

IN THE MATTER OF

UNITED STATES STEEL CORPORATION, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 760. Order, July 21, 1924—Modifying Order, March 10, 1986*

The Federal Trade Commission has modified a 1924 order (8 F.T.C. 1) issued against respondent by deleting a requirement that the company include specific price and transportation information on its contracts and invoices.

ORDER REOPENING AND MODIFYING ORDER ISSUED ON JULY 21, 1924

On November 7, 1985, respondent United States Steel Corporation ("USS") filed its "Request to Reopen and Set Aside in Part and Modify in Part the Order" ("Request"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen the proceeding in Docket No. 760 and to modify the order issued by the Commission in this case on July 21, 1924, by deleting Paragraph 3, which requires USS to state clearly on its contracts and invoices how much is charged for the steel f.o.b. the producing or shipping point and how much, if any, is charged for the actual transportation. USS also asks that the order be modified to specify that, "Quotations and sales may be made on a net delivered price basis so long as there is no concerted refusal to quote or sell rolled steel products f.o.b. the plant where the products are manufactured or from which they are shipped." USS' request was placed on the public record for thirty days; no comments were received.

After reviewing USS' request and other available information, the Commission has concluded that the public interest warrants reopening and modification of the order to eliminate Paragraph 3. The requirement that price and transportation information be included on USS' contracts and invoices for rolled steel products was adopted principally as a fencing-in restraint ancillary to the order's prohibitions against the use of the "Pittsburgh Plus" or other basing point pricing system and against price discrimination. USS has shown that since the deregulation of railroad freight rates by the Staggers Rail Act of 1980, 49 U.S.C. 10701 *et seq.*, enacted by Congress to promote competition by allowing carriers to negotiate confidential contract rates with their customers, many carriers have insisted that USS not disclose their negotiated rates. This change in the legal framework within which carriers and USS now operate, and the carriers' insist-

ence upon confidentiality within that new framework, represents a changed condition of fact warranting elimination of the order's requirement that the actual freight charge appear on contracts and invoices between USS and its customers. Disclosure of USS' rates in its invoices allows USS' competitors to discover any favorable terms which it has negotiated with carriers and would reduce the incentive of a rail carrier to offer USS a favorable rate. Elimination of Paragraph 3 is therefore in the public interest because it will enable USS to compete effectively for contract rates.

The disclosure requirements of Paragraph 3 appear to have served their remedial purpose. There is no indication that USS has used the "Pittsburgh Plus" or other basing point system of pricing or engaged in price discrimination of the type contemplated by the order since July 21, 1924. Nothing in the record suggests that the requirements of Paragraph 3 are now needed to ensure that basing point pricing or price discrimination are not reinstituted by USS.

With respect to the remainder of the Request, which asks that the order be modified to specify that, "Quotations and sales may be made on a net delivered price basis so long as there is no concerted refusal to quote or sell rolled steel products f.o.b. the plant where the products are manufactured or from which they are shipped," such modification is not necessary. Once Paragraph 3 is deleted, the remaining provisions of the order do not restrict USS' ability to quote or sell on a net delivered price basis. Rather, these provisions only ban quoting or selling of rolled steel products at "Pittsburgh Plus" prices, which the order defines as adding to the price of products shipped from points outside Pittsburgh amounts equal to the freight if the products had been shipped from Pittsburgh, or upon any other basing point. Net delivered pricing would not, therefore, be precluded so long as there was no charge for fictitious freight.

Accordingly, *it is ordered* that this matter be, and it hereby is, reopened and that Paragraph 3 of the order be, and it hereby is, deleted.

IN THE MATTER OF
BASS BROTHERS ENTERPRISES, INC., ET AL.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket 9178. Complaint, May 8, 1984—Decision, March 12, 1986

This consent order requires, among other things, that Ashland Oil Co., the nation's third-largest producer of carbon black, cancel the proposed sale of its carbon black assets to Bass Brothers Enterprises, Inc. Ashland is also required to obtain Commission approval before selling any of its domestic carbon black plants to a major competitor.

Appearances

For the Commission: *Steven B. Feirman* and *Edward F. Glynn, Jr.*

For the respondents: *Kathleen E. McDermott* and *Thomas L. Feazell*, in-house counsel, Russell, Ky., for respondent Ashland Oil Co.

COMPLAINT

The Federal Trade Commission, having reason to believe that Bass Brothers Enterprises, Inc. ("Bass Brothers") and Sid Richardson Carbon & Gasoline Co. ("Sid Richardson") intend to acquire the assets located in the United States of the Carbon Black Division of Ashland Chemical Company, a division of Ashland Oil, Inc. (collectively "Ashland"), 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. BASS BROTHERS ENTERPRISES, INC. AND SID RICHARDSON
CARBON & GASOLINE CO.

1. Respondent Bass Brothers Enterprises, Inc. is a corporation organized and existing under the laws of the State of Texas with its corporate headquarters at 2700 First City Bank Tower, 201 Main Street, Fort Worth, Texas.

2. Respondent Sid Richardson Carbon & Gasoline Co. is a corporation organized and existing under the laws of the State of Texas with