

IN THE MATTER OF
MEDICAL STAFF OF JOHN C. LINCOLN HOSPITAL &
HEALTH CENTER

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3166. Complaint, Sept. 26, 1985—Decision, Sept. 26, 1985

This consent order requires an unincorporated association of physicians and other practitioners who have been granted privileges by John C. Lincoln Hospital & Health Center in Phoenix, Ariz. to admit and attend patients, among other things, to cease threatening or participating in any: (1) boycott or concerted refusal to deal, including a refusal to refer, admit or treat patients; (2) unreasonably discriminatory action against a health care facility or professional; or (3) coercive action to influence any reimbursement or insurance determination, if the purpose or effect of such conduct would be to impede the development or operation of an urgent care center or other health care facility or institution in the Arizona counties of Maricopa, Pinal, Yavapai or Gila. Respondent is not prohibited from participating in any policy-making or medical review activities at the hospital, when such conduct does not constitute, and is not part of, a boycott or refusal to deal. Additionally, respondent is required to file compliance reports with the Commission at specified times and provide copies of the complaint and order to all present and future members of the Medical Staff.

Appearances

For the Commission: *Raymond L. Randall and Nina B. Hale.*

For the respondents: *Gerald A. Gaffaney, Mariscal, Weeks, McIntyre & Friedlander, Phoenix, Ariz.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41 *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the named respondent has violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows:

PARAGRAPH 1. John C. Lincoln Hospital & Health Center (hereinafter "Lincoln Hospital" or "the Hospital") is a nonprofit corporation organized and existing under the laws of the State of Arizona and operating a general acute care hospital. The principal physical facili-

ties of Lincoln Hospital are located at 9211 North Second Street, Phoenix, Arizona.

PAR. 2. Respondent Medical Staff of John C. Lincoln Hospital & Health Center (hereinafter "Medical Staff") is an unincorporated association, organized and existing under the laws of the State of Arizona, and is located at Lincoln Hospital, Phoenix, Arizona. It is composed of the physicians and other practitioners who have been granted privileges to attend patients at Lincoln Hospital.

PAR. 3. Most, if not all, of the members of the Medical Staff are engaged in the business of providing medical services for a fee. Except to the extent that competition has been restrained as herein alleged, most, if not all, of the Medical Staff's members have been and are now in competition among themselves and other health care providers in the Phoenix metropolitan area.

PAR. 4. The Medical Staff's purposes include providing the organizational structure through which the "benefits of membership on the Staff may be obtained by individual practitioners" and providing "a means through which the Medical Staff may participate in the Hospital's policy-making and planning process." By virtue of its purposes and activities, the Medical Staff is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, and is subject to the Commission's jurisdiction.

PAR. 5. In the course and conduct of their businesses and professions, physicians in the Phoenix metropolitan area charge fees and collect payments that, in substantial part, are paid directly or indirectly with federal funds or funds received interstate from insurance companies, employers, and other payers. The flow of said funds is affected by competition among physicians in the Phoenix metropolitan area and by the acts and practices of the Medical Staff and its members as hereinafter alleged. Said acts and practices are in commerce or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 6. In December 1982, the Board of Directors of Lincoln Hospital announced its plan to operate an urgent care center approximately three miles south of the hospital. The urgent care center, which opened on March 21, 1983, was designed to provide treatment to patients with urgent, but not life-threatening, conditions without the need for an appointment.

PAR. 7. Beginning in January 1983, the Medical Staff, acting as a combination of its members or in conspiracy with at least some of its members or others, joined in a common plan to coerce, intimidate, and threaten to boycott Lincoln Hospital in order to induce cancellation of the Hospital's involvement with any urgent care center in competition with members of the Medical Staff.

PAR. 8. The Medical Staff and members of the Medical Staff engaged in the following conduct, among other things, in furtherance of the aforesaid combination or conspiracy:

A. At a special meeting of the Medical Staff's Executive Committee on January 31, 1983, physicians of the Executive Committee and the Medical Staff's Family Practice Department expressed "concern" about the "impossibility" of their continuing to "support" with admissions a hospital engaged in competition with them and adopted a resolution that Lincoln Hospital should not engage in the "corporate practice of medicine" in "competition with private physicians who support the hospital."

B. On February 3, 1983, the Medical Staff Executive Committee, which is empowered to represent and act on behalf of the Medical Staff, voted that the Hospital's plans for the urgent care center were "not acceptable" to the Medical Staff.

C. On March 29, 1983, a member of the Medical Staff transmitted to each member of Lincoln Hospital's board of directors a document, which he claimed reflected the attitude of Medical Staff members, that (1) criticized the planned urgent care center and (2) stated that physicians would "take their patients (and their patient-generated revenues) to a friendlier competing facility."

D. On March 31, 1983, the Medical Staff Executive Committee voted that the Hospital should close the urgent care center.

E. On April 11, 1983, a Medical Staff member wrote to every Lincoln Hospital board member that Lincoln Hospital could "ill afford" any "alienation" of its Medical Staff in light of a new competing hospital being opened nearby, and cited an attached "position paper" adopted by the Maricopa County Medical Society recommending that physicians "not support" facilities that engage in "unfair competition" with them and that physicians should "stand together" as "admitters" of patients to such hospitals.

F. In April 1983, other members of the Medical Staff wrote letters to the members of the Lincoln Hospital board resigning from the Medical Staff or threatening to cease admitting patients to the Hospital because of the Hospital's operation of the urgent care center.

PAR. 9. On April 15, 1983, as a result of the aforesaid combination or conspiracy and conduct, the Hospital announced the closing of its urgent care center.

PAR. 10. The purposes or effects and the tendency and capacity of the combination or conspiracy and acts and practices described in Paragraphs Seven and Eight are and have been to restrain trade unreasonably and hinder competition in the provision of health care

services in the Phoenix metropolitan area, and to deprive consumers of the benefits of competition in the following ways, among others:

A. Patients have been limited in their ability to choose among a variety of alternative types of health care facilities competing on the basis of price, service, and quality;

B. Other hospitals may be deterred from operating similar facilities that might compete with the private practices of physicians on medical staffs;

C. The development of a competitive, convenient, cost-effective and innovative form of health care facility has been hindered;

D. Lincoln Hospital's ability to compete with other hospitals in the Phoenix metropolitan area has been restrained.

PAR. 11. The combination or conspiracy described above constitutes an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. Such combination or conspiracy is continuing and will continue absent the entry against Respondent of appropriate relief.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules the Commission

hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Medical Staff of John C. Lincoln Hospital & Health Center is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arizona, with its office and principal place of business located at 9211 North Second Street, in the city of Phoenix, State of Arizona.

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

ORDER

I.

It is ordered, That for purposes of this order, the following definitions shall apply:

A. *Respondent or the Medical Staff* means the Medical Staff of John C. Lincoln Hospital & Health Center, its officers, committees, representatives, delegates, agents, employees, successors, or assigns. The Medical Staff is an unincorporated association of physicians and other practitioners who have been granted privileges by John C. Lincoln Hospital & Health Center to admit and attend patients in John C. Lincoln Hospital & Health Center.

B. *Lincoln Hospital* means John C. Lincoln Hospital & Health Center, a non-profit corporation organized and existing under and by virtue of the laws of the State of Arizona that operates a general acute care hospital.

C. *Urgent care center* means a freestanding health care delivery facility that is designed and staffed to provide treatment to patients with non-life threatening, but nevertheless urgent, conditions on a non-appointment, episodic basis.

D. *Corrective action* means action taken pursuant to and in conformance with the Medical Staff's bylaws against any person with clinical privileges at Lincoln Hospital who fails to provide evidence of eligibility to purchase malpractice insurance or whose activities or professional conduct are detrimental to patient safety, the delivery of quality patient care, or are unreasonably disruptive to the operation of Lincoln Hospital.

II.

It is ordered, That Respondent shall cease and desist from, directly or indirectly or through any device:

A. Making, or joining in any plan to make, any express or implied threat of any unreasonably discriminatory action against a health care facility, institution, or professional, any coercive action to influence any reimbursement or insurance determination, or any boycott or concerted refusal to deal, including a refusal to refer, admit, or treat patients, or

B. Suggesting, encouraging, initiating, engaging in, or participating in any unreasonably discriminatory action against a health care facility, institution, or professional, any coercive action to influence any reimbursement or insurance determination, or any boycott or concerted refusal to deal, including a refusal to refer, admit, or treat patients,

for the purpose of, or with the effect or likely effect of, impeding the development or operation of an urgent care center or other health care facility or institution in the Arizona counties of Maricopa, Pinal, Yavapai, or Gila.

III.

It is further ordered, That this order shall not be construed to prohibit Respondent or its members from engaging, pursuant to the Medical Staff's bylaws, in credentialing, corrective action, utilization review, quality assurance, peer review, or hospital policy-making activities at Lincoln Hospital, where such conduct neither constitutes nor is part of any boycott, concerted refusal to deal, discrimination, or coercion, the purpose, effect, or likely effect of which is to impede unreasonably the development or operation of an urgent care center or any other health care facility or institution.

IV.

It is further ordered, That this order shall not be construed to prevent Respondent from exercising rights guaranteed against infringement by the First Amendment of the United States Constitution, including the right to petition any federal or state executive, legislative, judicial, or administrative agency or body, concerning legislation, rules, regulations, or procedures, or from engaging in any

activities which are exempt from the antitrust laws under the state action doctrine or the *Noerr-Pennington* Doctrine.

V.

It is further ordered, That Respondent shall:

A. Within thirty (30) days after this order becomes final, mail a copy of this order and of the complaint in this proceeding to each officer and to each physician who is a member of the Medical Staff on that date, and, for a period of five (5) years after that date, provide a copy of such order and complaint to each physician who becomes a member of the Medical Staff.

B. Within one hundred and twenty days (120) after this order becomes final, and at such other times as the Commission may by written notice to the Respondent require, file or cause to be filed with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

C. In addition to the report required by Section V.B., within one year after this order becomes final, and annually for a period of five (5) years on or before the anniversary of the date on which this order becomes final, and at such other times as the Commission may by written notice require, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which the Medical Staff has complied and is complying with this order.

D. For a period of five years after this order becomes final, maintain and make available to the Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with any activity covered by Part II of this order

VI.

It is further ordered, That the Respondent notify the Commission at least thirty (30) days prior to any proposed change in the Medical Staff that may affect compliance obligations arising out of this order.

Complaint

106 F.T.C.

IN THE MATTER OF
HOSPITAL CORPORATION OF AMERICA

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3167. Complaint, Sept. 30, 1985—Decision, Sept. 30, 1985

This consent order requires a Nashville, Tenn. for-profit hospital chain, among other things, to divest three of the hospitals it acquired from Forum Group, Inc. to Commission-approved acquirers within 12 months after the order becomes final. If respondent cannot divest within the time specified, the Commission will appoint a trustee to make the divestitures. Respondent is prohibited from reacquiring the assets of any of the divested hospitals for 10 years without prior Commission approval. Additionally, respondent is required to provide advance notification to the Commission before acquiring any psychiatric hospital or unit, or any general acute care hospital operating a psychiatric unit, in the Norfolk, Va., area, or any general acute care hospital in the Midland/Odessa, Tex. area, unless such acquisition price does not exceed one million dollars (\$1,000,000). Further, respondent is required to file compliance reports with the Commission at specified times and make records available to Commission staff.

Appearances

For the Commission: *Raymond L. Randall, Oscar M. Voss, Nina B. Hale and Linda M. Brody.*

For the respondents: *William D. Iverson and G.M. Chester, Jr., Covington & Burling, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent Hospital Corporation of America, a corporation subject to the jurisdiction of the Federal Trade Commission, has, through an acquisition of assets and voting securities, acquired several hospitals from Forum Group, Inc., a corporation subject to the jurisdiction of the Federal Trade Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

I. DEFINITIONS

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

(a) *HCA* means Hospital Corporation of America and its subsidiaries.

(b) *Forum* means Forum Group, Inc. and its subsidiaries.

(c) *Hospital* means a health facility, other than a federally-owned facility (such as a military or Veterans Administration hospital), having a duly organized governing body with overall administrative responsibility and an organized professional staff that provides 24-hour inpatient care, and that may also provide outpatient services.

(d) *General acute care hospital* means a hospital which has as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

(e) *Psychiatric hospital* means a hospital which has as a primary function the provision of inpatient services for psychiatric diagnosis, treatment, and care of persons suffering from mental illness or emotional disturbance, and may also provide treatment for alcohol or drug abuse.

(f) *Psychiatric unit* means a department, unit, or other organizational subdivision of a general acute care hospital that has as a primary function the provision of inpatient services for psychiatric diagnosis, treatment, and care of persons suffering from mental illness or emotional disturbance, and may also provide treatment for alcohol or drug abuse.

(g) *Norfolk MSA* means the Norfolk-Virginia Beach-Newport News, Virginia Metropolitan Statistical Area, as defined by the Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President as of January 1, 1985.

(h) *Midland/Odessa Area* means the area comprising Ector and Midland counties in Texas.

II. RESPONDENT - HOSPITAL CORPORATION OF AMERICA

2. HCA is a corporation organized and doing business under the laws of the State of Tennessee with its office and principal place of business located at One Park Plaza, Nashville, Tennessee.

3. HCA is primarily engaged in the operation and management of hospitals in the United States and in foreign countries. HCA is the largest for-profit hospital chain in the United States. It owns, leases, or manages more than 350 general acute care hospitals in over 40 States, and more than 25 psychiatric hospitals in over 10 States. In 1983, its revenues from domestic hospital operations exceeded \$3.7

billion. By virtue of its activities, HCA is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, and is subject to the jurisdiction of the Federal Trade Commission.

4. At all times relevant herein, HCA has been and is now engaged in activities that are in or affect commerce within the meaning of Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business activities are in or are affecting commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. HCA does business in a number of States and foreign countries. HCA in general, and the hospitals it owns or manages in the Norfolk MSA and the Midland/Odessa Area in particular, engage in interstate commerce.

III. THE ACQUISITION

5. On or about October 12, 1984, HCA entered into an agreement under which HCA would acquire from Forum most of Forum's general acute care hospitals and psychiatric hospitals through the purchase of certain assets and related voting securities for approximately \$195 million. Consummation of this acquisition (hereinafter "the acquisition") was completed on April 2, 1985.

6. Forum is a for-profit corporation organized and doing business under the laws of the State of Indiana with its office and principal place of business located at 8900 Keystone Crossing, Indianapolis, Indiana.

7. Prior to the acquisition, Forum owned general acute care hospitals and psychiatric hospitals in at least seven States. Forum also owns and operates nursing homes, facilities for the developmentally disabled, and retirement living complexes. Its fiscal 1984 operating revenues were approximately \$110 million. By virtue of its activities, Forum is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, and is subject to the jurisdiction of the Federal Trade Commission.

8. At all times relevant herein, Forum has been and is now engaged in activities that are in or affect commerce within the meaning of Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business activities are in or are affecting commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. Forum does business in a number of States. Forum in general, and the hospitals it owned in the Norfolk MSA and the Midland/Odessa Area in particular, engage in interstate commerce.

IV. COUNT I: PSYCHIATRIC HOSPITAL SERVICES—THE NORFOLK MSA

Trade and Commerce

9. The allegations of Paragraphs 1 through 8, inclusive, of this complaint are hereby incorporated by reference.

10. One relevant product market in which to evaluate the effects of the acquisition is psychiatric services provided by psychiatric hospitals and psychiatric units, excluding long-term treatment of chronic mental illness, and also excluding such treatment and other services provided by Federally-owned facilities and State mental hospitals ("psychiatric hospital services").

11. One relevant geographic market in which to evaluate the effects of the acquisition is the Norfolk MSA.

12. Among the hospitals HCA acquired from Forum were two psychiatric hospitals in the Norfolk MSA, Virginia Center for Psychiatry - Portsmouth in Portsmouth, Virginia, and Virginia Center for Psychiatry - Norfolk in Norfolk, Virginia.

13. At the time HCA acquired these hospitals, HCA already owned and operated a psychiatric hospital in the Norfolk MSA, Peninsula Hospital in Hampton, Virginia.

14. Prior to the acquisition, HCA and Forum were competitors in the psychiatric hospital services market in the Norfolk MSA.

15. At the time of the acquisition, HCA's Peninsula Hospital had approximately a 15 percent share of the psychiatric hospital services market in the Norfolk MSA based on licensed psychiatric beds and approximately a 12 percent share of the market based on the number of patient days of inpatient psychiatric care provided in 1983 ("1983 psychiatric patient days"). HCA's market share after the acquisition of the two psychiatric hospitals identified in paragraph 12 above increased to approximately 45 percent based on licensed psychiatric beds, an increase of 30 percent, and approximately 38 percent based on 1983 psychiatric patient days, an increase of 26 percent.

16. Prior to the acquisition, the psychiatric hospital services market in the Norfolk MSA was already concentrated. Concentration increased substantially as a result of the acquisition. The Herfindahl-Hirschman Index ("HHI") increased approximately 890 points, from approximately 1700 to approximately 2590, based on the number of licensed psychiatric beds. The HHI increased approximately 460 points, from approximately 1590 to approximately 2050, based on 1983 psychiatric patient days.

17. Barriers to entry into the psychiatric hospital services market in the Norfolk MSA are high. These barriers include, among other things, the requirement under the Virginia health planning laws, Va. Code Section 32.1-102.1 *et seq.*, that State government approval be

obtained prior to entry into the market. Because State government health planning officials project that, for purposes of health planning law implementation, the capacity of existing firms will likely exceed estimated demand for the foreseeable future, it is unlikely that such approval will be granted for new entry into the market in the foreseeable future.

Effects of the Acquisition

18. The effects of HCA's acquisition of the two Forum psychiatric hospitals in the Norfolk MSA may be substantially to lessen competition in the psychiatric hospital services market in the Norfolk MSA in, among others, the following ways:

- (a) actual competition between HCA and Forum in the relevant market has been eliminated;
- (b) Forum has been eliminated as a substantial independent competitor in the relevant market; and
- (c) actual competition among the remaining competitors in the relevant market may be lessened.

Violation Charged

19. The acquisition of Virginia Center for Psychiatry - Portsmouth and Virginia Center for Psychiatry - Norfolk by HCA constitutes a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

V. COUNT II: GENERAL ACUTE CARE HOSPITAL SERVICES— THE MIDLAND/ODESSA AREA

Trade and Commerce

20. The allegations of Paragraphs 1 through 8, inclusive, of this complaint are hereby incorporated by reference.

21. One relevant product market in which to evaluate the effects of the acquisition is general acute care hospital services.

22. One relevant geographic market in which to evaluate the effects of the acquisition is the Midland/Odessa Area in Texas.

23. Among the hospitals HCA acquired from Forum was Parkview Hospital, a general acute care hospital in Midland, Texas, as well as a planned new facility in Midland that, if and when it is completed, will be named "Doctors' Hospital of the Permian Basin" and will replace Parkview Hospital. (These two facilities will be hereinafter referred to collectively as "Parkview".)

24. At the time HCA acquired Parkview, HCA was already operating under a management contract one of the three other general

acute care hospitals in the Midland/Odessa Area, Medical Center Hospital in Odessa, Texas. Pursuant to the management contract, HCA manages the day-to-day operations of the hospital. HCA's specific responsibilities under the contract include, among other things, providing to the hospital an administrator and controller (both of whom serve as employees of HCA, as well as the hospital); making recommendations to the hospital's Board of Managers regarding hospital charges, capital improvements, and changes in the scope of services offered by the hospital; assisting in preparation of the hospital's budget, and its short-, medium-, and long-term plans; making recommendations regarding recruiting, hiring, firing, training, promotion, and assignment of, and compensation for, hospital employees; providing HCA staff consultants to the hospital as necessary; obtaining necessary licenses and permits for the hospital; and making recommendations for maintaining the hospital's compliance with accreditation standards and government regulations. As a result of its contractual relationship with the hospital, HCA has a significant role in determining the manner in which Medical Center Hospital competes with other hospitals.

25. Prior to the acquisition, HCA and Forum were competitors in the general acute care hospital services market in the Midland/Odessa Area.

26. At the time of the acquisition, Medical Center Hospital had approximately a 50 percent share of the general acute care hospital services market in the Midland/Odessa Area based on licensed general acute care beds and approximately 55 percent of the market based on the number of 1983 inpatient days. After the acquisition of Parkview, HCA controlled, either through ownership or management contract, hospitals with a combined share of 58 percent of the relevant market based on licensed general acute care beds, an increase of 8 percent, and approximately 60 percent based on 1983 inpatient days, an increase of 5 percent.

27. Prior to the acquisition, the general acute care hospital services market in the Midland/Odessa Area was already highly concentrated. Concentration increased substantially as a result of the acquisition. The HHI increased approximately 820 points, from approximately 3530 to approximately 4350, based on the number of licensed general acute care beds. The HHI increased approximately 560 points, from approximately 3990 to approximately 4550, based on 1983 inpatient days.

28. Barriers to entry into the general acute care hospital services market in the Midland/Odessa Area are substantial. Significant time delays, substantial excess capacity in the market, and other obstacles may impede or discourage new entrants into the market. It is unlike-

ly, for at least a substantial time period, that new entry will deter or prevent collusive or other anticompetitive conduct in the market.

Effects of the Acquisition

29. The effect of HCA's acquisition of Parkview from Forum may be substantially to lessen competition in the general acute care hospital services market in the Midland/Odessa Area in, among others, the following ways:

- (a) actual competition between HCA and Forum in the relevant market has been eliminated;
- (b) Forum has been eliminated as a substantial independent competitor in the relevant market; and
- (c) actual competition among the remaining competitors in the relevant market may be lessened.

Violation Charged

30. The acquisition of Parkview by HCA constitutes a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Clayton Act and the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional allegations set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect. and having thereupon accepted the executed

consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Hospital Corporation of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at One Park Plaza, in the City of Nashville, State of Tennessee.

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

ORDER

I.

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

A. *HCA* means Hospital Corporation of America, a corporation organized under the laws of Tennessee, with its principal executive office at One Park Plaza, Nashville, Tennessee, and its directors, officers, agents, employees, and representatives, and its subsidiaries, divisions, affiliates, successors, and assigns.

B. *Forum* means Forum Group, Inc. and its subsidiaries, divisions, affiliates, successors, and assigns.

C. *Hospital* means a health facility, other than a federally owned facility, having a duly organized governing body with overall administrative responsibility and an organized professional staff that provides 24-hour inpatient care, and that may also provide outpatient services.

D. *General acute care hospital* means a hospital which has as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

E. *Psychiatric hospital* means a hospital which has as a primary function the provision of inpatient services for psychiatric diagnosis, treatment, and care of persons suffering from mental illness or emotional disturbance, and may also provide treatment for alcohol or drug abuse.

F. *Psychiatric unit* means a department, unit, or other organizational subdivision of a general acute care hospital that has as a primary function the provision of inpatient services for psychiatric

diagnosis, treatment, and care of persons suffering from mental illness or emotional disturbance, and may also provide treatment for alcohol or drug abuse.

G. *Norfolk MSA* means the Norfolk-Virginia Beach-Newport News, Virginia Metropolitan Statistical Area, as defined as of January 1, 1985 by the Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President.

H. *Midland/Odessa Area* means the area comprising Ector and Midland counties in Texas.

I. *Acquire* a hospital or psychiatric unit means to directly or indirectly acquire all or any part of the stock or assets of a hospital or psychiatric unit, or enter into any other arrangement by which HCA obtains direct or indirect ownership of, or otherwise begins to operate, a hospital or psychiatric unit; *provided, however*, that if an order is issued and becomes final in *Hospital Corporation of America*, FTC Docket No. 9161 [106 F.T.C. 361 (1985)], that requires HCA to obtain the prior approval of, or provide advance notification to, the Federal Trade Commission with respect to any hospital management contracts, then as of that date, *operate a hospital or psychiatric unit* shall be deemed to include management of a hospital or a psychiatric unit pursuant to a management contract.

II.

It is ordered, That within twelve (12) months from the date this order becomes final, HCA shall divest, absolutely and in good faith, all of the stock and assets specified in Schedule A. The purpose of the divestitures is to reestablish the hospitals listed in Schedule A as viable competitors. The divestitures shall be subject to the prior approval of the Federal Trade Commission.

Pending divestiture, whether by HCA or by a trustee as provided for in Section III below, HCA shall continue to operate the facilities to be divested, and take all measures necessary to maintain those facilities in their present condition and to prevent any deterioration, except for normal wear and tear, of any of the assets to be divested so as not to impair their present operating abilities or market value.

For a period of ten (10) years from the date this order becomes final, HCA shall not, directly or indirectly, reacquire any interest in any Schedule A stock or assets required to be divested by this Section II of this order without the prior approval of the Federal Trade Commission.

III.

A. If HCA has not divested all of the properties, assets, or enterprises required to be divested pursuant to Section II of this order within the 12-month period provided therein, the Federal Trade Commission may select a trustee to effect any ordered divestitures yet to be accomplished. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If the Federal Trade Commission should elect to appoint a trustee, it shall not be precluded from seeking civil penalties and other relief available to it for any failure by HCA to comply with this order. If the Federal Trade Commission should not elect to appoint a trustee under this Section III of this order, it shall not be precluded from seeking civil penalties, the appointment by the courts of a trustee to effect the divestitures, and other relief available to it, for any failure by HCA to comply with this order.

B. Any trustee appointed by the Federal Trade Commission pursuant to this Section III shall have the following powers, authority, duties, and responsibilities:

1. The trustee shall have the exclusive power and authority to divest any properties, assets, or enterprises required to be divested pursuant to Section II of this order that have not been divested by HCA within the time period for the divestitures provided therein. The trustee shall have twelve (12) months from the date of appointment to accomplish the divestitures, which shall be subject to the prior approval of the Federal Trade Commission. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Federal Trade Commission. In addition, any delays in divestiture caused by HCA shall extend the time for divestiture in accordance with the delay caused.

2. The trustee shall have full and complete access to the personnel, books, records and facilities of any property, asset, or enterprise that the trustee has the duty to divest, and HCA shall develop such financial or other information relevant to the properties, assets, or enterprises to be divested as the trustee may reasonably request. HCA shall cooperate with the trustee, and shall take no action to interfere with or impede the trustee's accomplishment of the divestitures.

3. The power and authority of the trustee to divest shall be at the most favorable price and terms available consistent with this order's absolute and unconditional obligation to divest and the purposes of the divestitures as stated in Section II of this order.

4. The trustee shall serve, without bond or any other security, at the cost and expense of HCA on such reasonable and customary terms and conditions as the Federal Trade Commission may set. The trustee shall have authority to retain, at the cost and expense of HCA, such consultants, attorneys, investment bankers, business brokers, accountants, appraisers, and other representatives and assistants as are reasonably necessary to assist in the divestitures. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Federal Trade Commission of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to HCA and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the trust property.

5. HCA shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities to which the trustee may become subject, arising in any manner out of, or in connection with, the trustee's duties under this order, unless the Federal Trade Commission determines that such losses, claims, damages, or liabilities arose out of the misfeasance, negligence, or the willful or wanton acts or bad faith of the trustee.

6. Promptly upon appointment of the trustee and subject to the approval of the Federal Trade Commission, HCA shall, subject to the Federal Trade Commission's prior approval and consistent with provisions of this order, execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to cause the divestitures.

7. If the trustee ceases to act or fails to act diligently, the Federal Trade Commission shall appoint a substitute trustee.

8. The trustee may ask the Federal Trade Commission to issue, and the Federal Trade Commission may issue, such additional orders or directions as may be necessary and appropriate to accomplish the divestitures required under this order.

9. The trustee shall have no obligation or authority to operate or maintain any of the properties, assets, or enterprises required to be divested pursuant to Section II of this order.

10. The trustee shall report in writing to HCA and the Federal Trade Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That for a period of ten (10) years from the date this order becomes final, HCA shall not, without providing advance

notification to the Federal Trade Commission, acquire: (1) any psychiatric hospital, any psychiatric unit, or any general acute care hospital operating a psychiatric unit, in the Norfolk MSA; or (2) any general acute care hospital in the Midland/Odessa Area. Such advance notification shall be provided when HCA executes a letter of intent or enters into an agreement to make such an acquisition, whichever is earlier.

The notification required by this section shall be the Notification and Report form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended, and shall be prepared and transmitted in accordance with the requirements of that Part. This notification requirement shall apply to HCA and shall not apply to any party that HCA seeks to acquire. HCA shall also provide at the same time of the filing of the Notification and Report Form supplemental information, either in HCA's possession or reasonably available to HCA, relating to the hospital to be acquired, the HCA hospital(s) in that geographic area, and identification and assessment of the area hospital market, as specified in Schedule B. In addition, HCA shall comply with reasonable requests by Commission staff for additional information within fifteen (15) days of service of such requests.

Provided, however, That no acquisition shall be subject to the notification requirements of this section: (1) if the acquisition is by purchase, and the consideration paid for the hospital or any rights or interest therein, including assumption by HCA of any liabilities, does not exceed one million dollars (\$1,000,000); or (2) if notification of the acquisition is required to be made, and in fact is made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

V.

It is further ordered, That HCA shall, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until it has fully complied with the provisions of Section II of this order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with these provisions.

Such compliance reports shall include, in addition to any other information that the staff of the Federal Trade Commission may reasonably request, a summary of all contacts and negotiations with potential purchasers of the stock, assets, or other rights or interests to be divested under this order, the identity and address of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

VI.

It is further ordered, That HCA, upon written request of the Secretary of the Federal Trade Commission or the Director of the Bureau of Competition of the Federal Trade Commission made to HCA at its principal office, for the purpose of securing compliance with this order, and for no other purpose, and subject to any legally recognized privilege, shall permit duly authorized representatives of the Federal Trade Commission:

1. reasonable access during the office hours of HCA, which may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, reports, and other records and documents in HCA's custody, possession or control that relate materially and substantially to any matter contained in this order; and

2. an opportunity, subject to the reasonable convenience of HCA, to interview officers or employees of HCA, who may have counsel present, regarding such matters.

VII.

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

SCHEDULE A: STOCK AND ASSETS TO BE DIVESTED

A. All stock, and all assets (including, but not limited to, properties, licenses, land, and other rights and privileges, tangible or intangible), acquired by HCA directly or indirectly from Forum in connection with any of the following hospitals:

1. Parkview Hospital, in Midland, Texas;
2. Doctors' Hospital of the Permian Basin, in Midland, Texas (a planned new facility which, if and when it is completed, will replace Parkview Hospital);
3. Virginia Center for Psychiatry - Norfolk, in Norfolk, Virginia; and
4. Virginia Center for Psychiatry - Portsmouth, in Portsmouth, Virginia,

including specifically all stock of Doctors' Hospital Permian Basin, Inc. (a Texas corporation), and whatever assets may have been acquired by HCA directly or indirectly from that corporation, from Midland Hospital Corporation (a Texas corporation), or from Norfolk Psychiatric Center, Inc. or Portsmouth Psychiatric Center, Inc. (both Virginia corporations).

B. All improvements made to the hospitals and related assets specified in paragraph A above subsequent to their acquisition by HCA

**SCHEDULE B: SUPPLEMENTAL INFORMATION TO ACCOMPANY
NOTIFICATION OF A HOSPITAL ACQUISITION**

The supplemental information HCA is required to submit with its notification to the Federal Trade Commission of a hospital acquisition, pursuant to Section IV of this order, shall include a full description of the acquisition (including a copy of the acquisition agreement), to the extent such information is not already provided in the Notification and Report form submitted by HCA, and shall also include, where available, patient flow data, annual management and strategic plans, hospital utilization and revenue data, and documents relating to market share, formulation of hospital prices, competitive interaction among area hospitals, implementation of certificate of need standards in the area, planned efficiencies, relations with third-party payers, and physician admitting patterns.

Complaint

106 F.T.C.

IN THE MATTER OF
INTERNORTH, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket C-3168. Complaint, Sept. 30, 1985—Decision, Sept. 30, 1985

This consent order requires InterNorth, Inc. (INI), the Omaha, Neb. acquirer of the Houston Natural Gas Corporation, among other things, to divest within 12 months from the date of the order to a Commission-approved buyer, all the properties listed on Schedule A, and to terminate all rights and obligations it may have on the contracts listed on Schedule B. Should INI fail to complete the required divestiture within the allotted time, a trustee, appointed by the court or the Commission, will be given 18 months from the date of appointment to divest the remaining Schedule A properties. Until those properties are divested, INI is required to use its best efforts to maintain them as ongoing, viable enterprises. The order further prohibits the company, for a period of ten years, from acquiring any assets or interests of a company that is engaging in the gathering or transportation of natural gas in the Permian basin or the Panhandle whose acquisition price is \$15 million or more, and from entering into any agreement or venture for the joint purchasing, gathering, or transportation of natural gas in the Permian basin or the Panhandle without prior Commission approval.

Appearances

For the Commission: *Marc G. Schildkraut.*

For the respondents: *D. Stuart Meiklejohn, Sullivan & Cromwell*, New York City, for respondent InterNorth, Inc. and *Richard D. Kinder*, Houston, Tex., in-house counsel, for respondent Houston Natural Gas Corp.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, InterNorth, Inc., a corporation subject to the jurisdiction of the Federal Trade Commission, intends to acquire, or has acquired the stock or assets of respondent Houston Natural Gas Corporation, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)) stating its charges as follows:

I. DEFINITIONS

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

a. *INI* means InterNorth, Inc., its predecessors, subsidiaries, divisions, groups, affiliate entities, and each of their past or present directors, officers, employees, agents and representatives; and each partnership, joint venture, joint stock company or concession in which INI is a participant. The words *subsidiary*, *affiliate* and *joint venture* refer to any partial (10 percent or more) as well as total ownership or control.

b. *HNG* means Houston Natural Gas Corporation, its predecessors, subsidiaries, divisions, groups, affiliate entities, and each of their past or present directors, officers, employees, agents and representatives; and each partnership, joint venture, joint stock company or concession in which HNG is a participant. The words *subsidiary*, *affiliate* and *joint venture* refer to any partial (10 percent or more) as well as total ownership or control.

c. The acquisition means the transaction described, in whole or in part, in Paragraph 14 of this complaint.

II. RESPONDENTS

A. *INI*

2. Respondent INI is a corporation organized and doing business under the laws of the state of Delaware with its executive offices at 2223 Dodge Street, Omaha, Nebraska.

3. Respondent INI owns businesses that operate at several levels in the natural gas transportation and distribution industry. In addition, respondent INI engages in the exploration for and production of oil and gas, in the production, transportation, and marketing of liquid fuels and in the production and marketing of petrochemicals.

4. Respondent INI had 1984 sales of \$7.5 billion and assets of \$6.1 billion as of December 31, 1984.

5. In 1984, respondent INI owned and operated the longest natural gas pipeline system in the United States. INI's pipeline division owned and operated a natural gas pipeline system in the United States consisting of over 23,000 miles of pipeline. INI also owned and operated various other natural gas gathering and transmission facilities. Most of INI's system is interstate pipeline.

6. Respondent INI wholly or partially owns (or owns interests in companies that wholly or partially own) the following natural gas pipelines in the United States: Northern Natural Gas Company Pipeline System; TransTexas Pipeline; Overthrust Pipeline; Tiger Ridge

Pipeline System; Northern Border Pipeline; Trailblazer Pipeline; Cognac Pipeline; NIPCO Louisiana Pipeline; Central Texas Loop Pipeline; Seagull Shoreline System; Matagorda Offshore Pipeline System; and several pipelines used for the local distribution of natural gas that are operated by Peoples Natural Gas Company, a division of INI.

7. At all times relevant herein, respondent INI has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

B. HNG

8. Respondent HNG is a corporation organized and doing business under the laws of the state of Texas with its executive offices at 1200 Travis Street, Houston Texas.

9. Respondent HNG engages in the transmission and sale of natural gas, in the exploration for and production of oil and gas, and in hydrocarbons processing and marketing.

10. Respondent HNG had 1984 sales of \$2.0 billion and assets of \$3.7 billion, as of December 31, 1984.

11. In late 1984, respondent HNG acquired the Florida Gas Transmission Company and the Transwestern Pipe Line Company, for the first time making respondent HNG an interstate pipeline company. Until these acquisitions, respondent HNG had been exclusively an intrastate pipeline system.

12. In 1984, respondent HNG wholly or partially owned the following intrastate pipelines: Llano, Inc.; Oasis Pipeline Company; Intratex Gas Company; Houston Pipeline Company; Red River Pipeline; HPI Transmission, Inc.; Black Marlin Pipeline Company; Valley Pipelines, Inc.; A-S Pipeline; Texoma Pipeline; and other smaller pipelines.

13. At all times relevant herein, respondent HNG has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. THE ACQUISITION

14. On or about May 3, 1985, INI commenced a cash tender offer for up to 100 percent of the outstanding shares of HNG common stock at a price of \$70 per share with the intent of effecting a merger of InterNorth Holdings, Inc. a Texas corporation wholly-owned by INI.

into HNG, pursuant to which HNG would become a wholly-owned subsidiary of INI, all as contemplated in that certain Merger Agreement entered into among INI, its subsidiary, and HNG on May 2, 1985. HNG's Board of Directors has approved the tender offer and recommended its acceptance by HNG shareholders. If all the currently outstanding HNG common shares are tendered to INI, the total value of the transaction is about \$2.3 billion and, if consummated, it would result in the largest natural gas transportation company in the United States in terms of assets.

IV. TRADE AND COMMERCE

A. *Purchase and Transportation of Natural Gas*

15. One relevant line of commerce in which to evaluate the effects of the acquisition is the purchase of natural gas in producing fields and basins, and the transportation of natural gas from producing fields and basins to consumers.

16. One relevant section of the country is the Permian Basin, composed of "producing districts 8, 8A and 7C" as defined by the Texas Railroad Commission and "New Mexico-East" as defined by the U.S. Department of Energy.

17. Another relevant section of the country is the Panhandle region, composed of "producing district 10" as defined by the Texas Railroad Commission and the counties of Beaver, Beckham, Cimarron, Ellis, Harmon, Harper, Roger Mills, Texas and Woodward in Oklahoma.

18. Consumption of natural gas in these two sections of the country is substantially below production in the area, with the result that most production in the area is transported by pipelines to consuming areas on the Texas Gulf Coast and elsewhere in the United States.

19. The business of buying and transporting by pipeline natural gas in and out of these respective sections of the country is concentrated.

20. It is difficult to enter into the business of buying and transporting natural gas by pipeline in these respective sections of the country.

21. INI is the sole owner of the Northern Natural Gas Company Pipeline System that runs from the Permian Basin to the Panhandle and from the Panhandle to consuming areas to the north of the Panhandle, including but not limited to the states of Minnesota and Wisconsin.

22. INI is also an owner of an undivided 50 percent interest in the TransTexas Pipeline that runs from the Permian Basin to New Braunfels, Texas, where the Pipeline connects to pipelines that serve areas on the Texas Gulf Coast.

23. HNG is the sole owner of Llano, Inc., that owns a gathering pipeline system in the Permian Basin.

24. HNG is also the sole owner of the Transwestern Pipe Line Company which owns a pipeline system that runs from both the Permian Basin and the Panhandle to consuming areas to the west of the Permian Basin and the Panhandle, including but not limited to California.

25. HNG is also an owner of 50 percent of the Oasis Pipeline Company which owns a pipeline that runs parallel to the TransTexas Pipeline from the Permian Basin to New Braunfels, and continues to the Texas Gulf Coast consuming area.

26. HNG is also an owner of 25 percent partnership interest in the Red River Pipeline which owns a pipeline that runs from the Panhandle to the Permian Basin, where the Pipeline connects to pipelines that serve areas located outside of the Permian Basin.

27. Respondents INI and HNG are direct and substantial competitors in the business of purchasing and transporting natural gas in and from producing fields and basins to consuming areas.

B. Transportation and Sale of Natural Gas

28. One relevant line of commerce in which to evaluate the effects of the acquisition is the transportation and sale of natural gas by pipeline in consuming areas.

29. One relevant section of the country is the Texas Gulf Coast, composed of "producing districts 2, 3 and 4" as defined by the Texas Railroad Commission.

30. The business of selling and transporting by pipeline natural gas in and into the Texas Gulf Coast consuming area is concentrated.

31. It is difficult to enter into the business of selling and transporting natural gas by pipeline in the Texas Gulf Coast consuming area.

32. HNG is the largest competitor in the business of transporting and selling natural gas in the Texas Gulf Coast consuming area.

33. INI is a competitor of HNG through INI's joint venture known as "Nor-Val", a partnership created in February, 1985, between INI and Valero Transmission Company.

34. INI also competes with HNG by virtue of INI's ownership of 50 percent of the TransTexas Pipeline. TransTexas Pipeline is connected to pipelines serving the Texas Gulf Coast consuming areas at New Braunfels. Some of these pipelines at New Braunfels are owned by Valero Transmission Company. Valero Transmission Company has dedicated capacity to transport natural gas for Nor-Val into the Texas Gulf Coast consuming area.

35. HNG is an owner of 50 percent of the Oasis Pipeline that runs parallel to the TransTexas Pipeline from the Permian Basin to New Braunfels, and continues to the Texas Gulf Coast consuming area.

36. Respondents INI and HNG are direct and substantial competi

tors in the business of transporting and selling natural gas in the Texas Gulf Coast consuming area.

V. EFFECTS

37. The effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in each of the relevant lines of commerce and relevant sections of the country in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways among others:

a. actual competition between respondents INI and HNG in the relevant lines of commerce and relevant sections of the country will be eliminated;

b. actual competition between competitors generally in the relevant lines of commerce and relevant sections of the country will be lessened; and

c. concentrations in the relevant lines of commerce and relevant sections of the country will be increased, therefore increasing the likelihood of collusion.

VI. VIOLATION CHARGED

38. The proposed acquisition of the stock and assets of HNG by INI, as set forth in Paragraph 14 herein, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The FTC having initiated an investigation of the proposed acquisition of shares of Houston Natural Gas Corporation ("HNG") by InterNorth, Inc. ("INI"), and INI and HNG ("respondents") having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration, and which, if issued by the Commission, would charge respondents with violations of the Clayton Act and Federal Trade Commission Act; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, and admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules and the recommendation of its staff, and having concluded that the consent agreement should be accepted; and

Now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission issues its complaint, makes the following jurisdictional findings and enters the following order:

1. INI is a corporation organized under the laws of Delaware with its executive office at 2223 Dodge Street, Omaha, Nebraska.

HNG is a corporation organized under the laws of Texas with its executive office at 1200 Travis Street, Houston, Texas.

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

ORDER

I.

As used in this order the following definitions shall apply:

(a) *Acquisition* means INI's acquisition of shares of the Common Stock of HNG.

(b) *Schedule A Properties* means the assets and businesses listed in Schedule A of this order. *Schedule B Contracts* mean the contracts listed in Schedule B of this order.

(c) *INI* means InterNorth, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by INI and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

(d) *HNG* means Houston Natural Gas Corporation, as it was constituted prior to the acquisition, including its parents, predecessors, subsidiaries, divisions, groups and affiliates controlled by HNG, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

(e) *Permian Basin* means the counties currently included in Texas Railroad Commission Districts 7C, 8 and 8A and that portion of the state of New Mexico currently defined as *New Mexico—East* by the United States Department of Energy for purposes of reporting on form EIA-23.

