

reasons discussed below, the Commission has determined to grant Alleghany's Petition in part.

The Commission, in its Prior Approval Policy Statement, "concluded that a general policy of requiring prior approval is no longer needed," citing the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino ("HSR") Act, 15 U.S.C. § 18a, to protect the public interest in effective merger law enforcement. Prior Approval Policy Statement at 2. The Commission announced that it will "henceforth rely on the HSR process as its principal means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger." As a general matter, "Commission orders in such cases will not include prior approval or prior notification requirements." Id.

The Commission stated that it will continue to fashion remedies as needed in the public interest, including ordering narrow prior approval or prior notification requirements in certain limited circumstances. The Commission said in its Prior Approval Policy Statement that "a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger." The Commission also said that "a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger." Id. at 3. As explained in the Statement, the need for a prior notification requirement will depend on circumstances such as the structural characteristics of the relevant markets, the size and other characteristics of the market participants, and other relevant factors.

The Commission also announced, in its Statement, its intention "to initiate a process for reviewing the retention or modification of these existing requirements" and invited respondents subject to such requirements "to submit a request to reopen the order." Id. at 4. The Commission determined that,

presumption will apply to existing prior notice requirements, which have been adopted on a case-by-case basis and will continue to be considered on a case-by-case basis under the policy announced in this statement."

The Complaint in Docket No. C-3218 alleged that Alleghany's acquisition of Safeco Corporation would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by substantially lessening competition in the production and/or sale of title plant information in Cook County, Illinois, and in Los Angeles County, California.

Paragraph V of the 1987 Order requires Alleghany, for ten years, to obtain Commission approval before acquiring any interest in entities with interests in a title plant that serves Cook County, Illinois, or Los Angeles County, California. Paragraph VI of the 1987 Order requires Alleghany, for ten years, to give the Commission notice and observe a waiting period before acquiring certain interests relating to title plants servicing any geographic area for which Alleghany also has an ownership interest in a title plant.

The Commission's Complaint in Docket No. C-3335 alleged that Alleghany's acquisition of title insurance-related assets of Westwood Equities Corporation would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by substantially lessening competition in the production and/or sale of title plant and back plant information in nine relevant markets. Paragraph V of the 1991 Order requires Alleghany, for ten years, to obtain Commission approval before acquiring any interest in certain entities having interests in title plants serving the relevant markets.

Paragraph VI of the 1991 Order requires Alleghany, for ten years, to give the Commission notice and observe a waiting period before acquiring certain interests relating to a title plant or back plant serving any geographic area for which Alleghany has an ownership interest in a title plant or back plant.

Under the Commission's Prior Approval Policy Statement, the presumption is that setting aside the prior approval requirement in these Orders is in the public interest. Alleghany has shown that these matters do not present the limited circumstances in which narrow prior approval provisions may be appropriate. Accordingly, the Commission has determined to reopen the proceedings and modify the Orders to delete Paragraph V.

2. Policy Statement at 4-5.

3. See Damon Corp., Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), at 2 ("Damon Letter"),

IT IS FURTHER ORDERED that Paragraph V of the Orders be, and it hereby is, deleted in its entirety; and

IT IS FURTHER ORDERED that Paragraph VI of the Orders be, and it hereby is, modified, as of the effective date of this order, to add the following to the end of the Paragraph:

Notification is not required to be made pursuant to this Paragraph with respect to any acquisition by Alleghany of a copy of title records or other information from a person or entity which thereafter retains the original records or information in its ownership and control, and where competition in the ordinary course between the parties is not otherwise restrained.

By the Commission, Commissioner Azcuenaga dissenting insofar as the Commission modifies the prior notice requirement in Paragraph VI, and Commissioner Starek concurring in the result only.

Donald S. Clark
Secretary

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ISSUED: June 27, 1996