

It is further ordered. That Count II and Count III of the complaint be, and they hereby are, dismissed.

It is further ordered, That the initial decision of the hearing examiner, as modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondent, National Dairy Products Corporation, 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 the order to cease and desist set forth herein.

Commissioner Elman dissented. Commissioner MacIntyre concurred in part and dissented in part. Commissioner Jones concurred in part and dissented in part.

IN THE MATTER OF

CROWN CENTRAL PETROLEUM CORPORATION

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8539. Complaint, Oct. 19, 1962—Decision, June 30, 1967.

Order dismissing complaint which charged a Baltimore, Md., petroleum company with fixing prices of gasoline at retail and suppressing competition by selling below cost to certain dealers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, (U.S.C., Title 15, Sec. 45), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Crown Central Petroleum Corporation, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of Section 5 of said Act, 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 Crown Central Petroleum Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, with its

principal office and place of business located at the American Building, Baltimore 3, Maryland.

PAR. 2. 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 in a thirteen State area including the States of Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Alabama, Florida and Texas. Said gasoline is offered for sale, and sold under the brand names of "Crown Gold" and "Crown Silver." Respondent comprises an integrated unit in the petroleum industry. It is engaged in the acquisition, development and exploitation of oil and other petroleum products as well as the purchase, sale and transportation of crude oil, and the refining of crude oil and its derivatives, and the subsequent marketing at wholesale and retail of the products of its refinery in the hereinabove named States of the United States. Respondent has a refinery in Houston, Texas. It also owns and operates pipe lines, terminals and bulk plants for the transportation, distribution, offering for sale and sale of its gasoline and other products to service station dealers. In 1961 its gross sales of petroleum products totaled \$66,410,463.

PAR. 3. In the delivery and sale of its gasoline to its various marketing outlets located in the aforementioned States, respondent ships or otherwise transports its gasoline and other petroleum products from its refinery located in Houston, Texas, to bulk stations and other distributing points across State lines, from which 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 refinery, terminals and distribution points, its bulk storage plants and said wholesalers, jobbers and retail dealers purchasing said gasoline in the 13-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. Respondent has been and is now marketing its refined petroleum products, including gasoline, through a number of retail outlets, located in Baltimore, Maryland, among other areas, by the medium of contracts or lease agreements under the terms of which respondent agrees to sell and deliver and dealers agree to buy all of their requirements of gasoline from respondent. A

substantial number of these retail outlets are operated by independent businessmen, or those who would be such in the absence of the power and control exercised over them by respondent, who lease or sublease their service station properties from respondent and have entered into the aforementioned supply contracts for gasoline and certain other requirements with respondent.

In addition, respondent owns or operates through agents or representatives a number of retail service station outlets in Baltimore, Maryland, which are commonly known or referred to as "commission" stations.

PAR. 5. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint, respondent has been and now is in substantial competition with other corporations, firms, partnerships and individuals engaged in the sale and distribution of gasoline in "commerce" as that term is defined in the Federal Trade Commission Act.

PAR. 6. It is now and has been for some time past the practice and policy of Crown Central Petroleum Corporation to enter into certain agreements, arrangements and understandings with various of its marketing outlets, located in the areas within which it does business including Baltimore, Maryland, whereby respondent, under the guise and pretext of giving assistance to said outlets, can and does establish control, manipulate or fix the retail price at which its gasoline is sold to motorists and others of the consuming public.

For example, commencing on or about June 12, 1962, Crown Central Petroleum Corporation initiated, adopted and directed the placing into effect of a policy or plan under which all of its retail dealer outlets, including both its own commission stations and those operated by independent lessee-dealers, in Baltimore, Maryland, would sell the "Crown Silver" brand of gasoline to consumers at a posted pump price of 17.9¢ per gallon. Under said pricing plan or policy, respondent offered to give and did grant price allowances of 12.5¢ per gallon to those of its said retail outlets selling "Crown Silver" gasoline to consumers at a posted retail pump price of 17.9¢ per gallon. By about 5:30 p.m. of June 12, 1962, almost all stations in the Baltimore City area were posting the said 17.9¢ per gallon retail price. By 7 p.m. of the same day all stations in the Baltimore City area had been contacted by respondent and the 17.9¢ per gallon retail price was in effect.

By means of various provisions in the leases, subleases and

supply contracts, including riders applicable thereto, and through a system of policing the business operations of the said independent lessee-dealers, the respondent is able to and does, to a substantial extent and degree, dominate and control the manner in which said lessee-dealers operate the service stations. The power resident in respondent through 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 the pricing policy or plan herein set forth. At all times the independent lessee-dealer is conscious and aware of the power of respondent and is influenced and persuaded by the presence of such power in the everyday decisions made by him in the conduct of his business.

As a result of the exercise of such power or the threat of the use thereof, respondent has caused its independent lessee-dealers to enter into or acquiesce in a course of dealing, cooperation, understanding, combination and planned common course of action, with respondent whereby the retail price at which gasoline was sold or offered for sale to the purchasing public at retail stations operated by the said lessee-dealers was and is fixed and maintained.

PAR. 7. This alleged unlawful planned common course of action, combination, agreement, understanding or course of dealing is singularly unfair, oppressive and to the prejudice of the public, and respondent's competitors and retailers of gasoline in the Baltimore, Maryland, area and other areas, and has a dangerous tendency to unduly restrain, hinder, suppress and eliminate competition between and among respondent's retail dealers and 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 within the intent and meaning of Section 5 of the Federal Trade Commission Act.

COUNT II

PAR. 8. All of the allegations of Paragraphs One through Five 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. 9. In the course and conduct of its business in commerce,

respondent offered to sell and deliver and has delivered and sold its gasoline at below cost prices with the intent and purpose, or under circumstances where the effect may be, to injure, restrain, suppress, or destroy competition in the sale of gasoline within the area of Baltimore, Maryland.

Pursuant to a policy or plan initiated, established and placed into effect on June 12, 1962, as alleged in Paragraph 6 of Count I, respondent offered to deliver and sell and has delivered, offered for sale and sold its gasoline to retail outlets located in Baltimore, Maryland, at a price of 3.4¢ per gallon while selling its gasoline of the same grade to other retail outlets in other areas at substantially higher prices.

The 3.4¢ per gallon price was below respondent's costs of producing, refining, distributing and selling such gasoline, and sales at such price were made for the purpose and with the intent or under circumstances where the effect may be as aforesaid.

PAR. 10. The effect and result of the pricing practice of respondent, as alleged in Paragraph Nine hereof, has been or may be to substantially lessen competition in the distribution and sale of gasoline, to the injury and prejudice of the public, and to the injury and prejudice of respondent's competitors, as aforesaid; and such pricing practice 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. Anthony Zabiegalski and *Mr. Harold Brandt* for the Commission.

Bergson & Borkland, by *Mr. Herbert Borkland*, *Mr. Howard Adler, Jr.*, and *Mr. James H. Kelley* of Washington, D.C.; with *Mr. Richard F. Cadigan*, of Baltimore, Md., for respondent.

INITIAL DECISION BY ROBERT L. PIPER, HEARING EXAMINER

MARCH 17, 1964

Preliminary Statement

On October 19, 1962, the Federal Trade Commission issued its complaint against Crown Central Petroleum Corporation, a corporation (hereinafter called respondent or Crown), charging it with price fixing and selling below cost in violation of Section 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 Crown. Count I

of the complaint alleges in substance that Crown entered into a resale price fixing agreement and combination with its retail dealers in violation of Section 5. The second count charges Crown with selling below cost in violation of Section 5.

Respondent appeared by counsel and filed answer admitting the corporate and certain other factual allegations of the complaint but denying the commerce allegations and all of the alleged violations. Pursuant to notice, prehearing conferences and hearings were held at various times and places before the undersigned hearing examiner duly designated by the Commission to hear this proceeding.

Both parties were represented by counsel, participated in the hearings and were afforded full opportunity to be heard, to examine and cross-examine 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 and replies thereto. Both parties so filed. All such findings of fact and conclusions of law proposed by the parties, respectively, not hereinafter specifically found or concluded are herewith specifically rejected.¹

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following findings of fact, conclusions and order.

FINDINGS OF FACT

I. *Corporate Organization*

Crown is a Maryland corporation with its principal office and place of business located at the American Building, Baltimore 3, Maryland (Answer).

II. *Interstate Commerce and Competition*

Crown 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 in a 13-State area, including the States of Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Alabama, Florida and Texas (Answer). Crown offers for sale, sells and has sold gasoline under the brand names of "Crown Gold" and "Crown Silver" in the States of Connecticut, New Jersey, New York, Maryland,

¹ 5 U.S.C. 1007(b).

North Carolina, South Carolina, Pennsylvania, Texas, Virginia and West Virginia, and unbranded gasoline at wholesale in the above-mentioned thirteen States (Answer; CX 2A; RX 39).²

Crown is engaged in the acquisition and development of, and exploration for, oil producing properties and the production, purchase, sale and transportation of crude oil, the refining of crude oil and its derivatives, and the subsequent marketing of such refinery products (Answer). Crown has a refinery at Houston, Texas (Answer). It also owns and operates pipelines, terminals and bulk plants for the transportation, distribution and sale of its gasoline and other products to purchasers thereof, including service station dealers (Answer). An integrated unit in the petroleum industry consists of one engaged in the production, refining, transportation and marketing of petroleum products (Tr. 727; 1381). Thus Crown comprises an integrated unit in the petroleum industry (CX 1 B; CX 2A; CX 4 B-H; CX 1078). In 1961 Crown's gross operating income was \$66,410,463 (Answer), with gross sales of petroleum products approximately \$63,000,000 (CX 49).

In the delivery and sale of its gasoline to its various marketing outlets, Crown ships or otherwise transports its gasoline and other petroleum products from its Houston, Texas refinery across State lines to bulk stations and other distributing points, from which said gasolines are distributed to service stations, dealers or other customers (Answer). In the shipment, transportation and sale of gasoline from its refinery, terminals, bulk storage plants and other distribution points to said wholesalers, jobbers or retail dealers in the aforesaid States, Crown is now and at all times mentioned herein has been engaged in commerce within the meaning of the Act. Although Crown denies that it is engaged in commerce and that its sales to retail dealers (with which both counts of the complaint are concerned) are in commerce, the contrary is too well established to require extended discussion.³

In the course and conduct of such business, Crown has been and now is in substantial competition in commerce with others likewise engaged in the sale and distribution of gasoline in commerce within the meaning of the Act, including such fully integrated companies as Sun, Gulf, Humble, American, Shell,

² The following abbreviations are used throughout this decision: CX (Commission exhibit); RX (Respondent exhibit); Tr. (transcript); CPF (Commission proposed finding); RPF (Respondent proposed finding).

³ *Standard Oil Co. v. F.T.C.*, 340 U.S. 231 (1951); *Sun Oil Company*, 63 F.T.C. 1371, D.N. 6934 (1963), and cases cited therein.