Supreme Court Basing Point Decision On Maximum Price Regulations

Agency Points Out That Sellers Found In Violation Of Robinson-Patman Act May Obtain Relief Under Supplementary Order No. 41

Further Study Required Before O.P.A. Can Determine What Price Regulations, If Any, Will Have To Be Amended

WASHINGTON, April 27.—Grave concern in the metal industries over the sweeping effect of the Supreme Court decision which threatens to outlaw the basing point price structure of these industries, will be aggravated by a statement issued today by the Office of Price Administration.

While admitting that O.P.A. attorneys have not completed a full study of the implication of the court ruling as concerns O.P.A orders, that agency said:

"While this study is being completed, compliance with the regulations will not compel any seller to violate the Robinson-Patman Act. The price discrimination that might, under some circumstances, flow from charging the full maximum price permitted by a regulation, can always be avoided by charging a lower price that will not cause discrimination in favor of the seller's other customers. A seller who has been found by the Federal Trade Commission or a court to be in violation of the Robinson-Patman Act and who would sustain substantial hardship if he eliminated price discrimination by lowering his higher prices to conform to that Act, may apply under Supplementary Order No. 41, issued by O.P.A. two years ago, for permission to increase his lower maximum price to those purchasers in whose favor he has been found to have discriminated."

From this statement O.P.A. is seen as putting industry on notice that it has within O.P.A. price regulations the relief method by which they can clear themselves of violations of the court decision and at the same time offers a method through which sellers who have been absorbing freight may obtain price increases to permit them to clear themselves of violation of the court ruling on this score.

Trade reactions are mixed on the effects of the decision. However, when it is seen that the Federal Trade Commission's fight on the basing point structure is an old one which was aimed primarily against the steel industry's use of the basing point structure and that F.T.C. officials see the ruling as having consequential effect on cases now pending against companies in that industry, it is believed that industry opinion will solidify around the conclusion that the danger ... not implied.

(Continued on page 3)

O.P.A. Issues Statement On Effect Of Supreme Court Basing Point Decision On Maximum Price Regulations

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The O.P.A. statement concerning the court ruling as concerning their regulations follows:

'The decisions of the United States Supreme Court on Monday, April 23, 1945, in the cases of Corn Products Refining Company vs. Federal Trade Commission and Federal Trade Commission vs. A. E. Staley Manufacturing Company have led to inquiries as to the plans of the Office of Price Administration with respect to certain of its maximum price regulations which use the basing point system in establishing maximum prices.

"The two decisions hold that adherence to a basing point system of pricing under circumstances such as were found by the Trade Commission to have existed in those cases constitutes unlawful discrimination violative of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act. It seems clear from the decisions, however, that basing point pricing is not violative of the law under all circumstances.

"Whether, and to what extent if any, it may be necessary for maximum price regulations to be amended in view of the Corn Products and Staley cases can be determined only after careful study of the two Supreme Court decisions."

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