It is further ordered, That respondents Peter Pan Yarn Corp. and King Arthur Yarn Corp., corporations, and their officers, and Morris Batansky, individually and as an officer of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of yarn or any other textile products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of constituent fibers contained in yarn or any other textile products in advertisements or on invoices or shipping memoranda applicable thereto or in any other manner.

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

BEATRICE FOODS CO., INC., ET AL.

ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SECS. 2(a) AND 2(d) OF THE CLAYTON ACT

Docket 7599. Complaint, Sept. 28, 1959—Decision, July 29, 1965

Order adopting in part the findings of fact in the initial decision of the hearing examiner and dismissing the complaint which charged a major dairy products company with headquarters in Chicago, Ill., with granting discriminatory discounts to certain retail grocery stores and discriminatory promotional allowances to others.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondents Beatrice Foods Co., Inc., and Eskay Dairy Company, Inc., have violated and are now violating the provisions of subsections (a) and (d) of Section 2 of the Clayton Act, as amended (15 U.S.C., Sec. 13), hereby issues its complaint, charging as follows:

COUNT I

PARAGRAPH 1. Respondent Beatrice Foods Co., Inc., hereinafter referred to as "Beatrice," is a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business located at 120 South LaSalle Street, Chicago, Illinois.

PAR. 2. Respondent Eskay Dairy Company, Inc., hereinafter referred to as "Eskay," is a corporation organized and existing under the laws of the State of Indiana with its principal office and place of business located at 1501 Fairfield Street, Fort Wayne, Indiana.

PAR. 3. Respondent Beatrice is a holding and operating company having on April 1, 1958, a 100% voting power in approximately twenty-eight subsidiary corporations. Beatrice conducts a diversified dairy business, including virtually all branches thereof. In their respective trading areas, said respondent conducts its business by and through its subsidiaries. Its principal divisions are creamery butter, ice cream, milk, produce, cold storage, and frozen food. Beatrice's chief trade name is "Meadow Gold."

Respondent Beatrice has 115 plants for the manufacturing and processing of butter, ice cream, ice cream mixes, dried butter milk, powdered milk, and fluid milk, located in thirty States and the District of Columbia. Sales branches are maintained by Beatrice at its manufacturing plants and in addition Beatrice has 200 selling branches in thirty-one States.

Beatrice's consolidated net sales for the fiscal year ending February 28, 1959, were $385,449,644.

PAR. 4. Respondent Eskay became a wholly owned subsidiary of respondent Beatrice on or about April 22, 1955. By agreement entered into on that date by and between the holders and owners of all of the capital shares of Eskay and respondent Beatrice, all of the capital shares of Eskay were exchanged for a specified number of the capital shares of Beatrice; and, thereafter, upon the exchange of such shares respondent Beatrice obtained complete control over the operations of respondent Eskay.

Respondent Eskay prior to the above exchange of all of its capital shares for Beatrice shares, and at the present time, is engaged in the manufacturing, processing and sale of fluid milk and other dairy products at Fort Wayne, Indiana, and in other cities, towns and places located in the State of Indiana.

The sales and other activities of respondent Eskay, including the acts and practices hereinafter to be alleged, were and are under the direction, supervision and control of respondent Beatrice; and both said corporations are jointly and severally named as respondents herein.

PAR. 5. In addition to the manufacturing and sales activities of respondent Beatrice which it carries on through its wholly owned subsidiary Eskay in the Fort Wayne, Indiana, trading area, respondent Beatrice owns, maintains and operates a plant for the manufacturing, processing and sale of fluid milk and other dairy products at New Castle, Indiana, with branches in several cities in Indiana, including Richmond, Indiana. Respondent Beatrice also owns, maintains, and operates plants at New Bremen, Ohio, with branches in St. Marys, Ohio, and in other cities and places in the State of Ohio.

Respondents Beatrice and Eskay sell fluid milk and other dairy products of like grade and quality to a large number of purchasers located in the States of Indiana and Ohio for use, consumption, or resale therein. Respondent Beatrice, and through its subsidiaries, sells fluid milk and other dairy products of like grade and quality to a large number of purchasers located in many other States of the United States and in the District of Columbia for use, consumption or resale therein.

PAR. 6. In the course and conduct of their business, respondents Beatrice and Eskay are now and for many years last past have been transporting fluid milk and other dairy products, or causing the same to be transported, from dairy farms and other points of origin to respondents' processing and manufacturing plants located in other States of the United States and in other places under the jurisdiction of the United States, including the District of Columbia.

Respondents are now and for many years past have been transporting fluid milk and other dairy products or causing the same to be transported from the State or States where such products are processed, manufactured or stored in anticipation of sale or shipment to purchasers located in other States of the United States and in other places under the jurisdiction of the United States, including the District of Columbia.

Respondents also sell and distribute their said fluid milk and other dairy products to purchasers located in the same States where such products are processed, manufactured or stored in anticipation of sale.

Among other things, respondent Eskay acquires substantial quantities of raw milk from dairy farms located in the State of Ohio which it processes and sells to purchasers in Indiana. Said respondent also receives dairy products through inter-company transfer and shipment from plants and facilities owned by respondent Beatrice in States other than Indiana which it resells to purchasers in Indiana. Respondent Beatrice's New Bremen, Ohio, plant receives substantial quantities of raw milk from dairy farms located in the State of Indiana which said respondent processes at its New Bremen plant and transports, or causes the same to be transported, to respondent Beatrice's New Castle, Indiana, plant for the purpose of sale to purchasers located in Indiana. Respondent Beatrice receives substantial quantities of processed bottled milk at its plant in New Bremen, Ohio, which is transported from its New Castle, Indiana, plant for sale in Ohio. Also respondent Beatrice's New Bremen, Ohio, plant transports or causes to be transported substantial quantities of fluid milk processed from raw milk obtained from dairy farms in Indiana to respondent's St. Marys, Ohio, branch for resale to purchasers buying from said branch.

Respondent Beatrice and all of its subsidiaries are engaged in interstate commerce. All of the matters and things, including the acts and practices, sales and distribution by respondents of their said fluid milk and other dairy products, as hereinbefore alleged, were performed and done in a constant current of commerce, as "commerce" is defined in the Clayton Act.

PAR. 7. Respondents Beatrice and Eskay sell fluid milk and other dairy products to distributors, retailers and consumers.

Respondents' distributors resell to retailers and consumers to the extent that such purchasers do not buy directly from respondents. In many instances respondents' distributors act as their agents in making sales and deliveries to retailer-purchasers to the extent that such distributors pay or allow discounts and rebates on sales to such customers on behalf of respondents for which said distributors are reimbursed by respondents.

Many of respondents' retailer-purchasers located in Indiana, in Ohio, and in other States and places where respondent Beatrice, and through its subsidiaries, does business were and are in substantial competition with one another.

Respondents Beatrice and Eskay, in the sale of fluid milk and other dairy products to retailers and consumers, were and are in substantial competition with other manufacturers, processors, distributors and sellers of said products in the States of Indiana and Ohio. Respondent Beatrice and its other subsidiaries are in like competition in other states and areas where they do business.

PAR. 8. In the course and conduct of their business in commerce, respondents have discriminated in price in the sale of fluid milk and other dairy products by selling such products of like grade and quality at different prices to different purchasers at the same level of trade.

Included in, but not limited to, the discriminations in price, as above alleged, respondents Beatrice and Eskay have discriminated in price in the sale of said products to retailers located in Fort

Wayne, New Castle, and Richmond, Indiana, and in other cities, towns and places in the State of Indiana served by respondents' plants located in Fort Wayne and New Castle, Indiana, by charging many retailer-purchasers of respondents' said products substantially higher prices than other retailer-purchasers of respondents buying said products of like grade and quality, many of whom are competing purchasers.

Respondent Beatrice has discriminated in price in the sale of fluid milk and other dairy products in New Bremen and St. Marys, Ohio, and in other cities, towns and places served by said plants by charging many of its retailer-purchasers higher prices for respondent's said products than respondent charged to other retailer-purchasers in said area, many of whom are competing purchasers.

Respondent Beatrice and respondent Eskay have discriminated in price in the sale of said products to retailer-purchasers located in Fort Wayne, New Castle, and Richmond, Indiana, and in other cities, towns, and places in the State of Indiana and to retailers located in New Bremen and St. Marys, Ohio, and in other cities, towns, and places in the State of Ohio, and between favored retailers located in each of the said cities, towns and places and unfavored retailers located in each of the others.

PAR. 9. The effect of such discriminations in price by respondents Beatrice and Eskay in the sale of fluid milk and other dairy products has been or may be substantially to lessen, injure, destroy or prevent competition:

1. Between respondents and their competitors in the manufacturing, processing, sale and distribution of such products.

2. Between retailers paying higher prices and competing retailers paying lower prices for respondents' said products.

PAR. 10. The discriminations in price, as herein alleged, are in violation of subsection (a) of Section 2 of the Clayton Act, as amended.

COUNT II

PAR. 11. Paragraphs One through Seven of Count I are hereby set forth by reference and made a part of this Count as fully and with the same effect as if quoted herein verbatim.

PAR. 12. In the course and conduct of its business in commerce, as aforesaid, respondent Beatrice has paid, or contracted for the payment of, money, goods, or other things of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities, including advertising services or facilities, furnished or agreed to be furnished by or through such customers in connection with the handling, sale, or offering for sale of respondent's milk and other dairy products and respondent has not made or contracted to make such payments, allowances, or considerations available on proportionally equal terms to all of its other customers competing in the sale and distribution of such products.

Included in, but not limited to, the practices, as herein above alleged, respondent Beatrice paid for the newspaper advertising of its said products by some of its retailer-customers located in St. Marys, Ohio, and said respondent did not offer or make available on proportionally equal terms such payments and allowances to all other competing customers of respondent doing business in St. Marys, Ohio.

PAR. 13. The acts and practices alleged in Paragraphs Eleven and Twelve are in violation of subsection (d) of Section 2 of the aforesaid Clayton Act, as amended.

Mr. William H. Smith for the Commission.

Winston, Strawn, Smith & Patterson, by *Mr. Thomas A. Reynolds* and *Mr. Edward L. Foote,* and *Mr. John P. Fox,* Chicago, Ill. for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

SEPTEMBER 15, 1964

INDEX

PRELIMINARY CONSIDERATIONS

The complaint herein issued on September 28, 1959, charges violations of section 2(a) and (d) of the Clayton Act involving the granting of discriminatory discounts and the granting of discriminatory advertising allowances in the sale of respondents' products, inclusive of fluid milk and other dairy items or by-products.

The respondent Eskay Dairy Company, Inc., in the within matter, is included as a wholly owned subsidiary of respondent Beatrice Foods Co., Inc. The former, however, was dissolved on or about February 28, 1959, prior to the date the complaint was filed, and has not been in existence as a corporation or legal entity since that date. Complaint counsel, however, asserts that the respondent Beatrice Foods Co., Inc., is entirely responsible for the acts of Eskay because of the corporate relationship therewith followed by the integration of Eskay into Beatrice as a division thereof. (Tr. 934-35.)

Following the initial termination of complaint counsel's prima facie case, respondents on August 13, 1962, made motions to dismiss claiming an insufficiency of evidence and also to strike certain evidence which did not appear to be relevant to the actual charges being pressed by complaint counsel. Since there seemed to be some question concerning what charges complaint counsel was pressing, the hearing examiner issued an order on June 25, 1963, directing counsel in support of the complaint to submit a categorical allocation[1] of the evidence relied upon by complaint counsel to prove the competitive effect (prohibited by the statute) resulting from the discriminations in price by respondents as shown by the record. On September 4, 1963, complaint counsel complied with the hearing examiner's order by filing a document entitled "Response of Counsel in Support of Complaint to Order of Hearing Examiner of June 25, 1963."

Specifically, complaint counsel's allocation identifying exhibits and other evidence relied upon, which he proposes to have incorporated by reference into the findings[2] is as follows:

> In compliance with the directive of the Hearing Examiner, above stated, counsel in support of the complaint herewith submits an allocation of the evidence together with such other facts and circumstances as in complaint counsel's opinion support the allegations of price discrimination as alleged in the complaint and the adverse competitive effects of such discrimination as follows:
>
> I
>
> Respondent discriminated in price between competing wholesale customers in the sale of fluid and milk products:
>
> A. By selling such products of like grade and quality to Marsh Food Liners, Inc. of Yorktown, Indiana, at substantially lower prices than to competing wholesale customers in St. Marys, Ohio.

[1] See complaint counsel's categorical allocation of evidence at pp. 292-300 hereof.

[2] This allocation is included in the initial decision for the reasons hereinafter set forth. It is, however, not included in the initial decision as a finding.

The effect of such discrimination in price substantially lessened competition and tended to injure, destroy, and prevent competition between such other wholesale products in St. Marys, Ohio and the Marsh Food Liners Store at St. Marys, Ohio more particularly described as follows:

Marsh Food Liners, Inc. is a chain grocery store organization. (Tr. 995, 1056, 1063) Marsh purchases fluid milk and other dairy products from respondent. Marsh's fluid milk purchases are made from respondent's plants at New Bremen, Ohio and Fort Wayne, Indiana. This milk is bottled and packaged by respondent under Marsh's private label. (Tr. 993, 994)

Respondent's New Bremen, Ohio plant bottles milk for Marsh in glass gallon jugs and transports about 2400 gallons a week to Marsh's warehouse in Yorktown, Indiana, a distance of 86 miles. (Tr. 1063, 1064, 1071) This milk is sold by respondent to Marsh on contract, based on raw milk costs computed as follows: (Tr. 1071, 1078)

Indianapolis Class I price per hundred wt.	$4.40
Add	1.25
Add 2¢ per gallon transportation charges from New Bremen to Yorktown, (each hundred wt. contains 11¼ gallons Tr. 1029)	.2250
Total Price per hundred wt.	$5.8750
Price per gallon: $5.8750 ÷ 11¼ =	52.22¢

Respondent's Eskay Division at Fort Wayne, Indiana sells milk in paper cartons to Marsh's warehouse in Yorktown, Indiana "on a dock delivery." (Tr. 1111, 1113, 1115, 1116) These sales include half gallons of homogenized milk. (Tr. 1113) Respondent's price to Marsh is based on the Class I Fort Wayne Federal Market order per hundred wt. for 3.5 butter fat milk to which is added certain charges. (Tr. 1113, 1114) The price to Marsh for a half gallon of homogenized milk (22½ half gals. per hundred wt.) is computed as follows:

Class I Market Order	$4.072
Federal Market Charge	.04
Health Dept. Charge	.01
Add	1.45
Total price to Marsh per hundred weight.	$5.572
Price of half gallon: $5.572 ÷ 22½ =	24.76¢

The private label milk sold to Marsh by respondent's New Bremen and Fort Wayne plants is substantially the same product as milk sold by respondent under its Meadow Gold Brand. (Tr. 1012, 1013, 1085, 1086)

Marsh Food Liners, Inc. owns and operates a grocery store at St. Marys, Ohio (Tr. 1068) which has been in business since about November 1958. (Tr. 1201) Gallon jugs of fluid milk sold by respondent's New Bremen, Ohio plant to Marsh and delivered to Marsh's warehouse at Yorktown, Indiana, are transported from that point by Marsh to its stores for sale at retail as a part of "the Marsh Food Liners chain of delivery". (Tr. 1070) Some of respondent's milk bottled in gallon jugs is shipped by Marsh from its warehouse a distance of 86 miles to Marsh's store in St. Marys, Ohio. (Tr. 1071) Half gallons of fluid milk packaged by respondent's Fort Wayne, Indiana plant and sold to Marsh's warehouse are transported in Marsh trucks to Marsh's St. Marys Store. (Tr. 1187, 1201)

Respondent operates wholesale routes from its New Bremen, Ohio plant on which respondent sells its milk and milk products to wholesale customers in St. Marys, Ohio. (Tr. 1055, 1056) The Marsh Store at St. Marys is supplied with respondent's by-products, such as cream and chocolate milk, by respondent's trucks operating on these routes. (Tr. 1068)

Respondent's trucks operating on its wholesale routes from New Bremen, Ohio sell respondent's fluid milk and dairy products under respondent's Meadow Gold label to competing stores with the Marsh Store in St. Marys, Ohio. (Tr. 1055, 1956)

Earl Wesner operates a retail grocery and meat store at St. Marys. (Tr. 1141) Wesner buys Meadow Gold milk (known locally as White Mountain) from respondent. He buys and sells this milk in glass gallon and half gallon jugs and in half gallon paper containers. (Tr. 1142) Respondent allows Wesner a discount of 5%. (Tr. 1142, 1143) The Marsh Store in St. Marys is one of Wesner's competitors in the sale of respondent's milk and dairy products. (Tr. 1143) Wesner pays respondent 70¢ for gallon jugs and 39¢ for half gallons of Meadow Gold milk less 5% discount, or net prices of 66.50¢ and 37.05¢, respectively. (Tr. 1144) Wesner resells the gallon jugs for 73¢ (Tr. 1145) and half gallons for 40¢. (Tr. 1149) Wesner saw advertisements in newspapers showing that Marsh was selling half gallons at 3 for $1.00. (Tr. 1148, 1151) Wesner's price of 40¢ for the half gallon was approximately his cost. (Tr. 1155) A comparison of Wesner's net prices with Marsh's net prices paid for respondent's fluid milk of like grade and quality discloses the following differences in price:

Wesner's price	*Marsh's price*	*Difference*
Gal. jug 66.50¢	52.22¢	14.28¢
Half gal. 37.05¢	24.76¢	12.29¢

Robert L. Fortman, Manager of a retail grocery and meat store at St. Marys, sells Meadow Gold milk. (Tr. 1176) He receives a 2% discount off a 39¢ list price for half gallons in paper (Tr. 1177) which he is presently paying, making a net of 38.22¢ (Tr. 1178) which he resells at 45¢. (Tr. 1178) Fortman's Store competes with Marsh in the sale of respondent's milk and milk products. (Tr. 1177)

Bernard A. Fortman, grocery and meat market owner, St. Marys, sells Meadow Gold milk in his store in gallon jugs, and half gallons in paper and glass jugs. He receives a 2% discount from respondent. He pays respondent 39¢ less the 2% discount for half gallons or a net of 38.22¢ which he resells for 42¢. (Tr. 1188, 1189) The Marsh Store at St. Marys is one of his competitors. (Tr. 1188, 1189) Marsh has advertised milk in half gallon containers at 3 for $1.00 plus bonus stamps. (Tr. 1189, 1190) By reason of this Fortman "began to lose business and my customers." (Tr. 1190, 1191) Fortman reduced his price but still lost customers. He put in half gallons in glass which he resold at cost, which was 35¢. (Tr. 1193) He knows what his competitor's prices are by seeing their ads in the paper and by driving by their stores seeing ads sticking on their windows. (Tr. 1200) Fortman buys respondent's Meadow Gold milk in gallon jugs at 70¢ which he resells at 70¢ in his store. (Tr. 1204)

B. By selling such products of like grade and quality to Miller's Supermarkets, Inc. of Denver, Colorado at substantially lower prices than to competing wholesale customers in metropolitan Denver, Colorado.

The effect of such discriminations in price substantially lessened competition and tended to injure, destroy, and prevent competition between such other wholesale purchasers of respondent's said products in metropolitan Denver, Colorado and Miller's Supermarkets, Inc.'s Stores in metropolitan Denver, Colorado more particularly described as follows:

Miller's Supermarkets, Inc. will hereinafter be referred to as Miller's. Miller's is a supermarket chain with 38 stores in Colorado and Wyoming. Twenty-nine stores are in the Denver market area; four stores are in Colorado Springs; one store in Greeley; and two stores in Cheyenne, Wyoming. (Tr. 380, 1443) Miller's sells Meadow Gold dairy products in all their stores. Meadow Gold milk in half gallon containers is sold exclusively in the Miller's Stores in the Denver area. (Tr. 1444)

In 1959 Miller's received discounts of 10% and 12% from respondent on purchases of fluid milk from respondent. (Tr. 1445) On respondent's Meadow Gold Brand milk products the discount to Miller's was 10% and on Miller's private brand of fluid milk "Top Taste", packaged for Miller's by respondent, the discount to Miller's was 12%. (Tr. 1445, 1524) Respondent's Meadow Gold Brand and Miller's private brand "Top Taste" milk are of the same grade and quality, the only difference being the carton and the label. (Tr. 1445)

The 29 Miller's Stores in the Denver metropolitan area are scattered throughout this area, and these stores compete with other grocers in the Denver metropolitan area. Miller's Stores cover generally the entire metropolitan Denver area and advertise in newspapers. (Tr. 1453)

Respondent ranks first among its competitors in wholesale milk sales in Denver. (Tr. 319) Miller's is respondent's largest wholesale milk customer in Denver. (Tr. 319) Respondent's fluid milk sales to Miller's amount to about $29,000.00 weekly. (Tr. 320)

Except during a price war in October, 1958 and another beginning on or about June 25, 1959 and continuing through July, respondent's wholesale price of its Meadow Gold Brand milk in half gallon cartons was 43½¢. (CX 116A) During the 1959 price war the wholesale price was reduced to 36¢ less the discounts to Miller's of 10% and 12%. (CX 116C; Tr. 328) Prior to the price war respondent's net price for half gallons to Miller's was 39.15¢ for respondent's Meadow Gold Brand and 38.28¢ for Miller's private brand "Top Taste". During the price war of 1959 respondent's net price to Miller's for its half gallon Meadow Gold Brand was 32.4¢ and for Miller's private brand 31.68¢.

King Soopers is a supermarket chain with eleven stores in the Denver area; two in Colorado Springs; one in Pueblo, Colorado. During 1958 and 1959 King Soopers handled respondent's fluid milk under its Meadow Gold Brand (Tr. 1460) which it purchased from respondent. (Tr. 1460, 1461) Respondent's Meadow Gold Brand milk was sold during 1959 in all King Soopers Stores in the Denver area. (Tr. 1461) King Soopers received discounts from respondent as follows:

November, 1956

Discount on all milk products 5%; 4¢ on 2 boxes cottage cheese. (CX 94B and C)

September 1, 1959

"On dairy items except butter" list price less 7½%. (CX 94A)

Respondent's sales of its Meadow Gold Brand milk to King Soopers amounted to about $7,000.00 a week. (Tr. 322) During the morning of June 25, 1959, respondent reduced its wholesale list price for fluid milk from 43½¢ (CX 116A; Tr. 326) to 36¢ (Tr. 328, 329, 330, 331). During the same morning (June 25, 1959) respondent reduced its wholesale prices on its half gallon cartons of fluid milk to 36¢ less 10% discount to Miller's and 36¢ less 5% discount to King Soopers. (Tr. 328, 329, 1461) All King Soopers Stores are in competition with Miller's Stores in the sale of respondent's milk and milk products. (Tr. 1462)

Busley's Super Market, which is the fourth ranking grocery chain in Denver in size, (Tr. 321, 322) buys fluid milk from respondent under its Meadow Gold Brand in an amount of approximately $1,000.00 a week. Busley's receives a discount of 5% from respondent on these purchases. (Tr. 364; CX 80B) The Busley's Stores compete with the Miller's Stores. (Tr. 1453)

Furr's is the next supermarket chain in size in the Denver area. Furr's purchases of respondent's fluid milk under its Meadow Gold Brand amount to about $1,000.00 a week. (Tr. 322) Discounts paid by respondent to Furr's are as follows:

June, 1957

"all dairy products" list price less 5% and 2%. (CX 93A)

There is no evidence of record that these discounts to Furr's were increased by respondent during the year 1959. The Furr's Stores compete with Miller's Stores in the sale of respondent's milk and dairy products. (Tr. 1453)

Bi-Lo is an independent supermarket located in the Englewood area, which is a part of metropolitan Denver. During 1959 Bi-Lo purchased Meadow Gold milk and dairy products from respondent. (Tr. 1475, 1476) Bi-Lo competes with Miller's in the sale of respondent's milk products. (Tr. 1477) During 1959 Bi-Lo was a member of the A-G group. (Tr. 1479) On January 1, 1959, Bi-Lo was allowed a 5% discount by respondent on its milk purchases which was paid by respondent direct and not through the A-G group. (CX 87)

Johnson Food Center is a retail grocery in the Denver area. (Tr. 1483) As of July 23, 1959, Johnson Food Center received a 7% discount from respondent on all milk items purchased except butter. (CX 88; Tr. 1484) The above discount was for the Johnson Food Center Store located at 2020 Youngfield, Lakewood, Colorado. (CX 88)

Johnson Food Center operated three stores in the Denver area. (Tr. 1484) The store located on Youngfield Street was opened in July, 1959. (Tr. 1486) The other two stores did not handle respondent's products. (Tr. 1487, 1495, 1496) The Youngfield Store purchased and sold respondent's milk under the Meadow Gold Brand. (Tr. 1484) Lewis M. Johnson, President, testified that his Youngfield Store competes with Miller's Stores: that "everybody is my competitor." (Tr. 1485) The Youngfield Store sold Meadow Gold milk in 1959 in the half gallon and quart containers. (Tr. 1486)

A number of respondent's Exception Sheets taken from respondent's current files showing the rates of discounts paid by respondent to wholesale milk purchasers (grocery stores) located in the city of Denver or in the Denver area are contained in the record. (CX 87 through CX 100) All of these show discounts paid by respondent on wholesale milk purchases ranging from 4% to 7½%. CX 147A to CX 147D are tabulations of some of respondent's rebate checks in the Denver, Colorado area from May through October

1959 by Mr. William Lemberg, one of the accountants on the commission's Accounting Staff. Among other items shown, these exhibits disclose the 10% and 12% discounts paid by respondent to Miller's and lesser discounts to other competing purchasers of respondent among which may be found discounts to Associated Grocers of Colorado of 5½%. (CX 147A, CX 147B, CX 147C, CX 147D)

Respondent's Meadow Gold Plant in Denver has about 1200 wholesale customers, and all are located in Denver except those customers located on two wholesale routes that run up into the mountains. (Tr. 363) The majority of respondent's wholesale customers are not paid discounts by respondent. (Tr. 365) All of respondent's other wholesale customers located in and around Denver compete with Miller's. (Tr. 366)

C. By selling such products of like grade and quality to Miller's Supermarkets, Inc. for delivery to the two stores owned and operated by Miller's Supermarkets, Inc. in Cheyenne, Wyoming at substantially lower prices than to competing wholesale customers of respondent in Cheyenne, Wyoming.

The effect of such discrimination in price substantially lessened competition and tended to injure, destroy, and prevent competition between such other wholesale purchasers of respondent's said products in Cheyenne, Wyoming and the stores of Miller's Supermarkets, Inc. located in Cheyenne, Wyoming more particularly described as follows:

Respondent owns and operates a milk processing plant in Greeley, Colorado which has three wholesale routes which operate from this plant into Cheyenne, Wyoming. (Tr. 1315) On these routes respondent transports from Greeley to Cheyenne milk products processed and packaged in containers which respondent delivers to the two Miller's Stores in Cheyenne, and also to other wholesale customers located in Cheyenne. (Tr. 1316, 1443) Cheyenne is a city of about 14,000 people. The two Miller's Stores in Cheyenne compete with other grocery stores located in Cheyenne in the sale of respondent's milk and milk products. Miller's advertises in Cheyenne newspapers. (Tr. 1454)

On January 1, 1958, respondent's wholesale price in Cheyenne for a half gallon of homogenized milk in paper was 42¢ and in glass 39¢; the wholesale price of a quart was 21¢. (CX 55) It was stipulated by counsel that CX 55 is the current wholesale price list of respondent effective in Cheyenne, Wyoming. (Tr. 1353) Respondent's Meadow Gold Brand milk was sold at the same list price as Miller's private label "Top Taste". (CX 133) CX 126 shows that in sales by respondent of milk for delivery to the two Cheyenne Miller's Stores from April through October, 1959, respondent's Meadow Gold Brand was sold at a discount of 10% and Miller's "Top Taste" brand at a discount of 12%. This exhibit discloses that Associated Grocers of Colorado, for its Cheyenne Stores, received a discount on purchases of respondent's fluid milk of 5½%. CX 127B dated July 9, 1959, shows drop shipment charges for the month of June, 1959 for fluid milk and dairy products of $5670.95 delivered to Associated Grocers Cheyenne Stores upon which respondent allowed a discount of 5½%, which discount amounting $311.90 was included in respondent's check issued to Associated Grocers executed at Cheyenne, Wyoming, dated July 14, 1959 and appearing of record as CX 127A. Also appearing of record as CX 128A is respondent's check executed in Cheyenne, Wyoming on June 30, 1959 to the order of Miller's Supermarkets, Inc. in the amount of $625.42, which includes 10% discount on purchases of milk and dairy products totaling $1773.01 and deliveries of Miller's private brand "Top Taste" of $155.40 less a 12% discount. All of these products were delivered by respondent to Miller's Cheyenne Store, number 21, for the period May 25 through June 30, 1959. (CX 128B) On deliveries to Miller's Cheyenne Store, number 24, for the period May 25 through June 20, 1959, Miller's received a discount of 10% on respondent's Meadow Gold Brand milk and dairy products and 12% on Miller's "Top Taste" brand. (CX 128C) The Boulevard Bakery in Cheyenne, during July 1959, purchased half gallons and quarts of respondent's Meadow Gold Brand milk for 42¢ and 21¢, respectively, less a discount of 1¢ on quarts and 2¢ on half gallons or a discount of about 5%. (CX 133) Branens Food Market, during the same month, purchased respondent's half gallons and quarts at the same list price less a discount of 5%. (CX 133) Stop & Shop, Cheyenne, bought respondent's half gallons and quarts at the same list price less a 5% discount. (CX 133) On July 1 and July 2, 1959, other wholesale customers at Cheyenne, Wyoming purchased respondent's half gallons and quarts of Meadow Gold Brand milk at the regular list price of 42¢ and 21¢ less a 5% discount, as follows:

East side Dairy Store	Frontier Dairy Store
Ridgeway Grocery	Star Service
Silver Saddle Store	Silver Saddle Dairy Store
Dane Market	Dan's Market
Sam Bounos	Howard's Market

(See CX 134)

It also appears from this exhibit (CX 134) that some stores in Cheyenne received no discounts.

D. By selling such products of like grade and quality to Miller's Supermarkets, Inc. for delivery to the four stores owned and operated by Miller's Supermarkets, Inc. of Colorado Springs, Colorado at substantially lower prices than to competing wholesale customers of respondent in Colorado Springs, Colorado.

The effect of such discriminations in price substantially lessened competition and tended to injure, destroy, and prevent competition between such other wholesale customers of respondent's said products in Colorado Springs, Colorado and the stores of Miller's Supermarkets, Inc. located in Colorado Springs, Colorado more particularly described as follows:

Respondent owns and operates a plant in Colorado Springs, Colorado which processes fluid milk and dairy products, and ice cream. (Tr. 373) Fluid milk is packaged in gallon jugs, paper half gallon cartons and in paper and glass quart containers which respondent sells at wholesale and retail. (Tr. 375) Prior to June 26, 1959, respondent's wholesale price structure in Colorado Springs was as follows: (Tr. 376, 377)

Half gallons	42¢ and 43¢
Gallons	79¢

Beginning June 26, 1959, there was a price war during which the wholesale price of half gallons was affected. (Tr. 377) On June 26, 1959, the wholesale price of respondent's half gallons of fluid milk (homogenized) were reduced to 39¢; the wholesale price of gallons remained the same. This 39¢ price fluctuated between June 26 and November, 1959. (Tr. 377, 378) The lowest half gallon wholesale price during this period was 32¢. (Tr. 378)