

Set Aside Order

125 F.T.C.

IN THE MATTER OF

RECKITT & COLMAN PLC

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-3571. Consent Order, April 4, 1995--Set Aside Order, March 24, 1998*

This order reopens and sets aside a 1995 consent order with Reckitt & Colman, (119 FTC 380), thus removing the Commission's prior approval requirement for acquiring the assets of or the rights related to any carpet deodorizer businesses in the United States.

ORDER SETTING ASIDE ORDER

On December 5, 1997, Reckitt & Colman plc ("R&C"), the respondent named in the above-referenced consent order ("order") issued by the Commission on April 4, 1995, filed its Petition to Reopen and Modify Consent Order ("Petition") in this matter. R&C asks that the Commission reopen and modify 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 Concerning Prior Approval and Prior Notice Provisions, issued on June 21, 1995 ("Prior Approval Policy Statement").¹ The Petition requests that the Commission reopen and modify the order to eliminate the prior approval provision set forth in paragraph VI of the order, or, in the alternative, substitute a prior notification requirement for the prior approval requirement. The thirty-day public comment period on the Petition ended on January 13, 1998. No comments were received. For the reasons discussed below, the Commission has determined to grant R&C's Petition.

The complaint in this matter alleges that R&C's agreement with Eastman Kodak Company ("Kodak"), L&F Products, Inc. ("L&F"), a wholly-owned subsidiary of Kodak, and Sterling Winthrop Inc., a wholly-owned subsidiary of L&F, to acquire the household products, professional products and personal products businesses of L&F violated Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended,

¹ 60 Fed. Reg. 39,745-47 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.

15 U.S.C. 18, by lessening competition and tending to create a monopoly in the carpet deodorizer products business in the United States.²

The order required R&C to divest the "Carpet Deodorizer Assets" and "Rug Cleaning Assets," as defined in paragraphs I.H and I.J, respectively, of the order.³ On February 23, 1995, the Commission approved R&C's application to divest the "Rug Cleaning Assets" to Playtex Products, Inc. On August 21, 1995, the Commission approved R&C's application to divest the "Carpet Deodorizer Assets" to Block Drug Co., Inc. Under the order, R&C is prohibited for a ten-year period from acquiring without the prior approval of the Commission any stock or related assets of any concern engaged in the "Carpet Deodorizer Products" business in the United States.⁴

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, 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.⁵ 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."⁶

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

² Complaint ¶¶ V, VI, and VII.

³ Order ¶¶ I.H and I.J, II and III.

⁴ Order ¶ VI.

⁵ Prior Approval Policy Statement at 2.

⁶ *Id.*

attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger."⁷ 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 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."⁸ 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.⁹

The presumption is that setting aside the general prior approval requirement of paragraph VI is in the public interest. There is no evidence in the record that suggests that this matter presents any of the circumstances identified by the Prior Approval Policy Statement as appropriate for retaining a narrow prior approval provision, nor is there any indication of the circumstances that would warrant the substitution of a prior notice provision for the prior approval provision. There is nothing to suggest that the respondent would attempt the same or essentially the same merger that gave rise to the original complaint. In addition, it appears likely that future mergers within the relevant market would be HSR reportable. R&C completed the divestitures required by the order. Accordingly, nothing to overcome the presumption having been presented, and because the only remaining obligation under the order is the prior approval requirement in paragraph VI and the attendant reporting requirements, the Commission has determined to reopen the proceeding in Docket No. C-3571 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 April 4, 1995, be, and it hereby is, set aside as of the effective date of this order.

⁷ *Id.* at 3.

⁸ *Id.* at 4.

⁹ *Id.*

IN THE MATTER OF

HAROLD A. HONICKMAN, 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 9233. Consent Order, July 25, 1991--Set Aside Order, March 31, 1998*

This order reopens and sets aside a 1991 consent order (modified in July 1992 and March 1993) with Harold A. Honickman, (115 FTC 623), thus removing the Commission's prior approval requirement for acquiring the assets of or the rights related to any bottling operation in the New York metropolitan area.

ORDER SETTING ASIDE ORDER

On November 5, 1997, Harold A. Honickman ("Honickman") filed a Petition To Modify Consent Order ("Petition") in Docket No. 9233 ("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 ("Prior Approval Policy Statement").¹ The Petition requests that the Commission reopen and modify the order to terminate the prior approval provision set forth in paragraph II of the order. The Petition was placed on the public record for thirty days and no comments were received. The Commission has determined to terminate the prior approval provision of the order by setting aside the order.

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, 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.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,

¹ 60 Fed. Reg. 39,745-47 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.

² Prior Approval Policy Statement at 2.