

IN THE MATTER OF
FORD MOTOR COMPANY, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9073. Decision, March 29, 1979—Modifying Order, Feb. 26, 1980

This order reopens and modifies a consent order issued on March 29, 1979, 44 FR 25630, 93 F.T.C. 402, so that Paragraph II (C) (7) of the order provides for a waiver of customers' surplus rights in the event that a dealership retains a repossessed vehicle for its own use, rather than for resale. This brings the order into conformity with one aspect of an order issued against Francis Ford, Inc. on September 21, 1979 under the same docket number, 44 FR 62481, 94 F.T.C. 564.

ORDER REOPENING AND MODIFYING CONSENT ORDER

By petition of November 26, 1979, respondents Ford Motor Company and Ford Motor Credit Company (hereafter "Ford respondents") have asked the Commission to modify Paragraph II C.(7) of the consent order entered by the Commission against these respondents on March 29, 1979, in order to conform with a less restrictive provision of the litigated order in this docket entered against respondent Francis Ford, Inc. on September 21, 1979. An "Order to Show Cause" as to why the requested change should not be made, dated January 15, 1980, has elicited no objection.

Paragraph VII B. of the consent order provides that if a final order is issued in Dkts. 9073, 9074, or 9075 that imposes less restrictive standards in certain enumerated respects than does the consent order, the Commission shall reopen the consent order within 120 days of a petition to do so and modify the consent order to conform with the less restrictive provisions contained in the other order.

Although the less restrictive order upon which Ford respondents rely for their request has not yet become final, due to the pendency of an appeal, no purpose would be served by delaying modification of the Consent Order until such time as the appeal is resolved, inasmuch as the appeal by Francis Ford is hardly likely to result in imposition of a *more* restrictive standard than the Commission has imposed. Modification now will expedite achievement of uniform treatment of automobile dealers which is a primary purpose of Paragraph VII B. Therefore,

It is ordered, That the consent order in this docket be reopened for the limited purpose of effecting the following changes.

It is further ordered, That Paragraph II of the consent order be modified to eliminate the following language:

Modifying Order

95 F.T.C.

C. The accounting system shall provide that:

7. Dealers are not to obtain waivers of surplus or redemption rights from repurchase financing customers.

It is further ordered, That Paragraph II of the consent order be modified to add the following language:

C. The accounting system shall provide that:

7. Dealers are not to take any action to obtain or to attempt to obtain or bring about a waiver of a customer's right to redeem, except in the precise manner and circumstances contemplated by the applicable state law version of Section 9-505 of the Uniform Commercial Code. Under Section 9-505 a waiver of a customer's right to a surplus may not be sought unless the dealer intends to retain the collateral for its own use for the immediate future rather than to resell the collateral in the ordinary course of business. If a waiver is sought, the dealer shall not represent that by proposing the waiver, it proposes to forego its right to a deficiency judgment, unless it intends to seek such a judgment should the waiver not be given. No customer's waiver of rights or failure to object to any secured party's proposal to retain the repossessed vehicle, unless procured in exact conformity with this subparagraph, shall limit the provisions of the accounting system relating to accounting for and paying any surplus.

Modifying Order

IN THE MATTER OF
HASTINGS MANUFACTURING COMPANY

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC.
2(A) OF THE CLAYTON ACT

Docket 4437. Decision, Dec. 9, 1944—Modifying Order, Feb. 28, 1980

This order modifies an order issued on December 9, 1944, 10 FR 773, 39 F.T.C. 498, by deleting the phrase "or all such products of any competitor of respondents" from the second paragraph of the original order which barred respondent from offering stock lifts as an inducement to dealers to carry its products exclusively or in place of a competing line stocked by the dealer. The revised order prohibits only stock lifts to induce exclusive dealing arrangements.

ORDER MODIFYING ORDER TO CEASE AND DESIST

Following extensive briefing by respondent Hastings Manufacturing Company and the Commission's Bureau of Competition, the Commission on December 20, 1979, issued an order to show cause why the cease and desist order issued in this proceeding in 1944¹ should not be modified. The Commission stated that stock lifting, when not employed to induce exclusive dealing arrangements, ordinarily is an unobjectionable form of competition by suppliers for dealers.² Little different from a price discount, stock lifting is likely to promote price competition and, if the market is otherwise competitive, ultimately benefit the consumer. The Commission concluded that it appeared to be in the public interest to modify the 1944 order so that it would no longer prohibit stock lifting for purposes, or with effects, other than to induce exclusive dealing. The show cause order invited interested parties to comment on the proposed change.

The Commission having considered the comments submitted by several members of the public,³

Now, therefore, *it is hereby ordered*, pursuant to Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)) and Rule 3.72(b) of the Commission's Rules of Practice (16 CFR 3.72(b)), That the 1944 cease and desist order be modified in part as follows (deleted language is hyphenated out):

It is ordered, That respondent Hastings Manufacturing Co., its officers, representatives, agents, and employees, directly or through

¹ Hastings Mfg. Co., 39 F.T.C. 498, 509 (1944).

² The Commission noted that there are exceptions. For example, stock lifting to encourage dealers to carry the stock lifter's goods in place of one of several existing lines might violate Section 3 of the Clayton Act (15 U.S.C. 14) if the practice's effect might be to substantially lessen competition. In addition, if the stock lifter possessed monopoly power and its stock lifting functioned as a form of predatory pricing, the practice might constitute monopolization.

³ Neither the respondent nor the Bureau of Competition filed comments in response to the order to show cause.