

IN THE MATTER OF

NIPPON SHEET GLASS COMPANY, LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3346. Complaint, Oct. 7, 1991—Decision, Oct. 7, 1991*

This consent order requires, among other things, the respondents, suppliers of wired glass, for a period of ten years, to obtain prior Commission approval before engaging any other entity in North America into any joint manufacturing, marketing or distribution agreement that involves selling to customers located in the United States.

Appearances

For the Commission: *Robert W. Doyle, Jr. and James C. Eagan, Jr.*

For the respondents: *Bruce D. Stokler, Glovsky & Popep, P.C.,*
Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that respondent Nippon Sheet Glass Company, Ltd. ("Nippon") and its subsidiary, respondent NSG Holding USA, Inc. ("NSG-USA"), corporations subject to the jurisdiction of the Commission, have, pursuant to a Common Stock Purchase Agreement ("Purchase Agreement"), purchased approximately 20% of the stock or voting securities of respondent Libbey-Owens-Ford Co., ("LOF"), a subsidiary of respondent Pilkington plc ("Pilkington"), and said Purchase Agreement constitutes a 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 to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

I. DEFINITIONS

1. For the purposes of this complaint, the following definitions apply:

a. "*Nippon*" means respondent Nippon Sheet Glass Company, Ltd., as well as its officers, employees, agents, divisions, subsidiaries (including but not limited to NSG-USA), successors, assigns, and the officers, employees, or agents of Nippon's divisions, subsidiaries, successors and assigns.

b. "*NSG-USA*" means respondent NSG Holding USA, Inc., a wholly owned subsidiary of Nippon, as well as its officers, employees, agents, divisions, subsidiaries, successors, assigns, and the officers, employees, or agents of NSG-USA's divisions, subsidiaries, successors and assigns.

c. "*Pilkington*" means respondent Pilkington plc, as well as its officers, employees, agents, divisions, subsidiaries (including but not limited to LOF), successors, assigns, and the officers, employees or agents of Pilkington's divisions, subsidiaries, successors and assigns.

d. "*LOF*" means respondent Libbey-Owens-Ford Co., a subsidiary of Pilkington, as well as its officers, employees, agents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of LOF's divisions, subsidiaries, successors and assigns.

e. "*Wired glass*" means any flat glass containing wire netting.

f. "*North America*" means the United States, Canada and Mexico.

II. THE PARTIES

2. Respondent Nippon is a corporation organized, existing, and doing business under and by virtue of the laws of Japan with its principal offices at 5-11, Doshomacho 3-chome, Chuo-Ku, Osaka, Japan.

3. Respondent Nippon is, and at all times relevant herein has been, a corporation whose business is affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

4. Respondent NSG-USA, a wholly owned subsidiary of respondent Nippon, is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1209 Orange Street, Wilmington, Delaware.

5. Respondent NSG-USA is, and at all times relevant herein has been, a corporation whose business is affecting commerce as

“commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

6. Respondent Pilkington is a corporation organized, existing, and doing business under and by virtue of the laws of England with its principal offices at Prescot Road, St. Helens, Merseyside, England WA10 3TT.

7. Respondent Pilkington is, and at all times relevant herein has been, a corporation whose business is affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

8. Respondent LOF, a subsidiary of respondent Pilkington and respondent NSG-USA, is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 811 Madison Avenue, Toledo, Ohio. Prior to the transaction described in paragraph 10, LOF was wholly owned by Pilkington.

9. Respondent LOF is, and at all times relevant herein has been, a corporation whose business is affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. THE AGREEMENT

10. Pursuant to a Common Stock Purchase Agreement with respondent Pilkington and respondent LOF dated May 21, 1989, respondent Nippon, through respondent NSG-USA, agreed to purchase approximately 20% of respondent LOF's stock or voting securities and further agreed to allow LOF to distribute wired glass in North America produced by both Pilkington and Nippon. On or about March 12, 1990, Nippon purchased approximately 20% of LOF's voting securities for approximately \$230 million.

IV. THE RELEVANT MARKET

11. The relevant market is the distribution and sale of wired glass in North America.

V. COMPETITION

12. Respondent Nippon is engaged in the manufacture and sale of wired glass. Respondent Pilkington is engaged in the manufacture and sale of wired glass. Respondents Nippon and Pilkington are engaged in the sale of wired glass in North America.

VI. MARKET STRUCTURE

13. The wired glass market in North America is highly concentrated whether measured by the Herfindahl-Hirschmann Index ("HHI") or by a four-firm concentration ratio.

VII. BARRIERS TO ENTRY

14. The barriers to entry into the relevant market are significant.

VIII. EFFECTS

15. The effects of the aforesaid agreement and the aforesaid acquisition may be substantially to lessen competition in the market for wired glass 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, in the following ways, among others:

(a) It will eliminate actual and potential competition between Nippon and Pilkington;

(b) It will significantly increase the already high levels of concentration in the market for wired glass;

(c) It will eliminate Nippon and/or Pilkington as a substantial independent competitive force in the market for wired glass; and

(d) It will enhance the possibility of collusion or interdependent coordination by the remaining firms in the market for wired glass.

IX. VIOLATIONS CHARGED

16. The acquisition of 20% of the voting securities of LOF by Nippon violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

17. The acquisition of 20% of the voting securities of LOF by Nippon violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

Commissioner Yao not participating.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof relating to the acquisition of certain stock or voting securities of Libbey-Owens-Ford Co. ("LOF"), a subsidiary of Pilkington plc ("Pilkington") by NSG Holding USA, Inc. ("NSG-USA"), a subsidiary of Nippon Sheet Glass Company, Ltd. ("Nippon"), pursuant to a

Common Stock Purchase Agreement, and respondents 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 respondents with violation of the Federal Trade Commission Act and the Clayton Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents 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 the respondents have 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 issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Nippon is a corporation organized, existing and doing business under the laws of Japan, with its office and principal place of business located at 5-11, Doshomacho 3-chome, Chuo-Ku, Osaka, Japan.

2. Respondent NSG-USA, a wholly owned subsidiary of respondent Nippon, is a corporation organized, existing and doing business under the laws of Delaware, with its office and principal place of business located at 1209 Orange Street, Wilmington, Delaware.

3. Respondent Pilkington is a corporation organized, existing and doing business under the laws of England, with its office and principal place of business located at Prescott Road, St. Helens, Merseyside, England WA10 3TT.

4. Respondent LOF, a subsidiary of respondent Pilkington, is a corporation organized, existing and doing business under the laws of Delaware, with its office and principal place of business located at 811 Madison Avenue, Toledo, Ohio.

5. The Federal Trade Commission has jurisdiction of the subject

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

ORDER

For purposes of this order the following definitions shall apply:

1. "*Nippon*" means respondent Nippon Sheet Glass Company, Ltd., as well as its officers, employees, agents, divisions, subsidiaries (including but not limited to NSG-USA), successors, assigns, and the officers, employees, and agents of Nippon's divisions, subsidiaries, successors and assigns. LOF shall not be treated as a subsidiary of Nippon for purposes of this order.

2. "*NSG-USA*" means respondent NSG Holding USA, Inc., as well as its officers, employees, agents, divisions, subsidiaries, successors, assigns, and the officers, employees, and agents of NSG-USA's divisions, subsidiaries, successors and assigns.

3. "*Pilkington*" means respondent Pilkington plc, as well as its officers, employees, agents, divisions, subsidiaries (including but not limited to LOF), successors, assigns, and the officers, employees and agents of Pilkington's divisions, subsidiaries, successors and assigns.

4. "*LOF*" means respondent Libbey-Owens-Ford Co., as well as its officers, employees, agents, divisions, subsidiaries, successors, assigns, and the officers, employees and agents of LOF's divisions, subsidiaries, successors and assigns.

5. "*Wired glass*" means any flat glass containing wire netting.

I.

It is ordered, That for a period of ten (10) years from the date this order becomes final, respondent Nippon and respondent Pilkington, directly or indirectly, or through any corporate or other device including respondent LOF, shall cease and desist, without the prior approval of the Federal Trade Commission, from engaging together in North America in any marketing or manufacturing joint venture, corporate or non-corporate, or joint distribution agreement, to sell wired glass, directly or indirectly, to customers located in the United States.

II.

It is further ordered, That within ten (10) days after the date this

order becomes final, respondent Nippon and respondent Pilkington shall each distribute a copy of this order to its current directors and corporate officers at the level of the parent company, and to the directors and officers of each subsidiary involved in the manufacture or sale of wired glass.

III.

It is further ordered, That within thirty (30) days after the date this order becomes final, and at such other times as the Commission or its staff may require, each respondent shall submit to the Commission a verified report setting forth in detail the manner and form in which it has complied with this order.

IV.

It is further ordered, That for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request by the Commission or its staff and on reasonable notice to any respondent made to its principal office, such respondent shall permit duly authorized representatives of the Commission:

A. Reasonable access during respondent's office hours, in the presence of counsel, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of respondent relating to any matters contained in this order, for inspection and copying; and

B. An opportunity, subject to respondent's reasonable convenience, to interview, in the presence of counsel, officers or employees of respondent regarding such matters.

V.

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

Commissioner Yao not participating.

IN THE MATTER OF

AMERICAN MEDICAL ASSOCIATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9064. Final Order, Oct. 12, 1979—Modifying Order, Oct. 10, 1991*

This order reopens the proceeding and modifies the Commission's order issued on Oct. 12, 1979 [94 FTC 701], by allowing the respondent to give its member organizations the choice of: supplying the certification originally required; or allowing the AMA to review their codes of ethics and other materials to ensure that they are not restricting truthful advertising, or interfering with the compensation physicians are offered in contracts for their services.

ORDER REOPENING AND MODIFYING ORDER
ISSUED ON OCTOBER 12, 1979

On June 14, 1991, the American Medical Association ("AMA") filed a petition pursuant to Section 5(b) of the Federal Trade Commission Act and Rule 2.51 of the Commission's Rules of Practice requesting that the Commission reopen and modify its order in Docket No. 9064. The litigated order,¹ which became final on July 2, 1982, prohibits AMA from restricting truthful, nondeceptive advertising, and from interfering with the amount or form of compensation provided a physician in exchange for his or her professional services in contracts with entities offering physician services to the public. AMA's petition asks the Commission to reopen the order and delete paragraph IV(D), which requires AMA to obtain certifications from its state and local societies that they agree to adhere to the requirements of the order, or, in the alternative, to substitute for it two additional proposed provisions. For the reasons set forth below, the Commission denies AMA's request to modify the order by deleting paragraph IV(D) and grants AMA's alternative request to modify the order by adding the two new provisions proposed by AMA.

I.

The Commission issued its order against AMA after finding that

¹ *American Medical Association*, 94 FTC 701 (1979), *modified*, 638 F.2d 443 (2d Cir. 1980), *affirmed by an equally divided Court*, 452 U.S. 960 (1982).