respect to the appeal from the hearing examiner's dismissal of the complaint as to Bowfund Corporation: The parties shall submit their respective briefs on or before October 11, and their answering briefs, if any, on or before October 28, 1966, at which date oral argument shall be heard in the matter.

MARQUETTE CEMENT MANUFACTURING COMPANY

Docket 8685. Order, July 27, 1966

Order granting respondent's appeal on the propriety of the Commission conducting an industrywide survey of the ready-mix cement business at the same time as adjudicating this individual case.

ORDER STAYING PROCEEDING AND GRANTING IN PART AND DENYING IN PART REQUEST FOR PERMISSION TO FILE INTERLOCUTORY APPEAL

The complaint herein, issued May 20, 1966, charged that respondent, a cement manufacturer, violated Section 7 of the Clayton Act, and Section 5 of the Federal Trade Commission Act by its acquisition of a ready-mix concrete firm. Respondent moved to dismiss the complaint, or, in the alternative, to stay all proceedings herein in view of (a) the dismissal by the hearing examiner of similar complaints in two other proceedings involving the same market area involved here, and (b) the conduct by the Commission of industrywide hearings on vertical integration in the cement industry while the present adjudicative proceeding was pending. On July 13, 1966, the hearing examiner denied respondent's motions and ordered it to answer the complaint within twenty days. Respondent requests an interlocutory appeal from the examiner's order.

The hearing examiner's initial decision in the two other cases clearly furnishes no basis for the dismissal of the complaint here. Those cases have yet to be reviewed by the Commission. Nor does the action in those cases by the hearing examiner or their pendency before the Commission justify the delay which would result from a stay of this proceeding, especially since

respondent has not stipulated to be bound by the outcome of those proceedings.

However, respondent also raises questions similar to those raised in *Lehigh Portland Cement Company,* Docket No. 8680, relating to the alleged unfairness resulting from the conduct of legislative-type hearings while adjudicative proceedings are pending. In *Lehigh* we noted that these questions appear to be sufficiently substantial to warrant full consideration by the Commission. We, therefore, permitted an interlocutory appeal in that case and stayed all further proceedings pending further order of the Commission. The same procedure should be followed here. Accordingly,

It is ordered, That:

(1) Respondent's request for an interlocutory appeal is granted insofar as it seeks review of the examiner's order denying its motion to dismiss the proceeding on the basis of alleged unfairness arising from the Commission's conduct of hearings on vertical integration in the cement industry while this adjudicative proceeding was pending; in all other respects, respondent's request for an interlocutory appeal is denied;

(2) Respondent shall have thirty (30) days from the date of this order within which to file a brief in support of its appeal; and upon the filing of such brief by respondent, complaint counsel shall have thirty (30) days within which to file an answering brief. The Commission will thereafter determine whether and when it desires to hear oral arguments and the Secretary will so notify counsel on both sides; and

(3) Pending the Commission's determination of the appeal, respondent's time to answer and all other proceedings before the hearing examiner in this matter are hereby stayed until further order of the Commission.

Commissioner MacIntyre not participating.

AMERICAN CYANAMID COMPANY ET AL.

Docket 7211. Order, August 1, 1966

Order reopening proceeding pursuant to a judgment of the United States Court of Appeals, Sixth Circuit, 363 F. 2d 757 (1966) (8 S. & D. 248), for a rehearing without the participation of Chairman Dixon and remanding case to the Chief Hearing Examiner.