

Complaint

105 F.T.C.

IN THE MATTER OF
THE CITY OF MINNEAPOLIS

ORDER WITHDRAWING COMPLAINT IN REGARD TO ALLEGED VIOLATION
OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9180. Complaint, May 10, 1984—Order Withdrawing Complaint, May 7, 1985

This order withdraws the complaint alleging that the City of Minneapolis had combined, contracted or agreed with taxicab companies to pursue certain anticompetitive policies in violation of Section 5 of the Federal Trade Commission Act. The Commission held that changes now made in the City's municipal Code, which includes raising the number of taxicab licenses to be made available to operators, "significantly relieves the injury to competition alleged in the complaint and . . . may eliminate the need for further Commission action." Thus, continuing the matter would not be in the public interest. In withdrawing its complaint, the Commission expressed no opinion as to whether the "liability of the City of Minneapolis could have been established at trial."

Appearances

For the Commission: *Jerry A. Philpott.*

For the respondent: *John French, French, Faegre & Benson, Minneapolis, Minn. and Robert J. Alfton and Scott Reeves, City of Minneapolis, Minn.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the City of Minneapolis, a municipal corporation subject to the jurisdiction of the Commission, hereinafter sometimes referred to as Respondent or the City, has violated the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

For purposes of this complaint, the following definitions shall apply:

(A) *Taxicab* means any motor vehicle, except a limousine, regularly engaged in the business of carrying passengers for hire, having a seating capacity of less than ten (10) persons and not operated on a fixed route or schedule.

(B) *License* means the annual taxicab vehicle license issued by the

City of Minneapolis that authorizes the holder thereof to operate a taxicab within the City of Minneapolis.

(C) *Owner-operator* means an individual or company that owns at least one taxicab and taxicab license issued by the City of Minneapolis.

(D) *Leasing* means the practice by taxicab owner-operators of entering into an agreement with a person who is authorized by the City of Minneapolis to drive a taxicab, wherein for a rental fee paid to the owner-operator, said driver is entitled to use a taxicab and its corresponding taxicab license for a specified time and retain all fares collected from passengers.

(E) *CPCN* means the certificate of public convenience and necessity issued by the Minneapolis City Council that is the prerequisite for issuance by the City of Minneapolis of a taxicab license.

(F) *Taxicab company* means any business organization, corporation, partnership, cooperative or person that at present (or sometime in the past) has a trade name and color scheme registered with the City of Minneapolis for the purpose of operating taxicabs or providing services related to the business of owning, operating and/or leasing taxicabs to taxicab owners, operators and/or drivers authorized to do business by the City.

PARAGRAPH 1. Respondent is a municipal corporation organized under the laws of the State of Minnesota and is a person or corporation within the meaning of the Federal Trade Commission Act, as amended (15 U.S.C. 45). The City has passed and enforces certain ordinances that regulate the taxicab business in Minneapolis.

PAR. 2. At all times relevant herein, Respondent's acts and practices have affected the businesses of taxicab companies and taxicab owners, operators, drivers or lessees that maintain, and have maintained, substantial courses of business, including the acts and practices as hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, and Respondent is subject to the jurisdiction of the Federal Trade Commission. The acts and practices alleged herein are in or affect commerce by affecting at least the following activities that are in or affect commerce:

(A) Taxicabs and taxicab companies provide a primary method of transportation for interstate travelers between Minneapolis-St. Paul International Airport and destinations in Minneapolis.

(B) Taxicabs and taxicab companies provide transportation for interstate travelers between Minneapolis and nearby cities in Minnesota and Wisconsin.

(C) Taxicabs and taxicab companies provide transportation to inter-

state travelers between train stations, bus terminals and other destinations in Minneapolis.

(D) Taxicabs and taxicab companies provide transportation to interstate travelers between hotels, motels, places of business, convention centers, and tourist attractions and other destinations in and around Minneapolis.

(E) Taxicabs are manufactured in other states and are sold for use in and are transported into Minnesota.

(F) Items and services purchased in substantial quantities such as gasoline, tires, taximeters, two-way radios and various replacement parts for taxicabs originate in other states and have been transported into Minneapolis.

(G) Employment opportunities as a Minneapolis taxicab driver have attracted persons from other states.

PAR. 3. For many years and continuing up to and including the date of the issuance of this complaint, the City has combined, contracted or agreed with taxicab companies, to pursue the following policies and do the following acts, among others:

(A) To permit and encourage taxicab companies to combine and to agree upon proposals to increase fares for taxicabs in Minneapolis.

(B) To adopt uniform fares applicable to all taxicabs upon request by taxicab companies.

(C) To limit the number of taxicab licenses in Minneapolis and to prohibit by other means, new entry of taxicab drivers, owners and operators into Minneapolis.

(D) To raise unreasonable barriers to entry to new taxicab companies in Minneapolis.

(E) To prohibit competition from vehicles-for-hire licensed outside Minneapolis.

PAR. 4. The acts and practices of Respondent, as alleged in Paragraph Three, have been and are now having the effects, among others, of:

(A) eliminating and preventing substantial competition between competitors and potential competitors in the operation of taxicabs in Minneapolis;

(B) strengthening the market power of currently authorized taxicab companies operating in the Minneapolis taxicab market;

(C) raising, fixing, stabilizing, maintaining, or otherwise interfering or tampering with the rates charged for taxicab service in and from Minneapolis; and

(D) depriving interstate and intrastate consumers of taxicab services in and from Minneapolis of the benefits of free and open competition in taxicab services.

PAR. 5. The acts and practices of Respondent, as alleged herein, were and are to the prejudice and injury of the public and constituted and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended. The acts and practices, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

STATEMENT OF CHAIRMAN JAMES C. MILLER III

After extensive consideration of the issue, I have voted today to issue complaints in accordance with my statutory responsibility to act when there is reason to believe that the law has been violated.

The action taken by the Commission today is based upon allegations of monopoly power and alleged violations of the U.S. antitrust laws in the taxi markets of Minneapolis and New Orleans [105 F.T.C. 1]. As a technical matter, the way a case is brought most effectively in such situations is to address regulations enacted by the city governments. I wish to stress that our concern is with allegations of monopoly power in taxi markets, and is not driven by any interest in limiting the lawfully-exercised powers of the cities themselves.

I also wish to stress that our concern is solely with restraints on *competition*; we have no concerns with rules affecting safety, insurance, and other related service standards.

The Commission's decision today comes after a 10-year staff study of taxi markets, after extensive inquiries and discussions with city officials and taxi operators, and after thorough briefing of the Commission by the agency's career staff.

STATEMENT OF COMMISSIONER MICHAEL PERTSCHUK* DISSENTING
FROM THE ISSUANCE OF COMPLAINTS AGAINST THE CITIES OF
MINNEAPOLIS AND NEW ORLEANS

I dissent from the Commission's decision to issue complaints against the cities of Minneapolis and New Orleans [105 F.T.C. 1] charging each city with an illegal combination or conspiracy in violation of the Sherman and FTC Acts. The complaints allege that each city conspired with taxicab owners and drivers to restrain trade in the provision of taxicab services through the enactment of municipal regulations that establish fixed taxi fares and create barriers to entry into the market.

For the Commission to succeed under the theories alleged in these complaints, it must first prove that the challenged regulations were the result of an illegal combination or conspiracy rather than lawful

* Michael Pertschuk, Commissioner 1977-1984.

actions taken by the cities in the interest of their citizens. I am troubled by the idea that a city's adoption of taxi regulations after consultation with the industry—when consultation is a necessary element of responsible government—transforms the city's regulations into an illegal conspiracy.

Second, when the federal antitrust laws come in apparent conflict with regulations enacted by a governmental entity such as a municipality, the Commission must be especially confident that federal intervention is warranted. Here it is at the very least unclear whether the economic theory of these complaints fits the facts as we know them. Studies commissioned by the Department of Transportation and others of cities where taxi service was deregulated do not demonstrate that the public benefited. Fares often rose and there is considerable doubt whether service improved. Finally, Congress is currently considering legislation which would exempt most municipal regulations from antitrust scrutiny. I note that the Assistant Attorney General in charge of the Antitrust Division has recently testified in support of that legislation. While the Commission need not consider pending legislation when deciding whether to act, the unpredictable effects of the Commission's action on the taxi market and the legitimate regulatory interests of the cities counsel restraint in these cases.

ORDER

Complaint counsel have moved for withdrawal of the complaint in this matter, on the ground that a new municipal ordinance that the City of Minneapolis recently enacted "significantly relieves the injury to competition alleged in the complaint and . . . may eliminate the need for further Commission action." The Administrative Law Judge has certified that motion to the Commission, with the recommendation that the Commission grant the motion. The complaint alleges that the City of Minneapolis has combined, contracted or agreed with taxicab companies in a number of respects relating to fare increases, fare uniformity, limitations on the number of taxicab licenses issued in Minneapolis, barriers to entry, and competition from vehicles-for-hire licensed outside Minneapolis, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. In the Notice of Contemplated Relief that accompanied the complaint, the Commission indicated that as part of any relief it might order, it might prohibit enforcement of three separate groups of Minneapolis Code provisions: (1) Section 341.710 *et seq.* (with some exceptions), which generally regulate fares; (2) portions of Section 341.260 and Section 341.280, which established a variety of criteria for determining whether new

341.310, which established 248 as the maximum number of taxicab licenses (other than 48 "winter licenses") available to operators in any given year.

The City of Minneapolis has now amended its Code to repeal Section 341.260 and Section 341.280. It has also amended Section 341.300 of the Code to raise the number of taxicab licenses from 248 to 323 by February 1, 1986, and by as many as an additional 25 licenses every year thereafter, beginning on July 1, 1986.¹ These changes offer the prospect of preventing the anticompetitive conduct alleged in the complaint by strongly facilitating new entry into the Minneapolis taxicab market. The Commission has therefore determined that continuing this matter would not presently serve the public interest, and that the complaint should be withdrawn. In taking this action, we express no opinion as to whether the liability of the City of Minneapolis could have been established at trial.

Accordingly, *it is ordered* that the complaint issued against the City of Minneapolis in Docket No. 9180 be, and it hereby is, withdrawn.

Commissioner Azcuenaga did not participate.

¹ Section 341.290(b) has been amended to require that all license holders must be "a member of a company, cooperative, or association" with at least eight taxicabs licensed by Minneapolis; at least fifteen licensed taxicabs "operated under a common color scheme with common radio dispatching facilities;" and a total of at least fifteen such taxicabs licensed in Minneapolis within one year of issuance of the first eight licenses. Section 341.290(c) exempts taxicabs already holding licenses from this requirement.

IN THE MATTER OF

ASSOCIATED DRY GOODS CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
THE FAIR CREDIT REPORTING ACT

Docket C-3153. Complaint, May 7, 1985—Decision, May 7, 1985

This consent order requires a New York City merchandise retailer, among other things, to cease failing to disclose to an applicant who has been denied credit on the basis of information contained in a consumer report (including non-derogatory information or no file response), that the adverse action was based wholly or partly on information reported by a credit bureau; and provide rejected applicants with the name and address of the reporting agency. The order additionally requires that a copy of the letter attached to the order as Appendix A be completed to include the name and address of the appropriate consumer reporting agency, and mailed within 90 days to credit applicants who were denied credit by Robinson's of Florida or Hahne and Company, divisions of Associated Dry Goods Corporation, between January 1, 1982, and December 31, 1983, on the basis of information submitted by a consumer reporting company.

Appearances

For the Commission: *Paul K. Davis.*

For the respondents: *Joseph J. Schumm, New York City.*

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Associated Dry Goods Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Associated Dry Goods Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 417 Fifth Avenue, New York, New York.