products of like grade and quality to purchasers who are in substantial competition with each other in the resale and distribution of such products within the trading areas where said purchasers are located.

PAR. 5. In the course and conduct of its business in commerce, and particularly since 1959, respondent has been, and is now discriminating in price between different purchasers of its products by selling said products to some purchasers at higher and less favorable prices than the prices charged competing purchasers for such products of like grade and quality.

For example, within the State of Pennsylvania, respondent has sold, and is now selling, certain of its products of like grade and quality to purchasers thereof at net prices substantially higher than the net prices charged other purchasers who compete in the sale and distribution of said products with the purchasers paying the higher prices. In one instance a retail food chain purchasing respondents' products is granted a rebate or allowance not granted to competing purchasers. In other instances, certain favored purchasers of respondent's products receive merchandise for which no charge is made, resulting in said favored purchasers paying net prices which are lower than the prices paid by competing purchasers who do not receive such free merchandise.

PAR. 6. The effect of the discriminations in price made by respondent in the sale of its products to competing purchasers, as hereinbefore set forth, may be substantially to lessen competition or tend to create a

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monopoly in the lines of commerce in which the favored purchasers are engaged, or to injure, destroy or prevent competition with the favored purchasers who receive the benefit of such lower net prices.

PAR. 7. The discriminations in price made by respondent in the sale of its products, as hereinbefore alleged, are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

COUNT II

PAR. 8. 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 quoted herein verbatim.

PAR. 9. In the course and conduct of its business in commerce, and particularly since 1959, respondent has paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments have not been made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

For example, respondent has in effect with certain of its customers cooperative advertising agreements whereby said customers are paid an allowance for advertising respondent's products based on total purchases of certain of respondent's products. Said allowance is not made available on proportionally equal terms to all other competing customers. In addition to said cooperative advertising allowance, respondent has granted to a large retail food chain in the State of Pennsylvania a special allowance of two hundred dollars (\$200) per three-month period for additional advertising services, including in-store display, furnished by said customer. Said special allowance has not been made available on proportionally equal terms to all other competing customers. Respondent has also made payments to customers for advertising furnished by said customers in catalogs, newspapers and on radio. Said payments have not been made available on proportionally equal terms to all other competing customers.

As a further example, respondent has, directly or indirectly, through Storecast Corporation of America, a corporation located in New York City engaged in the business of furnishing background music and other promotional services or facilities to retailers within the State of Pennsylvania, made or made available, substantial payments in the form of cash rebates, merchandising aid and background music to a large retail food chain as compensation or in consideration for certain

promotional services or facilities furnished by retail outlets of said retail food chain in connection with the resale of respondent's products. Respondent has not made such payments available to competitors of the aforesaid favored customer on proportionally equal or on any terms.

PAR. 10. The acts and practices of respondent, as alleged herein, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

COUNT III

PAR. 11. 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 quoted herein verbatim.

PAR. 12. In the course and conduct of its business in commerce, and particularly since 1959, respondent has discriminated in favor of certain purchasers of its products bought for resale by contracting to furnish, or furnishing, or by contributing to the furnishing to such favored purchasers of services or facilities connected with the handling, sale, or offering for sale of such products so purchased while not according such services or facilities to all competing purchasers on proportionally equal terms.

As one example of such practices, respondent has furnished certain of its purchasers the services and facilities of special personnel known as "demonstrators", while not according such services or facilities to all other competing purchasers on proportionally equal terms. Such personnel, compensated and furnished by respondent, are installed in the places of business of favored purchasers to assist in promoting the sale of respondent's products to customers of said favored purchasers.

PAR. 13. The acts and practices of respondent as alleged herein, are in violation of subsection (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsections (a), (d) and (e) of Section 2 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint

to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Procino-Rossi Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 48 Washington Street, Auburn, New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Procino-Rossi Corporation, a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of any of its products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality:

By selling such products to any purchaser at net prices higher than the net prices charged any other purchaser who competes in the resale or distribution of such products with the purchaser paying the higher price.

It is further ordered, That respondent Procino-Rossi Corporation, a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of any of its products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of respondent as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the offering for sale, sale or distribution of respondent's products, unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution of such products;

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2. Furnishing, contracting to furnish, or contributing to the furnishing of services or facilities in connection with the handling, processing, sale or offering for sale of respondent's products to any purchaser from respondent of such products bought for resale, when such services or facilities are not accorded on proportionally equal terms to all other purchasers from respondent who resell such products in competition with such purchasers who receive such services or facilities.

It is further ordered, That the respondent herein shall, within sixty