

Modifying Order

104 F.T.C.

IN THE MATTER OF

BATUS INC.

MODIFYING ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT*Docket C-3099. Consent Order, Dec. 6, 1982—Modifying Order, Nov. 13, 1984*

This Order reopens the proceeding and modifies the divestiture order issued against a department store operator, 100 F.T.C. 553 (1982), which required the company to divest department stores sufficient to reduce its floor space by 200,000 square feet and its sales volume by \$20 million, as measured by 1981 sales. To date, the operator has received Commission approval for divestitures totalling 492,000 square feet and \$17.9 million in 1981 sales, and has petitioned for modification of the Order stating that any further divestiture would "account for substantially more than \$20 million in 1981 sales." Following an examination of the record and the company's plan of divestiture, the Commission concluded that the company had made a good faith compliance effort and that divestiture of a much larger store to satisfy the remaining \$2.1 million sales volume requirement was not in the public interest. Therefore, Paragraph II of the original Order has been modified by substituting for the phrase in the first sentence reading "in an amount not less than \$20 million as measured by fiscal 1981 sales" the phrase "in an amount not less than \$17.9 million as measured by fiscal 1981 sales."

ORDER REOPENING PROCEEDING AND MODIFYING ORDER

By petition filed July 17, 1984, respondent BATUS Incorporated ("Batus") requests, pursuant, to Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), that Paragraph II of the Commission's Order issued in this matter on December 6, 1982 [100 F.T.C. 553], be modified so that Batus will not be required to make further divestitures to reach the \$20 million sales volume standard set out in Paragraph II 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 order required Batus to divest department stores in the Milwaukee, Wisconsin SMSA sufficient to reduce its floor space by 200,000 square feet and its sales volume by \$20 million, as measured by 1981 sales. To date Batus has received Commission approval for divestitures totalling 492,000 square feet and \$17.9 million in 1981 sales.

The Commission has reviewed Batus' plan of compliance with the divestiture requirements of the Order, including its selection of stores, and the efforts undertaken to fulfill its obligations and believes Batus has made a good faith effort to accomplish full compliance with the Order. The record also demonstrates that sale of an additional store having a 1981 sales volume in the range of \$2.1 million to a

viable competitor is unlikely. Given Batus' good faith compliance effort and the degree of divestiture already obtained, we believe that it is not in the public interest to require a divestiture of a much larger store to satisfy the remaining \$2.1 million sales volume requirement. Therefore, we find that modification of certain language in Paragraph II of the order 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 II is amended by substituting in lieu of the phrase at the end of the first sentence which reads:

in an amount not less than \$20 million as measured by fiscal 1981 sales.

the phrase,

"in an amount not less than \$17.9 million as measured by fiscal 1981 sales."

IN THE MATTER OF
TEAC CORPORATION OF AMERICA

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

Docket C-2752. Consent Order, Oct. 24, 1975—Modifying Order, Nov. 16, 1984

This Order grants the request of a Montebello, California supplier of high fidelity audio components to reopen the proceedings and delete Paragraph I(11) from the Commission's October 24, 1975 Consent Order, 86 F.T.C. 981, *modified*, November 25, 1983, 102 F.T.C. 1814, so as to permit the firm to prevent transshipment of its products to dealers who did not meet non-discriminatory standards of promotion, service and display. After considering company's arguments and other relevant information, the Commission concluded that the public interest warranted reopening and modifying the Order as requested. The transshipment provision had served its remedial purpose. There was no indication that the firm had engaged in resale price maintenance or breached the transshipment provision. Nor was there anything in the record to suggest a need to retain the provision as a fencing-in mechanism, or as a means of preventing anticompetitive effects from nonprice vertical restraints. Accordingly, the Commission ordered that the matter be reopened and Paragraph I(11) of the Order deleted.

ORDER REOPENING AND MODIFYING ORDER ISSUED ON OCTOBER 24, 1975

On June 6, 1984, respondent TEAC Corporation of America ("TEAC") filed its "Request to Reopen Proceedings and to Modify Consent Order" ("Request"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.5 of the Commission's Rules of Practice. The Request asked the Commission to reopen the proceeding in Docket No. C-2752 and modify the order issued by the Commission in this case on October 24, 1975—as modified by an order issued November 25, 1983—to remove a provision that restricts TEAC's ability to limit transshipment of its products. TEAC's Request was placed on the public record for thirty days and no comments were received.

After reviewing TEAC's request and other available information, the Commission has concluded that the public interest warrants reopening and modifying the order in the manner requested by TEAC. The transshipment provision of the order [2] (Paragraph I(11)) was adopted principally as a "fencing in" restraint ancillary to the order's ban on resale price maintenance ("RPM"). TEAC has shown that it does not fix the prices at which its authorized dealers resell TEAC products, that TEAC product prices vary from dealer to dealer, and that the transshipment provision therefore has encouraged the emer-