

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

Docket C-1957. Complaint, June 29, 1971—Decision, June 29, 1971

Consent order requiring the Nation's five largest tire manufacturers with headquarters in New York City and Akron, Ohio, to cease refusing to sell special mileage commercial tires to any transit company, entering into any agreement with a transit company which does not contain certain enumerated options to alter the contract, selling such tires with the "buy-out" provision, and making any contract with a transit company for more than five (5) years; also each customer shall have the right to amend its contract to purchase all special mileage commercial tires it has in use, and each respondent shall publish and disseminate to the transit companies lists of prices for such tires.

The Federal Trade Commission having reason to believe that the corporations named as respondents in the caption hereof, and more particularly designated and described hereinafter, have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent The Goodyear Tire & Rubber Company (hereinafter referred to as "Goodyear") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at 1144 East Market Street, Akron, Ohio.

Respondent The Firestone Tire & Rubber Company (hereinafter referred to as "Firestone") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at 1200 Firestone Parkway, Akron, Ohio.

Respondent UNIROYAL, Inc. (formerly United States Rubber Company and hereinafter referred to as "UNIROYAL"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 1230 Avenue of the Americas, New York, New York.

Respondent The B. F. Goodrich Company (hereinafter referred to as "Goodrich") is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 500 South Main Street, Akron, Ohio.

Respondent The General Tire & Rubber Company (hereinafter referred to as "General") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at 1708 Englewood Avenue, Akron, Ohio.

PAR. 2. Definitions:

(a) The term "special mileage commercial tire" means any tire supplied by a respondent to a transit company (as hereinafter defined) under the terms of and in connection with a leasing agreement (as hereinafter defined) and includes tires specially constructed for that purpose, exclusive of truck tires.

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(b) The term "leasing agreement" means all agreements, arrangements, understandings or contracts, written or oral, whether or not actual leases, under which one of the respondents agrees to supply a transit company (as hereinafter defined) with any or all of its requirements for special mileage commercial tires.

(c) The term "transit company" includes both publicly and privately-owned transit authorities, corporations, partnerships, sole proprietorships and other entities engaged in transporting persons in the United States over public and private roadways in bus coaches, including but not limited to those engaged in operating intracity buses, intercity buses, school buses, charter buses and similar forms of transportation.

(d) "Sale" and "sell" mean any immediate transfer of title and use, whether for cash or on credit.

PAR. 3. The respondents, and each of them, have been and now are engaged in, among other business activities, the business of manufacturing special mileage commercial tires used by virtually every transit company in the United States and distributing said tires through leasing agreements, each of said leasing agreements involving one of the respondents and a transit company. The total revenue derived annually from said business has exceeded the sum of twenty million dollars in each year since 1964, with respondents collectively sharing substantially all of said revenues. The approximate market shares of the individual respondents in said business are: Goodyear 33 percent; Firestone 30 percent; Goodrich 21 percent; General 8 percent; and UNIROYAL 7 percent, with the remaining 1 percent distributed among other manufacturers.

PAR. 4. In the course and conduct of their aforesaid business, respondents now ship, and for some time last past have shipped, their special mileage commercial tires from their respective production facilities in various States to locations in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said tires in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Except to the extent that actual and potential competition among the respondents and with others has been hindered, frustrated, foreclosed, lessened and eliminated by the unfair methods of competition and unfair acts and practices hereinafter set forth, each of the respondents is in direct, substantial competition with the other respondents and others in the manufacture, sale, leasing and servicing of special mileage commercial tires.

PAR. 6. In the conduct of the aforesaid business, the respondents,

and each of them are now using and for many years have used and pursued parallel courses of business behavior constituting unfair methods of competition and unfair acts and practices in commerce.

Among the unfair methods, acts and practices in which respondents, and each of them, have been and are now engaged are the following:

(a) Entering into, establishing and maintaining leasing agreements with transit companies wherein and whereby:

(i) A transit company is obligated to obtain its total requirements or substantially all of its requirements for special mileage commercial tires from one of the respondents for the duration of the leasing agreement, which duration, exclusive of any renewals and extensions, ranges from two to eight years with three to five years being generally employed; and,

(ii) A transit company, on terminating an existing leasing agreement, is required to purchase or "buy-out" all of the special mileage commercial tires then identified to the leasing agreement.

(b) Refusing to sell special mileage commercial tires except on termination of a leasing agreement.

(c) Offering and providing service for special mileage commercial tires only in conjunction with, and as an integral part of, a leasing agreement for said tires with a transit company.

PAR. 7. The purpose and effect of the "buy-out" requirement has been and is now to deter or preclude lessee transit companies throughout the United States from terminating an existing supplier and from seeking a new supplier of special mileage commercial tires, and, if a transit company seeks to shift the burden of said requirement to any new supplier, to deter or preclude any such potential new supplier from soliciting and/or obtaining the special mileage commercial tire business of that transit company.

In order to enhance further the deterrent and prohibitive effect of the "buy-out" requirement, and thereby further hinder, frustrate, foreclose, lessen and eliminate competition among respondents and with other potential competitors, the respondents, and each of them, have been and now are engaged in the following unfair methods, acts and practices:

(a) Inflating, padding and "loading" the inventory of special mileage commercial tires identified to the leasing agreement prior to the expiration thereof; and

(b) Establishing under the leasing agreement, methods or formulae for valuing and/or pricing special mileage commercial tires under the "buy-out" requirement of said leasing agreement, which

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methods or formulae produce a purchase price to the transit company substantially in excess of the manufacturer's inventory value for said tires.

PAR. 8. The methods, acts and practices of respondents, and each of them, by and through the special mileage commercial tire leasing agreement and other acts and practices ancillary thereto, as herein described, have had for many years and are now having the effect of hindering, frustrating, foreclosing, lessening and eliminating competition in the sale and leasing of special mileage commercial tires and of allocating transit company customers among respondents, and such acts constitute unfair acts and practices in commerce, all in derogation of the public interest and in violation of Section 5 of the Federal Trade Commission Act.

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The Federal Trade Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents 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 respondents, their attorneys and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have 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, during which time public comments were received and considered, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent The Goodyear Tire & Rubber Company is a corporation organized, existing and doing business under and by virtue of

the laws of the State of Ohio, with its principal office and place of business at 1144 East Market Street, Akron, Ohio.

2. Respondent The Firestone Tire & Rubber Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at 1200 Firestone Parkway, Akron, Ohio.

3. Respondent UNIROYAL, Inc. (formerly United States Rubber Company), is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 1230 Avenue of the Americas, New York, New York.

4. Respondent The B. F. Goodrich Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 500 South Main Street, Akron, Ohio.

5. Respondent The General Tire & Rubber Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at 1708 Englewood Avenue, Akron, Ohio.

6. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents The Goodyear Tire & Rubber Company, a corporation; The Firestone Tire & Rubber Company, a corporation; UNIROYAL, Inc. (formerly United States Rubber Company), a corporation; The B.F. Goodrich Company, a corporation; and The General Tire & Rubber Company, a corporation; and each of said respondents and their respective officers, representatives, agents and employees, successors and assigns, directly or through any corporate or other device, in connection with the manufacture, distribution, supply and sale of special mileage commercial tires, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Refusing to sell special mileage commercial tires to a transit company.

(2) Entering into or extending any agreement for the supplying of special mileage commercial tires to a transit company, in which the payments received are based in any way upon the mileage run on said tires, which does not contain an option exercisable by the transit company upon thirty (30) days notice

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prior to the expiration date specified in said agreement as follows:

- (a) The transit company shall have the right to extend the agreement and continue the use, and in that event the supplier shall continue its interest (if any be retained) in said tires, and if so extended, the agreement shall terminate in thirty-six (36) months, and
 - (b) Payment for such use shall not exceed the mileage rate formulae in effect during the six-month period immediately preceding the expiration of the agreement, and
 - (c) The transit company shall continuously use such tires insofar as practicable on its highest-mileage runs, until they are rendered permanently unfit for service, and
 - (d) No additional tires are to be furnished by the supplier during such extension unless requested by the transit company and agreed to by the supplier, and
 - (e) Upon expiration of the agreement as so extended, the transit company shall pay for any mileage remaining computed in accordance with the formulae in Par. I(2)(b) above.
- (3) Entering into any rental agreement for the supply of special mileage commercial tires to a transit company which requires such company to purchase ("buy-out") any tires at the expiration thereof unless in accordance with the terms of Par. I (2) above.
 - (4) Entering into any agreement of any kind to provide any transit company with its needs or requirements for special mileage commercial tires for a total period in excess of five years.
 - (5) Entering into any agreement of any kind with a transit company which does not contain a provision, if requested by the transit company, giving that company the right to test special mileage commercial tires other than the supplier's on five percent (5%) of its fleet.

II

It is further ordered, That each respondent, individually, shall within thirty (30) days from the date of issuance of this order, notify each transit company with which it then has an agreement for the supply of special mileage commercial tires that:

- (1) The transit company shall have the right by notice to the respondent within ninety (90) days of the date of issuance of this order, to amend its agreement to provide that at the end of

the term of the agreement, it may purchase and pay for any and all special mileage commercial tires then in use by:

(a) Calculating a cash purchase price for said tires by multiplying the mileage remaining by the mileage rate formulae in effect for the six-month period immediately prior to the termination date, less any charge intended to cover costs for service which is not thereafter to be performed by respondent, and including credit for bonus mileage earned or to be earned, and

(b) Payment of the definite price established by Par. II (1) (a) above by means of equal monthly payments over a maximum period of twenty-four (24) months or a number of months equal to two-thirds ($\frac{2}{3}$) of the average remaining life of such tires, whichever is less.

(2) All new agreements, including renewals of existing agreements, will be executed by the respondent in accordance with the provisions of this order.

(3) Respondent will not impose legal penalties or financial charges or costs of any kind upon any transit company because it exercises the rights granted by and complies with the conditions specified in Par. II (1) above.

III

It is further ordered, That each respondent, individually, shall:

(1) Establish cash sales prices, exclusive of any present "buy-out" prices, for special mileage commercial tires, and publish and disseminate a list or lists of said prices to existing transit company customers, and to any transit company on request;

(2) Separately state to any transit company rates for service of its special mileage commercial tires whenever an offer is made to supply said service to that company; and

(3) Make available upon request, for purchase by any party, written material setting forth procedures for the proper use, maintenance and service of its special mileage commercial tires.

IV

It is further ordered, That each respondent shall, within thirty (30) days after the date of issuance of this order, notify each and every transit company with which such respondent has a contract, agreement or understanding for the sale or lease of special mileage commercial tires of this order by providing each of them with a copy.

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It is further ordered, That each respondent shall, within ninety (90) days after the date of issuance of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied and is complying with each and every specific provision of this order, and the responses to the notices described in Par. II above.

It is further ordered, That each respondent shall, between the fifteenth and eighteenth month 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 and is complying with each and every specific provision of this order.

It is further ordered, That the respondents and each of them notify the Commission at least thirty (30) days prior to any proposed change 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.

IN THE MATTER OF

THE PAPERCRAFT CORPORATION

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF