

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.

"Commission orders in such cases will not include prior approval or prior notification requirements."³

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."⁴ 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."⁵ 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.⁶

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 Honickman would attempt the same or essentially the same acquisition that gave

³ *Id.*

⁴ *Id.* at 3.

⁵ *Id.* at 4.

⁶ *Id.*

rise to the original complaint. In addition, it appears likely that future acquisitions that may have adverse competitive consequences within the relevant market would be HSR reportable. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order because deleting the prior approval requirement, in effect, would eliminate all of Honickman's future obligations under the order.⁷

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened, and that the order be, and it hereby is, set aside as of the effective date of this order.

Commissioner Azcuenaga recused.

⁷ See, e.g., S.C. Johnson & Son, Inc., Docket No. C-3418, Order Setting Aside Order (January 4, 1996).

Complaint

125 F.T.C.

IN THE MATTER OF

TRW INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3790. Complaint, April 6, 1998--Decision, April 6, 1998

This consent order requires, among other things, the Ohio-based corporation to divest, to an acquirer approved by the Commission and the Dept. of Defense, BDM's SETA service contract with the BMDO and all of BDM's assets associated with the performance of that contract within 120 days from the date TRW consummates its proposed acquisition of BDM. The consent order also requires TRW to provide technical assistance to the acquirer for a period of one year.

Appearances

For the Commission: *Nicholas Koberstein, Yolanda Gruendel, Ann Malester and William Baer.*

For the respondent: *Tom D. Smith, Jones, Day, Reavis & Pogue, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, TRW Inc. ("TRW"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire all of the voting securities of BDM International Inc. ("BDM"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent TRW is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal executive offices located at 1900 Richmond Road, Cleveland, Ohio.