

Interlocutory Order

IN THE MATTER OF

GENERAL MOTORS CORPORATION, ET AL.

Docket 9074. Interlocutory Order, Feb. 25, 1980.

DENIAL OF INTERVENOR'S MOTION FOR ACCESS TO CONSENT ORDER

By motion filed February 12, 1980, intervenor, the National Automobile Dealers Association ("NADA") has requested that the Commission (1) grant NADA access to the consent order signed by General Motors Corporation and General Motors Acceptance Corporation ("the GM Respondents"), including all supporting documents; (2) vacate the Commission order dated January 23, 1980, withdrawing this matter from adjudication as to the GM respondents and remand the matter to the administrative law judge; and (3) if the order is not vacated, grant NADA thirty days within which to comment on the proposed consent order before the Commission determines whether or not to accept the order pursuant to Section 3.25(f) of its Rules of Practice. Complaint counsel have opposed the motion.

In support of its motion, NADA observes that it was not served with the joint motion of complaint counsel and the GM Respondents, dated December 28, 1979, to withdraw this matter from adjudication, and that it was, thereby, precluded from objecting to or otherwise taking action on the motion.

It does appear that NADA was not served with the joint motion. However, because of the unusual nature of the motion involved, it does not appear that there has been any prejudice to NADA from the failure to make service, and, accordingly, there is no need, nor would any purpose be served, by restoring this matter to adjudication.

The Commission's Rules of Practice, Section 3.25(c), prescribe that where both complaint counsel (including the appropriate Bureau Director) and any respondent to an adjudication have executed a consent agreement, the Secretary *shall* issue an order withdrawing the matter from adjudication with respect to such respondent(s). Withdrawal is not discretionary on the Secretary's part, and, accordingly, no objection that NADA might have raised could possibly have altered the outcome of the motion. Similarly, restoration of this matter to adjudication would simply result in the matter again being withdrawn therefrom, regardless of what objection NADA might interpose.¹

¹ It should be noted that inasmuch as the Secretary is *required* to withdraw from adjudication as to consenting respondents any matter as to which the requisite consent has been signed, the issuance of an order to withdraw will often occur almost *simultaneously* with the filing of the motion to withdraw. In most cases, therefore, parties to a matter other than the joint movants (complaint counsel and the consenting respondent) will receive service of the joint motion to withdraw at the same time they receive the order granting it. In this case, it appears that the motion to withdraw was filed prior to the time the Bureau Director signed the consent agreement, and several weeks elapsed

With respect to NADA's alternative request that it be shown a copy of the consent order and be given 30 days within which to comment upon it prior to the time any decision is made by the Commission as to whether it should be accepted, the Commission finds the situation identical to that which arose with respect to Dkt. 9073, wherein the same request by NADA was denied. The Commission believes that if the proffered consent order should be accepted, the 60-day public comment period will provide ample opportunity for NADA to make its views with respect to the order known, and any such views that it may submit will be given fullest consideration by the Commission.

Therefore, *It is ordered*, That intervenor NADA's motion is hereby denied.

before that signature was obtained and the Secretary could issue the order to withdraw. Technically, this premature motion to withdraw should have been served upon intervenor NADA, but we cannot see how the failure to do so deprived it of any right it would otherwise have had.

Complaint

IN THE MATTER OF

THE SOUTHLAND CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT

Docket 9127. Complaint, April 26, 1979—Decision, Feb. 25, 1980

This consent order requires, among other things, The Southland Corporation (Southland), a Dallas, Texas dairy processor, to refrain for seven years from acquiring, without prior Commission approval: 1) any fluid milk processing plant, distribution facility or route within a 150-mile radius of a Southland fluid milk processing plant or distribution facility; 2) any such company or plant located within a 150- to 500-mile radius of a Southland fluid milk processing plant or distribution facility, which processed more than 26 million pounds of Class I milk within any of the three years prior to the acquisition; or 3) any fluid milk processing company that processes 300 million pounds of Class I milk annually.

Appearances

For the Commission: *James R. Chamberlain* and *Robert C. Cheek*.

For the respondents: *Peter K. Bleakley, Arnold & Porter, Wash., D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents, each subject to the jurisdiction of the Commission, have entered into an acquisition agreement, which, if consummated, would result in a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

I. DEFINITION

1. For the purpose of this complaint, the term "San Antonio market area" refers to the Office of Management and Budget's Standard Metropolitan Statistical Area for San Antonio, Texas which is composed of the three counties of Bexar, Comal, and Guadalupe.