

IN THE MATTER OF

T&N PLC

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-3312. Complaint, Nov. 8, 1990—Decision, Nov. 8, 1990

This consent order requires, among other things, a Manchester, England, manufacturer to divest within twelve months certain thinwall engine bearing assets and certain tri-metal heavywall engine bearing assets to a Commission-approved acquirer or acquirers; and if required by the acquirers, requires the respondent to supply certain input material to the acquirers for five years. If neither the respondent nor the trustee successfully divests either set of assets, the order requires the divestiture of J.P. Industries' McConnellsville, Ohio, facility, in addition to certain thinwall engine bearing assets.

Appearances

For the Commission: *Allee A. Ramadhan* and *Ernest A. Nagata*.

For the respondent: *Richard E. Carlton, Sullivan & Cromwell*, New York, N.Y.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent T&N plc ("T&N"), a corporation subject to the jurisdiction of the Commission, proposes to acquire substantially all of the common stock of J.P. Industries, Inc. ("JPI") 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 ("FTC Act"), as amended, 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 FTC Act, 15 U.S.C. 45(b), stating its charges as follows:

I. DEFINITIONS

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

(A) "*T&N*" means T&N plc, its predecessors, subsidiaries, divisions, groups and affiliates controlled by T&N, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(B) "*JPI*" means JP Industries, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by JPI, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(C) "*Plain engine bearings*" or "*bearings*" mean engine bearings characterized by having interfacing surfaces with relative motion of a sliding nature that provide support to a shaft rotating over a thin film of oil. Plain engine bearings include half bearings, bushings and thrust washers.

(D) "*Thinwall engine bearings*" means bearings with a wall thickness of one-quarter of an inch or less. Such bearings are utilized in automotive and light truck as well as heavy duty diesel engine applications.

(E) "*Tri-metal heavywall engine bearings*" means copper lead bearings with an overlay plating of lead tin or lead tin copper that have a wall thickness of greater than one-quarter of an inch.

II. THE RESPONDENT

2. Respondent T&N plc is a corporation organized under the laws of the United Kingdom, with its principal offices located at Bowdon House, Ashburton Road West, Trafford Park, Manchester M17 1RA, England.

3. T&N at all times relevant herein has been and is now engaged in commerce as the term "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 affects commerce as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. 44.

III. THE ACQUISITION

4. On March 27, 1990, T&N and JPI entered into an agreement and plan of merger in which T&N agreed to purchase substantially all of JPI's common stock through T&N Automotive Components Inc., an indirect, wholly-owned subsidiary of T&N. The total value of the proposed acquisition is approximately \$190 million.

IV. RELEVANT MARKETS

5. For purposes of this complaint, the relevant lines of commerce

within which to assess the effects of T&N's proposed acquisition of JPI are the manufacture and sale of thinwall engine bearings and the design, manufacture and sale of tri-metal heavywall engine bearings.

6. For purposes of this complaint, the relevant geographic market within which to assess the effects of T&N's proposed acquisition of JPI is the United States.

V. MARKET STRUCTURE

7. The manufacture and sale of thinwall engine bearings in the United States is highly concentrated, whether measured by the Herfindahl-Hirschmann Index or by two-firm and four-firm concentration ratios.

8. The design, manufacture, and sale of tri-metal heavywall engine bearings in the United States is highly concentrated, whether measured by the Herfindahl-Hirschmann Index or by two-firm and four-firm concentration ratios.

VI. ENTRY CONDITIONS

9. Entry into the manufacture and sale of thinwall engine bearings in the United States is very difficult and time-consuming.

10. Entry into the design, manufacture, and sale of tri-metal heavywall engine bearings in the United States is very difficult and time-consuming.

VII. COMPETITION

11. T&N and JPI are actual competitors in the relevant markets.

VIII. EFFECTS

12. The effect of the acquisition may be substantially to lessen competition in the relevant markets described in paragraphs 5 and 6 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 T&N and JPI;

(B) Significantly enhancing the likelihood of successful anticompetitive interdependent conduct, nonrivalrous behavior, and actual or tacit collusion among firms in the relevant markets;

(C) Eliminating substantial potential competition between T&N and JPI; and

(D) Eliminating JPI as a substantial independent competitive force.

13. All of the above effects increase the likelihood that firms in the relevant markets will increase prices both in the near future and in the long term.

IX. VIOLATION CHARGES

14. The agreement and plan of merger violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and the acquisition, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. Commissioner Azcuenaga dissenting.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of respondent's proposed acquisition of J.P. Industries, Inc., 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 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 respondent that the law had 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 the 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, and makes the following jurisdictional findings and enters the following order:

1. Respondent T&N is a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom with

its principal executive offices at Bowdon House, Ashburton Road West, Trafford Park, Manchester M17 1RA, England.

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.

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

1. "*T&N*" means T&N plc, a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom with its principal offices at Bowdon House, Ashburton Road West, Trafford Park, Manchester M17 1RA, England, its predecessors, subsidiaries, divisions, groups and affiliates controlled by T&N (including, after the acquisition, JPI), and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

2. "*JPI*" means J.P. Industries, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan with its principal offices at 325 East Eisenhower Parkway, Ann Arbor, Michigan, its predecessors, subsidiaries, divisions, groups and affiliates controlled by JPI, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

3. "*Plain engine bearings*" means engine bearings characterized by having interfacing surfaces with relative motion of a sliding nature that provide support to a shaft rotating over a thin film of oil. Plain engine bearings include half bearings, bushings and thrust washers.

4. "*Vandervell*" means Vandervell Limited, a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom, which is a wholly-owned subsidiary of T&N engaged in the manufacture of plain engine bearings at a factory located in Maidenhead, England.

5. "*Vandervell America*" or "*VanAm*" means the business of selling plain engine bearings for U.S. gasoline and diesel applications into the U.S. aftermarket now carried on by Vandervell America, Inc. of Tucker, Georgia, a wholly-owned subsidiary of T&N.

6. "*AE Auto Parts*" means AE Auto Parts Limited, a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom, which is a wholly-owned subsidiary of T&N engaged in the sale of a range of automotive and diesel truck components into the aftermarket from a facility located in Bradford, England.

7. "*Glacier*" means The Glacier Metal Co. Ltd., a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom, which is a wholly-owned subsidiary of T&N engaged in the manufacture and sale of plain engine bearings.

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

9. "*Aftermarket*" means the sale of parts to replace used, worn or damaged parts in gasoline and diesel engines, excluding sales of bearings to original equipment manufacturers.

10. "*Thinwall engine bearing assets*" means the assets and information that T&N will divest relating to the manufacture and sale of thinwall engine bearings. Those assets consist of the following:

(a) All assets relating to the sale, marketing and distribution of bearings for U.S. gasoline engine applications manufactured by Vandervell directed to the U.S. aftermarket that are based at VanAm's facility in Tucker, Georgia, including, but not limited to, all customer lists, inventory (to be repackaged in plain boxes), and assignment of the building lease and all agreements with sales agencies and fee warehouses, excluding any trademarks or trade names;

(b) All tooling that is or has been located at Vandervell's factory in Maidenhead, England that is or has been used for the manufacture of bearings for U.S. gasoline applications (including, but not limited to, the 486 primary part numbers in current use and 76 primary part numbers that have been withdrawn from the U.S., all of which are listed in Appendix A) and/or, at the acquirer's option, all specifications relating to such tooling;

(c) Specifications for tooling used for the manufacture of bearings for U.S. diesel applications at Glacier's facility in Kilmarnock, Scotland that are sold and/or offered for sale in the U.S. aftermarket through VanAm, either directly or as agent for AE Auto Parts (the part numbers of which are listed in Appendix B);

(d) An agreement by T&N to manufacture and supply bearings in the quantities ordered for the applications described in subparagraphs I.10.(b) (excluding the 76 primary part numbers that have been

withdrawn from the U.S.) and I.10.(c) for a period of up to two (2) years (but in no event after Vandervell has transferred to the acquirer that tooling necessary to manufacture a given part number) at current transfer prices between AE Auto Parts Limited and VanAm plus freight and duty plus an annual increase equal to any increase in the United Kingdom Index of Producer Prices for the previous year;

(e) At the option of the acquirer, an agreement by T&N to supply, for a period of at least five (5) years, cast copper lead, sintered copper lead or aluminum strip (whichever the acquirer may choose to buy) used or to be used within the 5-year period by T&N to manufacture the bearings described in subparagraphs I.10.(b) and I.10.(c) for sale into the U.S. aftermarket, such strip to be used by the acquirer to manufacture bearings using the former Vandervell tooling or tooling made by or for the acquirer to the specifications described in subparagraphs I.10.(b) and I.10.(c), and such strip to be supplied by T&N at (i) the average price (excluding freight and duty) prevailing in other arm's-length sales of strip to third parties in the previous year plus an increase equal to any increase in the United States or United Kingdom Index of Producer Prices, whichever is applicable, since the end of that year, or (ii) a negotiated price not to exceed T&N's fully allocated cost of manufacturing strip plus 10%, whichever of the two is lower, plus freight and duty.

(f) Specifications for appropriate machining and overlay electroplating equipment to the extent such equipment is not already in the possession of the acquirer; and

(g) Manufacturing know-how (to the extent the acquirer does not already possess it) with respect to tooling, machining, electroplating and quality control necessary to make commercially saleable engine bearings for the part numbers identified in subparagraphs I.10.(b) and I.10.(c).

11. "*Tri-metal heavywall engine bearings*" means copper lead bearings with an overlay plating of lead tin or lead tin copper that have a wall thickness of greater than one-quarter of an inch.

12. "*Tri-metal heavywall engine bearing assets*" means the assets and information that T&N will divest relating to the manufacture and sale of tri-metal heavywall engine bearings. Those assets consist of the following:

(a) At the option of the acquirer, an agreement to supply for a period of at least five (5) years sintered copper lead slab for the manufacture by the acquirer of the tri-metal heavywall bearings

referred to in subparagraph I.12.(d), such slab to be supplied at (i) the average price (excluding freight and duty) prevailing in other arm's-length sales of slab to third parties in the previous year plus an increase equal to any increase in the United Kingdom Index of Producer Prices since the end of that year, or (ii) a negotiated price not to exceed T&N's fully allocated cost of manufacturing slab plus 10%, whichever of the two is lower, plus freight and duty;

(b) At the option of the acquirer, either or both (i) centrifugal casting equipment substantially equal in design, manufacturing capability and production capacity to the centrifugal casting equipment currently used to cast tri-metal heavywall bearings at T&N's Ilminster facility (if T&N opts to purchase centrifugal casting equipment for the acquirer, then such equipment shall be sold at T&N's cost of acquiring the equipment); and/or (ii) an agreement to supply rough castings for the tri-metal heavywall bearings referred to in subparagraph I.12.(d), to be machined into finished bearings by the acquirer; if the acquirer opts to buy rough castings rather than or in addition to centrifugal casting equipment, those rough castings shall be sold to the acquirer at a negotiated price not to exceed T&N's fully allocated cost of manufacturing rough castings plus 10% plus freight and duty for a period of at least five (5) years;

(c) Specifications for appropriate machining and overlay electroplating equipment to the extent such equipment is not already in the possession of the acquirer; and

(d) Manufacturing know-how and T&N's proprietary design information, if any (to the extent not already in the possession of the acquirer), customer details and tooling (and/or, at the acquirer's option, specifications for such tooling) for (i) any tri-metal heavywall engine bearings that are, or within the past five (5) years have been, supplied to the same United States customer by both T&N and JPI (to the extent that can be ascertained from T&N's and JPI's existing business records); or (ii) any tri-metal heavywall engine bearings as to which either T&N or JPI is in the process of acquiring tooling needed to meet an outstanding U.S. purchase order if those tri-metal heavywall engine bearings are, or within the past five (5) years have been, supplied to the same United States customer by the other company (to the extent that can be ascertained from T&N's and JPI's existing business records). Where a customer has authority to prevent T&N from providing customer details and tooling to an acquirer pursuant to this order, T&N shall use its best efforts to secure

authority from the customer to provide such customer details and tooling to the acquirer.

13. "*Fully allocated cost*" means the manufacturing cost of the product in question in the most recent twelve-month period plus allocated selling and marketing, research and development and administrative costs (allocated on the same basis as those costs are currently allocated to T&N's engine bearing business).

14. "*Transfer price*" means the price that is negotiated between a T&N manufacturing entity and a T&N sales entity based on the former's financial objectives, anticipated order load for the coming year and projected productivity improvements and on the latter's minimum required profit margin and ability to source the product more cheaply from sources outside the T&N group. The transfer price between Vandervell and AE Auto Parts for each of the applications described in subparagraph I.10.(b) is set out in Appendix A and the transfer price between Glacier and AE Auto Parts for each of the applications described in subparagraph I.10.(c) is set out in Appendix B.

15. "*McConnelsville facility*" means all of JPI's assets used in material production and manufacture and sale of engine bearings that are located in McConnelsville, Ohio.

II.

It is further ordered, That T&N shall comply with all the terms of the Asset Maintenance and Improvement Agreement executed on August 17, 1990 as Appendix C and made a part of this order. Said Agreement shall continue in effect until such time as T&N or the trustee has accomplished all divestitures required by paragraphs III, IV, VII and VIII of this order or until such time as the said Agreement provides.

III.

It is further ordered, That:

A. T&N shall divest the thinwall engine bearing assets within twelve (12) months from the date this order becomes final; *provided, however*, that if the Commission has not approved or disapproved of a proposed divestiture within one hundred and twenty (120) days of the date the application for such divestiture has been put on the public

record, the running of the divestiture period shall be tolled until the Commission approves or disapproves of the divestiture. The divestiture shall be only to an acquirer (or acquirers) that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to remedy the lessening of competition resulting from the acquisition of JPI by T&N as alleged in the Commission's complaint in this matter.

B. T&N shall, as soon as practicable, but no later than sixty (60) days after Commission approval of an acquirer, deliver to the acquirer all of the production technology, know-how, specifications and other information or documentation required to be divested pursuant to paragraph III of this order.

C. On reasonable notice to T&N from an approved acquirer, T&N shall provide technical assistance and know-how to the acquirer with respect to the manufacture and sale of engine bearings to be made using the divested assets. Such technical assistance shall include, but not be limited to, consultation with knowledgeable T&N employees and training at the acquirer's manufacturing facility. T&N may charge to said approved acquirer the reasonable costs T&N shall incur providing such technical assistance, including reimbursement, commensurate with the salary and benefits of the T&N personnel involved, for the time plus expenses of such T&N personnel. T&N shall continue providing such technical assistance for a period of time sufficient to satisfy the management of the acquirer of the thinwall engine bearing assets that it is capable of producing commercially saleable engine bearings utilizing the former Vandervell assets; *provided, however*, that T&N shall not be required to continue providing such technical assistance for more than two (2) years after an agreement of sale divesting the thinwall engine bearing assets is approved by the Commission.

IV.

It is further ordered, That:

A. T&N shall divest the tri-metal heavywall engine bearing assets within twelve (12) months from the date this order becomes final; *provided, however*, that if the Commission has not approved or disapproved of a proposed divestiture within one hundred and twenty (120) days of the date the application for such divestiture has been put on the public record, the running of the divestiture period shall be

tolled until the Commission approves or disapproves of the divestiture. The divestiture shall be only to an acquirer (or acquirers) that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to remedy the lessening of competition resulting from the acquisition of JPI by T&N as alleged in the Commission's complaint in this matter.

B. T&N shall, as soon as practicable, but no later than sixty (60) days after Commission approval of an acquirer, deliver to the acquirer the production technology, know-how, specifications and other information or documentation required to be divested pursuant to paragraph IV of this order.

C. On reasonable notice to T&N from an approved acquirer, T&N shall provide technical assistance and know-how to the acquirer with respect to the manufacture and sale of engine bearings to be made with the divested assets. Such technical assistance shall include, but not be limited to, consultation with knowledgeable T&N employees and training at the acquirer's manufacturing facility. T&N may charge to said approved acquirer the reasonable costs T&N shall incur providing such technical assistance, including reimbursement, commensurate with the salary and benefits of the T&N personnel involved, for the time plus expenses of such T&N personnel. T&N shall continue providing such technical assistance for a period of time sufficient to satisfy the management of the acquirer of the tri-metal heavywall bearing business that it is capable of producing commercially saleable engine bearings utilizing the assets to be divested; *provided, however*, that T&N shall not be required to continue providing such technical assistance and training for more than four (4) years after an agreement of sale divesting the tri-metal heavywall bearing business is approved by the Commission.

V.

It is further ordered, That if T&N has not divested the thinwall engine bearing assets as provided in paragraph III within twelve (12) months after the date this order becomes final (or within the divestiture period as it may be extended pursuant to subparagraph III.A), T&N shall consent to the appointment by the Commission of a trustee who shall have the power and authority to divest the thinwall engine bearing assets. However, if a trustee has already been

appointed to divest the tri-metal heavywall engine bearing assets pursuant to paragraph VI, such trustee shall have the power and authority to divest the thinwall engine bearing assets.

VI.

It is further ordered, That if T&N has not divested the tri-metal heavywall engine bearing assets as provided in paragraph IV within twelve (12) months after the date this order becomes final (or within the divestiture period as it may be extended pursuant to subparagraph IV.A), T&N shall consent to the appointment by the Commission of a trustee who shall have the power and authority to divest the tri-metal heavywall engine bearing assets. However, if a trustee has already been appointed to divest the thinwall engine bearing assets pursuant to paragraph V, such trustee shall have the power and authority to divest the tri-metal heavywall engine bearing assets.

VII.

It is further ordered, That:

A. In the event that the Commission or the Attorney General 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, T&N shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee pursuant to paragraph V, VI, VII or VIII of this order shall preclude the Commission or the Attorney General from seeking civil penalties and other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the FTC Act, or any other statute enforced by the Commission, for any failure by T&N to comply with this order.

B. If a trustee is appointed by a court or the Commission pursuant to paragraph V, VI or VII of this order, T&N shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

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

(2) Within thirty (30) days after appointment of the trustee and

subject to the approval of the Commission and, in the case of a court-appointed trustee, of the court, T&N shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures.

(3) Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the assets covered by paragraphs III and IV of this order. The trustee shall have twelve (12) months from the date of appointment to accomplish the divestitures. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission or, for a court-appointed trustee, by the court; *provided, however*, that the Commission or the court may only extend the divestiture period for an additional period not to exceed one (1) year.

(4) The trustee shall have full and complete access to the personnel, books, records and facilities of T&N. T&N shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. T&N shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by T&N shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

(5) Subject to T&N's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestitures as stated in paragraphs III and IV, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the thinwall engine bearing assets and the tri-metal heavywall engine bearing assets. Divestiture of the thinwall engine bearing assets and the tri-metal heavywall engine bearing assets shall be made in the manner set out in paragraphs III and IV; *provided, however*, that if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by T&N from among those approved by the Commission.

(6) The trustee shall serve, without bond or other security, at the cost and expense of T&N on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of T&N, such

consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission or the court of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to T&N 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 divesting the assets covered by this order.

(7) T&N 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 Commission or a court of competent jurisdiction determines that such losses, claims, damages, or liabilities arose out of the misfeasance, gross negligence, or willful or wanton acts or bad faith of the trustee.

(8) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraphs V and VI.

(9) The Commission and, in the case of a court-appointed trustee, the court may, on its own initiative or at the request of the trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this order.

(10) The trustee shall report in writing to T&N and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

VIII.

It is further ordered, That:

A. If divestiture of the thinwall engine bearing assets has not been accomplished by T&N within the twelve (12) months provided in paragraph III (including any extension of that divestiture period pursuant to subparagraph III.A) or the divestiture of the tri-metal heavywall engine bearing assets has not been accomplished by T&N within the twelve (12) months provided in paragraph IV (including any extension of that divestiture period pursuant to subparagraph IV.A), and the divestiture of either the thinwall engine bearing assets or the heavywall engine bearing assets has not been accomplished by

