

Set Aside Order

120 F.T.C.

IN THE MATTER OF

MANNESMANN, A.G.

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-3378. Consent Order, Mar. 24, 1992--Set Aside Order, Oct. 11, 1995*

This order reopens a 1992 consent order--which required Mannesmann to divest the Buschman Co. and to obtain, for 10 years, Commission approval prior to acquiring any business that manufactures and sells certain conveyor systems--and sets aside the consent order pursuant to the Commission's Prior Approval Policy Statement. The order cites the availability of the premerger notification and waiting period requirements, and noted that under the Policy Statement, the Commission presumes that the public interest requires setting aside the prior approval requirement in paragraph V of the order.

ORDER SETTING ASIDE ORDER

On June 29, 1995, Mannesmann, A.G. ("Mannesmann"), filed its Petition To Reopen and Vacate or Modify Consent Order ("Petition") in this matter. Mannesmann asks that the Commission reopen and modify the 1992 consent order in this matter 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 June 21, 1995 ("Prior Approval Policy Statement").¹ Mannesmann in its Petition requests that the Commission reopen and set aside the order in Docket No. C-3378 or, in the alternative, reopen and modify the order by deleting the requirement in paragraph V that Mannesmann seek prior Commission approval for certain acquisitions. The Petition was on the public record for thirty days; no comments were received.

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 premerger notification and waiting period requirements of Section 7A of the Clayton Act, 15

¹ 60 Fed. Reg. 39,745-47 (August 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241, at 20,991 (June 21, 1995).

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, the Commission said, "Commission orders in such cases will not include prior approval or prior notification requirements." *Id.*

Narrow prior approval or prior notification provisions may be necessary to protect the public interest in some 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.

The Commission in its Prior Approval Policy Statement announced 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 presumption is that setting aside the prior approval requirement in paragraph V of the order in Docket No. C-3378 is in the public interest. Nothing to overcome the presumption has been presented, and nothing in the record, including the original complaint and order, suggests that exceptions described in the Prior Approval Policy Statement are warranted. The Commission has determined to reopen the proceeding in Docket C-3378 and set aside the order.²

² Mannesmann completed the divestiture required by the order in 1992; and the only remaining obligation under the order is the prior approval requirement in paragraph V and the attendant reporting requirements.