

Complaint

111 F.T.C.

IN THE MATTER OF
SUN COMPANY, INC.

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

Docket C-3246. Complaint, Mar. 6, 1989—Decision, Mar. 6, 1989

This consent order requires, among other things, a Radnor, Pa. corporation to divest terminals and related assets and operations of Atlantic Petroleum Corporation (Atlantic) that are located in certain parts of N.Y. and Pa., requires respondent to obtain FTC approval before making any acquisition of any light products terminals or light products pipelines in certain parts of N.Y. or Pa., and also requires the "hold-separate agreement" to continue in effect until the Commission has approved the divestiture of the property.

Appearances

For the Commission: *Arthur J. Nolan.*

For the respondent: *Robert H. Campbell & Jonathon C. Waller, in-house counsel, Philadelphia, Pa. and Keith E. Pugh, Jr., Howrey and Simon, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, Sun Company, Inc. ("Sun"), a corporation subject to the jurisdiction of the Federal Trade Commission, has acquired 100 percent of the stock of Atlantic Petroleum Corporation ("Atlantic"), 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 ("FTC Act"), 15 U.S.C. 45; that said acquisition and the actions of the respondent to implement that acquisition constitute violations of Section 5 of the FTC Act; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. SUN COMPANY, INC.

1. Respondent Sun is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business at 100 Matsonford Road in Radnor, Pennsylvania.

2. Sun is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

II. ATLANTIC PETROLEUM CORPORATION

3. Atlantic is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1016 West 9th Avenue, King of Prussia, Pennsylvania.

4. Atlantic is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

III. THE ACQUISITION

5. On or about July 4, 1988, Sun entered into a purchase agreement with Atlantic pursuant to which Sun agreed to purchase 100 percent of the capital stock of Atlantic Petroleum Maatschappij, B.V., which owns all the outstanding shares of Atlantic Refining and Marketing Corporation. Purchase of the capital stock would give Sun control of a refinery, about 900 miles of light products pipelines, 30 distribution terminals, and about 600 retail service stations and convenience stores primarily located in the states of Pennsylvania and New York. The total value of the proposed acquisition is \$513 million with Sun paying an additional \$113 million for Atlantic's petroleum inventories.

IV. TRADE AND COMMERCE

A. *Relevant Line of Commerce*

6. The relevant line of commerce in which to analyze to Sun's acquisition of Atlantic is the wholesale distribution and marketing of light petroleum products from terminals.

B. Relevant Section of the Country

7. The relevant sections of the country are the individual terminal distribution markets of Williamsport, PA and Binghamton, NY.

V. MARKET STRUCTURE

8. Distribution of light petroleum products from terminals in each relevant market is highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios.

VI. BARRIERS TO ENTRY

9. Entry into the relevant markets set out in paragraphs 6 and 7 herein, is very difficult.

VII. ACTUAL COMPETITION

10. Sun and Atlantic are actual competitors in the distribution of light petroleum products from terminals in Williamsport, PA and Binghamton, NY.

VIII. EFFECT

11. The effect of the proposed acquisition, if consummated, may be substantially to lessen competition in the product market in relevant sections of the country described above in paragraphs 6 and 7 in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the FTC Act, 15 U.S.C. 45, in the following ways, among others:

- a. Actual competition between Sun and Atlantic will be eliminated;
- b. Actual competition between competitors generally will be lessened;
- c. Concentration will be increased which will increase the likelihood of collusion; and
- d. Interdependent conduct, nonrivalrous behavior, collusion, or parallel policies of mutual advantage will be increased.

All of the above increase the likelihood that firms in the market will increase prices and decrease the likelihood that they will decrease prices in the near future and in the long run.

IX. VIOLATION CHARGED

12. The acquisition agreement described in paragraph 5 as it relates to light products distribution and marketing assets in Williamsport,

PA and Binghamton, NY constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

13. The proposed acquisition agreement described in paragraph 5 as it relates to light products distribution and marketing assets in Williamsport, PA and Binghamton, NY, would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

Commissioner Machol not participating.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of Sun Company, Inc.'s ("Sun") acquisition of 100 percent of the stock of Atlantic Petroleum Corporation ("Atlantic"), and the respondent Sun having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and

Respondent Sun, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Sun of all 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 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 Commission having thereafter considered the matter and having determined that it had reason to believe that respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, 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 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Sun is a corporation organized under the laws of Pennsylvania with its executive offices at 100 Matsonford Road in Radnor, Pennsylvania.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of respondent Sun, and the proceeding is in the public interest.

ORDER

I.

As used in this order (including the Agreement to Hold Separate, annexed to and made a part hereof), the following definitions shall apply:

(a) “*Acquisition*” means Sun’s acquisition of shares of the common stock of Atlantic Petroleum Maatschappij, B.V.

(b) “*Light products pipeline*” means any pipeline or segment of a pipeline system that is used or that at any time during the two preceding years has been used for transportation of gasoline, diesel fuel, home heating oil, or kerosene-based jet fuel.

(c) “*Schedule A Properties*” means the assets and businesses listed in Schedule A of this order.

(d) “*Sun*” means Sun Company, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by Sun and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(e) “*Atlantic*” means Atlantic Petroleum Maatschappij, B.V. as it was constituted prior to the acquisition, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Atlantic and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(f) “*Light products terminal*” means a facility having the capacity to store ten thousand (10,000) barrels or more that is used or that at any time during the two preceding years has been used for receiving, storage, and truck distribution of gasoline, diesel fuel, home heating oil, or kerosene-based jet fuel.

(g) “*Retail Gasoline Properties*” means service stations, “convenience stores,” and other real estate, whether owned in fee or leased, from which gasoline is sold to the public.

II.

It is ordered, That:

(A) Sun shall divest, absolutely and in good faith, within six months

of the date this order becomes final, the Schedule A Properties, as well as any additional assets and businesses relating to petroleum transportation and marketing that (i) Sun may at its discretion include as a part of the assets to be divested and are acceptable to the acquiring entity, or (ii) the Commission shall require to be divested to ensure the divestiture of the Schedule A Properties as ongoing, viable enterprises, engaged in the businesses in which the properties are presently employed.

(B) Sun shall provide prospective acquirers of Schedule A Properties petroleum product exchanges if necessary to insure divestiture of the properties as ongoing, viable enterprises engaged in the same businesses in which the properties are presently employed.

(C) The Agreement to Hold Separate, attached hereto, shall continue in effect until such time as the Commission has approved Sun's divestiture of the Schedule A Properties or until such other time as the Agreement to Hold Separate provides, and Sun shall comply with all terms of said agreement.

(D) Divestiture of the Schedule A Properties shall be made only to a buyer or buyers, and only in a manner, that receives the prior approval of the Commission. The purpose of the divestiture of the Schedule A Properties is to ensure the continuation of the assets as ongoing, viable enterprises engaged in the same businesses in which the properties are presently employed and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint.

(E) Sun shall maintain the viability and marketability of the Schedule A Properties and shall not cause or permit the destruction, removal or impairment of any assets or businesses to be divested except in the ordinary course of business and except for ordinary wear and tear that does not affect the viability and marketability of the Schedule A Properties.

III.

It is further ordered, That, within sixty (60) days after the date of service of this order, and every sixty (60) days thereafter until Sun has fully complied with the provisions of paragraph II of this order, Sun shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying with, or has complied with that provision. Sun shall include

in compliance reports, among other things that are required from time to time, a full description of the contacts or negotiations for the divestiture of properties specified in paragraph II of this order, including the identity of all parties contacted. Sun also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

IV.

It is further ordered, That, for a period commencing on the date of service of this order and continuing for ten (10) years from and after the date of service of this order, Sun shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, assets used or previously used in (and still suitable for use in), or any interest in, or the whole or any part of the stock or share capital of, any company that is engaged in:

(A) The ownership or operation of light products terminals in any part of the states of Pennsylvania or New York (but excluding New York counties south of Orange and Putnam counties in the state of New York); or

(B) The ownership or operation of any light products pipeline in any part of the states of Pennsylvania or New York (but excluding New York counties south of Orange and Putnam counties in the state of New York), excluding any pipeline or pipeline segment entirely located within a circular area with radius of fifty (50) miles centered on the Sun refinery at Marcus Hook, Pennsylvania and also excluding any light products pipeline assets purchased for less than two million dollars (\$2,000,000).

Provided, however, that these prohibitions shall not relate to the construction of new facilities or participation in joint ventures in which Sun is a participant on the date of service of the order.

V.

One year from the date of service of this order and annually thereafter for nine years, Sun shall file with the Commission a verified written report of its compliance with paragraph IV.

VI.

For the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Sun made to its principal office, Sun shall permit any duly authorized representative of the Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Sun relating to any matters contained in this order; and

(B) Upon five (5) days' notice to Sun and without restraint or interference from it, to interview officers or employees of Sun who may have counsel present regarding such matters.

VII.

It is further ordered, That Sun notify the Commission at least thirty (30) days prior to any change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the order.

Commissioner Machol not participating.

SCHEDULE A

Assets to be divested by Sun, as provided above, are the following:

1. All Atlantic light products terminals located in Broome County, New York (at 440 Prentice Road, Vestal, New York, near the city of Binghamton) and in Lycoming County, Pennsylvania (at RD 4 South Williamsport, Pennsylvania), including all associated on-site facilities and petroleum products inventories.
2. All retail gasoline properties owned by Atlantic at the following locations:

522 Hooper Road	Endwell, NY 13760
61 Glenwood Avenue	Binghamton, NY
3808 Vestal Parkway	Vestal, NY
2 Castle Creek Road	Binghamton, NY 13901
2680 Main Street	Whitney Point, NY 13862
1153 Vestal Avenue S Penn	Binghamton, NY 13903
236-240 Conklin Avenue	Binghamton, NY 13903
1010 Union Maine Highway	Endicott, NY 13760
500 Vestal Avenue	Endicott, NY 13760
341-343 Fron Street	Binghamton, NY 13905
110 N. Main Street	Jersey Shore, PA 17740
241-243 Broad Street	Montoursville, PA 17754
261 Washington Blvd.	Williamsport, PA 17701
507 Hepburn Street	Williamsport, PA 17701
857 W. Third	Williamsport, PA

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate (the "Agreement"), by and between Sun Company, Inc. ("Sun"), a Pennsylvania corporation, with executive offices at 100 Matsonford Road, Radnor, Pennsylvania, and the Federal Trade Commission ("the Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41 *et seq.* (collectively, "the parties").

PREMISES

Whereas, on July 4, 1988, Sun and Atlantic Petroleum Corporation, N.V. and John C.M.A.M. Deuss entered into a stock purchase agreement, pursuant to which Sun agreed to purchase all issued and outstanding shares of capital stock of Atlantic Petroleum Maatschappij, B.V. which owns all the outstanding shares of Atlantic Refining and Marketing Corporation ("Atlantic"); and

Whereas, the Commission is now investigating the transaction contemplated by the stock purchase agreement (the "acquisition") to determine if the acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached agreement containing consent order ("consent order"), the Commission must

place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the status quo ante of Atlantic's refining, transportation and marketing assets and businesses during the period prior to the final acceptance of the consent order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of properties described in Schedule A to the consent order (the "Schedule A Properties") and the Commission's right to seek to restore Atlantic as a viable competitor; and

Whereas, the purpose of this agreement and the consent order is to preserve Atlantic as viable petroleum company pending the divestiture of the Schedule A Properties as viable, ongoing enterprises, in order to remedy any anticompetitive effects of the acquisition and to preserve Atlantic as a viable petroleum company in the event that divestiture is not achieved; and

Whereas, Sun's entering into this agreement shall in no way be construed as an admission by Sun that the acquisition is illegal; and

Whereas, Sun understands that no act or transaction contemplated by this agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this agreement.

Now, Therefore, the parties agree, upon understanding that the Commission has not yet determined whether the acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the consent order, it will not seek further relief from Sun with respect to the acquisition, except that the Commission may exercise any and all rights to enforce this agreement and the consent order to which it is annexed and made a part thereof, and in the event the required divestitures are not accomplished, to seek divestiture of such assets as are held separate pursuant to this agreement, as follows:

1. Sun agrees to execute and be bound by the attached consent order.
2. Sun agrees that, until the first to occur of (i) three business days

after the Commission withdraws its acceptance of the consent order pursuant to the provisions of Section 2.34 of the Commission's Rules; or (ii) if the Commission within 120 days after publication in the Federal Register of the consent order finally accepts such order, until all of the divestitures required by Schedule A of the consent order are approved by the Commission, Sun will hold all of Atlantic's refining, transportation, and marketing assets and business operations, separate and apart on the following terms and conditions:

a. All of Atlantic's refining, transportation, and marketing assets and businesses shall be operated independently of Sun;

b. Sun shall not exercise direction or control over, or influence directly or indirectly, any of Atlantic's refining, transportation, and marketing assets and businesses; *provided, however*, that Sun may exercise only such direction and control over Atlantic as is necessary to assure compliance with this agreement.

c. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the acquisition, defending investigations or litigation, or negotiating an agreement to dispose of assets, Sun shall not receive or have access to, or the use of, any "material confidential information" relating to Atlantic's refining, transportation and marketing assets and businesses not in the public domain, except as such information would be available to Sun in the normal course of business if the acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to Sun from sources other than Atlantic, and includes but is not limited to customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets).

d. Sun shall not change the composition of the management of Atlantic's refining, transportation and marketing assets and businesses except as provided in subparagraph (e) herein and except that the current Atlantic directors, serving on the "New Board" (as defined in subparagraph (g)) shall have the power to remove employees for cause; Sun shall maintain the viability and marketability of Atlantic's refining, transportation and marketing assets and businesses and shall not sell, transfer, encumber, or otherwise impair their marketability or viability (other than in normal course of business).

e. In the event that employees of Atlantic leave or resign from

Atlantic prior to the expiration of this agreement, and such vacancies are required to be filled in order to ensure the viability of Atlantic's operations and business, Sun may fill such vacancies, if any, with Sun employees, on the condition that the employees so appointed shall comply with all terms and conditions of this agreement and shall enter a confidentiality agreement prohibiting disclosure of confidential information.

f. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 2(a) - (e) hereof, shall be subject to a majority vote of the New Board (as defined in subparagraph (g)).

g. Sun may adopt new Articles of Incorporation and Bylaws, provided that they are not inconsistent with other provisions of this agreement, and may elect a new three person board of directors of Atlantic ("New Board") once it is a majority shareholder of Atlantic. Sun may elect the directors to the Board; provided, however, that such Board shall consist of at least two current Atlantic employees and no more than one Sun director, officer, employee, or agent. Except as permitted by this agreement, the director of Atlantic who is also a Sun director, officer, employee or agent, shall not receive in his or her capacity as director of Atlantic material confidential information relating to Atlantic's refining, transportation and marketing assets and businesses and shall not disclose any such information received under this agreement to Sun or use it to obtain any advantage for Sun. Said director of Atlantic who is also a Sun director, officer, employee or agent, shall enter a confidentiality agreement prohibiting disclosure of confidential information. Such director shall participate in matters that come before the New Board only for the limited purpose of considering a capital investment or other transactions exceeding \$5,000,000 and carrying out Sun's and Atlantic's responsibility to assure that Schedule A Properties and such other properties as the Commission may elect to add under paragraph II of the consent order are maintained in such manner as will permit their divestiture as ongoing, viable assets to achieve the remedial purposes of the consent order. Except as permitted by this agreement, such Director shall not participate in any matter, or attempt to influence the votes of the other directors with respect to matters that would involve a conflict of interest if Sun and Atlantic were separate and independent entities. Meetings of the Board during the term of this agreement shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this agreement.

h. Nothing herein shall prevent the New Board from negotiating or entering into agreements to dispose of Atlantic's assets, provided that any such agreements with respect to refining, transportation and marketing related assets and businesses are conditioned on and not consummated prior to final approval of the consent order by the Commission.

i. Nothing contained in this agreement shall preclude a loan by Sun to Atlantic at closing in an amount sufficient to retire existing bank debt owed by Atlantic. Such loan shall be unsecured and bear interest at prevailing market rates payable to Sun and falling due fourteen (14) days after any denial of final approval of this consent order by the Commission.

j. A majority of the New Board may declare a dividend and payment not greater than the amount paid in the same quarter in 1987. Except for such dividend payment, all earnings and profits of Atlantic shall be retained separately in Atlantic. Sun shall have the right to borrow monies from Atlantic upon approval by the majority of the New Board on the same terms and conditions described in paragraph (i); *provided, however*, that Sun shall not borrow funds if the result would be to impair Atlantic's ability to operate its refining, transportation and marketing assets and businesses at its 1987 levels of expenditure on an annualized basis.

k. Whereas Atlantic's refinery has previously been supplied with crude oil by related companies, and whereas Atlantic's crude oil supply needs to be maintained in order to ensure the viability of Atlantic's operations and businesses, Sun may enter into an agreement to supply crude oil to Atlantic, provided that such agreement shall be negotiated by Sun and the New Board on an arm length basis and that the terms of such agreement shall provide that the purchases be based on the then current fair market value for crude oil.

l. Should the Federal Trade Commission seek in any proceeding to compel Sun to divest itself of the shares of Atlantic Petroleum Maatschappij, B.V. stock it shall acquire, or to compel Sun to divest any refining, transportation and marketing assets or businesses that it may hold, or to seek any other injunctive or equitable relief, Sun shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted Atlantic Petroleum Maatschappij, B.V. stock to be acquired. Sun also waives all rights to contest the validity of this agreement.

3. For the purpose of determining or securing compliance with this agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Sun made to its principal office, Sun shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Sun and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Sun relating to compliance with this agreement;

b. Upon five (5) days notice to Sun, and without restraint or interference from it, to interview officers or employees of Sun, who may have counsel present, regarding any such matters.

No information or documents obtained by the Commission shall be divulged by any representative of the Commission, except in the case of legal proceedings to which the Commission is a party, or for the purpose of securing compliance with this consent order, or as otherwise required by law.

If, at any time, information or documents are furnished by Sun and Sun identifies such documents as "confidential," then the Commission shall provide to Sun ten (10) days notice or, if ten (10) days is not possible, as many days notice as possible prior to divulging such material in any legal proceeding to which that entity is not a party.

4. This agreement shall not be binding until approved by the Commission.

Show Cause Order

111 F.T.C.

IN THE MATTER OF

R.J. REYNOLDS TOBACCO COMPANY

Docket 9206. Show Cause Order, March 24, 1989

SHOW CAUSE ORDER

On October 28, 1988, Chief Administrative Law Judge Montgomery Hyun certified to the Commission for enforcement a subpoena and a set of interrogatories that had been directed to the respondent, R.J. Reynolds Tobacco Company ("Reynolds").¹ Reynolds has declined to respond to the subpoena, to answer the interrogatories or to participate in the remainder of this proceeding before the administrative law judge on the ground that such participation would violate its First Amendment right to free speech. On September 20, 1988, complaint counsel moved that the judge impose sanctions on Reynolds in the form of adverse inferences drawn from the subpoena and interrogatories to which Reynolds has refused to respond and to permit complaint counsel to present evidence in support of the complaint. The judge declined and, on his own motion, certified the subpoena and interrogatories to the Commission for enforcement.

The issue before the Commission is whether to seek enforcement or to take other action. For the reasons below, the Commission has decided not to seek enforcement at this time but to direct the respondent to show cause why the Commission should not impose sanctions in the form of adverse inferences, as provided in the Rules of Practice.

A subpoena enforcement action would be advisable if we believed that it would promote expeditious completion of the administrative proceedings. *See UAW v. NLRB*, 459 F.2d 1329, 1339 (D.C. Cir. 1972) ("enforcement against a really intransigent party can be costly and time consuming, where the enforcement process is of necessity collateral to the main case"). Reynolds has stated that it intends to defend its refusal to comply with complaint counsel's discovery on the ground that the Commission lacks jurisdiction to conduct this proceeding. Although Reynolds would appear to prefer litigating this issue in the court of appeals without first proceeding in district court, and indeed opposes a subpoena enforcement action here as inefficient,

¹ Also included in the certification was a subpoena directed to a nonparty, Stanley H. Katz, Leber Katz