

Modifying Order

97 F.T.C.

IN THE MATTER OF

NATIONAL TEA COMPANY, ET AL.

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

Docket 9126. Decision, July 23, 1980—Modifying Order, April 15, 1981

This order reopens the proceeding and modifies the Commission order issued on July 23, 1980, 96 F.T.C. 42, (45 F.R. 53455), by modifying Paragraph IG of the Order to relieve respondent from the obligation of divesting a specific store, since no purchaser could be found.

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED JULY 23, 1980

The Federal Trade Commission having considered respondent National Tea Company's petition filed on January 29, 1981 to reopen this matter and to modify the consent order to cease and desist issued by the Commission on July 23, 1980, and having determined that reopening and modification of the order is warranted:

It is ordered, That this matter be, and it hereby is reopened and that Paragraph I(G) of the Commission's order be and it is hereby modified to read as follows:

(G) The "disposition stores" means the following National ("N") stores and Applebaums' ("A") store:

1. N-80 (2326 Louisiana, St. Louis Park);
2. N-91 (3115 E. 38th St., Minneapolis);
3. N-99 (150 Apache Plaza, St. Anthony Village);
4. N-210 (4300 Xycon Ave., New Hope);
5. N-130 (1901 W. 80th St., Bloomington); and
6. A-8 (900 E. Maryland, St. Paul).

IN THE MATTER OF
AMERICAN GENERAL INSURANCE COMPANY, ET AL.

DISMISSAL ORDER AND OPINION IN REGARD TO ALLEGED
VIOLATION OF SEC. 7 OF THE CLAYTON ACT

Docket 8847. Complaint, June 17, 1971—Dismissal Order, April 21, 1981*

On remand from the Ninth Circuit Court of Appeals, 589 F.2d 462, the Commission has determined to dismiss the June 17, 1971 complaint which alleged that the effect of American General Insurance Co.'s 1969 acquisition of Fidelity & Deposit Co. of Maryland would be to decrease competition in the fidelity and surety bond markets. The Commission, in dismissing the complaint, held that it would not be in the public interest to impose an order, at this late date, on a respondent no longer doing business in the relevant market.

FINAL ORDER

This matter has been heard by the Commission on remand from the Court of Appeals upon the appeals of complaint counsel and respondent from the initial decision and upon briefs and oral argument in support of and in opposition to the appeals. For the reasons stated in the accompanying Opinion, the Commission has determined to sustain respondent's appeal. Complaint counsel's appeal is denied. The motion to supplement the record filed by complaint counsel is granted. The motion to dismiss filed by respondent is granted. Accordingly,

It is ordered, That the complaint is dismissed.

OPINION OF THE COMMISSION

BY PITOFKY, *Commissioner*:

This case is before us on remand from the Ninth Circuit after an appeal of a cease and desist order issued by the Commission on June 28, 1977. For the reasons set forth in this opinion, the Commission has determined to dismiss the complaint.

The history of this proceeding is long and tortuous. The complaint was issued on June 17, 1971, challenging the July 1, 1969 acquisition by American General Insurance Company of Fidelity & Deposit Company of Maryland (F&D). Various interlocutory proceedings followed, including an unsuccessful district court action filed by respondent to enjoin the Commission from proceeding with the case. *American General Insurance Co. v. FTC*, 359 F. Supp. 887 (S.D. Tex.

* Complaint, Initial Decision, Opinion and Final Order previously published at 89 F.T.C. 557.