

Set Aside Order

126 F.T.C.

IN THE MATTER OF
EMERSON ELECTRIC CO., 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-3291. Consent Order, June 22, 1990—Set Aside Order, Nov. 4, 1998

This order reopens a 1990 consent order -- which required the respondents to divest McGill Manufacturing Company's mounted ball bearing business to a Commission approved acquirer -- and sets aside the prior approval provision and related reporting requirements of the order pursuant to the Commission's Prior Approval Policy Statement.

ORDER SETTING ASIDE ORDER

On July 24, 1998, Emerson Electric Co. and its wholly-owned subsidiary Emerson Power Transmission Corp. (collectively "Emerson"), the respondents named in the above-referenced consent order ("Order") issued by the Commission on June 22, 1990, filed its Petition to Reopen and Modify Consent Order ("Petition") in this matter. Emerson 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 and related reporting requirements set forth in paragraph IX of the Order. The thirty-day public comment period on the Petition ended on September 24, 1998. No comments were received. For the reasons discussed below, the Commission has determined to grant Emerson's Petition.

The Complaint in this matter alleges that Emerson's agreement with McGill Manufacturing Co., Inc. ("McGill") to acquire substantially all of McGill's voting securities 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, 15 U.S.C. 18, by lessening

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

competition and tending to create a monopoly in the production and distribution of mounted ball bearings in the United States.²

The Order required Emerson to divest McGill's Mounted Ball Bearings Business, as defined in paragraph I.F of the Order.³ On June 14, 1991, the Commission approved Emerson's application to divest McGill's Mounted Ball Bearings Business to VMB, Inc., an affiliate of The Brenlin Group. Under the Order, Emerson is prohibited for a ten-year period from acquiring, without the prior approval of the Commission, more than 1% of the stock or share capital of, or interest in, any concern engaged in the manufacture or sale of mounted ball bearings in the United States; or from acquiring, except in the ordinary course of business, any assets used in any company engaged in the manufacture or sale of mounted ball bearings 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

² Complaint ¶¶ II-V.

³ Order ¶¶ I.F and II.

⁴ Order ¶ IX.

⁵ Prior Approval Policy Statement at 2.

⁶ *Id.*

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."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 IX 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. Emerson completed the divestiture required by the Order. Nothing to overcome the presumption having been presented, and because the only remaining obligation under the Order is the prior approval

⁷ *Id.* at 3.

⁸ *Id.* at 4.

⁹ *Id.*

requirement in paragraph IX and the attendant reporting requirements, the Commission has determined to reopen the proceeding in Docket No. C-3291 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 June 22, 1990, be, and it hereby is, set aside as of the effective date of this order.

IN THE MATTER OF
COMMONWEALTH LAND TITLE INSURANCE COMPANY

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-3835. Complaint, Nov. 10, 1998--Decision, Nov. 10, 1998

This consent order requires, among other things, Commonwealth Land Title Insurance Company, a Pennsylvania-based corporation, to relocate its operations and to maintain them as a fully functional title plant in competition with First American Title Insurance Company. In addition, the consent order requires that Commonwealth, for ten years, provide prior notice to the Commission before it merges, combines or consolidates its operations with any other title plant serving the District of Columbia.

Participants

For the Commission: *Patrick Roach, Michael Antalics, William Baer, John Simpson, and Jonathan Baker.*

For the respondent: *John Graybeal, Parker, Poe, Adams & Bernstein, Raleigh, N.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that respondent Commonwealth Land Title Insurance Company ("Commonwealth"), a corporation subject to the jurisdiction of the Commission, has engaged in certain conduct that constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and of Section 7 of the Clayton Act, as amended (15 U.S.C. 18); and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act, (15 U.S.C. 45(b)), stating its charges as follows: