

Order Proceeding and Modifying Previous Order 76 F.T.C.

sion's order ruling on the petition filed by the respondent on June 7, 1961: *Provided further*, That the respondent shall not be prohibited hereby from effectuating the proposed purchases referred to in the first paragraph of the Commission's order ruling on the petition filed by the respondent on October 1, 1969."

IN THE MATTER OF
TRI VALLEY GROWERS FORMERLY TRI-VALLEY PACKING
ASSOCIATION

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

Dockets 7225 and 7496. Complaints, Aug. 6, 1958 and May 15, 1959—Decision, Dec. 12, 1969

Order modifying an earlier order dated July 28, 1966, 70 F.T.C. 223, pursuant to a decision of the United States Court of Appeals, 411 F. 2d 985 (8 S.&D. 915), by inserting the words, "including customers who do not purchase directly from respondent," in paragraph 2 of the Commission's final order.

MODIFIED ORDER

Respondent, Tri Valley Growers, formerly known as Tri-Valley Packing Association, a corporation, having filed in the United States Court of Appeals for the Ninth Circuit a petition to review and set aside the order to cease and desist issued against it by the Commission on July 28, 1966 [70 F.T.C. 223]; and the Court on May 13, 1969 [8 S. & D. 915], having rendered its decision, and, on May 29, 1969, having entered its final decree modifying and, as modified, affirming and enforcing the said order to cease and desist; and the Supreme Court of the United States having denied a petition filed by respondent, Tri Valley Growers, for writ of certiorari to the said Court of Appeals for review of the said decision and final decree;

Now, therefore, it is ordered, That the aforesaid order to cease and desist be modified, in accordance with the said final decree of the said Court of Appeals, to read as follows:

It is ordered, That respondent, Tri Valley Growers, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other devise in, or in connection with, the sale of food products in commerce, as "commerce"

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Modified Order

is defined in the amended Clayton Act, do forthwith cease and desist from:

1. Discriminating in the price of such products of like grade and quality by selling to any purchaser at net prices higher than the net prices charged any other purchaser who, in fact, competes with the purchaser paying the higher price or with customers of such purchaser.

2. Paying or contracting for the payment of anything of value to or for the benefit of any customer of respondent, pursuant to a specially tailored or negotiated arrangement, as compensation or in consideration for any service furnished by or through such customer, in connection with the offering for sale, sale or distribution of any of respondent's products, unless such payment or consideration is made available on proportionally equal terms to all other customers of respondent, including customers who do not purchase directly from respondent, who compete in the distribution of such products with the favored customer.

It is further ordered, That respondent, Tri Valley Growers, shall, within sixty (60) days after service of this order upon it, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the terms of the order to cease and desist contained herein.