IN THE MATTER OF

THE KROGER COMPANY

Docket 9102. Interlocutory Order, Feb. 26, 1979

ORDER DENYING MOTION FOR RECONSIDERATION AND DENYING MOTION TO DISQUALIFY ADMINISTRATIVE LAW JUDGE

Respondent has moved for reconsideration of our recent order affirming the administrative law judge's ("ALJ") denial of respondent's motion for discovery of certain documents in the files of the Commission. Respondent has also moved to disqualify the ALJ, Montgomery K. Hyun, on the ground that because he had access to many of these same documents during his prior employment as attorney-advisor to former Chairman Engman, his continued participation creates an actual or apparent impropriety. Respondent perceives an impropriety because "it appears that [Judge Hyun] may decide the case or have his reaction to evidence preconditioned by ex-record material and discussion on pertinent issues arising from his activities engaged in before becoming an administrative law judge." Affidavit of Stuart J. Land at 6. Judge Hyun declined to disqualify himself and certified respondent's motion to the Commission, pursuant to Section 3.42(g) of our Rules of Practice.

The Issue of Disqualification

This case concerns, *inter alia,* allegations that respondent, which owns a chain of supermarkets, made comparative price claims about the relative costs to consumers of its products, which claims were based upon methodologically unsound price surveys. Judge Hyun accepted an assignment to this matter only on the basis, which he has expressly reaffirmed, that he had no recollection of advising former Chairman Engman on, or otherwise dealing with, any matter pertaining to respondent or to retail food advertising generally during his tenure as an attorney-advisor. Respondent has not suggested that the contrary is true. Thus, the only question with which we are presented here is whether disqualification of an administrative law judge is mandated where in his prior employment he had access to, but does not recall reviewing, materials which, respondent contends, might influence his reaction to record evidence and thus lead him to render a biased decision.

The Nature of the Claim

Judge Hyun resigned from the Commission in September 1973; the

preliminary investigation underlying the instant complaint was not opened until December 1975, and the complaint itself was not issued until July 1977. Accordingly, respondent cannot and does not allege that the documents to which Judge Hyun had access bear specifically on the allegations against it. Instead, respondent avers that the Commission documents concern and would reflect upon the ease or difficulty of designing and implementing a methodologically valid retail food price survey generally. Collectively, respondent claims, such documents would tend to be exculpatory in nature.[1] But, it is apparent, respondent could only benefit from any preconditioning of the mind of Judge Hyun resulting from his exposure to allegedly exculpatory information. To assert this disqualification claim, therefore, respondent avers that at the time of Judge Hyun's resignation from the Commission, the exculpatory nature of the document may not yet have become evident, because the Commission's staff had not yet comprehended or reported the difficulties of devising a sound methodology. Thus, it is alleged, during his seven-month service as an attorney-advisor, Judge Hyun would have had access only to documents which might not prove to be exculpatory after all, and that he therefore may be "preconditioned," if one presumes he actually read or discussed the documents, to react other than positively to respondent's defense asserting the unreasonable difficulty of conducting a methodologically valid survey.

Disposition of the Motion for Disqualification

Because we do not perceive an appearance of impropriety, we decline either to reverse our earlier determination concerning document production[2] or to order the disqualification of the ALJ. Even if all the allegations contained in the moving affidavit are taken as true, respondent would still fall short. As we have previously stated, an ALJ should be disqualified only upon an adequate showing of bias or prejudgment. Mere access to internal Commission documents tangentially relevant to a proceeding cannot be grounds for his dismissal, notwithstanding that such access has served, under our Rules of Practice, as grounds for denial of clearance to a former Commission employee who wished to appear as counsel for respondent in this litigation. *See* letter of November 16,

[1] On this basis, respondent has sought, unsuccessfully, to have all such documents, including those which the ALJ has ruled are exempt from disclosure by reason of privilege, produced and admitted into evidence in this litigation. Judge Hyun has, of course, ordered production to respondent of all relevant non-privileged factual materials, including exculpatory information, in the possession of the Commission.

[2] As noted at the outset, we recently affirmed Judge Hyun's denial of respondent's motion for production of otherwise privileged Commission documents. Respondent has asked us, in connection with the motion for disqualification of Judge Hyun, to reconsider this determination, so that it might "lay bare facts which would either confirm or dispel the appearance of impropriety that now exists." Motion for Reconsideration at 2.

1978 to S. Mark Tuller, Esq. As we have noted previously, our clearance rules address issues wholly distinct from those pertinent to disqualification of a law judge.[3]

The two instances cited by respondent in which disqualification was ordered by a Court of Appeals because an individual acting in an adjudicative capacity had gained knowledge of relevant facts while serving in a prior, non-judicial capacity, differ materially from this case and do not support respondent's contention that Judge Hyun must be disqualified.

In *American Cyanamid Co.* v. *FTC,* 363 F.2d 757 (6th Cir. 1966), it was proved that a member of the Commission, in his role as Chief Counsel to the Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee, had personally investigated the same facts and issues concerning the same parties named as respondents in an administrative proceeding, prior to adjudicating that proceeding in his subsequent role as Chairman of the Commission. The decision plainly is not based on the Commissioner's access to pertinent information in his role as Chief Counsel but rather upon his extensive personal conduct, which the court held to be sufficient to unseat the presumption of impartiality. Indeed, the Court of Appeals specifically stated that the Commissioner's service, standing alone, as counsel to the subcommittee that was undertaking the investigation, would not necessarily require his disqualification. 363 F.2d at 768.

In *United States* v. *Amerine,* 411 F.2d 1130 (6th Cir. 1969), a criminal case, the court ordered the disqualification of a district court judge who had tried and sentenced a defendant against whom the original complaint had been issued during the period of the judge's prior service as United States Attorney. There are critical distinctions between *Amerine* and the instant case, even beyond the undeniable asymmetry of the criminal and civil laws. First, the complaint in this case was not issued until four years after Judge Hyun's resignation from the Commission, a salient distinction which eliminates any need for disqualification. *See United States* v. *Wilson,* 426 F.2d 268 (6th Cir. 1970); *Barry* v. *United States,* 528 F.2d 1094 (7th Cir.), *cert. den.,* 429 U.S. 826 (1976); *United States* v. *Kelly,* 556

[3] In the clearance context, the Commission's primary concern is with the perception that a former employee may have an advantage in representing a client by reason of having had access to nonpublic information, and as a matter of policy the Commission has decided to base its determinations on an essentially objective standard—likelihood of access and opportunity to be exposed to such information—rather than to rely solely upon the subjective standard of actual exposure. In the present context, however, respondent's claim of disqualification rests largely upon the supposed effects of actual exposure to certain information, and the Commission has concluded in any event that, under its precedents, even actual exposure would not be disqualifying, *see infra,* Alternative Ground for Disposition of Motion to Disqualify, there being no comparable problem of a former Commission employee using for private purposes information acquired while a Commission employee.

F.2d 257 (5th Cir. 1977), *cert. den.,* 434 U.S. 1017 (1978). Second, Mr. Hyun's role as attorney-advisor to a Commissioner is hardly akin to that of a United States Attorney, who exercises supervisory responsibility and at least nominally initiates charges and issues complaints. Finally, *Amerine* is of limited utility in any event, since the opinion rested solely upon a statutory construction of the former version of 28 U.S.C. 455, under which the judge was deemed to have been "of counsel" to the government by dint of his former role as United States Attorney.

Finally, respondent urges upon us the current version of 28 U.S.C. 455(b) (1976), as amended in 1974, which mandates the disqualification of a federal judge who has "personal knowledge of disputed evidentiary facts concerning the proceeding" or who "participated as . . . adviser . . . concerning the proceeding" while "in governmental employment." The proposed application of the statute to the facts at hand cannot be sustained. First, the statute on its face does not apply to administrative law judges,[4] and respondent's argument that the courts have so extended the statute, Application for Review of ALJ's Order of January 15, 1979 at 12, lacks support. There is considerable authority, apart from the application of maxims of construction, which suggests that Section 455 does not apply to agency adjudicators, whose potential disqualification is to be tested instead against the standard set out in the Administrative Procedure Act ("APA"). *See* 5 U.S.C. 556(b) (1976); *Securities and Exchange Comm'n* v. *R. A. Holman & Co.,* 323 F.2d 284, 287 (D.C. Cir.), *cert. den.,* 375 U.S. 943 (1963); *Converse* v. *Udall,* 262 F.Supp. 583 (D. Ore. 1966), *aff'd,* 399 F.2d 616 (9th Cir. 1968), *cert. den.,* 393 U.S. 1025 (1969). The APA gives appropriate recognition to the varied functions performed by agencies which federal judges would not be expected to perform. Where Congress has not explicitly subjected agencies to the same strictures applicable to federal courts, it would be inappropriate to subject an agency's actions to the same standards. *See generally Vermont Yankee Nuclear Power Corp* v. *NRDC,* 435 U.S. 519 (1978); *FTC* v. *Flotill Prods., Inc.,* 389 U.S. 179, 183–85 (1967); *United States* v. *Morton Salt Co.,* 338 U.S. 632, 641–42 (1950).

Second, assuming *arguendo* that the statute does apply, it does not require Judge Hyun's disqualification. The judge has specifically denied having any "personal knowledge" whatever concerning this proceeding, and he has specifically denied that he "participated as an advisor" concerning this proceeding. The authorities are also clear that under Section 455, a necessary precondition to disqualifi-

[4] Only justices, judges, magistrates and referees in bankruptcy are expressly covered.

cation is that the proceeding in question have been initiated during the judge's prior tenure in a non-judicial capacity, a hurdle which respondent plainly fails to surmount here. *See United States* v. *Kelly, supra; Barry* v. *United States, supra.*

In the absence of some evidence extrinsic to the discovery in this case, which suggests that Judge Hyun's stated recollections are mistaken, we see no basis for disqualification or even for further inquiry. There is nothing to suggest that the judge will decide the case on the basis of anything other than the record evidence. Respondent has failed utterly to demonstrate that Judge Hyun has "a bent of mind that may prevent or impede impartiality of judgment." *Berger* v. *United States,* 255 U.S. 22, 33–34 (1921).

Alternative Ground for Disposition of Motion to Disqualify

As an alternative and independent ground for affirmance, the Commission is of the view that Commission rule and precedent, as well as the Administrative Procedure Act, dispose of respondent's arguments.

For example, *Grolier, Inc.,* 87 F.T.C. 179, 180 (1976), *aff'd* 91 F.T.C. 486 (1978), contradicts respondent's position. There, the Commission held that even an ALJ's prior participation as an attorney-advisor in "provid[ing] advice during the precomplaint stage of an investigation" would not alone be sufficient to order his disqualification on the grounds of alleged improper commingling of functions, possible bias, or possible exposure to information not later admitted into evidence. In the instant case, of course, Judge Hyun has stated that he has no present recollection of participating in this matter, and we have no reason to question his statements. *Cf. National Nutritional Foods Ass'n* v. *FDA,* 491 F.2d 1141, 1144–46 (2d Cir.), *cert. den.,* 419 U.S. 874 (1974); *Hercules* v. *EPA,* No. 77–1248, slip op. at 59–62 (D.C. Cir. Nov. 3, 1978). Judge Hyun's conduct thus falls well within the ambit of activity protected by *Grolier.*

Neither is the relief sought by respondent required by the APA. Section 7, 5 U.S.C. 556, of course, mandates impartiality, but does not aid respondent, because respondent has failed completely to overcome the strong presumption of honesty and fairmindedness attributed to agency adjudicators. *See Withrow* v. *Larkin,* 421 U.S. 35, 47, 55 (1975). Indeed, under respondent's argument a Commissioner who had access to the same information as Judge Hyun could not then preside at the reception of evidence, a result clearly inconsistent with the APA.

Disposition of the Motion for Reconsideration

Respondent's motion for reconsideration must be denied. Absent some extrinsic evidence of bias or prejudgment by the ALJ, respondent is not entitled to discovery of otherwise privileged documents to which it has sought and been denied access already in this proceeding. *Cf. United States* v. *Litton Industries, Inc.*, 462 F.2d 14 (9th Cir. 1972); *R. A. Holman & Co.* v. *S.E.C.*, 366 F.2d 446 (2d Cir. 1966), *cert. den.*, 389 U.S. 991 (1967). The naked conclusory allegation of bias, resting upon a hypothetical preconditioning of the mind of the ALJ resulting from his possible exposure to documents which he does not recall, does not state a need sufficient to overcome a proper assertion of privilege. Accordingly,

It is ordered, That respondent's motion for reconsideration of the Order Affirming Order Ruling on Respondent's Motion for Production of Documents be, and it hereby is, denied. And,

It is further ordered, That respondent's motion for disqualification of the administrative law judge be, and it hereby is, denied.

Commissioner Pitofsky did not participate.

IN THE MATTER OF

LOUISIANA-PACIFIC CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND CLAYTON ACTS

Docket C-2956. Complaint, Feb. 27, 1979 — Decision, Feb. 27, 1979

This consent order, among other things, requires a Portland, Ore. firm engaged in harvesting and converting timber into various wood products, including medium density fiberboard (MDF) and particleboard, to divest, within two years to a Commission-approved buyer, the Rocklin MDF plant, which firm acquired through its merger with the Fiberboard Corporation; and offer the new buyer the opportunity to purchase from the firm, for five years, a limited amount of the raw materials necessary to manufacture MDF. Additionally, the order prohibits the firm, for ten years, from acquiring, without prior agency approval, any entity engaged in the manufacture of particleboard or MDF.

Appearances

For the Commission: *James Egan.*

For the respondent: *William E. Willis, Sullivan & Cromwell,* New York City.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent, subject to the jurisdiction of the Commission, has entered into a merger agreement which, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, that said agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, and that a proceeding 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. 4(b), stating its charges in the following Count I.

The Federal Trade Commission, having further reason to believe that the above-named respondent also has violated and is violating Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, through the acquisition of the stock and/or assets of various corporations, and that a proceeding 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 in the following Count II.

COUNT I

I. Louisiana Pacific Corporation

PARAGRAPH 1. Louisiana Pacific Corporation (L-P) is a corporation organized under the laws of the State of Delaware with its principal place of business located at 1300 S.W. Fifth Ave., Portland, Oregon.

PAR. 2. L-P is a diversified, integrated forest products company. It grows and harvests timber which it then converts to various wood products, including lumber, plywood, particleboard, veneer, pulp and wood chips. In 1977 L-P had total shipments of particleboard in excess of $56 million and total sales of lumber in excess of $330 million.

PAR. 3. In 1977 L-P had net sales in excess of $794 million and net income in excess of $60 million.

II. Fibreboard Corporation

PAR. 4. Fibreboard Corporation (F-B) is a corporation organized under the laws of the State of Delaware with its principal place of business located at 55 Francisco St., San Francisco, California.

PAR. 5. F-B is a diversified, integrated forest products company. It grows and harvests timber, which it then converts to various wood products, including lumber, plywood, medium density fiberboard (MDF), pulp and wood chips. It is also involved in the manufacture and sale of container products and insulation. F–B's total shipments of MDF in 1977 exceeded $10 million and its total sales of forest products exceeded $51 million.

PAR. 6. In 1977 F-B had net sales in excess of $227 million and net income in excess of $1.2 million.

III. Jurisdiction

PAR. 7. At all times relevant herein L-P and F-B have been engaged in the manufacture and sale of various products, including those products relevant to this complaint, in interstate commerce and are engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and each is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

IV. The Merger Agreement

PAR. 8. On March 22, 1978 L-P and F-B entered into a merger agreement which provides, inter alia, for the merger of F-B into L-P. The merger agreement further provides that, upon consummation of the merger, F-B will become a wholly-owned subsidiary of L-P. The value of the transaction is in excess of $56 million.

V. Trade and Commerce

PAR. 9. The relevant markets are:

a. The manufacture in the United States of particleboard and MDF, and the sale thereof.

b. The manufacture in the Western Region of the United States of particleboard and MDF, and the sale thereof.

c. The manufacture in the Pacific Coast Region of the United States of particleboard and MDF, and the sale thereof.

PAR. 10. The Western Region of the United States as used herein includes the States of Arizona, California, Colorado, Idaho, Montana, New Mexico, Oregon, Nevada, Utah, Washington and Wyoming. Of these states particleboard and/or MDF is actually produced only in the States of California, Idaho, Montana, New Mexico, Oregon and Washington. The Pacific Coast Region of the United States as used herein includes the States of California, Oregon and Washington.

PAR. 11. Concentration in each of the relevant markets enumerated in Paragraph 9 of this complaint is already high and increasing.

PAR. 12. Barriers to entry into each of the relevant markets enumerated in Paragraph 9 of this complaint are already high and increasing.

VI. Actual Competition

PAR. 13. L-P and F-B are now and have been since at least 1975 actual competitors of each other in each of the relevant markets enumerated in Paragraph 9 of this complaint, and actual competitors of others engaged in each of the relevant markets enumerated in Paragraph 9 of this complaint.

PAR. 14. L-P is the largest manufacturer, by capacity, of particleboard/MDF in the United States, accounting, in 1978, for approximately 12.4 percent of all capacity in that market. In 1978 F-B had approximately 1.3 percent of the total capacity in that market. In terms of actual production, L-P was the second largest producer in 1977 accounting for approximately 11.1 percent of all particleboard/MDF produced in the United States. In that same year F-B

accounted for approximately 1.3 percent of total production in that market.

PAR. 15. L-P is the largest manufacturer, by capacity, of particleboard/MDF in the Western Region of the United States, accounting, in 1978, for approximately 14.5 percent of all capacity in that market. In 1978 F-B was ranked twelfth in that market in terms of capacity with approximately 2.9 percent of the total. In terms of actual production, L-P was the third largest producer in 1977 accounting for approximately 14.1 percent of all particleboard/MDF produced in the Western Region of the United States. In the same year F-B ranked thirteenth in terms of production accounting for 2.9 percent of the market.

PAR. 16. L-P is the third largest manufacturer, by capacity, of particleboard in the Pacific Coast Region of the United States accounting in 1978, for approximately 11.4 percent of all capacity in that market. In 1978 F-B was ranked eleventh in that market in terms of capacity with approximately 3.3 percent of the total. In terms of actual production, L-P was the fourth largest producer in 1977 accounting for approximately 10.0 percent of all particleboard/MDF produced in the Pacific Coast Region of the United States. In the same year F-B ranked twelfth in terms of production accounting for approximately 3.5 percent of the market.

VII. Effects; Violations Charged

PAR. 17. The effects of the proposed acquisition may be to substantially lessen competition or tend to create a monopoly in the relevant markets enumerated in Paragraph 9 of this complaint in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

(a) actual competition between L-P, F-B and others in the manufacture and sale of particleboard/MDF will be eliminated; and

(b) concentration in the manufacture and sale of particleboard/MDF will be increased and the possibilities for eventual deconcentration may be diminished.

COUNT II

VIII. Louisiana-Pacific Corporation

PAR. 18. The allegations as set forth in Paragraphs 1 through 3,

inclusive of Count I are hereby incorporated by reference and made a part of Count II as if rewritten herein.

IX. Evans Products Company

PAR. 19. Evans Products Company is a corporation organized under the State of Delaware with its principal place of business located at 1121 S.W. Salmon St., Portland, Oregon.

PAR. 20. Evans Products Company is engaged in the manufacturing, marketing and retailing of building materials including lumber, plywood, plywood specialities, and precut homes, and the manufacturing, marketing and leasing of transportation and industrial equipment. In 1975, its last full year of particleboard production, Evans Products Company had particleboard shipments in excess of $9 million.

X. Georgia-Pacific Corporation

PAR. 21. Georgia-Pacific Corporation ("G-P") is a corporation organized under the laws of the State of Delaware with its principal place of business located at 900 S.W. Fifth Ave., Portland, Oregon.

PAR. 22. G-P is a diversified integrated forest products company. It grows and harvests timber which it then converts to various wood products, including lumber, plywood, particleboard and wood chips. In 1975 G-P had particleboard shipments in excess of $31 million.

XI. Jurisdiction

PAR. 23. The allegations as set forth in Paragraph 7 of Count I which relate to L-P are hereby incorporated by reference and made part of Count II as if fully rewritten herein.

PAR. 24. At all times relevant herein Evans Products and G-P have been engaged in the manufacture and sale of various products, including those products relevant to this complaint, in interstate commerce and are engaged in commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

XII. The Acquisitions

PAR. 25. On April 2, 1976, L-P purchased from Evans Products Company a particleboard plant in Missoula, Montana for $11,798,000 (including plant and related assets).

PAR. 26. On August 30, 1976, L-P leased a particleboard plant from G-P at Ukiah, California ("Ukiah") for a period of five years at an

average annual payment of $480,000. L-P has the option to purchase the plant at the end of 3 years.

XIII. Trade and Commerce

PAR. 27. The relevant markets are:

a. The manufacture in the United States of particleboard and MDF, and the sale thereof.

b. The manufacture in the Western United States of particleboard and MDF, and the sale thereof.

c. The manufacture in the Pacific Coast Region of the United States of particleboard and MDF, and the sale thereof.

PAR. 28. The allegations as set forth in Paragraph 10 of Count I are hereby incorporated by reference and made a part of Count II as if rewritten herein.

PAR. 29. At the time of the acquisitions by L-P of the Missoula particleboard plant and the Ukiah particleboard plant, the manufacture of particleboard/MDF and the sale thereof in the relevant markets as enumerated in Paragraph 27 of this complaint was highly concentrated and increasing.

PAR. 30. Barriers to entry into the manufacture and sale of particleboard/MDF are substantial and are increasing.

XIV. Actual Competition

PAR. 31. At the time of the acquisitions, L-P and Evans Products Company were and had been since at least 1975, actual competitors of each other in the relevant markets as enumerated in Paragraph 27, subparts a. and b. of this complaint and actual competitors of others engaged in the relevant markets as enumerated in Paragraph 27, subparts a and b, of this complaint.

PAR. 32. At the time of the acquisitions, L-P and G-P were and had been since 1975, actual competitors of each other in the relevant markets as enumerated in Paragraph 27 of this complaint, and actual competitors of others engaged in the relevant markets as enumerated in Paragraph 27 of this complaint.

PAR. 33. In 1975, the year preceeding the acquisitions L-P accounted for approximately 5.3 percent of all particleboard/MDF production in the United States; 3.9 percent of all particleboard/MDF production in the Western Region of the United States and 4.6 percent of all particleboard/MDF production in the Pacific Coast Region of the United States. In that same year, G-P's Ukiah plant accounted for 1.6 percent of all particleboard production in the

United States; 3.3 percent of all particleboard/MDF production in the Western Region of the United States and 3.9 percent of all particleboard/MDF production in the Pacific Coast Region of the United States. In that same year, Evans Products Company accounted for 2.9 percent of all particleboard/MDF production in the United States and 6.1 percent of all particleboard/MDF production in the Western Region of the United States.

XV. Effects, Violations Charged

PAR. 34. The effects of the acquisitions may be to substantially lessen competition or tend to create a monopoly in the relevant markets enumerated in Paragraph 27 of this complaint in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

(a) actual competition between L-P, G-P, Evans Products Company and others in the manufacture and sale of particleboard/MDF has been eliminated; and

(b) concentration in the manufacture and sale of particleboard/MDF has been increased and the possibilities for eventual deconcentration have been diminished.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with a violation of the Federal Trade Commission Act and the Clayton Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all jursidictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in