

**CONCURRING STATEMENT OF COMMISSIONERS ROBERT PITOFSKY,  
SHEILA F. ANTHONY AND MOZELLE W. THOMPSON**

*IN THE MATTER OF*

STONE CONTAINER CORPORATION

DOCKET NO. C-3806

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The Commission recognizes that in invitation to collude cases, a fundamental question is whether the alleged "invitation" was merely legitimate business conduct. Our colleague, Commissioner Orson Swindle, dissents in this matter on grounds that Stone Container Corporation's behavior in curtailing its own production, and simultaneously purchasing excess inventory from its competitors, was conduct that did not clearly lack an "independent legitimate business reason." As the Analysis To Aid Public Comment emphasized, however, it would have been more economical for Stone Container to keep its plants open than to purchase inventory from competitors, and competitors would have recognized that fact. This conduct and other statements by Stone Container made clear that its goal was to manipulate industry supply conditions to invite a coordinated price increase. It is for these reasons that we now have accorded final approval to the complaint and consent order.

While there may be some difference of view on the facts in this matter, we agree with Commissioner Swindle that there can be no implied invitation to collude when the actions that amount to the invitation are justified by business considerations.