

IN THE MATTER OF
UNIVERSAL-RUNDLE CORPORATION

Docket 8070. Order, Aug. 4, 1964

Order denying respondent's petition for withdrawal of cease and desist order and for entry of order staying its effective date.

ORDER DENYING RESPONDENT'S PETITION

This matter has come before the Commission on a petition filed by respondent on July 20, 1964, requesting that we withdraw the order to cease and desist issued in this proceeding on June 12, 1964 [65 F.T.C. 924], and stay the re-entry of said order and further requesting that we grant a hearing on the petition and stay the order to cease and desist pending decision on the petition. An answer in opposition to this petition has been filed by complaint counsel.

Respondent contends in support of its request for withdrawal of the order to cease and desist that there is an industrywide practice by plumbing supply manufacturers of granting discounts on truckload shipments and that inasmuch as it is prohibited by the order from granting such discounts it will be placed in an adverse competitive position. Respondent has also submitted information to the effect that it has incurred losses in the operation of its business since 1961 and that certain of its competitors have realized profits during that period. It requests therefore that the order be withdrawn until the Commission has taken the necessary steps to correct the practice complained of.

The principal basis for respondent's petition seems to be that the granting of truckload discounts by its competitors is illegal per se under Section 2(a) of the amended Clayton Act. There is nothing in our decision to support this contention, however, nor does the order to cease and desist entered against respondent absolutely prohibit it from granting truckload discounts. While the practice of granting such discounts may under certain circumstances, such as those shown in the record of this proceeding, result in price discriminations having proscribed competitive effects, the practice is not necessarily illegal as indicated in respondent's petition. In this connection, it must be determined in each case whether the discount creates a price difference, whether the recipient of such a discount is competing at the same functional level with a customer paying a higher price, whether the customer buying in less than truckload quantities is able to avail itself of the truckload discount, and whether the differential is sufficient in the competitive conditions shown to exist to have the requisite anti-competitive effects. Moreover, even if a prima facie violation of Section

2(a) is established, the seller may in each case interpose the statutory defenses to justify the discrimination.

Consequently, the general allegation by respondent that its competitors are granting truckload discounts is not a sufficient basis for instituting industrywide proceedings to condemn this practice nor is it a valid reason for withholding enforcement of the order entered against respondent in this matter. Moreover, the fact that respondent may have incurred losses prior to the issuance of the order does not support the contention that enforcement of the order will cause it financial hardship.

For the foregoing reasons the Commission is of the opinion that respondent has failed to make a showing which would warrant granting the relief requested :

It is ordered, That respondent's petition for withdrawal of the order to cease and desist and request for entry of an order staying the effective date of the cease and desist order be, and it hereby is, denied.