

INTERLOCUTORY, MODIFYING,
VACATING, AND MISCELLANEOUS
ORDERS

IN THE MATTER OF

**EQUITABLE RESOURCES, INC.,
DOMINION RESOURCES, INC.,
CONSOLIDATED NATURAL GAS COMPANY,
and
THE PEOPLES NATURAL GAS COMPANY**

Docket No. 9322 - Order, January 31, 2008

ORDER DISMISSING COMPLAINT

On March 1, 2006, Respondent Equitable Resources, Inc. (“Equitable”) executed an agreement to acquire the capital stock (“Agreement”) of Respondent The Peoples Natural Gas Company (“Peoples”) from Respondent Consolidated Natural Gas Company, a subsidiary of Respondent Dominion Resources, Inc. On March 14, 2007, the Commission issued the Administrative Complaint in this matter, alleging that the March 1, 2006 Agreement violated Section 5 of the Federal Trade Commission Act, and that Equitable’s proposed acquisition of Peoples, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. On April 13, 2007, the Commission filed a complaint and motions for a temporary restraining order and a preliminary injunction against Respondents in the United States District Court for the Western District of Pennsylvania, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), seeking to prevent the merger, and thereby maintain the *status quo*, during the pendency of the administrative proceeding. On May 14, 2007, the District Court granted the Defendants-Respondents’ motion to dismiss the complaint on state action grounds. On May 16, 2007, the Commission filed an emergency motion for an injunction pending appeal in the District Court, which the Court denied on May 21, 2007. On May 18, 2007, the Commission filed a notice of appeal of

Interlocutory Orders, Etc.

the District Court judgment – and on May 21, 2007, filed an emergency motion for an injunction pending appeal – with the United States Court of Appeals for the Third Circuit, in *Federal Trade Commission v. Equitable Resources, Inc.*, No. 07-2499. On June 1, 2007, the Court of Appeals issued an Order granting the Commission’s motion for an injunction pending appeal, and that Order remains in effect.

Complaint Counsel have now filed an Unopposed Motion To Dismiss Complaint (“Motion”) – which the Respondents do not oppose – due to a change in Respondents’ circumstances. The Motion recites that on January 15, 2008, Respondents Equitable and Dominion publicly announced that they had mutually terminated the March 1, 2006 Agreement, and that on January 17, 2008, Respondent Equitable filed a notice of the termination with the U.S. Securities and Exchange Commission. The Motion further recites that [redacted].

The Commission has determined to dismiss the Administrative Complaint, consistent with both Commission precedent and the current posture of this case. In *Swedish Match*,¹ for example, the Commission dismissed the administrative complaint without prejudice after the parties determined to abandon the transaction at issue and Swedish Match AB withdrew the applicable HSR Notification and Report Form. The Commission noted:

The withdrawal of the Notification and Report Form – and the parties’ abandonment of the February 10, 2000 Asset Purchase Agreement – ensure that the most important elements of the relief set out in the administrative complaint’s Notice of Contemplated Relief have been accomplished without the need for further litigation in this case. Therefore, the public

¹ *In the Matter of Swedish Match North America Inc., and National Tobacco Company, L.P.*, Docket No. 9296 (*Swedish Match*), Order Dismissing Complaint (January 4, 2001), available at <http://www.ftc.gov/os/2001/01/swedishdismisscmp.htm>.

Interlocutory Orders, Etc.

interest warrants dismissal of the administrative complaint. The Commission has determined to do so, however, without prejudice, because it is not reaching a decision on the merits.²

Similarly, in *H.J. Heinz*,³ the Commission dismissed the administrative complaint after the Respondents abandoned the transaction at issue.

In this matter, as in *Swedish Match*, the most important elements of the relief set out in the Notice of Contemplated Relief in the administrative complaint have been accomplished without the need for further administrative litigation. In particular, the acquisition Agreement at issue has now been terminated, and the proposed acquisition has been enjoined pending further order of the Court of Appeals. Moreover, Complaint Counsel maintain [redacted].

For the foregoing reasons, the Commission has determined that the public interest warrants dismissal of the Administrative Complaint in this matter. The Commission has determined to do so without prejudice, however, because it is not reaching a decision on the merits. Accordingly,

IT IS ORDERED that the Administrative Complaint in this matter be, and it hereby is, dismissed without prejudice.

By the Commission.

² *Id.*, citing *R.J. Reynolds Tobacco Company*, Docket No. 9285, Order Dismissing Complaint (January 26, 1999), at 4.

³ *In the Matter of H.J. Heinz Company, Milnot Holding Corporation, and Madison Dearborn Capital Partners, L.P.*, Docket No. 9295 (*H.J. Heinz*), Order Dismissing Complaint (December 4, 2001), available at <http://www.ftc.gov/os/2001/12/heinzorder.pdf>.

Interlocutory Orders, Etc.

IN THE MATTER OF

REALCOMP II LTD.*Docket No. 9320 – Order, April 8, 2008***ORDER GRANTING MOTION FOR LEAVE TO FILE BRIEF
AMICUS CURIAE ON ISSUES OF REMEDY**

On January 25, 2008, the American Homeowners Grassroots Alliance filed a timely Motion For Leave To File Responding Amicus Curiae Brief On Issues Of Remedy in this matter, and attached a copy of the brief that it proposed to file. The Alliance describes itself as a grassroots advocacy organization serving the nation's homeowners. Neither Counsel for the Respondent nor Complaint Counsel has filed an Answer objecting to the Alliance Motion.

The Commission has determined to grant the Motion because it satisfies the Commission's requirement that the public interest will benefit from the Commission's consideration of the attached brief.¹ The Commission takes no position on the substantive or procedural merit of any of the arguments presented in the brief. Accordingly,

IT IS ORDERED that the Alliance Motion For Leave To File Responding Amicus Curiae Brief On Issues Of Remedy be, and it hereby is, **GRANTED**.

By the Commission.

¹ See, e.g., *In the Matter of Evanston Northwestern Healthcare Corporation, et al.*, Docket No. 9315, Order Granting Motions For Leave to File Briefs *Amici Curiae* (January 24, 2006); *In the Matter of Telebrands Corp., et al.*, Docket No. 9313, Order Granting Motion for Leave to File Brief *Amicus Curiae* and Revising Briefing Schedule (Dec. 1, 2004); *In the Matter of Rambus Incorporated*, Docket No. 9302, Order Granting Motions for Leave to File Briefs *Amici Curiae* and Scheduling Oral Argument (April 30, 2004), and Order Granting Motions for Leave to File Briefs *Amici Curiae* (June 21, 2004).