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.

ORDER REOPENING PROCEEDING AND REMANDING CASE TO HEARING EXAMINER

The United States Court of Appeals for the Sixth Circuit having issued its opinion and judgment on June 16, 1966, vacating the order of the Commission and remanding the case for

further proceedings without the participation of Chairman Dixon; and

Chairman Dixon having decided to withdraw from further proceedings in this matter;

It is ordered, That this proceeding be, and it hereby is reopened.

It is further ordered, That the matter be, and it hereby is remanded to the Chief Hearing Examiner for assignment to an examiner to begin expeditious hearings, in accordance with the Court's opinion, not later than 60 days from the issuance of this order for the sole and limited purpose of receiving the testimony of Patent Examiner H. J. Lidoff, and of any other witnesses who have heretofore testified, with respect to "the issue as to whether Pfizer and Cyanamid made misrepresentations to the Patent Office and withheld essential information, thereby deceiving Lidoff into granting a patent which otherwise never would have been approved."

It is further ordered, That upon termination of the hearings the examiner shall within 90 days thereafter enter his initial decision confined to the issue hereinabove specified which shall be subject to review by the Commission under Subpart G of Part 3 of the Commission's Rules of Practice.

Chairman Dixon not participating.

INLAND CONTAINER CORPORATION ET AL.

Docket 7993. Order and Opinion, Aug. 2, 1966

Order denying request of a corrugated box manufacturer of Louisville, Ky., not a party to this case, that Commission reopen proceedings to admit additional evidence concerning the present competitive status of the corrugated box manufacturing market in the Louisville, Ky., area.

OPINION OF THE COMMISSION

Petitioner, Independent Boxmakers, Inc., Louisville, Kentucky, a company not a party to the original proceeding in this matter, has requested that the Commission reopen the proceedings for the purpose of holding hearings to "collect current data concerning the productive capacity, sales structure, and competitive status" of the Lousiville corrugated box manufacturing market.[1]

[1] According to the petition, Independent Boxmakers, Inc., is one of eight corrugated box manufacturers located in the Louisville area. Originally organized as a sheet plant, it has subsequently purchased a corrugator and has an estimated capacity of approximately 300 million square feet of corrugated board per year. Its current approximate volume is 120 million square feet per year.

It is the petitioner's position that the Commission's Modified Order of March 1, 1966, [69 F.T.C. 201] [2] is destructive of competition and that it was entered without a full understanding on the part of the Commission of either the past or present competitive realities of this market. Petitioner asks that the Commission, after holding the requested hearing, formulate a different order ". . . effectuating the purposes of the Act [Section 7 of the Clayton Act as amended] and enhancing competition in the Louisville market." Commission counsel have opposed the instant petition. Respondents have not answered.

There is no provision in the Commission's Rules of Practice which permits one who was not a party to the original proceeding to petition for the reopening of that proceeding. However, the Commission may reopen a proceeding *sua sponte* after the decision has become final when it is of the opinion that changed conditions of law or fact, or the public interest so require. Rules of Practice, par. 3.28(b)(1). Presumable the instant petition is a request that the Commission exercise this power. While not conceding that a petitioner who was not a party to the original proceeding has standing to make such a request, the Commission will nevertheless consider whether either of the above prerequisites for reopening a proceeding exists.

The petition sets forth the present productive capacity of each corrugated box manufacturer located in Louisville, the total productive capacity of the Louisville market, and the current demand for corrugated box in this market. On the basis of these figures, petitioner calculates that the demand constitutes only 37 percent of the present productive capacity. The petition then states that 25 percent of the corrugated container requirements of the Louisville market are being supplied by firms located outside Louisville, and alleges that two additional corrugated box manufacturers will soon establish plants in Louisville. The conclusion that the Commission's Modified Order is anticompetitive is predicated upon petitioner's belief that the formation of still another manufacturer, as required by the Commission, must inevitably result in the diversion of business from established manufacturers, such as the petitioner, and may result in the elimination of one or more of these competitors from the market.

The Commission does not think that the facts recited by

[2] The Final Order, issued July 31, 1964 [66 F.T.C. 329], required Inland Container Corporation to divest itself of all stock and assets of General Box Company. The Modified Order, issued March 1, 1966, requires Inland to establish in Louisville a corrugated container manufacturer and to guarantee such concern adequate financing, certain necessary raw materials, and initial customer business.

and Deception as to the Leather Content of Waist Belts applied to their business, (b) that the original investigation was unfair because assertedly there was no opportunity for them for a hearing at the investigational stage, and (c) that the Commission has not taken similar action against competitors; and

The Commission having determined that respondents have made no showing that they have been denied an opportunity for a full and complete hearing in this matter or that there was any unfairness in any action or procedure followed by the Commission either as to the individual action against respondents or as to the Commission's industrywide regulations applying to all members of the industry and that they have not shown, as a basis for their request, that there have been any changed conditions of fact or law or that the public interest requires the reopening and setting aside of the order requested:

It is ordered, That respondents' petition to reopen this proceeding and to set aside the order to cease and desist issued September 16, 1964, be, and it hereby is, denied.

NATIONAL DAIRY PRODUCTS CORPORATION

Docket 7018. Order, Sept. 19, 1966

Order denying respondent's request for reconsideration of the Commission's order of July 28, 1966, page 79 herein, on the grounds that only two of the three participating Commissioners voted to issue the order. Respondent contends that an order of the Commission must be supported by three members.