

of this motion does not, of course, preclude respondent from seeking the settlement of this case by regular adjudicatory process through the filing of an admission answer or submission of the case to the examiner on a stipulation of facts and an agreed-upon order. Accordingly,

It is ordered, That respondent's motion to withdraw the matter from adjudication and/or scheduling prompt oral argument on and consideration of respondent's settlement proposal be, and it hereby is, denied.

THE BENDIX CORPORATION, ET AL.

Docket 8739. Order, March 24, 1969

Order remanding to hearing examiner a request for modification of an agreement relative to a divestiture.

ORDER REMANDING APPLICATION TO EXAMINER

This matter is before the Commission upon the hearing examiner's certification, dated March 5, 1969, of an application by respondent Bendix for modification of an agreement with the Commission.¹ Complaint counsel, on March 10, 1969, filed an answer to the motion, expressing their opposition thereto, and on March 17, 1969, respondent filed a reply to complaint counsel's answer. This reply consists of a letter from A. P. Fontaine, chairman and president of The Bendix Corporation, dated March 17, 1969, addressed to Chairman Paul Rand Dixon, and a supporting statement from Paul F. Hartz, president, Fram Corporation.

A review of the matter has persuaded the Commission to remand the application to the examiner for consideration on the basis of the full record and disposition thereof in the initial decision, along with a recommendation to the Commission whether the requested modification of the agreement would impair the effectiveness of an order of divestiture should such an order ultimately issue. The Commission will act immediately upon receiving such recommendation from the hearing examiner. Accordingly,

It is ordered, That this matter be, and it hereby is, remanded to the examiner.

¹ The application is contained in a letter dated February 24, 1969, addressed to Chairman Paul Rand Dixon. The letter was treated as a motion and referred to the examiner.

KOPPERS COMPANY, INC.

Docket 8755. Order and Opinion, March 24, 1969

Order denying respondent's motion to dismiss proceeding for lack of public interest.

OPINION OF THE COMMISSION

This matter is before the Commission upon the motion of respondent, filed February 11, 1969, to dismiss the proceeding for lack of public interest. This motion is predicated upon respondent's contention that contrary to the state of affairs upon which the complaint is premised, competition in the resorcinol market is now firmly established. Further, respondent contends that the only acts alleged in the complaint as restrictive of competition were the reduction of its prices in conjunction with the use of long term requirements contracts and that since the requirements contracts have been voluntarily modified by respondent, no issue remains for litigation, particularly in view of the protracted nature of the discovery phase of this proceeding.

In the Commission's view these contentions run to the merits of this proceeding and are such as can only be resolved by the hearings themselves. The question of the public interest in these proceedings was resolved by the Commission when it authorized issuance of the complaint and it would be premature, to say the least, to find at this stage that that interest no longer existed on the basis of suppositions of fact which are contested by counsel supporting the complaint and which have not been established on the record.

If respondent is intending to plead abandonment of the practices charged in the complaint as the basis for its contention that public interest is no longer involved, quite a different issue might be presented. While such a plea would not be sufficient to bring about dismissal of the complaint, it might furnish sufficient grounds to support a motion to withdraw this matter from adjudication for the purpose of negotiating a consent order along the lines of the notice order issued with the complaint. However, it is obvious that the Commission cannot pass upon the merits of such a motion unless and until it is presented in proper form and accompanied by a proposal which would effectively preclude the use of any of the practices charged in the complaint. It cannot rule upon it collaterally in a motion to dismiss.

In arriving at its conclusion, the Commission has given consideration to the examiner's Certification Of Additional Facts dated February 27, 1969, to the Statement of United States Pipe

and Foundry Company In Connection With Respondent's Motion To Dismiss, filed February 28, 1969, and to respondent's Response to this Statement, filed March 5, 1969. While the Certification of Additional Facts serves to clarify the positions of the parties with respect to the opportunity afforded complaint counsel to cross-examine the deponents from United States Pipe, this is a matter to be considered by the examiner as the hearings progress and should not be the occasion for further delay. The Statement of United States Pipe and the Response thereto are repetitions of arguments previously made and do not require further comment at this time.

ORDER DENYING MOTION TO DISMISS FOR LACK OF PUBLIC INTEREST

Upon consideration of the motion to dismiss this proceeding for lack of public interest, filed by respondent on February 11, 1969, and for the reasons stated in the accompanying opinion,

It is ordered, That the motion to dismiss be, and it hereby is, denied.

KOPPERS COMPANY, INC.

Docket 8755. Order and Opinion, March 24, 1969

Order denying respondent's motion to disqualify hearing examiner.

OPINION OF THE COMMISSION

The Commission has again been called upon to enter into this proceeding during the prehearing stage, this time to consider respondent's motion, filed March 5, 1969, to disqualify the hearing examiner. Under date of March 10, 1969, counsel for respondent and counsel for the complaint took note of the fact that the examiner was on leave and would continue to be so until about April 16, 1969, and stipulated that the time for a response to the motion to disqualify may be extended until 10 days following the return of the examiner or until about April 28, 1969, whichever is later.

As the Commission views this matter, it will not be necessary to act upon the stipulation, which might in some manner be considered to be a motion to extend the time for the examiner to respond, as it has concluded that the motion is so lacking in merit that no response by the examiner will be necessary. Respondent has filed this present Motion to Disqualify with full knowledge of the fact that on January 30, 1969, the Commission denied its request to have this proceeding remanded to a new