

IN THE MATTER OF  
HARBOR BANANA DISTRIBUTORS, INC.

*Docket 8795. Order, Apr. 9, 1975.*

Denial of respondent's petition for relief from divestiture and for moratorium period  
to begin as of date of acquisition of McCann assets.

*Appearances*

For the Commission: *James T. Halverson.*

For the respondent: *Bernard Morris, Deutsch, Kerrigan & Stiles,*  
New Orleans, La.

ORDER DENYING PETITION FOR RECONSIDERATION

On Feb. 18, 1975, respondent petitioned the Commission pursuant to Section 3.55 of the Commission's Rules of Practice to reconsider the final order in this matter for the purpose of (1) relieving respondent of the obligation to divest those assets that constituted the Charles C. McCann Company and (2) measuring the ten year period disallowing acquisitions by respondent from the date Feb. 2, 1968 (the acquisition moratorium had been previously ordered to commence on Jan. 28, 1975,

683

## Order

the date of service of the modified Commission order). Counsel supporting the complaint did not file a responsive statement.\*

Respondent's petition for relief from divestiture is denied. Respondent has failed to demonstrate that the changed conditions it alleges have materially affected either the continuing need for the divestiture of the McCann assets or the ability of respondent to complete that divestiture. Competitive conditions have not been shown to have been restored in the marketplace. The petition is also barren of any showing that a good faith effort to divest has been made.

Respondent's motion to allow the 10 year moratorium on further acquisitions to begin as of the date of the acquisition of the McCann assets is also denied. Respondent was under no compulsion to suspend its acquisition activities during the pendency of this proceeding. That respondent may have imposed on itself a seven-year moratorium prior to the Commission's final order, as a reaction to an interest of Commission staff in this matter, is neither demonstrated nor relevant.

On review, the order is found to be reasonably related to the adjudged violation and fairly calculated to assist in the restoration of competitive conditions in the marketplace.

*It is ordered,* That the aforesaid petition be, and it hereby is, denied.

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