

Modifying Order

91 F.T.C.

IN THE MATTER OF

G C SERVICES CORP., ET AL.

MODIFYING ORDER, IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-2511. Decision, April 16, 1974 — Modifying Order, June 21, 1978.*

This order reopens the proceeding and modifies the cease and desist order issued April 16, 1974, 39 FR 17100, 83 F.T.C. 1521, by substituting for Paragraph 6 of the original order, one that extends the time period postdated checks may be held from 15 days to 60 days, if specified requirements are satisfied before checks are deposited.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER TO
CEASE AND DESIST

By petition filed December 20, 1977, pursuant to Rule 3.72(b)(2), petitioner G C Services Corporation has requested the Commission to modify its order of April 16, 1974, to permit respondents to hold postdated checks for an unlimited period of time as long as certain requirements are met. The Director, Bureau of Consumer Protection, has filed an answer wherein he advises that he opposes the relief originally sought by petitioner but does not oppose alternate relief which would permit respondents to hold postdated checks for a maximum of sixty days as long as certain additional requirements are satisfied. The Director, Bureau of Consumer Protection, further advises in his answer that this alternative relief has been discussed with respondents and they do not object.

In support of their proposed modification respondents rely on the recent passage of Pub. Law 95-109, the "Fair Debt Collection Practices Act," 15 U.S.C. 1601, *et seq.* Section 808 of the Act (15 U.S.C. 1692f) prohibits a debt collector from using any "unfair or unconscionable" means to collect or attempt to collect any debt. Without limiting the general application of this, the Act continues to specify certain specific violations of the section. With regard to the use of postdated checks, the Act prohibits debt collectors from (1) accepting a check postdated by more than five days unless the alleged debtor is notified in writing of the debt collector's intent to deposit such check three to ten business days prior to deposit; (2) soliciting any postdated check for the purposes of threatening or instituting criminal prosecution; and (3) depositing or threatening to deposit any postdated instrument prior to the date on the instrument.

Respondents request that the Commission modify the order to

the Act. As an additional safeguard, GCSC would provide written notification of each of debtors' rights, pursuant to the Act, with regard to postdated checks as noted above.

The Bureau in its Answer to the Petition agrees that the proceeding should be reopened. The Answer submits that the order should be modified to permit alleged debtors and respondents greater flexibility in the use of postdated checks. However, the Bureau suggests an alternative modification to extend the period respondents could accept postdated checks from fifteen to sixty days with the additional safeguard that ten days prior to deposit respondents obtain or make good faith efforts to obtain permission from the alleged debtor to deposit the check. If they do not meet this requirement, they will be unable to deposit the check. Nothing in the order or modification shall limit respondents' obligations to otherwise fully comply with the requirements of the Fair Debt Collection Practices Act.

The Commission, having carefully considered the petition and answer thereto, has determined that the alternate relief as set forth in the answer be granted. The modification suggested by the Bureau would allow respondents greater flexibility to use postdated checks while insuring that alleged debtors are adequately protected. Respondents have alleged a legitimate benefit to consumers and competitive need for extending its ability to use postdated checks. However, respondents' proposed modification would obligate it to do little more than the Act already requires. The Commission is persuaded that extension of the time limit and the permission requirements for holding postdated checks would provide consumers and respondents with greater flexibility without unduly jeopardizing alleged debtor's rights.

Accordingly, *it is ordered*, That the proceeding be, and hereby is reopened for the limited purpose of modifying Paragraph Six of the Commission's order of April 16, 1974.

Further, *it is ordered*, That the order to cease and desist be, and hereby is modified by striking Paragraph Six and substituting therefor the following:

6. Receiving from alleged debtors postdated checks which will be held by respondents or their representatives for more than 60 days after receipt, *Provided* that, for any postdated check held for more than fifteen business days, no such postdated check shall be deposited unless respondents not more than ten nor less than three business days prior to such deposit (1) obtain permission to deposit such check from the alleged debtor or (2) make a good faith effort to contact and obtain permission from the alleged debtor. A "good faith effort" shall consist of three telephone calls to the alleged debtor's known telephone

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contact, unless circumstances would make such efforts unreasonable. Failure to make contact would not relieve respondents of the obligation to notify in writing the alleged debtor of respondents' intent to deposit such check. Nothing in this order shall limit any duty of respondents to comply fully with the provisions of the Fair Debt Collection Practices Act, 15 U.S.C. 1692.

Interlocutory Order

IN THE MATTER OF

FRUEHAUF CORP.

Docket 8972. Interlocutory Order, June 22, 1978

Order denying respondent's petitions to reopen and set aside Commission's divestiture order of February 22, 1978.

ORDER DENYING PETITIONS TO REOPEN AND SET ASIDE ORDER

By motions filed on May 10 and May 15, respondent Fruehauf has petitioned the Commission to reopen this proceeding and set aside the Commission's decision of February 22, 1978 which ordered divestiture by Fruehauf of the assets of the Kelsey-Hayes Company other than those unique to Kelsey-Hayes' Aerospace and RV Agricultural groups.

The asserted bases for Fruehauf's petition are several developments in the market for antiskid braking devices (ASBD). Fruehauf cites principally the decision of the Ninth Circuit in *Paccar, Inc. v. National Highway Traffic Safety Administration*, Nos. 75-1017, 2831, 3128 (April 17, 1978) ordering suspension of FMVSS 121 as it applies, *inter alia*, to truck trailers, because of defects in the procedure by which the standard was promulgated. Fruehauf also cites the initiation of a rulemaking proceeding by NHTSA to reconsider the standard, as well as introduction of bills in Congress to repeal the standard. All these developments, in Fruehauf's view, raise the possibility of changes in the ASBD market, and accordingly Fruehauf asks the Commission to withdraw its order, take further evidence and eventually reconsider its determination that divestiture is warranted. For the following reasons we believe that such a course of action is unwarranted and not in the public interest, and accordingly, we decline to reopen this proceeding.

The Commission found that violations of law had occurred in *three* markets—heavy duty wheels, truck trailers, and antiskid braking devices. Findings of violation in the first two of these markets are in no way altered or subject to potential alteration by the new information presented by respondent. With respect to the ASBD market, the Commission's finding that the merger was unlawful when it occurred is also not disturbed. To be sure, the information presented by Fruehauf does raise a *possibility* that at some unspecified future date the merger will no longer continue to threaten competitive harm with respect to the production of antiskid braking devices. This *might* occur, for example, if Fruehauf ceased permanently to purchase any substantial quantities of ASBD. Whether this *will* occur, however, or when, is highly problematical. The Ninth Circuit's decision (which at