

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

requirements." Accordingly, the Commission announced that, when a petition is filed to reopen and modify an order pursuant to the Prior Approval Policy Statement, "the Commission will apply a rebuttable presumption that the public interest requires reopening of the order and modification of the prior approval requirement." Consistent with the Commission's Prior Approval Policy Statement, the presumption is that the prior approval requirements in paragraph VI of this order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceedings and modify the order in Docket No. C-3478 to set aside the prior approval requirement in paragraph VI.

The Commission also stated that it would continue to fashion remedies as needed in the public interest, including ordering narrow prior notification requirements in certain limited circumstances. Accordingly, a prior notification provision may be used where there is a credible risk that a company would, but for an order, engage in an anticompetitive merger that would not be subject to the premerger notification and waiting period requirements of the HSR Act. As explained in the Prior Approval Policy Statement, the need for a prior notification requirement will depend on circumstances such as the structural characteristics of the relevant markets, the size and other characteristics of the market participants, and other relevant factors. Based on the record in this case, there is no evidence that a prior notification requirement is warranted.

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. C-3478 be, and it hereby is, modified to set aside the prior approval requirement in paragraph VI as of the effective date of this order.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

The Commission has adopted a policy to "apply a rebuttable presumption that the public interest requires the reopening of the order and modification of the prior approval requirement" in merger cases. *See* Statement of Federal Trade Commission Policy Concerning Prior Approval and Prior Notice Provisions, 60 Fed. Reg.

39,745, 39,746 (Aug. 3, 1995), Commissioner Azcuenaga Dissenting (60 Fed. Reg. at 39,476). The order in this case is the first to be modified since the new policy was adopted. Although I dissented from the decision of the Commission to change its policy, the revised order is consistent with the new policy, and I have voted to issue it.

Complaint

120 F.T.C.

IN THE MATTER OF

JERRY'S FORD SALES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
TRUTH IN LENDING ACT, REGULATION Z, CONSUMER LEASING ACT
AND THE FEDERAL TRADE COMMISSION ACT

Docket C-3612. Complaint, Aug. 29, 1995--Decision, Aug. 29, 1995

This consent order requires, among other things, three corporations in Virginia and their President and CEO, in any advertisement to promote any extension of consumer credit, to cease and desist from misrepresenting the terms of financing the purchase of a vehicle, including whether there may be a balloon payment and the amount of any balloon payment. The consent order also requires the respondents, in any advertisement to promote any extension of consumer credit, to cease and desist from failing to state all terms required by Sections 226.24(b) and 226.24(c) of Regulation Z. In addition, the consent order also requires the respondents, in any advertisement to aid, promote or assist any consumer lease, to cease and desist from failing to state all terms required by Section 213.5(c) of Regulation M.

Appearances

For the Commission: *Carole L. Reynolds.*

For the respondents: *Basil Mezines and George Tobin, Stein, Mitchell & Mezines, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Jerry's Ford Sales, Inc., and John's Ford, Inc. dba Jerry's Leesburg Ford, corporations, hereinafter sometimes referred to collectively as respondent Jerry's Ford, Jerry's Chevrolet Geo Oldsmobile, Inc., a corporation, hereinafter sometimes referred to as respondent Jerry's Chevy, and Jerry C. Cohen, individually and as an officer of the aforementioned corporations, hereinafter sometimes referred to as respondent Cohen, have violated the Truth in Lending Act ("TILA"), 15 U.S.C. 1601-1667, as amended, and its implementing Regulation Z, 12 CFR 226, the Consumer Leasing Act ("CLA"), 15 U.S.C. 1667-1667e, as amended, and its implementing Regulation M, 12 CFR 213, and the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45-58, as amended, and it appearing to the Commission that a