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HOW MUCH LIGHT HAS "SUN OIL" SHED ON "MEETING COMPETITION" UNDER THE ROBINSON-PATMAN ACT?

The latest episode in the saga of Robinson-Patman interpretation is the recent decision handed down by the Supreme Court, *Federal Trade Commission v. Sun Oil Co.*[1] The case has settled that the availability of the meeting competition defense is open only to the seller who meets his own competition and not to one who meets his customer's competition. Many expected that more than this would be decided in this long awaited case, but the Court went no further than it had to in order to dispose of the question raised on the record.

To nationwide sellers, in the oil industry in particular, the meeting competition defense is a vital item in pricing strategy. The Justices, while limiting their holding to the narrow fact issue, have shown what methods they employ to interpret this statute, which is known for its lack of clarity. Furthermore, they have disclosed their present feeling as to where Robinson-Patman fits into the overall antitrust picture and as to what role it should play in the modern-day market place. This "feeling of the Court" is but one of the many factors in the formulae used by counsel who must tell advice seeking sellers what they can and cannot do. *Sun* is not the last word, particularly in the gasoline market, where the recent growth of independents has brought back price competition at a time when the "majors" would prefer to have none of it.

The respondent, Sun Oil, is a major integrated oil company. In 1955 it was selling its regular gasoline to thirty-eight independent retail Sunoco dealers in the Jacksonville, Florida area at the price of 24.1 cents per gallon. At that time all "major" brands of regular gasoline, including Sunoco, were selling at the prevailing retail price of 28.9 cents per gallon. One of Sun's independent retailers was Gilbert McLean, who sold his gasoline at the 4.8 cent per gallon gross profit margin, at a station leased to him by Sun. In June 1955 a new station, owned and operated by the Super Test Oil Company, opened for business across the street from McLean. The new station sold Super Test, a "non-major" brand of regular gasoline, at 26.9 cents per gallon.[2] Soon after opening, however, Super Test commenced a series of sporadic and temporary price reductions.[3] This practice continued through the Summer of 1955 and was particularly effective in causing a substantial reduction in McLean's gallonage and profits. McLean, maintaining his pump price of 28.9 cents per gallon, continued to lose business through the Autumn

[1] 371 U.S. 505 (1963).

[2] "Private" or "non-major" brands usually sell at 2¢ per gallon less than the prevailing area price for "major" or "name" brands. At this price differential the entry of a "non-major" into the market will not have any substantial competitive repercussions. It is likely that McLean's business would not have been significantly affected by Super Test had their price remained at the 26.9¢ per gallon level. See deChazeau and Kahn, Integration and Competition in the Petroleum Industry 466 (1959); Comment, Competition in Gasoline Retailing: A Price War, 101 U. Pa. L. Rev. 643, 645 (1953).

[3] Super Test adopted a practice of "Special Sales" and would drop its price for a weekend or other short periods to a level of 21.9¢ per gallon, and on one occasion posted a 20.9¢ per gallon price. 371 U.S. at 508.

months, and relief requested from Sun in the form of a price concession was not forthcoming. In December McLean again requested a discount, informing Sun that if he could not post a 25.9 cents per gallon price, he would be forced out of business. Super Test was then selling at 24.9 cents per gallon. Sun responded with a discount to McLean of 1.7 cents per gallon off of the regular tank wagon wholesale price, and he then reduced his gross margin to 3.5 cents per gallon. McLean's gallonage went up immediately, but other Sunoco dealers in Jacksonville lost business when their customers went to McLean's station to purchase the same "Blue Sunoco" at a cheaper price. Finally, in February a major price war broke out in the vicinity and Sun, along with the other major oil companies, gave all their dealers in the area the same discounts. Because of its special treatment to McLean, however, Sun was charged by the Federal Trade Commission with a violation of the Clayton Act, as amended by the Robinson-Patman Act.[4] Specifically, the Commission alleged that Sun's concession to McLean was a discrimination in price among its purchasers which was injurious to competition in that it resulted in a loss of business to other Sunoco dealers not favored by the discount. The Commission found[5] that Sun's action comprised the necessary elements of a section 2(a) offense and rejected Sun's contention that its actions were justified under section 2(b) of the same act, as a lower price offered ". . . in good faith to meet an equally low price of a competitor. . . ."[6] On appeal the Fifth Circuit reversed[7] the Commission, holding that the defense was available to a seller who offers a discriminatory price to a customer in order to enable that purchaser to meet the prices of the purchaser's own competitors.[8]

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[4] 49 Stat. 1526 (1936), 15 U.S.C. § 13(a) (1958). Section 2(a) of the act, as amended, provides in part:

> It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them . . .

[5] Sun Oil Co., 55 F.T.C. 955 (1959).

[6] 49 Stat. 1526 (1936), 15 U.S.C. § 13(b) (1958). Section 2(b) of the act, as amended, provides in part:

> Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however,* That nothing herein contained . . . shall prevent a seller from rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

[7] Sun Oil Co. v. FTC, 294 F.2d 465 (5th Cir. 1961).

[8] The court stated that the statute as applied to this case called for a broad and simple construction:

The Court of Appeals found the defense applicable by viewing McLean as a conduit through which Sun was actually competing with Super Test. On certiorari to the Supreme Court the Fifth Circuit was reversed. HELD: In order to claim the benefit of the 2(b) meeting competition defense the seller must show that the lower price which he meets is a lower price of his own competitor. On the facts, Super Test, rather than being a competitor of the Sun Oil Company, was no more than a retail competitor of McLean. There was no evidence showing that a competitor of Sun had offered or sold to anyone at the lower price needed to justify Sun's purported competitive concessions.

The Clayton Act of 1914, under section 2, prohibited certain price discrimination practices which either lessened competition or tended to create a monopoly.[9] The act was aimed at the predatory pricing tactics used by large sellers to eliminate local competition and thus it was an endeavor to protect the economy and the consumer by maintaining fair and free competition on the sellers' level, *i.e.*, primary line of competition.[10] The need for greater legislative protection became apparent with the advent of the mass distributor or chain store. These big buyers demanded special discounts from suppliers on their large orders, while the small buyers had to pay the regular price and at the same time compete for the consumer business with the chains.[11] The non-favored customers of the price discriminating sellers

> [U]nder Section 2(b) a supplier may be in competition with a supplier-retailer. Here, a supplier selling gasoline that is in competition with the gasoline of a supplier-retailer and marketing its gasoline through an independent filling station that is in direct competition with a filling station owned and operated by the supplier-retailer is in competition with that supplier-retailer and entitled to assert the defense of meeting competition in good faith.

Id. at 481.

From this statement it is apparent that the Court of Appeals assumed that Super Test was an integrated supplier-retailer, and, while the record does not support this conclusion, the Commission did not bring the point to the attention of the circuit judges. The Supreme Court, however, decided the case on the facts disclosed on the record and treated Super Test as being engaged only in retail operations, 371 U.S. at 512. See note 33, infra.

[9] 38 Stat. 730 (1914). Section 2 provided:

> That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities, . . . where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided,* That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes any due allowance for differences in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition . . . .

[10] A typical example of the pricing practices aimed at is found in Porto Rican Am. Tobacco Co. v. American Tobacco Co., 30 F.2d 234 (2d Cir.), cert. denied, 279 U.S. 858 (1929).

[11] Since different prices could be charged for the different quantities of goods sold under Section 2 of the Clayton Act, see note 9 supra, the big buyers, the chain stores, could demand substantial quantity discounts and thereby undercut the small independent retailers on the price offered to the consumer.

Some commentators feel that the inadequacy of the general "meeting competition" defense of section 2 also initiated the 1936 changes. Berger and Goldstein, Meeting

were being injured, but had no Clayton Act protection.[12] It was to aid these small businessmen on the secondary line of competition that the Robinson-Patman amendments were adopted in 1936. Section 2(a) now prohibits price discriminations causing injury to any level of competition.[13] The meeting competition proviso affords a complete defense[14] to an alleged violation of section 2(a) when the discriminatory low price is offered in good faith[15] to meet the lawful[16] and equally low price of a competitor, and provided that the price is offered in a defensive measure[17] in individual competitive situations.[18]

The Court stated that the precise question raised in the present case had not been decided before,[19] and only in one other case was a closely similar problem presented. In *Enterprise Industries Inc. v. Texas Co.*[20] the plaintiff was one of a number of independent retail stations which purchased gasoline from the defendant in the Hartford, Connecticut area. Because of a full scale price war in the area, Texaco, like most other "majors" then selling in the market, was granting discounts to the stations engaged in the price war. The plaintiff, while located in this vicinity, was also close to a turnpike and maintained his prices at normal levels in order to realize a high gross margin on his sales, a substantial portion of which were to transient motorists who were unaware of the price war. Texaco refused to grant any price concessions

Competition Under the Robinson-Patman Act, 44 Ill. L. Rev. 315, 324 n.43 (1949). The Court also indicated that it felt Congress at least had this concern when the amendments were finally adopted. 371 U.S. at 516. Other writers point out that in no court case was the meeting competition proviso successfully invoked to excuse a proven unlawful price discrimination. Rowe, Price Discrimination Under the Robinson-Patman Act 210 (1962). Nevertheless, the meeting competition provision *was* amended with the rest of the section in 1936. See notes 9, 4 & 6 supra for the changes by comparison, and Rowe, supra at 212-15, for an analysis of these changes as made by Congress.

[12] Mennen Co. v. FTC, 288 Fed. 774 (2d Cir.), cert. denied, 262 U.S. 759 (1923).

[13] Supra note 4.

[14] Standard Oil Co. v. FTC, 340 U.S. 231 (1951). The FTC first contended that the 2(b) defense was merely procedural. It asserted that a prima facie case of a 2(a) violation was made by showing a price discrimination and 2(b) had only the effect of rebutting this 2(a) case, but if actual harm to competition were shown the Commission gave no weight to the defense. The Supreme Court rejected this interpretation, however, and established that section 2(b) afforded a complete and absolute defense to a charge of price discrimination otherwise unlawful under section 2(a).

[15] FTC v. Standard Oil Co., 355 U.S. 396 (1958); Standard Oil Co. v. Brown, 238 F.2d 54, 58 (5th Cir. 1956).

[16] FTC v. Cement Institute, 333 U.S. 683, 725 (1948).

[17] FTC v. A. E. Staley Mfg. Co., 324 U.S. 746 (1945); Cf. Sunshine Biscuits Inc. v. FTC, 306 F.2d 48 (7th Cir. 1962), noted in 4 B.C. Ind. & Com. L. Rev. 471 (1963).

[18] FTC v. A. E. Staley Mfg. Co., supra note 17; Standard Motor Prods., Inc. v. FTC, 265 F.2d 674 (2d Cir.), cert. denied, 361 U.S. 826 (1959); FTC v. Standard Oil Co., supra note 15, at 401.

[19] 371 U.S. at 512.

[20] 136 F. Supp. 420 (D. Conn. 1955), rev'd on other grounds, 240 F.2d 457 (2d Cir.), cert. denied, 353 U.S. 965 (1957). Prior to 1955 the Commission was of the opinion that suppliers who acted in a manner similar to Sun in the present case were within the protection of the 2(b) defense. In 1955 it changed to its present position, *i.e.*, the non-availability of the defense. The statement of change did not rely on the *Enterprise* decision, but noted that their new policy was consistent with that case. Hearings on the Gasoline Price War in New Jersey before the Senate Select Committee on Small Business, 84th Cong., 2d Sess. 458-59 (1955-56).

to the plaintiff as long as he did not lower his pump price to the prevailing "war-time" level. Plaintiff brought suit for treble damages in the district court alleging injury from Texaco's 2(a) price discrimination against him. The court rejected Texaco's argument that the discrimination was justified under 2(b) and held that the price was not offered to meet the equally low price of a competitor.[21] The court, while admitting that it might be ". . . fiction to speak of price competition at the oil company sale to the station level," maintained that the statute only provides for a defense when prices are met on the seller's level of competition.[22]

The Supreme Court, while mentioning that *Enterprise* supports the Commission in the present case, did not state whether it agreed or disagreed with that decision. Mr. Justice Goldberg spoke for the Court in an opinion which was expressly narrow[23] and specifically limited to the facts. He concluded that ". . . 2(b) of the Act contemplates that the lower price which may be met by one who would discriminate must be the lower price of his own competitor. . . ."[24] The Court based its interpretation on the clear wording of the statute as it emerged from hearings, committee studies and floor debates, amended for Congressional adoption. This meaning was found to be in alignment with the overall Robinson-Patman principle of competitive equality in the market place.

A judicial examination of the wording in both 2(a) and 2(b)[25] led to the conclusion that "competitor" as used in the latter section could have a sensible meaning only if it referred to the seller's competitor. As did the District Judge in the *Enterprise* case,[26] the Court distinguished the terminology of 2(a), where it provides protection from injury on any level of competition, from the 2(b) defense, which is singularly available on the seller's level. From this it was reasoned that Congress intended not to allow the seller to meet, either directly or by way of a two-step price reduction, anyone's competition but his own.

Contrasting the original Clayton Act meeting competition provisions[27] with those presently found in 2(b), the Court sensed an intent on the part of Congress to tighten up the defense. An inspection of this movement and the language of the House Committee which recommended the adopted amendments[28] revealed no indication that the competitor of 2(b) is other than the seller's competitor.

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[21] Supra note 20, at 421, ". . . Texas could justify discrimination only by a showing that it dropped its price to the other stations to meet an equally low price made available to those other stations by a competing oil company." See critical comment in 66 Yale L.J. 935 (1957). But see Rowe, supra note 11, at 251-53.

[22] Supra note 20, at 421.

[23] 371 U.S. at 512 n.7, 529 n.19.

[24] Id. at 529. This statement is the holding of this case and will most probably stand as the law on this point, but, as did the Court in this case, subsequent decisions will require courts to determine who the seller's competitor actually is.

[25] Supra notes 4 & 5.

[26] Supra note 22.

[27] Supra note 9.

[28] "It should be noted that while the seller is permitted to meet local competition, it [section 2(b)] does not permit him to cut local prices until *his competitor* has first offered lower prices, and then he can go no further than to meet those prices." (Emphasis

Sun maintained that since their pricing policies aided a small businessman in his competitive effort, its action ought to be justified under section 2(b). The Court, while agreeing that it was for the benefit of the small independent businessman that the Robinson-Patman bill was adopted,[29] pointed out that the defense can be invoked only when the elements called for in the statute are shown to be present. Sun will not be permitted to cause harm to the non-favored dealers merely because it has aided a select member of their group with its pricing practices. The opinion set down a guiding ideal to be used in the application of the statute: "In short, Congress intended to assure, to the extent reasonably practicable, that businessmen at the same functional level would start on equal competitive footing so far as price is concerned."[30] To allow one retailer's supplier to grant a discriminatory price concession to that retailer in order to enable him to lower his price to the consumer and thus meet the price of another independent retailer, who has the benefit of no price relief from his supplier, puts the first supplier into the market place with an unfair advantage. This practice is, as Sun conceded, the supplier meeting the price of a competing retailer which, if allowed, would run squarely against the ideal of fair and equal competition.

Having established that it is the price of the seller that must be met, Mr. Justice Goldberg proceeded to show that Super Test, being no more than a retailer, could by no stretch of the imagination be the competitor of supplier Sun in the purview of the 2(b) defense. Sun had maintained that *they competed* for the consumer gasoline dollar *against Super Test*, the retail station across the street from McLean. Thus viewed, independent McLean was but a "conduit" used by Sun in its competition with Super Test.[31] To allow this approach would be tantamount to allowing the 2(b) defense to extend to all levels of competition and not merely to the seller's level. The Court was convinced that the conduit theory, if allowed, would be a return to the pre-1936 Clayton Act "meeting *competition*" provision. "Restriction of the defense to those situations in which a supplier responds to the price concessions of its own competitor—another supplier—maintains general competitive equities."[32]

The Court has dealt with and disposed of this case with the judicial self restraint of a Constitutional decision. It has answered the question as to *whose* price a discriminatory seller must meet to avail himself of the 2(b) defense, but at the same time has raised a number of other questions (discussed infra) and has left them unanswered. The case was decided on the facts as shown on the record, *i.e.*, that Super Test is a retailer only and receives no price cut from its own supplier.

Yet these facts portray but one of the many competitive arrangements in

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Supplied.) Report of the House Committee on the Judiciary, H.R. Rep. No. 2287, 74th Cong., 2d Sess. 16 (1936).

[29] See note 11, supra.

[30] 371 U.S. at 520. The Court relied on the language of the House Report, supra note 28, at 6, in formulating this principle.

[31] The Fifth Circuit dealt with Super Test as an integrated supplier-retailer, and based its decision on this premise, supra note 7, at 476-77, 481.

[32] 371 U.S. at 522-23.

the present day market place.[33] The main question yet to be answered is whether or not the Court will make the 2(b) defense available to a supplier who grants a discriminatory price concession to a customer in order to enable that customer to meet the equally low price of a competing retailer, when the other retailer is either receiving a helping discount from his supplier, or is himself an integrated supplier-retailer.[34]

Were this question presented to the Court, it would have no problem finding the requisite competitive arrangement—Sun in this case, as McLean's supplier, facing Super Test's supplier as a competitor.[35] It is another matter, however, as to whether or not the competitor's price being met must have been offered to the retailer who is favored with the respondent's concession. On these facts must Super Test's supplier (Sun's competitor) first offer the low price to McLean before Sun can meet that price in its sales to him? While the Court leaves the door open on this point,[36] it would seem that the statutory terminology does not compel such a requirement, and there is no indication that Congress intended it as a prerequisite to an invocation of the defense. Also, overall Robinson-Patman policy would not be violated by disregarding the Commission's insistence on a particular offer as a prerequisite to 2(b), in as much as the spirit of the law is to put the sellers into the market place ". . . on equal competitive footing as far as price is concerned."[37] With this competitive equality, any difference in price to the consumer would reflect independent enterprising and efficient merchandising, both of which have the Court's blessing[38] and are in line with the free competition that is the overall objective of antitrust legislation. This consideration of the *Sun* opinion indicates that the Court might well have followed the Court of Ap-

[33] It is submitted that the record of this case frames a factual situation which is as a practical matter nonexistent. The Super Test Oil Company, which owns and operates 65 retail outlets, most probably occupies a market position in the oil industry beyond that of a retailer, and, if it does not purchase its gasoline as a distributor, it purchases it at a price lower than did McLean prior to Sun's price concession. This is still probably true, even when the 2¢ per gallon non-major brand price disparity is taken into account, along with a factor reflecting the high volume (cost justifying) savings that would be passed along to Super Test by its supplier. See Dirlam and Kahn, Leadership and Conflict in the Pricing of Gasoline, 61 Yale L.J. 818, 833 & n.48 (1952).

[34] The Court recognizes that this is a situation quite different from the present case, and this is expressly noted in their opinion, 371 U.S. at 512 n.7. The situation is the same whether the retail level competition comes from an integrated supplier-retailer or from an independent retailer who is receiving discounts from his supplier. See Note, 75 Harv. L. Rev. 429, 432 (1961). The facts of the *Enterprise* case were similar in that the other majors were granting the same discounts to their stations as Texas was granting its favored buyers to meet these majors, see note 43 infra.

[35] See text accompanying note 32 supra.

[36] The Court pointed out that it did not have to resolve this question in the decision of the present case, 371 U.S. at 529 n.19. The district court in the *Enterprise* case took the view that such an offer was required to establish the defense, supra note 20, at 421. This is the Commission's position on the matter. See the recent Commission Ruling opinion, Forster Mfg. Co., FTC Docket No. 7207, 3 Trade Reg. Rep. ¶ 16,243, at 21,085 (1963). Commentators have taken differing views on this requirement. See Berger and Goldstein, supra note 11, at 325, in accord with the Commission; but see Rowe, supra note 11, at 253, where the Fifth Circuit view of the question in passing on the present case is found to be "both realistic and compatible with the statutory text."

[37] Supra note 30.

[38] 371 U.S. at 523.

peals in its disposition of the case had it taken the same view of the record that was relied on below,[39] which treated Super Test as an integrated supplier-retailer.

Other perplexing problems in this area cannot be overlooked merely because they were not considered in this case. The Court and the Commission both treated Sun as a supplier or distributor, one step on the competitive scale above the retail dealer, and, for the disposition of this case, no more was required.[40] Had Super Test been shown to be an integrated supplier-retailer, however, the FTC might have changed its tactics. Sun is an integrated *refiner-supplier*,[41] while it is most probable that Super Test is no more than an integrated *supplier-retailer* who purchases its gasoline from a *refiner*.[42] Under these circumstances, would Sun be Super Test's competitor? Would the Court apply the 2(b) defense to a situation in which an integrated *refiner-supplier* grants a discriminatory price concession designed to enable his customer to meet the competition of a *retailer* who is aided by his *supplier* or who is himself an integrated *supplier-retailer*? Would the Court require that the respondent seller first show that the competing *supplier* or *supplier-retailer* was really an integrated *refiner-supplier-retailer* or an integrated *refiner-supplier*, or was receiving enabling price concessions from the *refiner* who sold the gasoline to him?[43] An imbalance between the levels of competition where the price reductions originate would seem fatal to the availability of the defense in the light of the Court's equality of competitive opportunity interpretation of the statute.

In its opinion, the Court stated that Robinson-Patman ". . . prohibits discriminations generally, subject only to defenses not based upon size."[44] The Court goes on to say that competitive ability and size have no application under 2(b).[45] However, economic power has much weight with the Court in interpreting section 2 as a whole, and thus necessarily in its application of 2(b).[46] The fact that the Court stated its viewpoint on these matters in *this* case is significant in that the injury upon which the complaint was based was not injury to Super Test (primary line injury) and was not the result of Sun's superior economic power; but rather it was injury to the other Sunoco dealers (secondary line injury). The Court injected some of its economic theory into the decision when it remarked that the "private" or "non-name"

[39] Two Justices, while agreeing with the decision of the present case, felt that Sun should be given the chance to prove Super Test's competitive structure and that the case ought to be remanded to the Commission for introduction of evidence on this matter, should any be available. They felt that a final decision of the issue, set on facts as those viewed by the Fifth Circuit, would resolve questions that this decision leaves unanswered. 371 U.S. at 529-30.

[40] The Court took the trouble to identify the Sun Oil Co. as being one of the nation's larger industrial corporations and the thirteenth largest integrated oil company. 371 U.S. at 507 n.3.

[41] 55 F.T.C. 955, 956 (1959).

[42] See generally Dirlam and Kahn, supra note 33.

[43] In the *Enterprise* case the competition was from other major suppliers, supra note 20, at 421. This problem would not arise in such a case where "majors" meet the price of "majors" since all are integrated over the same levels of competition.

[44] 371 U.S. at 522.

[45] Ibid.

[46] Id. at 522-23.

brand challenge from independents such as Super Test may be the only meaningful source of price competition offered against the majors in the oligopolistic environment of the oil industry.[47] Since the independents have neither the economic strength nor the competitive structure of the major integrated oil companies, any price discrimination[48] which is injurious to them will be difficult to bring within the limitations of the 2(b) defense when based upon a meeting of *their* lower price. Can these smaller companies who do not compete on the refiner level qualify as "2(b) competitors" of a major integrated oil company?[49]

These issues have been raised as questions and it is submitted that such is the unanswered state in which they presently stand. The Commission and the Court seem to be the only sources of a sure and reliable solution. But business cannot wait. Educated speculation, along with a reasoned interpretation of existing authority, and perhaps a good measure of modern day soothsaying will continue to serve the advisory needs of those who daily enter the market-place, hoping both to stay within the law and also "in the black."

JOSEPH H. SPAIN

[47] Id. at 523. See H.R. Rep. No. 1423, 84th Cong., 1st Sess. 16 (1955).

[48] When the injury is on the primary line, i.e., when the harm is received by competing sellers, the price differential need not exist in the same area of competition, FTC v. Anheuser-Busch, Inc., 363 U.S. 536 (1960). This type of discriminatory pricing practice was aimed at in the original Clayton Act, supra notes 8 and 9.

[49] A presently pending complaint involves this type of fact situation, Pure Oil Co., FTC No. 6640, 3 Trade Reg. Rep. ¶ 16,111 (1962).