Findings, Opinions and Orders

IN THE MATTER OF

THE CLOROX COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2975. Complaint, July 2, 1979 — Decision, July 2, 1979

This consent order, among other things, requires an Oakland, Calif. manufacturer of household cleansers, detergents, bleach, specialty food products and charcoal briquets to cease misrepresenting characteristics, properties, quality or use of any cleanser; to cease advertising any of the above without first having in their possession documentation supporting their claims; to cease failing to maintain adequate records of substantiation documentation; and to cease failing to disclose precautionary measures specified in the order.

Appearances

For the Commission: *Jeffrey A. Klurfeld.*

For the respondent: *James O. Cole,* Oakland, Calif.

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, having reason to believe that The Clorox Company, a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent The Clorox Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1221 Broadway, Oakland, California.

PAR. 2. Respondent is now, and for some time last past, has been engaged in the manufacture, advertising, offering for sale and sale of household cleansers and detergents, bleach, specialty food products, and charcoal briquets. Sales by respondent for fiscal year 1978 exceeded $1 billion.

PAR. 3. Respondent maintains, and has maintained a substantial course of business, including the acts and practices as hereinafter set

forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In 1976, respondent introduced a new household cleanser, marketed under the name "Soft Scrub." Soft Scrub was allegedly formulated to effectively clean the following surfaces which would otherwise be abraded and scratched if cleaned with scouring powder: formica, fiberglass, plastic, stainless steel, ceramic tile, chrome, appliance enamel, porcelain and aluminum. Approximately 50% of household surfaces are composed of these materials.

PAR. 5. Since its introduction, Soft Scrub has enjoyed great success. It is estimated that approximately 8,000,000 American households use the product.

PAR. 6. In marketing Soft Scrub, respondent affixed labels to containers thereof that represented directly or by implication that Soft Scrub could be safely used on appliance enamel without risk of substantial abrasion or scratching. Among the other surfaces on which Soft Scrub was recommended were plastic and fiberglass.

PAR. 7. In truth and in fact, Soft Scrub cannot be used on appliance enamel, plastic and fiberglass without risk of substantial abrasion and scratching thereto, unless certain precautionary measures are taken. These measures involve the type of applicator used, the quantity of product used, and the degree of pressure applied in cleaning.

Therefore the representations set forth in Paragraph Six concerning appliance enamel, plastic and fiberglass were, and are, unfair or deceptive acts or practices.

PAR. 8. Through the use of the representations set forth in Paragraph Six concerning appliance enamel, plastic and fiberglass, respondent has represented, directly or by implication, that at the time it made said representations, it possessed and relied upon a reasonable basis for making the representations.

PAR. 9. In truth and in fact, respondent did not possess and rely upon a reasonable basis for making the representations set forth in Paragraph Six concerning appliance enamel, plastic and fiberglass.

Therefore the representations set forth in Paragraph Six concerning appliance enamel, plastic and fiberglass were, and are, unfair or deceptive acts or practices.

PAR. 10. In the course and conduct of its business, and at all times mentioned herein, respondent has been, and now is, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the manufacture, advertising, offering for sale and sale of merchandise of the same general kind and nature as merchandise sold by respondent.

PAR. 11. The use by respondent of the aforesaid false, misleading and

deceptive statements, representations, acts and practices, directly or by implication, has had, and now has, the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were, and are, true and complete, and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken belief.

PAR. 12. The acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and of respondent's competitors, and constituted, and now constitute, unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. The acts and practices of respondent, as herein alleged are continuing, and will continue, in the absence of the relief herein requested.

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 San Francisco Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional 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 the 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 Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent The Clorox Company is a corporation organized, existing and doing business under and by virtue of the laws of the

State of California, with its office and principal place of business located at 1221 Broadway, in the City of Oakland, State of California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

For the purposes of this order, the following definition shall apply:

"Cleanser" is defined as "Soft Scrub," or as any other product with the same or similar chemical formulation which is manufactured, offered for sale or sold by The Clorox Company.

It is ordered, That respondent The Clorox Company, a corporation, its successors and assigns, and respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labelling, offering for sale, sale or distribution of any "cleanser," as hereinabove defined, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

I

1. Misrepresenting, directly or by implication, any characteristic, property, quality or use of any cleanser.

2. Representing, directly or by implication, any characteristic, property, quality or use of any cleanser unless prior to the time such representation is first made, respondent possesses and relies upon a competent and reliable scientific test or tests or other objective data which substantiate such representation.

3. Failing to maintain accurate and adequate records which may be inspected by Commission staff members upon reasonable notice of all documentation in substantiation of any representation regarding any characteristic, property, quality or use of any cleanser.

4. Failing to clearly and conspicuously disclose (in print of a size and type no less prominent than the majority of the text) the following statement, with nothing to the contrary or in mitigation thereof, on any label affixed to any bottle or other container of any cleanser that is intended for retail sale:

ATTENTION: To prevent scratching fiberglass, plastic, and appliance enamel on refrigerators, dishwashers, oven doors and on other appliances: USE SPARINGLY: AND RUB GENTLY WITH A DAMP SPONGE.

5. Other than on any label affixed to any bottle or other container of any cleanser, failing to clearly and conspicuously disclose the

following statement, with nothing to the contrary or in mitigation thereof, in any advertisement promoting the sale of any cleanser:

Use only as directed

II

It is further ordered, That respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

III

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

IV

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions.

IN THE MATTER OF

SKF INDUSTRIES, INC., ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 9046. Complaint, July 22, 1975 — Final Order, July 5, 1979

This order, among other things, requires SKF Industries, Inc. ("SKF") and Federal-Mogul Corporation ("FM"), two bearings manufacturers, to cancel their December 17, 1974 by-sell agreement whereby SKF agrees to cease distribution of certain bearings to the automotive aftermarket in exchange for FM's agreement to purchase its tapered roller bearings requirements from SKF, and other similar arrangements between them. The order prescribes specific limitations on FM's purchases of tapered roller bearings from SKF for 12 years following the effective date of the order, and requires the companies to notify their sales and policy-making staff of the terms of the order. Additionally, twice annually for each of two years, respondents are required to publish those terms in two major trade journals.

Appearances

For the Commission: *K. Keith Thurman, John R. Hoagland, Rhett R. Krulla* and *Annthalia Lingos.*

For the respondents: *Larry L. Williams* and *Robert J. Pope, Clifford, Glass, McIlwain & Finney,* Washington, D.C. for SKF Industries, Inc., *Fred W. Freeman* and *Kenneth J. McIntyre, Dickinson, Wright, McKean, Cudlip & Moon,* Detroit, Mich. for Federal-Mogul Corporation and *Haliburton Fales, 2d, Peter J. Dias* and *Alan L. Morrison, White & Case,* New York City for Aktiebolaget SKF.

COMPLAINT

The Federal Trade Commission, having reason to believe that SKF Industries, Inc. and Aktiebolaget Svenska Kullagerfabriken, corporations subject to the jurisdiction of the Commission, have violated 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), and that Federal-Mogul Corporation, a corporation subject to the jurisdiction of the Commission, has violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45) and it appearing that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges as follows:

I. Definitions

1. For the purpose of this complaint, the following definitions shall apply:

(a) "Bearings" are nonminiature machine parts which bear the friction occasioned when parts are in contact and have relative motion and which employ either balls or rollers as the moving elements. [2]

(b) The term "automotive aftermarket" includes all sales for replacement use directly to automotive wholesalers or retailers, other than vehicle dealers.

(c) The term "automotive" refers to parts having application on selfpropelled land vehicles, including, but not limited to, automobiles, trucks, buses, tractors, selfpropelled agricultural equipment and construction equipment.

II. AB SKF

2. Aktiebolaget Svenska Kullagerfabriken (hereinafter "AB SKF") is a corporation organized and doing business under the laws of the Kingdom of Sweden since 1907, with its principal place of business at Gothenburg, Sweden.

3. AB SKF had sales of approximately $1 billion in 1971 and assets of $1.4 billion at the end of that year. In 1971, 85% of AB SKF's sales consisted of bearing sales, making it the world's largest manufacturer of bearings, with a 22% market share of bearings sold outside Communist countries.

4. Since its inception in 1907, AB SKF has expanded aggressively both by internal development and acquisitions. The Swedish corporation now has subsidiary or affiliate corporations in the United States, United Kingdom, France, Germany, Holland, Canada, Brazil, India, South Africa, Italy, Argentina, Spain, Australia and New Zealand. By 1971, AB SKF owned 16 manufacturing companies with 66 factories and maintained sales offices in practically all countries.

5. In 1915, AB SKF established a ball bearing plant in the United States. Until 1933, this plant was operated by the SKF Ballbearing Company of Hartford, Connecticut. On December 13, 1933, SKF Industries, Inc. (hereinafter "SKF") was incorporated under Delaware law as a successor to the SKF Ballbearing Company. In 1973, AB SKF held the beneficial ownership in approximately 94% of the capital stock of SKF. [3]

6. In 1965, AB SKF acquired controlling interest in RIV Officine diVillar Perosa S.p.A. (hereinafter "RIV"), an Italian producer of ball, taper roller (hereinafter "TR") and other bearings. Prior to its

acquisition by AB SKF, RIV sold ball and TR bearings in the United States.

7. AB SKF and several of its European affiliates export finished bearings and parts to the United States. Sales in the United States are made by AB SKF not only through SKF but also directly by AB SKF or its foreign subsidiaries. SKF Group shipments of bearings to the United States were approximately $5.5 million in 1972.

8. At all times relevant hereto, AB SKF and SKF sold and shipped their products throughout the United States and engaged in commerce within the meaning of the Clayton Act, as amended, and were corporations whose businesses were in or affected commerce within the meaning of the Federal Trade Commission Act, as amended.

III. SKF Industries, Inc.

9. SKF is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at Front St. and Erie Ave., Philadelphia, Pennsylvania.

10. SKF is the nation's third largest manufacturer of bearings, with net sales of approximately $126 million in 1971. In that year, SKF held assets in excess of $113 million and realized a net income of approximately $1.48 million. SKF does not and has not engaged in the sale of significant quantities of any product other than bearings, almost all of which were ball or TR bearings.

11. In the last twenty years, SKF has grown rapidly through several acquisitions of stock or assets, including, among others:

(a) Tyson Bearing Corporation (hereinafter "Tyson"), a Delaware corporation acquired in 1955 whose principal place of business was in Massillon, Ohio. At the time of the acquisition, Tyson was a subsidiary of Nice Ball Bearing Company, was the nation's third largest manufacturer of TR bearings, and was engaged in or its business affected commerce within the meaning of the Federal Trade Commission Act, as amended. [4]

(b) Nice Ball Bearing Company (assets acquired in 1960) (hereinafter "Nice") then a division of Channing Corporation, a corporation organized and doing business under the laws of the State of Delaware with its principal place of business in New York, New York. At the time of the acquisition Nice was a substantial manufacturer of ball bearings and was engaged in commerce within the meaning of the Clayton Act, as amended, and the Federal Trade Commission Act, as amended.

Since their acquisitions, Tyson and Nice have become and been operated as divisions of SKF.

IV. Federal-Mogul Corporation

12. Respondent Federal-Mogul Corporation (hereinafter "F-M") is a corporation organized and doing business under the laws of the State of Michigan, with its principal office and place of business located at 26555 Northwestern Highway, Southfield, Michigan.

13. During 1971, F-M had net sales of $269.6 million, assets in excess of $201 million and net earnings of $13.3 million. F-M manufactured automotive engine parts and bearings, with the latter accounting for one-third of its 1971 net sales. In 1971, F-M was the nation's fourth largest bearing producer and the largest seller of bearings to the automotive aftermarket.

14. At all times relevant hereto, F-M sold and shipped its products throughout the United States and engaged in or its business affected commerce within the meaning of the Federal Trade Commission Act, as amended.

15. On or about July 8, 1971, F-M and SKF commenced negotiations regarding the termination by F-M of the manufacture of TR bearings with an outside diameter of 4 inches or smaller and the purchase of such bearings by F-M from SKF for resale. [5]

16. In January 1972, SKF decided to discontinue the marketing of bearings to the automotive aftermarket.

17. On or about January 11, 1972, an agreement was reached between F-M and SKF whereby SKF promised to sell TR bearings, ball bearings and other bearings to F-M for resale to the automotive aftermarket. Under this agreement F-M would supply bearings to the former SKF customers in the automotive aftermarket with SKF personnel assisting F-M in changing over such SKF customers to F-M. Such agreement has been performed according to the terms set forth in this paragraph.

VII. Trade and Commerce

18. The relevant geographic market is the United States as a whole and includes all bearings produced in the United States or manufactured abroad and imported into the United States.

19. The relevant product markets are:

(a) the manufacture and sale of TR bearings;
(b) the manufacture and sale of ball bearings; and
(c) the sale of bearings direct to the automotive aftermarket.

20. Sales of ball and TR bearings in the United States are substantial. In 1971, domestic sales of TR bearings were over $381 million and ball bearing sales were over $523 million.

21. Concentration in the manufacture and sale of TR bearings and ball bearings in the United States has been high since 1955. In 1971, the four largest sellers accounted for the following percentages of domestic shipments:

(a) TR bearings – 92%; and
(b) ball bearings – 63%. [6]

22. Entry into the manufacture and sale of TR and ball bearings is extremely difficult. A successful entrant must possess both considerable technical expertise and substantial financial resources.

23. No company has successfully entered the domestic manufacture of ball or TR bearings except through acquisition since World War II.

24. Prior to its acquisition of Tyson, AB SKF through SKF was one of the few most likely entrants into the domestic TR bearing market. AB SKF and SKF had the expertise (derived in part from AB SKF's production of identical items outside the United States), resources, and distribution system to be a significant competitor in the domestic TR bearing market, and had given serious consideration to entering that market by means of internal expansion.

25. In 1955, Tyson was the nation's third largest producer of TR bearings, with sales of such bearings of $2.95 million, accounting for 2% of total 1955 sales of TR bearings.

26. In 1958, SKF was a substantial domestic manufacturer of ball bearings with sales of $24 million, accounting for 9.5% of the domestic ball bearing market.

27. In 1958, Nice was a substantial manufacturer of ball bearings with sales of $6.8 million, accounting for 2.3% of total 1958 domestic ball bearing shipments of $255 million.

28. In 1971, SKF, with TR bearing sales of $17.6 million and ball bearing sales of $49.6 million, accounted for 4.6% of domestic TR bearing sales and 12% of domestic ball bearing sales.

29. In 1971, F-M was the nation's second largest producer and seller of TR bearings. In that year, F-M had sales of TR bearings of $53.2 million and accounted for 14.0% of total domestic sales of TR bearings. In that same year, F-M's sales of ball bearings were $26.6 million, accounting for 6.3% of the domestic ball bearing market, making it the 4th largest seller in that market. [7]

30. Sales of bearings to the automotive aftermarket are substantial, with 1970 shipments of $55.9 million. Concentration in this market

is high. In 1970, the four largest sellers accounted for 78.2% of total sales of bearings in the automotive aftermarket.

31. Entry into the sale of bearings to the automotive aftermarket is difficult. A successful seller must operate a large, sophisticated distribution system, offer products with a reputation for high quality and have ample financial resources and considerable expertise. An additional barrier to entry exists in the fact that many purchasers in the automotive aftermarket prefer to deal with a seller offering a full line of bearings rather than just a few types or sizes.

32. In 1970, SKF's sales of bearings in the automotive aftermarket were $4.1 million, accounting for 7.3% of that market. SKF was the nation's fourth largest seller of bearings to the automotive aftermarket in 1970.

33. In 1970, F-M's sales of bearings in the automotive aftermarket were $20.4 million, accounting for 36.5% of that market. In 1970, F-M was the nation's largest seller of bearings to the automotive aftermarket.

34. The acquisition of Tyson by SKF; the subsequent acquisition of foreign bearing companies including, among others, United Bearing Co., Ets. Rossi Freres S.A., RIV, and four Spanish bearing companies by AB SKF; and the arrangement between SKF and F-M, individually or taken as a whole, constitute an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, in that substantial actual and potential competition between and among AB SKF (including SKF), Tyson, F-M and others in the manufacture and sale of TR bearings has been eliminated.

35. The acquisition of Nice by SKF; the subsequent acquisitions of foreign bearing companies including, among others, United Bearing Co., Kugellagerfabrik Saarland, Les Applications du Roulement, RIV, Compagnie Generale du Roulement, and four Spanish bearing companies by AB SKF; and the arrangement between SKF and F-M, individually or taken as a whole, constitute an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, in that substantial actual and potential competition between and among AB SKF (including SKF), Nice, F-M and others in the manufacture and sale of ball bearings has been eliminated. [8]

36. The effects of the acquisition of Nice by SKF are substantially to lessen competition or tend to create a monopoly in the manufacture of ball bearings throughout the United States in violation of Section 7 of the Clayton Act, as amended, in that substantial actual competition between Nice, SKF and others in the manufacture and sale of ball bearings has been eliminated.

37. The arrangement between SKF and F-M constitutes an unfair

method of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, in the following ways, among others:

(a) Substantial competition between and among SKF, F-M and others in the sale of bearings in the automotive aftermarket has been eliminated.

(b) The arrangement has eliminated F-M as a substantial potential purchaser of TR and ball bearings from manufacturers other than SKF.

Initial Decision by Morton Needelman, Administrative Law Judge

May 12, 1978

I.

Statement of the Case

The complaint in this proceeding issued on July 22, 1975. It charges that beginning in 1955, acting alone or in combination, respondents have committed various antitrust offenses both in the United States and abroad which have had the effect of reducing actual and potential competition in three domestic bearings markets — the manufacture and sale of tapered roller bearings ("TRB"), the manufacture and sale of all ball bearings, and the distribution of all bearings, including TRB, to the automotive aftermarket. Specifically, the challenged acts are:

1. A 1955 acquisition by SKF Industries, Inc. ("SKF") of Tyson Bearing Corp. ("Tyson"), a manufacturer of TRB.

2. A 1960 acquisition by SKF of Nice Ball Bearing Company ("Nice"), a manufacturer of ball bearings.

3. A series of acquisitions by Aktiebolaget SKF[1] ("AB SKF") of TRB and ball bearings manufacturers located outside of the United States. [3]

4. An "arrangement", entered into sometime during the period 1971–1974 and continuing to the present, between SKF and Federal-Mogul Corporation ("FM") relating to the manufacture and distribution of TRB and other bearings to the automotive aftermarket. This "arrangement" allegedly contemplates that SKF would continue to manufacture automotive bearings but would withdraw from distribution of bearings to the automotive aftermarket while FM would continue to distribute to the automotive aftermarket, but would withdraw from the manufacture of automotive TRB. The effects of

[1] The complaint as issued names Aktiebolaget Svenska Kullagerfabriken. The corporate name of the Swedish respondent was changed on May 31, 1977 to Aktiebolaget SKF. Tr. 1076.

this arrangement are said to be the elimination of competition between FM and SKF as well as the elimination of FM as a substantial purchaser of TRB and ball bearings from manufacturers other than SKF.

The complaint does not allege that each of the four acts cited above constitutes a distinct violation. Thus the complaint does not charge that the 1955 acquisition of Tyson standing alone violates either Section 7 of the Clayton Act or Section 5 of the Federal Trade Commission Act. Instead, Paragraph 34 of the complaint states that the acquisition of Tyson, as well as the foreign acquisitions by AB SKF *and* the arrangement between SKF and FM, "individually or taken as a whole" constitute an unfair method of competition in that substantial, actual, and [4] potential competition between AB SKF, SKF, Tyson, FM, and other manufacturers of TRB has been eliminated.

Similarly, the foreign acquisitions of AB SKF are not cited as separate violations of Section 5. They are challenged as part of a pattern of anticompetitive activity by AB SKF which is said to impact adversely on domestic bearings markets by eliminating independent foreign sources which could conceivably export to the United States and compete on their own against SKF in the domestic market.

While the acquisition of Nice is charged as a separate Section 7 violation (Complaint, ¶ 36), this act, too, is linked together in Complaint Paragraph 35 with the foreign acquisitions by AB SKF as well as the SKF and FM "arrangement", and all of these acts (again, "individually or taken as a whole") are alleged to be an unfair method of competition.

Finally, the complaint charges separately (Complaint, ¶ 37) that the "arrangement" between SKF and FM constitutes an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act by reason of the elimination of substantial competition between SKF and FM in the automotive aftermarket.

SKF's answer, filed on September 26, 1975, denies all material allegations of the complaint and avers that the 1955 acquisition of Tyson was a toe-hold acquisition of a [5] failing company, and the 1960 acquisition of Nice involved a firm which did not compete against SKF. In addition, the SKF answer raises the following affirmative defenses:

1. The 1955 acquisition of Tyson and the 1960 acquisition of Nice had been investigated by the Federal Trade Commission at the time they occurred, and SKF had been informed by the Federal Trade Commission that no enforcement action was contemplated. Relying upon this "clearance", SKF spent substantial sums of money on the acquired firms during the past 20 years. Under the doctrines of

equitable estoppel or laches, the Commission may not now challenge what it has approved in the past.

2. The proposed order — divestiture of the combination of Tyson and Nice and cancellation of the "arrangement" between SKF and FM — will have adverse effects on competition in that this relief will only serve to enhance the dominant position of others in the manufacture and sale of TRB.

While not conceding that the Federal Trade Commission has either in personam or subject matter jurisdiction over a Swedish company which has made acquisitions outside of the United States, AB SKF filed an answer on September 29, 1975 which denied all the material allegations of the complaint relating to it. Later, AB SKF agreed to waive **[6]** all objections to personal jurisdiction for the purpose of this suit only.[2]

FM's answer, filed on September 26, 1975, denied all substantive portions of the complaint relevant to it. In addition, FM raised affirmative defenses including inexcusable delay in bringing a proceeding relating to a 1972 agreement, and the claim that certain aspects of FM business were "failing companies" at the time when the so-called "arrangement" was made between FM and SKF.

In the prehearing stage, all parties were allowed some discovery, requests for admissions were answered, and stipulations were filed. Upon completion of the prehearing stage, the case-in-chief began on October 3, 1977 and was completed on October 13, 1977. The defense case was presented between November 28 and December 9, 1977. Hearings for rebuttal were held during the week of January 9, 1978. During the hearings all counsel were given full opportunity to be heard, and to examine and cross-examine witnesses.

The record was closed on January 13, 1978. Proposed findings of fact and briefs were filed by all parties on **[7]** February 14, 1978. Answering briefs were filed on March 1, 1978.[3]

After reviewing all the evidence as well as the proposed findings and briefs submitted by the parties, and based on the entire record, I make the following findings of facts:[4]

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[2] Proposed Findings of Facts, Conclusions of Law, and Main Brief of AB SKF, p. 33.

[3] By leave of the Commission, the filing date for this Initial Decision was extended from April 12, 1978 to May 12, 1978.

[4] Proposed findings not adopted in the form proposed or in substance are rejected, as either not supported by the entire record, or as involving immaterial or irrelevant matters.

The following abbreviations are used throughout in citing to the record: "Tr." (transcript of testimony); "CX" (complaint counsel exhibit); "RSX" (respondent SKF exhibit); "RAX" (respondent AB SKF exhibit); "RFX" (respondent FM exhibit). CX's 1A–1Z–26, an index to complaint counsel's exhibits, contain a description of each exhibit and the date received in evidence or rejected. The same information for respondents' exhibits appears on RSX's 1A–H (for SKF); RFX's 150A–E (for FM); and RAX's 250A–C (for AB SKF). These indices also indicate which exhibits are *in camera*. References in citations to exhibits to "No." refer to numbered requests for admissions and answers to requests for admissions or paragraph numbers of stipulations. By the terms of my omnibus *in camera* order there is no

(Continued)

[12] II.

FINDINGS OF FACT

The Respondents

Federal-Mogul (FM)

1. FM is a Michigan corporation whose headquarters is located at Southfield, Michigan. It manufactures and distributes a wide-range of

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limitation whatever on the public use of this material in decisions written by the undersigned, the Commission, or other reviewing authorities. See "Omnibus *In Camera* Order," dated October 4, 1977. This order further provides that *in camera* exhibits are to be placed on the public record five years after the record closed — that is, on January 13, 1983.

[8] The appearances of the witnesses were as follows:

NAME	*CALLED BY*	*TR. PAGES*
Joseph F. Toot The Timken Company (Bearings Manufacturer)	Complaint Counsel ("c.c.")	399–514
H. E. Markley The Timken Company (Bearings Manufacturer)	Stipulated Testimony	496–497
Shunji Ishino NTN Toyo Bearing Manufacturing Co., Ltd. (Bearings Manufacturer)	c.c.	519–578
Thomas W. Morrison (Retired, Former Chairman, SKF)	c.c.	744–815
Paul Joseph Tracy American Koyo Corporation (Bearings Manufacturer and Importer)	c.c.	823–871
Russell S. Strickland (Retired, former Vice President and Bearings Group Manager, F-M)	c.c.	877–985
Walter P. Wieland FAG, Kugelfisher, Georg Schaefer & Co. (Bearings Manufacturer)	c.c.	998–1071
Bruce R. Paxton Hoover NSK Bearing Company (Bearings Manufacturer)	c.c.	1078–1109
[9] Frank V. Smith, Jr. Lipe Rollway Corporation (Bearings Manufacturer)	c.c.	1109–1143
Warren E. Milner (Retired, former General Manager, New Departure-Hyatt Bearing Division of General Motors Corporation)	c.c.	1166–1181
Philip B. Ziegler New Departure-Hyatt Bearing Division of General Motors Corporation (Bearings Manufacturer)	c.c.	1182–1215
Augustino Canonica RIV Officine diVillar Perosa S.p.A. (Bearings Manufacturer)	resp. AB SKF	1251–1334

(Continued)

automotive products including ball bearings and TRB, oil seals, O-rings, gaskets, and pistons. In 1971, FM's sales were $269.6 million.[5]

2. In 1970, the Bower Division of FM ("Bower") produced TRB at

William J. Kelly Winstead Precision Ball Corporation and Former Vice President, FAG Bearings Corp. (Bearings Manufacturer and Importer)	resp. SKF	1340–1424
Philip Sutherland (Former Treasurer of Tyson)	resp. SKF	1428–1448
A. Stuart Murray (Retired, former Vice President of SKF)	resp. SKF	1449–1515
John A. McAdams SKF (Treasurer)	resp. SKF	1520–1551
[10] Henry M. McAdoo (Retired, former President, Nice Ball Bearing Division of SKF)	resp. SKF	1556–1603
Joseph A. Heron SKF (Assistant Treasurer)	resp. SKF	1603–1636
Tibor E. Tallian SKF (Vice President, Technology Services)	resp. SKF	1637–1681
Shaun F. O'Malley Price Waterhouse & Company (Retained Expert)	resp. SKF	1775–1906
Fred H. Meyer and Leonard J. Brzozowsky Cresap, McCormick and Paget, Inc. (Retained Experts-Joint Appearance)	resp. SKF	1944–2039
Thomas F. Russell FM (Chairman and Chief Executive Officer)	resp. FM	2050–2218
William Webster FM (Vice President and Group Executive, World Wide Marketing Group)	resp. FM	2270–2294
[11] Raymond Peck FM (Automotive Aftermarket Sales Manager, World Wide Marketing Group)	resp. FM	2400–2431
Donald R. Potter FM (Director of Pricing, World Wide Marketing Group)	resp. FM	2436–2536
Richard F. Harrington Aetna Bearings Company (Bearings Manufacturer)	c.c. (on rebuttal)	2547–2579
W. Stewart Johnson Brenco, Inc. (Bearings Manufacturer)	c.c. (on rebuttal)	2672–2713
Stephen R. Nelson Economist Federal Trade Commission (Expert Witness)	c.c. (on rebuttal)	2733–2868