

CONSOLIDATED FOODS CORP.

1833

Modifying Order

IN THE MATTER OF

CONSOLIDATED FOODS CORPORATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT

Docket C-1024. Consent Order, Dec. 21, 1965—Modifying Order, Dec. 7, 1983

On Dec. 7, 1983, the Federal Trade Commission deleted Paragraph VIII from the order issued against Consolidated Foods Corp. on Dec. 21, 1965 (68 F.T.C. 1137). The Commission has determined that order provisions requiring prior approval of future acquisitions generally should not have terms exceeding ten years.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER

By petition filed August 8, 1983, respondent Consolidated Foods Corporation ("Consolidated") requests, pursuant to Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), that the Commission modify its final order in this matter to remove the prior approval requirement contained in Paragraph VIII of the order. Pursuant to Section 2.51 of the Commission's Rules of Practice and Procedure, the petition was placed on the public record for thirty days. No comments were received.

The Commission has determined that order provisions requiring prior Commission approval of future acquisitions generally should not have terms exceeding ten years. In most cases, the Commission believes that such prior approval provisions will have served their remedial and deterrent purposes after ten years and that the findings upon which such provisions are based should not be presumed to continue to exist for a longer period of time. The Commission has reviewed respondent's petition and has concluded that the order has served its law enforcement and remedial goals.

Therefore, upon consideration of the petition, the Commission, in the exercise of its discretion, finds that elimination of Paragraph VII is in the public interest.

Accordingly, *it is ordered*, that the proceeding be, and it hereby is reopened for the purpose of modifying the Order entered therein;

It is further ordered, That Paragraph VIII shall terminate upon service of this order.

Modifying Order

102 F.T.C.

IN THE MATTER OF

BULOVA WATCH COMPANY, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1887. Consent Order, April 1, 1971—Modifying Order, Dec. 12, 1983*

This order reopens the proceeding and modifies the Commission's order issued on April 1, 1971 (78 F.T.C. 556), by deleting Paragraphs 2 and 4.B. from the order. The modification allows the company to prevent transshipping of its watch and clock products by its dealers.

ORDER REOPENING AND MODIFYING CEASE AND DESIST ORDER

By petition of August 11, 1983, respondent Bulova Watch Company, Inc. ("Bulova") requests that the Commission vacate its April 1, 1971 Order against Bulova in its entirety or, in the alternative, suspend the Order for a ten-year period, at the end of which period Bulova would have the burden of demonstrating that the Order should be permanently vacated. The Order in this matter prohibits Bulova from engaging in certain acts and practices, including resale price maintenance and restricting transshipment by sellers of its watch or clock products. Pursuant to Section 2.51 of the Commission Rules of Practice, Bulova's petition was placed on the public record for comment. No comments were received.

Upon consideration of Bulova's petition and supporting materials, the Commission has determined that the petition makes a satisfactory showing that changed conditions of fact and law and the public interest require reopening the Order and modifying it by deleting its transshipment provisions. The Supreme Court has now determined that non-price vertical restraints such as transshipment restrictions are not *per se* illegal, but instead should be evaluated pursuant to the rule of reason. *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 39, 57-59 (1977). From that perspective, the Commission has determined that the transshipment provisions in the Order are no longer necessary to prevent injury to competition in this industry, and that Bulova will likely suffer significant competitive injury unless those provisions are eliminated. The Commission also finds that Bulova has failed to demonstrate that the remaining provisions of the Order should be modified or set aside. Bulova's petition does not point to changes in law or fact or public interest considerations sufficient to require modifying or deleting those provisions. Accordingly,