

IN THE MATTER OF  
COLUMBIAN ENTERPRISES, INC., ET AL.

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

*Docket 9177. Complaint, May 8, 1984—Decision, Nov. 13, 1985*

This consent order requires a Tulsa, Okla. producer and distributor of carbon black, a component in the manufacture of natural and synthetic rubber, among other things, to obtain Federal Trade Commission approval before acquiring substantial assets or stock in its competitors' production facilities. Such approval is needed if the total acquisitions over a five year period would increase the respondent's yearly carbon black production capacity by 130 million pounds or more.

*Appearances*

For the Commission: *Michael Wise.*

For the respondents: *C. Loring Jetton, Jr., John Rounsaville, Jr. and Robert M. Pozin, Wilmer, Cutler & Pickering, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Columbian Enterprises, Inc. ("Columbian") intends to acquire all of the voting securities of Continental Carbon Company ("Concarb"), a wholly owned subsidiary of Conoco Inc. ("Conoco"), in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45); and it appearing that a proceeding by the Commission in respect thereof would be in the public interest, the Commission hereby issues its Complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. COLUMBIAN ENTERPRISES, INC.

1. Respondent Columbian Enterprises, Inc. is a corporation organized and existing under the laws of the State of New York with its corporate headquarters at 425 Park Avenue, New York, New York.

II. CONOCO INC.

2. Respondent Conoco Inc. is a corporation organized and existing under the laws of the state of Delaware with its corporate headquarters at 1007 Market Street, Wilmington, Delaware.

## III. JURISDICTION

3. At all times relevant herein, each of the companies named in this Complaint has been engaged in activities that are in or affecting commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended (15 U.S.C. 12), and Section 4 of the Federal Trade Commission Act, as amended (15 U.S.C. 44).

## IV. THE PROPOSED ACQUISITION

4. On November 12, 1983, Columbian entered into an agreement to acquire 100 percent of the voting securities of Concarb.

## V. TRADE AND COMMERCE

5. The relevant product market in which to assess the competitive effects of the acquisition is the market for carbon black.

6. The relevant geographic market in which to assess the competitive effects of the acquisition is the United States.

7. The relevant market is highly concentrated.

8. Barriers to entry into the production and distribution of the relevant product are substantial.

9. Both Columbian and Concarb are substantial competitors in the relevant product and geographic markets.

## VI. EFFECTS OF THE PROPOSED ACQUISITION

10. The effect of the proposed acquisition, if consummated, may be to substantially lessen competition or tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), inasmuch as it will, among other things, result in the following:

(a) Eliminate substantial actual competition between Columbian and Concarb in the relevant market;

(b) Eliminate Concarb as a substantial competitor in the relevant market;

(c) Substantially increase concentration in an already highly concentrated market, therefore increasing the likelihood of collusion;

(d) Encourage additional mergers or acquisitions in the relevant market, thereby further increasing the likelihood of collusion;

(e) Tend to reduce the degree of price competition in the relevant market;

(f) Tend to reduce the volume of production of carbon black below competitive levels; and

(g) Tend to reduce actual competition among other companies engaged in the production and distribution of the relevant product.

## VII. VIOLATIONS CHARGED

11. The proposed acquisition constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

## DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Columbian Enterprises, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 425 Park Avenue, in the City of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

## ORDER

*Definitions*

For the purposes of this order the following definitions shall apply:

*Rubber carbon black* means furnace-process and thermal-process carbon black used for the manufacture of rubber.

*Columbian* means Columbian Enterprises, Inc., as well as its officers, employees, agents, its parents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of its parents, divisions, subsidiaries, successors and assigns.

*Rubber carbon black production capacity* means the practical annual productive capacity in the United States of any production units, including both units currently in operation and existing units that could be put into operation with or without time delay or additional investment. The term shall not include units dedicated to the manufacture of carbon black for industrial end uses. The term shall include reactor vessels, including associated nozzles and reaction chambers, and associated baghouses and dryers, but shall not include other equipment.

## I.

*It is ordered*, That for a period of five (5) years from either (a) the date this order becomes final or (b) February 15, 1985, whichever is earlier, Columbian shall not acquire, directly or indirectly, without the prior approval of the Commission, any part of the United States rubber carbon black business of any other person or corporation, whether represented by securities or assets, other than products or securities obtained in the regular course of business, if as a result of such acquisition Columbian would cumulatively increase its United States rubber carbon black production capacity by more than 130 million pounds.

## II.

*It is further ordered*, That, while Paragraph I of this order is effective, Columbian shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment of substantially all assets, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries in the United States, that may affect compliance obligations arising out of this order.

## III.

*It is further ordered,* That (a) if the Commission dismisses its complaint in *Bass Brothers Enterprises, Inc., et al.*, Docket No. 9178 [107 F.T.C. — (1986)], with respect to Respondents Bass Brothers Enterprises, Inc. or Sid Richardson Carbon & Gasoline Co., (hereinafter collectively “Richardson”) then this order shall, upon application of Respondent, be dismissed, unless the Commission determines that the grounds for the dismissal of Richardson are a material change in the market for rubber carbon black or in the competitive significance of Richardson in that market, and the Commission finds that said grounds are not applicable to Columbian; (b) if the Commission proceeding in *Bass Brothers Enterprises, Inc., et al.* terminates with an order that does not require prior Commission approval of future acquisitions by Richardson or requires prior Commission approval for a period shorter than that set forth in Paragraph I above, then this order shall, upon application of Respondent, be modified to impose only such lesser restriction on Respondent herein; and (c) if the Commission proceeding in *Bass Brothers Enterprises, Inc., et al.* terminates with an order that permits without prior Commission approval acquisitions that would cumulatively increase Richardson’s United States rubber carbon black capacity by more than 130 million pounds (including any permitted acquisition of capacity by Richardson from Ashland,) then this order shall, upon application of Respondent, be modified to permit Respondent herein to acquire United States rubber black production capacity in the same amount.

## IV.

*It is further ordered,* That if Columbian shall make an acquisition of United States rubber carbon black production capacity permitted under this order while Paragraph I of this order is effective, it shall file with the Commission a written report describing such acquisition.

Commissioner Calvani dissented.

Complaint

106 F.T.C.

IN THE MATTER OF  
OKLAHOMA OPTOMETRIC ASSOCIATION

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

*Docket 9191. Complaint, Feb. 28, 1985—Decision, Nov. 19, 1985*

This consent order requires the Oklahoma Optometric Association, among other things, to cease prohibiting any member optometrist from: affiliating with or operating franchises; operating branch offices; or truthfully advertising the prices, terms and availability of optometric services or optical goods.

*Appearances*

For the Commission: *Toby G. Singer, Raymond L. Randall and Alan R. Soudakoff.*

For the respondent: *Daniel J. Gamino, Daniel J. Gamino & Associates, P.C., Oklahoma City, Okla.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the named respondent has violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Oklahoma Optometric Association is a corporation formed pursuant to the laws of the State of Oklahoma, with its mailing address at 4545 N. Lincoln Blvd., Suite 173, Oklahoma City, Oklahoma.

PAR. 2. Respondent is a professional association organized in substantial part to represent the interests of optometrists who practice in Oklahoma and the profession of optometry in Oklahoma. Respondent has approximately 300 members, constituting approximately ninety percent of the practicing optometrists in Oklahoma. A significant portion of respondent's activities furthers its members' pecuniary interests. By virtue of its purposes and activities, respondent is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended (15 U.S.C. 44).