

Complaint

99 F.T.C.

IN THE MATTER OF
GENERAL MOTORS CORPORATION

DISMISSAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9077. Complaint, March 22, 1976—Final Order, June 25, 1982

On June 25, 1982, the Commission dismissed its complaint charging a major car manufacturer with violating Section 5 of the Federal Trade Commission Act by its use of a selective distribution system for new crash parts for GM automobiles and light trucks.

Appearances

For the Commission: *Donald K. Tenney, Alan H. Melnicoe and Myron L. Dale.*

For the respondent: *Edwin S. Rockefeller, Alan M. Frey, Richard Haddad and Charles L. Duffney, Bierbower & Rockefeller, Washington, D.C., and Francis H. Dunne, in-house counsel, Detroit, Mich., for respondent General Motors Corporation. Jerry S. Cohen, Kohn, Milstein & Cohen, Washington, D.C., for intervenor National Automobile Dealers Association. Jonathan T. Howe, Jenner & Block, Chicago, Ill. and Donald A. Randall, in-house counsel, Washington, D.C., for intervenor Automotive Service Councils, Inc.*

COMPLAINT

The Federal Trade Commission, having reason to believe that General Motors Corporation, a Delaware corporation, has engaged in unfair methods of competition and unfair acts or practices in connection with the distribution of new service crash parts applicable to automobiles and light trucks assembled by General Motors Corporation, in violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45) and that a proceeding in respect thereof would be in the public interest, issues its complaint, charging as follows:

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

- (a) *Automobiles* are self-propelled, four-wheeled vehicles primarily for the transport of persons—they travel primarily on roads or streets and their seating capacity is for no more than 10 persons.
- (b) *Light trucks* are self-propelled vehicles, other than automo-

biles, designed to carry a load or freight, having a gross vehicular weight of less than 10,000 pounds, and traveling primarily on roads or streets.

(c) *Service Parts or Replacement Parts* are new parts used to replace parts assembled as original equipment (*OE Parts*) in new automobiles and light trucks or used to replace service parts previously installed thereon.

(d) *Crash Parts* refers to any one or all of the following products: fenders, grilles, bumpers, hoods, deck lids, doors, quarter panels, rear end panels, rocker panels, lamp assemblies, wheel opening panels, fender and rear end caps, tail gates, radiator supports and shrouds, and mouldings, [2]including inner and outer panels and all components of these products as well as all parts necessary to attach the aforesaid to the bodies of automobiles and light trucks.

(e) *Service GM Crash Parts* are service crash parts applicable to automobiles and light trucks assembled by General Motors Corporation, sometimes hereinafter referred to as the *relevant parts*.

(f) *Distribution* refers to the business of *distributors*. Distributors are firms which either manufacture service crash parts or contract for their manufacture for the purpose of reselling them, principally to franchisees who wholesale or install the parts.

(g) *Wholesalers* are firms which resell service crash parts to installers but which may also install such parts. They neither manufacture service crash parts nor do they contract for their manufacture.

2. Respondent General Motors Corporation (hereinafter "GM") is and at all times relevant herein has been a Delaware corporation; its headquarters are at 3044 W. Grand Boulevard, Detroit, Michigan.

3. GM is now and for many years has been engaged in the manufacture, sale and distribution of a wide variety of products, including automobiles, trucks, buses, diesel locomotives, diesel engines, earth moving equipment, household appliances and automotive parts.

4. In 1972, GM had sales of \$30.4 billion, net earnings after taxes of \$2.16 billion, and total assets as of December 31, 1972 of \$18.3 billion, ranking first in sales and profits and second in assets among the nation's largest industrial corporations. In 1975, GM had sales of \$35.7 billion and net earnings after taxes of \$1.3 billion.

5. GM is the largest manufacturer of automobiles and light trucks in the United States. Its principal domestic lines include Chevrolet, Pontiac, Oldsmobile, Buick and Cadillac automobiles and light trucks. In 1972, its total domestic sales of automobiles alone

amounted to 4,823,827 units, 43% of the U.S. market and 52% of U.S. sales by domestic manufacturers. [3]

6. GM sells and for some time past has sold substantial amounts of crash parts. In 1972, GM's sales of service GM crash parts exceeded \$250 million.

7. In the course and conduct of its business, respondent GM is and for some time past has been engaged in selling service GM crash parts throughout various States of the United States, and has caused such parts to be shipped to purchasers in various other states. In so doing, GM is and at all times relevant herein has been engaged in a continuous and substantial course of trade in commerce and has affected commerce as "commerce" is defined in the amended Federal Trade Commission Act.

8. The number of automobile and light truck accidents occurring in the United States increases nearly every year. There were approximately 17 million accidents involving motor vehicles in 1972 alone. A substantial number of the motor vehicles involved in accidents are automobiles and light trucks manufactured by respondent. In 1972, there were 86.4 million automobiles registered in the United States; 41.1 million or approximately 47.6% of these automobiles had been manufactured by GM.

9. Crash parts comprise virtually the entire outer protective cover of an automobile or light truck and include the most frequently crash-damaged parts. While any automobile or light truck part is susceptible to crash damage on occasion, crash parts collectively account for the preponderance of all automobile and light truck parts replaced on account of crash damage. Unlike most other automobile and light truck parts, crash parts are almost always replaced due to crash damage rather than due to maintenance or mechanical failure.

10. All service GM crash parts are and for many years have been produced either by GM or by independent manufacturers for GM. All of the relevant parts are and for many years have been funnelled through GM for distribution. GM has and for some time has had and has intentionally maintained a monopoly and monopoly power over the distribution of these parts.

11. Unlike many other parts it sells, GM for many years has sold and continues to sell service GM crash parts exclusively to its franchise dealers who are located throughout the United States. GM's franchise dealers, individually and in concert, have concurred in, and urged upon GM, this policy of [4]selling to them exclusively; and GM has acquiesced in and adopted this policy so as to extend to its franchise dealers, when wholesaling and installing the relevant

parts, benefits of GM's monopoly position in the distribution of the relevant parts. The dealers depend on and have for some time depended on GM as their sole source for new GM automobiles and light trucks and certain replacement parts applicable to GM-made vehicles. GM owns or has a substantial financial investment in a number of these dealers. GM franchise dealers either install the relevant parts, wholesale them, or occasionally sell them to consumers. There are approximately 12,000 GM dealers in the United States, many of whom both wholesale and install the relevant parts.

12. GM franchise dealers wholesale and for many years have wholesaled service GM crash parts principally to independent body shops (IBSs). There are approximately 30,000 IBSs in the United States. IBSs compete and have competed with GM dealers in installing the relevant parts. Most of the relevant parts needed by consumers are and for many years have been installed by GM dealers or by IBSs.

13. Because GM has distributed and sold the relevant parts exclusively to its dealers, IBSs have had to purchase said parts from the dealers and in so doing have frequently paid more for the parts than have competing GM dealers.

14. GM has refused to sell the relevant parts to its franchise dealers on equal terms. The dealers receive wholesale incentives on only those relevant parts which fit the lines of new cars the dealers are franchised to sell. This has effectively precluded many GM dealers from wholesaling additional relevant parts.

15. Service GM crash parts are not installed in any vehicles other than those which have been assembled by GM. Furthermore, due to design proliferation by GM, any particular service GM crash part fits only one or at best a few models of GM vehicles. Thus, in excess of 5,000 different crash parts were designed to fit GM automobiles and light trucks produced for sale in the U.S. during model years 1968-1972.

16. Respondent, who has a monopoly in the distribution of service GM crash parts, has engaged for some time, and is continuing to engage, in the following unfair methods of competition and unfair acts or practices, among other: [5]

(a) refusing to sell the relevant parts—goods which the IBSs are under a commercial compulsion to obtain—directly to IBSs or to any potential suppliers to IBSs other than GM franchise dealers;

(b) bolstering its monopoly power through, among other things, selling the relevant parts exclusively to its franchise dealers;

(c) adopting a method of distribution which substantially hinders

competition in the distribution, wholesaling, and installing of the relevant parts;

(d) combining, agreeing or acting in concert with GM franchise dealers so as to substantially hinder competition in the distribution, wholesaling, and installation of the relevant parts;

(e) discouraging competition in the wholesaling of the relevant parts through utilization of disparate wholesaling incentives;

(f) maintaining a method of distribution which provides GM with an unfair competitive advantage in the sale to its dealers of parts available from alternate sources; and

(g) disseminating to GM franchise dealers lists which suggest the prices at which the relevant parts should be sold to installers and to members of the consuming public.

17. The effects of the acts, practices, methods, and power set forth in the preceding paragraph have been and are, among others, to

(a) deter new entrants and raise barriers to entry into wholesaling and installing the relevant parts;

(b) enhance monopoly power and maintain monopoly pricing and inefficiency in the distribution of the relevant parts;

(c) extend monopoly power and its effects in the distribution of the relevant parts to the wholesaling and installation of the relevant parts; [6]

(d) curb efficiencies in the wholesaling of the relevant parts;

(e) lessen competition in wholesaling the relevant parts;

(f) restrain competition between GM dealers and IBSs in installing the relevant parts;

(g) restrain competition among GM dealers in wholesaling the relevant parts;

(h) increase prices to and otherwise disadvantage IBSs in competing with dealer-owned body shops;

(i) decrease the availability of the relevant parts;

(j) decrease competition in the sale to GM dealers of alternate-sourced parts; and

(k) increase prices to and otherwise disadvantage the consuming public.

18. The acts, practices and methods of competition alleged in this complaint, coupled with the monopoly power alleged herein, constitute unfair methods of competition and unfair acts or practices by respondents in violation of Section 5 of the amended Federal Trade Commission Act.

INITIAL DECISION

BY JOSEPH P. DUFRESNE, ADMINISTRATIVE LAW JUDGE

SEPTEMBER 24, 1979

THE COMPLAINT

1. The Complaint is dated March 22, 1976, and charges that General Motors Corporation (GM) engaged in unfair methods of competition and unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act (FTCA), as amended (15 U.S.C. 45), in connection with the distribution of "new service [2]crash parts" applicable to automobiles and light trucks assembled by GM (Complaint, Introductory Paragraph).

Crash parts are defined therein as:

. . . any one or all of the following products: fenders, grilles, bumpers, hoods, deck lids, doors, quarter panels, rear end panels, rocker panels, lamp assemblies, wheel opening panels, fender and rear end caps, tail gates, radiator supports and shrouds, and mouldings, including inner and outer panels and all components of these products as well as all parts necessary to attach the aforesaid to the bodies of automobiles and light trucks. (Complaint, ¶ 1(d)).

The definitions of *automobiles* and *light trucks* are those generally understood, but are limited, respectively, to autos having seating capacity for no more than 10 persons and trucks having a gross vehicular weight of less than 10,000 pounds (Complaint, ¶¶ 1(a) and (b)).

2. Paragraphs 11 and 12 of the complaint reflect: that GM sells crash parts exclusively to its approximately 12,000 GM franchise dealers located throughout the United States and that the dealers either (1) install the parts themselves, (2) wholesale them, principally to the approximately 30,000 independent body shop operators (IBSs) in the U.S. who compete with the dealers in installing the parts, or (3) occasionally retail the parts to consumers.

3. One allegation is that IBSs must purchase the parts from their competitors, GM dealers, frequently at prices higher than those paid by the dealers (Complaint, ¶ 13). Another is that since GM pays dealers wholesale compensation (explained below) only for crash parts for the brand of GM car the dealer sells (*e.g.*, no wholesale compensation is paid to a Pontiac dealer who sells crash parts for a Buick), many GM dealers are effectively precluded from wholesaling crash parts for brands of GM autos and light trucks for which the dealer is not franchised (Complaint, ¶ 14).

4. "Wholesale compensation" is a percentage of the list price GM

pays to (or credits to) the dealer on his sales of crash parts to a businessman/repairer of damaged vehicles (*i.e.*, an IBS or another dealer or commercial type purchaser but not to individual members of the public). In other words, wholesale compensation in the context of this case is a payment/rebate by GM to a dealer for performing a wholesaling function to the [3]automotive repair trade (Tr. 2005; CX 7010B).¹

5. Wholesale compensation is available to a GM dealer only when he sells parts applicable to the vehicles for which he is franchised (RA 795-799) to purchasers such as an IBS or, with certain limitations, another GM dealer. Wholesale compensation is not paid on sales to an independent wholesaler (CX 7813A-B; Tr. 10266) (CCPF 47).

6. The wholesale compensation allowance was and is designed to afford car dealers a satisfactory margin of profit [4]on sales to IBSs and to encourage them to make crash parts available to the IBSs at the dealer price. On those parts for which a wholesale compensation allowance is provided, the *suggested* general trade price is identical to the price the franchised dealer is to pay to GM. *If* a dealer adheres to the intent of the program, an IBS pays the dealer the same price as the dealer is charged by GM for crash parts used in the dealer's body repair shop. (CX 7010B).

7. Starting with an allegation that GM has a monopoly in the distribution of GM crash parts, Paragraph 16 charges that GM

¹ The following abbreviations will be used in this decision:

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| Tr. | - Transcript followed by the page number. |
| CX | - Commission's Exhibit, followed by its number. |
| RX | - Respondents' Exhibit, followed by its number. |
| RA and
CCA | - Respondents' and Commission counsels' Admissions. |
| ALJX | - Administrative Law Judge's Exhibit, followed by its number (Note: This device was used to insure that <i>all</i> pages of a document offered by Commission counsel, or that an exhibit the ALJ believed should be identified or included, became a part of the evidentiary record. For example, CX 7000A-G is typical. That exhibit consists of seven pages of a twenty-five (25) page letter dated May 12, 1967, from GM to Commission staff. Commission counsel declined to offer the complete letter. In that instance, ALJX-7 was used to identify and place the remaining eighteen (18) pages into evidence.) |
| CCPF, CCB
and CCRB
RPF, RB
and RRB | - Commission counsel's Proposed Findings, Brief and Reply Brief. |
| IX | - Respondents' Proposed Findings, Brief and Reply Brief. |
| INPF, INB
and INRB | - Intervenor NADA's Exhibit, followed by its number. |
| IAPF, IAB
and IARB | - Intervenor NADA's Proposed Findings, Brief and Reply Brief. |
| | - Intervenor ASC's Proposed Findings, Briefs and Reply Brief. |

engaged/engages in the following unfair methods of competition and unfair acts or practices, among others, by:

(a) refusing to sell the relevant parts—goods which the IBSs are under a commercial compulsion to obtain—directly to IBSs or to any potential suppliers to IBSs other than GM franchise dealers;

(b) bolstering its monopoly power through, among other things, selling the relevant parts exclusively to its franchise dealers (abandoned or dismissed later-see below);

(c) adopting a method of distribution which substantially hinders competition in the distribution, wholesaling, and installing of the relevant parts;

(d) combining, agreeing or acting in concert with GM franchise dealers so as to substantially hinder competition in the distribution, wholesaling, and installation of the relevant parts;

(e) discouraging competition in the wholesaling of the relevant parts through utilization of disparate wholesaling incentives;

(f) maintaining a method of distribution which provides GM with an unfair competitive advantage in the sale to its dealers of parts available from alternate sources (abandoned or dismissed later-see below) and;

(g) disseminating to GM franchise dealers lists which suggest the prices at which the relevant parts should be sold to installers and to members of the consuming public (abandoned or dismissed later-see below).

8. In Paragraph 17 it is alleged that:

The effects of the acts, practices, methods, and power set forth in the preceding paragraph have been and are, among others, to [5]

(a) deter new entrants and raise barriers to entry into wholesaling and installing the relevant parts;

(b) enhance monopoly power and maintain monopoly pricing and inefficiency in the distribution of the relevant parts;

(c) extend monopoly power and its effects in the distribution of the relevant parts to the wholesaling and installation of the relevant parts;

(d) curb efficiencies in the wholesaling of the relevant parts;

(e) lessen competition in wholesaling the relevant parts;

(f) restrain competition between GM dealers and IBSs in installing the relevant parts;

(g) restrain competition among GM dealers in wholesaling the relevant parts;

(h) increase prices to, and otherwise disadvantage IBSs, in competing with dealer-owned body shops;

(i) decrease the availability of the relevant parts;

(j) decrease competition in the sale to GM dealers of alternate-sourced parts (abandoned or dismissed later-see below) and

(k) increase prices to and otherwise disadvantage the consuming public.

9. The following order to Cease and Desist was proposed:

Requiring GM to sell crash parts, through and from whatever facilities it maintains to service its franchise dealers, to all vehicle dealers, independent body shops and independent wholesalers at the same prices, terms and conditions of sale, said prices to be subject to reasonable cost justified quantity discounts and stocking allowances. (Complaint, Notice of Contemplated Relief).

10. However, in his Reply brief, Commission counsel proposed a different order. That version includes definitions of *automobiles*, *light trucks*, *crash parts*, *components of [6]crash parts*, *service crash parts*, *service GM crash parts*, *independent wholesalers*, *independent body shops*, *functional discounts*, *quantity discounts* and non-exclusionary terms or conditions of sale. Thereafter, Part I of the order calls for an end to GM's use of functional discounts, as defined. Part II calls for GM to sell its crash parts to all vehicle dealers, independent body shops and independent wholesalers, as defined, at identical prices and on non-discriminatory, non-exclusionary terms except that ". . . graduated, non-cumulative, cost-justified volume and/or quantity discounts based solely on the sale of service GM crash parts" may be offered. Part III calls for submittal of a detailed plan to carry out the order no later than 90 days after the order is served on GM. Part IV calls for: (1) the plan to be put into effect 90 days after the Commission approves it; (2) notice to all GM customers for crash parts 30 days before a change takes effect and; (3) a notice in *Automotive News* or similar publication of each such change. Part V calls for an annual report to the Commission for five years on the anniversary of the date this Order becomes final "describing the manner of GM's compliance with parts I and II." (CCRB 132-136).

11. Commission counsel also moved in his Reply Brief (p. 98) for the acceptance of CX 7013A-H, which is a letter dated March 5, 1976 from GM to the Director of the Commission's Bureau of Competition. However, the record for the reception of evidence is closed and I am not convinced that it need be reopened to receive the letter because the subjects in the letter either are addressed elsewhere or would not add critical or important evidence. (Note: Commission Rule 3.51(d) permits reopening the record by the ALJ to receive additional evidence but it is not appropriate in this instance.)

GM'S ANSWER

12. GM answered the complaint on June 21, 1976, denying that the Commission had reason to believe that GM had engaged in unfair methods of competition and unfair acts or practices in distributing "new service crash parts", in violation of Section 5 of the Federal Trade Commission Act (FTCA), and denying that the proceeding would be in the public interest. To the numbered paragraphs of the complaint, GM:

(1) denied the accuracy and applicability to the proceeding of all definitions in the complaint except the one for automobiles (Answer, ¶ 1);

- (2) admitted manufacturing and selling a wide variety of products, including automobiles and trucks, (Answer, ¶ 3);
- (3) admitted sales in calendar year 1972 of \$30.4 billion with after-tax profits of \$2.16 billion, [7]and total assets of \$18.3 billion, compared with 1975 sales of \$35.7 billion with after tax profits of \$1.3 billion (Answer, ¶ 4);
- (4) admitted being the largest manufacturer of automobiles and light trucks in the U.S., (Answer, ¶ 1, 4 and 5);
- (5) admitted that in 1972 GM sales of automobile replacement parts including "crash" parts exceeded \$250 million (Answer, ¶ 6);
- (6) admitted that GM engages in commerce and affects commerce (Answer ¶ 7);
- (7) admitted that of the 86.4 million automobiles in U.S. operation in 1972, approximately 41.1 million had been manufactured by GM or its subsidiaries (Answer, ¶ 8);
- (8) admitted "[a]ll service GM crash parts are, and for many years have been produced either by GM or by independent manufacturers for GM, . . . and have been funnelled through GM for distribution," but denied that it had or has ". . . intentionally maintained a monopoly and monopoly power over the distribution of these parts." (Answer, ¶ 10);
- (9) admitted that it sells new GM crash parts exclusively to the approximately 12,000 GM dealers, some of which it owns or in which it has a financial investment, who either install or sell the parts, or do both (Answer, ¶ 11);
- (10) admitted that any particular new GM crash part may not fit all models of GM vehicles and that in excess of 5,000 different service GM parts fit GM autos and trucks for model years 1968-1972 (Answer, ¶ 15).

GM either denied the remaining allegations or stated that it was without knowledge or information sufficient to form a belief regarding their truth.

13. As noted above, on pages 4-5, Commission counsel later abandoned or agreed to the dismissal of paragraphs 16(b), (f) and (g) and 17(j). (See "Order (1) Dismissing Paragraphs 16(b) and 17(j) Of The Complaint, and (2) Denying GM Motion For Interim Rulings To Guide Further Hearings" dated September 29, 1978; Tr. 10581). [8]

THE INTERVENORS

14. The National Automobile Dealers Association (NADA), which had on July 7, 1976, 8,690 members who were GM dealers, was permitted to intervene by order dated January 11, 1977. Counsel to

NADA has participated in the trial by questioning witnesses, calling his own witnesses, offering exhibits, making oral arguments, and submitting proposed findings and briefs.

15. In addition, the Automobile Service Councils, Inc. (ASC) which had over 2,000 independent body shop operators as members on October 3, 1978, was permitted to intervene by order dated October 16, 1978. Counsel to ASC has participated by filing briefs.

THE HEARINGS

16. Prehearing conferences were held in Washington, D.C. on April 7, July 29, September 22, October 29, and November 23, 1977, and on January 24, 1978 (CCPF, p. 1).

17. Both parties and intervenor NADA exchanged trial briefs in support of their respective positions. These included legal arguments and lists with copies of proposed exhibits and the names of witnesses with short narrative summaries of expected testimony.

18. The hearings began in Washington, D.C., on May 15, 1978. The record for the reception of evidence was closed on May 22, 1979. In all, there were 82 days on which hearings were held, including an inspection of the GM parts warehouse in Baltimore, Md. There are approximately 16,285 pages of transcript. (Note: There are some gaps in pagination due to changes from "routine" to "daily" or from "daily" to "rush" copy, e.g., Feb. 2-5, 1979, April 18, 1979. When such changes occur the reporter must estimate the number of pages required for transcription of notes. If the estimate is low a gap in pagination results.)

19. Sixty witnesses testified for the Commission, 21 testified for GM, and 3 testified for NADA (RB 1). Of these, 24 were IBS witnesses from the following seven trade areas: Buffalo, New York; Mansfield, Ohio; Cleveland, Ohio; New Orleans, Louisiana; St. Louis, Missouri; Spokane, Washington; and Tucson, Arizona (ALJX 26). In addition, testimony of two IBS witnesses was stipulated (CCPF 106; RRB 106).

THE STRIKING OF TESTIMONY AND REJECTION OF EXHIBITS

20. The testimony of four GM witnesses was stricken because counsel for GM declined to observe my order that they were to hand over to Commission counsel pretrial reports of interviews [9] of witnesses. My "Order Granting Motion of General Motors Corporation for Production of Interview Reports" dated April 10, 1978, called for each side to provide the other with ". . . all interview reports relied upon in connection with the witness's testimony" one week before a witness testified. The purposes of the order were to have

each side apprise the other, within reason, of testimony to be elicited by Commission counsel in connection with the allegations in the complaint, the defenses of GM, to encourage counsel to execute stipulations, and otherwise to expedite the trial (Tr. 10619-20). The order was discussed at considerable length at the hearing on September 27, 1978 (Tr. 10581-10629; 10672-10693). Commission counsel made it clear that he had maximally complied with the order (Tr. 10624-25).

21. On that date, in the course of the hearing (Tr. 10582) and later in connection with the testimony of GM witnesses Cann on October 2 (Tr. 11119-11179), Mack on October 5 (Tr. 11555-11701), Faulkner on October 6 (Tr. 11718-11817), and Vulbrock on October 17 (Tr. 12280-12354), Commission counsel raised the question as to whether any interview reports existed.

22. Counsel for GM said that he had no document/interview reports within the purview of the order and that, even if he did, an ALJ lacked authority to compel what the April 10 order required. Thereafter, Counsel for GM showed me some papers/notes. After examining them I concluded they were interview reports within the scope of the order. However, Counsel for GM continued to decline to hand over copies to Commission counsel. After I made some handwritten marks on them to identify those portions deemed privileged, the reports were returned to counsel for GM. The "Order Denying Motion for Reconsideration of Order of September 27, 1978, Requiring the Production of Interview Reports" dated October 13, 1978, elaborates on the action taken at the hearing.

23. The "Order Modifying Order Granting Motion of General Motors Corporation for Production of Interview Reports" dated October 31, 1978, ordered the striking of the testimony of the four GM witnesses. (See Commission Rule 3.38). Thereafter, the four documents were placed in a sealed envelope and delivered to the Commission's Secretary so that they may be examined by the Commission upon its review. (See "Order Re In Camera Documents Delivered to the Commission's Secretary" dated Feb. 14, 1979).

24. The testimony (Tr. 8750-8787) of a Commission witness whose name and testimony are *in camera*, at his and Commission counsel's request was stricken as being cumulative (Tr. 8787) (CCRB ¶ 2). Parts of the testimony of Commission witness Perschall were stricken for a time because the parts were unreliable, due to their being based on documents prepared by another person, with these foundation documents either not produced at the hearing or not being credible. However, the [10]testimony was reinstated without objection by counsel for GM after underlying documents were

provided. (See "Order Reinstating Stricken Testimony of Commission Witness Kenneth Perschall" dated May 25, 1979).

25. In accord with Commission Rule 3.43(g), the rejected exhibits and testimony remain a part of the official record, although they have not been considered in reaching or preparing this Initial Decision.

BASES FOR THE FINDINGS OF FACT

26. The following findings of fact are based on a review of the allegations made in the complaint, respondent's answers, the documentary evidence, and consideration of the demeanor of the witnesses.

27. The proposed findings of fact, conclusions, and proposed orders, together with reasons and briefs in support thereof filed by each side and by the intervenors have been given careful consideration. Many proposed findings have been adopted as submitted or in substance. To the extent not adopted by this decision in the form proposed or in substance, they are rejected. Further, any motions not ruled upon are denied.

28. For convenience, the findings of fact include references to supporting evidentiary items in the record. Such references are intended to serve as guides to the testimony, evidence, and exhibits supporting the findings of fact. They do not necessarily represent complete summaries of the evidence considered in arriving at such findings.

FINDINGS OF FACT

Background

29. The Commission investigation of the distribution and sale of crash parts which, essentially, are fenders, grilles, moldings, etc. began in the mid-1960's. Operators of IBSs had complained to the Commission that automobile dealers were charging them excessive prices for crash parts, thereby making it difficult to compete with dealers for collision repair business. The IBSs sought to buy crash parts at the same price that automobile dealers paid for parts used in their own repair shops (ALJX 14M, Supp. to CX 7014).

30. Prior to September 12, 1967, GM simply provided its dealers with a suggested general trade price to be charged wholesale purchasers of crash parts (CX 7015A). GM estimates that under that system wholesaling dealers allowed purchasers at wholesale an average discount in excess of 18% from the list price (CX 7015B).

31. On September 12, 1967, GM proposed a plan to its [11]dealers

