

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

Docket C-1895. Complaint, Apr. 6, 1971—Decision, Apr. 6, 1971

Consent order requiring a Council Bluffs, Iowa, manufacturer and distributor of assembled amateur radio equipment to cease discriminating in the price of its products by selling to certain purchasers at new prices higher than it sells to other competing purchasers, and furnishing certain services and facilities to some customers and not to competing customers on proportionally equal terms.

COMPLAINT

The Federal Trade Commission, having reason to believe that Galaxy Electronics, Inc., a corporation, has violated and is now violating the provisions of subsections (a) and (d) of Section 2 of the Clayton Act, as amended (15 U.S.C. Sec. 13), hereby issues its complaint stating its charges with respect thereto as follows:

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COUNT I

Charging a violation of subsection (a) of Section 2 of the afore-said Clayton Act, as amended, the Commission alleges:

PARAGRAPH 1. Respondent, Galaxy Electronics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska with its headquarters and principal place of business located at 10 South 34th Street, Council Bluffs, Iowa.

PAR. 2. Respondent is now, and for some time last past has been a manufacturer, distributor and seller of assembled amateur radio equipment, including, but not limited to transmitters, receivers and transceivers. Respondent manufactures its said products at its plant located at Council Bluffs, Iowa.

Respondent distributes and sells its products of like grade and quality to a large number of purchasers located throughout many States of the United States for use and resale therein.

Respondent's sales of its products are substantial, exceeding \$800,000 for the fiscal year 1970.

PAR. 3. Respondent sells and causes its products to be transported from its principal place of business in the State of Iowa to purchasers located in other States of the United States. There is now, and for some time last past has been, 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 respondent's like products.

PAR. 5. In the course and conduct of its business in commerce, respondent has been, and is now discriminating in price between different purchasers of its products of like grade and quality 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, respondent is now using, and for some time last past has used the following rebate schedule in connection with its sales of its amateur radio equipment of like grade and quality which it sells to retail dealers, many of whom compete with each other in the resale of such equipment, said schedule being based upon the semi-annual volume of purchases of such dealers:

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Semi-annual purchases:	Percent of rebate
\$70,000.....	8
\$50,000.....	7
\$35,000.....	6
\$25,000.....	5
\$20,000.....	4
\$15,000.....	3
\$10,000.....	2
\$5,000.....	1

Pursuant to such rebate schedule, some retail dealer purchasers have been charged higher and less favorable prices than the prices charged competing retail dealer purchasers for such products of like grade and quality, in that their semi-annual volume of purchases has been insufficient to qualify them for the higher percentages of rebate attained by the favored purchasers.

PAR. 6. The effect of such discriminations in price made by respondent in the sale of its products, as hereinbefore set forth, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which the favored purchasers from respondent are engaged, or to injure, destroy or prevent competition with the favored purchasers from respondent who receive the discriminatory lower 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.

COUNT II

Charging a violation of subsection (d) of Section 2 of the aforesaid Clayton Act, as amended, the Commission alleges:

PAR. 8. Paragraphs One through Four of Count I hereof are hereby set forth by reference and made a part of this Count II as fully and with the same effect as if quoted here verbatim.

PAR. 9. In the course and conduct of its business in commerce as aforesaid, respondent has paid or authorized payment of money, goods or other things of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through such customers in connection with the handling, sale or offering for sale of respondent's products and respondent has not offered to make or made such payments, allowances or consideration available on proportionally equal terms to all of its other customers competing with the customers so favored in the sale and distribution of its products.

For example, respondent is now using, and for several years last past has used, an advertising announcement which it has devised, in which respondent has stated:

CO-OP ADVERTISING . . . sure . . . and very liberal, just contact me, and we will negotiate; or

We will be glad to consider requests for one-time or unusual Ad requirements on an individual basis.

Pursuant to said announcement, respondent has granted advertising allowances to some of its retail dealer customers, which allowances were not made available on proportionally equal terms to all of its other retail dealer customers competing with the customers so favored in the sale and distribution of its products.

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.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of subsections (a) and (d) of Section 2 of the Clayton Act, as amended.

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 aforesaid draft of complaint, 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Galaxy Electronics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 10 South 34th Street, Council Bluffs, Iowa.

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

ORDER

It is ordered, That respondent Galaxy Electronics, Inc., a corporation, its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the sale of its amateur radio equipment in commerce, as "commerce" is defined in the Clayton Act, as amended, forthwith cease and desist from discriminating directly or indirectly, in the price of such amateur radio equipment of like grade and quality, by selling to any purchaser at net prices higher than the net prices charged any other purchaser competing in fact with such unfavored purchaser in the resale and distribution of such amateur radio equipment.

It is further ordered, That respondent Galaxy Electronics, Inc., a corporation, its officers, employees, agents and representatives, directly or through any corporate device, in or in connection with the sale of its amateur radio equipment in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from making or contracting to make to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any advertising or any other services or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of respondent's amateur radio equipment, unless such payment is in fact made available on proportionally equal terms to all other customers competing in the distribution of such products.

It is further ordered, That respondent herein shall notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

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

It is further ordered, That within thirty (30) days after service

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upon it of this order respondent herein shall deliver to all persons purchasing its amateur radio equipment for resale a letter to such persons describing the manner and form of respondent's compliance with this order.

It is further ordered, That the respondent corporation shall forth-