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 wtih 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,

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[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.

Sinclair, Texaco and Cities Service (Answer; CX 1588; RX 38; 130–34; National Petroleum News Factbook, Mid-May, 1963, pp. 64–69 and 76–79, of which pages official notice was taken).

III. *The Unlawful Practices*

A. The Issues

Count I of the complaint alleges a resale price fixing agreement or combination between Crown and its retail dealers in the Baltimore, Maryland area. Count II alleges sales by Crown to said dealers below cost with the intent and purpose, or where the effect may be, to injure, destroy or substantially lessen competition.

B. Resale Price Fixing

Crown has been and now is marketing its refined petroleum products, including gasoline, in part through a number of retail outlets located, among other areas, in Baltimore, Maryland, and has entered into contracts or lease agreements under the terms of which it agrees to sell and deliver and the dealers agree to buy all of their requirements of gasoline at said outlets from Crown, and which require the purchase of specified minimum annual quantities (Answer; CX 5 A; CX 13 A). A substantial number of these retail outlets are operated by independent business men who lease or sublease their service station properties from Crown and have entered into such contracts to purchase gasoline, motor oil and greases from Crown (Answer). In addition, Crown owns or operates through agents or representatives a number of retail service stations in Baltimore, commonly known or referred to as "commission" stations (Answer). Crown in Baltimore also marketed its gasoline through one unbranded retail service station outlet (Tr. 237–40; Tr. 1156–60).

The complaint alleges a resale price fixing agreement or combination between Crown and its dealers, both as the result of actual agreements entered into with its dealers and, independently thereof, as the result of the existence of the aforesaid lease and dealer supply contracts between Crown and its dealers and certain actions by Crown thereunder. The issues, by agreement, are limited to the Baltimore area, Crown's regular brand gasoline, called Crown Silver, and February through June, 1962.

Prior to 1962, the "usual" or "regular" retail pump price for house-brand or regular major brand gasoline had been 30.9 cents per gallon, with the so-called "private" brands selling for 2¢ per

gallon less (Tr. 477, 593, 633, 709, 832). During the first six months of 1962, the Baltimore area experienced a series of gasoline price wars, resulting in substantial declines in the retail price of gasoline (Answer). These price wars were triggered by the introduction in that market of new sub-regular branded gasolines, particularly Gulftane and Sun 190, by major brand operators at pump prices lower than their regular gasolines and equal to the private brands (Answer; Tr. 364, 475, 594, 633, 704).

Crown's tank wagon price to its dealers for regular gasoline throughout this period was 25.9 cents, resulting at "usual" prices in a margin to the dealer of five cents per gallon (CX 137–482). The dealers could not meet prices below 30.9 cents and retain such margin. As a result of the declining pump prices, in order to protect the dealers' gallonage and margin of profit, Crown upon their request from time to time granted them temporary tank wagon price allowances to enable them to meet competition (Answer). On such temporary allowances, to meet the first cent of a reduced pump price the dealer was given only ½ cent, thus reducing his margin of profit to 4½ cents, which margin thereafter remained the same throughout succeeding price reductions (Tr. 336, 850).

Crown's policy and procedure with respect to granting such allowances required a dealer request, a survey of his competitors' prices by a Crown salesman, a recommendation to the Division office for an allowance to "protect" a specific pump price, the transmission thereof by telephone to Mr. Garrison, Crown's Assistant Manager of Marketing, who granted or denied such requests, and his approval thereof. In addition to such oral transmission, the Division office filled out a form, directed to Garrison, listing the dealer's pump price (the price to be protected), his 4.5 cents margin, the prevailing competitive prices, and the recommended allowance, which always equaled the price to be protected less the dealer's margin, subtracted from 25.9 cents, the tank wagon price (Tr. 329–37; 835–47; CX 53–73).

After approval, the Division office notified the salesman, who in turn advised the dealer that he was "protected" at a certain pump price (Tr. 329–31; 518; 544–5; 851). The record clearly establishes that the temporary price allowances were given to "protect" a specific pump price and that the salesmen so advised the dealers (CX 53–73; 46 B; Tr. 288; 331; 544–5; 518; 850).

The dealers were paid the allowances only upon the gasoline they actually sold rather than upon that bought, by means of the salesmen reading their pump meters at the time the allowance

was granted and thereafter periodically. Such readings were recorded on forms by the salesman with the appropriate computations, signed by him and the dealer, and credited by the Crown drivers against subsequent deliveries of gasoline (Tr. 347–9; CX 74–80; CX 586–685). A dealer could not receive any allowance unless he would allow Crown to read his pump meters (CX 47, Tr. 355–6). The record reveals that the dealers receiving allowances could post the protected price or a lower price, but not a higher price (Tr. 288; 324; 331; 518; 545; 550; 556–7).

On June 12, 1962, the prevailing retail price of major brand regular and Crown regular gasoline was 23.9 cents a gallon (Tr. 513; CX 44 D; CX 53–73; CX 89; CX 103; CX 133; RX 2). As a result of the price wars that year, Crown had expended substantial amounts of money because of allowances granted to dealers to support a price and enable them to meet competition (RX 126; Tr. 1280), had lost substantial gallonage because Crown did not act until the prices of others had gone down (RX 129), and the number of closed Crown stations had increased from one in January to five in June (CX 44 D; RX 60 B; RX 70 C). In addition, Crown had experienced a substantial decline in overall gross income (RX 128).

On June 12, 1962, Crown's top management decided to post and protect a retail price of 17.9 cents per gallon, 6 cents below prevailing prices, by placing such price into effect at its commission stations, and giving its independent dealers a 12.5 cent allowance to protect such price, which would continue their margin at 4.5 cents (Answer; CX 46 B; RX 7). This price was substantially below Crown's costs (CX 1078; 1548–49; 1587 A). The avowed purpose was to alleviate Crown's losses (Answer). Just how this action would accomplish such a result is not clear, but apparently the contention is that it might have shocked competitors into realizing the futility of the price war and restoring more normal prices (Tr. 714; 757–8).

About 2 p.m. Crown dropped its price at all commission stations to 17.9 cents and notified all of its dealers, through the salesmen, that a pump price of 17.9 cents would be protected (Answer; Tr. 341; CX 46 B; RX 7). Crown had 44 service stations in Baltimore, of which five were closed and 11, or approximately 28% of those open, were commission stations (CX 34). By about 5:30 p.m., almost all of the dealers were posting 17.9 cents, and by 7 p.m. all dealers contacted were posting 17.9 cents (CX 46 B; Tr. 346; 749). One dealer, who was not contacted and not given the allowance because he would not permit Crown

to read his meters, did not post the 17.9 price (CX 47; Tr. 335–6). The 12.5 cent allowance, and the 17.9 cent pump price, remained in effect until about 2 p.m., June 18 (CX 45 E).

With respect to the June 12 allowance, Mr. Burke, Crown's Baltimore division manager who supervised all of the salesmen, testified that he instructed them to offer each service station operator "a 12.5 cent allowance *in line with their going to a 17.9 price*" (Tr. 359–60; emphasis added). Mr. Newsom, Crown's General Manager of Marketing, who conveyed management's order to Burke on June 12, told Burke to instruct all the salesmen to tell the dealers: "If you will post or go to 17.9¢ a gallon at the pump we will protect that figure" (Tr. 283). Newsom testified that the dealers would get the allowance if they posted 17.9 or less, but not if they posted higher (Tr. 318; 324). Several dealers testified they were required to post the protected price or lower (Tr. 519; 554–57; 567–8), and one said he did not know what the allowance was on June 12 when he posted 17.9 (Tr. 554). Burke said that Crown wanted a 17.9 price sign at every station and if necessary the salesmen were to make the signs themselves on the spot and get them posted (Tr. 341).

It is clear that the allowance of 12.5 cents per gallon was given to dealers to "protect" the 17.9 price and upon condition that they post the 17.9 price, or lower. As found above, the dealers were regularly and on this occasion advised that the allowances were to protect a price, or that a certain price was protected. The allowances were only granted on gasoline sold, and the dealers knew this required the reading of their pump meters by Crown salesmen, which enabled them to ascertain the posted price.

Crown, while admitting the granting of the 12.5 cent allowance to protect a retail price of 17.9 cents and the "recommending" of such price to its dealers, contends that this allowance was unconditional and the dealers were free to do as they chose. In addition to the facts found above demonstrating that this allowance was conditioned upon the dealers posting the 17.9 price or lower, the surrounding circumstances likewise impel such a conclusion.[4] This allowance was not in accord with Crown's established policy, which required a dealer request for help, a survey of his competitors' prices, and an allowance based upon such facts. Here there was no request, no survey, and indeed a known

[4] It is well established that a price-fixing agreement or conspiracy may be inferred from circumstantial evidence and does not have to be proved by direct evidence. *Interstate Circuit, Inc.* v. *United States*, 306 U.S. 208 (1939); *Theatre Enterprises, Inc.* v. *Paramount*, 346 U.S. 537 (1954).

prevailing higher price of 23.9, with sub-regular and private brands slightly lower. With respect to prior allowances, even though the dealers were told the allowances were to "protect" a price or that they were "protected" at a price, and their meters were read, nevertheless such allowances had been granted upon the dealers' request and a demonstrated need for help to meet competition, and it might be expected, without any conditions attached, that they would post such competitive prices. Here the expectation would be the contrary.

Given an unconditional 12.5 cent allowance, with competitors generally posting 23.9¢, and having been losing ½ cent of their normal margin for six months in order to meet lower prices, the dealers could easily have posted 18.9 (or indeed higher), been substantially below all competition, logically expected a substantial increase in gallonage, and restored their margin to normal or better. Yet all of the dealers given the allowance posted 17.9. While the record establishes, as Crown points out, that the dealers welcomed this allowance with joy (Tr. 315; 345; 720; 862) this does not negate their singular lack of self-interest in failing to restore a normal margin under such fortuitous circumstances.

It is concluded and found that the above found facts, particularly with respect to the allowance of June 12, 1962, demonstrate that Crown and its dealers entered into an agreement, arrangement, understanding, planned common course of action or conspiracy to fix, control and stabilize the retail price at which Crown gasoline was to be sold. That such agreements or arrangements are illegal *per se*, in violation of the Sherman Act, and unfair methods of competition under the Act is well settled.[5]

Counsel supporting the complaint also contend, as the complaint alleges, that the dealers were coerced or caused to agree to fix their retail prices by reason of their lease and dealer equipment and supply contracts with Crown, independently of the above-found facts demonstrating an agreement to fix prices. In this connection, counsel contend such written contracts, coupled with Crown's "policing" of the dealers' operations, gave Crown the power to dominate and control the dealers with such alleged effect. The leases and supply contracts are substantially the same as those used throughout the industry. The lease gives Crown the right to inspect the premises. Either party may cancel upon 5

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[5] *Ethyl Gasoline Co.* v. *United States*, 309 U.S. 436 (1940); *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940); *F.T.C.* v. *Cement Institute*, 333 U.S. 683, 691 (1948); *F.T.C.* v. *Motion Picture Advertising Service Co.*, 344 U.S. 392 (1953).

days written notice (CX 6 A, B). These are customary and usual provisions. As found above, the supply contracts required the dealer to buy his station requirements from Crown, with a specified annual minimum. They ran from year to year, with 90 days termination notice required of the dealer, although Crown could terminate on 10 days notice at any time (CX 7 A and E).

There is no evidence, aside from the method of handling allowances discussed above, which method is unrelated to any of the provisions or requirements of the leases and supply contracts, that Crown in any manner "policed" the operations of the dealers. It was conceded that there was no evidence of actual or threatened coercion by Crown (Prehearing Conference Tr. 80; 95–6). In addition, the record establishes that Crown's dealers were frequently solicited by competing oil companies to transfer their allegiance (Tr. 244; 521).

It is concluded and found that the leases and dealer supply and equipment contracts between Crown and its dealers, and the operation thereof, have not coerced or caused the dealers to enter into price-fixing arrangements with Crown, independently of the actions and agreements with respect to the allowances hereinabove considered.

C. Selling Below Cost

1. *The Facts*

The complaint alleges that the same sales by Crown from June 12 through June 18, 1962, when the dealers were given a 12.5 cent allowance, were below cost with the intent and purpose, or where the effect may be, to injure or substantially lessen competition in violation of the Act. Crown's net tank wagon price, after deduction of the 12.5 cent allowance and the 10 cents Federal and state taxes, was 3.4 cents per gallon (Answer). This was substantially below Crown's costs (CX 1078; 1548–49; 1587 A). During the same period, Crown's net tank wagon prices to dealers in other areas where it operated were substantially higher (CX 45 A–J).

In addition to the major integrated companies above found, Crown was also in competition in Baltimore with a number of unbranded or private brand operators, including Cashin, Joe's, Hudson, Midway, Savon, Scot, Thriftway, Thrifty, and Thompson (CX 53–63; 70; 89; Tr. 461–2; 581; 630–31). Crown, in addition to its sales to its dealers, also made wholesale sales at its Baltimore terminal to various such unbranded or private brand operators (Tr. 737). Crown's regular wholesale price to such unbranded