

Syllabus

IN THE MATTER OF

NAMSCO, INC. (FORMERLY NATIONAL WHEELS AND
PARTS MANUFACTURING CO., INC.)

COMPLAINT, DECISION, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECTION (a) OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5771. Complaint, May 1, 1950—Decision, Mar. 17, 1953

Automotive parts jobbers operate on a very small profit margin, and such a jobber's profit is made up of an accumulation of small margins of profit on many items, and where particular products, though slow moving, are essential items in every jobber's stock, the profit thereon contributes to the aggregate which determines whether a jobber grows, remains the same size, goes backward, or fails.

Price competition is but one form of competition, and additional service to customers, additional salesmen to call on them, carrying a larger and more varied stock, branch houses, and proximity to customers all aid such jobbers to stay in business and to prosper; and the institution or expansion of such competitive aids depends directly on operating profit margin, a major factor in which is cost of merchandise purchased.

To prove the existence of competition between two sellers reselling the same or substantially the same functional products, it is unnecessary that a distributor must testify he attempted to sell the product of one of the sellers to a given potential customer at the same specified time and place that another distributor was attempting to sell the same product bought from the same source.

A contention that since certain products are slow in turnover and constitute but a small part of the invested capital of distributor buyers, small differences in the cost of acquisition do not affect competition, is not valid, since, like a grocer, an automotive parts distributor must carry a large and varied stock, many items of which are slow in turnover, small in unit cost or profits, but necessary to stock; and it was the intention of Congress to protect a merchant from competitive injury attributable to discriminatory prices on any or all goods sold in interstate commerce, whether the particular goods constituted a major or minor portion of his stock. *Federal Trade Commission v. Morton Salt Company*, 334 U.S. 37.

A further contention that, in a price discrimination proceeding in which the alleged discriminating seller suggested certain resale prices for his distributor customers, no injury to competition or substantial lessening thereof was shown where the discriminatory discount was not used to reduce the resale price of the product and that no inference of such injury arises from obvious injury to profit or from a showing that one of two reselling competitors bought from respondent for less, is likewise not valid, since, where purchasers who buy and compete in the resale of the same merchandise are charged different prices therefor, the conclusion is inescapable that injury

to the competitive efforts of the unfavored purchaser is present, and the taking of testimony to show "actual financial losses" on account of the discriminatory prices is unnecessary. *Federal Trade Commission v. Morton Salt Company*, 334 U.S. 37.

Where a corporation engaged in the manufacture and interstate sale and distribution of wheel discs, hub caps, exhaust extensions, gas tank and radiator caps, and in the purchase and resale of wheel parts such as nuts, bolts, and studs; in selling its said automotive products to automotive jobbers, distributors, dealers, and warehousemen located through the United States, and including purchasers in Birmingham, Mobile, Los Angeles, New Orleans, Jackson (Miss.), Kansas City, Newark, Philadelphia, Memphis, and Dallas.

- (a) Discriminated in favor of eight "special accounts" during 1947-1949 in that it sold them hub caps in substantial quantities at prices which ranged from 10 percent to 17 percent below its "blue list," entitled "Distributors Net Prices" or "Jobbers Net Prices," on which were published prices at which it sold the great majority of the purchasers of its said products:
- (b) Discriminated in favor of five cooperative buying organizations during said period, in that it sold them all of its products at prices which were 5 percent, 7½ percent, and 10 percent lower than the prices on its said "blue list," by way of rebate in said amounts; and
- (c) Discriminated in favor of 104 purchasers through substantial sales to them of hub caps at its "white list" prices issued in 1949, listing prices which ranged up to 33½ percent below the "blue list;"

Effect of which discrimination in price between customers competing in the resale of its products was and might be to substantially lessen competition among its customers competitively engaged in the resale thereof, and to injure and prevent competition among them:

Held, That such acts and practices, under the circumstances set forth, violated the provisions of subsection (a) of section 2 of the Clayton Act as amended.

As respects respondent's contention that the evidence, consisting of testimony of purchasers from respondent in two of the areas involved, namely, Memphis and New Orleans, as to the competition concerned and affected, along with other evidence hereinbefore indicated, was insubstantial and insufficient to show the existence of competition between purchasers of respondent's products reselling the same in the same trading area: respondent offered no evidence, and there was nothing in the record, to indicate that the two areas were unique or different from other trading areas in which respondent sold its products to automotive parts jobbers at different prices, and it was therefore concluded that the competitive conditions shown to exist in the two areas with respect to the purchase and resale of said products were typical of the other areas in the United States herein concerned; that respondent's customers reselling its products in the same trading areas were in competition with each other in such reselling efforts; and that the challenged evidence was both substantial and sufficient.

With regard to respondent's further contention that there was no substantial or sufficient evidence to show that the effects of its different prices charged purchasers competitively engaged with each other in the resale of its products was "substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition:" testi-

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mony from customers in the aforesaid trading areas was unanimous that each purchaser took regular advantage, as a matter of necessity, of the cash discount for prompt payment extended uniformly to all by respondent; that failure to do so would seriously impair, if not wipe out, profit margin; and, in the absence of evidence to show that the areas in which testimony was taken were unique or different economically from the rest of the United States, and in the light of the other facts hereinbefore indicated, it was concluded that the effects found had been and were present throughout respondent's entire sales territory; and that respondent's said discrimination in price among its customers thus competitively engaged in the resale of its products had and might have the effect of substantially lessening competition among them, and of injuring and preventing such competition.

As respects the charge in the complaint, denied by respondent's answer, that its price discriminations had and might substantially lessen competition, tend to create a monopoly, and injure, destroy and prevent competition in respondent's line of commerce; the evidence in the record on the whole was sparse, lacking in detail, contradictory, and neither substantial nor sufficient evidence of the effect charged.

With regard to respondent's defense under section 2 of the Clayton Act, asserted in its answer, namely, that the challenged price variations were made to meet competition: no other evidence thereof was in the record and none was offered by it, and said defense was accordingly held not to be substantial.

As respects the fact that respondent in 1950 discontinued its price discriminations to group buying purchasers, and its request that no order be issued as to the discontinued practices: there was no evidence that it likewise discontinued its "white list" or its special discriminatory discounts to special accounts, discontinuance has been repeatedly held to be no defense, and discretion should not be favorably exercised in the matter, since respondent is engaged in a competitive business with highly fluid and constantly changing conditions, and the record is barren of anything to indicate that the partial discontinuance, which occurred about the time the complaint was issued, was permanent.

Before *Mr. Abner E. Lipscomb* and *Mr. Frank Hier*, hearing examiners.

Mr. Eldon P. Schrup and *Mr. Francis C. Mayer* for the Commission.

Mr. Frank A. Ramsey, of Chicago, Ill., for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (a), section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent National Wheels and Parts Mfg. Company, Inc., is a corporation organized and doing business under and

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by virtue of the laws of the State of Illinois, with principal office and place of business located at 1810 South Michigan Avenue, Chicago, Illinois.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of the manufacture, sale and distribution of automotive products and supplies to different purchasers of the same located in the various States of the United States and in the District of Columbia. Said products and supplies are sold by the respondent for use, consumption or resale within the United States and the District of Columbia, and respondent causes said products and supplies so sold to be shipped and transported from the State or States of location of its places of business to the purchasers thereof located in States other than the State or States wherein said shipment or transportation originated. Respondent maintains, and at all times mentioned herein has maintained, a course of trade and commerce in said products and supplies among and between the States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business as aforesaid, is now, and since June 19, 1936, has been, engaged in active and substantial competition with other corporations, partnerships, firms, and individuals manufacturing, selling, and distributing comparable automotive products and supplies in commerce to purchasers of the same in manner and method and for purposes as aforestated. Many of said purchasers and many of the aforesaid purchasers from the respondent are competitively engaged each with the other.

PAR. 4. Respondent, in the course and conduct of its business as aforesaid, is now, and since June 19, 1936, has been, directly or indirectly discriminating in price between the aforesaid different purchasers of its said automotive products and supplies of like grade and quality sold and distributed in manner and method and for purposes as aforestated, by selling said products and supplies at higher and less favorable prices to numerous small businessmen purchasers than said products and supplies are sold to various larger purchasers, some of which are competitively engaged with some of said less favored purchasers and with some of said purchasers from respondent's competitors.

PAR. 5. The effect of respondent's aforesaid discriminations in price between the said different purchasers of its said automotive products and supplies of like grade and quality sold in manner and method and for purposes as aforestated, may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and the aforesaid favored purchasers are engaged, or to injure, destroy or prevent competition with said respondent, said favored purchasers, or with customers of either of them.

PAR. 6. The aforesaid acts and practices of respondent constitute violations of the provisions of subsection (a) of section 2 of the Clayton Act (U. S. C., Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936.

DECISION OF THE COMMISSION

Pursuant to Decision and Order of the Commission dated March 17, 1953, the initial decision of hearing examiner Frank Hier became on that date the order of the Commission.¹

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Clayton Act as amended by the Robinson-Patman Act (15 U. S. C., Sec. 13), the Federal Trade Commission on May 1, 1950, issued and subsequently served its complaint in this proceeding upon National Wheels and Parts Manufacturing Company, Inc., a corporation, charging it with violation of subsection (a) of section 2 of said Act as amended. After the filing of answer to the complaint, hearings were held at which testimony and other evidence in support of the allegations of the complaint were introduced before the above-named trial examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Respondent filed a motion to strike evidence from the record and a motion to dismiss the complaint, which motions were denied by the trial examiner. Respondent thereupon elected to offer no testimony or other evidence in opposition to the evidence received in support of the allegations of the complaint, and the record was thereupon closed. Thereafter, the proceeding regularly came on for final consideration by said trial examiner on the complaint, answer thereto, testimony and other evidence, proposed findings as to the facts, conclusions, and proposed order submitted by counsel and said trial examiner, having duly considered the record herein, makes the following findings as to the facts, conclusions drawn therefrom, and order :

¹ Said "Decision," etc., dated March 17, 1953, reads as follows, omitting the formal Order of Compliance, set forth infra at page 1172.

Service of the initial decision of the hearing examiner in this proceeding having been completed on the 10th day of September, 1951, and the Commission having, on the 10th day of October, 1951, extended until further order of the Commission the date on which the said initial decision would otherwise become the decision of the Commission; and

The Commission having duly considered the record herein and being of the opinion that said initial decision is adequate and appropriate to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner, a copy of which is attached, shall, on the 17th day of March, 1953, become the decision of the Commission.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent National Wheels and Parts Manufacturing Company, Inc., was a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its principal offices and place of business located at 1810 South Michigan Avenue, Chicago, Illinois. On January 12, 1951, respondent's corporate name was changed in accordance with the laws of the State of Illinois to Namsco, Inc., under which respondent has, since that date, operated. There was no change in the management and operation of respondent's business.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of the manufacture, sale and distribution of wheel discs, hub caps, exhaust extensions, gas tank and radiator caps and in the purchase and resale of wheel parts, such as nuts, bolts and studs, to different purchasers of the same located in the various States of the United States and in the District of Columbia. Said products and supplies are sold by the respondent for resale within the United States and the District of Columbia, and respondent causes said products and supplies, so sold, to be shipped and transported from Chicago, Illinois, to purchasers thereof located in States other than the State wherein said shipments or transportation originated. Respondent maintains, and at all times mentioned herein has maintained, a course of trade and commerce in said products and supplies among and between the States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business as aforesaid, is now, and since June 19, 1936, has been, engaged in active and substantial competition with other corporations, partnerships, firms and individuals manufacturing, selling, and distributing comparable automotive products and supplies in commerce to purchasers of the same.

PAR. 4. Respondent has sold and now sells its automotive products to the great majority of the purchasers thereof at prices published by respondent on its "blue list" which is entitled "Distributors Net Prices" or "Jobbers Net Prices." For a number of years and specifically during 1947, 1948 and 1949, it has sold its hub caps to eight "special accounts" in substantial quantities at prices ranging from 10 percent to 17 percent below its "blue list." Respondent has also during 1947, 1948 and 1949 sold all of its products to five cooperative buying organizations at prices 5 percent, 7½ percent and 10 percent lower than the prices on its "blue list," by way of rebate in those amounts. These discounts were withdrawn by respondent in 1950 and since then these five cooperative buying groups have paid "blue list" prices. In addition to these price-preferred customers, respondent in May 1949 issued

