

Moreover, to the extent that the current status of the LDPE market is a factor in considering whether the public interest requires the requested five year extension, we conclude that the differences in market characterizations between Phillips and the Bureau of Competition are of a minor nature, and relate primarily to long-run future developments. Certainly they do not constitute "substantial questions of fact" within the meaning of Rule 3.72(b)(3) so as to require a further evidentiary hearing.

Accordingly, we do not find any basis in the papers submitted by the parties for granting the requested modification nor do we find any disputed issue of fact bearing on the modification which would indicate the necessity for taking any evidence or holding any hearings. The papers now before us, both on the original petition and on the petition for reconsideration, adequately set out the arguments of the parties and on the basis of these papers we reaffirm our order of December 14, 1970, and deny the petition for reconsideration.

The Commission having fully considered the Petition of Respondent Phillips Petroleum Company for Reconsideration of Order Denying in Part Phillips' Application for Modification of Consent Order;

It is ordered, That respondent's petition for reconsideration be, and hereby is, denied.

UNIVERSAL ELECTRONICS CORPORATION, ET AL.

Docket 8815. Order and Opinion, March 29, 1971

Order denying petition for reconsideration of Commission's decision on grounds of ambiguity.

OPINION OF THE COMMISSION

This matter is before the Commission on the petition of respondents for reconsideration of the decision of the Commission in the above captioned matter received February 24, 1971. By its order of January 28, 1971 [78 F.T.C. 265], the Commission adopted as its own the initial decision of the hearing examiner filed November 6, 1970. The respondents, pursuant to Rule 3.55 of the Rules of Practice have now filed a petition for reconsideration of said decision and order.

Respondents petition alleges that two provisions of the order are confusing and ambiguous and that one of the possible readings in each case is illegal. The order paragraphs here are plain on their face. The caption paragraph contains the very specific language " * * or any other products or any franchises or dealerships in connection therewith." It is clear from this language that the hearing examiner and the Commission intended that the order not be limited to only those products and franchises that were the subject of hearings before

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the Commission. Nor can it be seriously maintained not to so limit is illegal. *FTC v. Ruberoid*, 343 U.S. 470, 473 (1952).

Respondents make the same assertion with respect to Paragraph 3b *i.e.*, that it is ambiguous with one construction illegal. The third circuit has recently affirmed *per curiam* an order provision identical to the one in question here based upon substantially similar practices. The Court found the wording of said paragraphs not to be too vague for compliance. *Windsor Distributing Co. et al. v. FTC*, 437 F. 2d 443 (3rd Cir., 1971). The order compels the respondent to refund promptly all monies to any purchaser who has been induced to purchase after the date that the order becomes final by practices in violation of the order.

Respondents have raised no new questions with respect to this order as required by the rule. The petition for reconsideration, accordingly, is denied. An appropriate order accompanies this opinion.

ORDER DENYING PETITION FOR RECONSIDERATION OF DECISION

Upon consideration of the Petition for Reconsideration of Decision, filed February 24, 1971 by the respondents in the above captioned matter, the Commission, for the reasons set forth in the accompanying opinion, has determined that the petition should be denied. Accordingly,

It is ordered, That petition of the respondents Universal Electronics Corporation and Wendell Coker to reconsider the decision be, and it hereby is denied.

FOOD FAIR STORES, INC., ET AL. DOCKET 8786

H. C. BOHACK CO., INC., ET AL. DOCKET 8787

JEWEL COMPANIES, INC., ET AL. DOCKET 8788

BORMAN FOOD STORES, INC., ET AL. DOCKET 8789

FIRST NATIONAL STORES, INC., ET AL. DOCKET 8790

Order, April 12, 1971

Order directing General Counsel to file in District Court for the Northern District of Illinois documents advising the court that the Commission has found that issuance of the complaints is in the public interest.

STATEMENT OF EVERETTE MACINTYRE, COMMISSIONER

These matters are before the Federal Trade Commission for a reconsideration of the Commission's decision to issue the administrative complaints involved here.

As provided for in the Order of the United States District Court for the Northern District of Illinois, Eastern Division, in No. 69 C 1673, dated January 21, 1971, entered by Judge J. S. Perry, the Commission gave the parties to whom the administrative complaints have been directed opportunity to be heard in connection with this further reconsideration of the issuance of such complaints. The hearing included the filing of extensive briefs filed in the early part of March, 1971, and oral argument thereon March 23, 1971. On the latter date, the Commission announced it would take the matters under advisement and later announce its decision.

In view of some arguments and statements by others concerning my beliefs about the meaning of the law, it appears that it is appropriate and perhaps desired that I further explain my belief and position on the meaning of the law in question.

Prior to an earlier decision by the Federal Trade Commission to issue these administrative complaints I had made two statements. On one of those occasions I had included in one of my statements the sentence:

Congress did not, as the dissent seems to imply, leave it to the discretion of the Commission to decide, *as a matter of policy*, whether to *enforce* Section 2(c) of the Clayton Act when it has "reason to believe" that the statute is being violated (emphasis supplied).

On a later occasion, when the Commission was issuing these administrative complaints I made another statement in which I included the following sentence:

My decision to vote for the issuance of these complaints is based upon my conviction that their issuance is justified.

A member of the Federal Trade Commission who dissented to the Commission's action in the issuance of these administrative complaints at that time stated "The Commission apparently believes it has no discretion when it comes to squandering scarce resources on bringing such a proceeding." Apparently that remark, others in the same vein and arguments based thereon made to the courts, and especially in the light of the earlier statements I had made, caused the courts to wonder whether the Commission and I in particular had misconstrued our statutory obligation by assuming we had no discretion to consider whether the issuance of a particular complaint under the particular provision of the law involved would be in the public interest.

At the outset, I wish to say that I have never consciously voted for the Federal Trade Commission to institute a proceeding without my conviction that to institute such a proceeding was to the interest of the public. When I voted to institute the proceedings under reconsideration at this time, I likewise was convinced that my action was clothed

with public interest and was in the public interest. Likewise, I believe this last action of mine in these matters to be in the public interest. Therefore, I have not only considered that the public interest is involved, I have taken it into account and I am convinced that my actions are in accord therewith.

Now, with respect to statements I have made in the past regarding laws entrusted to the Federal Trade Commission for enforcement, let me say this: I do not think that the Federal Trade Commission "*as a matter of policy*" has discretion to decide not to enforce any one of those laws. That is not to say that I do not believe the Commission has discretion to decide whether to institute or not institute a particular proceeding under any one of those laws. As the parties argued before the Commission on March 23, 1971, in these matters the Commission has on a number of occasions failed to institute proceedings for violation of the provision of law involved here. In a number of those actions of the Commission I participated. I consider that in each such participation I exercised my proper discretion in avoiding the "squandering scarce resources" and unnecessary litigation.

Also, I wish to say that I have a strong belief and conviction that a public official in the exercise of discretion should not abuse discretion.

Although not involved in these cases nor in our reconsideration of the same, I have come to know some Federal Trade Commissioners, some members of the bar and a few others, who (according to my view of what they say and write) do not believe that the Federal Trade Commission, "*as a matter of policy*" should enforce Subsection (c) of Section 2 of the Clayton Antitrust Act according to the standards specified therein, but instead if that provision of law is to be enforced at all it should be enforced according to the different standards specified and spelled out in Subsection (a) of Section 2 of the Clayton Antitrust Act. I do not believe that the Federal Trade Commission has discretion "*as a matter of policy*" to do that. In my view that would be an abuse of discretion. My simple belief and position in that respect is based largely on the expressed views of the Congress, the courts and on what I have been able to learn as a student of the law.

It is regrettable that my small and simple belief and position in the above respect has been so utilized as to trouble so many, so much, and for so long.

ORDER REAFFIRMING DECISION TO ISSUE COMPLAINTS

Respondents herein having filed a motion for summary judgment in the United States District Court for the Northern District of Illinois, Civil Action No. 69 C 1673, requesting the court to permanently enjoin the Commission from further proceedings upon the ad-