Interlocutory order upholding hearing examiner's granting of motion to amend complaint and denying respondents' motion for bill of particulars.

This matter having come on to be heard by the Commission upon respondents' interlocutory appeal from the hearing examiner's ruling granting the motion of counsel supporting the complaint to amend the complaint and the hearing examiner's ruling denying respondents' motion for a bill of particulars, and the answer of counsel supporting the complaint in opposition to the appeal; and

It appearing that the amendment allowed by the hearing examiner serves to clarify the complaint and that such amendment is within the scope of the proceeding initiated by the complaint and does not in any way change the original cause of action stated in the complaint; and

It further appearing that the complaint sufficiently informs the respondents as to the nature of the statutory violation with which they are charged and that the hearing examiner properly denied respondents' motion for further particulars:

It is ordered, That respondents' appeal be, and it hereby is, denied.

It is further ordered, That respondents may, within thirty (30) days after service upon them of this order, file answer to the complaint herein, as amended by the hearing examiner's order of June 30, 1959.

SPERRY RAND CORPORATION

Docket 6701. Order, Sept. 11, 1959

Order denying motion to reopen Clayton Act proceeding—disposed of by a consent order on Nov. 3, 1958, 55 F.T.C. 655—following amendment of the Act to provide for more expeditious enforcement of orders and imposition of penalties for violations.

Respondent, Sperry Rand Corporation, having filed a motion requesting the Commission to reopen this proceeding for the purpose of modifying (in a manner not specified) the order to cease and desist entered herein on November 3, 1958; and

Said respondent having alleged in support of its motion (1) that certain bona fide questions exist as to the propriety of the respondent's pricing practices under the terms of the order, (2) that since the entry of said order, the Clayton Act has been amended by the enactment of Public Law 86–107, approved July 23, 1959, to provide for the more expeditious enforcement of orders issued under said Act, and (3) that it would be inequitable for the legality of the respondent's pricing practices to be determined under the procedures set forth in said Public Law 86–107, providing for the imposition of civil penalties of not more than $5,000 for each violation of an order issued under the Clayton Act which has become final, rather than under the procedures in effect prior to the amendment, whereunder there were no such penalty provisions; and

It appearing that the order to cease and desist was entered in disposition of this proceeding pursuant to and in strict conformity with a voluntary agreement theretofore executed by the respondent and counsel in support of the complaint expressly providing for the entry thereof, and in which agreement the respondent, among other things, expressly waived all of the rights it may have had to challenge or contest the validity of the order; and

The Commission being of the opinion that the changes in the procedures for the enforcement of orders to cease and desist issued under the Clayton Act brought about by the enactment of Public Law 86–107 afford no basis for the modification of a previously entered order and that the respondent has not otherwise demonstrated a reasonable probability that the order entered herein should be modified: