

Complaint

92 F.T.C.

IN THE MATTER OF
McDONNELL DOUGLAS CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND CLAYTON ACTS

Docket C-2944. Complaint, Dec. 21, 1978 — Decision, Dec. 21, 1978

This consent order, among other things, requires a St. Louis County, Mo. aircraft manufacturer and its subsidiaries to cease offering or making payments to influential foreign entities for the purpose of preventing competition in the sale of their aircraft abroad; and to keep adequate documentation for all payments, brokerage fees, commissions, or political campaign contributions paid to any one foreign party which total annually in excess of \$100,000. Respondents are additionally required to report to the Commission, within ten days, any corporate policy change which relates to foreign sales activities.

Appearances

For the Commission: *Daniel A. Laufer and Jaime Taronji, Jr.*
For the respondent: *Alfred W. Cortese, Jr., Clifford, Glass,*
McIlwain & Finney, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that McDonnell Douglas Corporation, a corporation under the jurisdiction of the Commission, has violated Section 2(c) of the Robinson-Patman Act (15 U.S.C. 13(c)) and Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

PARAGRAPH 1. McDonnell Douglas Corporation (hereinafter "MDC") is a Maryland corporation with its principal office and place of business located at Airport and Brown Roads, St. Louis County, Missouri.

PAR. 2. At all times relevant herein, MDC was engaged in the purchase or sale of products and services in interstate and foreign commerce and was a corporation whose business was in or affected commerce within the meaning of the Federal Trade Commission Act, as amended.

PAR. 3. Between 1970 and 1975, in connection with certain export sales of jet aircraft by MDC in competition with other domestic aircraft manufacturers, MDC made payments to or intended for foreign government officials or officers or employees of foreign

commercial customers who were in a position to make or influence the decision whether or not to purchase the aircraft offered for sale by MDC. Such payments, in some instances, effectively excluded other domestic aircraft manufacturers from selling their aircraft to the governments and airlines whose officials, officers, and employees had received the payments

PAR. 4. The above-described acts, practices and methods of competition by MDC committed in a successful attempt to procure aircraft sales for itself and deny such sales to domestic competitors, constitute unfair acts or practices and unfair methods of competition in violation of Section 2(c) of the Robinson-Patman Act (15 U.S.C. 13 (c)) and Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45).

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 a violation of the Federal Trade Commission Act and the Robinson-Patman Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all 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 Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following findings and enters the following order:

1. Respondent McDonnell Douglas Corporation is a corporation organized, existing and doing business under and by virtue of the

laws of the State of Maryland, with its principal place of business at Airport and Brown Roads, St. Louis County, Missouri.

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

ORDER

It is hereby ordered, That respondent McDonnell Douglas Corporation, and its officers, agents, employees, representatives, successors and assigns, and its subsidiaries, through any corporate or other device, in its transactions in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist, in connection with its foreign sales activity, from offering to make or making payments to officers, employees, agents or representatives of commercial customers or foreign governments in any form whatsoever, directly or indirectly, where the purpose of such payments is to influence the recipient of the payment or the customer to favor respondent at the expense of one or more domestic competitors of respondent or to prevent domestic competitors from bidding, selling, or otherwise doing business in competition with respondent in the sale of aircraft, aircraft parts or related services to foreign governments or business entities. For purposes of this order, "payments" shall not include normal business expenditures for entertainment, travel or small gifts (the cost of which does not exceed \$1,000 per gift) for promotion of respondent's products or services, or payments permitted under Sections 103(b) or 104(d)(2) of the Foreign Corrupt Practices Act of 1977.

It is further ordered, That respondent and its subsidiaries shall maintain adequate documentation, with respect to all payments referred to in the previous paragraph; and with respect to all brokerage fees, commissions or political campaign contributions which total in excess of \$100,000 in any calendar year, paid to any one foreign public official, person, firm, corporation, or other foreign entity, and the Federal Trade Commission shall have continuing access to such documentation. Such documentation shall include, but not be limited to, all internal memoranda, all financial documents, and all correspondence with third persons, firms, corporations, or other entities regarding such payments, brokerage fees, commissions, or political campaign contributions and all correspondence with international marketing consultants regarding breaches of their consulting contracts, maintained in the ordinary course of business.

It is further ordered, That in the event there is to be any change of

respondent's policy respecting payments by respondent in connection with its foreign sales activities, respondent will file with the Federal Trade Commission, within ten (10) days of the date when such change in policy is scheduled to become effective, a report detailing the change in such policy proposed to be made.

It is further ordered, That any violation of this order shall be considered a continuing violation from the date any offer of payment or payment is made, whichever occurs first, until the date any contract procured by such offer or payment, whether or not such contract is altered, amended, or modified, is fulfilled or terminated, and each day of continuation shall be treated as a separate violation in accordance with Section 5(m)(1)(c) of the Federal Trade Commission Act. This continuing violation provision shall apply only to "payments" proscribed by this order and shall not apply to "offers" that do not result in a proscribed payment.

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

It is further ordered, That respondent shall forthwith distribute a copy of the order to each of its operating divisions and subsidiaries.

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

Complaint

92 F.T.C.

IN THE MATTER OF
THE HERTZ CORPORATION

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

Docket C-2945. Complaint, Dec. 21, 1978 — Decision, Dec. 21, 1978

This consent order, among other things, requires a New York City car rental company to provide each charge account customer having five dollars or more as a credit balance with periodic statements reflecting that balance; notify such customers that credit balances are refundable; and automatically refund unclaimed credit balances within seven months of their occurrence. The order would additionally prohibit the company from writing off credit balances, and would require the firm to refund, upon request, any credit balance created during the past six years.

Appearances

For the Commission: *Micheal J. Vitale*, Atty. and *Irvin E. Abrams*, Investigator.

For the respondent: *Arthur K. Kahn*, Philadelphia, Pa.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Hertz Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Hertz Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 660 Madison Ave., New York, New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the business of offering to rent and the renting of automobiles to the general public.

PAR. 3. In the ordinary course and conduct of its business as aforesaid, respondent rents automobiles in various States of the United States and the District of Columbia. By these and other operations respondent engages in, and at all times mentioned has been engaged in, a substantial course of business in or affecting