

Appearances

For the Commission: *Murray L. Lyon, Harold G. Munter and Joseph J. O'Malley.*

Order

83 F.T.C.

For the respondent: *Theodore F. Craver*, Litton Industries, Inc., Beverly Hills, Calif. and *Howrey, Simon, Baker & Murchison*, Wash., D.C.

ORDER

This matter is before the Commission upon (1) an order dated September 20, 1973, of the administrative law judge certifying a motion by complaint counsel that the Commission withdraw its order remanding for hearings on the issue of relief, and (2) complaint counsel's application for interlocutory review under Rule 3.23(b) of the administrative law judge's ruling upon the scope of hearings to be conducted on remand.¹

On May 16, 1973, after the Commission had previously held that respondent had violated Section 7 of the Clayton Act and should divest itself of the acquired company, the Commission, upon petition of respondent, reopened and remanded the proceeding "solely for the purpose of reexamining the question of relief in its entirety." [82 F.T.C. 1424] The Commission directed that the administrative law judge "shall examine the question of appropriate relief in its entirety, and upon completion of the hearings, he shall furnish the Commission with his findings on the issue of relief and his recommendations."

At prehearing conferences following the remand order, the parties took different views as to the scope of the hearings to be conducted on remand, and in an "Order Ruling Upon Scope of Hearings to be Conducted on Remand" issued August 17, 1973, the law judge made a number of rulings. Among those which are contested by complaint counsel is the law judge's rejection of complaint counsel's argument that consideration of relief must under the order of remand be limited to the *form* of divestiture and may not encompass the question whether divestiture itself may be required. The law judge's ruling that he will allow evidence bearing on the question of whether divestiture should be ordered at all is clearly correct.

We have also examined the other rulings made by the law judge on the scope of remand, as set forth in his August 17 order and as

¹ These matters were submitted to the Commission on September 20, 1973, in the form of an order entitled "Order Certifying Motion of Complaint Counsel that the Commission Withdraw its Order of Reconsideration dated May 16, 1973, and Alternative Appeal from Ruling of Administrative Law Judge Upon Scope of Hearings to be Conducted on Remand," accompanied by a 10-page "Appeal" of complaint counsel dated September 4, 1973. By previous order, the Commission indicated it would treat the latter document as an application for review filed with the Commission under Rule 3.23(b). Respondent has filed an answer in opposition to the application.

further commented upon by him in his order of September 20, 1973, and we find no reason to disturb his rulings. Accordingly,

It is ordered, That the application for interlocutory review be, and it hereby is, denied.

It is further ordered, That complaint counsel's motion that the Commission withdraw its order remanding for hearings on the issue of relief be, and it hereby is, denied.

Commissioner Jones abstaining.