

Modifying Order

96 F.T.C.

IN THE MATTER OF
ATLANTIC RICHFIELD COMPANY

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC.
5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE
CLAYTON ACT

Docket 9089. Order, Oct. 29, 1979—Modifying Order, Oct. 7, 1980

This order reopens the proceeding and modifies definition (h)(1) and (2) of the divestiture order issued on October 29, 1979, 44 FR 67643, 94 F.T.C. 1054, so that, upon prior Commission approval, Noranda Mines Ltd., INCO Ltd., the Anglo American Group, or any of their respective subsidiaries (previously designated as "ineligible"), may be considered as "eligible" to purchase properties to be divested or to engage in certain joint ventures with Atlantic Richfield.

ORDER REOPENING PROCEEDING AND MODIFYING CONSENT ORDER

By letter dated January 14, 1980, Noranda Mines Ltd. ("Noranda") requested that the Commission reopen this proceeding to reconsider the designation of Noranda as absolutely ineligible to purchase the properties subject to divestiture under the consent order issued in this proceeding on October 29, 1979.¹ One of the principal objectives of the consent order was to promote deconcentration of the copper industry through divestiture of the subject properties to firms that presently are not major producers. Atlantic Richfield may divest the properties to, or engage in certain joint ventures with, any person who is "eligible" under the terms of the order.² Because eligibility based solely on market share criteria could not meet the Commission's competition objectives in this instance, three major companies—Noranda, INCO Ltd. and the Anglo American Group—were designated by name as ineligible. Those companies' actual or potential competitive positions were believed to be inadequately reflected by reference solely to market share criteria.

Upon consideration of Noranda's request, the Commission determined that it would be in the public interest to reopen the

¹ The Commission has treated Noranda's correspondence as a request that the Commission reopen this proceeding on its own initiative, as authorized by Sections 3.71 and 3.72 of the Commission's Rules of Practice. Rules 3.71 and 3.72(b)(1), 45 F.R. 21622 (Apr. 2, 1980).

² To determine eligibility, the October 29 consent order defines "Eligible Person" and "Ineligible Person." It designates as absolutely ineligible any person having more than ten percent (10%) of the United States copper market for any of the three calendar years preceding an attempt to purchase the subject properties or to engage in certain joint ventures with Atlantic Richfield. Any person having between five percent (5%) and ten percent (10%) of the United States copper market for any of the three calendar years is eligible to purchase the subject properties or to engage in certain joint ventures with Atlantic Richfield only upon prior approval of the Commission. Three companies, Noranda, INCO Ltd. and the Anglo American Group, are declared absolutely ineligible. Definitions (h) and (i) of the order.

proceeding for the purpose of modifying the consent order. The Commission was of the opinion that the public interest in improving competition in the copper industry may adequately be served by designating Noranda, INCO Ltd. and the Anglo American Group as eligible upon prior approval of the Commission.³ On June 19, 1980, the Commission issued an order to show cause why the consent order should not be modified. The show cause order invited interested persons to comment on the proposed change.

Having carefully considered the comments received,⁴ the Commission continues to believe that the competitive positions of Noranda, INCO Ltd. and the Anglo American Group are not adequately reflected by reference solely to market share criteria. The Commission has concluded that the public interest would adequately be served by giving each of the three firms an opportunity to present its views in the context of a specific request for prior Commission approval of a proposed divestiture transaction or a proposed joint venture subject to Paragraphs IX and X of the consent order.

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 C.F.R. 3.72(b) (1979), that the October 29, 1979 consent order be modified in part as follows (new language is italicized, deleted language is hyphenated out):

For purposes of this Order, the following definitions shall apply:

* * * * *

(h) (1) Subject to the provisions of subparagraph (2) of this definition "h", "Eligible Person" means all Persons ~~other than Noranda Mines Ltd., INCO Ltd., the Anglo American Group, and any of their respective subsidiaries, and any other Person~~ having not more than ten percent (10%) of the Copper Market for any of the three calendar years immediately preceding (i) an attempt by such Person to acquire a property or interest to be divested under the provisions of Paragraphs I through V of this Order, or (ii) an attempt by such Person to enter into a Joint Venture with Respondent which may be subject to the provisions of Paragraphs IX and X of this Order. ~~The "Anglo American Group" means the Anglo American Corporation of South Africa Limited, Charter Consolidated Ltd., De Beers Consolidated Mines Ltd., Hudson Bay Mining and Smelting Co., Limited, Minerals and Resources Corporation Ltd., Anglo American Corporation of Canada Limited, and Inspiration Consolidated Copper Company and their respective subsidiaries.~~

(2) *Noranda Mines Ltd., INCO Ltd., the Anglo American Group, and any of their respective subsidiaries, and any Person otherwise eligible under subparagraph (1) of*

³ Although Noranda is the only one of the three companies that has requested a reopening of this proceeding, its position is not substantially different from that of INCO Ltd. or the Anglo American Group. Therefore, the Commission has concluded that it would be appropriate to modify the order with respect to all three firms.

⁴ Comments were received from Noranda and from respondent Atlantic Richfield. Noranda proposed an alternative modification. Atlantic Richfield stated that it does not object to the Commission's proposed modification.

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this definition "h" having between five percent (5%) and ten percent (10%) of the Copper Market for any of the three calendar years immediately preceding any of the events described in sections (i) and (ii) of subparagraphs (1) of this definition "h", shall be considered to be an "Eligible Person" only upon prior approval of the Commission. *The "Anglo American Group" means the Anglo American Corporation of South Africa Limited, Charter Consolidated Ltd., De Beers Consolidated Mines Ltd., Hudson Bay Mining and Smelting Co., Limited, Minerals and Resources Corporation Ltd., Anglo American Corporation of Canada Limited, and Inspiration Consolidated Copper Company and their respective subsidiaries.*

IN THE MATTER OF
ZAYRE CORPORATION

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

Docket C-2908. Decision, Oct. 27, 1977—Modifying Order, Oct. 8, 1980

This order reopens the proceeding and modifies the order issued against the firm on October 27, 1977, 42 FR 60138, 90 F.T.C. 329, in connection with the availability and pricing of advertised specials. In conformity with the modification allowed on April 9, 1980 to the order issued against Pay'N Pak Stores, Inc., Docket C-2780, the order requires only a limited disclosure of availability where closeout merchandise is involved (merchandise whose entire inventory is being disposed of at a reduced price and which is not planned to be restocked).

ORDER REOPENING THE PROCEEDING AND MODIFYING DECISION
AND ORDER

On October 27, 1977, the Commission issued a Decision and Order against Zayre Corp. in connection with the availability and pricing of advertised specials. The Order includes a provision to prevent Zayre from representing in its advertisements that merchandise is available at its stores at any price unless each advertised item is readily available for sale at or below the advertised price and that each advertised item is properly marked. There are certain exceptions to the availability and pricing requirements of the Order.

On July 18, 1980, Zayre Corp. petitioned the Commission pursuant to Section 5(b) of the Federal Trade Commission Act, as amended on May 28, 1980, and Section 2.51 of the Commission's Organization, Procedures and Rules of Practice, 16 C.F.R. 2.51, to reopen the proceeding for the limited purpose of modifying the consent order in conformity with the modification allowed on April 9, 1980, to the Order issued against *Pay'N Pak Stores, Inc.*, Docket C-2780, dealing with "closeout" merchandise. On August 15, 1980, Zayre filed supplemental papers with respect to its petition.

"Closeout" merchandise was defined in the modified Pay'N Pak order as merchandise whose entire inventory is being disposed of at a reduced price and which is not planned to be restocked. Zayre's proposal embodies the same definition. It would, as the Pay'N Pak order, require only a limited disclosure of availability where closeout merchandise is involved.

After due consideration, the Commission believes that the public interest will be served by modifying the Zayre Corp. Decision and