

MODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket 7453. Complaint, Mar. 26, 1959—Decision, Mar. 23, 1972.

Order reopening and modifying an earlier order, 69 F.T.C. 226, dated March 4, 1966, which prohibited petitioner from acquiring stock of other food product retailers for a period of 10 years by bringing its provisions more into line with orders involving other food chains issued since 1967.

ORDER REOPENING PROCEEDING AND MODIFYING
ORDER TO CEASE AND DESIST

This matter is before the Commission on the petition of respondent National Tea Company, filed December 10, 1971, requesting that this

proceeding be reopened for the purpose of modifying the order to cease and desist issued March 4, 1966, which prohibits the petitioner for a period of ten years, without prior Commission approval, from acquiring the whole or any part of the stock or assets of any firm, partnership or corporation engaged in the retail sale of food products. Petitioner requests that the original order be modified to read as follows:

It is ordered, That, for a period of ten (10) years from March 4, 1966, National Tea Co. shall not (A) merge with or acquire, directly or indirectly, through subsidiaries, or in any other manner, except with the prior approval of the Commission upon written application, the whole or any part of any grocery store (an establishment classified in Industry No. 5411, Standard Industrial Classification Manual, 1967 revision, or a grocery department in a non-food store), where such acquisition or merger involves (1) five or more grocery stores, (2) annual grocery store sales of more than five (5) million dollars, or (3) combined (respondent and the grocery stores to be acquired or merged) grocery store sales of more than five (5) percent of total grocery or food store sales in any city or county in the United States; and (B) without sixty (60) days prior notification to the Commission, merge with or acquire, directly or indirectly, through subsidiaries or in any other manner, any grocery store establishment for which prior approval is not required pursuant to subparagraph A.

A request for a similar modification was denied by the Commission on May 20, 1969 [75 F.T.C. 1087].

In support of this request petitioner has alleged that there have been changed conditions of fact and law since the entry of the 1966 order and that the public interest in fair competition requires that restrictions imposed on National Tea Company be no more stringent than those imposed upon other food chains against which Section 7 Clayton Act orders have been issued. Petitioner has also submitted in support of its allegation of changed condition of fact "An Economic Study of Competitive Developments in Retail Food Distribution Since 1966," prepared for petitioner by an economic consultant. Petitioner's claim of a changed condition of law is based principally upon the issuance by the Commission in 1967 of its Enforcement Policy With Respect to Mergers in The Food Industry.

The Director of the Bureau of Competition has filed an answer to the petition advising that he does not oppose the requested modification giving as his principal reason therefor that such modifica-

Order

80 F.T.C.

tion would be consistent with the aforesaid policy statement and with other orders issued by the Commission subsequent to the original proceeding against National Tea Company. The director has expressed some doubt as to the accuracy and correctness of the economic study submitted by petitioner but feels that even though there has been no great change of fact the petition should nevertheless be granted.

Having considered the petition and the answer thereto, the Commission concurs in the views expressed by the Director of the Bureau of Competition and is of the opinion that in the circumstances shown to exist the requested modification of the order should be made.

The Commission has also considered a request by petitioner that certain tables and charts accompanying the aforesaid economic study be accorded confidential treatment and has determined that the type of information contained therein is customarily privileged and not otherwise available to petitioner's competitors.

Accordingly, *It is ordered*, That this proceeding be, and it hereby is, reopened and the Commission's order of March 4, 1966, be, and hereby is, modified to read as follows:

It is ordered, That, for a period of ten (10) years from May 4, 1966, National Tea Co. shall not (A) merge with or acquire, directly or indirectly, through subsidiaries, or in any other manner, except with the prior approval of the Commission upon written application, the whole or any part of any grocery store (an establishment classified in Industry No. 5411, Standard Industrial Classification Manual, 1967 revision, or a grocery department in a non-food store), where such acquisition or merger involves (1) five or more grocery stores, (2) annual grocery store sales of more than five (5) million dollars, or (3) combined (respondent and the grocery stores to be acquired or merged) grocery store sales of more than five (5) percent of total grocery or food store sales in any city or county in the United States; and (B) without sixty (60) days prior notification to the Commission, merge with or acquire, directly or indirectly, through subsidiaries or in any other manner, any grocery store establishment for which prior approval is not required pursuant to subparagraph A.

Within thirty (30) days from the effective date of this order, and annually thereafter until it has fully complied with this order, National Tea Co. shall submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this order.

