

Set Aside Order

120 F.T.C.

IN THE MATTER OF

RUBBER MANUFACTURERS ASSOCIATION, INC., ET AL.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 5448. Consent Order, Feb. 2, 1948--Set Aside Order, July 19, 1995*

The Federal Trade Commission has reopened a 1948 consent order (44 FTC 453) -- which prohibited the Association from formulating or enforcing resale price agreements, exchanging resale price information or entering into price-fixing agreements -- and has set aside the consent order as to respondent Rubber Manufacturers Association pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

ORDER REOPENING PROCEEDING
AND SETTING ASIDE ORDER AS TO RESPONDENT
RUBBER MANUFACTURERS ASSOCIATION, INC.

On March 17, 1995, Rubber Manufacturers Association, Inc. ("Rubber Manufacturers") one of forty-three respondents named in this consent order,¹ filed its Petition to Reopen and Set Aside Consent Orders ("Petition") in this matter. Rubber Manufacturers requests that the Commission set aside the 1948 consent order in this matter pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and the Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders, issued on July 22, 1994, and published at 59 Fed. Reg. 45,286-92 (Sept. 1, 1994) ("Sunset Policy Statement"). In the Petition, Rubber Manufacturers affirmatively states that it has not engaged in any conduct violating the terms of the order. The Petition was placed on the public record, and the thirty-day comment period expired on May 10, 1995. One comment, relating to general policy issues concerning the Commission's Sunset Policy Statement, was received.

¹ The remaining respondents did not petition the Commission to reopen and set aside the order as to them.

The Commission in its July 22, 1994, Sunset Policy Statement said, in relevant part, that "effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years."² The Commission's consent order in Docket No. 5448 was issued on February 2, 1948, and has been in effect for forty-seven years. Consistent with the Commission's July 22, 1994, Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. 5448 as to respondent Rubber Manufacturers.

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened;

It is furthered ordered, That the Commission's order in Docket No. 5448 be, and it hereby is, set aside, as to respondent Rubber Manufacturers, as of the effective date of this order.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I concur in the decision to grant the request of the Rubber Manufacturers Association, Inc. to set aside the 1948 order in Docket No. D. 5448 and the 1962 order in Docket No. D. 7505. I dissent from the decision to limit the setting aside of the order to the association, instead of setting aside the order in its entirety.

The decision to limit relief to the Rubber Manufacturers Association, one of forty-three respondents under the order, appears to be inconsistent with the Commission's announced policy to presume "that the public interest requires reopening and setting aside the order in its entirety" (emphasis added) "when a petition to reopen and modify a competition order is filed" and the order is more than twenty years old.¹ The Commission's recognition of the limitations of the findings underlying an order² further suggests that the presumption that an order will be terminated after twenty years

² See Sunset Policy Statement, 59 Fed. Reg. at 45, 289.

¹ FTC, Statement of Policy with Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment with Respect to Duration of Consumer Protection Orders (July 22, 1994), at 8 (hereafter "Sunset Policy Statement").

² "[F]indings upon which [orders] are based should not be presumed to continue for longer than twenty years." Sunset Policy Statement at 4.

should apply to the order in its entirety and not be limited to the petitioner.³

I previously have expressed my concern that the adoption of a presumption instead of an across-the-board rule in favor of sunset "will impose costs by requiring respondents to file individual petitions and the Commission to assess in the context of each such petition whether the presumption has been overcome for that order."⁴ Now the Commission would further increase the burden on both public and private resources by applying the presumption in favor of sunset not only on a case-by-case basis but on a respondent-by-respondent basis.

The petition filed by the Rubber Manufacturers Association invoked the twenty-year presumption that the order should be set aside. No evidence of recidivist conduct by any of the forty-three respondents, having been presented to overcome the presumption,⁵ the order should be set aside in its entirety.

³ The presumption of termination after 20 years applies automatically for new orders in competition cases and is not limited to individual respondents, further supporting the view that the twenty-year presumption in favor of sunset for existing orders should apply to the order, not to particular respondents.

⁴ Separate Statement of Commissioner Mary L. Azcuenaga on Sunset Policy (July 22, 1994), at 7 (footnote omitted).

⁵ See Sunset Policy Statement at 8 n.19.

IN THE MATTER OF

RUBBER MANUFACTURERS ASSOCIATION, INC., ET AL.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 7505. Consent Order, Jan. 6, 1962--Set Aside Order, July 19, 1995

The Federal Trade Commission has reopened a 1962 consent order (60 FTC 89) -- which prohibited the Association from formulating or enforcing resale price agreements, exchanging resale price information or entering into price-fixing agreements -- and has set aside the consent order as to respondent Rubber Manufacturers Association pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

ORDER REOPENING PROCEEDING
AND SETTING ASIDE ORDER AS TO RESPONDENT
RUBBER MANUFACTURERS ASSOCIATION, INC.

On March 17, 1995, Rubber Manufacturers Association, Inc. ("Rubber Manufacturers"), one of seventeen respondents named in this consent order,¹ filed its Petition to Reopen and Set Aside Consent Orders ("Petition") in this matter. Rubber Manufacturers requests that the Commission set aside the 1962 consent order in this matter pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and the Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders, issued on July 22, 1994, and published at 59 Fed. Reg. 45,286-92 (Sept. 1, 1994) ("Sunset Policy Statement"). In the Petition, Rubber Manufacturers affirmatively states that it has not engaged in any conduct violating the terms of the order. The Petition was placed on the public record, and the thirty-day comment period expired on May 10, 1995. One comment, relating to general policy issues concerning the Commission's Sunset Policy Statement, was received.

¹ The remaining respondents did not petition the Commission to reopen and set aside the order as to them.