

Interlocutory Order

106 F.T.C.

IN THE MATTER OF
THE KROGER COMPANY

Docket 9102. Interlocutory Order, Nov. 26, 1985.

ORDER REVOKING *IN CAMERA* TREATMENT AND
PLACING DOCUMENTS ON THE PUBLIC RECORD

During the administrative hearing in this matter, certain documents and testimony received *in camera* treatment. On July 10, 1979, the Kroger Company filed a motion to revoke the *in camera* designation and to place on the public record the entire Initial Decision issued by the Administrative Law Judge and all the evidence and argument it offered during the proceeding. The Commission, in entering its final decision and order, 98 F.T.C. 639 (1981), *modified*, 100 F.T.C. 573 (1982), did not address respondent's pending motion that the *in camera* status of these materials be revoked. Respondent now asks the Commission to withdraw from *in camera* status and place on the public record certain internal documents admitted into evidence in the proceeding.

The exhibits accorded *in camera* treatment consist of documents provided by respondent and internal agency materials. Kroger consents to the public disclosure of its own materials.¹ The agency records were compiled in investigations that closed more than three years ago. We have determined that most of the agency materials made part of the *in camera* record no longer warrant confidential treatment and should be made part of the public record. Several exhibits, however, reflect the predecisional views of individual Commissioners and advice from the General Counsel. These sensitive deliberative materials are protected from public disclosure, *see NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1972), and the Commission believes there is good cause to preserve their *in camera* status. Accordingly, the Commission declines to revoke the *in camera* status of these documents.²

It is ordered, That the *in camera* treatment of exhibits received in evidence and of other documents in the record relating to those exhibits be eliminated in accordance with this order.

¹ Letter from N. Diamond, counsel for Kroger, dated May 14, 1985.

² In its letter dated May 14, 1985, Kroger's counsel advised that respondent was specifically interested in five exhibits, RX221, RX222, RX240, RX241 and RX1003. Portions of RX222 and RX1003 set forth the predecisional views of individual Commissioners and will remain nonpublic. The remaining portions of these exhibits as well as RX221, RX240 and RX241 will be publicly disclosed.

IN THE MATTER OF

DETROIT AUTO DEALERS ASSOCIATION, INC., ET AL.

Docket 9189. Interlocutory Order, Nov. 27, 1985

ORDER

Administrative Law Judge Timony has certified, pursuant to Rules 3.22(a) and 3.15(a)(1), complaint counsel's motion to dismiss the complaint as to respondent Warren E. Avis. It appears that Mr. Avis has had no meaningful connection with the conduct at issue in this case. Although Mr. Avis is an absentee owner of respondent Avis Ford, Inc., he did not act as Chairman and Treasurer of the firm, as complaint counsel previously believed. Accordingly, it is not in the public interest to continue these proceedings as to Mr. Avis. The motion is granted.

It is so ordered.