

IN THE MATTER OF

FREEMAN HOSPITAL, ET AL.

Docket 9273. Interlocutory Order, Nov. 30, 1995

ORDER DISMISSING COMPLAINT

On November 6, 1995, the respondents moved that this matter be withdrawn from adjudication. Complaint counsel did not oppose the motion. On November 8, 1995, the matter was withdrawn from adjudication pursuant to Section 3.26(c) of the Commission's Rules, 16 CFR 3.26(c), for the purpose of considering whether the public interest warrants further litigation.

The "Statement of Federal Trade Commission Policy Regarding Administrative Merger Litigation Following the Denial of a Preliminary Injunction," issued June 21, 1995, provides that on a case-by-case basis, the Commission will evaluate whether to pursue administrative litigation after denial of a preliminary injunction. The statement indicates that the Commission will consider the following factors in deciding whether to continue administrative litigation:

(i) The factual findings and legal conclusions of the district court or any appellate court, (ii) any new evidence developed during the course of the preliminary injunction proceeding, (iii) whether the transaction raises important issues of fact, law, or merger policy that need resolution in administrative litigation, (iv) an overall assessment of the costs and benefits of further proceeding, and (v) any other matter that bears on whether it would be in the public interest to proceed with the merger challenged.

After consideration of these factors, the Commission concludes that further litigation is not in the public interest.

It is therefore ordered, That the complaint be, and it hereby is, dismissed.

Modifying Order

120 F.T.C.

IN THE MATTER OF

AMERICAN STORES COMPANY, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3238. Consent Order, Aug. 31, 1988--Modifying Order, Dec. 1, 1995*

This order reopens a 1988 consent order that required American Stores to divest certain retail grocery stores in parts of California and Nevada and to obtain Commission approval before acquiring certain grocery stores. This order modifies the consent order by deleting the prior-approval requirements in paragraph VIII of the consent order pursuant to the Commission's Prior Approval Policy -- under which the Commission presumes that the public interest requires reopening and setting aside the prior-approval provisions in outstanding merger orders, making them consistent with the policy -- and by replacing that provision with a prior notification provision.

ORDER REOPENING AND MODIFYING ORDER

On November 20, 1995, American Stores Company ("ASC") filed its Petition To Reopen and Vacate or Modify Consent Order ("November Petition") in this matter. Respondent asks that the Commission reopen this 1988 consent order¹ pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and the Statement of Federal Trade Commission Policy Concerning Prior Approval and Prior Notice Provisions, issued on June 21, 1995 ("Prior Approval Policy Statement").² The Petition requests that the Commission reopen and vacate the order in Docket No. C-3238, or in the alternative, reopen and modify the order by deleting the prior approval provisions of paragraph VIII.

The November Petition is identical to the Petition to reopen previously filed by ASC on July 28, 1995 ("July Petition"). Since the July Petition was subject to a thirty-day public comment period, which expired on September 8, 1995, and no comments were received, the Commission waived the public comment period for the November Petition.

¹ *American Stores Company, et al.*, 111 FTC 80 (1988) ("American Stores").

² 60 Fed. Reg. 39,745-47 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH), ¶ 13,241, at 20,991 (June 21, 1995).