

Complaint

112 F.T.C.

IN THE MATTER OF
COCA-COLA BOTTLING COMPANY
OF THE SOUTHWEST, ET AL.

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

Docket 9215. Complaint, July 29, 1988—Decision, Dec. 20, 1989

This consent order requires, among other things, that Dr Pepper take no action that interferes with the accomplishment of any relief that might be ordered by the Commission against the Coca-Cola Bottling Company of the Southwest.

Appearances

For the Commission: *James E. Elliott, Joan Greenbaum and Constance M. Salemi.*

For the respondents: *Andy Berg and Owen Johnson, Akin, Gump, Strauss, Hauer & Feld, Washington, D.C. Philip D. Bartz, Morrison & Forester, Washington, D.C. Nelson A. Bangs, Dr. Pepper Company, Dallas, Tx. and Gregory S.C. Huffman and Frank L. Hill, Thompson & Knight, Dallas, Tx.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that the respondent, Coca-Cola Company of the Southwest, a corporation, subject to the jurisdiction of the Commission, has acquired the Dr Pepper and the Canada Dry franchises and certain other assets from the San Antonio Dr Pepper Bottling Company, a wholly-owned subsidiary of the then Dr Pepper Company or DP Holdings, Inc., now respondent Dr Pepper/Seven-Up Company, a corporation, that may be in violation of the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45; and that said acquisition constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45; and it appearing to the Commission that a proceeding by it 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. "*CCSW*" means Coca-Cola Company of the Southwest and its subsidiaries, divisions, and groups controlled by CCSW and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

b. "*Dr Pepper*" means Dr Pepper/Seven-Up Company and its subsidiaries, divisions and groups controlled by Dr Pepper and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

c. "*San Antonio DPB*" means the San Antonio Dr Pepper Bottling Company and its subsidiaries, divisions and groups controlled by San Antonio DPB and their respective directors, officers, employees, agents and representatives, and their successors and assigns.

d. "*Brand*" or "*brand name*" means the trademarked name of any type of soft drink product and includes warehouse, private label and house brands. For example, "Dr Pepper" and "Diet Dr Pepper" are each separate brands.

e. "*Bottler*" refers to a person that is engaged in bottling soft drinks or that has been granted an exclusive bottling appointment by any manufacturer of soft drink syrup or concentrate.

f. "*Bottles*", "*bottling*" or "*bottled*" means the process of putting syrup or concentrate and other ingredients together as a soft drink in a bottle or can, regardless of the sources of the syrup or concentrate.

g. "*Territory*" means an area for which a bottler has been granted an exclusive bottling appointment.

h. "*Soft drink*" means a carbonated soft drink, as classified under the four-digit Standard Industrial Classification industry code 2086.

II. THE PARTIES

2. CCSW is a privately-held corporation organized and existing under the laws of the State of Texas with its principal place of business located at No. 1 Coca-Cola Place, San Antonio, Texas.

3. In 1984, CCSW's net sales totaled approximately \$90 million.

4. Dr Pepper is a corporation organized and existing under the laws of the State of Texas, with its principal place of business located at 5523 East Mockingbird Lane, Dallas Texas.

5. In 1985, Dr Pepper's net sales totaled approximately \$173 million.

6. CCSW and Dr Pepper are, and at all times relevant herein have been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are 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

7. On or about September 1984, CCSW acquired from San Antonio DPB, a wholly-owned subsidiary of Dr Pepper, the Dr Pepper and the Canada Dry franchises and other assets which include, among other things, some of the San Antonio DPB delivery trucks, Dr Pepper-identified vending machines and a warehouse. CCSW paid approximately \$14.5 million for the franchises and other assets. At the time of the acquisition CCSW and San Antonio DPB bottled, distributed and sold soft drinks in the San Antonio area. After the acquisition the remaining portion of San Antonio DPB became the Big Red Bottling Company.

IV. TRADE AND COMMERCE

Relevant Line of Commerce

8. A relevant line of commerce in which to analyze CCSW's acquisition of the Dr Pepper and the Canada Dry franchises is no broader than all soft drinks.

Relevant Sections of the Country

9. Relevant sections of the country are approximately a ten-county area surrounding and including San Antonio, Texas. This area encompasses the territories of the Dr Pepper and the Canada Dry franchises acquired by CCSW. These counties may include, but are not limited to, Atascosa, Bandera, Bexar, Frio, Kendall, Medina, Wilson and parts of Blanco, Comal, and Karnes counties.

V. MARKET STRUCTURE

10. The production, distribution and sale of soft drinks is highly

concentrated, whether measured by the Herfindahl-Hirshmann indices or two-firm and four-firm concentration ratios.

VI. ENTRY CONDITIONS

11. Entry into the relevant markets is difficult or unlikely.

VII. COMPETITION

12. CCSW and San Antonio DPB were actual competitors in the production, distribution and sale of soft drinks in the ten-county area.

VIII. EFFECTS

13. The effect of the acquisition may be substantially to lessen competition in the relevant line of commerce and the relevant sections of the country in the following ways, among others:

- a. By significantly weakening the Big Red Bottling Company, raising its costs and reducing its output;
- b. By reducing competition between Coca-Cola and other soft drink brands and the Dr Pepper and the Canada Dry soft drink brands;
- c. By increasing the likelihood of, or facilitating, actual or tacit collusion; or
- d. By increasing the likelihood that CCSW will unilaterally exercise market power.

14. Any or all of the above increase the likelihood that firms will increase prices and restrict output both in the near future and in the long term.

15. The acquisition by CCSW of San Antonio DPB's Dr Pepper and Canada Dry franchises and other assets violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and Section 7 of the Clayton Act, 15 U.S.C. 18.

Commissioner Azcuenaga recused.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging respondents Coca-Cola Bottling Company of the Southwest and Dr Pepper/7-Up Companies, Inc. with 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 respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

Respondent Dr Pepper/7-Up Companies, Inc., its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Dr Pepper/7-Up Companies, Inc. of all jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication as to respondent Dr Pepper/7-Up Companies, Inc. in accordance with Section 3.25(c) of its 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, now, in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Dr Pepper/7-Up Companies, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Delaware with principal offices at 8144 Walnut Hill Lane, Dallas, Texas.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent Dr Pepper/7-Up Companies, Inc., and the proceeding is in the public interest.

ORDER

I.

DEFINITIONS

For purposes of this order the following definitions shall apply:

A. "*Dr Pepper*" means Dr Pepper/Seven-Up Companies, Inc., a corporation organized, existing and doing business under and by virtue of the laws of Delaware with its principal place of business at 8144 Walnut Hill Lane, Dallas, Texas, and its directors, officers, agents, and employees, and its subsidiaries, divisions, affiliates, successors, and assigns;

B. "*CCSW*" means Coca-Cola Bottling Company of the Southwest, a corporation organized, existing and doing business under and by

virtue of the laws of Delaware with its principal place of business at One Coca-Cola Plaza, San Antonio, Texas and its directors, officers, agents, and employees, and its subsidiaries, divisions, affiliates, successors, and assigns;

C. "*Asset Purchase Agreement*" means the Asset Purchase Agreement Between San Antonio Dr Pepper Bottling Company, Dr Pepper Company and Coca-Cola Bottling Company of the Southwest, dated as of August 28, 1984;

II.

It is ordered, That Dr Pepper shall take no action that interferes with the accomplishment of any relief that might be ordered by the Commission against CCSW in this proceeding to the extent that it prohibits CCSW from retaining any assets or business conveyed to CCSW under the Asset Purchase Agreement or to the extent that it orders CCSW to cease and desist from bottling or distributing any products pursuant to the Asset Purchase Agreement.

III.

It is further ordered, That for a period of ten years following the date of this order, for the purpose of determining compliance with this order, upon written request of the Federal Trade Commission, the Director or any Assistant Director of the Bureau of Competition or the Director of the Dallas Regional Office of the Federal Trade Commission made to Dr Pepper at its principal offices and subject to any legally recognized privilege, Dr Pepper shall permit duly authorized representatives of the Federal Trade Commission, of the Bureau of Competition or of the Dallas Regional Office:

A. Reasonable access during the office hours of Dr Pepper, which may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, reports and other records and documents in Dr Pepper's possession or control that relate to any matter contained in this order; and

B. An opportunity, subject to the reasonable convenience of Dr Pepper, to interview officers or employees of Dr Pepper, who may have counsel present, regarding such matters.

IV.

It is further ordered, That Dr Pepper shall cooperate in this proceeding by producing, at its own expense, information and documents in its possession, custody or control and individuals to provide deposition or hearing testimony as may be requested by complaint counsel in connection with this proceeding.

V.

It is further ordered, That, while paragraph III of this order is effective, Dr Pepper shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment of substantially all assets, sale, or acquisition resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries in the United States, or any other change in the corporation which may affect compliance with the obligations arising out of this order.

VI.

It is further ordered, That, within sixty (60) days after service upon Dr Pepper of the Commission's final order against CCSW in this proceeding and at such other times as the Commission or its staff may request, Dr Pepper shall file with the Commission a verified written report setting forth in detail the manner and form in which Dr Pepper has complied with this order.

Commissioner Azcuenaga recused.

Complaint

IN THE MATTER OF

SOCIETE NATIONALE ELF AQUITAINE, ET AL.

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

Docket C-3270. Complaint, Dec. 28, 1989—Decision, Dec. 28, 1989

This consent order requires, among other things, the corporation, based in Paris, to divest a chemical plant in New Jersey, to a Commission-approved acquirer, and to "hold separate" the entire fluorocarbon division, to eliminate antitrust concerns created by its acquisition of Pennwalt Corporation.

Appearances

For the Commission: *Howard Morse* and *Edward F. Glynn*.

For the respondents: *Wayne D. Collins, Shearman & Sterling*, New York City and *Stephen A. Stack, Jr., Dechert, Price & Rhoads*, Philadelphia, Pa.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondents, Societe Nationale Elf Aquitaine, a corporation; Atochem S.A., a corporation; Elf Aquitaine, Inc., a corporation; Atochem North America, Inc., a corporation; Atochem, Inc., a corporation (collectively "Elf"), all subject to the jurisdiction of the Federal Trade Commission, propose to acquire substantially all of the common stock of respondent, Pennwalt Corporation ("Pennwalt"), a corporation, also 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 ("FTC Act"), 15 U.S.C. 45; and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Societe Nationale Elf Aquitaine ("SNEA") is a French corporation with its office and principal place of business at Tour Elf, 92078 Paris La Defense, France.

2. Respondent Atochem S.A. is a French corporation with its office and principal place of business at 4-8 Cours Michelet, 92091 Paris La Defense, France.

3. Respondent Elf Aquitaine, Inc. is a corporation organized under the laws of the State of Delaware with its office and principal place of business at High Ridge Park, P.O. Box 10037, Stamford, Connecticut.

4. Respondent Atochem North America, Inc. is a corporation organized under the laws of the State of Delaware with its office and principal place of business at High Ridge Park, P.O. Box 10037, Stamford, Connecticut.

5. Respondent Atochem Inc. is a corporation organized under the laws of the State of Delaware with its office and principal place of business at 266 Harristown Road, Glen Rock, New Jersey.

6. Respondent Pennwalt is a corporation organized under the laws of the Commonwealth of Pennsylvania with its office and principal place of business at Three Parkway, Philadelphia, Pennsylvania.

7. Respondents at all times herein have been and now are engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose business or practices are in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

II. THE ACQUISITION

8. On or about March 20, 1989, Pennwalt entered into an Agreement and Plan of Merger with Elf, in which Elf agreed to purchase substantially all of Pennwalt's common stock. Purchase of substantially all of Pennwalt's common stock would give Elf control of Pennwalt. The total value of the proposed acquisition is approximately \$1.06 billion.

III. THE RELEVANT MARKETS

9. For purposes of this complaint, the relevant lines of commerce in which to analyze the proposed acquisition of Pennwalt are the production and distribution of vinylidene fluoride ("VF₂") and polyvinylidene fluoride ("PVDF").

10. For purposes of this complaint, the relevant geographic markets are worldwide.

11. Production and distribution of both VF₂ and PVDF are highly concentrated, whether measured by Herfindahl-Hirschmann indices or two-firm and four-firm concentration ratios in each relevant market.

12. Entry into the relevant markets set out in paragraphs 9 and 10 herein, is very difficult and time consuming.

13. Elf and Pennwalt are actual competitors in the production and distribution of both VF₂ and PVDF.

IV. EFFECTS

14. The effect of the acquisition may be substantially to lessen competition in the relevant markets described above in paragraphs 9 and 10 in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the FTC Act, 15 U.S.C. 45, by, among other things:

a. Eliminating substantial actual competition between Elf and Pennwalt;

b. Eliminating Elf as a perceived and potentially more significant competitive force than it is at present, especially in the sale of PVDF used in architectural coatings;

c. Significantly enhancing the likelihood of collusion or interdependent coordination between or among the firms that produce or sell the relevant products; and

d. Tending to create a dominant firm in the relevant markets.

V. VIOLATION CHARGED

13. The acquisition as set forth in paragraph 8 herein violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18 and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

Chairman Steiger and Commissioner Owen not participating.

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 violations of section 7 of the Clayton Act and section 5 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, and having considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, 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 Societe Nationale Elf Aquitaine ("SNEA") is a French corporation with its office and principal place of business at Tour Elf, 92078 Paris La Defense, France.

2. Respondent Atochem S.A. is a French corporation with its office and principal place of business at 4-8 Cours Michelet, 92091 Paris La Defense, France.

3. Respondent Elf Aquitaine, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at High Ridge Park, P.O. Box 10037, Stamford, Connecticut.

4. Respondent Atochem North America, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at High Ridge Park, P.O. Box 10037, Stamford, Connecticut.

5. Respondent Atochem Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at 266 Harristown Road, Glen Rock, New Jersey.

6. Respondent Pennwalt is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its office and principal place of business at Three Parkway, Philadelphia, Pennsylvania.

7. 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 SNEA's acquisition of any or all voting securities of Pennwalt.

b. "*SNEA*" means Societe Nationale Elf Aquitaine, a French corporation, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates that Societe Nationale Elf Aquitaine controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

c. "*Pennwalt*" means Pennwalt Corporation, a Pennsylvania corporation, as it was constituted prior to the acquisition, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Pennwalt controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

d. "*Atochem*" means Atochem S.A., a French corporation, a directly wholly-owned subsidiary of SNEA, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Atochem S.A. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

e. "*EAP*" means Elf Aquitaine, Inc., a Delaware corporation and a directly wholly-owned subsidiary of SNEA, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Elf Aquitaine, Inc. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

f. "*Atochem Inc.*" means Atochem Inc., a Delaware corporation and an indirectly wholly-owned subsidiary of SNEA, its predecessors, and other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Atochem Inc. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

g. "*ANA*" means Atochem North America, Inc., a Delaware corporation and an indirectly wholly-owned subsidiary of SNEA, its

predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Atochem North America, Inc. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

h. "*Respondents*" means SNEA, Atochem S.A., Elf Aquitaine, Inc., Atochem Inc., Atochem North America, Inc. and Pennwalt.

i. "*PVDF*" means polyvinylidene fluoride homopolymers and copolymers.

j. "*VF₂*" means vinylidene fluoride monomer.

k. "*Thorofare Plant*" means the manufacturing facility currently owned and operated by Pennwalt located at Thorofare, New Jersey, and all of its assets, title, properties, interests, rights and privileges, of whatever nature, tangible and intangible, including without limitation all buildings, machinery, equipment, customer lists, and other property of whatever description, and including the right to use in the United States on a nonexclusive basis (under a license, lease, contract or similar arrangement) Pennwalt's current technology and know-how employed to produce HCFC-142b and VF₂ at such plant and all Pennwalt's commercial grades of PVDF whether or not produced at such plant.

l. "*Acquirer*" shall have the meaning given to the term in Section II.

m. "*Commission*" means the Federal Trade Commission.

II.

It is ordered, That respondents shall divest, absolutely and in good faith, to an acquirer that receives the prior approval of the Commission (the "acquirer"), within twelve (12) months after the date this order becomes final, the Thorofare Plant.

III.

It is further ordered, That:

A. If respondents have not divested the Thorofare Plant as contemplated by Section II within the twelve-month period provided for in Section II, respondents shall consent to the appointment of a trustee empowered to divest the Thorofare Plant. In the event that the Commission brings an action pursuant to Section 5(l) of the Federal

Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. The appointment of a trustee shall not preclude the Commission from seeking civil penalties or any other relief available to it for any failure by respondents to comply with this order.

B. The trustee shall also be empowered to include in the assets to be divested a commitment from respondents to provide the acquirer for a period of at least one (1) year from the date of divestiture with technical assistance required by said acquirer to operate the Thorofare Plant using the proprietary technology and know-how licensed as part of the divestiture of the Thorofare Plant. If the commitment to provide technical assistance to the acquirer is included in the assets that the trustee is empowered to divest and if the Commission determines that respondents have not complied with its commitment, the Commission may extend the period of the commitment in addition to any other remedies available to the Commission.

C. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest at no minimum price. The trustee shall make the divestitures contemplated by this Section III only to an acquirer that receives the prior approval of the Commission, and only in manner that receives the prior approval of the Commission.

D. If a trustee (the "trustee") is appointed by the Commission or a court in order to discharge respondents' obligations under Section III of this order, the following terms and conditions shall apply to the trustee's duties and responsibilities:

(1) The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

(2) The trustee shall have the power and authority to accomplish the divestiture contemplated by Section III of this order. The trustee shall have twelve (12) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission and, if the trustee is appointed by a court, subject also to the prior approval of the court. If, however, at the end of such 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 Commission, or by the court

for a court-appointed trustee; *provided, however*, that the Commission or court may only extend the divestiture period two (2) times.

(3) Respondents shall make available in the United States to the trustee and the trustee shall have full and complete access to the personnel, books, records and facilities of any businesses that the trustee has the duty to divest. Respondents shall develop such financial or other information as the trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

(4) The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest at no minimum price.

(5) The trustee shall serve at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ such consultants, accountants, attorneys or other persons reasonably necessary to carry out the trustee's duties and responsibilities and respondents shall bear the expense for such services. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondents 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's accomplishing the divestiture of the Thorofare Plant.

(6) Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission, and, in the case of a court-appointed trustee, of the court, the respondents shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture for which the trustee is responsible.

(7) If the trustee ceases to act or fails to act diligently, one or more substitute trustees shall be appointed in the same manner as provided in this Section III of the order.

(8) The trustee shall report in writing to respondents and the Commission every sixty (60) days concerning each trustee's efforts to accomplish the divestiture.

