

IN THE MATTER OF

L'AIR LIQUIDE S.A., ET AL.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3216. Consent Order, July 15, 1987--Set Aside Order, Feb. 15, 1996

This order reopens a 1987 consent order--which required L'Air Liquide to divest certain specified air separation gases assets and required prior Commission approval before making certain acquisitions--and sets aside the consent order pursuant to the Commission's Prior Approval Policy Statement, under which the Commission presumes that the public interest requires setting aside the prior approval requirements in outstanding merger orders and making them consistent with the policy.

ORDER SETTING ASIDE ORDER

On November 15, 1995, L'Air Liquide S.A. (formerly known as L'Air Liquide Societe Anonyme pour L'Etude et L'Exploitation des Procedes Georges Claude) ("L'Air Liquide"), the respondent named in the consent order issued by the Commission on July 15, 1987, in Docket No. C-3216 ("order"), filed its Petition To Reopen and Vacate Order ("Petition") in this matter. L'Air Liquide asks that the Commission reopen and vacate the order 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 on June 21, 1995 ("Prior Approval Policy Statement" or "Statement").¹ L'Air Liquide's Petition requests that the Commission "reopen the order in Docket No. C-3216, terminate the prior approval and related reporting obligations in paragraph VII, and vacate the order." Petition at 3. The thirty-day public comment period on L'Air Liquide's Petition ended on January 8, 1996. No comments were received. For the reasons discussed below, the Commission has determined to grant L'Air Liquide's Petition.

The Commission, in its Prior Approval Policy Statement, "concluded that a general policy of requiring prior approval is no

¹ 60 Fed. Reg. 39745-47 (August 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13, 241.

longer needed," citing 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, 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, "Commission orders in such cases will not include prior approval or prior notification requirements." *Id.*

The Commission stated that it will continue to fashion remedies as needed in the public interest, including ordering narrow prior approval or prior notification requirements in certain limited 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. 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.

The Commission also announced, in its Prior Approval Policy Statement, 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 complaint in this matter ("complaint") alleged that L'Air Liquide's acquisition of Big Three Industries, Inc. ("BTI") would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition and tending to create a monopoly in the production and sale of merchant oxygen and nitrogen in the Southern Rocky Mountain region, West Texas, North Texas and South Texas, and Florida, and by lessening competition and tending to create a monopoly in the production and sale of merchant argon in the United States.

The complaint alleged that the acquisition would eliminate actual competition between L'Air Liquide and BTI in the relevant markets; increase concentration in the relevant markets; and enhance the likelihood of collusion or interdependent coordination between or among the remaining firms in the relevant markets. The Commission's order required L'Air Liquide to divest certain specified air separation gases assets. After obtaining the Commission's approval, L'Air Liquide completed the required divestiture. Paragraph VII of the order prohibits L'Air Liquide from acquiring without prior approval of the Commission the stock or assets of any United States merchant air separation gases producer. Paragraph VII further requires L'Air Liquide to submit annual reports of compliance with the prior approval requirement.

The presumption is that setting aside the prior approval requirement in this order is in the public interest. Nothing to overcome the presumption has been presented, and nothing in the record suggests that L'Air Liquide would engage in the same acquisition as alleged in the complaint. Accordingly, and because the only remaining obligation under the order is the prior approval requirement and the attendant reporting obligations, the Commission has determined to reopen the proceeding in Docket No. C-3216 and set aside the order.

Accordingly, *It is hereby ordered*, That this matter be, and it hereby is, reopened, and that the Commission's order issued on July 15, 1987, be, and it hereby is, set aside as of the effective date of this order.

Complaint

121 F.T.C.

IN THE MATTER OF

WLAR CO., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3641. Complaint, Feb. 21, 1996--Decision, Feb. 21, 1996

This consent order prohibits, among other things, a Virginia-based corporation and its officer from making unsubstantiated representations for their weight-loss booklets, products or program. The consent order requires the respondents to provide, in future advertisements, a disclosure statement that the products consist solely of a booklet or pamphlet containing information and advice on weight-loss.

Appearances

For the Commission: *Richard Cleland* and *C. Lee Peeler*.

For the respondents: *Randall Shaheen, Arnold & Porter*,
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that WLAR Co., a corporation, and Michael K. Craig, individually and as an officer of said corporation ("respondents"), have violated the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent WLAR Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware. Its principal place of business is located at 5622 Columbia Pike #106, Falls Church, VA.

Respondent Michael K. Craig is or was at relevant times herein the sole owner, officer, and employee of the corporate respondent. Individually, or in concert with others, he participated in and/or formulated, directed, and controlled the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His address is the same as that of the corporate respondent.