the "Jencks rule" as described in the Commission's opinion of this date;

(2) deliver to respondents' counsel any of such reports or portions thereof found by him to be statements within the meaning of the "Jencks rule" and to be relevant for the purposes of cross-examination;

(3) if requested by respondents' counsel, reconvene the hearing-in-chief to permit respondents' counsel to utilize such reports or portions thereof for the purpose of cross-examining any of such witnesses whom respondents' counsel requests be recalled for such purpose; and

(4) issue a new initial decision which should include specific findings with respect to the issues presented on this remand.

Commissioner Elman dissented and has filed a dissenting opinion. Commissioner MacIntyre concurred and has filed a separate concurring statement.

DEAN FOODS COMPANY ET AL.

Docket 8674. Order, April 25, 1966

Order vacating hearing examiner's order denying respondent's request for subpoenas duces tecum directed to four dairies and ordering hearing examiner to reconsider the matter.

ORDER GRANTING APPEAL, VACATING RULING DENYING REQUEST FOR SUBPOENAS AND DIRECTING RECONSIDERATION

This matter is before the Commission upon the appeal of complaint counsel under § 3.17(f) of the Commission's Rules of Practice from the hearing examiner's ruling contained in his memorandum to complaint counsel, dated March 29, 1966, denying their request to issue subpoenas duces tecum directed to four named persons to appear and to testify and to produce documents, for the reason that a hearing had not been scheduled in the proceeding. The hearing examiner stated, in his memorandum, that the time and place of hearings will be fixed at a prehearing conference scheduled for May 23, 1966, that he sees no necessity to require the appearance of the parties prior to the time of the "regular hearings," and that the said counsel's request could be renewed after hearings have been scheduled.

Respondent Dean Foods Company filed a statement on April 11, 1966, in which it states it takes no position on whether the ruling appealed from should be affirmed or reversed, but that it does not want to be prejudiced in the securing, at a later time, of the information obtained.

The hearing examiner, under § 3.15(c) of the Commission's Rules of Practice, has the power and duty, *inter alia,* to take all necessary action to avoid delay in the disposition of proceedings and has all powers necessary to that end, including, among others, the power to issue subpoenas. The examiner's authority to issue subpoenas in a particular proceeding begins the moment he is designated as the hearing examiner in the matter. Thus, here the examiner had the power to issue the subpoenas requested by complaint counsel even though hearings had not yet been scheduled.

It seems to us that the examiner, considering complaint counsel's representations to him that the subpoenas are necessary because of the refusal or failure of four dairies to provide information necessary to such counsel in an attempt to obtain accurate market share data, took a very narrow view of his responsibilities in failing to provide such process so as to prevent future delay in the preparation for trial and in the trial of this case. We believe that it would be wholly appropriate in the circumstances to issue such subpoenas. The information sought would be obtained as an aid in the trial of the case. Such subpoenas are not considered, and are not to be considered, as investigational subpoenas.

This appeal will be entertained because the ruling complained of involves substantial rights, will materially affect the final decision, and because a determination of its correctness before the conclusion of the hearing will better serve the interests of justice. Accordingly,

It is ordered, That complaint counsel's appeal from the examiner's ruling denying their request for subpoenas duces tecum be, and it hereby is, granted.

It is further ordered, That the hearing examiner's ruling denying the request of complaint counsel for subpoenas duces tecum be, and it hereby is, vacated.

It is further ordered, That the hearing examiner forthwith reconsider, in the light of this order and the views of the Commission stated herein, the request of complaint counsel for the issuance of subpoenas duces tecum.

HUMPHREYS MEDICINE COMPANY, INC., Docket No. 8640
E. C. DeWITT & CO., INC., Docket No. 8642
GROVE LABORATORIES, INCORPORATED, Docket No. 8643
THE MENTHOLATUM COMPANY, Docket No. 8644

Order, Apr. 26, 1966

Order denying petitions of respondents that hearing examiner reconsider his denial of motion to suspend proceedings in all four cases pending the outcome of the *American Home Products* case, Docket 8641, and directing hearing examiner to offer respondents the opportunity to settle their cases through stipulation.

ORDER RULING ON MOTIONS CERTIFIED BY THE HEARING EXAMINER

This matter is before the Commission on the certification to the Commission, on April 20, 1966, by the hearing examiner of motions by the respondents in *Humphreys Medicine Company, Inc.,* Docket No. 8640, *The Mentholatum Company,* Docket No. 8644, *Grove Laboratories, Inc.,* Docket No. 8643, and *E. C. DeWitt & Co., Inc.,* Docket No. 8642. In each case respondent requested the hearing examiner to certify to the Commission its motion that the Commission permit reargument of, and reconsideration of, the motion of complaint counsel to suspend hearings in these proceedings pending issuance of the Commission's decision *In the Matter of American Home Products Corporation,* Docket No. 8641 [70 F.T.C. 1524]. Complaint counsel's motion to suspend was denied in each case by orders of the Commission, dated March 16, 1966.*

Respondent E. C. DeWitt & Co. also moves, in the alternative, that the proceeding in Docket No. 8642 be joined and consolidated with the *Matter of American Home Products Corporation,* Docket No. 8641. In this connection, DeWitt requests permission to withdraw its answer and to file an amended answer by which respondent "shall agree to be bound in the manner, and at the time and to the extent appropriate, by any order which the Commission may enter in said *Matter of American Home Products Corporation.*" Such order, according to respondent's motion, may include an affirmation of the hearing examiner's initial decision in that proceeding but is not limited to such a result or the Commission may take substantially the same action in Docket No. 8642 as it deems appropriate *In the Matter of*

*DeWitt requests the Commission to authorize the hearing examiner to reinstate his order of February 14, 1966.

American Home Products Corporation, Docket No. 8641. DeWitt's motion, in the alternative, further provides that the Commission may grant such additional relief as is deemed appropriate and in the public interest.

The hearing examiner, in the case of all four certifications, recommended that the motions certified be granted.

The Commission has determined that the motions certified have not stated grounds justifying further suspension of the hearings in these proceedings and that the hearing examiner should be directed to go forward with the hearings in these cases unless respondents are willing to stipulate in the course of the prehearing conferences that they will submit these proceedings to the Commission for disposition on the basis of the record in *American Home Products Corporation,* Docket No. 8641, and that they waive any further intervening procedural steps before the hearing examiner. In this connection, if any of the respondents wish to dispose of their proceeding on that basis they should further stipulate, if they are able to, on the basis of the facts applicable in their proceeding, that:

1. The advertising of the particular respondent had no significantly different effect upon the reader than the effect of the advertisements in *American Home Products*;

2. The effect of the use of respondent's preparation is not significantly different from the use of the preparation of American Home Products;

3. If there are any significant differences between the advertisements of respondents and the advertisements in the record in *American Home Products,* then the Commission, in its order disposing of the case may include appropriate provisions to take into consideration such differences.

If any respondent wishes to avail itself of this procedure, it will also be necessary for it to attach to the stipulation the relevant advertising, which it has utilized, for inclusion in the record. Finally, those respondents desiring to conclude their proceeding without hearings before the examiner should include in their stipulations a provision that the Commission may dispose of their proceeding at the time *American Home Products* is decided by such order as it deems necessary to the public interest in the light of the record of the particular case. Such stipulation should contain the further provision that the record, on which the Commission is to make its final disposition of this case and for the purposes of judicial review, is limited to the record of the

proceeding at the time the stipulation is filed, the stipulation and the attached advertisements as well as the record in *American Home Products*. Accordingly,

It is ordered, That the hearing examiner is directed to proceed with the hearings in these cases forthwith: *Provided, however,* That the examiner will, without further action, certify the record in the particular case to the Commission if the respondent in that proceeding and complaint counsel, within 30 days of the service of this order upon them, file a stipulation providing that:

1. They will submit the case to the Commission on the record in Docket No. 8641, *American Home Products Corporation,* and such other facts and records as provided for below;

2. (a) The facts applicable to the case support the stipulation that advertisements in the case had no significantly different effect upon readers from the effect of the advertisements in *American Home Products,*

(b) The facts applicable to the case support the stipulation that the effect of the use of respondent's preparation is not significantly different from the use of American Home Products' preparations;

3. To the extent that a respondent's advertisements differ significantly from those in *American Home Products,* the Commission may, in its order disposing of the proceeding, include appropriate provisions to take into consideration such differences;

4. The advertisements attached to the stipulation are representative of respondent's advertising claims and are to be included in the record of such proceeding;

5. Respondent waives any intervening steps before the hearing examiner;

6. The Commission may, on the basis of the stipulation, the attached advertisements and the record in *American Home Products,* issue such order as it deems necessary to the public interest;

7. The Commission is to issue its order disposing of such proceeding concurrently with the order setting forth its final decision in *American Home Products*; and

8. The record on which the Commission is to make its disposition of such proceeding and for the purpose of judicial review is limited to the record at the time the stipulation is filed, the stipulation with the attached advertisements and the record in *American Home Products.*

ALHAMBRA MOTOR PARTS ET AL.

Docket 6889. Order, May 5, 1966

Order setting aside cease and desist order of December 17, 1965, 68 F.T.C. 1039, as to respondents Earl Crawford, Lester L. Congdon, Margaret A. Ludwick, Otis M. Ludwick, E. L. Covey, Edward Gaughn, Carl D. Haase and Emma F. Wright.

ORDER SETTING ASIDE CEASE AND DESIST ORDER AS TO CERTAIN RESPONDENTS

Earl Crawford, Lester L. Congdon, Margaret A. Ludwick and Otis M. Ludwick have filed motions to set aside the cease and desist order of December 17, 1965 as to them and complaint counsel has filed a motion in behalf of E. L. Covey, Edward Gaughn, Carl D. Haase and Emma F. Wright to set aside this order as to those respondents. These motions are made pursuant to a provision in the order providing:

It is further ordered, That those respondents who severed their connection with Southern California Jobbers, Inc., prior to January 17, 1963, be, and they hereby are, granted permission, within sixty (60) days of the service of this order upon them, to file a motion requesting the Commission to set aside as to them the above order relating to warehouse distributor discounts.

It appears from respondents' motions, complaint counsel's motion and the supporting affidavits that this requirement has been satisfied in the case of Earl Crawford, Lester L. Congdon, Margaret A. Ludwick, Otis M. Ludwick, E. L. Covey, Edward Gaughn, Carl D. Haase and Emma F. Wright. Accordingly,

It is ordered, That the cease and desist order of December 17, 1965 relating to warehouse distributor discounts be, and it hereby is, set aside as to Earl Crawford, Lester L. Congdon, Margaret A. Ludwick, Otis M. Ludwick, E. L. Covey, Edward Gaughn, Carl D. Haase and Emma F. Wright.

SUBURBAN PROPANE GAS CORPORATION

Docket 8672. Order, June 2, 1966

Order remanding certification of question of postponing hearing date to hearing examiner with instructions that he expedite the proceedings in this case.

ORDER RULING ON CERTIFICATION OF NECESSITY FOR POSTPONING HEARING DATE

This matter has come on for a hearing upon the examiner's certification of the question of the necessity for postponement of formal hearings until October 1966.

On May 18, 1966, the examiner directed counsel to file not later than June 10, 1966, their requests, if any, for hearings at more than one time and place and designating the earliest feasible dates and places of such hearings, with their reasons, a list of witnesses and exhibits, such stipulations as have been agreed upon, and all other motions and requests which would further the expedition of the hearings.

In a motion filed May 25, 1966, complaint counsel assert, among other things, that the filings required by the examiner's order would be premature and could not be made with the aura of finality which should accompany such filings, and they contend that a different prehearing timetable as suggested by such counsel would dispose of many pending prehearing matters and point toward commencement of the hearings at the earliest possible date. Specifically, on the question of setting the date of hearings, complaint counsel assert that when they advised the examiner mid-October 1966 was the earliest possible hearing date, they "were dealing with many areas of guesswork which are still uncertain," and that while they still adhere to their original date, they emphasize that this is merely an estimate.

The examiner states that in light of the record, which includes complaint counsel's motion of May 25, 1966, he is of the opinion that the request of such counsel is reasonable and that the hearings should be deferred until October 1966. He requests the authority for such deferment.

The examiner, we believe, misconceives his role and his authority in connection with the conduct of a Commission proceeding. The examiner clearly must guard against any unwarranted delays in the prehearing stage and exercise his powers in such a way as to bring the matter to trial at the earliest possible date. However, within that limitation, if such it be, he has broad discretion in all pretrial procedures and arrangements and specifically in the matter of fixing an appropriate date for the formal hearings. We note that even at this time it apparently is uncertain whether or not the hearings can be set for October 1966, since the time for these hearings will depend upon the disposition of various pretrial matters. In such circumstances, the Commis-

sion is not in a position to make a sound decision in the matter. This is something peculiarly within the hearing examiner's province, especially since he is in a position to call the parties together and to iron out difficulties, if any, so that the hearings can commence with all possible speed.

The Commission notes that the formal complaint in this proceeding was issued more than six months ago, and the hearing examiner has not yet fixed a definite date for the commencement of hearings. The Commission believes that altogether too much time for utilization of prehearing procedures has already elapsed. We do not know where the fault, if any, lies; but it is the special duty of complaint counsel and the hearing examiner to carry out both the Commission's statutory obligation to "proceed with reasonable dispatch" (Section 6(a) of the Administrative Procedure Act) and its expressed policy that adjudicative proceedings "shall be conducted expeditiously" (Section 3.1 of the Commission's Rules of Practice). We stress that the examiner should brook no undue delay. He has, we believe, all of the powers necessary to see to it that the parties dispose of all pretrial matters in a reasonable time and to get on with the trial of the case. He should use them.

It is ordered, That this matter be, and it hereby is, remanded to the examiner for further conduct of the proceedings in accordance with the views herein expressed.

THE MENTHOLATUM COMPANY

Docket 8644. Order and Opinion, June 8, 1966

Order rejecting stipulation of respondent pursuant to order of April 26, 1966, and remanding case to hearing examiner for trial unless, within 10 days, respondent submits a new stipulation.

OPINION OF THE COMMISSION

This matter is before the Commission on the certification to the Commission on May 27, 1966, by the hearing examiner of a stipulation entered into by counsel supporting the complaint and counsel for respondent pursuant to the Commission's order dated April 26, 1966, which provided that the hearing examiner was to proceed with the hearing in the case forthwith unless a stipulation was filed within 30 days of service of said order containing the provisions set forth in said order.

Paragraph 2(b) of the Commission's order of April 26, 1966, stated that to comply with its terms the stipulation entered into by counsel must provide that:

> The facts applicable to the case support the stipulation that the effect of the use of respondent's preparation is not significantly different from the use of American Home Products' preparations.

Paragraph 2(b) of the stipulation submitted by counsel provides as follows:

> The effect of the use of respondent's preparation is not significantly different from the use of the preparation of American Home Products *other than as set forth in advertisements hereto attached which show that the Mentholatum product contains benzocaine, technically Ethyl p-Aminobenzoate, as listed in official compendia (U.S. Pharmacopeia, U.S. Formulary) as a local anesthetic and hexachlorophene listed in the U.S. Pharmacopeia as a local anti-infective.* (Emphasis added.)

The qualified agreement entered into by counsel clearly does not comply with the requirements set forth in Paragraph 2(b) of the Commission's order and would seemingly require the Commission to make a scientific evaluation of the merits of respondent's alleged ingredients "Benzocaine" and "Hexachlorophene." Since the stipulation contains no agreement among counsel concerning the significance and effects of these alleged ingredients, the Commission would be unable to determine the effect, if any, of the presence of these ingredients in respondent's preparation on the issues in the case.

Paragraph 3 of the stipulation provides:

> That the Commission in its order disposing of the case may include appropriate provisions and take into consideration such differences as the inclusion of the anesthetic and local anti-infective.

This language does not state directly that it is designed to encompass differences in advertising as well as in the product. It is, therefore, not in direct conformity with the requirements of Paragraph 3 of the Commission's order of April 26, 1966, which states:

> To the extent that a respondent's advertisements differ significantly from those in *American Home Products*, the Commission may, in its order disposing of the proceeding, include appropriate provisions to take into consideration such differences.

It would appear, therefore, that the stipulation submitted by counsel does not fully comply with the requirements of the Commission's order of April 26, 1966, and that it contains some omissions and ambiguities which should be clarified before it can be accepted. It is accordingly rejected for these reasons and

counsel are granted an additional 10 days within which to resubmit an amended stipulation.

ORDER ON STIPULATION CERTIFIED BY HEARING EXAMINER

The Commission in an order dated April 26, 1966 [p. 1179 herein], having directed the hearing examiner to proceed with the hearing in the case forthwith unless the parties entered into a stipulation in accordance with the provisions set forth in said order, in which event the hearing examiner was ordered to certify the record to the Commission; and counsel supporting the complaint and counsel for respondent having on May 20, 1966, entered into a stipulation purportedly complying with the provisions of said Commission order dated April 26, 1966; and the matter having been certified to the Commission by the hearing examiner on May 27, 1966; and the Commission having determined that said stipulation does not comply with the requirements set forth in its order of April 26, 1966:

It is ordered, That the stipulation submitted by counsel be and hereby is rejected and the matter returned to the hearing examiner who shall proceed with the hearing in this case forthwith unless, within 10 days after the service of this order upon respondent, a stipulation is filed with the hearing examiner complying with the requirements set forth in the Commission's order of April 26, 1966, whereupon the hearing examiner shall again certify the record in this case to the Commission without further action.

MISSISSIPPI RIVER FUEL CORPORATION

Docket 8657. Order, June 8, 1966

Order denying motions to quash several subpoenas duces tecum directed to officials of ready-mix concrete companies, and further providing that the subpoenaed documents be turned over to an accounting firm selected jointly by Commission and respondent's counsel.

ORDER ENTERTAINING AND DENYING APPEALS FROM HEARING EXAMINER'S DENIAL OF MOTIONS TO QUASH OR LIMIT SUBPOENAS

In January 1965, the Commission issued the complaint in this case charging that respondent's acquisitions of ready-mix concrete firms in Kansas City, Missouri, Memphis, Tennessee, and Cincinnati, Ohio, during the period from September 1963 through

January 1964, violated Section 7 of the amended Clayton Act. On the application of respondent's counsel, the hearing examiner on January 27, 1966, entered an order for the taking of depositions and the issuance of subpoenas *duces tecum* to 33 portland cement manufacturers and 30 ready-mix concrete distributors and their officials, many of whom have moved to quash or limit these subpoenas. On April 12, 1966, the hearing examiner heard oral argument and conducted a conference on the motions to quash or limit the subpoenas. Thereafter, on April 28, 1966, the hearing examiner issued an order denying the motions to quash but modifying and limiting the subpoenas in some respects. The matter is now before the Commission on the appeal from the hearing examiner's order of a number of those persons subpoenaed.

Section 3.17 of the Commission's Rules of Practice provides that an appeal to the Commission from the hearing examiner's ruling granting or denying a motion to limit or quash any subpoena "will be entertained by the Commission only upon a showing that the ruling complained of involves substantial rights and will materially affect the final decision and that a determination of its correctness before conclusion of the hearing will better serve the interests of justice." The Commission has determined that the requisite showing has been made in this case and it therefore entertains the appeals.

Complaint counsel and respondent's counsel have stipulated, for the purposes of this proceeding only, that if a cement consumer had or has one or more of the relationships described below with a portland cement manufacturer, then during the existence of that relationship, the cement consumer is likely to be influenced to buy a significant part of its cement requirements from such manufacturer:

(1) Any debt due of a cement consumer to a manufacturer which has been owing for more than 60 days;

(2) Debts of a cement consumer guaranteed by a cement manufacturer;

(3) Any lease between a cement manufacturer and a cement consumer for assets used by the consumer in the production or distribution of ready-mixed concrete or concrete products;

(4) Any lease-purchase agreement between a cement manufacturer and a cement consumer for assets used by the consumer in the production or distribution of ready-mixed concrete or concrete products;

(5) Any right or option of a cement manufacturer to acquire any of the stock or assets of a cement consumer;

(6) Any sale of equipment or other property where the deferred purchase price is secured by lien or retention of title by a cement manufacturer to a cement producer;

(7) The furnishing of equipment or other property by a cement manufacturer to a cement consumer without charge or for a consideration less than the fair value of the property;

(8) Any contribution of capital by a cement manufacturer to a cement consumer;

(9) The placing or retaining on the payroll of a cement manufacturer of any officer or employee of a cement consumer; and

(10) The presence on the Board of Directors of a cement consumer of one or more directors common to a cement manufacturer.

The subpoenas at issue here seek documents and writings which reflect any of these relationships* for the years 1963 through 1965 and, as modified by the hearing examiner, the geographic area covered is that defined in the complaint. The hearing examiner's order provided that the subpoenas may be complied with by mailing the specified papers to respondent's counsel in lieu of personally appearing and testifying. The order contains further provisions with reference to the copying of documents and disclosure of their contents, all designed to protect the confidentiality of the information submitted in response to the subpoenas.

Appellants launch a broadly based attack on the validity of the subpoenas. They argue first that the subpoenas constitute an effort on the part of respondent to engage in a discovery proceeding unauthorized by the Commission's Rules. We disagree. By the subpoenas, respondent proposes to gather evidence by which it expects to prove certain aspects of the structure of the cement and ready-mix markets in the relevant geographical areas. The subpoenas cover a limited and specified class of documents relating to specifically defined relationships—relationships which constitute elements of the economic setting in which the challenged mergers took place. On this basis, we reject appellants' contention that "respondent's purpose is not to obtain evidence but to conduct an expedition in the hope of discovering something helpful."

*The hearing examiner's order modified the subpoenas to require data as to debts owing for more than 90 days rather than the 60 days stipulated.

Although it is not necessary to decide now, and we do not decide, whether the type of evidence that respondent seeks to elicit by the subpoenas will constitute a defense to the Section 7 violations charged in this case, it does appear that the material sought is relevant to an appraisal of market conditions in the cement industry and pertinent to the issues in this case. Respondent is entitled to gather such information for purposes of making its defense. It is clear that the information sought would not be given voluntarily and that it is available to respondent only through compulsory process. If respondent is denied the opportunity to collect this material, it will be unable to lay the foundation for whatever legal arguments, based on market conditions, it may wish to make. It is to be emphasized that the Commission does not imply its acceptance or rejection of any legal argument that respondent may choose to make in its defense. We merely hold that respondent is not to be foreclosed, at this stage of the proceeding, from attempting to make its defense by being denied the opportunity to obtain the necessary evidence. We also reject appellants' contentions that some items of the subpoenas are not relevant.

Appellants contend also that respondent's real purpose is to gather highly confidential competitive data which will be "of incalculable value to respondent in competing with movants." The Commission believes that the data sought is not of so confidential or sensitive a nature as appellants claim and, moreover, that the protective provisions of the examiner's order render it highly unlikely that the material submitted by appellants can be put to unfair or improper competitive use by respondent. However, out of an abundance of caution and in order to avoid any possibility that the allegedly confidential data will be improperly used, we direct that material submitted in response to the subpoenas should be submitted to a reputable and disinterested accounting firm, to be selected by the hearing examiner in consultation with the parties, which shall compile and present the material to respondent's counsel in such manner that no individual company's confidential arrangements or data will be revealed. This shall be in addition to the protective provisions already contained in the examiner's order. The request for oral argument is denied.

It is so ordered.

Commissioner MacIntyre not participating.

MODERN MARKETING SERVICE, INC., ET AL.

C. H. ROBINSON COMPANY AND NASH-FINCH COMPANY

Dockets 3783, 4589. Order, June 9, 1966

Order denying respondents' request to either terminate case or to defer filing of proposed findings until the Supreme Court has ruled on *F.T.C.* v. *Jantzen, Inc.*, 356 F. 2d 253 (9th Cir. 1966), but granting a 30 day extension to prepare findings.

ORDER DENYING RESPONDENT'S MOTION TO TERMINATE PROCEEDING, OR, IN THE ALTERNATIVE, TO DEFER FILING OF PROPOSED RECOMMENDATIONS AND GRANTING REQUESTED EXTENSION OF TIME FOR FILING RECOMMENDATIONS

This matter is before the Commission upon the hearing examiner's certification, under § 3.6(a) of the Commission's Rules of Practice, of a motion of respondent, Nash-Finch Company, filed May 4, 1966, requesting that the proceeding be terminated, or, in the alternative, that the filing of proposed recommendations and other submissions with the examiner be deferred until such time as the United States Supreme Court has ruled that the Commission has authority to conduct a proceeding for enforcement of a pre-1959 Clayton Act order which was commenced subsequent to the enactment of the Clayton Act Finality Act. In addition, respondent, on May 6, 1966, filed a motion to extend from June 9, 1966, to August 9, 1966, the time to file its proposed recommendations with the examiner, in the event that its May 4, 1966, motion is denied.

In his certification of May 20, 1966, the examiner recommended that the Commission deny both parts of the first motion and grant the second.

Respondent's contention in support of the requested termination is that the Commission has no authority to prosecute this proceeding, inasmuch as all statutory provisions for the enforcement of pre-1959 Clayton Act orders, by a proceeding commenced after July 23, 1959, were repealed by enactment of the Clayton Act Finality Act. Respondent cites in support the recent decision of the Court of Appeals for the Ninth Circuit in *Federal Trade Commission* v. *Jantzen, Inc.*, 356 F. 2d 253 (1966).

Respondent supports its alternative request for a deferment of the filing of proposed recommendations until the Supreme