

IN THE MATTER OF
STANDARD MOTOR PRODUCTS, INC.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(a) OF
THE CLAYTON ACT

Docket 5721. Complaint, Dec. 20, 1949—Decision, Dec. 27, 1957

Order requiring a seller in Long Island City, N.Y., of automotive replacement parts to jobbers who resold to garages, service stations, fleet owners, and other jobbers, to cease discriminating in price in violation of section 2(a) of the Clayton Act, by means of a retroactive volume rebate plan under which large volume purchasers and members of group buying organizations were granted rebates on their total annual purchases in addition to the customary 2 percent cash discount, with result that they were charged lower prices than their smaller competitors.

Mr. Eldon P. Schrup for the Commission.

Mr. Edward S. St. John, of New York, N.Y., for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is based upon a complaint charging that the respondent Standard Motor Products, Inc., a corporation, has discriminated in price between different purchasers of its products in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C., Title 15, sec. 13). The price differentials which are charged to be in violation of the Clayton Act arise from respondent's pricing practices, involving the granting of an annual retroactive volume rebate to its customers, and also in the granting of such retroactive volume rebate to group purchasers on the basis of their aggregate purchases instead of upon the individual purchases of the members. The general system of pricing used by the respondent, as developed by the record, and the variations therefrom in the case of group buyers, is not disputed by the respondent, but was instead defended on the basis that the pricing practices of respondent have not resulted in any injury to competition, and that respondent's prices, discounts and allowances were made to meet competition. No attempt was made by respondent to justify its price differentials on the basis of differences in cost of manufacture, sale, or delivery.

This proceeding is now before the undersigned hearing examiner for final consideration on the complaint, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel and oral argument thereon. The hearing examiner has given consideration to the proposed findings as to the facts

and conclusions submitted by both parties and the memoranda and brief in support thereof, and all findings of facts and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded, are herewith rejected, and the hearing examiner having considered the record herein and being now fully advised in the premises, makes the following findings as to the facts, conclusions drawn therefrom, and order:

1. Respondent Standard Motor Products, Inc., is a corporation organized under the laws of the State of New York with its principal office and place of business located at 37-18 Northern Boulevard, Long Island City, New York, N. Y.

2. Since 1926, the respondent has been engaged in the manufacture and in the sale and distribution in interstate commerce of automotive replacement parts, consisting of ignition parts and automotive wire and cable and related items, in competition with other concerns who were also engaged in the sale and distribution of similar products in interstate commerce.

3. The market in automotive replacement parts is highly competitive. The amount of business transacted by the respondent in the replacement parts field is substantial. Its sales during the year 1949, exclusive of Hygrade products, was in excess of \$4 million.

4. The respondent, during the time mentioned herein, has sold its replacement parts to jobbers, who were designated by the respondent as distributors, who resold such products to garages, service stations, fleet owners and other jobbers. From time to time respondent issued its Distributor's Price List, which listed the basic prices used by the respondent in the sale and distribution of its various replacement parts. Any discounts, allowances or rebates were off Distributor's Price List. Respondent also from time to time issued suggested resale price lists for use by distributors and dealers in the resale of respondent's products. The net purchase price paid by distributors for respondent's products is the purchase price paid subject to and following all applicable rebates, discounts and allowances. The automotive replacement parts sold and distributed by respondent were all of one grade and quality. Respondent sold such products of like grade and quality to its distributors at varying net prices. Such distributors of respondent were competitively engaged in the resale of respondent's replacement parts in the various territories and places where such distributors carried on their businesses.

5. On October 15, 1947, respondent acquired Hygrade Products Co., Inc., which became a division of the respondent but was operated as a separate unit. The Hygrade Products line consisted of fuel

pumps and parts therefor. The pricing practices followed by the respondent in connection with its Hygrade line was substantially the same as those maintained in its regular Standard line. However, for the purpose of expediting this matter and bringing the litigation to a conclusion, the examiner eliminated from consideration in this proceeding all exhibits and testimony pertaining to the Hygrade line of products.

6. The annual volume rebates provided for in respondent's pricing plan were incorporated in, and made a part of, its Distributors Rebate Contract and Master Distributors Rebate Contract. Since June 19, 1936, and prior thereto, respondent has granted a retroactive volume rebate to its various distributors. The retroactive volume rebates as set out in respondent's contracts with its distributors are as follows:

(a) *Distributors Rebate Contract.* Purchasers operating under this contract by the Standard line of products subject to a retroactive rebate on purchase price based upon the following rebatable purchase volume, plus a cash discount of 2 percent on the value of all invoices if paid on the 10th following the month of date of shipment:

"If the net amount of goods purchased is \$1,800 per year the rebate is 3%
If the net amount of goods purchased is \$2,400 per year the rebate is 5%
If the net amount of goods purchased is \$3,600 per year the rebate is 7%
If the net amount of goods purchased is \$5,000 per year the rebate is 9%
If the net amount of goods purchased is \$6,500 per year the rebate is 11%
If the net amount of goods purchased is \$8,000 per year the rebate is 13%
If the net amount of goods purchased is \$10,000 per year the rebate is 15%"

(b) *Master Distributors Rebate Contract.* Purchasers operating under this contract and its endorsement, buy the Standard line of products subject to a retroactive rebate on purchase price based upon the following rebatable purchase volume:

"Net purchases of \$1,800, rebate is 3% advanced monthly.
Net purchases of \$2,400, rebate is 3% advanced monthly plus 2% at end of year.
Net purchases of \$3,600, rebate is 3% advanced monthly plus 4% at end of year.
Net purchases of \$5,000, rebate is 3% advanced monthly plus 6% at end of year.
Net purchases of \$6,500, rebate is 3% advanced monthly plus 8% at end of year.
Net purchases of \$8,000, rebate is 3% advanced monthly plus 10% at end of year.

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Net purchases of \$10,000, rebate is 3% advanced monthly plus 12% at end of year.

Net purchases of \$25,000, rebate is 3% advanced monthly plus 13% at end of year.

Net purchases of \$50,000, rebate is 3% advanced monthly plus 14% at end of year.

Net purchases of \$75,000, rebate is 3% advanced monthly plus 15% at end of year.

Net purchases of \$100,000, rebate is 3% advanced monthly plus 17% at end of year."

The Master Distributors Rebate Contract, as distinguished from the Distributors Rebate Contract, provides that "The manufacturer will allow the distributor a monthly discount of 5 percent instead of the usual 2 percent. This 5 percent comprises the usual 2 percent cash discount and 3 percent rebate allowed in advance monthly."

7. Under the retroactive rebate plan, purchasers were granted and received rebates on all their individual purchases according to the rebate bracket applicable to their total annual purchases. Any individual purchase price was retroactively determined by the total of all purchases during the year according to the terms of the retroactive rebate plan.

8. The amounts involved in the granting by respondent of the volume rebates were substantial and reflect the importance which was attached to said rebates by the various purchasers. Respondent has 1,500 or more customers located in numerous cities and towns throughout the United States who are variously operating under the afore-described rebate contracts.

9. During the year 1949, respondent sold its products to jobber members of various group buying organizations. Sales were made during 1949 to members of the following group buying organizations:

<i>Name</i>	<i>Address</i>
Mid-South Distributors, Inc.-----	Memphis, Tenn.
Warehouse Distributors, Inc.-----	Atlanta, Ga.
Automotive Parts Distributors, Inc. (now National Parts Warehouse).	Athens, Ga.
Ark-La-Tex Warehouse Distributors, Inc.-----	Marshall, Tex.
Automotive Southwest, Inc.-----	Dallas, Tex.
Southwestern Warehouse Distributors, Inc.-----	Dallas, Tex.
Metropolitan Automotive Wholesalers Co-Operative, Inc.	New York, N.Y.

10. The purchasing procedure in a group buying operation provided for the forwarding of merchandise purchase orders by the

individual jobber member to the seller directly or through the group office. Merchandise so ordered was shipped by the respondent direct to the individual jobber member with billing for same being directed to the group office. Monthly settlements were made between respondent and the group office for the aggregate sum of the purchase orders of all the jobber members so received, and each jobber member also settled monthly with the group office for his own individual purchases so made. The annual volume rebate allowed by the respondent was based upon the aggregate purchases of the group members and was paid to the group office, which in turn distributed such volume rebate to the jobber members in proportion to the amount of such jobber's individual purchases. In some instances respondent permitted the buying group to deduct the retroactive discount on making monthly remittances. For example, Mid-South Distributors, Inc., deducted the 20 percent, plus 2 percent cash discount, from its monthly remittances. The rebates and discounts as shown by the tabulations in evidence were granted and allowed by the respondent to each individual member of the said buying groups on the basis of the total purchases of all the members irrespective of whether or not the amount of such individual member's purchases met with the requirements of any particular bracket of respondent's volume rebate schedules set forth in the respondent's rebate contracts. The group buying organization was in reality a bookkeeping device for the collection of rebates, discounts and allowances received from sellers on purchases made by its jobber members. Such jobber members, in fact, purchased their requirements of respondent's products direct from respondent, and at the same time received a more favorable price or higher rebate based upon the combined purchases of all the members.

11. Respondent's gross billings during 1949 in connection with the Standard line products sales to the above group members were in the total aggregate amount of \$698,124.48, on which respondent allowed cash discounts of \$13,972.50. The rebatable amount on such aggregate purchases was \$642,351.93, on which respondent allowed volume discounts of \$123,710.35, or an average rebate of 19.26 percent to such buyers.

12. Illustrative of the monetary benefits derived by the individual jobber member of such group buying organization, as opposed to those individual purchasers buying without the benefits of such group consolidation of purchases is the following tabulation taken from Commission's exhibit 330, dealing with the transactions between respondent and Mid-South Distributors, Inc.:

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AUTOMOTIVE JOBBER "GROUP BUYING" METHOD OF PURCHASING

Manufacturer's published rebate schedule to trade		1	2	3	4	5	6
Net purchases	Rebate	Actual net rebatable purchases each member jobber	Manufacturer's schedule rebate rate applicable	Manufacturer's schedule rebate amount due	Manufacturer's "group" rebate rate	Manufacturer's "group" rebate amount paid	Actual price difference
	Percent		Percent		Percent		
		1. \$10,926.64	15	\$1,639.00	20	\$2,185.33	\$546.33
		2. 4,883.52	7	341.85	20	976.70	634.85
		3. 19,813.71	15	2,972.06	20	3,962.72	990.66
Under \$1,800.....	None	4. 34,902.59	16	5,584.41	20	6,980.50	1,396.09
\$1,800-\$2,400.....	3	5. 2,107.24	3	63.22	20	421.45	358.23
\$2,400-\$3,600.....	5	6. 34,578.28	16	5,532.52	20	6,915.65	1,383.13
\$3,600-5,000.....	7	7. 2,432.54	5	121.63	20	486.54	364.91
\$5,000-\$6,500.....	9	8. 263.35	None		20	52.67	52.67
\$6,500-\$8,000.....	11	9. 44,940.96	16	7,190.55	20	8,988.15	1,797.60
\$8,000-\$10,000.....	13	10. 8,312.32	13	1,080.60	20	1,662.47	581.87
\$10,000-\$25,000.....	15	11. 13,933.59	15	2,090.04	20	2,786.70	696.66
\$25,000-\$50,000.....	16	12. 4,500.89	7	315.06	20	899.99	584.93
\$50,000-\$75,000.....	17	13. 11,386.24	15	1,707.94	20	2,277.43	569.49
\$75,000-\$100,000.....	18	14. 17,050.24	15	2,557.54	20	3,410.06	852.52
\$100,000 and over....	20	15. 31,821.79	16	5,091.49	20	6,364.36	1,272.87
		16. 16,638.77	15	2,495.82	20	3,327.75	831.93
		17. 5,803.64	9	522.33	20	1,160.75	638.42
		18. 17,307.94	15	2,596.19	20	3,461.61	865.42
Totals.....		281,604.25		41,902.25		56,320.83	14,418.58

13. In following the pricing practices hereinabove described, respondent has discriminated in price by means of rebates allowed by it in the sale of its various automotive products and related items as between respondent's competing distributors and also between respondent's distributors and competing group buying jobbers, and the effect of such discrimination may be to substantially lessen, injure or prevent competition between respondent's customers receiving the benefit of such discriminations and the customers who do not receive the benefit of such discriminations.

14. The respondent did not grant exclusive territory to any of its customers and has had more than one distributor in various trade areas who were, in fact, in competition with each other and also in competition with group buying jobbers, who sold respondent's replacement parts to dealers and other purchasers in their respective trade areas. Substantial differences in the net purchase prices paid by competing purchasers of respondent's product lines have resulted from the aforesaid pricing practices of respondent. The record contains a number of tabulations prepared from respondent's accounts and records showing details of respondent's sales to jobber purchasers in a number of different trading areas. These tabulations reflect price differences between such purchasers in the same trading area of varying amounts or percentages, with some net purchase price differences amounting to as much as 20 percent.

15. The record, based upon the tabulations in evidence in this proceeding, disclosed substantial differences in the net purchase prices paid by competing purchasers of respondent's products for resale. The substantiality of the amount represented by such price differences with relation to the purchaser's net profit margin is conclusively shown when compared with the competitive effect of the amount represented by the 2 percent cash discount. Distributors of respondent, who testified in this proceeding, stated that they invariably took advantage of the 2 percent cash discount as being essential in the conduct of their respective businesses, and that such discount reduced the cost of acquisition of respondent's products. This 2-percent reduction in cost of acquisition is substantial and may account for a substantial portion of the margin of profit. Several jobbers of respondent testified that the overall net profit of their companies after taxes ran from 2 to 4 percent. By the very nature of the businesses operated by the various jobber customers of respondent, their profit was necessarily based upon an accumulation of small margins of profit on many items. Some of the witnesses handled from 50 to 150 lines, involving an aggregate of thousands of items. Practically all of respondent's jobber customers extend the same cash discount they receive to their customers, however, on a mark-up of acquisition cost, the discount actually given by such customer to its purchaser on resale will be greater than the 2 percent cash discount.

16. The substantiality of the total dollar volume amounts in lost rebates to respondent's nonfavored customers by not being allowed the higher rebate percentages on purchase price granted respondent's favored customers, is well illustrated by the following comparison based on Commission's exhibits 340 and 350D. The substantiality of respondent's price discriminations between its various favored and nonfavored customers becomes most apparent when the dollar amount of the cash discounts, normally taken as a matter of business necessity by these nonfavored customers, is contrasted with the dollar amount in total rebates actually lost to such nonfavored customers because of respondent's following less favorable rebate percentages:

