

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).

factors would, as complaint counsel argue, involve value judgments of the decisionmakers that would necessarily vary from case to case, and the meaning of the law would become unacceptably vague.

These same considerations militate against an interpretation of Section 5 that would similarly open up the area of inquiry in cases under the Federal Trade Commission act. The Commission sees no extraordinary circumstances that compel the interpretation of Section 5 as advocated by respondents.

The statements of various federal officials referred to by respondents indicate the existence of a public debate on how federal prosecutors may consider international trade in selecting cases for enforcement, and how the antitrust laws might be amended to take into account the effects of mergers on international trade. However, they do not evidence any dispute with regard to the meaning of current law.

For the aforesaid reasons, the appeal is hereby denied.

Complaint

99 F.T.C.

IN THE MATTER OF
GENERAL MOTORS CORPORATION

DISMISSAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9077. Complaint, March 22, 1976—Final Order, June 25, 1982

On June 25, 1982, the Commission dismissed its complaint charging a major car manufacturer with violating Section 5 of the Federal Trade Commission Act by its use of a selective distribution system for new crash parts for GM automobiles and light trucks.

Appearances

For the Commission: *Donald K. Tenney, Alan H. Melnicoe and Myron L. Dale.*

For the respondent: *Edwin S. Rockefeller, Alan M. Frey, Richard Haddad and Charles L. Duffney, Bierbower & Rockefeller, Washington, D.C., and Francis H. Dunne, in-house counsel, Detroit, Mich., for respondent General Motors Corporation. Jerry S. Cohen, Kohn, Milstein & Cohen, Washington, D.C., for intervenor National Automobile Dealers Association. Jonathan T. Howe, Jenner & Block, Chicago, Ill. and Donald A. Randall, in-house counsel, Washington, D.C., for intervenor Automotive Service Councils, Inc.*

COMPLAINT

The Federal Trade Commission, having reason to believe that General Motors Corporation, a Delaware corporation, has engaged in unfair methods of competition and unfair acts or practices in connection with the distribution of new service crash parts applicable to automobiles and light trucks assembled by General Motors Corporation, in violation of 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, issues its complaint, charging as follows:

1. For the purpose of this complaint, the following definitions shall apply:

- (a) *Automobiles* are self-propelled, four-wheeled vehicles primarily for the transport of persons—they travel primarily on roads or streets and their seating capacity is for no more than 10 persons.
- (b) *Light trucks* are self-propelled vehicles, other than automo-