

IN THE MATTER OF
FORD MOTOR COMPANY

Docket 9001. Interlocutory Order, Feb. 10, 1978

On motion to withdraw matter from adjudication, Commission directed that pleadings of complaint counsel be furnished to the Commission, but not placed on the public record, to enable it to determine the probability that a settlement will be achieved.

ORDER

By his order of January 19, 1978, the Administrative Law Judge certified to the Commission an amended motion by respondent to withdraw this matter from adjudication for consideration of a consent order.

Beyond those facts, the posture of the motion becomes somewhat murky. Respondent's original motion recites that "complaint counsel do not oppose this motion," but this recital is absent from the amended motion.¹ Complaint counsel have not, however, executed the proposed consent order, for reasons which the Administrative Law Judge describes as including both some disagreement with its terms and the view that it would vary the terms of our earlier order (Dkt. C-2582) against the respondent, a variance complaint counsel presumably felt they could not agree to since "[a]ny modification of an outstanding order is exclusively within the jurisdiction and discretion of the Commission."²

Evidently the respective positions of respondent and complaint counsel with regard to the proposed consent order are fully set out in respondent's memorandum of December 23, 1977, complaint counsel's answer of January 16, 1978, and respondent's reply of January 18. These pleadings have not been sent forward to us, however, because of the Administrative Law Judge's opinion that "it would not be appropriate for the Commission to consider the substance of that memorandum [of December 23, 1977] before it withdraws the instant matter from adjudication."

The reasons for this are not elaborated, nor are they self-evident. Obviously, no "*ex parte*" problem exists, and if respondent in its memorandum concedes matters it had placed in issue the damage has already been done by submitting the memorandum to the initial

¹ In his certification, however, the Administrative Law Judge characterizes the motion as "unopposed."

² While this statement is correct, its application in this context seems to reflect a misunderstanding of the significance of executing a proposed consent order. Complaint counsel's signature would indicate a recommendation that the Commission accept the order. Actual modification of the outstanding order would occur only if the Commission followed that recommendation. We make this observation only to obviate confusion in the future, since it appears here that complaint counsel could not unreservedly make such a recommendation.

trier of fact and law. Inasmuch as we are trying to determine, as the Administrative Law Judge did, the probability that a settlement will be achieved, respondent's memorandum and the additional pleadings could be of considerable assistance.

Accordingly, it is ordered, That the pleadings of December 23, 1977, and January 16 and 18, 1978, be expeditiously transmitted to the Commission. They should not, however, be placed on the public record at this time.

Interlocutory Order

IN THE MATTER OF

AIRCO, INC.

Docket 9098. Interlocutory Order, Feb. 15, 1978

Order establishing a protective order providing ten (10) days' notice before release of certain documents to be supplied in response to subpoena duces tecum.

ORDER

The Administrative Law Judge has certified to the Commission a paragraph undertaking to provide ten days' notice before release of certain documents to be supplied by Airco, Inc. in response to a subpoena *duces tecum*. If we so authorize, it is the Administrative Law Judge's intention to incorporate this paragraph in a protective order which he will grant to Airco. As our Rules now stand, a "ten-day notice" undertaking can only be made by the Commission itself.

The action requested by the Administrative Law Judge's certification is similar to that which the Commission took by order dated January 31, 1977, in *Exxon Corporation, et al.* The Commission has determined to authorize incorporation of paragraph 6 in the proposed protective order. The language set out in the Administrative Law Judge's certification will be modified, however, by deletion of the words "designated by Airco as confidential" and substitution therefor of the words "covered by this protective order." The coverage of such an order is of course for the Administrative Law Judge, not respondent, to determine.

So ordered.

Complaint

91 F.T.C.

IN THE MATTER OF
SECURITY PACIFIC MORTGAGE CORPORATION, AS
SUCCESSOR TO KASSLER & CO.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS

Docket C-2917. Complaint, Feb. 17, 1978 — Decision, Feb. 17, 1978

This consent order, among other things, requires a Denver, Colo. finance company to cease failing to provide consumers, in connection with the extension of credit, such material and disclosures as are required by Federal Reserve System regulations. Further, the company is required to make prescribed efforts to obtain information pertaining to third-party fees.

Appearances

For the Commission: *James T. Rohrer.*

For the respondent: *Gordon Greiner and Donald G. Palmer,
Holland & Hart, Denver, Colo.*

COMPLAINT

Pursuant to the provisions of the Truth in Lending Act and the implementing regulation promulgated thereunder, and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Security Pacific Mortgage Corporation, as successor in interest to Kassler & Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said Acts and implementing regulation, 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 in that respect as follows:

PARAGRAPH 1. Respondent Kassler & Co. was a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at Diamond Hill Office Park, 2460 West 26th Ave., Denver, Colorado.

PAR. 2. Security Pacific Mortgage Corporation is a "successor and assign" of Kassler & Co., having merged with Kassler in 1974, after the acts and practices alleged in the complaint. Security Pacific Mortgage Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2460 West 26th Ave. Denver, Colorado.

PAR. 3. Respondent is now and for some time last past has been engaged in the business of arranging for and providing to the public, for a fee, mortgage loans secured by real property.

PAR. 4. In the ordinary course and conduct of its business as aforesaid, respondent regularly arranges for the extension of consumer credit, as "arrange for extension of credit" and "consumer credit" are defined in Section 226.2 of Regulation Z, the implementing regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve Board.

PAR. 5. Subsequent to July 1, 1969, respondent, in connection with its arrangement for the extension of consumer credit, has provided customers with required cost disclosure statements which:

A. Fail to include in the finance charge a charge imposed directly or indirectly by the creditor payable directly or indirectly by the customer to a third party, such charge being incident to the extension of credit, as required by Section 226.4(a) of Regulation Z, when such charges were within the actual or constructive knowledge of the respondent and within the purview of its relationship with the customer as required by Section 226.6(d) of Regulation Z.

B. Fail to state the finance charge accurately as required by Section 226.8(d)(3) of Regulation Z.

C. Fail to disclose, in accordance with Section 226.8(d)(2) of Regulation Z, any finance charge paid directly or indirectly with the creditor's knowledge to another person as required by Section 226.8(e)(1).

D. Fail to state accurately the amount of credit by failing to exclude from such amount financed the items set forth in Section 226.8(e)(1) of Regulation Z as required by Section 226.8(d)(1) of Regulation Z.

E. Fail to disclose the annual percentage rate computed in accordance with the requirements of Section 226.5 of Regulation Z accurately to the nearest quarter of one percent, as required by Section 226.8(b)(2) of Regulation Z.

PAR. 6. Subsequent to July 1, 1969, in the ordinary course and conduct of its business as aforesaid, respondent arranged for the extension of credit in transactions in which a security interest is acquired in real property which is used as a principal residence of the customer. The customers thereby have the right to rescind the transaction, as provided by Section 226.9 of Regulation Z. As set out in Paragraph Five herein, respondent has failed and continues to fail to deliver to some of its customers the material disclosures required by Regulation Z. Therefore, some of the respondent's customers have not been afforded the three (3) day right of rescission from the date

of consummation of the transaction or date of delivery of material disclosures, whichever is later, as set out in Section 226.9(a) of Regulation Z. Respondent has not given notice of this right to rescind as required by Section 226.9(b) of Regulation Z, in the manner and form specified therein.

PAR. 7. Pursuant to Section 103(q) of the Truth in Lending Act, respondent's aforesaid failures to comply with the requirements of Regulation Z constitute a violation of that Act and, pursuant to Section 108(c) thereof, respondent thereby violated the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Atlanta Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act, as amended; and

The respondent and its attorney and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Proposed respondent Kassler & Co. was, at the time of the acts alleged in the Commission's complaint, a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at Diamond Hill Office Park, 2460 West 26th Ave., Denver,

2. Security Pacific Mortgage Corporation is a successor and assign of Kassler & Co., having merged with Kassler in 1974, after the acts and practices alleged in the complaint. Security Pacific Mortgage Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2460 West 26th Ave., Denver, Colorado. Security Pacific Mortgage Corporation is thus bound by this order.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Security Pacific Mortgage Corporation, as successor in interest to Kassler & Co., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the extension of "consumer credit" or arranging for "consumer credit", as defined in Regulation Z (12 C.F.R. 226) of the Truth in Lending Act [15 U.S.C. 1601-65 (1970), as amended, 15 U.S.C. 1601-65(a), (Supp. IV, 1974)], do forthwith cease and desist from:

1. Failing to include in the stated finance charge, as required by Section 226.4(a) of Regulation Z, any monies payable directly or indirectly by the customer to any third party who may have referred consumer loans to them or who may have assisted them in arranging for consumer credit, of which respondent is aware or should be aware through its reasonable effort.

2. Failing to disclose the amount of the finance charge accurately, as required by Section 226.8(d)(3) of Regulation Z.

3. Failing to disclose the amount of any "prepaid finance charge," as directed in Section 226.8(d)(2) of Regulation Z.

4. Failing to state accurately the amount of credit by failing to exclude from such amount the items set forth in Section 226.8(e)(1) of Regulation Z, as required by Section 226.8(d)(1) of Regulation Z.

5. Failing to disclose the annual percentage rate accurately to the nearest quarter of one percent, in accordance with Section 226.5 of Regulation Z, as required by Section 226.8(b)(2) of Regulation Z.

6. Failing to make reasonable efforts to obtain or to estimate information required for disclosures as is allowed by Section 226.6(f) of Regulation Z, and thus failing to accurately disclose the finance charge, as required by Section 226.8(d)(3) of Regulation Z.

7. Failing in any consumer credit transaction or advertising to

make all disclosures determined in accordance with Sections 226.4 and 226.5 of Regulation Z at the time and in the manner, form and amount required by Sections 226.6, 226.8 and 226.10 of Regulation Z.

It is further ordered, That the respondent henceforth obtain from each person receiving consumer credit from it a completed and signed statement relating to monies or obligations to pay monies which are payable, directly or indirectly, by the customer to any third party who may have referred the customer to respondent or who may have assisted the customer in arranging for consumer credit with respondent. A sample of such a form is attached hereto as Appendix A. In each instance in which respondent has obtained such a completed form and in which a customer has indicated thereon that he is not liable for and has not paid a fee to any other person in connection with the loan, respondent shall be deemed to have made sufficient reasonable efforts as required by subparagraph 1 of this order, unless respondent otherwise has actual knowledge of monies or fees payable by the customer to any third party.

It is further ordered, That respondent shall, within sixty (60) days after service of this order upon respondent, file with the Commission a report showing the manner and form in which it has complied and is complying with each and every specific provision of this order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

APPENDIX A

Customer Statement of Third Party Fees

1. Have you paid or are you liable for the payment of a fee to any person who has assisted you with or who has arranged for your application to Security Pacific Mortgage Corporation for this loan?

Yes

No

2. If your answer above was "Yes," please state the amount of the fee paid or to be paid to such person.

\$ _____

3. If your answer to question 1 was "Yes," please state the name and address of such person.

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Appendix

Address _____

I have read and understand this document, and affirm that the answers given are true to the best of my knowledge.

Date

Customer

Customer

Complaint

91 F.T.C.

IN THE MATTER OF

FRUEHAUF CORPORATION, INC.

ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT AND SECTION 7 OF THE
CLAYTON ACT*Docket 8972. Complaint, June 21, 1974 — Final Order, Feb. 22, 1978*

This order, among other things, requires a Detroit, Mich. truck trailer manufacturer to divest itself, within one year from the date of the order, of Kelsey-Hayes, a Romulus, Mich. manufacturer of automotive components, excluding those operations unique to Kelsey-Hayes' Aerospace Group and R-V Agriculture Group; and to refrain, for a ten-year period, from acquiring any concern engaged in manufacturing, distributing, or selling heavy duty wheels, antiskid braking devices, or truck trailers.

Appearances

For the Commission: *K. Keith Thurman, George J. Wright, Richard L. Williams and Tom D. Smith.*

For the respondent: *John R. Ferguson, William H. Wentz, Phillip A. Proger, Janine H. Coward, Alan S. Ward and Warren Daane, Baker, Hostetler, Frost & Towers, Washington, D.C.*

COMPLAINT

The Federal Trade Commission having reason to believe that Fruehauf Corporation, a corporation subject to the jurisdiction of the Commission, has acquired the stock of Kelsey-Hayes Company, a corporation, in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45(a)(1)), and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5 of the Federal Trade Commission Act (15 U.S.C. 45(a)(6)(b)), stating its charges in that respect as follows:

I. DEFINITIONS

1. For the purpose of this complaint, the following definitions shall apply:

- (a) "Wheels" include wheels, rims, hubs and brake drums.
- (b) "Heavy duty" refers to components for application on on-highway vehicles such as trucks, truck tractors, buses, truck trailers and container chassis having a gross vehicle weight (GVW) of 14,000

(c) "Antiskid braking device" is three matched components consisting of a sensor, a computer and a valve designed to control braking during a potential skid situation. [2]

(d) "Truck Trailers" are all types of truck trailers (product class code 37150) reported by the U.S. Bureau of Census in its current industrial report of shipments of truck trailers for 1972.

(e) "Market" includes all shipments of the relevant products manufactured in the United States or imported into the United States.

II. FRUEHAUF CORPORATION

2. Respondent, Fruehauf Corporation (hereinafter "Fruehauf"), is now, and was at the time of the acquisition hereinafter set forth, a Michigan corporation with its principal office and place of business located at 10900 Harper Ave., Detroit, Michigan.

3. In 1972, Fruehauf had sales and rentals of \$550.4 million and assets of \$556.6 million. In that year it was the 245th largest publicly held industrial corporation in the nation in total sales and revenues and ranked 207th in assets.

4. Fruehauf, prior to and following the acquisition hereinafter set forth, was and is the nation's largest and most vertically integrated truck trailer manufacturer. Fruehauf presently produces truck trailers in twelve manufacturing locations in the United States. Ninety-six domestic branch operations owned by Fruehauf sell and service truck trailers in the United States and they constitute the most extensive service and distribution system in the nation's truck trailer industry. Fruehauf produces, sells and services several different types of truck trailers including all types of van trailers, platform, tank, bulk commodity and dry material, pole and logging, dump, low-bed heavy haulers, van size containers and container chassis.

5. At all times relevant herein, Fruehauf sold and shipped its products throughout the United States and was engaged and is now engaged in commerce as "commerce" is defined in the Clayton Act and in the Federal Trade Commission Act.

III. KELSEY-HAYES COMPANY

6. Prior to its acquisition by Fruehauf as hereinafter set forth, Kelsey-Hayes Company (hereinafter "Kelsey-Hayes"), was a Delaware corporation with its principal office and place of business located at 38481 Huron River Drive, Romulus, Michigan. [3]

7. In the fiscal year ending August 31, 1973, Kelsey-Hayes had

sales of \$453.7 million and assets of \$243.0 million. In 1972, Kelsey-Hayes was the 281st largest publicly held industrial corporation in the nation in total sales and revenues and ranked 363rd in assets.

8. In 1972, approximately 72 percent of Kelsey-Hayes' sales were of products and components for automobiles, trucks, and truck trailers.

9. In 1972, Kelsey-Hayes was the nation's largest manufacturer of wheels for use in the manufacture of automobiles. Kelsey-Hayes was and is a significant supplier of heavy duty wheels including truck trailer wheels. In 1972, Kelsey-Hayes was a key supplier of heavy duty truck wheels to both original equipment manufacturers and replacement parts distributors and the major independent supplier of both drum brake assemblies and brake drums to the automotive industry. Kelsey-Hayes has developed and plans to manufacture and sell a heavy duty antiskid braking device of the type which will be standard equipment on all heavy duty trucks, truck tractors and truck trailers manufactured in the United States beginning September 1, 1974.

10. At all times relevant herein, Kelsey-Hayes sold and shipped its products throughout the United States and was engaged and is now engaged in commerce as "commerce" is defined in the Clayton Act and in the Federal Trade Commission Act.

IV. THE ACQUISITION

11. On or about October 31, 1973, Fruehauf Manufacturing Company (hereinafter "Fruehauf Manufacturing"), an inactive wholly-owned subsidiary of Fruehauf, was merged into Kelsey-Hayes, whereby Kelsey-Hayes survived as a wholly-owned subsidiary of Fruehauf. To consummate the merger, Fruehauf issued approximately 3,804,915 shares of Fruehauf common stock at an approximate value of \$99 million to Fruehauf Manufacturing and all Kelsey-Hayes common stock was then converted into Fruehauf common stock owned by Fruehauf Manufacturing in the ratio of five shares of Fruehauf common stock for four shares of Kelsey-Hayes common stock. Kelsey-Hayes has been operated as a Fruehauf subsidiary since the acquisition.

V. TRADE AND COMMERCE

12. The relevant geographic market is the United States as a whole. The relevant product markets are: [4]

- (a) Manufacture and sale of heavy duty wheels;
- (b) Manufacture and sale of truck trailer wheels.

- (c) Manufacture and sale of cast spoke truck trailer wheels, exclusive of rims;
- (d) Manufacture and sale of heavy duty antiskid braking devices; and
- (e) Manufacture and sale of truck trailers.

A. HEAVY DUTY WHEELS

13. The market for heavy duty wheels was \$263.6 million in 1972. Shipments in the truck trailer wheel market were \$72.7 million in that year. In 1972, shipments of cast spoke truck trailer wheels, exclusive of rims, were \$35.0 million.

14. Concentration in the manufacture and sale of heavy duty wheels is high with the top four firms accounting for 69 percent, and the top eight firms accounting for 94 percent of the market in 1972. Concentration is similarly high in the manufacture and sale of truck trailer wheels with the top four firms accounting for 63 percent, and the top eight firms accounting for 87 percent of the market in 1972. Concentration in the manufacture and sale of cast spoke truck trailer wheels, exclusive of rims, is very high, with the top four firms accounting for 91 percent, and the top eight firms accounting for 100 percent of the market in 1972.

a. *Vertical Relationships*

15. Entry into the manufacture and sale of heavy duty wheels is difficult. The manufacture and sale of such wheels requires large financial resources, sophisticated technological skills required of a foundry and an effective distribution system. Few firms possess such prerequisites for entry. [5]

16. In 1972, Kelsey-Hayes was the second largest domestic producer of heavy duty wheels, the eighth largest domestic producer of truck trailer wheels, and the fourth largest domestic producer of cast spoke truck trailer wheels, exclusive of rims. In 1972, Kelsey-Hayes' share of the market for heavy duty wheels was 15 percent, its share of the market for truck trailer wheels was 3.7 percent, and its share of the market for cast spoke truck trailer wheels, exclusive of rims, was 7.8 percent.

17. In 1972, Fruehauf accounted for 4.8 percent of all heavy duty wheel purchases. Fruehauf was the largest purchaser of truck trailer wheels and cast spoke truck trailer wheels, exclusive of rims, in that year, accounting, respectively, for 17.9 percent and 17.5 percent of such purchases. Fruehauf purchased 7 percent of its requirements

for truck trailer wheels in 1972 from Kelsey-Hayes and 93 percent from all other suppliers.

18. With the availability of Fruehauf's branches as outlets for selling and servicing of Kelsey-Hayes heavy duty wheels and the aid of the Fruehauf domestic sales force, Kelsey-Hayes' position in the heavy duty wheel market will be strengthened.

b. *Potential Competition*

19. Fruehauf was one of the few most likely competitors of Kelsey-Hayes in the heavy duty wheel market prior to the acquisition. Fruehauf had conducted several studies relating to fabricating its own truck trailer wheels and had done extensive development work with truck trailer wheel manufacturers prior to the acquisition of Kelsey-Hayes. Fruehauf, prior to the acquisition of Kelsey-Hayes, had already integrated into the manufacture of axles and was the only truck trailer manufacturer which fabricated truck trailer axles. Such axles were not only for its own use but also were sold to other truck trailer manufacturers. Similarly, Fruehauf had integrated into aluminum extrusion, a major truck trailer component, and was the only truck trailer manufacturer which produced its own aluminum extrusions. Such extrusions not only were used by Fruehauf but also sold to other truck trailer manufacturers. [6]

20. By virtue of its position as the most vertically integrated truck trailer manufacturer in the United States, its production of truck trailer axles and possession of attendant technological skill, its marketing ability, its financial resources and its demonstrated interest in entering the heavy duty wheel market, Fruehauf was, prior to October 31, 1973, one of the few most likely entrants into the manufacture and sale of heavy duty wheels.

B. HEAVY DUTY ANTISKID BRAKING DEVICES

21. Performance standards set forth in Department of Transportation Federal Motor Vehicle Safety Standard 121¹ will require heavy duty antiskid braking devices on all heavy duty trucks, truck tractors and truck trailers manufactured in the United States after September 1, 1974.

22. Entry into the manufacture and sale of heavy duty antiskid braking devices is difficult. The development, manufacture, and sale of heavy duty antiskid braking devices require large financial resources, sophisticated technological skill and an effective distribu-

tion and service system. Few firms possess such prerequisites for entry.

23. In the year following September 1, 1974, domestic sales of heavy duty antiskid braking devices will be approximately \$80 million. Heavy duty antiskid braking devices having application on truck trailers will comprise approximately 30 percent of the heavy duty antiskid braking device market in the year following September 1, 1974.

24. Concentration in the heavy duty antiskid braking device will be high. Fewer than ten firms will be able to manufacture production quantities of heavy duty antiskid braking devices by September 1, 1974.

25. Kelsey-Hayes is a leading producer and developer of heavy duty antiskid braking devices as well as a leading manufacturer of automobile antiskid braking devices.

26. Kelsey-Hayes' share of the heavy duty antiskid braking device market is projected to be approximately 30 percent in the year following September 1, 1974.

27. Purchases of heavy duty antiskid braking devices by Fruehauf will comprise approximately 8 percent of total heavy duty antiskid braking device purchases in the year following September 1, 1974. [7]

28. With the availability of Fruehauf's branches as outlets for selling and servicing of Kelsey-Hayes heavy duty antiskid braking devices and the aid of the Fruehauf domestic sales force, Kelsey-Hayes' position in the heavy duty antiskid braking device market will be strengthened.

C. TRUCK TRAILERS

29. In 1972, the total value of truck trailer shipments in the United States was \$886.2 million.

30. The truck trailer market is highly concentrated. In 1972, the top four firms accounted for 55.0 percent of total truck trailer shipments and the top eight firms accounted for 69.3 percent.

31. In 1972, Fruehauf's share of the truck trailer market was approximately 25 percent.

32. Entry into the manufacture and sale of truck trailers to significant users is difficult. A successful manufacturer and seller of truck trailers must possess ample financial resources, have manufacturing, assembling and marketing skill and have access to reliable sources of supply for component parts.

33. The prompt supply of truck trailer components is of major importance to truck trailer manufacturers due to short delivery

deadlines often set by truck trailer purchasers. Through the acquisition of Kelsey-Hayes, Fruehauf has captured a secure source of supply for truck trailer wheels as well as a source of heavy duty antiskid braking devices. This secure source of supply to Fruehauf of truck trailer wheels and heavy duty antiskid braking devices gives Fruehauf a significant advantage over its competitors, particularly in periods of scarce supply of either of these truck trailer components.

34. The advantage gained by Fruehauf over its competitors through its acquisition of a secure source of supply for component parts produced by Kelsey-Hayes is magnified by the probability that truck trailer customers who purchase truck trailers from Fruehauf during periods of components' scarcity will continue to purchase truck trailers from Fruehauf in the future. Truck trailer customers generally receive better trade-in terms for Fruehauf trailers at Fruehauf branches than they do from other manufacturers, giving these customers an incentive to continue purchasing from Fruehauf. Many truck trailer customers are trucking fleet operators who seek standardization in their fleets to minimize parts stocking problems and simplify maintenance and therefore are likely to continue [8] purchasing truck trailers from their present source. Fruehauf utilizes many component parts peculiar to Fruehauf trailers when the truck trailers are manufactured. Thus, double stocking of the same type of parts is necessary when a trucker mixes other makes of truck trailers with Fruehauf trailers in his fleet.

VI. EFFECTS OF THE ACQUISITION

35. The effects of the acquisition of Kelsey-Hayes by Fruehauf may be substantially to lessen competition or tend to create a monopoly in the manufacture and sale of heavy duty wheels, truck trailer wheels, cast spoke truck trailer wheels, exclusive of rims, heavy duty antiskid braking devices and truck trailers throughout the United States in violation of Section 7 of the Clayton Act, as amended, and the effects of the acquisition may be to unreasonably restrain trade and hinder competition unduly in the manufacture and sale of heavy duty wheels, truck trailer wheels, cast spoke truck trailer wheels, exclusive of rims, heavy duty antiskid braking devices and truck trailers, thereby constituting a restraint of trade and an unfair act and practice in commerce, in violation of Section 5 of the Federal Trade Commission Act, as amended, in the following ways among others:

Kelsey-Hayes have been and may be foreclosed from selling to a substantial purchaser of heavy duty wheels.

(b) Kelsey-Hayes' position in the heavy duty wheel market will be strengthened.

(c) Actual and potential producers of truck trailer wheels other than Kelsey-Hayes have been and may be foreclosed from selling to the leading purchaser of truck trailer wheels. [9]

(d) Kelsey-Hayes' position in the truck trailer wheel market will be strengthened.

(e) actual and potential producers of cast spoke truck trailer wheels, exclusive of rims, other than Kelsey-Hayes have been and may be foreclosed from selling to the leading purchaser of such wheels.

(f) Kelsey-Hayes' position in the market for cast spoke truck trailer wheels, exclusive of rims, will be strengthened.

(g) Substantial potential competition between Fruehauf and manufacturers of heavy duty wheels, including Kelsey-Hayes, has been eliminated.

(h) Potential competition in the heavy duty wheel market has been substantially lessened.

(i) Sales by Kelsey-Hayes of heavy duty antiskid braking devices may be increased through, and competitive suppliers of such products foreclosed from, the actual and potential purchases of Fruehauf.

(j) Kelsey-Hayes' position in the heavy duty antiskid braking device market will be strengthened at the expense of Kelsey-Hayes' actual and potential competitors.

(k) Truck trailer manufacturers who are competitors of Fruehauf have been or may be foreclosed from a source of supply for heavy duty wheels and heavy duty antiskid braking devices.

(l) Barriers to entry in each of the relevant markets have been raised.

(m) The dominant position of Fruehauf in the truck trailer market will be strengthened. [10]

VII. VIOLATIONS CHARGED

36. The acquisition of Kelsey-Hayes by Fruehauf constitutes a violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18), and constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45).

