

Complaint

126 F.T.C.

IN THE MATTER OF

FAIR ALLOCATION SYSTEM, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3832. Complaint, Oct. 22, 1998--Decision, Oct. 22, 1998*

This consent order prohibits, among other things, the Montana-based association of franchised automobile dealerships from participating in, suggesting, encouraging, or assisting any boycott or threatened boycott of, or refusal to deal with, any automobile manufacturer or consumer. In addition, the consent order requires the respondent to amend its by-laws to incorporate the provisions of this order and to distribute copies of the amended by-laws to each of its members.

Participants

For the Commission: *Shane Woods, Charles Harwood, William Baer, William Layher, and Jonathan Baker.*

For the respondent: *R. J. Sewell, Smith Law Firm, Helena, MT.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Fair Allocation System, Inc. (hereafter "respondent") has violated 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 would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Fair Allocation System, Inc. is an incorporated association of franchised automobile dealerships (primarily Chrysler, Plymouth, Dodge, Jeep and Eagle), existing and doing business under and by virtue of the laws of the State of Montana, with a mailing address at P.O. Box 1691, Helena, Montana.

PAR. 2. Respondent was formed by its member dealers as an entity through which its members could communicate with Chrysler Corp. ("Chrysler") concerning Chrysler policies and how those policies might affect respondent's members. Respondent's members were initially concerned about the practices of a competing dealer

whose low prices and Internet advertising were attracting car buyers from a broad geographic area and taking sales from respondent's members. Respondent's members had previously asked Chrysler to reduce the number of vehicles it allocates to this dealer, but Chrysler had refused. Respondent has approximately 25 members, who are generally engaged in the retail sale of new Chrysler, Plymouth, Dodge, Jeep and Eagle automobiles. In addition to new car sales, respondent's members provide service on Chrysler, Plymouth, Dodge, Jeep and Eagle automobiles, including warranty work. Member dealerships are located principally in eastern Washington, northern Idaho and western Montana, where they constitute a substantial percentage of the Chrysler, Plymouth, Dodge, Jeep and Eagle dealerships. In cities and towns along Interstate 90 between Ellensburg, Washington, and Missoula, Montana, for example, seven of 11 such dealerships are members of respondent. Except to the extent that competition has been restrained as alleged herein, respondent's members have been and are now in competition among themselves and with other automobile dealerships.

PAR. 3. Respondent's acts and practices, including the acts and practices alleged herein, are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 4. Respondent is organized for the purpose of guarding and fostering the interests of its members. Respondent engages in activities that further its members' pecuniary interests. By virtue of its purposes and activities, respondent is a corporation organized for the profit of its members within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 5. Respondent has been and is acting, or has attempted to act, in agreement, combination or conspiracy with some of its members to restrain trade in the sale of new Chrysler, Plymouth, Dodge, Jeep and Eagle automobiles by threatening to boycott particular models and limit warranty service to particular customers unless Chrysler modifies its system for allocating vehicles to its dealers. Instead of allocating vehicles based on each dealer's total sales volume, as Chrysler does now, respondent demanded that Chrysler allocate vehicles based on each dealer's sales volume from within its local area.

PAR. 6. The purposes or effects of respondent's agreement, combination or conspiracy, or attempted agreement, combination or conspiracy, as described in paragraph five, have been and are, or would be, to restrain competition unreasonably and to deprive consumers of the benefits of competition in one or more of the following ways, among others:

A. By foreclosing, reducing and restraining competition among automobile dealers, including Chrysler, Plymouth, Dodge, Jeep and Eagle dealers;

B. By depriving consumers of local access to particular models of new Chrysler, Dodge, Plymouth, Jeep and Eagle automobiles; and

C. By depriving consumers of local access to warranty work on their Chrysler, Plymouth, Dodge, Jeep or Eagle automobiles.

PAR. 7. The aforesaid acts and practices herein alleged were and are to the prejudice and injury of the public, and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The acts and practices of respondent, as herein alleged, are continuing and will continue in the absence of the relief requested.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of respondent Fair Allocation System, Inc. ("FAS"), 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 the respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by 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 it had reason to believe that the respondent has violated the said Act, and that a 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 sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. FAS is an incorporated association of franchised automobile dealerships (primarily Chrysler, Plymouth, Dodge, Jeep and Eagle), organized, existing and doing business under and by virtue of the laws of the State of Montana, and has a mailing address at P.O. Box 1691, Helena, Montana.

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

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Respondent*" or "*FAS*" means Fair Allocation System, Inc., its officers, directors, employees, agents and representatives, successors, and assigns, its subsidiaries, divisions, groups and affiliates controlled by FAS, and the respective officers, directors, employees, agents and representatives, successors, and assigns of each.

B. "*Commission*" means the Federal Trade Commission.

II.

It is further ordered, That respondent, directly or indirectly, or through any person or any corporate or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from carrying out, participating in, inducing, suggesting, urging, encouraging, or assisting any boycott or threatened boycott of, or concerted refusal to deal or threatened concerted refusal to deal with, any automobile manufacturer or consumer.

III.

It is further ordered, That respondent shall:

A. Within thirty (30) days after the date this order becomes final, distribute by first-class mail a copy of this order and the complaint to each of its members;

B. Within sixty (60) days after the date this order becomes final, amend its by-laws to incorporate by reference paragraph II of this order, and distribute by first-class mail a copy of the amended by-laws to each of its members;

C. For a period of ten (10) years after the date this order becomes final, provide each new member with a copy of this order, the complaint, and the amended by-laws within thirty (30) days of the new member's admission to FAS; and

D. Within sixty (60) days after the date this order becomes final, and annually thereafter for a period of ten (10) years on the anniversary of the date this order becomes final, file with the Secretary of the Commission a verified written report setting forth in detail the manner and form in which FAS has complied with and is complying with this order.

IV.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any change in respondent, such as dissolution or reorganization resulting in the emergence of a successor corporation or association, or any other change in FAS that may affect compliance obligations arising out of this order.

V.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request, respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent.

VI.

It is further ordered, That this order shall terminate on October

IN THE MATTER OF
EXXON CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3833. Complaint, Oct. 30, 1998--Decision, Oct. 30, 1998

This consent order, among other things, requires Exxon to sell its viscosity index improver (an essential motor oil additive) business to Chevron Chemical Company or another Commission-approved buyer.

Participants

For the Commission: *Philip Eisenstat, Joseph Krauss, William Baer, Leslie Farber, and Jonathan Baker.*

For the respondents: *Robert Paul, White & Case, Washington, D.C. and Jim Egan, Rogers & Wells, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondents Exxon Corporation, The Shell Petroleum Company Limited, and Shell Oil Company, all corporations subject to the jurisdiction of the Commission, have agreed to form a joint venture, in violation of the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC 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:

I. THE RESPONDENTS

1. Respondent Exxon Corporation ("Exxon") is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, having its principal offices at 5959 Las Colinas Boulevard, Irving, Texas.

2. Respondent The Shell Petroleum Company Limited is a corporation organized, existing and doing business under and by virtue of the laws of England, having its principal offices at Shell Centre, London SE1 7NA, England.