

IN THE MATTER OF

P. LORILLARD CO.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION
OF SEC. 2 OF THE CLAYTON ACT*Docket 6600. Consent Order, May 7, 1958--Set Aside Order, Aug. 24, 1995*

This order reopens a 1958 consent order--which required Lorillard to offer compensation for promotional services on proportionally equal terms to all competing companies that distribute its tobacco and other products--and sets aside the consent order 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 AND PROCEEDING
AND SETTING ASIDE ORDER

On May 5, 1995, Lorillard Tobacco Company ("Lorillard"), as respondent and successor to P. Lorillard Co., filed its Petition to Reopen and Set Aside Cease and Desist Order ("Petition") in this matter. Lorillard request that the Commission set aside the 1959 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, Lorillard 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 June 14, 1995. No comments were received.

The Commission in its 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."¹ The Commission's cease and desist order in Docket No. 6600, issued on May 7, 1958, and affirmed by the United States

¹ See Sunset Policy Statement, 59 Fed. Reg. at 45, 289.

Court of Appeals for the Third Circuit on June 4, 1959, has been in effect for thirty-six years. Consistent with the Commission's 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. 6600.

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

It is further ordered, That the Commission's order in Docket No. 6600 be, and it hereby is, set aside, as of the effective date of this order.

IN THE MATTER OF

THE VALSPAR CORPORATION, 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-3478. Consent Order, Jan. 25, 1994--Modifying Order, Aug. 29, 1995

This order reopens a 1994 consent order that settled allegations that Valspar's acquisition of the Resin Products Division of Cargill, Inc. would eliminate competition between two leading U.S. producers of coating resins. This order modifies the consent order by deleting the prior approval requirements in paragraph VI pursuant to the Commission's Prior Approval Policy, under which the Commission presumes that the public interest requires reopening prior approval provisions in outstanding merger orders and making them consistent with the policy.

ORDER REOPENING AND MODIFYING ORDER

On June 27, 1995, McWhorter Technologies, Inc. ("McWhorter," formerly McWhorter, Inc. prior to its spin-off from Valspar Corporation) filed a Petition To Reopen And Modify Order ("Petition") 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, and published at 60 Fed. Reg. 39,745-47 (August 3, 1995) ("Prior Approval Policy Statement"). McWhorter requests that the order in Docket No. C-3478 be reopened and modified to terminate the prior approval provision in paragraph VI. The Petition was placed on the public record, and the thirty-day comment period expired on August 1, 1995. No comments were received.

The Commission, in its Prior Approval Policy Statement, stated that the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino ("HSR") Act, 15 U.S.C. 18a, will adequately protect the public interest in effective enforcement in merger cases, and that, as a general matter, "Commission orders in such cases will not include prior approval or prior notice