LEXSEE 1982 FTC LEXIS 96

In the Matter of FLOWERS INDUSTRIES, INC., a corporation

DOCKET NO. 9148

Federal Trade Commission

*1982 FTC LEXIS 96*

ORDER DENYING MOTIONS TO QUASH

March 19, 1982

**ALJ: [*1]**

James P. Timony, Administrative Law Judge

**ORDER:**

ORDER DENYING MOTIONS TO QUASH

The complaint in this case challenges the acquisition by Flowers Industries, Inc. of several bakeries scattered across the Southern United States. n1 In an attempt to establish market facts, respondent obtained 133 subpoenas directed at bakeries selling in competition with it in those markets.

n1 The Complaint challenges the acquisition of seven bakeries in the following geographic markets: Southern Florida; Alabama; Houston, Texas and surrounding counties; and Central North Carolina and Virginia; and in the following two geographic submarkets: Central North Carolina and Central Virginia. The relevant product markets and submarkets are: bread and breadtype rolls produced by wholesale bakeries, grocery chain bakeries and in-store bakeries; bread and bread-type rolls produced by wholesale bakeries and grocery chain bakeries; bread and bread-type rolls produced by wholesale bakeries; and white pan bread and hamburger and hot dog buns produced by wholesale bakeries.

There were six categories of subpoenas issued. First, 23 subpoenas with four specifications went to grocery stores with bakeries on the premises. **[*2]** All of these have complied. Second, 56 subpoenas with five specifications went to small bakeries. All but three of these have complied (Davis Bakery, Inc., Weinman's Bakery, Inc. and Bagel Hole, Inc.). Third, seven subpoenas were sent to bakeries producing frozen dough. All of these have complied. Fourth, 30 subpoenas with 19 specifications were sent to medium-sized bakeries. All but three of these have complied (Franklin Baking Company, Inc., American Bread Company of Alabama, Inc., and Dainty Maid Bakery, Inc.). Fifth, eight subpoenas with from 19 to 21 specifications were sent to large multi-plant bakeries. All but two of these have complied (Interstate Brands Corporation and Mrs. Baird's Bakeries, Inc.). And, sixth, nine subpoenas with from 21 to 26 specifications were sent to large chain grocery stores with separate baking facilities. All of these have complied. n2

n2 Motions to quash the subpoenas have been filed by the following third-party bakeries: Mrs. Baird's Bakeries, Inc., Franklin Baking Company, Inc., Dainty Maid Bakery, Inc., Interstate Brands Corporation, Weinman's Bakery, Inc., Davis Bakery, Inc., Bagel Hole, Inc. and American Bread Company of Alabama, Inc.

Based **[*3]** on the memorandum of counsel, the affidavits, the oral argument held on March 2, 1982, n3 the motions to quash are denied.

n3 Although all movants were invited, only Mrs. Baird's Bakeries, Inc. and Waldensian Bakeries, Inc. (which later negotiated a settlement) appeared and argued.

The movants argue generally (1) that the information sought by the subpoenas is irrelevant to the issues raised in this proceeding; (2) that the information sought is confidential and that no adequate showing of need has been made; and (3) that the subpoenas' requests are excessively broad and unduly burdensome and that in the event that they are ordered to comply with the subpoenas, respondent should be required to pay their fees and expenses in that regard.

Relevancy

The test for the relevancy of an administrative subpoena is whether the information sought is "reasonably relevant" to the agency's inquiry. FTC v. Anderson, 631 F.2d 741, 745 (D.C. Cir. 1979). Where it is a subpoena requested by the respondent in a Federal Trade Commission adjudicative proceeding, the reasonable relevancy of the information sought is determined by laying the subpoena along side of the defenses raised by respondent's **[*4]** answer to the complaint. FTC v. United States Pipe & Foundry Co., 304 F. Supp. 1254, 1260 (D.D.C. 1969); cf. Adams v. FTC, 296 F.2d 861, 867 (8th Cir. 1961), cert. denied, 369 U.S. 864; Moore Business Forms, Inc. v. FTC, 307 F.2d 188, 189 (D.D.C. 1962). n4

n4 For this reason, the argument of Interstate Brands Corporation, Weinman's Bakery, Inc. and Davis Bakery, Inc. implying that a respondent in an FTC proceeding should be limited to documents requested by counsel supporting the complaint is without merit.

Here, Flowers' answer put at issue the question of whether the markets alleged in the complaint constitute appropriate geographic areas or product categories in which to assess the effects of the acquisitions. Further, the answer contests whether the acquisitions are likely to result in any substantial lessening of competition, and asserts (1) that the effects of the acquisitions have been pro-competitive; (2) that each of the companies or facilities acquired were in a failing condition; (3) that the characteristics and inefficiency of the acquired entities, in the context of the structure, history and probable future of the baking industry, demonstrate **[*5]** the absence of any threat of a lessening of competition. To prove these defenses, Flowers stated in its applications for the subpoenas that it must obtain such information as:

> . . . The history, circumstances and probable future of the industry involved and the markets alleged by the complaint; the definitions of proper geographic and product markets; the effects of the challenged acquisitions; the identity of competitors; the operational circumstances and financial status of bread products producers; the competitive structure of the alleged markets; the proper determination and components of market share statistics; changes in technology and production; industry and market trends; the propriety or efficacy to the proposed relief, and, other issues relevant to this proceeding.

All of the specifications of the subpoenas bear a general relevancy to the defenses raised by respondent Flowers. Movants are all competitors of respondent in the production and sale of bread. Information in the files of competing companies is frequently crucial in proceedings such as this one. In FTC v. Bowman, 149 F. Supp. 624, 628 (N.D. Ill. 1957), aff'd, 248 F.2d 456 (7th Cir. 1957), the court **[*6]** emphasized the relevance of the kind of data sought here as follows:

> . . . . In a proceeding under the anti-merger provisions of the Clayton Act, the share of the market affected by the merger and the effect on competitors engaged in the same line of commerce are crucial inquiries. The proceeding would be crippled if neither the Commission nor the party charged could produce by compulsory process the essential industry data.

See also, Covey Oil Co. v. Continental Oil Co., 340 F.2d 993, 998 (10th Cir. 1965), cert. denied, 380 U.S. 964; FTC v. Tuttle, 244 F.2d 605, 609, 614 (2d Cir. 1957), cert. denied, 354 U.S. 925; United States v. American Optical Co., 39 F.R.D. 580, 586 (N.D. Cal. 1966); United States v. Lever Bros. Co., 193 F. Supp. 254, 257 (S.D.N.Y. 1961).

Confidentiality

Each of the movants argues that the documents requested need not be produced because they are "confidential." The fact that information sought by a subpoena may be confidential does not excuse compliance. It is well established that confidential information of the type sought enjoys no exemption from mandatory production in discovery proceedings before administrative **[*7]** agencies or courts. Covey v. Continental Oil Co., 340 F.2d 993, 999 (10th Cir. 1965), cert. denied, 380 U.S. 964; FTC v. Tuttle, 244 F.2d 605, 607, 609, 616 (2d Cir. 1957), cert. denied, 354 U.S. 925. Where the provisions of the protective order prevent dissemination of confidential information to competitors and where the information sought is relevant to the issues in the proceeding, the courts have dismissed objections to subpoenas duces tecum based on the confidentiality of the requested information. Menzies v. FTC, 242 F.2d 81, 84 (4th Cir.), cert. denied, 353 U.S. 957 (1957); Graber Mfg. Co. v. Dixon, 223 F. Supp. 1020 (D.D.C. 1963); Hunter v. International Systems & Controls Corp., 51 F.R.D. 251, 255 (W.D. Mo. 1970).

Furthermore, a showing of general relevance is sufficient to justify production of documents containing confidential business information and no further showing of "need" is necessary. See, e.g., FTC v. United States Pipe & Foundry Co., 304 F. Supp. 1254, 1256, 1259-60 (D.D.C. 1969); FTC v. Menzies, 145 F. Supp. 164, 170-71 (D. Md.), aff'd 242 F.2d 81 (4th Cir. 1957), cert. denied, 353 U.S. 957 **[*8]** (1957). See also, Olympic Refining Co. v. Carter, 332 F.2d 260 (9th Cir. 1964); Covery Oil Co. v. Continental Oil Co., supra; Hunter v. International Systems & Controls Corp., supra; and see Estate of Le Baron v. Rohm & Haas Co., 441 F.2d 575 (9th cir. 1971). n5

n5 While some courts have required that a showing of "need" should accompany a showing of "general relevancy" to support mandatory production of trade secrets, these cases involved deleted provisions of the former discovery rules requiring a showing of "good cause" or unusual facts involving great burden on the responding company. Zenith Radio Corp. v. Radio Corp. of America, 106 F. Supp. 561, 564 (D. Del. 1952); Papercraft Corp. v. FTC, 472 F.2d 927, 930 (7th Cir. 1973); United States v. American Optical Co., 39 F.R.D. 580 (N.D. Cal. 1966).

A protective order was entered in this proceeding on April 29, 1981. This order provides appropriate procedures for identification of "confidential information" and narrowly restricts dissemination of such data. Movants could protect the confidentiality of the subpoenaed information pursuant to the terms of this order or negotiate additional protections in the terms **[*9]** of the order. n6 Examples of such modifications might include, for example, having the documents returned to the subpoenaed companies at the conclusion of the case; providing that the documents could be used for this case only; providing reasonable notice to the subpoenaed company prior to disclosure to any other agency, Congress, or a court, and before the documents are offered in evidence at the trial in this case; depositing the documents in the files of a law firm chosen by the movant, so long as trial lawyers for respondent have reasonable access to the documents to choose those to be introduced as evidence at trial; having the persons who have access to the documents sign an affidavit of secrecy, which would make them subject for unauthorized disclosures to the criminal sanctions in 18 U.S.C. § 1001, § 1621, § 1905 and § 2071.

n6 At the hearing on the motions to quash held on March 2, 1982, the administrative law judge made it clear that any reasonable request for a modification of the protective order would be granted.

Movants argue that they are not parties to the administrative proceeding and are being asked to disclose what they consider important information. However, **[*10]** in United States v. American Optical Co., 39 F.R.D. 580, 586 (N.D. Cal. 1966), the court held that defendants were entitled to production by competitors of documents showing, inter alia, sales in units and dollars. The court said:

> In cases such as this, the risk of competitive injury to third parties, and the seriousness of such potential injury, must be balanced against the need for the information in the preparation of the defense . . . . Inconvenience to third parties may be outweighed by the public interest in seeking the truth in every litigated case.

See also, FTC v. Tuttle, 244 F.2d 605, 609 (2d Cir. 1957), cert. denied, 354 U.S. 925; and United States v. Lever Brothers Co., 193 F. Supp. 254, 257 (S.D.N.Y. 1961).

The fact that information sought by the subpoenas involves sensitive, financial and trade data does not limit the power to obtain it. FTC v. Tuttle, 244 F.2d at 616 (information relating to sales in dollars and units of various items); FTC v. United States Pipe & Foundry, 304 F. Supp. 1254 (D.D.C. 1969) (documents showing prices, sales, production

costs, and profit and loss); United States v. American Optical Company, 39 F.R.D. **[*11]** 580 (N.D. Cal. 1966) (information concerning sales statistics, profit and loss and balance sheets); FTC v. Green, 252 F. Supp. 153 (S.D.N.Y. 1966) (breakdown of cost data by plants and categories); Singer Mfg. Co. v. Brother International Corp., 191 F. Supp. 322 (S.D.N.Y. 1960) (sales and price data); In re Dependable Merchandise Corp., 14 F.R.D. 257 (S.D.N.Y. 1953) (information concerning suppliers); Caldwell-Clements, Inc. v. McGraw-Hill Publishing Co., Inc., 12 F.R.D. 531 (S.D.N.Y. 1952) (cost information). The court in Service Liquor Distributors v. Calvert Distillers Corp., 16 F.R.D. 507, 509 (S.D.N.Y. 1954), said:

> In an action under the antitrust laws, based upon the alleged abuse of competition, competitor's business records, where good cause has been shown, are not only not immune from inquiry, but are precisely the source of the most relevant evidence.

Most of the other subpoenaed bakeries have chosen to comply with the subpoenas directed to them. In United States v. Aluminum Co. of America, 193 F. Supp. 249 (N.D.N.Y. 1960), a suit alleging violation of Section 7 of the Clayton Act, disclosure of production and sales figures had been sought from **[*12]** a number of the defendant's competitors and the court recognized that the fact that not all of the competitors objected to the disclosure of the information is some indication that the harm resulting from disclosure is minimal. 193 F. Supp. at p. 250, See also, FCC v. Schreiber, 381 U.S. 279, 298-99 (1965); and United States v. American Optical Co., 39 F.R.D. 580, 587 (N.D. Cal. 1966).

Breadth and Burden

Movants claim that the subpoenas are invalid because their specifications are excessively broad and because compliance would impose cost, time and manpower burdens. Inspection of the subpoenas themselves shows that the specifications are clearly drawn so as to identify the categories of documents relevant to the issues in this proceeding. A more specific identification of documents for production would require familiarity with the particular documents in movant's files. Several of the specifications expressly indicate that summary statements of the requested data will be acceptable in place of the underlying document.

The courts have upheld and enforced subpoenas duces tecum with specifications drawn in terms similar to those employed here. Genuine Parts Co. v. **[*13]** FTC, 445 F.2d 1382, 1389-90 (5th Cir. 1971); FTC v. St. Regis Paper co., 304 F.2d 731, 732, 733 (7th Cir. 1962); FTC v. Bowman, 149 F. Supp. 624, 626 (N.D. Ill.), aff'd 248 F.2d 456 (7th Cir. 1957).

Several movants assert that the subpoenas are oppressive and burdensome. This general, unsupported claim is not persuasive. Even where a subpoenaed third party adequately demonstrates that compliance with a subpoena will impose a substantial degree of burden, inconvenience, and cost, that will not excuse producing information that appears generally relevant to the issues in the proceeding. United States v. Morton Salt Co., 338 U.S. 632, 653-54 (1950); FTC v. Standard American, Inc., 306 F.2d 231, 235 (3d Cir. 1962). Furthermore, Flowers has negotiated reasonable modifications designed to alleviate these difficulties and has offered to do so with movants.

Several movants have argued that the size and complexity of their business will result in large costs in complying with the subpoenas. In this regard, Judge Weinfeld noted in Application of Radio Corp. of America, 13 F.R.D. 167, 172 (S.D.N.Y. 1952):

> Inconvenience is relative to size. Any witness who is subpoenaed **[*14]** suffers inconvenience. An individual operating a small business, for example, or a corporation operated by a sole shareholder, may suffer, in like circumstances more inconvenience than [a major corporation] with . . . thousands of employees. But this inconvenience . . . is part of the price we pay to secure . . . the enforcement of our laws.

See also, United States v. IBM, 62 F.R.D. 507, 510 (S.D.N.Y. 1974); Blank v. Talley Indus., Inc., 54 F.R.D. 627 (S.D.N.Y. 1972).

The law is clear that a recipient of a subpoena duces tecum issued in an FTC adjudicative proceeding who resists compliance therewith bears a heavy burden. That burden is no less because the subpoena is directed at a non-party. As the court noted in FTC v. Dresser Industries, Inc., 1977-1 Trade Cases P61,400, at p. 71,491 (D.D.C. 1977):

> . . . One who opposes an agency's subpoena necessarily must bear a heavy burden. That burden is essentially the same even if the subpoena is directed to a third party not involved in adjudicative or other proceedings out of which the subpoena rose.

And, broadness alone is not a sufficient ground to bar enforcement of a subpoena. FTC v. Rockefeller, **[*15]** 591 F.2d 182, 190 (2d Cir. 1979); Adams v. FTC, 296 F.2d 861, 867 n.20 (8th Cir. 1961), cert. denied, 369 U.S. 864 (1961); FTC v. Texaco, Inc., 555 F.2d 862, 882 (D.C. Cir. 1977), cert. denied, 431 U.S. 974 (1977):

> We emphasize that the question is whether the demand is unduly burdensome or unreasonably broad. Some burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency's legitimate inquiry and the public interest. The burden of showing that the request is unreasonable is on the subpoenaed party.

This standard has been specifically applied in the context of upholding the enforcement against a non-party of an FTC subpoena issued in an adjudicative proceeding upon the application of a respondent charged with violating anti-merger provisions. Dresser, supra, 1977-1 Trade Cases at 71,492. It requires that the subpoena be enforced absent showing that compliance "would unduly disrupt or seriously threaten normal operations." Id.; accord, FTC v. Rockefeller, supra, 591 F.2d at 190.

Costs

Several movants have requested that their costs incurred in complying with the subpoenas be reimbursed. The law for **[*16]** this request was recently stated by the Federal Trade Commission in another request for costs n7 in International Telephone & Telegraph Corp., 3 Trade Reg. Rep. P21,810 (FTC Docket 9000), at p. 22,034:

> The standards applicable to reimbursement requests in adjudicative proceedings are essentially the same as those previously announced by the Commission with respect to investigative subpoenas. A subpoenaed party is expected to absorb the reasonable expenses of compliance as a cost of doing business, but reimbursement by the proponent of the subpoena is appropriate for costs shown by the subpoenaed party to be unreasonable. To determine whether expenses are "reasonable," the ALJ should compare the costs of complaince in relation to the size and resources of the subpoenaed party.

Even where costs are awarded to a non-party, where the non-party is in the industry in which the alleged acts occured and the non-party has interest in the litigation and would be affected by the judgment, only the cost of copying, and no other costs of the search, need be reimbursed. Cf. United States v. IBM, 62 F.R.D. 507, 510 and 526, 529 (S.D.N.Y. 1974); FTC v. Ace Books, Inc., 11 Pike **[*17]** & Fisher, Ad. Law 2d 942, 944 (S.D.N.Y. 1961).

> n7 The non-party requesting costs of compliance in ITT was Interstate Brands Corporation, one of the movants requesting costs in this proceeding.

Weinman's Bakery, Inc., Davis Bakery, Inc. and Bagel Hole, Inc., having received subpoenas as part of the group of "small" bakeries, should be reimbursed for their costs of photocopying documents in response to the subpoenas. All three are small, privately owned businesses. The subpoenas call for a broad range of information from these small bakeries. Even more elaborate information is requested from the "medium" size bakeries. Of these bakeries, Franklin Baking Company, Inc. has only six people in management; Dainty Maid Bakery, Inc. has but two. Both are described as small, privately owned businesses. American Bread Company of Alabama, Inc. is described as a small, closely-held, essentially family-owned bakery. n8 Its costs of complying with the subpoena are specified in detail and amount to almost $ 20,000. n9 The medium-size bakeries should also be reimbursed for their copying costs. In the alternative, respondent may choose to take production of the documents where they are stored. **[*18]** FTC v. Texaco, Inc., 1975-2 Trade Cases P60,430 at pp. 66,900-01 (D.C. Cir. 1975). Movant's requests for attorney's fees, cost of outside accountants and other outside help, as well as search, compilation and travel costs are denied.

> n8 I assume that all of these movants, in their requests for costs, failed to be more specific about their financial size and resources because they were simultaneously arguing confidentiality of their financial information.

n9 Part of these costs, however, are based on the mistaken assumption that the subpoena requires compilations, rather than allowing that alternative at movant's choice.

Other Arguments Raised in the Motions to Quash

(a) Interstate Brands Corporation

Interstate Brands Corporation one of the four largest bread baking companies in the United States, has over 12,000 employees and total sales of about $ 600 million for the fiscal year ending May 31, 1981.

Interstate argues that compliance with the subpoena will require a search of forty facilities including thirty-five bakery plants throughout the United States as well as regional headquarters offices, and that the search will cost $ 15,000.

Respondent points out that **[*19]** substantially all of the information sought by the subpoena will be found at three of the Interstate facilities: its plant at Burmington, Alabama, the regional headquarters for that plant, and Interstate's home office. Respondent has shown no reason, however, why responsive documents can be expected to be found at Interstate's other facilities. The subpoena will therefore be limited to those three locations.

The subpoena will be further limited so that where specifications call for "all reports, studies or analyses," Interstate need not search correspondence or notes of meetings.

Two other modifications suggested by Interstate cannot be adopted. First, the subpoena does not require the preparation of compilations but only provides, as to some specifications, that compilations may be certified in lieu of the production of voluminous underlying documents. Second, I cannot agree in advance to afford in camera treatment automatically to any document chosen to be introduced at trial by respondent Flowers. The in camera standards of Rule 3.45 of the Commission's Rules of Practice, 16 C.F.R. § 3.45, and the case law must be first met. Bristol-Myers Co., 90 F.T.C. Decisions 455 **[*20]** (1977). Interstate will, as to any document covered by the protective order issued herein, be provided with the opportunity to move for in camera treatment in the event any such document is offered in evidence at the trial of this case. n10

n10 This disposes of similar requests by Weinman's Bakery, Inc. and Davis Bakery Inc.

(b) Mrs. Baird's Bakeries, Inc.

Mrs. Baird's Bakeries, Inc. is the largest bakery in Texas with ten plants in nine cities employing 3,000 workers, and with estimated sales of over $ 66 million in 1981.

Mrs. Baird's argues that the geographic market specified in the subpoena is irrelevant and that respondent Flowers should be limited in its discovery to the market designated by complaint counsel, which in Texas is Houston and about 11 surrounding counties. Flowers has designated a larger geographic market of about 37 additional counties. n11 The law on this issue was stated by the Commission in Topps Chewing Gum, Inc., Docket 8463 (interlocutory order of November 15, 1962), a case alleging a monopoly in baseball trading cards:

> While respondent is entitled to make a defense that the 'relevant market's as defined in the complaint is erroneous, it **[*21]** certainly does not need information showing the size and make-up of the market it claims is proper. In making such a defense, it is not necessary or proper to present detailed information concerning the composition or size of the entire chewing gum, candy and confection industry.

Similarly, while respondent is certainly entitled to defend that the geographic market stated by complaint counsel is erroneous, it does not need detailed information showing the size and make-up of the market it claims is proper. (See Attachment A, Order of May 1, 1978 by former Chief Judge Daniel H. Hanscom in Airco, Inc., Docket 9098, pp. 3-6).

n11 A map outlining the two versions of the geographic markets - both of which contain parts of some of the counties - has been provided to Mrs. Baird's.

As an additional burden argument, however, Mrs. Baird's incorrectly assumes that it will have to create new compilations to answer the subpoena. The subpoena requires no submission or compilation of certified statements but

provides the option to do so in lieu of supplying the underlying documents. Respondent has made other attempts in the subpoena and in negotiation to alleviate any substantial burden **[*22]** on Mrs. Baird's without avail. By taking advantage of this aid, Mrs. Baird's should be able to comply without undue burden.

Several of the movants, including Mrs. Baird's, argue that the records requested by some specifications are unavailable, either because they have been destroyed or because the company does not keep the information. Movants cannot of course produce records that do not exist nor can they compile reports which require information from records that have been destroyed. Genuine Parts Co. v. FTC, 313 F. Supp. 855, 857 (N.D. Ga. 1970), aff'd. 445 F.2d 1382 (5th Cir. 1971).

(c) American Bread Company of Alabama, Inc.

American Bread Company of Alabama, Inc. argues that the protective order issued herein is inadequate to protect American Bread against dissemination of requested information to competitors, and relates a story that a Federal Trade Commission staff attorney who was given confidential documents by American Bread gave the documents to respondent Flowers.

I find no breach of the protective order has occurred. In a statement submitted in response to this allegation, Sarah K. Walls, one of the counsel supporting the complaint, credibly denies that the **[*23]** four documents received from American Bread or its attorneys were provided to respondent, and Flowers argues that any information about American Bread received from complaint counsel has been provided only to its trial counsel pursuant to the protective order and that confidential information of American Bread has not been disclosed to Flowers or any of its employees.

American Bread admits that it has not complied with Rule 3.38(b) of the Commission's Rules of Practice, calling for the filing of a description of allegedly privileged documents in lieu of filing a motion to quash. American Bread has thereby waived its privilege arguments on those documents. n12

n12 Bagel Hole, Inc. similarly failed to specify the documents it claimed to be privileged.

American Bread does raise a reasonable objection to Specification 11. That specification will be modified to limit production to documents discussing either Flower's acquisition or the instant proceeding within the time periods specified.

Conclusion

My perusal of the motions to quash convinces me that enforcement of the subpoena specifications, as modified, will not unduly disrupt or seriously threaten the normal operations of **[*24]** the movants. The subpoenas will therefore be enforced as modified and movants shall comply within thirty days of service of this order.

ATTACHMENT A

In the Matter of AIRCO, INC., a corporation.

DOCKET NO. 9098

ORDER QUASHING IN PART AND LIMITING IN PART DISCOVERY SUBPOENAS DUCES TECUM ISSUED ON APPLICATION OF AIRCO

After discussion at a pretrial conference January 17 and the filing of memoranda by both sides, the undersigned on February 24 issued comprehensive discovery subpoenas duces tecum to 13 suppliers of industrial gases competing with respondent Airco. Ten of these subpoenaed third parties filed motions to quash or limit including Union Carbide Corporation, Air Products and Chemicals, Inc., Chemetron Corporation, Burdett Oxygen Company, Liquid Air, Inc., Burdox, Inc., Alabama Oxygen Company, Inc., Big Three Industries, Inc., Liquid Carbonic Corporation, and National Welders Supply Company, Inc. Most asked for oral argument on their motions, and this was held on April 20, Airco's response having been filed on March 17, 1978.

Although there are differences and varying emphasis, the subpoenaed firms in general ground their motions on the alleged great sensitivity and **[*25]** confidentiality of the data and information subpoenaed, and the consequent harm if disclosure were to occur despite the issuance of a protective order, the burden and expense of compliance which