GOJER, INC.

Docket 7851. Order, Jan. 19, 1961

Order denying motion to reopen price discrimination proceeding in which consent order to cease and desist was entered Dec. 1, 1960 (57 F.T.C. 1228), possible trade practice rules imposing no legal injunction and no facts being presented to indicate need for industry-wide conference.

The respondent, by motion filed January 6, 1961, having requested the Commission to reopen this proceeding and, in effect, hold in abeyance the order to cease and desist contained in the hearing examiner's initial decision adopted by the Commission on December 1, 1960, it being the respondent's contention that such action would be justified because (1) the respondent wishes to file an application for a trade practice conference for its industry which it hopes will contribute to a better understanding on the part of the industry members of what constitutes fair trade practices, and (2) the respondent was the first company in its industry to be formally charged with a violation of the Clayton Act, as amended, and a stay of the order would obviate a disadvantage which the respondent allegedly will suffer if prohibited from engaging in practices open to its competitors; and

The Commission having considered the petition and having concluded that the showing made fails to demonstrate that granting the relief requested would be in the public interest for the reasons (1) that trade practice rules, even if ultimately approved for the respondent's industry, and even if they should cover the practices prohibited by the order to cease and desist, would be in the nature of advisory opinions for the guidance of businessmen acting on a voluntary basis and would not impose upon the industry members, including the respondent, any legal injunction to refrain from the activities to which they would relate, and (2) that the respondent has presented no facts from which the Commission might conclude that the respondent's competitors actually engage in the practices prohibited to the respondent or, if so, whether such practices may or should be dealt with through the medium of a voluntary and industry-wide conference or in separate adjudicative proceedings, and has provided the Commission with no basis for appraising the adverse effect on competition which might result from postponing the order prohibiting the respondent from continuing pricing practices long recognized as inimical to competition; and

The Commission being unaware of any other facts or circumstances which might justify a stay of the order to cease and desist:

It is ordered, That the respondent's motion be, and it hereby is, denied.

AMERICAN METAL PRODUCTS COMPANY ET AL.

Docket 7365. Order and Opinion, Jan. 23, 1961

Interlocutory order remanding case to hearing examiner for modification and to provide for simultaneous filing by both parties of proposed findings instead of successive filing.

OPINION OF THE COMMISSION

By the COMMISSION:

In his order of November 15, 1960, closing this proceeding for the reception of evidence, the hearing examiner fixed February 3, 1961, as the date for filing of proposed findings and conclusions by counsel supporting the complaint, and designated March 6, 1961, for filing of such proposals by the respondents. The order additionally granted counsel supporting the complaint leave to file reply to respondents' suggested findings within a time to be subsequently designated. Counsel supporting the complaint seasonably filed interlocutory appeal and contends that the order's provision for successive instead of simultaneous filings of those proposals is inequitable and constitutes an improper departure from established procedure in Commission cases. Since the question thus raised involves an interpretation of a rule of practice having general applicability to all of the Commission's adjudicative proceedings, the Commission feels that an expression of its views on this subject will be of material assistance to both counsel and hearing examiners in future proceedings and, consequently, the appeal is being treated as one to be entertained and decided.

Section 3.19 of the Commission's Rules accords parties the right to file proposed findings and conclusions at the close of the reception of evidence or "within a reasonable time thereafter" as fixed by the hearing examiner. Counsel supporting the complaint does not contend, however, that the time allotted for preparation of the suggested findings which are to be initially filed by him is insufficient, and disposition of the appeal accordingly does not turn on this aspect of the time disparities. Furthermore, although the periods of time accorded under the hearing examiner's ruling exceed those usually granted in Commission proceedings, the appeal's exceptions relate only to the successive filing provision. Thus, no question of whether the order serves to delay the proceeding unduly is presented to us, nor is it being decided.

The above-mentioned rule does not expressly prescribe that the time fixed by hearing examiners provide for simultaneous filing of proposed findings; and a rigid requirement in that respect would foreclose hearing examiners from meeting the exigencies of unusual