

Modifying Order

120 F.T.C.

IN THE MATTER OF

OCCIDENTAL PETROLEUM 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 9205. Modified Final Order, Feb. 3, 1994--Modifying Order, Nov. 16, 1995*

This order reopens a 1994 modified final order that settled allegations that Occidental's acquisition of Tenneco would substantially reduce competition in the U.S. market for mass and suspension PVC and required the Commission's prior approval before acquiring the stock or PVC assets of any PVC producer in the United States. This order modifies the consent order by deleting the prior approval requirements in paragraph VI of the consent order pursuant to the Commission's Prior Approval Policy, under which the Commission presumes that the public interest requires reopening cases and setting aside the prior approval provisions in outstanding merger orders, making them consistent with the policy.

ORDER REOPENING AND MODIFYING ORDER

On August 7, 1995, Occidental Petroleum Corp. and Occidental Chemical Corp (collectively "Occidental"), filed a Petition To Reopen and Modify Order ("Petition") in this matter. Occidental asks that the Commission reopen and modify the 1994 order in this matter pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval and Prior Notice Provisions, issued June 21, 1995 ("Prior Approval Policy Statement").¹ Occidental in the Petition requests that the Commission reopen and modify the order in Docket No. 9205 by deleting the requirement in paragraph VI that Occidental seek prior Commission approval for certain acquisitions. The Petition was on the public record for thirty days; no comments were received.

The Commission in its Prior Approval Policy Statement "concluded that a general policy of requiring prior approval is no longer needed," citing the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act, 15

¹ 60 Fed. Reg. 39,745 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241, at 20,991 (June 22, 1995).

U.S.C. 18a, to protect the public interest in effective merger law enforcement. Prior Approval Policy Statement at 2. The Commission announced that it will "henceforth rely on the HSR process as its principal means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger." As a general matter, the Commission said, "Commission orders in such cases will not include prior approval or prior notification requirements." *Id.*

Narrow prior approval or prior notification provisions may be necessary to protect the public interest in some circumstances. The Commission said in its Prior Approval Policy Statement that "a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger." The Commission also said that "a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger." *Id.* at 3.

The Commission in the Prior Approval Policy Statement announced its intention "to initiate a process for reviewing the retention or modification of these existing requirements" and invited respondents subject to such requirements "to submit a request to reopen the order." *Id.* at 4. The Commission determined 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 policy announced" in the Statement. *Id.*

The presumption is that setting aside the prior approval requirement in paragraph VI of the order in Docket No. 9205 is in the public interest. Nothing to overcome the presumption has been presented, and nothing in the record, including the complaint and order, suggests that the exceptions described in the Prior Approval

Policy Statement are warranted. The Commission has determined to reopen the proceeding in Docket No. 9205 and modify the order to set aside the prior approval requirement set forth in paragraph VI.²

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

It is further ordered, That the Commission's order issued on February 3, 1994, be, and it hereby is modified, as of the effective date of this order, to set aside paragraph VI of the order.

Chairman Pitofsky recused.

² Occidental completed the divestitures required by the order in 1995. There is one remaining substantive obligation under the order. Paragraph III requires, for one year following the divestiture required by the order, that Occidental provide the acquirer or acquirers of the PVC divestiture assets, if the acquirer(s) so requests, such additional know-how as may reasonably be required to enable the acquirer(s) to manufacture and sell PVC. Occidental must also submit reports of its compliance with the order, if requested to do so by the staff.

IN THE MATTER OF

PAPERMAKERS FELT ASSOCIATION, ET AL.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-828. Consent Order, Sept. 9, 1964--Set Aside Order, Nov. 22, 1995*

This order reopens a 1964 consent order--which prohibited Papermakers Felt Association and its members from combining or conspiring to fix prices or terms of sale, or to enter into specific other agreements to restrain competition in the papermakers felt industry--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 PROCEEDING
AND SETTING ASIDE ORDER

On August 1, 1995, Albany International Corp., the successor to respondent Albany Felt Company (collectively "Albany"), filed its Petition To Reopen and Set Aside Consent Order ("Petition") in this matter. Albany requests that the Commission set aside the 1964 order pursuant to 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 July 22, 1994, and published at 59 Fed. Reg. 45,286-92 (Sept. 1, 1994) ("Sunset Policy Statement"). In the Petition, Albany 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 September 11, 1995. No comments were received.

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."¹ The Commission's order in Docket No. C-828 was issued on September 9, 1964, and has been in effect for approximately thirty-one years. Consistent with the

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