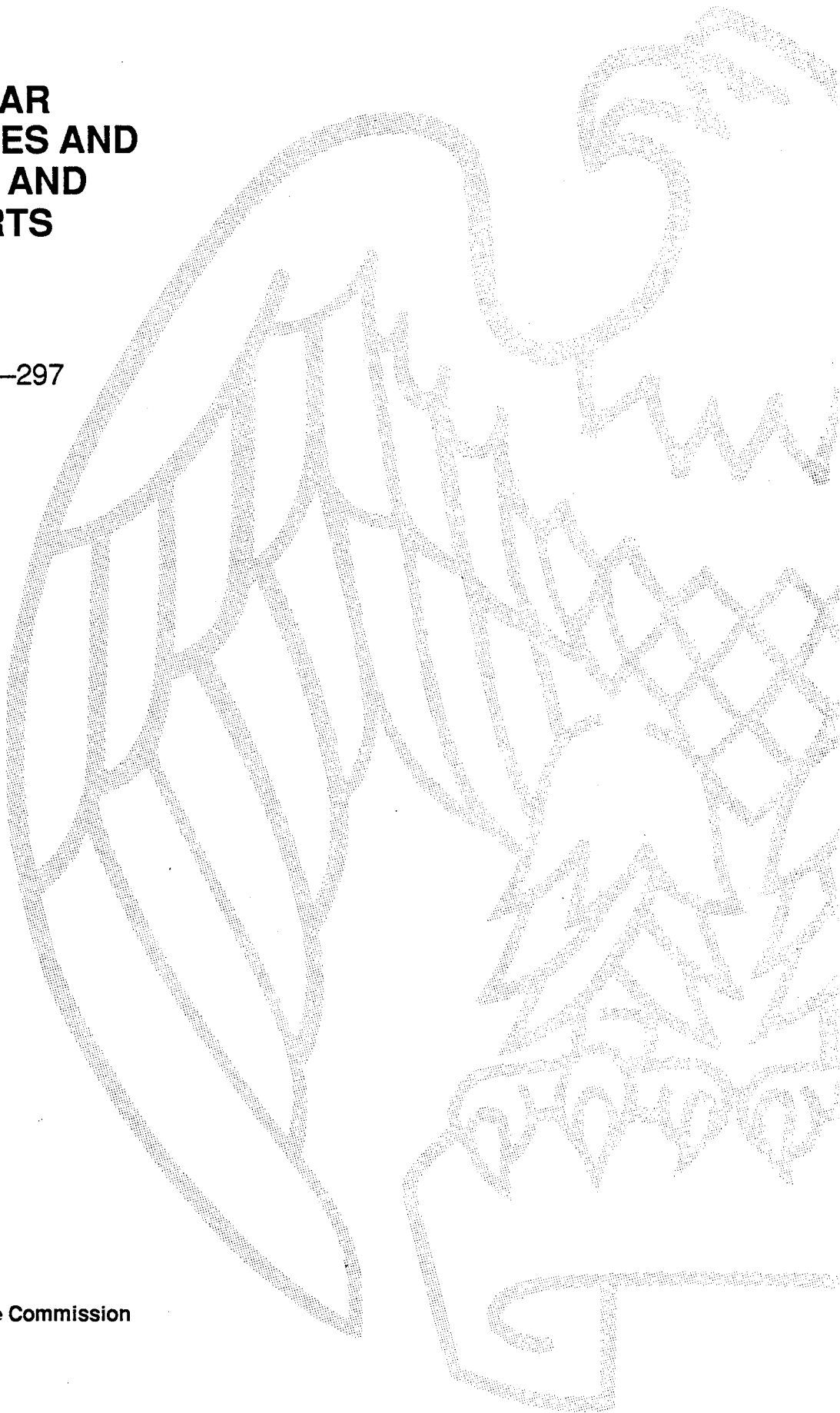


*In the Matter of*

**CERTAIN CELLULAR  
RADIOTELEPHONES AND  
SUBASSEMBLIES AND  
COMPONENT PARTS  
THEREOF**

Investigation No. 337-TA-297

(Commission Decision  
of August 29, 1989)



**USITC PUBLICATION 2361**

**FEBRUARY 1991**

United States International Trade Commission  
Washington, DC 20436

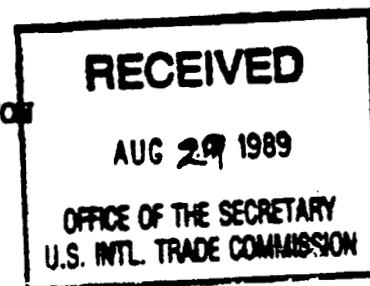
**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**COMMISSIONERS**

**Anne E. Brunsdale, Chairman**  
**Ronald A. Cass, Vice Chairman**  
**Seeley G. Lodwick**  
**David B. Rohr**  
**Don E. Newquist**

**Address all communications to**  
**Kenneth R. Mason, Secretary to the Commission**  
**United States International Trade Commission**  
**Washington, DC 20436**

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C. 20436



In the Matter of )  
)  
)

CERTAIN CELLULAR RADIOTELEPHONES )  
AND SUBASSEMBLIES AND COMPONENT )  
PARTS THEREOF )  
)

Investigation No. 337-TA-297

**NOTICE OF COMMISSION DECISION NOT TO MODIFY OR VACATE  
INITIAL DETERMINATION GRANTING TEMPORARY RELIEF, AND  
ISSUANCE OF A LIMITED TEMPORARY EXCLUSION ORDER  
AND TEMPORARY CEASE AND DESIST ORDERS, SUBJECT TO  
POSTING OF BOND BY COMPLAINANT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to modify or vacate the presiding administrative law judge's (ALJ) initial determination (ID) granting temporary relief in the above-referenced investigation, and has issued a limited temporary exclusion order and temporary cease and desist orders, subject to posting of a bond by complainant.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1093.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337), as amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L 100-418 (Aug. 23, 1988) and in sections 210.24 and .58 of the Commission's Interim Rules of Practice and Procedure (53 F.R. 33034, Aug. 29, 1988, and 53 F.R. 49118, Dec. 6, 1988).

On April 17, 1989, Motorola, Inc. filed a complaint and a motion for temporary relief with the Commission alleging violations of section 337 in the importation and sale of certain cellular radiotelephones and subassemblies and component parts thereof. Motorola's complaint alleged infringement of seven U.S. patents. The motion for temporary relief was limited to 4 claims of 3 patents: claims 62 and 77 of U.S. Letters Patent 4,523,155; claim 18 of U.S. Letters Patent 4,636,593; and the sole claim of U.S. Letters Patent Des. 269,873.

Pursuant to Commission interim rule 210.24(e)(8), the Commission provisionally accepted Motorola's motion for temporary relief at the Commission meeting on May 23, 1989. The Commission also instituted an

investigation into the allegations of Motorola's complaint and published a notice of investigation in the Federal Register. 54 F.R. 23292-93 (May 31, 1989). The notice named the following respondents: (1) Nokia Corporation of Helsinki, Finland; (2) Nokia-Mobira Oy of Salo, Finland; (3) Nokia, Inc. of Basking Ridge, New Jersey; (4) Nokia-Mobira, Inc. of Largo, Florida; (5) Tandy Mobira Communications Corporation of Masan, The Republic of Korea; (6) Tandy Corporation of Fort Worth, Texas; and (7) A & A International of Fort Worth, Texas.

The presiding administrative law judge (ALJ) held an evidentiary hearing on Motorola's motion for temporary relief from July 7 to July 12, 1989. All respondents actively participated in the hearing. The Commission received submissions on the issues of remedy, the public interest, and bonding, from all parties on July 31, 1989, in accordance with Commission interim rule 210.24(e)(18)(ii).

On August 9, 1989, the ALJ issued his ID granting Motorola's motion for temporary relief. All parties filed written comments or responses to comments on the ID.

The Commission, having considered the ID, the comments and responses to comments of the parties, and the record in this investigation, determined that there are no errors of law or policy reasons to vacate or modify the ID. Consequently, pursuant to Commission interim rule 210.24(e)(17)(ii), the ID became the Commission's determination.

The Commission having determined that there is reason to believe that there is a violation of section 337 in the importation, sale for importation, or sale in the United States of the accused cellular radiotelephones, subassemblies thereof, or component parts thereof, and having determined that temporary relief is warranted, considered the issues of the appropriate form of such relief, whether the public interest precludes issuance of such relief, complainant's bond, and respondents' bond during the period such relief is in effect.

The Commission has determined that a temporary limited exclusion order and temporary cease and desist orders directed to all U.S. respondents are the appropriate form of temporary relief. The Commission has further determined that the statutory public interest factors do not preclude the issuance of such relief, and that respondents' bond under the temporary limited exclusion order and the temporary cease and desist orders shall be in the amount of twenty-five (25) percent of the entered value of the imported articles.

Commission interim rule 210.58(b)(3) sets forth the requirements for posting of complainant's bond. Commission interim rule 210.58(b)(7) requires that all bonds posted by complainant must be approved by the Commission Secretary before the temporary relief which the bond will secure will be issued. Consequently, the issuance of temporary relief described in the preceding paragraph is subject to the posting and approval of complainant's bond in the amount of five (5) percent of complainant's 1988 revenues from the products in question. Complainant is to file its bond

with the Commission Secretary within seven (7) business days of publication of this notice in the Federal Register.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.



Kenneth R. Mason  
Secretary

Issued: August 29, 1989



UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C. 20436

\_\_\_\_\_)  
In the Matter of )  
 )  
CERTAIN CELLULAR RADIOTELEPHONES ) Investigation No. 337-TA-297  
AND SUBASSEMBLIES AND COMPONENT )  
PARTS THEREOF )  
\_\_\_\_\_)

ORDER

On April 17, 1989, Motorola, Inc. filed a complaint and a motion for temporary relief with the Commission alleging violations of section 337 in the importation and sale of certain cellular radiotelephones and subassemblies and component parts thereof. Motorola's complaint alleged infringement of seven U.S. patents. The motion for temporary relief was limited to 4 claims of 3 patents: claims 62 and 77 of U.S. Letters Patent 4,523,155; claim 18 of U.S. Letters Patent 4,636,593; and the sole claim of U.S. Letters Patent Des. 269,873.

Pursuant to Commission interim rule 210.24(e)(8), the Commission provisionally accepted Motorola's motion for temporary relief at the Commission meeting on May 23, 1989. The Commission also instituted an investigation into the allegations of Motorola's complaint and published a notice of investigation in the Federal Register. 54 F.R. 23292-93 (May 31, 1989). The notice named the following respondents: (1) Nokia Corporation of Helsinki, Finland; (2) Nokia-Mobira Oy of Salo, Finland; (3) Nokia, Inc. of Basking Ridge, New Jersey; (4) Nokia-Mobira, Inc. of Largo, Florida; (5) Tandy Mobira Communications Corporation of Masan, The Republic of Korea; (6) Tandy Corporation of Fort Worth, Texas; and (7) A & A International of Fort Worth, Texas.

The presiding administrative law judge (ALJ) held an evidentiary hearing on Motorola's motion for temporary relief from July 7 to July 12, 1989. All respondents actively participated in the hearing. The Commission received submissions on the issues of remedy, the public interest, and bonding, from all parties on July 31, 1989, in accordance with Commission interim rule 210.24(e)(18)(ii).

On August 9, 1989, the ALJ issued his initial determination (ID) granting Motorola's motion for temporary relief. All parties filed written comments or responses to comments on the ID.

The Commission, having considered the ID, the comments and responses to comments of the parties, and the record in this investigation, has determined that there are no errors of law or policy reasons to vacate or modify the ID. Consequently, pursuant to Commission interim rule 210.24(e)(17)(ii), the ID has become the Commission's determination.

The Commission, having determined that there is reason to believe that there is a violation of section 337 in the importation, sale for importation, or sale in the United States of the accused cellular radiotelephones, subassemblies thereof, or component parts thereof, and having determined that temporary relief is warranted, considered the issues of the appropriate form of such relief, whether the public interest precludes issuance of such relief, complainant's bond, and respondents' bond during the period such relief is in effect.

The Commission has determined that a temporary limited exclusion order and temporary cease and desist orders directed to all U.S. respondents are the appropriate form of temporary relief. The Commission has further determined that the statutory public interest factors do not preclude the



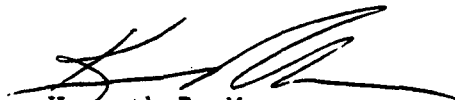
issuance of such relief, and that respondents' bond during the period of Presidential review, and under the temporary limited exclusion order and the temporary cease and desist orders, if they are not disapproved by the President, shall be in the amount of twenty-five (25) percent of the entered value of the imported articles.

Accordingly, it is hereby ORDERED THAT --

1. Cellular radiotelephones, subassemblies thereof, and components thereof, manufactured abroad by Nokia Corporation of Helsinki, Finland, Nokia-Mobira Oy of Salo, Finland, Tandy Mobira Communications Corporation of Masan, Republic of Korea, or any of their affiliated companies, parents, subsidiaries, licensees, contractors, or other related entities, or their successors or assigns, that infringe claims 62 and/or 77 of U.S. Letters Patent 4,523,155, and/or claim 18 of U.S. Letters Patent 4,636,593, are excluded from entry into the United States during the pendency of USITC Investigation No. 337-TA-297, except under license of the patent owner.
2. The temporary relief described in the preceding paragraph of this Order is issued subject to the posting by complainant and approval by the Commission of a complainant's bond in the amount of five (5) percent of complainant's 1988 revenues from the products in question.
3. In accordance with 19 U.S.C. § 1337(1), the provisions of this Order do not apply to cellular radiotelephones, subassemblies thereof, and components thereof imported by or for the United States.
4. The articles identified in paragraph (1) of this Order are entitled to entry into the United States under bond in the amount of twenty-five (25) percent of their entered value from the day after the Commission has approved complainant's posted bond until the day after the Commission issues its final determination in Investigation 337-TA-297, unless, pursuant to subsection (j)(3) of section 337 of the Tariff Act of 1930, the President notifies the Commission within 60 days after the date he receives this Order, that he disapproves this Order.
5. The Commission may amend this Order in accordance with the procedure described in section 211.57 of the Commission's Interim Rules of Practice and Procedure, 53 Fed. Reg. 33043, 33076 (Aug. 29, 1988) (to be codified at 19 C.F.R. § 211.57).
6. A copy of this Order shall be served upon each party of record in this investigation.

7. Notice of this Order shall be published in the Federal Register.

By order of the Commission.



Kenneth R. Mason  
Secretary

Issued: August 29, 1989

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C. 20436

_____ )	
In the Matter of )	
)	
CERTAIN CELLULAR RADIOTELEPHONES )	Investigation No. 337-TA-297
AND SUBASSEMBLIES AND COMPONENT )	
PARTS THEREOF )	
_____ )	

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT A & A International, 1200 One Tandy Center, Fort Worth, Texas, 76102, cease and desist from importing, selling for importation, marketing, distributing, offering for sale, selling, or otherwise transferring in the United States certain cellular radiotelephones, subassemblies thereof, and components thereof, during the pendency of USITC Investigation No. 337-TA-297.

I

(Definitions)

As used in this Order:

(A) "Commission" shall mean the United States International Trade Commission.

(B) "Complainant" shall mean Motorola, Inc., Schaumburg, IL,.

(C) "Respondent" shall mean A & A International, 1200 One Tandy Center, Fort Worth, Texas, 76102.

(D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than the above Respondent or its majority owned and/or controlled subsidiaries, their successors, or assigns.

(E) "United States" shall mean the fifty states, the District of Columbia, and Puerto Rico.

## II

### (Applicability)

The provisions of this Order shall apply to Respondent and to its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors and assigns, and to each of them, and to all other persons who receive actual notice of this Order by service in accordance with section VII hereof.

## III

### (Conduct Prohibited)

Respondent shall not import into the United States cellular radiotelephones, subassemblies thereof, or components thereof, that infringe claims 62 and/or 77 of U.S. Letters Patent 4,523,155, and/or claim 18 of U.S. Letters Patent 4,636,593, except under license of the patent owner.

Respondent shall not market, distribute, offer for sale, sell, or otherwise transfer in the United States imported cellular radiotelephones, subassemblies thereof, or components thereof, that infringe claims 62 and/or 77 of U.S. Letters Patent 4,523,155, and/or claim 18 of U.S. Letters Patent 4,636,593, except under license of the patent owner.

#### IV

##### (Conduct Permitted)

Notwithstanding any other provisions of this Order, specific conduct otherwise prohibited by the terms of this Order, shall be permitted if, in a written instrument, such specific conduct is licensed or authorized by complainant or related to the importation or sale of cellular radiotelephones, subassemblies thereof, or components thereof by or for the United States.

#### V

##### (Reporting)

For purposes of this reporting requirement, each reporting period shall commence on the first day of January, and shall end on the following last day of December. The first report required under this section shall cover the period August 29, 1989, to December 31, 1989. This reporting requirement shall continue in force until the day after the Commission issues its final determination in Investigation No. 337-TA-297, unless, pursuant to subsection (j)(3) of section 337 of the Tariff Act of 1930, the President notifies the Commission within 60 days after the date he receives this Order, that he disapproves this Order.

Any failure to report shall constitute a violation of this Order.

Within thirty (30) days of the last day of each reporting period, Respondent shall report to the Commission the following:

(A) Its importations, measured in units, of cellular radiotelephone models designated, as of the date of this Order, CT-101, CT-201, CT-301

(Radio Shack); TC-1000, TC-2000 (Tandy); M-10, P-30 (Nokia); 412, 422, 432, 512 (Mobira);

(B) Its importations, measured in units, of subassemblies or components of cellular radiotelephones bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

(C) Its sales or other transfers in the United States, measured in units, of cellular radiotelephones bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

(D) Its sales or other transfers in the United States, measured in units, of subassemblies or components of cellular radiotelephones, bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

(E) All contracts, whether written or oral, entered into during the reporting period in question, to sell or otherwise transfer cellular radiotelephones bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

(F) All contracts, whether written or oral, entered into during the reporting period in question, to sell or otherwise transfer subassemblies or components of cellular radiotelephones bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

In connection with the importation and sales or other transfers referred to in paragraphs (A) through (F) above, Respondent shall provide the Commission with two copies of all invoices, delivery orders, bills of lading, and other document concerning the importation or sale in question. Such copies shall be attached to the reports required by paragraphs (A) through (F) above.

## VI

### (Compliance and Inspection)

(A) For the purposes of securing compliance with this Order, Respondent shall retain any and all records relating to the importation to or sale in the United States of cellular radiotelephones, subassemblies thereof, or components thereof referred to in paragraphs (V)(A) through (V)(F) above made and received in the usual and ordinary course of its business, whether in detail or in summary form, for a period of two (2) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by Federal Courts of the United States, Respondent shall furnish or otherwise make available for inspection and copying to duly authorized representatives of the Commission, and in the presence of counsel or other representative if Respondent so chooses, upon reasonable written notice by the Commission or its staff, all books, ledgers, accounts, correspondence, memoranda, financial reports, and other records or documents in its possession or control for the purpose of verifying any matter or statement contained in the reports required under section V of this Order.

## VII

### (Service of Cease and Desist Order)

Respondent is ordered and directed to:

(A) Serve, within thirty (30) days after the date of issuance of this Order, a copy of the Order upon each of its respective officers, directors, managing agents, agents and employees who have any responsibility for the

importation, marketing, distribution or sale of imported cellular radiotelephones, subassemblies thereof, or components thereof in the United States.

(B) Serve, within thirty (30) days after the succession of any of the persons referred to in paragraph VII(A), a copy of this Order upon each successor.

(C) Maintain such records as will show the name, title, and address of each person described in paragraph VII(A) and (B) above upon whom this Order has been served, together with the date on which service was made.

(D) The obligations set forth in paragraphs VII (B) and (C) above shall remain in effect until the day after the Commission issues its final determination in Investigation No. 337-TA-297, unless, pursuant to subsection (j)(3) of section 337 of the Tariff Act of 1930, the President notifies the Commission within 60 days after the date he receives this Order, that he disapproves this Order.

## VIII

### (Confidentiality)

Information obtained by the means provided for in sections V and VI of this Order will be made available only to the Commission and its authorized representatives, will be entitled to confidential treatment, and will not be divulged by any authorized representative of the Commission to any person other than duly authorized representatives of the Commission, except as may be required in the course of securing compliance with this Order, or as otherwise required by law. Disclosure hereunder will not be made by the Commission without ten (10) days prior notice in writing to Respondent.



## IX

### (Enforcement)

Violation of this Order may result in any of the actions specified in section 211.56 of the Commission's Interim Rules of Practice and Procedure, 53 Fed. Reg. 33075 (August 29, 1988), including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930 (19 U.S.C. § 1337(f)), and such other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information as required by this Order.

## X

### (Modification)

This Order may be modified by the Commission on its own motion or upon motion by any person pursuant to section 211.57 of the Commission's Interim Rules of Practice and Procedure, 53 Fed. Reg. 33076 (August 29, 1988).

## XI

### (Bonding)

With respect to cellular radiotelephones, components thereof, and subassemblies thereof imported prior to August 29, 1989, the conduct prohibited by paragraph III of this Order may be continued during the period the during which this order is in effect subject to Respondent posting a bond in the amount of twenty-five (25) percent of the entered value of the cellular radiotelephones, components thereof, and subassemblies thereof in question. This bond provision does not apply to conduct which is otherwise

permitted by paragraph IV of this Order. Cellular radiotelephones, components thereof, and subassemblies thereof imported on or after August 29, 1989, are subject to the entry bond as set forth in the limited temporary exclusion order issued by the Commission on August 29, 1989, and are not subject to this bond provision.


The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders (53 Fed. Reg. 49133-34 (Dec. 6, 1988)).

The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by paragraph III of this Order.

The bond is to be forfeit in the event that the President approves, or does not disapprove within the Presidential review period, the Commission's Orders of August 29, 1989, or any subsequent final order issued after the completion of Investigation No. 337-TA-297, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the President disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the President, upon service on Respondent of an Order issued by the Commission based upon application therefor made by Respondent to the Commission.

By Order of the Commission



Kenneth R. Mason  
Secretary

Issued: August 29, 1989

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UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C. 20436

In the Matter of )

CERTAIN CELLULAR RADIOTELEPHONES )  
AND SUBASSEMBLIES AND COMPONENT )  
PARTS THEREOF )

Investigation No. 337-TA-297

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Nokia, Inc., 175 Morristown Road, Basking Ridge, New Jersey, 07920, cease and desist from importing, selling for importation, marketing, distributing, offering for sale, selling, or otherwise transferring in the United States certain cellular radiotelephones, subassemblies thereof, and components thereof, during the pendency of USITC Investigation No. 337-TA-297.

I

(Definitions)

As used in this Order:

(A) "Commission" shall mean the United States International Trade Commission.

(B) "Complainant" shall mean Motorola, Inc., Schaumburg, IL,.

(C) "Respondent" shall mean Nokia, Inc., 175 Morristown Road, Basking Ridge, New Jersey, 07920.

(D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than the above Respondent or its majority owned and/or controlled subsidiaries, their successors, or assigns.

(E) "United States" shall mean the fifty states, the District of Columbia, and Puerto Rico.

## II

### (Applicability)

The provisions of this Order shall apply to Respondent and to its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors and assigns, and to each of them, and to all other persons who receive actual notice of this Order by service in accordance with section VII hereof.

## III

### (Conduct Prohibited)

Respondent shall not import into the United States cellular radiotelephones, subassemblies thereof, or components thereof, that infringe claims 62 and/or 77 of U.S. Letters Patent 4,523,155, and/or claim 18 of U.S. Letters Patent 4,636,593, except under license of the patent owner.

Respondent shall not market, distribute, offer for sale, sell, or otherwise transfer in the United States imported cellular radiotelephones, subassemblies thereof, or components thereof, that infringe claims 62 and/or 77 of U.S. Letters Patent 4,523,155, and/or claim 18 of U.S. Letters Patent 4,636,593, except under license of the patent owner.

#### IV

##### (Conduct Permitted)

Notwithstanding any other provisions of this Order, specific conduct otherwise prohibited by the terms of this Order, shall be permitted if, in a written instrument, such specific conduct is licensed or authorized by complainant or related to the importation or sale of cellular radiotelephones, subassemblies thereof, or components thereof by or for the United States.

#### V

##### (Reporting)

For purposes of this reporting requirement, each reporting period shall commence on the first day of January, and shall end on the following last day of December. The first report required under this section shall cover the period August 29, 1989, to December 31, 1989. This reporting requirement shall continue in force until the day after the Commission issues its final determination in Investigation No. 337-TA-297, unless, pursuant to subsection (j)(3) of section 337 of the Tariff Act of 1930, the President notifies the Commission within 60 days after the date he receives this Order, that he disapproves this Order.

Any failure to report shall constitute a violation of this Order.

Within thirty (30) days of the last day of each reporting period, Respondent shall report to the Commission the following:

(A) Its importations, measured in units, of cellular radiotelephone models designated, as of the date of this Order, CT-101, CT-201, CT-301

(Radio Shack); TC-1000, TC-2000 (Tandy); M-10, P-30 (Nokia); 412, 422, 432, 512 (Mobira);

(B) Its importations, measured in units, of subassemblies or components of cellular radiotelephones bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

(C) Its sales or other transfers in the United States, measured in units, of cellular radiotelephones bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

(D) Its sales or other transfers in the United States, measured in units, of subassemblies or components of cellular radiotelephones, bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

(E) All contracts, whether written or oral, entered into during the reporting period in question, to sell or otherwise transfer cellular radiotelephones bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

(F) All contracts, whether written or oral, entered into during the reporting period in question, to sell or otherwise transfer subassemblies or components of cellular radiotelephones bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

In connection with the importation and sales or other transfers referred to in paragraphs (A) through (F) above, Respondent shall provide the Commission with two copies of all invoices, delivery orders, bills of lading, and other document concerning the importation or sale in question. Such copies shall be attached to the reports required by paragraphs (A) through (F) above.



## VI

### (Compliance and Inspection)

(A) For the purposes of securing compliance with this Order, Respondent shall retain any and all records relating to the importation to or sale in the United States of cellular radiotelephones, subassemblies thereof, or components thereof referred to in paragraphs (V)(A) through (V)(F) above made and received in the usual and ordinary course of its business, whether in detail or in summary form, for a period of two (2) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by Federal Courts of the United States, Respondent shall furnish or otherwise make available for inspection and copying to duly authorized representatives of the Commission, and in the presence of counsel or other representative if Respondent so chooses, upon reasonable written notice by the Commission or its staff, all books, ledgers, accounts, correspondence, memoranda, financial reports, and other records or documents in its possession or control for the purpose of verifying any matter or statement contained in the reports required under section V of this Order.

## VII

### (Service of Cease and Desist Order)

Respondent is ordered and directed to:

(A) Serve, within thirty (30) days after the date of issuance of this Order, a copy of the Order upon each of its respective officers, directors, managing agents, agents and employees who have any responsibility for the

importation, marketing, distribution or sale of imported cellular radiotelephones, subassemblies thereof, or components thereof in the United States.

(B) Serve, within thirty (30) days after the succession of any of the persons referred to in paragraph VII(A), a copy of this Order upon each successor.

(C) Maintain such records as will show the name, title, and address of each person described in paragraph VII(A) and (B) above upon whom this Order has been served, together with the date on which service was made.

(D) The obligations set forth in paragraphs VII (B) and (C) above shall remain in effect until the day after the Commission issues its final determination in Investigation No. 337-TA-297, unless, pursuant to subsection (j)(3) of section 337 of the Tariff Act of 1930, the President notifies the Commission within 60 days after the date he receives this Order, that he disapproves this Order.

## VIII

### (Confidentiality)

Information obtained by the means provided for in sections V and VI of this Order will be made available only to the Commission and its authorized representatives, will be entitled to confidential treatment, and will not be divulged by any authorized representative of the Commission to any person other than duly authorized representatives of the Commission, except as may be required in the course of securing compliance with this Order, or as otherwise required by law. Disclosure hereunder will not be made by the Commission without ten (10) days prior notice in writing to Respondent.

## **IX**

### **(Enforcement)**

Violation of this Order may result in any of the actions specified in section 211.56 of the Commission's Interim Rules of Practice and Procedure, 53 Fed. Reg. 33075 (August 29, 1988), including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930 (19 U.S.C. § 1337(f)), and such other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information as required by this Order.

## **X**

### **(Modification)**

This Order may be modified by the Commission on its own motion or upon motion by any person pursuant to section 211.57 of the Commission's Interim Rules of Practice and Procedure, 53 Fed. Reg. 33076 (August 29, 1988).

## **XI**

### **(Bonding)**

With respect to cellular radiotelephones, components thereof, and subassemblies thereof imported prior to August 29, 1989, the conduct prohibited by paragraph III of this Order may be continued during the period the during which this order is in effect subject to Respondent posting a bond in the amount of twenty-five (25) percent of the entered value of the cellular radiotelephones, components thereof, and subassemblies thereof in question. This bond provision does not apply to conduct which is otherwise

permitted by paragraph IV of this Order. Cellular radiotelephones, components thereof, and subassemblies thereof imported on or after August 29, 1989, are subject to the entry bond as set forth in the limited temporary exclusion order issued by the Commission on August 29, 1989, and are not subject to this bond provision.


The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders (53 Fed. Reg. 49133-34 (Dec. 6, 1988)).

The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by paragraph III of this Order.

The bond is to be forfeit in the event that the President approves, or does not disapprove within the Presidential review period, the Commission's Orders of August 29, 1989, or any subsequent final order issued after the completion of Investigation No. 337-TA-297, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the President disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the President, upon service on Respondent of an Order issued by the Commission based upon application therefor made by Respondent to the Commission.

By Order of the Commission



Kenneth R. Mason  
Secretary

Issued: August 29, 1989



UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C. 20436

<hr/>	
In the Matter of	)
	)
CERTAIN CELLULAR RADIOTELEPHONES	)
AND SUBASSEMBLIES AND COMPONENT	)
PARTS THEREOF	)
<hr/>	

Investigation No. 337-TA-297

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Tandy Corporation, 1800 One Tandy Center, Fort Worth, Texas, 76102, cease and desist from importing, selling for importation, marketing, distributing, offering for sale, selling, or otherwise transferring in the United States certain cellular radiotelephones, subassemblies thereof, and components thereof, during the pendency of USITC Investigation No. 337-TA-297.

I

(Definitions)

As used in this Order:

- (A) "Commission" shall mean the United States International Trade Commission.
- (B) "Complainant" shall mean Motorola, Inc., Schaumburg, IL,.
- (C) "Respondent" shall mean Tandy Corporation, 1800 One Tandy Center, Fort Worth, Texas, 76102.
- (D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than the above Respondent or its majority owned and/or controlled subsidiaries, their successors, or assigns.

(E) "United States" shall mean the fifty states, the District of Columbia, and Puerto Rico.

## II

### (Applicability)

The provisions of this Order shall apply to Respondent and to its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors and assigns, and to each of them, and to all other persons who receive actual notice of this Order by service in accordance with section VII hereof.

## III

### (Conduct Prohibited)

Respondent shall not import into the United States cellular radiotelephones, subassemblies thereof, or components thereof, that infringe claims 62 and/or 77 of U.S. Letters Patent 4,523,155, and/or claim 18 of U.S. Letters Patent 4,636,593, except under license of the patent owner.

Respondent shall not market, distribute, offer for sale, sell, or otherwise transfer in the United States imported cellular radiotelephones, subassemblies thereof, or components thereof, that infringe claims 62 and/or 77 of U.S. Letters Patent 4,523,155, and/or claim 18 of U.S. Letters Patent 4,636,593, except under license of the patent owner.



#### IV

##### (Conduct Permitted)

Notwithstanding any other provisions of this Order, specific conduct otherwise prohibited by the terms of this Order, shall be permitted if, in a written instrument, such specific conduct is licensed or authorized by complainant or related to the importation or sale of cellular radiotelephones, subassemblies thereof, or components thereof by or for the United States.

#### V

##### (Reporting)

For purposes of this reporting requirement, each reporting period shall commence on the first day of January, and shall end on the following last day of December. The first report required under this section shall cover the period August 29, 1989, to December 31, 1989. This reporting requirement shall continue in force until the day after the Commission issues its final determination in Investigation No. 337-TA-297, unless, pursuant to subsection (j)(3) of section 337 of the Tariff Act of 1930, the President notifies the Commission within 60 days after the date he receives this Order, that he disapproves this Order.

Any failure to report shall constitute a violation of this Order.

Within thirty (30) days of the last day of each reporting period, Respondent shall report to the Commission the following:

(A) Its importations, measured in units, of cellular radiotelephone models designated, as of the date of this Order, CT-101, CT-201, CT-301

(Radio Shack); TC-1000, TC-2000 (Tandy); M-10, P-30 (Nokia); 412, 422, 432, 512 (Mobira);

(B) Its importations, measured in units, of subassemblies or components of cellular radiotelephones bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

(C) Its sales or other transfers in the United States, measured in units, of cellular radiotelephones bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

(D) Its sales or other transfers in the United States, measured in units, of subassemblies or components of cellular radiotelephones, bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

(E) All contracts, whether written or oral, entered into during the reporting period in question, to sell or otherwise transfer cellular radiotelephones bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

(F) All contracts, whether written or oral, entered into during the reporting period in question, to sell or otherwise transfer subassemblies or components of cellular radiotelephones bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

In connection with the importation and sales or other transfers referred to in paragraphs (A) through (F) above, Respondent shall provide the Commission with two copies of all invoices, delivery orders, bills of lading, and other document concerning the importation or sale in question. Such copies shall be attached to the reports required by paragraphs (A) through (F) above.

## VI

### (Compliance and Inspection)

(A) For the purposes of securing compliance with this Order, Respondent shall retain any and all records relating to the importation to or sale in the United States of cellular radiotelephones, subassemblies thereof, or components thereof referred to in paragraphs (V)(A) through (V)(F) above made and received in the usual and ordinary course of its business, whether in detail or in summary form, for a period of two (2) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by Federal Courts of the United States, Respondent shall furnish or otherwise make available for inspection and copying to duly authorized representatives of the Commission, and in the presence of counsel or other representative if Respondent so chooses, upon reasonable written notice by the Commission or its staff, all books, ledgers, accounts, correspondence, memoranda, financial reports, and other records or documents in its possession or control for the purpose of verifying any matter or statement contained in the reports required under section V of this Order.

## VII

### (Service of Cease and Desist Order)

Respondent is ordered and directed to:

(A) Serve, within thirty (30) days after the date of issuance of this Order, a copy of the Order upon each of its respective officers, directors, managing agents, agents and employees who have any responsibility for the

importation, marketing, distribution or sale of imported cellular radiotelephones, subassemblies thereof, or components thereof in the United States.

(B) Serve, within thirty (30) days after the succession of any of the persons referred to in paragraph VII(A), a copy of this Order upon each successor.

(C) Maintain such records as will show the name, title, and address of each person described in paragraph VII(A) and (B) above upon whom this Order has been served, together with the date on which service was made.

(D) The obligations set forth in paragraphs VII (B) and (C) above shall remain in effect until the day after the Commission issues its final determination in Investigation No. 337-TA-297, unless, pursuant to subsection (j)(3) of section 337 of the Tariff Act of 1930, the President notifies the Commission within 60 days after the date he receives this Order, that he disapproves this Order.

## VIII

### (Confidentiality)

Information obtained by the means provided for in sections V and VI of this Order will be made available only to the Commission and its authorized representatives, will be entitled to confidential treatment, and will not be divulged by any authorized representative of the Commission to any person other than duly authorized representatives of the Commission, except as may be required in the course of securing compliance with this Order, or as otherwise required by law. Disclosure hereunder will not be made by the Commission without ten (10) days prior notice in writing to Respondent.

## **IX**

### **(Enforcement)**

Violation of this Order may result in any of the actions specified in section 211.56 of the Commission's Interim Rules of Practice and Procedure, 53 Fed. Reg. 33075 (August 29, 1988), including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930 (19 U.S.C. § 1337(f)), and such other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information as required by this Order.

## **X**

### **(Modification)**

This Order may be modified by the Commission on its own motion or upon motion by any person pursuant to section 211.57 of the Commission's Interim Rules of Practice and Procedure, 53 Fed. Reg. 33076 (August 29, 1988).

## **XI**

### **(Bonding)**

With respect to cellular radiotelephones, components thereof, and subassemblies thereof imported prior to August 29, 1989, the conduct prohibited by paragraph III of this Order may be continued during the period the during which this order is in effect subject to Respondent posting a bond in the amount of twenty-five (25) percent of the entered value of the cellular radiotelephones, components thereof, and subassemblies thereof in question. This bond provision does not apply to conduct which is otherwise

permitted by paragraph IV of this Order. Cellular radiotelephones, components thereof, and subassemblies thereof imported on or after August 29, 1989, are subject to the entry bond as set forth in the limited temporary exclusion order issued by the Commission on August 29, 1989, and are not subject to this bond provision.


The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders (53 Fed. Reg. 49133-34 (Dec. 6, 1988)).

The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by paragraph III of this Order.

The bond is to be forfeit in the event that the President approves, or does not disapprove within the Presidential review period, the Commission's Orders of August 29, 1989, or any subsequent final order issued after the completion of Investigation No. 337-TA-297, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

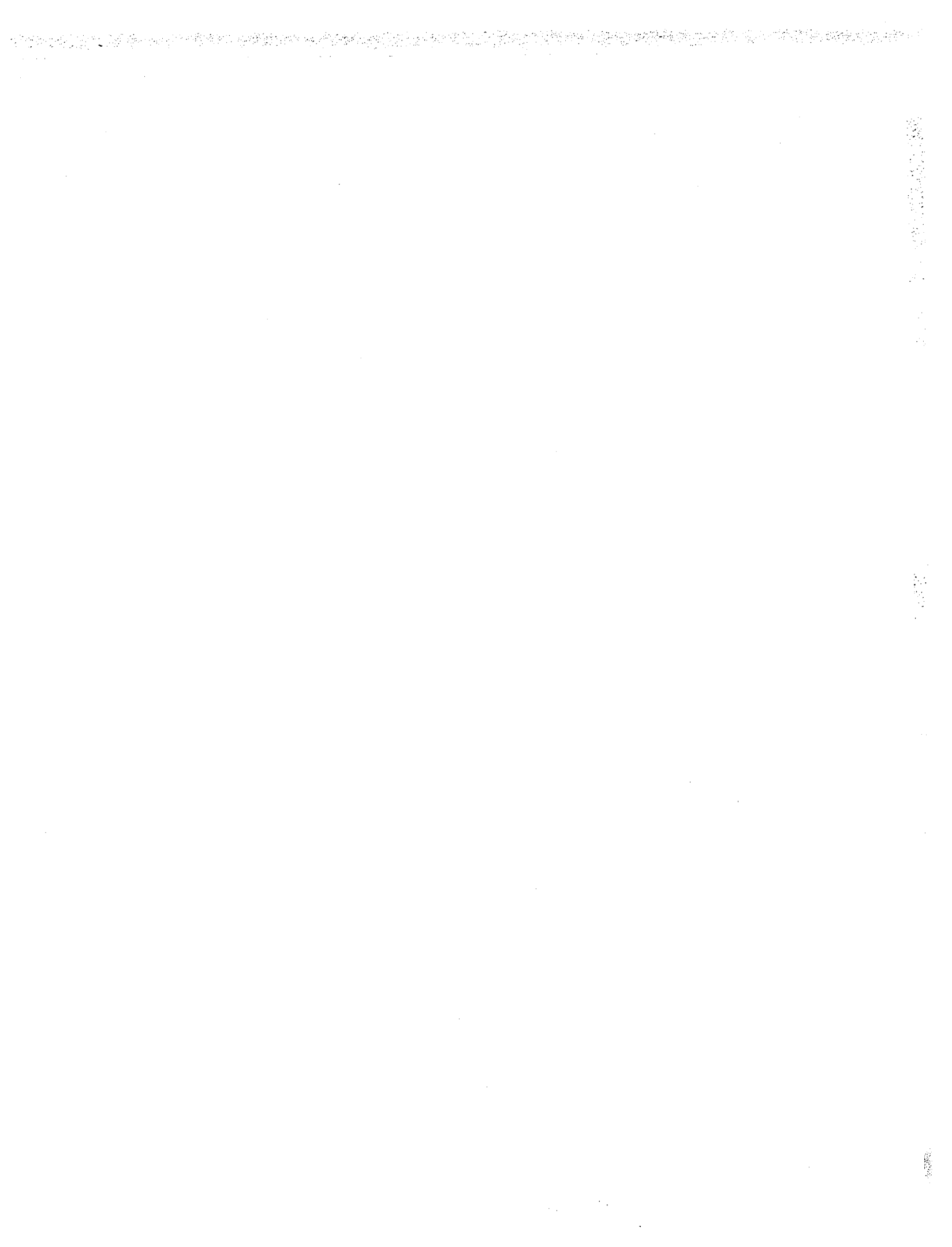
The bond is to be released in the event the President disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the President, upon service on Respondent of an Order issued by the Commission based upon application therefor made by Respondent to the Commission.

By Order of the Commission



Kenneth R. Mason  
Secretary

Issued: August 29, 1989





UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C. 20436

In the Matter of	)	
	)	
CERTAIN CELLULAR RADIOTELEPHONES	)	Investigation No. 337-TA-297
AND SUBASSEMBLIES AND COMPONENT	)	
PARTS THEREOF	)	

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Nokia-Mobira, Inc., 2300 Tall Pines Drive, Suite 100, Largo, Florida, 34641, cease and desist from importing, selling for importation, marketing, distributing, offering for sale, selling, or otherwise transferring in the United States certain cellular radiotelephones, subassemblies thereof, and components thereof, during the pendency of USITC Investigation No. 337-TA-297.

I

(Definitions)

As used in this Order:

- (A) "Commission" shall mean the United States International Trade Commission.
- (B) "Complainant" shall mean Motorola, Inc., Schaumburg, IL,.
- (C) "Respondent" shall mean Nokia-Mobira, Inc., 2300 Tall Pines Drive, Suite 100, Largo, Florida, 34641.
- (D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than the above Respondent or its majority owned and/or controlled subsidiaries, their successors, or assigns.

(E) "United States" shall mean the fifty states, the District of Columbia, and Puerto Rico.

## II

### (Applicability)

The provisions of this Order shall apply to Respondent and to its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors and assigns, and to each of them, and to all other persons who receive actual notice of this Order by service in accordance with section VII hereof.

## III

### (Conduct Prohibited)

Respondent shall not import into the United States cellular radiotelephones, subassemblies thereof, or components thereof, that infringe claims 62 and/or 77 of U.S. Letters Patent 4,523,155, and/or claim 18 of U.S. Letters Patent 4,636,593, except under license of the patent owner.

Respondent shall not market, distribute, offer for sale, sell, or otherwise transfer in the United States imported cellular radiotelephones, subassemblies thereof, or components thereof, that infringe claims 62 and/or 77 of U.S. Letters Patent 4,523,155, and/or claim 18 of U.S. Letters Patent 4,636,593, except under license of the patent owner.

#### IV

##### (Conduct Permitted)

Notwithstanding any other provisions of this Order, specific conduct otherwise prohibited by the terms of this Order, shall be permitted if, in a written instrument, such specific conduct is licensed or authorized by complainant or related to the importation or sale of cellular radiotelephones, subassemblies thereof, or components thereof by or for the United States.

#### V

##### (Reporting)

For purposes of this reporting requirement, each reporting period shall commence on the first day of January, and shall end on the following last day of December. The first report required under this section shall cover the period August 29, 1989, to December 31, 1989. This reporting requirement shall continue in force until the day after the Commission issues its final determination in Investigation No. 337-TA-297, unless, pursuant to subsection (j)(3) of section 337 of the Tariff Act of 1930, the President notifies the Commission within 60 days after the date he receives this Order, that he disapproves this Order.

Any failure to report shall constitute a violation of this Order.

Within thirty (30) days of the last day of each reporting period, Respondent shall report to the Commission the following:

(A) Its importations, measured in units, of cellular radiotelephone models designated, as of the date of this Order, CT-101, CT-201, CT-301

(Radio Shack); TC-1000, TC-2000 (Tandy); M-10, P-30 (Nokia); 412, 422, 432, 512 (Mobira);

(B) Its importations, measured in units, of subassemblies or components of cellular radiotelephones bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

(C) Its sales or other transfers in the United States, measured in units, of cellular radiotelephones, bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

(D) Its sales or other transfers in the United States, measured in units, of subassemblies or components of cellular radiotelephones, bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

(E) All contracts, whether written or oral, entered into during the reporting period in question, to sell or otherwise transfer cellular radiotelephones bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

(F) All contracts, whether written or oral, entered into during the reporting period in question, to sell or otherwise transfer subassemblies or components of cellular radiotelephones bearing, as of the date of this Order, the model designations identified in paragraph (A) above;

In connection with the importation and sales or other transfers referred to in paragraphs (A) through (F) above, Respondent shall provide the Commission with two copies of all invoices, delivery orders, bills of lading, and other document concerning the importation or sale in question. Such copies shall be attached to the reports required by paragraphs (A) through (F) above.

## VI

### (Compliance and Inspection)

(A) For the purposes of securing compliance with this Order, Respondent shall retain any and all records relating to the importation to or sale in the United States of cellular radiotelephones, subassemblies thereof, or components thereof referred to in paragraphs (V)(A) through (V)(F) above made and received in the usual and ordinary course of its business, whether in detail or in summary form, for a period of two (2) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by Federal Courts of the United States, Respondent shall furnish or otherwise make available for inspection and copying to duly authorized representatives of the Commission, and in the presence of counsel or other representative if Respondent so chooses, upon reasonable written notice by the Commission or its staff, all books, ledgers, accounts, correspondence, memoranda, financial reports, and other records or documents in its possession or control for the purpose of verifying any matter or statement contained in the reports required under section V of this Order.

## VII

### (Service of Cease and Desist Order)

Respondent is ordered and directed to:

(A) Serve, within thirty (30) days after the date of issuance of this Order, a copy of the Order upon each of its respective officers, directors, managing agents, agents and employees who have any responsibility for the

importation, marketing, distribution or sale of imported cellular radiotelephones, subassemblies thereof, or components thereof in the United States.

(B) Serve, within thirty (30) days after the succession of any of the persons referred to in paragraph VII(A), a copy of this Order upon each successor.

(C) Maintain such records as will show the name, title, and address of each person described in paragraph VII(A) and (B) above upon whom this Order has been served, together with the date on which service was made.

(D) The obligations set forth in paragraphs VII (B) and (C) above shall remain in effect until the day after the Commission issues its final determination in Investigation No. 337-TA-297, unless, pursuant to subsection (j)(3) of section 337 of the Tariff Act of 1930, the President notifies the Commission within 60 days after the date he receives this Order, that he disapproves this Order.

## VIII

### (Confidentiality)

Information obtained by the means provided for in sections V and VI of this Order will be made available only to the Commission and its authorized representatives, will be entitled to confidential treatment, and will not be divulged by any authorized representative of the Commission to any person other than duly authorized representatives of the Commission, except as may be required in the course of securing compliance with this Order, or as otherwise required by law. Disclosure hereunder will not be made by the Commission without ten (10) days prior notice in writing to Respondent.

## **IX**

### **(Enforcement)**

Violation of this Order may result in any of the actions specified in section 211.56 of the Commission's Interim Rules of Practice and Procedure, 53 Fed. Reg. 33075 (August 29, 1988), including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930 (19 U.S.C. § 1337(f)), and such other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information as required by this Order.

## **X**

### **(Modification)**

This Order may be modified by the Commission on its own motion or upon motion by any person pursuant to section 211.57 of the Commission's Interim Rules of Practice and Procedure, 53 Fed. Reg. 33076 (August 29, 1988).

## **XI**

### **(Bonding)**

With respect to cellular radiotelephones, components thereof, and subassemblies thereof imported prior to August 29, 1989, the conduct prohibited by paragraph III of this Order may be continued during the period the during which this order is in effect subject to Respondent posting a bond in the amount of twenty-five (25) percent of the entered value of the cellular radiotelephones, components thereof, and subassemblies thereof in question. This bond provision does not apply to conduct which is otherwise

permitted by paragraph IV of this Order. Cellular radiotelephones, components thereof, and subassemblies thereof imported on or after August 29, 1989, are subject to the entry bond as set forth in the limited temporary exclusion order issued by the Commission on August 29, 1989, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders (53 Fed. Reg. 49133-34 (Dec. 6, 1988)).


The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by paragraph III of this Order.

The bond is to be forfeit in the event that the President approves, or does not disapprove within the Presidential review period, the Commission's Orders of August 29, 1989, or any subsequent final order issued after the completion of Investigation No. 337-TA-297, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the President disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the President, upon service on Respondent of an Order issued by the Commission based upon application therefor made by Respondent to the Commission.



By Order of the Commission



Kenneth R. Mason  
Secretary

Issued: August 29, 1989



RECEIVED  
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OFFICE OF THE SECRETARY  
U.S. INTL. TRADE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C. 20436

In the Matter of )

CERTAIN CELLULAR RADIOTELEPHONES )  
AND SUBASSEMBLIES AND COMPONENT )  
PARTS THEREOF )

Investigation No. 337-TA-297

NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW  
INITIAL DETERMINATION TERMINATING INVESTIGATION ON THE BASIS OF A  
SETTLEMENT AGREEMENT

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) terminating the above-captioned investigation on the basis of a settlement agreement.


FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1098.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and in section 210.53(h) of the Commission's Interim Rules of Practice and Procedure (19 C.F.R. 210.53(h)).

On November 13, 1989, all of the private parties in the investigation filed a joint motion to terminate the investigation on the basis of a settlement agreement. On November 27, 1989, the presiding ALJ issued an ID (Order No. 36) terminating the investigation on the basis of the settlement agreement. No petitions for review, or agency or public comments were filed.

Copies of the non-confidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

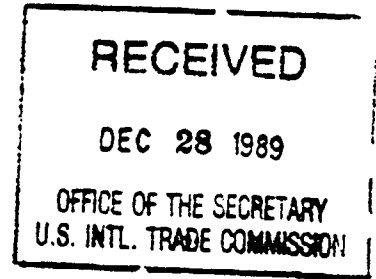
By order of the Commission.



Kenneth R. Mason  
Secretary

Issued: December 29, 1989

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C. 20436



In the Matter of )  
 )  
 )  
CERTAIN CELLULAR RADIOTELEPHONES )  
AND SUBASSEMBLIES AND COMPONENT )  
PARTS THEREOF )  
 )

Investigation No. 337-TA-297

**NOTICE OF COMMISSION DECISION VACATING  
TEMPORARY LIMITED EXCLUSION ORDER  
AND TEMPORARY CEASE AND DESIST ORDERS  
AND RELEASING, WITHOUT FORFEITURE, BONDS POSTED  
PURSUANT TO ITS DETERMINATION AND ORDERS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to vacate the temporary limited exclusion order and temporary cease and desist orders issued August 29, 1989, in the above-captioned investigation, and to release, without forfeiture, the bonds posted by parties pursuant to the Commission's determination and orders.

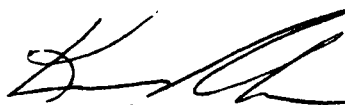
FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1093.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337).

The Commission, having determined not to review the initial determination terminating this investigation on the basis of a settlement agreement, further determined to vacate the temporary relief issued in this investigation, and release, without forfeiture, the bonds posted by the parties pursuant to the the determination and temporary relief orders issued August 29, 1989.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.



Kenneth R. Mason  
Secretary

Issued: December 29, 1989

PUBLIC VERSION

In the Matter of	)	
	)	
CERTAIN CELLULAR RADIOTELEPHONES	)	Investigation No. 337-TA-297
AND SUBASSEMBLIES AND COMPONENT	)	
PARTS THEREOF	)	
	)	

COMMISSION OPINION ON  
REMEDY, THE PUBLIC INTEREST, AND RESPONDENT S BONDING

INTRODUCTION

On April 17, 1989, Motorola, Inc. filed a complaint and a motion for temporary relief with the Commission alleging violations of section 337 in the importation and sale of certain cellular radiotelephones and subassemblies and component parts thereof. Motorola's complaint alleged infringement of seven U.S. patents. The motion for temporary relief was limited to 4 claims of 3 patents: claims 62 and 77 of U.S. Letters Patent 4,523,155 (the Walczak patent); claim 18 of U.S. Letters Patent 4,636,593 (the Novak patent); and the sole claim of U.S. Letters Patent Des. 269,873.

Pursuant to Commission interim rule 210.24(e)(8), the Commission provisionally accepted Motorola's motion for temporary relief at the Commission meeting on May 23, 1989. The Commission also instituted an investigation into the allegations of Motorola's complaint and published a notice of investigation in the Federal Register. 54 F.R. 23292-93 (May 31, 1989). The notice named the following respondents: (1) Nokia Corporation of Helsinki, Finland; (2) Nokia-Mobira Oy of Salo, Finland; (3) Nokia, Inc. of Basking Ridge, New Jersey; (4) Nokia-Mobira, Inc. of Largo, Florida; (5) Tandy Mobira Communications Corporation of Masan, The Republic of Korea; (6) Tandy

PUBLIC VERSION

2

Corporation of Fort Worth, Texas; and (7) A & A International of Fort Worth, Texas. 1/

The presiding administrative law judge (ALJ) held an evidentiary hearing on Motorola's motion for temporary relief from July 7 to July 12, 1989. All respondents actively participated in the hearing. The Commission received submissions on the issues of remedy, the public interest, and bonding, from all parties on July 31, 1989, in accordance with Commission interim rule 210.24(e)(18)(ii).

On August 9, 1989, the ALJ issued his initial determination (ID) granting Motorola's motion for temporary relief. All parties filed written comments and responses to comments on the ID.

The Commission, having considered the ID, the comments and responses to comments of the parties, and the record in this investigation, determined that there were no errors of law or policy reasons warranting modification or vacatur of the ID. Consequently, pursuant to Commission interim rule 210.24(e)(17)(ii), the ID became the Commission's determination on August 29, 1989.

The Commission, having determined that there is reason to believe that there is a violation of section 337 in the importation, sale for importation, or sale in the United States of the accused cellular radiotelephones, subassemblies thereof, or component parts thereof, and having determined that temporary relief is warranted, considered the issues of the appropriate form

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1/ During the proceedings the respondents were represented in two groups, the Nokia group and the Tandy group. Hereinafter, respondents (1)-(5) are referred to as the Nokia respondents, and respondents (6) and (7) are referred to as the Tandy respondents.



PUBLIC VERSION

3

of such relief, whether the public interest precludes issuance of such relief, and respondents' bond during the period such relief is in effect.

REMEDY

Motorola asked the Commission to issue a temporary limited exclusion order barring the importation of the accused devices, and subassemblies and components thereof, except under bond. Motorola also asked the Commission to issue a temporary cease and desist order prohibiting the sale for importation or sale or transfer within the United States of the accused devices, and subassemblies and components thereof, except under bond. Motorola specifically requested that the temporary relief include the transceiver and control unit subassemblies, and component parts such as circuit boards containing control circuitry that infringes the Walczak patent, or keyboards that infringe the Novak patent, in order to prevent circumvention of the orders.

The Commission investigative attorney supported Motorola with respect to the appropriate form of temporary relief, i.e., he supported issuance of a temporary limited exclusion order, and temporary cease and desist orders to all domestic respondents.

The Nokia respondents argued that any remedy should be limited to the specific models of cellular radiotelephones as to which the ALJ or Commission determined complainant has a likelihood of success on the merits. They specifically requested that the Commission exclude from the scope of any temporary relief the M-11 and certain unspecified other new models which they plan to import in the future. In addition, the Nokia respondents asked that the Commission include a provision allowing certification under oath that any

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cellular radiotelephones they wish to import contain only non-infringing components. They requested that if such certification is provided, no bond be required.

The Nokia respondents also argued that a cease and desist order is not appropriate in this investigation, arguing that such orders should be limited to cases where there is evidence of stockpiling of the product by respondents in the United States. They asserted that there has been no stockpiling in this case, and that therefore a cease and desist order is not warranted.

Tandy asserted that if any remedy is issued, only a temporary limited exclusion order and temporary cease and desist order directed at allegedly infringing cellular radiotelephones would be appropriate.

We determine that a temporary limited exclusion order, prohibiting the importation, except under license, of cellular radiotelephones, subassemblies thereof, and components thereof, that infringe the relevant claims of the Walczak and Novak patents is the appropriate measure of temporary relief in this investigation. We also determine that temporary cease and desist orders against all domestic respondents, prohibiting, except under license, the sale or transfer within the United States of imported, cellular radiotelephones, subassemblies thereof, and components thereof, that infringe the relevant claims of the Walczak and Novak patents, are warranted.

It having been established that there is reason to believe that a violation of section 337 exists, we believe that a temporary limited exclusion order is warranted. Motorola has not requested a general temporary exclusion order. Moreover, the criteria the Commission has established for issuance of a general exclusion order are not met in this case. See Certain Airless Paint

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Spray Pumps and Components Thereof, Inv. No. 337-TA-90, USITC Pub. 1199

(November 1981) at 17-20 for a discussion of those criteria.

In addition, there is evidence in the record indicating that the domestic respondents [

] Under the 1988 amendments to section 337, the Commission can issue both exclusion and cease and desist orders to remedy the same unfair act. 19 U.S.C. § 1337(f). Therefore, we believe that temporary cease and desist orders are also warranted, to prevent the domestic respondents from selling off such inventories and thereby causing harm to complainant during the pendency of the investigation.

We further determine that neither the temporary limited exclusion order nor the temporary cease and desist orders should specify particular models of respondents' cellular radiotelephones to which they apply. An exclusion or cease and desist order which specifically lists the models to which it applies merely invites an unscrupulous respondent to change the model numbers to circumvent the order. 2/ Commission exclusion orders are intended, upon a finding of a violation of section 337 (or in this case, reason to believe a violation exists), to prevent future violations with respect to the products involved in the investigation. Commission exclusion orders are not limited in

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2/ We do not mean to suggest that any of the respondents in this investigation would behave in such a fashion. However, we see no reason to issue orders listing specific models, given the potential for circumvention and abuse.

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their effect to the specific goods as to which the question of patent infringement has been adjudicated. 3/

We also have not included a certification provision of the type requested by the Nokia respondents. As with an order which lists the specific models to be excluded, a certification provision is open to circumvention and abuse. While the Commission has on occasion included certification provisions in exclusion orders, the circumstances have been different than those in this case. 4/ The Customs Service, which enforces Commission exclusion orders, has the means to determine whether a given article falls within the scope of a Commission exclusion order. In addition, the Commission has formal procedures for determining whether a given article is subject to exclusion, and for rendering assistance and advice to Customs in its enforcement of Commission exclusion orders.

THE PUBLIC INTEREST

Prior to issuing temporary relief, the Commission is required to consider the effect of such relief on the public health and welfare,

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3/ With respect to the Nokia M-11 cellular radiotelephone, we note that there is no finding in this investigation that that model does not infringe the patents at issue in the temporary relief proceedings. The ALJ did not make any findings specific to the question of infringement concerning the M-11 model. Consequently, there is no basis for exemption of that model from the scope of the order. This conclusion does not foreclose the possibility that Customs, in enforcing the temporary exclusion order, may determine that the M-11 model, or some other unspecified model as to which there were no specific findings concerning infringement, is not within the scope of the Commission's order.

4/ The Commission has allowed certification in the context of products manufactured according to a process which the Commission has determined does not infringe a process patent underlying an exclusion order, and in the case of imports of non-infringing downstream products which may, but need not, contain an infringing part or component.

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competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers. 19 U.S.C. § 1337(e)(1), (f)(1).

Motorola argued that the public interest will be served by the issuance of temporary relief in that the integrity of the U.S. patent laws will be preserved. Motorola argued that temporary relief will have no adverse effect on the public health and welfare, will not significantly reduce competitive conditions in the United States economy, and will benefit the production of like or directly competitive articles in the United States. Motorola noted that respondents [

] Motorola stated that it has sufficient capacity to meet the U.S. demand for cellular radiotelephones now sold by respondents, and that there are numerous other competitors in the U.S. market.

The IA also argued that temporary relief would not adversely affect the public interest, noting the many competitors in the market, and that new entrants are expected.

The Nokia respondents argued that the public interest would be damaged by the issuance of temporary relief in this case. They argued that they have played a pioneering role in the development of cellular radiotelephone technology, offer many innovative features to the U.S. market, have made significant investments directed at the U.S. market, and would be unable to contribute to the technological development of the U.S. market if temporary relief were issued. They argued that U.S. customers would be denied access to

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innovative products, a particularly unfortunate result in this case, since Motorola's Walczak and Novak patents do not protect inventions important to the public. Essentially, the Nokia respondents argued that since the alleged unfair acts do not harm the domestic industry, temporary relief would needlessly harm U.S. consumers and competition.

The Tandy respondents argued that the public interest dictates against temporary relief in this case, because it would restrict competition in the U.S. market without any benefit to Motorola, since Motorola would not gain the sales lost by Tandy in view of the many other suppliers in existence.

We determine that the statutory public interest factors do not preclude issuance of temporary relief in this case. Cellular radiotelephones are not products which have significant implications for the public health and welfare. There are numerous competitors in the U.S. market who will not be affected by the issuance of temporary relief. While U.S. consumers may be deprived of respondents' cellular radiotelephones during the period in which temporary relief is in effect (unless respondents choose to continue importing and selling under bond), there is in general no right of consumers to avail themselves of infringing technology. Motorola and the non-respondent competitors in the U.S. market have sufficient capacity to ensure that U.S. demand for cellular radiotelephones is met.

RESPONDENTS BOND

Motorola proposed a bond of 91 percent of the entered value of respondents' cellular radiotelephones or, in the alternative, a specific dollar amount, which is confidential, per unit. Motorola based the 91 percent figure on a comparison of its average selling price in June 1988 with the

average selling price of respondents' cellular radiotelephones as of July 1989. To arrive at the alternative dollar amount, Motorola calculated average costs per unit for itself, and a weighted average cost, based on transfer prices from Nokia and Tandy to Tandy Mobira Corp.

The IA proposed a bond of [] percent of the entered value of respondents' cellular radiotelephones. He noted that the bonding requirement is intended, to the extent possible, to offset the competitive advantage enjoyed by persons benefitting from the alleged unfair methods of competition and unfair acts in the importation of the articles. The IA noted that measurement of competitive advantage is complex and could be protracted. He further commented that the use of price differentials as a surrogate in this investigation is problematic, because of the several different levels of sales, the "bundling" of products with different service and warranty provisions for different customers, the multitude of models available, and the fact that prices are often unrelated to cost advantages because of the effects of service costs on equipment prices. Consequently, the IA derived per unit costs from complainant's and respondents' 1988 sales and compared them to arrive at the [] percent figure.

The Nokia respondents argued that no bond is appropriate. They asserted that different considerations govern the bonding provision for temporary relief than for permanent relief, given that no finding of violation of section 337 has been made, and that the bond is likely to be in effect for a significant period of time, i.e., 9 to 15 months. In addition, the Nokia respondents noted that should it finally be determined that the issuance of temporary relief was in error, respondents cannot recover for damages they

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suffered during the period temporary relief was in effect, while complainant can recover damages in the concurrent federal district court action. The Nokia respondents also argued that no bond is appropriate because they do not benefit from any competitive advantage. They asserted that they have not undersold complainant's products, and have no cost advantages over complainant. Finally, they argued that no bond is appropriate because of Motorola's alleged harassment of respondents during the proceedings on temporary relief. The Nokia respondents suggested a bond of at most no more than one dollar per unit (\$1.00), arguing that this represents the cost savings attributable to the allegedly infringing components.

Tandy argued that since it does not undersell the Motorola cellular radiotelephones, a bond of zero percent is appropriate.

The bonding determination in this investigation is particularly difficult. The ALJ chose, in his discretion, not to take evidence, receive argument, or make findings, with respect to the appropriate level of respondents' bond. <sup>5/</sup> The parties' briefs did not provide much information as to possible bases or methods for calculating an appropriate bond. The Commission has reviewed relevant portions of the record, including the transcript and exhibits, in an effort to establish an appropriate bond rate.

We determine not to adopt complainant's proposed bond of 91 percent. We believe this figure is based on an unreasonable comparison of Motorola's prices as of June 1988, before the allegedly deleterious effects of

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<sup>5/</sup> The Commission's interim rules give the ALJ discretion to decide whether to accept or consider evidence on the issues of the statutory public interest factors and respondents' bond. Commission interim rule 21024(e)(18)(i) 53 Fed. Reg. 49133 (Dec. 6, 1988).



respondents' entry into the U.S. market were felt, with respondents' prices as of approximately June 1989, after a full year of competition and learning curve effects had affected respondents' prices. We do not believe the 91 percent figure reasonably relates to the competitive advantage enjoyed by respondents.

Similarly, we are not satisfied with either complainants' or the IA's comparison of cost figures in order to assess the competitive advantage accruing to respondents. The IA based his analysis on figures for complainant's and respondents' total year 1988 sales in units and dollars. The IA calculated respondents' average 1988 cost by dividing the F.O.B. value of their 1988 imports by the number of units imported, and derived complainant's average cost by subtracting pre-tax profits from domestic sales revenues to arrive at a total cost figure, and then dividing that by the number of domestic sales. We are not satisfied that these figures represent a reasonable surrogate for actual costs, and therefore do not believe that they are a sufficiently reasonable basis for calculating a bond.

Motorola also proposed a dollar amount per unit as a bond, based on a cost differential. Motorola derived its own cost figures by dividing its manufacturing cost by the number of units shipped through May 1989. Respondents' costs were derived by taking a weighted average of the transfer prices received by Tandy Mobira Corporation in Korea from Nokia and Tandy on imports of accused cellular radiotelephones, and subtracting an imputed profit margin and a further percentage figure, which Motorola argued represented the amount Tandy Mobira Corporation's prices could be reduced in the event of a price war (i.e., this amount represents a "buffer" allegedly built into the

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transfer price which could be eliminated without selling below manufacturing costs). Motorola did not specify the time period for this calculation of respondents' costs. We are not satisfied with this calculation, as it is not evident how these "transfer prices" were calculated. In addition, it is unclear what basis underlies the imputed profit figure, and the additional deduction seems arbitrary, being based on a memorandum from October 1988 concerning Tandy Mobira Corporation's plans and available cash and equity at that time.

We agree with the IA's conclusion that a comparison of wholesale or retail prices is not an acceptable basis for calculating a bond in this investigation, given the multiplicity of models, channels of distribution, and

