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tomers competing in the distribution of such products with any respondent or any other retailer to whom or for whose benefit the payment or other consideration is made.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
ALHAMBRA MOTOR PARTS ET AL.

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

*Docket 6889. Complaint, Sept. 17, 1957—Decision, Dec. 17, 1965**

Order, following remand, requiring for the second time, a southern California trade association of automotive parts jobbers and its 60 jobber-members to cease illegally inducing and receiving discriminatory price discounts from manufacturers of automotive parts and accessories in violation of Sec. 2(f) of the Clayton Act; the Court of Appeals, Ninth Circuit, 309 F. 2d 213 (1962), 7 S.&D. 550, remanded cease and desist order dated October 28, 1960, 57 F.T.C. 1007, for further findings.

Mr. Hugh B. Helm and Mr. Roy C. Palmer supporting the complaint.

Lyle, Yudelson and Di Giuseppe, by Mr. Harris K. Lyle, of Van Nuys, Calif., for respondents.

SUPPLEMENTAL INITIAL DECISION ON REMAND OF PROCEEDING BY

JOHN LEWIS, HEARING EXAMINER

NOVEMBER 20, 1964

STATEMENT OF PROCEEDINGS

This proceeding is before the hearing examiner for decision on a remand from the United States Court of Appeals, for the Ninth Circuit. The complaint herein, issued September 17, 1957, charged the respondents herein with having violated subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, by knowingly inducing and receiving certain discriminations in

*The cease and desist order of December 17, 1965 relating to warehouse distributor discounts was set aside as to Earl Crawford, Lester L. Congdon, Margaret A. Ludwick, Otis M. Ludwick, E. L. Covey, Edward Gaughn, Carl E. Haase and Emma F. Wright by Commission's order dated May 5, 1966.

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price prohibited by subsection (a) of Section 2 of said Act as amended. Following the filing of an answer by respondents and the holding of hearings before Hearing Examiner Earl J. Kolb, to whom this proceeding was then assigned, an initial decision was filed by said examiner on June 22, 1960, in which it was found that respondents had violated the law as charged. By Decision issued October 28, 1960, the Commission adopted the hearing examiner's initial decision and order as its decision and order. Thereafter the matter came before the United States Court of Appeals for the Ninth Circuit on a petition for review filed by respondents. The court of appeals issued its opinion on October 9, 1962, affirming the Commission's Order in part and setting it aside in part, and remanding the cause to the Commission for further proceedings. A Final Decree consistent with said opinion was filed by the court on November 15, 1962.

By Order issued January 17, 1963 [62 F.T.C. 1483], the Commission reopened this proceeding and remanded it to the original hearing examiner for such further proceedings as were required to comply with the opinion and decree of the court of appeals. Due to the illness and subsequent retirement of said hearing examiner, as well as the death of the then senior counsel for respondents, further proceedings were delayed until the substitution of the undersigned hearing examiner on April 7, 1964. Following the convening of a prehearing conference on May 18, 1964, hearings were thereafter held from May 19 to May 26, 1964, in Los Angeles, California, at which evidence was offered by both sides with respect to the issues remanded by the court of appeals.

Following the close of the reception of evidence, proposed findings of fact, conclusions of law and an order were filed by the parties between August 26 and August 28, 1964, and replies to such findings were filed between September 8 and September 15, 1964. Such findings, including supporting memoranda, have been carefully considered by the hearing examiner. Proposed findings not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters.¹

The basic issues which were remanded by the court of appeals for further consideration by the Commission were: (1) Whether the "cost-justification defense" is applicable to certain of the price

¹ Proposed Findings Nos. 18, 19, 24 and 33 of complaint counsel are based, in whole or in part, on exhibits which were rejected as unreliable hearsay. While such exhibits were placed in the rejected exhibit file pursuant to Section 3.14(g) of the Commission's Rules of Practice, for consideration by any reviewing authority, the examiner has placed no reliance on said exhibits.

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differentials received by the cooperative corporation, Southern California Jobbers, Inc., in the operation of its warehouse, and (2) whether respondent Southern California Jobbers, Inc., or its jobber members, are the real buyers from the manufacturers which gave the former a price differential. This initial decision will deal only with these issues. The basic facts concerning respondents' business operations and their engagement in commerce, the nature of the discriminations in price involved, the existence of competition with other business entities, and competitive injury are set forth in the original decision filed by the former hearing examiner, and will not be referred to further herein, except as may be necessary to an understanding and resolution of the remanded issues.

After having reviewed the entire record in this proceeding, including the testimony and other evidence received at the earlier hearings, and based on his observation of the witnesses who testified at the hearings following the remand of this proceeding, the undersigned makes the following:²

FINDINGS OF FACT

Industry Distribution Channels

1. This proceeding involves the distribution of automotive parts in the so-called "after market," *i.e.*, the market involving the distribution of automobile parts for replacement and repair purposes following the original factory installation by automobile manufacturers. Such parts are distributed by the manufacturers thereof principally through warehouse distributors (hereinafter referred to as WD's) and jobbers. Some manufacturers sell only to WD's, while others sell to both WD's and jobbers (Tr. 132, 195, 235, 313, 369, 398, 450, 461, 486, 778, 1058, 1059, 1144, 1146, 1241, 1334, 1336, 1383-1384).³ WD's generally limit their sales to automotive parts jobbers (Tr. 652, 670, 717, 1452, 1706, and 1795). The latter re-distribute principally to garages, service stations, fleet owners and car dealers (Tr. 517, 523, 531, 543, 552, 571, 617, 644, 686, 728, 746, 763, 790, 796, 807, and 820).

2. A WD is, in effect, a wholesaler's wholesaler in the sense that jobbers to whom he sells are also wholesale distributors. The

² There was no objection to the undersigned's substitution as hearing examiner, based on the fact that he had not observed the witnesses who had testified prior to his substitution, or for any other reason (Tr. 990). No issue has been raised which requires an evaluation of the credibility of witnesses who testified at the hearings prior to the undersigned's substitution.

³ All references to the transcript are made with the abbreviated symbol "Tr.," followed by the appropriate page or pages. References to exhibits introduced into evidence by complaint counsel are hereinafter abbreviated as CX, followed by the appropriate exhibit number. References to exhibits introduced by respondents are abbreviated as RX, followed by the appropriate exhibit number.

WD is a fairly recent innovation in the automotive parts chain of distribution. In earlier years most manufacturers sold directly to jobbers. However, in time some of the larger jobbers began to redistribute to smaller jobbers, as well as selling directly to garages, fleets and similar retail-type outlets. In recognition of the function they performed in warehousing and redistributing their merchandise, automotive parts manufacturers gave such redistributing jobbers a so-called functional allowance on the portion of their purchases which was resold through other jobbers at wholesale. As the distributional pattern evolved, some of the redistributing jobbers became known as warehouse distributors and limited their sales entirely to jobbers, receiving a functional discount on all purchases made by them (Tr. 314, 332, 450, 490, 778, 783-784, 1512, 1704, 1717, and 1772). Contributing to the rise of the WD in the parts after-market distributional chain were: (a) The "parts explosion" which occurred in the 1950's, resulting in a tremendous increase in the number and variety of parts, and in the number of jobbers handling them, and (b) the wide dispersal of the parts market and the need for greater warehousing and service facilities than the average manufacturer selling a relatively narrow line of products was able to provide (Tr. 1456, 1736).

3. Parts manufacturers generally supply their WD's and jobber customers with copies of their supply catalogs and schedules of their prices, together with periodic changes made therein. The price lists frequently contain suggested resale prices at the various distributional levels. In some instances the manufacturers require that their distributors resell at the suggested resale prices and permit sales only to franchised or approved customers (Tr. 266, 767, 1063, 1162, 1209, 1236, 1241, 1378, 1386, 1409; CX 159-222).

4. Shipments to WD's and direct jobbers located in the Los Angeles area may be made either from the manufacturer's factory or from supplies maintained by the manufacturer in a warehouse in the area. Some manufacturers operate their own warehouse in the area, while others store merchandise in a public or so-called "fee" warehouse, which receives a percentage (usually 5 or 6%) on sales made out of the warehouse by the manufacturer. Sales are made f.o.b. factory or warehouse, depending on the manufacturer involved. However, most manufacturers have a prepaid freight policy on shipments in excess of a designated amount. Generally, WD's order in sufficient amounts to qualify for prepaid freight, while only a portion of the jobbers do (Tr. 168, 209, 250, 253, 281, 325, 370, 399, 459, 466, 487, 775, 803, 816, 823, 1080, 1202, and 1402).

5. In selling to WD's or direct jobbers, parts manufacturers do so through their own sales personnel or through so-called manufacturer's representatives, who are independent entrepreneurs representing several manufacturers in a given area. The salesmen or sales representatives call on their WD and direct jobber customers periodically to (a) promote the sale of their products, (b) check their stocks to see whether they need replenishment or whether there is obsolete merchandise to be returned for credit, (c) check catalogs and price lists to see that they are up-to-date, (d) advise them of new lines or changes in lines by the manufacturer, and (e) advise on technical problems which may have arisen in connection with the installation of particular parts (Tr. 170, 232, 369, 465, 487, 775, 1057-1059, 1145-1147, 1237, 1332, 1335, and 1383). In addition to calling on WD's and direct jobbers, the sales representatives of some manufacturers also make periodic calls on the jobber customers of their WD's. However, they usually call on such indirect customers less frequently and spend less time with them than they do in calling on the jobbers to whom they sell directly (Tr. 1059, 1078, 1147, 1157-1158, 1237, 1275, 1396, 1553, 1605, 1739-1740, 1854).

6. The WD performs a function similar to that performed by the sales personnel of the manufacturer, except that it is performed in greater depth and with greater frequency. As in the case of the manufacturer's representatives, the sales personnel of the WD call on their jobber customers to check their stocks, catalogs and price lists, to take care of their obsolescent merchandise and to take orders for replenishing merchandise or adding to the lines carried by the jobber. However, since the WD stocks a great many lines which may be sold to the jobber, his sales personnel call on the jobbers more frequently and spend more time with them than is economically feasible for the personnel of a manufacturer selling a single line or a limited number of items. Thus, whereas a manufacturer's sales representative may call on jobbers as infrequently as once a year or an average of four times a year, the WD's sales representative will usually visit their customers at least once a month and, in the case of their larger customers, as frequently as once a week. While some manufacturers do call on the jobber customers of their WD customer, as already mentioned such calls are much less frequent and of shorter duration than those of the WD's sales personnel (Tr. 758, 1074, 1157, 1250, 1275, 1396, 1424, 1553, 1598, 1740, 1855, 1916).

7. WD's assist automotive parts manufacturers in the distribution of their merchandise by making it more readily available to

jobbers. Where the manufacturer does not have a local warehouse, the WD affords the manufacturer a storage point from which merchandise may be more quickly delivered on order of the jobbers. Even where a manufacturer does maintain a local warehouse, the WD's warehouse minimizes the storage demands on the manufacturer's warehouse. In either case, by selling to a WD the manufacturer is able to ship in maximum quantities and to look to a single source for payment. This is in contrast to selling through numerous jobbers where the manufacturer is frequently required to break bulk, and to bill and look to a multiplicity of customers for payment (Tr. 416, 1072, 1086, 1089, 1277, 1346, 1367, 1391, 1733, and 1779). In consideration of the sales, warehousing, and credit services performed by them in the redistribution of automotive parts, WD's receive a so-called functional allowance from the manufacturer. This allowance, in most instances, is 20% of the jobber net list price. The jobber usually pays the same price, whether he buys through a WD or directly (Tr. 248, 313, 416, 451, 461, 491, 1067, 1148, 1241, 1345, 1386, 1548).

The SCJ Operation

8. As found in the original initial decision herein, Southern California Jobbers, Inc. (hereinafter referred to as SCJ), is a California membership corporation formed by a number of automotive parts jobbers in Los Angeles County, each of which owns a share of stock in the corporation. As stated in its Articles of Incorporation filed in 1935, the corporation was formed by its members "for the mutual benefit of ourselves and our businesses." Its general purpose was stated to be "to protect the legitimate new automotive parts jobbers of this County against unfair competition," and its specific purposes were stated to be to, (a) "provide a joint buying and pickup service for the shareholders of this corporation, in order that the shareholders might buy such articles as are used in their business to a better mutual advantage," (b) "operate a system of distribution to the individual businesses of the stockholders of this corporation," (c) "operate, purchase and control a delivery system, restricted in its use to stockholders of this corporation," and (d) "operate such facilities as are necessary for the mutual benefit of the stockholders of this corporation at cost, without intention of making a profit to the stockholders out of the operation of this corporation" (CX 2). Among the services to be provided by the corporation for its stockholders, according to the corporation's current by-laws promulgated in 1956, were "the joint buying, assembling and warehousing of automobile parts and

accessories and the delivery system operated and maintained by the Corporation for and on behalf of the stockholders" (CX 3).

9. Under its by-laws the conduct of the affairs of SCJ is vested in a Board of Directors of seven jobber stockholders elected by the stockholders for a term of two years. The Board of Directors is empowered to establish "quotas which each stockholder must meet during a pre-determined period," and to "make and enforce rules for the enforcement of quotas and for the payment of the indebtedness of each stockholder to the corporation." Among the rules which the Directors are authorized to make is one that "any stockholder who fails to meet the quota established for him or who fails to pay for goods or services in the manner and within the time required by the Directors shall lose the privilege of using the Corporation's facilities for a period of time fixed by the Directors" (CX 3, p. 3).

10. Stockholders of SCJ are required to deposit a sum of money in a "Merchandise Guarantee Fund, such sum to be determined in advance for each stockholder on a fair and equitable basis" by the Directors. The money so deposited is a "prepayment on current merchandise purchased by each stockholder making such deposit." Within five days after receiving a statement showing the amount due the corporation on purchases made by the stockholder, the stockholder is required to remit "a sufficient sum of money to completely pay for his merchandise purchases for the preceding period and restore his deposit in the Merchandise Guarantee Fund to the amount stipulated for the next succeeding period by the Board of Directors" (CX 3, p. 8).

11. As provided in its certificate of incorporation and by-laws, SCJ acts as an instrumentality for the joint buying of automotive parts by its jobber members. By buying in this manner, SCJ receives a better price than the members could obtain if they bought from the manufacturers directly. For a number of years SCJ received a volume discount or rebate from a number of manufacturers, based on the aggregate purchases of all its jobber members. The jobber members ordered the merchandise directly from the manufacturers, which delivered it to the members but billed SCJ. The volume discounts received by SCJ were higher than the discounts that would have been earned by the jobbers on the basis of the quantities purchased by each of them separately. On other purchases of merchandise which it brought into its warehouse, SCJ received a so-called functional discount in a fixed percentage amount, based on the fact that it purported to act as a warehouse distributor in the resale of the merchandise to its jobber members

(Initial Decision of June 22, 1960, Findings Nos. 9-13). The practice of pooling the purchases of its members by SCJ to receive a cumulative volume discount on merchandise which was not brought into its warehouse was characterized as a "brokerage" operation, and was conceded to be illegal by respondents in the review of the Commission's Decision and Order by the court of appeals. This practice has been discontinued by SCJ since the remand of the proceeding. All merchandise on which SCJ now receives a discount is brought into its warehouse and, with the possible exception of purchases from one manufacturer, the discounts received by it purport to be based entirely on the function performed by it as a warehouse distributor, rather than on the volume of its purchases (Tr. 1078, 1083, 1148, 1200, 1289-1290, 1345, 1354, 1386, 1873, 1888-1889, and 2021; and CX 223).⁴

12. The extra discounts and rebates received by SCJ from its manufacturer-suppliers, representing the difference between the warehouse distributor net prices paid by it and the higher jobber prices charged by it to its jobber members, are "impounded" by SCJ. Such impounds are periodically credited to the accounts of the jobber members in proportion to their purchases through SCJ, after deducting each member's proportionate share of the expenses incurred by SCJ in the operation of the warehouse. Such impounds are not actually paid over to the jobbers, but are credited each quarter against the amount owing by the jobber members on purchases made through SCJ (Tr. 34, 559, 1948, 1952). The by-laws provide that the extra discounts and rebates impounded by SCJ "shall be and remain the property of the stockholders of said corporation, and no time shall become the property of the corporation itself" (CX 3, p. 10). While the by-laws also provide that the impounds shall be held by SCJ "for the purpose of properly prorating same among the separate participating stockholders," it is the practice of SCJ to use such funds in the purchase of merchandise, pending the quarterly crediting of same to its members' accounts (Tr. 1952).

13. For a number of years after its incorporation in 1935, SCJ's operations consisted primarily of providing a delivery service for its

⁴ Some manufacturers require that their WD's carry a full inventory of their products or a specified amount thereof, but the amount of the functional discount is not geared to any given quantity of sales, as in the case of the usual graduated volume discounts (CX 101, 117-A, 118-A, 143-A, 190, 222). There is testimony in the record to the effect that, in addition to a functional allowance of 10% received by SCJ on the engine bearing line purchased from Federal-Mogul-Bower Bearings, Inc., SCJ receives an additional volume rebate from this manufacturer of up to 10% (Tr. 1242, 1267-1271). However, other testimony in the record introduced by counsel supporting the complaint indicates that SCJ only purchases two of this manufacturer's lines and receives a straight 20% functional allowance on both (CX 223, p. 23).

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members. However, around 1955 it opened a small warehouse and began to engage in the warehousing of parts for its members. In May 1957 it moved into a new and larger warehouse, and began to do a substantial business as a warehouse distributor, purchasing automotive parts for its own account and reselling them to its jobber members (Tr. 363, 596, 874, 878, and 363). As noted by the court of appeals, SCJ's brokerage sales, which had been its principal source of income up to 1956, amounting to \$1,888,000 in that year as compared to \$390,458 in warehouse sales, began to decline thereafter and were overtaken by its warehouse sales in 1958, amounting to \$1,762,342 as compared to brokerage sales of \$1,367,099. In the first ten months of 1959 brokerage sales were \$1,088,821, compared to warehouse sales of \$2,013,610 (Tr. 878-880).

14. Following the remand of this proceeding there has been a further change in SCJ's operations. It has ceased all so-called brokerage activity and now purports to act principally as a warehouse distributor in purchasing automotive parts from manufacturers and reselling them to its jobber members. On August 1, 1962, it moved into a new and larger warehouse having approximately 37,200 square feet of space, compared to 14,000 square feet in its former warehouse. It now employs 37 employees in its warehouse operation and 10 employees in its trucking division, compared to 25 employees in its former warehouse and trucking operations (Tr. 2042, 874). In 1963 its warehouse sales amounted to \$3,502,211 (CX 225). During the first quarter of 1964 its inventory amounted to approximately \$574,000 (Tr. 2044; CX 226). In terms of warehouse space and inventory, SCJ's operation compares favorably with that of other WD's in the southern California area.⁵

15. At the present time SCJ is carrying approximately 75 lines of automotive parts in its warehouse, compared to 40 warehouse lines at the time of the earlier hearings (Tr. 2073; CX 226). As noted by the court of appeals, the lines handled by SCJ are determined by the Board of Directors after recommendation by the organization's Merchandising Committee, consisting of 4 to 8 jobber

⁵ Set forth below is a comparison of SCJ's warehouse and inventory with that of other WD's in the Los Angeles area (Tr. 1458, 1522, 1574, 1711, 1714, 1797, 1843, 1852):

Name of WD	Warehouse Size (Sq. Ft.)	Value of Inventory
SCJ	37,200	\$574,000
Mopex	17,000	250,000
Chanslor & Lyon	70,000	876,000
Crum & Lynn	30,000	300,000
Featherstone	42,000	750,000
Car Controls	15,000	485,000

members who interview representatives of manufacturers interested in selling their line to SCJ. Before deciding whether to take on a particular line, the Board generally canvasses the members by questionnaire to determine whether they will support the line. After the decision has been made to carry a line, the membership is notified in writing of this fact. From time to time the membership receives a booklet containing the names of the manufacturers whose lines are being carried and the amount of the discount or rebate which the organization will receive and which will be impounded for later payment to the members (Tr. 101, 519, 528, 539, 556, 589, 601-603, 836-837, 840, 1989, 1998; and CX 7, 223, 292-344).

16. As previously mentioned, the by-laws of SCJ empower the Board of Directors to establish quotas with respect to the amount of merchandise which each stockholder must purchase. Pursuant to this provision, the Board of Directors established a requirement that each member purchase 6% of his total volume through SCJ.⁶ However, so far as appears from the record, no member has ever been deprived of his privileges in SCJ by reason of failing to comply with the established quota (Tr. 102). SCJ relies primarily on the powers of persuasion of its officials, and the enlightened self-interest of its membership, to support the lines carried by the organization (Tr. 901-903, 1958, 1962; CX 74-A, 294). In almost all instances the members purchase from SCJ an amount in excess of the established quota.⁷

17. At the present time SCJ has 66 active jobber-stockholder-members (not counting branches operated by some members), compared to a membership of 59 at the time of the earlier hearings (Tr. 2074; CX 224). The financial requirement for membership in the organization has increased from \$4,450 to \$9,000. The latter amount includes a payment of \$1,250 for a share of stock in SCJ compared to \$800 at the time of the earlier hearings), and the balance is split between the Merchandise Guarantee Fund and a building fund (Tr. 1918-1919). In addition, stockholders are required to make quarterly payments of \$125 into the Merchandise

⁶ This quota was in existence at the time of the earlier hearings in this proceeding in 1958. There is no indication in the record of the present hearings as to whether this quota has ever been modified.

⁷ The record establishes the following percentage of purchases through SCJ by jobber members who testified in this proceeding 35%, 30%, 10%, 25-26%, 15-18%, and 15-20% (Tr. 516, 526, 533, 553, 574, 591, 963). In one instance a member purchased only 2 to 3% of his requirements from SCJ. However, this member was engaged principally in the sale of machine and tractor parts to building contractors, and only partially in the sale of automotive parts (Tr. 542, 547). It was stipulated that the testimony of the jobbers who were called as witnesses in this proceeding was typical of the other members of SCJ (Tr. 601).

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Guarantee Fund, which is used as operating capital (Tr. 2082-2083). The court of appeals noted in its opinion that SCJ's facilities are available only to its jobber members, but found that "any jobber in the Los Angeles area who desired to become a member of SCJ is permitted to do so." The record actually establishes some tendency on the part of SCJ in earlier years to exclude jobbers from areas where there were already a sufficient number of SCJ members. However, there is no substantial evidence that in recent years it has been unduly restrictive in accepting new members, aside from the not unreasonable requirement in the by-laws that applicants be able to demonstrate their financial responsibility.⁸

18. In selling automotive parts to its jobber members SCJ purports to act as a WD. It purchases the merchandise from the manufacturers with whom it deals at the WD price, which is generally the jobber price less 20%. The merchandise is billed to and paid for by SCJ monthly, except for merchandise which is sold on a consignment basis or in which there are longer periods of payment agreed upon. The members order the merchandise on order forms provided by SCJ or telephone in their orders to the SCJ warehouse. The members are billed monthly for their purchases by SCJ, and make monthly payment to SCJ (Tr. 53-56, 88, 112, 514, 556, 834-835, 847, 858, 933, 1952-1954). SCJ advises its members of new lines which are added, and encourages them to purchase these lines, as well as the lines which it is currently carrying. Since March 2, 1964, SCJ has employed a full-time salesman. Prior to that time its general manager spent the major portion of his time calling on the jobber members and encouraging them to handle its lines or to increase their purchases from it. The officers, directors and members of the Merchandising Committee also assist in encouraging members to carry SCJ's lines. In addition, four or five sales conferences are held with members during the year. SCJ also distributes catalogs and price lists supplied by its manufacturers, to the extent that the manufacturers do not make such catalogs and price lists directly available to the jobbers. It also advises its members concerning obsolescent items and arranges for

⁸ Under SCJ's by-laws, the acceptance of new members is subject to approval of the Board of Directors, based on the recommendation of the Membership Committee (CX 3, pp. 9-10). Evidence consisting of the minutes of stockholders' meetings in 1945, 1948, 1955 and 1956 indicates that it was the policy to accept applications only from jobbers located in territory not covered by the present membership (CX 43-E, 48-B, 69-C and 76-A). However, the record also indicates that there are a number of members who compete with other SCJ members in their territory (Tr. 122, 562, 564). There is also the uncontradicted testimony of SCJ's general manager that no applications for membership have been turned down in recent years (Tr. 598, 897). The fact is that 10 new members have been accepted in the past four years (Tr. 2076).

their return to the warehouse for credit purposes Tr. 835, 838-840, 932, 1492, 1927, 1958-1961, 2051, 2087-2090).

19. In addition to its services in connection with the warehousing of automotive parts and the resale thereof to its members, SCJ also maintains a delivery service. It operates nine trucks which are used not only to make delivery of merchandise ordered from its warehouse by the members, but to pick up and deliver merchandise purchased by its members from the local warehouses of manufacturers with whom the members deal directly or from the warehouses of other WD's. SCJ seeks to operate its delivery service on a self-sustaining basis. Members are charged a flat fee for each package delivered irrespective of size. At the end of the year members receive a prorata refund if the delivery service collection exceed costs, or are billed for the difference if costs exceed delivery receipts (Tr. 113-114, 514-515, 595-596, 841-846, 946-949, 1948, 2046-2051).

20. As already mentioned, the functional discount or allowance received by SCJ is generally 20% from the jobber price. However, in a few instances the discount is as high as 25 or 26%, and in a few as low as 10% (CX 223). In some instances the discount is subject to a reduction of from 5 to 10% on purchases or shipments made from the manufacturer's local warehouse in Los Angeles (CX 223, pp. 12, 22, 32, 45 and 61). The average amount of the warehouse distributor's allowance received by SCJ is 20% (Tr. 1964). This is substantially the same amount as the functional allowances received by other WD's in the Los Angeles area (Tr. 658, 674, 720, 1460, 1548, 1714, 1796, 1842).

21. In 1962 and 1963 the cost of operating the SCJ warehouse was 6.04% and 5.78%, respectively (CX 294, Minutes of Special Meeting of Stockholders, August 16, 1963). The cost of operating the SCJ warehouse has never exceeded 7%.⁹ The difference between the average discount of 20% received by SCJ and its warehouse costs of approximately 6% has been distributed by it to the jobber members in accordance with the charter and by-laws (Tr. 2096-2098). Most public or fee warehouses in the Los Angeles area charge a fee of 5 to 6% on merchandise stored by manufacturers for resale in the area (Tr. 1445, 1825). However, such warehouses do not generally break bulk and repack for shipment to smaller jobbers. Consequently the warehouse costs of WD's (which do break bulk) are generally higher than are the charges of fee ware-

⁹ This does not include the costs of the trucking division which, as previously mentioned, operates on a self-sustaining basis, with the members paying for the deliveries made to them on a per package basis.

