
IN THE MATTER OF
SUBURBAN PROPANE GAS CORPORATION

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

Docket 8672. Complaint, Nov. 26, 1965—Decision, Feb. 26, 1970

Order withdrawing the complaint and terminating the proceeding which charged a Whippany, New Jersey, retailer of liquefied petroleum gas with knowingly inducing and receiving discriminatory prices from its suppliers on the grounds that the hearing examiner had recently died and that market conditions in the industry have materially changed since the issuance of the complaint.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof, and more particularly designated and described hereinafter, has violated and is now violating the provisions of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, Section 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Suburban Propane Gas Corporation (sometimes referred to hereinafter as Suburban) is a corporation organized and existing under the laws of the State of New Jersey, with its principal office and place of business located at Whippany, New Jersey.

PAR. 2. Respondent Suburban, among other things, is engaged in

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the business of buying liquefied petroleum gas from producers and from producers' brokers for resale to commercial, residential and industrial consumers, directly as well as through said respondent's own dealers. Respondent Suburban is the largest independent company in the world engaged in the business of selling liquefied petroleum gas at retail to consumers, and its total sales of such gas during the year 1962 exceeded \$40,000,000.

PAR. 3. Respondent Suburban has purchased and now purchases liquefied petroleum gas in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, in that said respondent causes the liquefied petroleum gas purchased by it to be shipped and transported between and among the several States of the United States and the District of Columbia, from the respective State or States of origin to many other States and the District of Columbia where respondent maintains outlets through which it resells the liquefied petroleum gas so purchased and delivered. Respondent Suburban is therefore engaged in commerce, as "commerce" is defined in the Clayton Act, as amended. In the course of the aforesaid purchase and resale of liquefied petroleum gas, respondent Suburban has been and is now engaged in substantial competition with numerous smaller independent corporations, partnerships and individuals in many States of the United States and in the District of Columbia, except insofar as such competition has already been impaired or destroyed by the practices alleged herein.

PAR. 4. In the course of its purchases of liquefied petroleum gas in commerce, respondent Suburban has solicited and knowingly induced its suppliers to sell to it at prices substantially lower than their regular posted prices, posted prices constituting the generally prevailing current market prices of liquefied petroleum gas. Respondent has sometimes refused to purchase liquefied petroleum gas from suppliers which refused to accede to its demands of prices substantially below the prices at which liquefied petroleum gas of like grade and quality is sold to other purchasers thereof, including competitors of said respondent. The effect of such inducement and receipt, or receipt, by respondent of such discriminations in price has been and may be substantially to lessen, injure, destroy, or prevent competition with respondent in the resale of liquefied petroleum gas. Respondent knew, or should have known, that such price discriminations have constituted and now constitute violations of subsection (a) of Section 2 of the Clayton Act, as amended.

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Concurring Statement

PAR. 5. The practices alleged herein began when respondent Suburban was first organized, and have continued to the present time. As an example of the practices alleged herein, during the years from 1957 through 1963, respondent Suburban induced Phillips Petroleum Company, one of its principal suppliers, to contract to sell liquefied petroleum gas to it at said supplier's regular prices minus specified discounts which ranged from one-half cent per gallon in 1957 and 1958 up to one cent per gallon in 1962 and 1963. Pursuant to such contracts, respondent purchased from fifty million gallons to more than eighty million gallons of liquefied petroleum gas per year from Phillips Petroleum Company and received, in connection therewith, discounts from that supplier's current market prices aggregating several hundred thousand dollars per year. Respondent knew, or should have known, that Phillips Petroleum Company, at the same time, was selling liquefied petroleum gas of like grade and quality to many of respondent's competitors at said supplier's regular posted prices, and that the effect of such discriminations in price has been and may be substantially to lessen, injure, destroy, or prevent competition between respondent and other customers of said supplier in the resale and distribution of liquefied petroleum gas.

PAR. 6. The acts and practices of respondent Suburban, as alleged above, are in violation of the provisions of subsection (f) of Section 2 of the Clayton Act, as amended.

CONCURRING STATEMENT

FEBRUARY 26, 1970

By JONES and DIXON, *Commissioners*:

I concur in the Commission's order withdrawing the complaint. Because my reasoning differs somewhat from the majority's, I feel it necessary to write this separate statement.

The complaint in this matter, filed on November 26, 1965, challenge as illegal Suburban Propane's alleged inducement of discriminatory prices for its purchases of liquid propane gas (LPG) from Phillips Petroleum Company which "brokered" the fuel from other producers in the area. The alleged discriminatory prices were embodied in a 20-year contract entered into in 1945 by Phillips with Suburban at the time Suburban purchased its LPG distribution facilities in the New England market from Phillips.

Ten years ago, at about the time this Suburban-Phillips contract was entered into, a "buyer's" market existed in LPG. General

demand for the product was sufficiently weak relative to production and capacity that only a few producers found it worthwhile to devote resources to producing it on any significant scale for commercial distribution. Often, for lack of markets or storage capacity, it was simply burned off.

In recent years, however, there are indications that the "soft" market conditions for LPG have changed. The general potentiality for pressure on sellers to find markets has been substantially reduced by rapidly expanding demand for the product as new commercial applications have been and are being found. There has also been a notable change in production and supply conditions in the industry. While Phillips itself, the "induced" company has largely left the market, there are now at least ten refiners able to produce LPG for the New England market and which are themselves vertically integrated at least to some extent into LPG marketing at wholesale or retail or both. There are at least six independent marketers who serve one or more parts of the New England market. Moreover, new methods of LPG transport have emerged and storage facilities have been significantly increased. Long-term contracts of the sort that Suburban entered into with Phillips have ceased to be significant in this industry.¹

Under such circumstances, an order against Suburban to cease and desist from inducing discriminations from large and powerful suppliers who appear to have plenty of potential alternative marketing sources, including their own distribution system, would in my judgment, serve little competitive purpose.²

The Robinson-Patman Act was designed to deal with those price discriminations which have a clear anti-competitive effect upon the structure, behavior, and competitive performance of the market by intimidating viable actual and potential competitors. Suburban operates in a commodity line which today is sufficiently competitive that it has even been subject to organized futures trading as a hedge against undue price fluctuation. It faces competition from other purchasing firms—independents, large chemical companies, and refiners capable of using their vertical integration capacity to put a cost squeeze on independent wholesalers and retailers like Suburban. It is hard to see in these circumstances how Suburban could ever obtain

¹ Fortune, *Plant and Product Directory*, 1966; National Petroleum News, *Factbook Issue*, 1968.

² It is indicated also that the long-term contract with Phillips has been dissolved, and that Phillips no longer supplies the New England market in any competitively significant quantity.

discriminatory concessions which would injure the competitive viability of LPG production marketing.

Accordingly, I would have dismissed this complaint on the sole basis that market conditions have so changed in this industry that any order entered in this case would be a vain act. Since the public interest no longer requires or justifies an order, I would dismiss the complaint.

ORDER WITHDRAWING COMPLAINT

This matter is before the Commission on the motion of the respondent, Suburban Propane Gas Corporation, to withdraw this matter from adjudication and for a nonadjudicative disposition of it. The immediate principal basis for that motion is the recent death of the hearing examiner which the respondent suggests justifies nonadjudicative final disposition of this case at this time.

Moreover, the proceeding under the complaint herein was commenced on November 26, 1965. In the meantime, the matter was shuttled back and forth between the Commission and the hearing examiner on first one appeal or motion after another. These procedural matters have materially precluded expeditious disposition of the issues on the merit. The recent death of the hearing examiner and the pending motion, above mentioned, provide prospects for further delay in a determination of the issues on the merit. In view of all these circumstances, it is the conclusion of the Commission that procedural difficulties now present would preclude any timely resolution of the issues under the outstanding complaint. Therefore,

It is ordered, That the complaint herein be, and the same hereby is, withdrawn and the proceeding thereunder terminated.

By the Commission, with Commissioner Elman concurring in the result.

IN THE MATTER OF

GEON INTERCONTINENTAL CORPORATION, ET AL.

MODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket C-1623. Complaint, Nov. 12, 1969—Decision, Feb. 26, 1970

Modified order incorporated into original cease and desist order of November, 12, 1969. For cease and desist order see 76 F.T.C. 595.