

IN THE MATTER OF

WEYERHAEUSER COMPANY, ET AL.

*Docket 9150. Interlocutory Order, June 10, 1982*ORDER DENYING MOTION OF WEYERHAEUSER COMPANY FOR LEAVE
TO FILE REPLY MEMORANDUM

On April 21, 1982, Weyerhaeuser Company filed an application under Rule 3.23(b) of the Commission's Rules of Practice for review of a discovery order of the ALJ. On April 30, complaint counsel filed an answer. Weyerhaeuser has now requested the opportunity to file a reply memorandum because: (1) its application for review was only three pages (although the Rules allow for fifteen) and did not summarize the company's position, whereas complaint counsel used eight pages and did summarize their position, and (2) "complaint counsel's response misperceives the nature of the review sought."

Weyerhaeuser has not offered sufficient reason for the Commission to deviate from its Rules in this instance and allow for an additional filing. Interlocutory appeals of ALJ orders are entertained only in a narrow set of circumstances, and only after full consideration of all the issues by the ALJ. To allow otherwise would involve the Commission unduly in adjudicative proceedings and undermine the authority of its ALJ's. Consequently, the Rules allow the parties each one short, prompt filing. Weyerhaeuser's application for review was shorter than required; that was its decision.

In an interlocutory appeal, the Commission is concerned with the issues as they were briefed to and decided by the ALJ. There is little need for additional argument, unless one of the parties claims that the ALJ misperceived the issues before him. Even in such cases, the Rules provide adequate opportunity for argument in most instances.

Weyerhaeuser's motion is hereby denied.

Interlocutory Order

99 F.T.C.

IN THE MATTER OF
WEYERHAEUSER COMPANY, ET AL.

Docket 9150. Interlocutory Order, June 17, 1982

ORDER DENYING RESPONDENTS' APPEAL OF THE ALJ'S RULING OF
JANUARY 6, 1982

On January 6, 1982, the ALJ granted complaint counsel's motion to exclude discovery in this case on any beneficial effects on either the community of North Bend, Oregon or the nation's balance of payments of the acquisition by Weyerhaeuser Company of Menasha Corporation's corrugated medium mill and adjacent mill site in North Bend. At the same time, the ALJ expressed a willingness to consider the admission of evidence on the effects of the acquisition on employment in North Bend, but only as it would pertain to the selection of a remedy in the case.

We agree with the ALJ that "[e]vidence regarding the alleged beneficial effects of the merger on the community of North Bend, Oregon and on the nation's balance of payments is extraneous to the determination of whether this merger constitutes a violation of either Section 7 or Section 5." (Order of April 7, 1982, p. 9) The ALJ's scholarly analysis of the case law on this issue is exhaustive and his conclusions are accurate: if a merger may substantially lessen competition in the market in which it occurs, it is a violation of Section 7 of the Clayton Act, regardless of perceived social or political benefits it may create; the same rule should apply to the analysis of mergers under Section 5 of the Federal Trade Commission Act.

In determining whether a legal violation has occurred, antitrust analysis does not ordinarily permit consideration of factors other than those pertaining to competition in the relevant markets. *U.S. v. Philadelphia Nat'l Bank*, 374 U.S. 321, 371 (1963); *Nat'l Soc'y of Professional Engineers v. United States*, 435 U.S. 679, 692 (1978). While other factors might well be considered by the Commission in deciding whether to challenge a merger, or how to formulate an appropriate remedy, Congress set injury to competition as the ultimate legal standard for review under Section 7.* The number of conceivably relevant benefits to a merger that the Commission might consider, such as those suggested by respondent, is virtually limitless; and the weight that might be given to them is not readily apparent or even empirically ascertainable. The balancing of such

* Under certain circumstances, the analysis in preliminary injunction proceedings may be broader. *E.g.*, *FTC v. Weyerhaeuser Co.*, 665 F.2d 1072 (D.C. Cir. 1981).