

Complaint

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unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims and representations are based.

It is further ordered, That the respondent herein shall, within sixty (60) days 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 with this order.

IN THE MATTER OF

THE PURE OIL COMPANY ET AL.*

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATIONS OF SEC. 2 (a)
OF THE CLAYTON AND THE FEDERAL TRADE COMMISSION ACTS

*Dockets 6640, 6898, 7567, 8537. Complaints, Sept. 26, 1956—Decision,
Dec. 28, 1964*

Order vacating the initial decisions and dismissing the complaints charging four major marketers of gasoline with anti-competitive practices, and announcing a comprehensive industrywide inquiry into the marketing and other competitive problems of the gasoline industry.

COMPLAINT

SEPTEMBER 26, 1956

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated, and is now violating, the provisions of subsection (a) of Section 2 of the Clayton Act (15 U.S.C., Section 13) as amended by the Robinson-Patman Act, approved June 19, 1936, and the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C., Section 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 with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Pure Oil Company is a corporation organized, existing and doing business under and by virtue of the laws

*And the following related cases: The Texas Company, Docket No. 6898; Standard Oil Company (Indiana), Docket No. 7567; and Shell Oil Company, Docket No. 8537.

of the State of Ohio, with its principal office and place of business located at 35 East Wacker Drive, Chicago, Illinois.

PAR. 2. Respondent Pure Oil Company is now, and for several years last past has been, among other things, primarily engaged in the sale and distribution of gasoline and other petroleum products throughout the United States under the brand name of "Pure." "Pure" gasoline is nationally advertised and enjoys wide public acceptance.

Respondent occupies a major position in the petroleum industry, being among the Nation's leading producers and marketers of gasoline and other petroleum products. In 1955 respondent produced crude oil and gas from 5,540 net wells in 15 States and the Gulf of Mexico. It has four major refineries strategically located to serve its marketing area. Crude oil processed in these refineries during the year 1955 totalled 60,592,000 barrels compared with 47,178,000 barrels processed in 1954. It has marketing facilities located in twenty-four States and as of December 31, 1955, distributed its products from and through approximately 15,000 retail outlets. Of these, some 15,000 retail outlets respondent operates 93 as company stations, leases some 3,379 stations to independent dealers and has contracts in force of which 8,474 other independent stations under the terms of which "Pure" gasoline and other "Pure" petroleum products are sold. In addition thereto, respondent sells its "Pure" gasoline and other petroleum products to a number of independent jobbers who in turn sell "Pure" gasoline at retail through their own stations and to other independent gasoline service station operators. Some 3,288 stations are to be found in this latter category.

PAR. 3. Respondent Pure Oil Company markets its gasoline and other petroleum products on a nationwide basis through its own company-owned and operated stations as well as under dealer contracts. In the latter category, respondent has entered into dealer contracts with approximately 120 dealers located in the Birmingham, Alabama, area, now in force, obligating said respondent to sell and deliver to such dealers all of their respective requirements of respondent's brand of gasoline during the term of such contracts.

PAR. 4. For the purpose of supplying said customers, and in making delivery pursuant to said contracts, respondent ships or otherwise transports its gasoline from its refinery in Baton Rouge, Louisiana, to Birmingham, Alabama, through the facilities of the Plantation Pipe Line from which it is distributed to said dealers. There is now and has been at all times mentioned herein a continuous stream of trade in commerce, as "commerce" is defined in the Clayton Act, of said gasoline between respondent's Baton Rouge, Louisiana, refinery, terminals and

distribution points, and said retail dealers purchasing said gasoline in Birmingham, Alabama. All of such purchases by said retail dealers are and have been in the course of such commerce. Said gasoline is transported into Alabama by respondent and there sold by respondent for resale in the Birmingham, Alabama, area.

PAR. 5. Respondent Pure Oil Company, in the course and conduct of its business, is now, and during the times mentioned herein has been, in substantial competition with others engaged in the production, sale and distribution of gasoline and other petroleum products in commerce between and among the various States of the United States and of the District of Columbia.

PAR. 6. Respondent Pure Oil Company, in the course and conduct of its business, has discriminated in price between different purchasers of its gasoline of like grade and quality by selling it to certain of its customers at higher prices than it did to other of its customers.

Since on or about December 29, 1955, respondent Pure Oil Company, in the course and conduct of its business, as above described, has sold its gasoline to certain dealers located in and around Birmingham, Alabama, at prices substantially lower than the prices charged by said respondent to other of its retail purchasers of gasoline located in the State of Alabama as well as in other States of the United States.

PAR. 7. The effect of the aforesaid discriminations or of any appreciable part thereof has been or may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its favored customers are respectively engaged, or to injure, destroy or prevent competition with respondent or with said favored customers who receive the benefits of said discriminations or with the customers of either of them.

PAR. 8. The foregoing alleged discrimination in price made by respondent Pure Oil Company are in violation of subsection (a) of Section 2 of the Clayton Act, as amended.

COUNT II

PAR. 9. The allegations of Paragraphs One through Three of Count I of this complaint are hereby adopted and incorporated herein by reference and made a part of this Count II the same as if they were repeated herein verbatim.

PAR. 10. In the course and conduct of its business, respondent Pure Oil Company is now and has been at all times referred to herein engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that it ships or otherwise transports its gasoline

in tank cars, tankers, pipe lines, and trucks from its different refineries, terminals and distribution points located in various States of the United States to its retail dealers located in the Birmingham, Alabama, area and to various other States of the United States.

PAR. 11. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint, respondent has been and is now in substantial competition with other corporations, individuals and partnerships engaged in the sale and distribution of gasoline in "commerce" as that term is defined in the Federal Trade Commission Act.

PAR. 12. Beginning in or about December 1955, respondent, acting through its Division Manager, one Fayette G. Shepard, and some 60 odd of its retail dealers, engaged in selling Pure Oil Company gasoline and other petroleum products in the Birmingham, Alabama, area, for the purpose of suppressing, preventing, hindering, and lessening competition in the sale and distribution in such commerce of gasoline, have entered into, maintained and carried out a combination, planned common course of action, understanding and agreement, through which they would fix and maintain, and did fix and maintain, the price at which gasoline was sold or would be sold at retail in the gasoline service stations leased and operated by the some 60 odd retail service stations selling Pure Oil Company gasoline and other petroleum products.

PAR. 13. Pursuant to and in furtherance of the aforesaid unlawful combination, planned common course of action, understanding and agreement, respondent, acting through and with the aforesaid Fayette G. Shepard, together and in conspiracy and combination with the aforesaid some 60 odd retail service station dealers, did and performed the following acts and things:

1. Agreed to attempt to adopt and did to a substantial degree and extent adopt, adhere to and maintain a plan or policy, sometimes designated and referred to as the "Chicago Plan" or "1 cent policy," whereby the posted retail price of gasoline for grades at Pure stations in the Birmingham area would not exceed the price of gasoline for similar grades posted by independent stations selling unbranded grades of gasoline by more than 1 cent in said area.

2. Agreed to fix and maintain, and did fix and maintain, the retail price at which gasoline was sold or to be sold at the various service stations operated by the some 60 odd retail dealers operating under contract with respondent.

3. Agreed to and adhered to certain discounts, terms and conditions upon which the said gasoline would be sold to the some 60 odd retail service stations and to the purchasing public.

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PAR. 14. This alleged unlawful planned common course of action is singularly unfair, oppressive and to the prejudice of the public and respondent's competitors and retailers of gasoline in the Birmingham, Alabama, marketing area and has a dangerous tendency to unduly restrain, hinder, suppress and eliminate competition between and among respondent's retail dealers and the independent retail dealers located in the Birmingham, Alabama, areas, or others, and has unduly restrained, hindered, suppressed and eliminated competition therein in the sale and distribution of gasoline in commerce within the meaning of the Federal Trade Commission Act and constitutes an unfair method of competition and an unfair act and practice in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. Rufus E. Wilson, Mr. Alan Weber, and Mr. Paul D. Scanlon, for the Commission.

Howrey, Simon, Baker & Murchison, by Mr. William Simon and Mr. A. Duncan Whitaker of Washington, D.C., and Vinson, Elkins, Weems & Searls, by Mr. Ben A. Harper and Mr. John C. Snodgrass of Palatine, Illinois, for respondent.

COMPLAINT*

SEPTEMBER 27, 1957

The Federal Trade Commission, having reason to believe that The Texas Company, a corporation, hereinafter sometimes referred to as respondent, has violated and is now violating the provisions of Section 2(a) of the Clayton Act (15 U.S.C., Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, and the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C., Section 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 with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent, The Texas Company, 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 135 East 42d Street, New York 17, New York. Respondent is now, and for several years last past has been, among other things, engaged in the offering for sale, sale and distribution of gasoline and other petroleum products throughout the United States under the

*Hearing Examiner's order of Mar. 30, 1959, supplemented complaint to encompass activities allegedly in violation of Count II occurring since the date of the complaint, specifically in the Detroit area from June 1957 to June 1958.

brand names of "Texaco", "Fire Chief", and "Sky Chief". Gasoline sold under these brand names is nationally advertised and enjoys wide public acceptance. Respondent occupies a major position in the petroleum industry, being among the Nation's leading producers and marketers of gasoline and other petroleum products. The Texas Company, is an integrated organization engaged in all aspects of the oil industry and operates throughout the United States in one or more phases of the oil industry, or in related business. In 1956, the respondent produced 148,357,911 barrels of crude oil from its domestic wells. The company owns or leases 11,260,558 acres of productive and prospective land in the United States. At the close of 1956, the respondent's domestic crude and production pipe line system aggregated 6,707 miles. Marine equipment operated by the respondent in 1956 consisted of 76 ocean going vessels with a total capacity of approximately 1,265,000 dead-weight tons. The respondent has a total of 13 refineries located in the States of Texas, Illinois, New Jersey, California, Oklahoma, Wyoming, Montana, Delaware and Rhode Island, and these refineries have a daily aggregate crude capacity of 616,000 barrels. The respondent has approximately 140 terminals located throughout the United States of which 43 are served by pipe line and the balance by ocean or inland waterway. The company's products are marketed in every State of the United States, being sold direct from terminals and refineries and principally marketed through approximately 2,200 bulk stations.

The respondent also owns or leases producing properties, refineries and pipe lines, and markets its products in foreign lands.

PAR. 3. Respondent markets its gasoline and other petroleum products on a nationwide basis through its own company-owned and operated stations as well as under contracts with independent dealer stations. In the latter category, respondent has entered into dealer contracts with dealers, hereinafter referred to as "Texas" or "Texaco" dealers, located in the Portsmouth-Norfolk-Virginia Beach, Virginia, area, and other areas, now in force, and under the provisions thereof respondent sells and delivers to such dealers all of their respective requirements of respondent's brands of gasoline during the terms of such contracts.

PAR. 4. For the purpose of supplying said customers, and in making delivery pursuant to said contracts, respondent ships or otherwise transports its gasolines from its refineries located in various States across State lines, to bulk stations and other distributing points in the aforementioned area, from which it is distributed to said Texaco retail dealers. There is now and has been at all times mentioned herein a continuous stream of trade and commerce, as "commerce" is defined in the

Clayton Act, of said gasolines between respondent's refineries, terminals and bulk stations and said Texaco dealers purchasing said gasolines in the Portsmouth-Norfolk-Virginia Beach, Virginia, area, and other areas. All of such purchases by said Texaco retail dealers are and have been in the course of such commerce. Said gasolines after transportation into the State of Virginia and other areas by respondent and after sale by respondent to said Texaco dealers is then offered for resale and sold by the said Texaco dealers to motorists and others in the aforementioned areas, as well as other areas.

PAR. 5. Respondent, in the course and conduct of its business, is now, and during the times mentioned herein has been, in substantial competition with others engaged in the production, sale and distribution of gasoline and other petroleum products in commerce between and among the various States of the United States and of the District of Columbia.

PAR. 6. Respondent, in the course and conduct of its business, has discriminated in price between different purchasers of its gasoline, of like grade and quality, by selling it to certain of its customers at higher prices than it did to other of its customers. Since on or about November 1956, respondent, in the course and conduct of its business as above described, has sold its gasoline to certain dealers located in and around the Portsmouth-Norfolk-Virginia Beach, Virginia, area, and other areas at prices substantially lower than the prices charged by the respondent to its other retail purchasers for gasoline of the same grade and quality in the same competitive market area. This practice of respondent has been followed in other areas of the United States as well as the aforementioned Norfolk-Portsmouth-Virginia Beach, Virginia, area.

PAR. 7. The effect of the aforesaid discriminations, or of any appreciable part thereof, has been or may be substantially to lessen competition or to injure, destroy or prevent competition with those retailers of respondent's gasoline who received the lower prices, in the resale of said gasoline at retail in the Portsmouth-Norfolk-Virginia Beach, Virginia, area, and other areas.

PAR. 8. The foregoing alleged discriminations in price made by respondent, The Texas Company, are in violation of subsection (a) of Section 2 of the Clayton Act, as amended.

COUNT II

PAR. 9. The allegations of Paragraphs One through Six of Count I of this complaint are hereby adopted and incorporated herein by reference and made a part of this Count II the same as if they were repeated herein verbatim.

PAR. 10. Respondent sells its gasoline to a number of retail dealers located in the area comprising Portsmouth, Norfolk, and Virginia Beach, Virginia, as well as in other areas in different States of the United States. In these various areas respondent, as outlined in Paragraph Three herein, has entered into certain contracts or leases, now in force, obligating respondent to sell and deliver to such retail dealers all of their respective requirements of respondent's brands of gasoline during the terms of such contracts. For the purpose of supplying said customers and of making deliveries pursuant to said contracts, respondent ships or otherwise transports its gasolines from its refineries located in various States across State lines to bulk stations and other distributing or terminal points in or near the specified area or areas from which it is delivered to said retail dealers. There is now and has been at all times mentioned a continuous stream of trade and commerce, as "commerce" is defined in the Federal Trade Commission Act, of said gasolines between respondent's refineries, terminals and bulk stations and said retail dealers purchasing said gasolines in the areas mentioned herein. All of such purchases from respondent by the said Texaco retail dealers are and have been in the course and furtherance of such commerce. Said gasolines are sold by respondent for resale in the Portsmouth-Norfolk-Virginia Beach, Virginia, area and other areas.

PAR. 11. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint, respondent has been and is now in substantial competition with other corporations, individuals and partnerships engaged in the sale and distribution of gasoline in "commerce" as that term is defined in the Federal Trade Commission Act.

PAR. 12. It is now and has been the policy of respondent The Texas Company for a number of years to grant to its lessee retail dealers, temporary discounts from the regular tank wagon price of its gasolines.

The granting of such discounts generally occurs in areas where there is a price disturbance, usually in the nature of a local or area price war.

The policy of granting such discounts is conditioned upon the retail dealer agreeing to request such assistance and at the same time agreeing to post such prices as may be dictated by respondent The Texas Company. Failure or refusal on the part of the lessee retail dealer to post the prices dictated by respondent is regarded by the respondent as sufficient basis to not allow such discount, or in those cases where it has been granted, to terminate such discount even though such

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discount is still being given to other lessee retail dealers in the same competitive area.

PAR. 13. Beginning on or about November 1956, and at different times thereafter, respondent entered into a combination, planned common course of action, agreement and understanding with certain of its lessee retail dealers in the Portsmouth-Norfolk-Virginia Beach, Virginia, area and other areas under the terms and conditions of which the aforesaid discount policy of respondent was placed into effect, maintained and carried out.

PAR. 14. Pursuant to and in furtherance of the aforesaid unlawful combination, planned common course of action, understanding and agreement, respondent, acting together and in combination with the aforesaid retail service station dealers, agreed to fix and maintain and did fix and maintain, the retail price at which gasolines were sold or were to be sold at said retail service stations, and, further, agreed to and adhered to certain discounts, rebates, allowances, terms and conditions upon which said gasolines would be sold to said retail service stations and to the purchasing public.

PAR. 15. This alleged unlawful planned common course of action is singularly unfair, oppressive and to the prejudice of the public and respondent's competitors and retailers of gasoline in the Portsmouth-Norfolk-Virginia Beach, Virginia, area, and other areas, and has a dangerous tendency to unduly restrain, hinder, suppress and eliminate competition between and among respondent's retail dealers, or others, in the sale and distribution of gasoline in commerce within the meaning of the Federal Trade Commission Act, and constitutes an unfair method of competition and an unfair act and practice in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. Rufus E. Wilson and *Mr. Paul D. Scanlon* for the Commission.
Mr. Milton Handler and *Mr. Amzy B. Steed* of New York, N.Y.;
with *Mr. Fred A. Freund*, *Mr. Frank D. Gorman*, *Mrs. Cecelia H. Goetz*; and *Mr. James M. Brachman* of New York, N.Y., for the respondent.

COMPLAINT*

AUGUST 7, 1959

The Federal Trade Commission, having reason to believe that the above-named respondent has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C.,

*Reported as amended by order of Hearing Examiner dated Sept. 7, 1960.

Sec. 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:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 910 South Michigan Avenue, Chicago, Illinois.

PAR. 2. Respondent is now and for many years has been primarily engaged in the business of refining, storing, transporting, distributing, and selling gasoline and other petroleum products to various wholesale and retail buyers throughout the United States, as herein-after more fully set forth, for resale through service stations to the consuming public. Respondent's gasoline enjoys wide public acceptance wherever it is marketed and is considered a major brand product.

Respondent is a fully integrated company in that it is engaged in the acquisition and exploitation of oil producing properties in the United States and elsewhere and the refining of crude oil and the subsequent manufacture therefrom of various petroleum products, including gasoline. Respondent is one of the Nation's leading producers and marketers of gasoline and other petroleum products. In 1956 respondent's total assets of \$2,425,000,000 and total income of \$1,912,000,000 placed it third in size in the entire field. In 1957 respondent was the fifth largest oil company in terms of total assets, surpassed only by Standard Oil Company (New Jersey), \$7.9 billion; Gulf Oil Company, \$2.9 billion; Socony-Mobil Oil Company, \$2.8 billion; and The Texas Company, \$2.5 billion. It is the ninth largest industrial corporation in the Nation in terms of total assets, exceeded only by General Motors, U.S. Steel, Ford Motor Company and E. I. du Pont de Nemours & Co. in addition to the aforementioned oil companies.

In the United States respondent is the second largest refiner and the fourth largest producer of crude oil. In 1956, respondent refined about eight percent of all crude oil in the United States, and its sales, including an average of 323,694 barrels per day of refined gasoline, represented eight percent of the Nation's total. Its pipeline movements, through some 14,890 miles of crude oil pipelines, represented about sixteen percent of the Nation's total.

Respondent's primary marketing area is in the fifteen States known as the midwest and mountain States. These States are Montana, Wyoming, Colorado, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Minnesota, Iowa, Missouri, Wisconsin, Illinois, Michigan, and Indiana. In addition respondents has affiliates who market in some thirty-three States: Utah Oil Co. (Utoco), five States; American Oil

Company (Amoco), twenty-eight States. Thus, the consolidated company has marketing representation in forty-eight States.

In 1956 respondent and its affiliates served 29,890 or more retail outlets. Approximately sixty percent of respondent's gasoline is marketed in the fifteen State area mentioned above under the name of Standard White Crown (premium) and Standard Red Crown (regular or house brand), through some 15,654 retail outlets. Of this number, some 3,602 stations are company-owned service stations leased to dealers and some 6,930 stations are privately owned service stations sub-leased to dealers. Included in the foregoing are some 842 stations designated as lessee-consignee stations. Respondent also has some 96 company operated service stations and sells to some 5,017 other stations under supply agreements. The forty percent remainder of its gasoline production is sold directly to various commercial users and other commercial accounts.

In the entire fifteen State market area mentioned above, respondent is one of the major gasoline marketers engaged in selling its gasolines throughout the area, if not the major one, and occupies a dominant position or status in the area, as it has for many years.

PAR. 3. In the delivery and sale of its gasoline to its various marketing outlets located in the fifteen State area, respondent ships or otherwise transports its gasoline from its various refineries located in Whiting, Indiana; Sugar Creek, Missouri; Wood River, Illinois; Mandan, North Dakota; Neodesha, Kansas; Casper, Wyoming; Texas City, Texas; El Dorado, Arkansas; Destrehan, Louisiana; Yorktown, Virginia; Salt Lake City, Utah; Baltimore, Maryland; and Savannah, Georgia, through the facilities of its pipelines, barges, tank cars and trucks interconnecting the various refineries with its marine and other terminals and bulk stations across State lines, from which the said gasolines are distributed to service stations, dealers and other customers located in the various States in which it does business. Accordingly, respondent is now, and has been at all times mentioned herein, engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in the shipment and transportation of such gasoline between respondent's various refineries, terminals and distribution points, its bulk storage plants and said wholesalers, jobbers and retail dealers purchasing said gasoline in the fifteen State area. All of such purchases by wholesalers, jobbers and retail dealers in these States are and have been in the course of such commerce.

PAR. 4. Except to the extent that competition has been hindered, frustrated, lessened and eliminated, as set forth in this complaint, respondent has been and is now in substantial competition with other

corporations, firms and individuals engaged in the sale and distribution of gasoline in "commerce" as that term is defined in the Federal Trade Commission Act.

PAR. 5. Respondent has a number of retail outlets through which its refined petroleum products, including gasoline, are sold to the consuming public, as mentioned above. A substantial number of these outlets are operated by independent businessmen, or who would be such in the absence of the power and control exercised over them by respondent, who lease or sub-lease their service station properties from respondent and who have entered into supply contracts for gasoline and certain other requirements with respondent.

Respondent markets its gasoline through the retail outlets mentioned above by the medium of contracts or lease agreements under the terms of which respondent agrees to sell and deliver and the dealers agree to buy all of their requirements of gasoline from the respondent.

There are more than 10,000 such dealers operating service stations as respondent's lessees in the fifteen State area mentioned above.

PAR. 6. Commencing on or about December 1955, respondent devised, and in combination, concert, or by agreement, express or implied, with certain of its lessee-dealers, adopted and caused to be placed in effect a course of dealing, scheme, plan, method, device or policy applicable to the sale of gasoline to its retail lessee-dealers and the consuming public which has been placed in operation in different marketing areas as follows:

- Minneapolis-St. Paul, Minnesota;
- Kansas City, St. Louis, Missouri;
- Evansville, Indiana;
- Eau Claire, La Crosse, Wassau, Racine, Fond du Lac, Kenosha, Oshkosh, Wisconsin;
- Peoria, Decatur, Springfield, Danville, Champaign-Urbana, Kanakee, Illinois;
- Sioux Falls, Huron, South Dakota;
- Omaha, Nebraska; and
- Des Moines, Sioux City, Iowa.

Said policy is variously referred to, designated, or otherwise known as the "1956 Retail Marketing Plan," the "Twin Cities Plan," the "Minneapolis Plan," or the "Suggested Competitive Retail Price Plan," commonly known and hereinafter referred to as SCRP. Under SCRP respondent discontinues the traditional posting of its dealer tank wagon gasoline price at its bulk plants; purports to ascertain through surveys the prevailing retail price levels of various classes of unbranded gasoline resellers; and purports to determine an appro-

appropriate differential between branded and unbranded products as a class, to reflect realistically the difference in public acceptance between the two classes of products, taking into consideration:

- a. posted prices of unbranded resellers;
- b. discounts from posted prices;
- c. value of stamps, premiums and other give-aways.

On the basis of the foregoing, respondent then determines a "suggested competitive retail price." The price of gasoline to Standard's lessee-dealers is then determined by a percentage discount from the suggested competitive retail price, excluding taxes. In no event does the percentage discount allowed the lessee-dealer amount to what he was receiving as his normal margin of profit on each gallon of gasoline.

By means of various provisions in the leases, sub-leases and supply contracts and through a system of policing the business operations of the said independent lessee-dealers by constant inspection and surveillance, the respondent is able to and does, to a substantial extent and degree, dominate and control the lessee-dealers in the operation of the service stations leased or sub-leased from respondent. Such domination and control is exercised, exerted, and used by respondent to persuade, influence, coerce and induce said independent lessee-dealers to abide by, agree to, adhere to, follow or acquiesce in, various plans, policies or methods of doing business which may be suggested by respondent or which respondent may desire or elect to place in effect and operation, including SCRP. At all times the independent lessee-dealer is conscious and aware of the power of respondent and is influenced by such power in the everyday decisions made by him in the conduct of his business.

To help effectuate and carry out the SCRP plan in the different market areas hereinbefore set forth, respondent caused meetings to be held between representatives of respondent and certain of respondent's lessee-dealers, in the particular market or markets among others, at which time the details, aims and purposes of the SCRP plan were explained and discussed. These procedures and their implementation had the tendency to and did persuade, influence, and otherwise induce or cause respondent's independent lessee-dealers to agree to adopt or follow the SCRP plan and policies, when placed in operation.

As a result of such agreement, either express or implied from a course of dealing or other circumstances, cooperation, combination, understanding, and planned common course of action, respondent and certain of its lessee-dealers have been able to effectively establish, fix

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and maintain prices of gasoline in those market areas where the SCRP plan has been placed in effect.

PAR. 7. The combinations, agreements, understandings, acts, practices, systems, policies, course of dealing and planned common course of action of respondent and its lessee dealers, as alleged, have had a tendency to unduly restrain, hinder, suppress, prevent and eliminate competition between and among respondent's lessee-dealers; between respondent's lessee-dealers and others in the various areas in which SCRP has been and is now in force and effect; have a tendency to create a monopoly in the sale and distribution of gasoline in commerce within the meaning of the Federal Trade Commission Act; and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. Rufus E. Wilson and *Mr. A. M. Minotti* for the Commission.

Mr. Hammond E. Chaffetz and *Mr. Walter T. Kuhlmeier* of *Kirkland, Ellis, Hodson, Chaffetz and Masters*, Chicago, Ill., for respondent.

Mr. Merwin Bristol, *Mr. M. J. Keating*, of counsel.

COMPLAINT

OCTOBER 16, 1962

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated, and is now violating, 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, and the provisions of Section 5 of the Federal Trade Commission Act, as amended (U.S.C., Title 15, Sec. 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, charging as follows:

COUNT I

PARAGRAPH 1. The respondent, Shell Oil Company, 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 50 West 50th Street, New York, New York.

PAR. 2. Respondent is now, and for several years last past has been, among other things, primarily engaged in the business of distributing and selling gasoline and other petroleum products throughout the

United States and the District of Columbia under the brand name of "Shell". Products, and particularly automotive gasoline, sold under this brand name are nationally advertised and enjoy a wide public acceptance as a standard product by motorists in their own and other parts of the country.

Respondent occupies a major position in the petroleum industry, being among the Nation's leading producers and marketers of gasoline and other petroleum products. Respondent is an integrated organization in all aspects of the oil industry and operates throughout the United States and the District of Columbia in one or more phases of the oil industry.

Respondent's principal marketing areas in the United States are the West Coast, the East Coast, the Middle West, and the Deep South. Located within these areas, respondent has 16 or more marketing regions or divisions subdivided into numerous districts.

In 1959 respondent's assets were in excess of \$1 billion and its total revenue exceeded \$1.8 billion. Its over-all production, including royalty oil, averaged 366,000 barrels per day during 1959 as compared to 347,000 barrels per day during 1958, and this volume represented a gain of 5.5%. In 1959 respondent served 23,000 or more gasoline retail outlets. Respondent's sales for automotive gasoline through its company-owned and leased service stations increased in 1959 over the preceding year some 7 percent.

PAR. 3. Respondent markets its automotive gasoline and other petroleum products in the aforementioned areas through wholesalers, company operated stations and through retail service stations operated by dealers who either own or lease their stations. In the latter category, respondent has entered into dealer contracts with such independent dealer-purchasers, located in the Smyrna-Marietta, Georgia, trade area, as well as in other trade areas in the United States and the District of Columbia, which are now in force and effect, pursuant to the provisions of which respondent supplies such independent dealer-purchasers with all of their respective requirements of respondent's brand of automotive gasoline during the terms of such contracts.

For the purpose of supplying said independent dealer-purchasers and of making deliveries pursuant to said contracts, respondent ships or otherwise transports its automotive gasoline in tank cars, tankers, pipe lines and trucks from its different refineries, terminals and distribution points, located in various States of the United States to distributing points located within the State of Georgia, as well as in other States of the United States from which it is distributed to said independent dealer-purchasers.

Accordingly, there is now and has been at all times mentioned herein a continuous stream of trade in commerce, as "commerce" is defined in the Clayton Act, of said gasoline between respondent's different refineries, terminals and distribution points, located in various States of the United States and said independent dealers purchasing said gasoline in the Smyrna-Marietta, Georgia, trade area, and other trade areas in the United States and the District of Columbia.

PAR. 4. In the course and conduct of its said business, respondent has sold, and now sells, its automotive gasoline to independent dealer-purchasers, some of whom have been and are now in competition with each other in the resale and distribution of such gasoline and with customers of competitors of respondent selling competing brands of automotive gasoline.

In the course and conduct of its said business, respondent is now, and during the times mentioned herein has been, in substantial competition with other corporations, partnerships, wholesalers, individuals and firms engaged in the sale and distribution of automotive gasoline between and among the aforementioned trade areas and the District of Columbia.

PAR. 5. Respondent, in the course and conduct of its business above described, has discriminated in price between different purchasers of its automotive gasoline of like grade and quality by selling such gasoline to certain of its purchasers at lower and more favorable prices than it sold to other of its purchasers who compete with the favored purchasers in the resale of such automotive gasoline.

For example, commencing on or about October 1958, respondent sold its automotive gasoline to certain independent dealer-purchasers located in and around the Smyrna-Marietta, Georgia, trade area and in other trade areas in other States of the United States, at lower and more favorable prices than it sold to its other independent dealer-purchasers who resell such automotive gasoline of like grade and quality to consumers thereof, in competition with the independent dealer-purchasers receiving the lower and more favorable prices.

PAR. 6. The effect of the aforesaid discriminations, or of any appreciable part thereof, has been or may be substantially to lessen competition or to destroy or prevent competition with those purchasers of respondent's automotive gasoline who received the lower prices, in the resale of such gasoline at retail in the Smyrna-Marietta, Georgia, trade area and other areas.

PAR. 7. The foregoing discriminations in price are in violation of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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PAR. 8. The allegations of Paragraphs One through subparagraph two of Paragraph Three of Count I of this complaint are hereby adopted and incorporated herein by reference and made a part of this Count II as fully and with the same effect as if set out herein verbatim.

PAR. 9. In the course and conduct of its business, respondent is now and has been at all times referred to herein engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that it ships or otherwise transports its automotive gasoline from the various States of the United States where such gasoline is refined, processed or stored in anticipation of sales and shipment, to its independent dealer-purchasers located in the Smyrna-Marietta, Georgia, trade area and to various other trade areas in other States of the United States and the District of Columbia. All of such purchases by said independent dealer-purchasers and sales by respondent to such dealers are and have been in the course of commerce.

PAR. 10. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint, respondent has been and is now in substantial competition with other corporations, partnerships, individuals, and firms engaged in the sale and distribution of gasoline in "commerce", as that term is defined in the Federal Trade Commission Act.

PAR. 11. Commencing on or about the first week in October 1958, respondent, acting through its Division Manager, one R. D. Kizer, and certain of its independent dealer-purchasers engaged in selling respondent's automotive gasoline and other petroleum products in the Smyrna-Marietta, Georgia, trade area, for the purpose of suppressing, preventing, hindering and lessening competition in the sale and distribution in such "commerce" of automotive gasoline, entered into, acquiesced or cooperated in maintaining and carrying out a combination, planned common course of action, course of dealing, understanding and agreement, through which they would fix and maintain, and did fix and maintain, the price at which respondent's automotive gasoline was sold or would be sold at retail in the gasoline service stations leased and operated by the aforementioned independent dealer-purchasers selling respondent's automotive gasoline in the aforementioned trade area.

PAR. 12. Pursuant to and in furtherance of the aforesaid unlawful combination, planned common course of action, course of dealing, understanding and agreement, respondent, acting through and with the aforesaid R. D. Kizer, together and in conspiracy and combina-

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tion with the aforesaid independent dealer-purchasers did and performed the following acts and things:

1. Agreed to fix and maintain, and did fix and maintain, the retail price at which respondent's automotive gasoline was sold or to be sold at the various gasoline service stations operated by the aforementioned independent dealer-purchasers.

2. Agreed to adhere to, and did adhere to, certain discounts, terms and conditions upon which respondent's automotive gasoline would be sold by the aforesaid independent dealer-purchasers at their gasoline service stations to the purchasing public.

PAR. 13. This alleged unlawful planned common course of action is singularly unfair, oppressive and to the prejudice of the public and respondent's competitors and retailers of automotive gasoline in the Smyrna-Marietta, Georgia, trade area and has a dangerous tendency to unduly restrain, hinder, suppress and eliminate competition between and among the company-operated stations of respondent and respondent's independent dealer-purchasers and others, located in the same trading area, and has unduly restrained, hindered, suppressed and eliminated competition therein in the sale and distribution of gasoline in "commerce" within the meaning of the Federal Trade Commission Act and constitutes unfair methods of competition and unfair acts and practices in "commerce" within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. Rufus E. Wilson and *Mr. Americo M. Minotti* supporting the complaint.

Howrey, Simon, Baker & Murchison, Washington, D.C., by *Mr. William Simon* and *Mr. J. Wallace Adair*, and *Mr. William F. Kenny*, *Mr. S. R. Vandivort*, and *Mr. Donald P. Walsh*, New York, N.Y., for the respondent.

AMENDED INITIAL DECISION AFTER REMAND BY ROBERT L. PIPER,
HEARING EXAMINER

SEPTEMBER 28, 1962

PRELIMINARY STATEMENT

On September 26, 1956, the Federal Trade Commission issued its complaint against The Pure Oil Company,¹ a corporation (hereinafter called respondent or Pure), charging it with price discrimination in

¹ Incorrectly referred to as Pure Oil Company in the caption of the complaint and other documents.

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violation of § 2(a) of the Clayton Act (hereinafter called the Clayton Act), 15 U.S.C. 12, *et seq.*, as amended by the Robinson-Patman Act, and unfair methods of competition and unfair acts and practices in violation of § 5 of the Federal Trade Commission Act (hereinafter called the Act), 15 U.S.C. 41, *et seq.* Copies of said complaint together with a notice of hearing were duly served on respondent.

The complaint alleges in substance that respondent discriminated in price by the sale of its gasoline to some customers at prices substantially lower than the prices charged other customers, both in the same area and in different areas, and that respondent entered into an agreement with certain of its customer-dealers to fix and maintain the retail price at which such customers sold said gasoline. Respondent appeared by counsel and filed an answer admitting the corporate, competition and certain of the commerce allegations of the complaint, but denying any price discrimination in violation of the Clayton Act or any price-fixing agreement in violation of the Act.

Pursuant to notice, hearings were thereafter held before the undersigned hearing examiner, duly designated by the Commission to hear this proceeding, at various times and places from March 19, 1957, to September 12, 1958. At the conclusion of the case-in-chief, respondent elected to rest.

Thereafter on January 30, 1959, an initial decision was issued by the undersigned, finding a price discrimination in the primary line of competition and dismissing the alleged price discrimination in the secondary line and the alleged price-fixing agreement. Thereafter both parties appealed to the Commission, neither appealing the dismissal of the alleged price discrimination in the secondary line. On September 25, 1959, the Commission remanded the case to the undersigned for the limited purpose of receiving additional evidence relating to prices charged by respondent in areas other than Birmingham, and directing the undersigned to indicate any changes he might wish to make in the initial decision in the light of such additional evidence. On October 30, 1959, pursuant to motion of respondent, the Commission broadened the scope of the remand to include the reception of respondent's defense to the charge of geographical price discrimination and such rebuttal evidence as might be offered by counsel supporting the complaint. The Commission stated that further direction to the hearing examiner as to the form of initial decision was not necessary. Thereafter, hearings for the receipt of such additional evidence and respondent's defense were held at various times and places from January 21, 1960 to January 4, 1962.

Both parties were represented by counsel, participated in the hear-

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ings and afforded full opportunity to be heard, to examine and cross-examine the witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file proposed findings of fact, conclusions of law, and orders, together with reasons in support thereof. Both parties filed proposed findings of fact, conclusions of law, and orders, together with reasons in support thereof. All such findings of fact and conclusions of law proposed by parties, respectively, not hereinafter specifically found or concluded are herewith specifically rejected.²

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following amended :

FINDINGS OF FACT

I. The Business of Respondent

The complaint alleged, respondent admitted, and it is found that respondent is an Ohio corporation with its principal office and place of business located at 35 East Wacker Drive, Chicago, Illinois.

II. Interstate Commerce and Competition

The complaint alleged, respondent admitted, and it is found that it is now, and for several years has been, engaged in the offering for sale, sale and distribution of gasoline and other petroleum products in various States of the United States, including the city of Birmingham, Alabama, and adjacent territories. In the course and conduct of such business, respondent ships or otherwise transports its gasoline in tank cars, tankers, pipe lines and trucks from its different refineries, terminals and distribution points located in various States of the United States to retail dealers located in the Birmingham, Alabama, area and in various other States of the United States. In the course and conduct of this business, respondent is in direct and substantial competition in commerce with other corporations, individuals and partnerships likewise engaged in the sale and distribution of gasoline in commerce.

The record establishes and it is found that respondent's sales to said retail dealers are and have been in the course of commerce, and that there is now and has been at all times mentioned herein a continuous stream of trade in commerce of said gasoline and petroleum products between respondent's refineries, terminals, and distribution points and said retail dealers.³

² 5 U.S.C. § 1007(b).

³ *Standard Oil Co. v. FTC*, 340 U.S. 231 (1951).

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III. *The Unlawful Practices*

A. *The Issues*

The complaint contains two counts and three basic issues, primary-line price discrimination in violation of the Clayton Act, secondary-line price discrimination in violation of the Clayton Act, and price-fixing in violation of the Act. They are considered *seriatim*.

B. *Primary-Line Price Discrimination*

The complaint, as amended by the bill of particulars, alleges that since December 29, 1955, respondent discriminated in the sale of its gasoline by selling it to certain dealers located in and around Birmingham, Alabama, at prices substantially lower than respondent charged other retail purchasers located (1) in and around Birmingham, (2) in the State of Alabama, and (3) in other States of the United States. The facts are not in substantial dispute, and the same circumstances are relied upon to support the alleged primary-line and secondary-line price discrimination as well as the alleged price-fixing. Respondent denied that it had discriminated in price among its dealers located in the Birmingham area, and the record establishes, as will be seen hereinafter, that respondent in fact did not discriminate in price among such dealers but charged a uniform wholesale price throughout Jefferson County, Alabama, which includes the Birmingham area.

In general respondent sells its gasoline and other products to independent contractors who operate under the Pure Oil name filling stations either owned by them or leased from respondent. During the period in question, respondent had dealer contracts with approximately 120 such independent contractors in Jefferson County. Respondent delivers its gasoline to the filling stations operated by such dealers from its bulk plant, and, as is customary in the trade, posts at the bulk plant the wholesale price of gasoline, generally referred to as the tank wagon price.

For the purposes of this decision, respondent markets what is known in the trade as a major brand of gasoline. Major brands of gasoline are those which have a well-known, well-established and well-advertised brand name and are marketed by large, usually integrated oil companies, normally operating throughout a large regional area of many States or the entire United States. Such distributors market their gasoline through filling stations uniformly identified conspicuously with their respective brand name and distinguishing colors and decor, nearly always operated by independent contractor dealers, and employ the use of credit cards accepted throughout the entire area in which

they operate. Such stations provide additional substantial services, such as lubrication, washing, minor repairs, and the supplying of tires, batteries, and other automobile accessories. The marketers of major brand gasolines expend millions of dollars annually in advertising their respective brand names and the superiority of their gasolines. As a result of these methods of operation, major brand gasolines enjoy wide public acceptance, and are generally considered by the public superior to non-major brands of gasoline.

Pure operates in this manner and markets what is known in the industry and accepted by the public as a major brand of gasoline. Other well-known major brands of gasoline which are marketed in the same manner are Standard Oil, Texaco, Gulf, Shell, Sinclair, and Pan Am (Standard of Indiana). There are numerous other major brands. While some of the major brand companies operate in limited areas, such as Standard of Ohio, and some are not integrated oil companies, such as Standard of Kentucky, nevertheless, because of the wide general public acceptance and reputation of the Standard Oil name, they are uniformly considered and accepted by the public as distributors of major brand gasoline. In general, all of the other distributors of major brand gasoline operate either over wide areas or nationally and are fully integrated oil companies.

In addition to the distributors of major brand gasoline, gasoline is also marketed by other distributors, which gasoline is generally referred to in the industry as private brand gasoline. Such distributors normally, although not in all cases, purchase their gasoline from other sources. Some private brand distributors sell at both the wholesale and retail level while others sell only at the retail level. All of the private brand operators, even the most substantial, are much smaller in overall sales and assets than any of the major brand distributors. Spur, the largest private brand, with 304 stations in 21 States in 1957, was sold for a total purchase price of \$18,700,000. Yet Pure, one of the smallest of the majors, had over 15,000 outlets in 24 States with assets in excess of \$400 million in 1955. Of course, when a private brand is purchased by a large corporation with vast assets, such as Sears-Roebuck, Kerr-McGee, Murphy, etc., it may be said to have comparable assets available, but if the operation remains unchanged and the brand name is not converted to a major brand by comparable advertising, methods of operation, credit cards, and the other factors outlined above, it is not considered or accepted by the public as a major brand, and consequently cannot compete successfully without some retail price differential. In a very few markets one or two private brands may have acquired a brand reputation equal to that of a major brand and can

sell at the same retail price, such as Pate in Milwaukee, but this is the exception to the rule. If brand name is an insignificant factor in consumer acceptance, as respondent contends, then all of the experienced major brand marketers are wasting millions of dollars in advertising their respective brands.

Private brand gasoline is not as widely advertised and in some cases not at all, its brand names are not as well known and in some cases are virtually unknown, and the method of operation is substantially different, in that the filling stations are owned by the distributor and not by independent dealers, national or regional credit cards are not employed, and lubrication, washing and repair facilities are not available at the filling stations. As a result, private brand gasoline does not have the public acceptance and reputation enjoyed by the major brand gasolines and is generally, but not universally, considered inferior in quality to major brand gasoline. Some private brand gasoline is inferior in quality to major brand regular grade gasoline. Nevertheless, as respondent contends, most private brand regular grade gasolines are equal in quality to the regular grade major brand gasolines. In fact, many private brand operators purchase their gasoline from major brand distributors. However, these facts are not generally known to the public and hence do not enter into the general public opinion and acceptance of the product.

As a result of such lesser public acceptance, in the Birmingham area private brand gasoline is sold at a retail price below that generally prevailing for major brand gasolines. There is a wide divergence among the Birmingham area private brand operators. Some of them operate throughout wide areas of many States, engage in advertising, have good station locations, although the facilities do not equal those of the major brand distributors, and have acquired a degree of public acceptance for their brand names. Others have poor locations, little or no public acceptance of brand name, in some cases inferior quality gasoline, and operate primarily on a cut-price basis. Necessarily their gasoline has less public acceptance than the more substantial private brand operators.

For the purposes of this decision, the private brand operators in the Birmingham area in general fall into three categories, price-leading private brands, medium price private brands, and lowest price private brands. The record establishes that there is a usual and customary differential, normally one cent, between the retail prices of the regular grade gasolines of the three classes of private brand operators. In addition, there is a usual and customary retail price differential between the prevailing price of the major brand regular gasolines and

the price-leading private brands. The record establishes that in the Birmingham area the retail price differential between the major brand and the price-leading private brand regular gasolines in normal market periods was generally two cents a gallon, with the prices of the other private brands correspondingly lower. For the purposes of this decision normal market periods mean when no severe price disturbance or price war was taking place. Respondent contends that two cents is not the competitively necessary differential.

Because of the public acceptance of major brand gasoline and the general belief that it is superior in quality, as hereinabove found, both the record as well as logic establish that it is essential that there be some retail price differential between the major brands and the private brands, or the private brands would cease to exist. It is self-evident that a large majority of the public believes that major brand gasoline is superior to private brand gasoline. In every substantial market area, including the Birmingham area, the total sales of major brand gasolines exceed those of private brands in spite of the fact that private brands sell at retail from one to five cents a gallon less. It is an established economic principle that an homogenous product cannot successfully command a higher price than competing homogenous products known to be identical. Yet the major brands, charging a higher price, always in toto outsell the private brands in toto. This inevitably leads to the conclusion that if the private brands tried to sell at the same retail price, they would fail. Certainly if a large majority of the public believes major brands to be superior in quality, private brands would sell practically nothing at the same prices. Respondent concedes that price is one of the leading factors in public acceptance. If the major brands were not considered superior in quality certainly at higher prices they would not consistently outsell the private brands. This conclusion is further bolstered by the fact that the major brand distributors spend millions of dollars advertising why their brands are superior, e.g., Shell's TCP, Socony's Megatane, Texaco's Climatized Gasoline, etc. Certainly experienced marketers would not expend such sums unless they considered it effective.

Since the remand, the record contains very substantial and reliable evidence that a more competitively realistic retail price differential between the major brands and the *price-leading* private brands in the Birmingham area for regular grade gasoline is one cent a gallon, with the correspondingly greater differences between the prices of the major brands and the medium- and lowest-price private brands. Although the record discloses that a two-cent retail differential between the major brands and the price-leading private brands was more frequent,

it also establishes that when the differential was one cent, *and* the corresponding differentials existed between the medium- and lowest-price private brands, the private brand operators were not injured and did not suffer loss of market share to the major brand distributors. This is not meant to infer that the private brand operators did not suffer injury and loss of market share when the retail differential was reduced to one cent with substantially *all* of them, thus eliminating the usual and customary differentials between the price-leading, medium- and low-priced private brand distributors, as considered hereinafter.

The record establishes that with a usual two-cent retail differential for regular gasoline between the major brands and the price-leading private brands, with the correspondingly greater differential for the other private brands, the private brand operators had acquired a substantially increasing share of the market over the years. These facts necessarily lead to the conclusion, as contended by respondent, that a one-cent differential between the major brands and the price-leading private brands is more competitively realistic in that market. Respondent proposed numerous findings incorporating a conclusion that the appropriate or competitively necessary retail price differential between the major brands and the price-leading private brands for regular gasoline during the relevant period was one cent a gallon, and it is so concluded and found. The record establishes that such a differential had no adverse competitive effect upon the private brand operators.

However, the record also establishes that when the retail price differential was reduced below a one-cent differential between the major brands, the price-leading, the medium- and the lowest-price private brands, respectively, the private brands lost and the major brands gained substantial shares of the market. This was brought about by a compression of the private brand prices into one level, as a result of the lowest prices posted by the major brands in December 1955 and March 1956, during the two price wars, to be considered hereinafter. The prevailing retail prices of the major brands then were such that a price one cent below meant that all of the private brands were selling at or near cost, all of them were operating at a loss, and hence they were unable to maintain the necessary differentials between the price-leading, medium- and lowest-price brands. As a result, substantially all of the private brands were forced to post within one cent of the major brands and still operated at a loss. During the earlier stages of the two price wars, as the prices dropped, the private brands were able to maintain the necessary competitive differentials, *i.e.*, the price-leading brands one cent below the major brands, the medium-price brands one cent below the price-leading private brands, and the

