

likelihood of anticompetitive effects from an acquisition consequently increases as well. . . ." *Owens-Illinois*, slip op. at 27 (quoting *B.F. Goodrich*, 110 FTC at 303); *See also* Merger Guidelines, Section 1.51 ("Market concentration is a useful indicator of the likely potential competitive effect of a merger."). Increases in concentration magnify the likelihood of collusive behavior since "[t]he fewer the competitors in a market, the easier it becomes for the firms to coordinate price and output decisions." *Olin* slip op. at 21; *See also* Merger Guidelines, Section 2.0. However, while market concentration is a screen that helps identify mergers that may reduce competition, it is not always a precision tool.

The Merger Guidelines divide markets into three categories according to concentration. Markets with a post-merger HHI under 1000 are unconcentrated; markets with a post-merger HHI between 1000 and 1800 are moderately concentrated; and markets with a post-merger HHI over 1800 are highly concentrated. Merger Guidelines, Section 1.51. In this case, as in *B.F. Goodrich*, 110 FTC at 310, the mass and suspension PVC homopolymer market, is moderately concentrated, as the majority notes. Slip op. at 27.

Within each category, the Guidelines also look to the amount of increase resulting from the acquisition. In a moderately concentrated market, an increase of less than 100 in the HHI is "unlikely to have adverse competitive consequences." Merger Guidelines, Section 1.51(b). An increase of more than 100, however, "potentially raise[s] significant competitive concerns" depending on how likely it is that there will be a lessening of competition through coordinated interaction or unilateral effects, and factors relating to entry, efficiencies, and business failure. *Id.* In this case, there were no allegations of unilateral anticompetitive effects from the acquisition, therefore our focus is on whether the acquisition increases the likelihood of coordinated actions or collusive anticompetitive behavior.

The bright-line division between unconcentrated and moderately concentrated markets is somewhat illusory. As the Merger Guidelines observe, "[a]lthough the resulting regions provide a useful framework for merger analysis, the numerical divisions suggest greater precision than is possible with the available economic tools and information." Merger Guidelines, Section 1.5. The imprecision

of the numbers is further complicated where they fall "just above and just below a threshold." In that event, other things being equal, "comparable competitive issues" are presented. *Id.* Had the concentration level in this case fallen below the threshold dividing unconcentrated and moderately concentrated markets, it is unlikely that the acquisition would have had an adverse competitive effect. In such a case, there ordinarily would be no further investigation after the concentration level was determined. *Id.* at Section 1.51(a). The acquisition in this case left the market concentration just above the threshold separating unconcentrated and moderately concentrated markets, with an increase in the HHI just exceeding 100. Such a concentration level does not permit us to dismiss the acquisition as competitively insignificant without further analysis, but at the same time, the marginal level of concentration tells us relatively little about the likely competitive effect of a merger. The concentration as I have calculated it here is comparable, although not identical, to the market at the time of B.F. Goodrich. Then, the mass and suspension PVC homopolymer market after the acquisition was moderately concentrated, "but only by the barest of margins." 110 FTC at 310. The increase in the HHI was over 100 (110-113), "barely exceed[ing]" the Guidelines' threshold. The Commission held that such concentration created "only a weak presumption of competitive injury." *Id.* at 310-11.⁶ I would apply the same standard here.

⁶ The Commission in B.F. Goodrich noted the 1984 Justice Department Guidelines in its discussion of market concentration. 110 FTC at 310-11. In 1984, the Department was "likely to challenge mergers in [the moderately concentrated] region that produce an increase in the HHI of more than 100 points" unless, based on the totality of factors, the Department concluded that the acquisition "is not likely substantially to lessen competition." 1984 Department of Justice Merger Guidelines ("1984 DOJ Guidelines"), Section 3.11(b), *reprinted in* 4 Trade Reg. Rep. (CCH) ¶13,103 at 20,561 (emphasis in original). Under the Merger Guidelines since adopted by the Commission, such a merger "potentially raise[s] significant competitive concerns" depending upon other factors discussed therein. Section 1.51(b).

B. Weighing the Significance of Other Factors

In order to find a violation, we must determine that the effect of the acquisition "may be substantially to lessen competition." 15 U.S.C. 18. Where we fear coordinated activity, as opposed to the unilateral exercise of market power, "the ultimate issue is whether the challenged acquisition is likely to facilitate collusion." *Hospital Corp. of America v. FTC*, 807 F.2d 1381, 1386 (7th Cir. 1986), *cert. denied*, 481 U.S. 1038 (1987). While the level of market concentration is the starting point to determine the likelihood of collusion, many other factors also affect the likelihood of collusive behavior. When the concentration only marginally suggests a competitive problem, as in this case, the anticompetitive theory and the supporting facts must be examined with particular care.

The Commission has previously examined mergers where the increase in concentration was marginal, although within the moderately concentrated range. In *Weyerhaeuser Company*, the increase in the HHI was 211 points, resulting in a post-merger HHI of 1166. The Commission observed that an "especially careful review of a number of industry characteristics in addition to concentration" was necessary. 106 FTC 172, 280 (1985). As previously noted, in *B.F. Goodrich*, the Commission found that concentration levels comparable to those here "at the lower end of the 'moderately concentrated' range . . . create only a weak presumption of anticompetitive effects. . . ." 110 FTC at 338. Accordingly, the amount of evidence needed to rebut the "presumption" is not great. *See, e.g., United States v. Baker Hughes, Inc.*, 908 F.2d 981, 991 (D.C. Cir. 1990).⁷

⁷The B.F. Goodrich approach requires, as concentration increases, a greater quantum and quality of evidence to rebut any presumption created by concentration; similarly, it requires less evidence at lower levels of concentration. This approach should be distinguished from the notion that, as the HHI increases, there is less likelihood that any such presumption can be overcome, and therefore, that an analysis of competitive effects is unnecessary. The need to analyze those factors exists in all cases above the unconcentrated range, irrespective of how concentrated the market is, and the extent of the increase in concentration. Thus, the 1992 Merger Guidelines, quite rightly in my view, remove the suggestion from the 1984 Guidelines that factors relating to the ease and profitability of collusion, "[w]here

Successful collusion, or coordinated interaction, by competitors "entails reaching terms of coordination that are profitable to the firms involved and an ability to detect and punish deviations that would undermine the coordinated interaction." Merger Guidelines, Section 2.1. Therefore, we must examine the conditions in the market for mass and suspension PVC homopolymer, and reach a judgment concerning the likelihood that firms in the market could arrive at terms of coordination or police a collusive agreement. Because the increase in concentration is marginal, I would have to find that the industry is one where conditions are very conducive to collusion in order to conclude that this marginal increase in concentration meaningfully increases the likelihood of collusion. If even some market characteristics make it difficult to reach and police mutually profitable terms of coordination, then this acquisition likely will have no effect on competition. I now turn to the other evidence concerning the likelihood of such collusive pricing.

IV. THE EVIDENCE ON THE COMPETITIVE EFFECT

In B.F. Goodrich, the Commission concluded that mass and suspension copolymer is "relatively heterogeneous;" that costs vary significantly because of differing reactor sizes, resin production emphases, and transportation costs; that the price elasticity of demand for PVC end products might constrain efforts to collude; and that these industry characteristics made it unlikely that the acquisition had anticompetitive effects in the market. 110 FTC at 347. The B.F. Goodrich record is part of the record in this case. However, the majority concludes, based primarily on post-B.F. Goodrich record evidence, that the industry has changed sufficiently with respect to these characteristics to warrant reaching a different conclusion with

relevant, . . . are most likely to be important where the Department's decision whether to challenge a merger is otherwise close." 1984 DOJ Guidelines, Section 3.4 (emphasis supplied). It is therefore not correct to say that this provision in the 1984 Guidelines is equivalent to the B.F. Goodrich approach adopted by the Commission and, in my view, reflected in the 1992 Guidelines. See Merger Guidelines, Section 1.51.

respect to each factor, as well as on the ultimate proposition that anticompetitive effects are unlikely. I disagree.⁸

A. *Product Homogeneity -- Quality and Prices*

Coordination among firms need not be universal in terms of industry participants or dimensions of competition in order to have an anticompetitive effect. Merger Guidelines, Section 2.11. However, as products in the relevant market become more differentiated, collusion becomes "more complex" because it is then "necessary to establish and enforce a complex schedule of prices corresponding to gradations in actual or perceived quality attributes among the competing products." *B.F. Goodrich*, 110 FTC at 315 (quoting 1984 DOJ Guidelines at ¶ 3.411 (footnote omitted)); *See also* Merger Guidelines, Section 2.11 ("[R]eaching terms of coordination may be limited or impeded by product heterogeneity. . . ."). Heterogeneity "substantially complicates the determination and enforcement of consensus prices. Instead of establishing a single price for a single homogeneous product, firms must establish and maintain a whole series of prices for a whole series of product grades." *B.F. Goodrich*, 110 FTC at 316 n.151.

⁸ Occidental argues that *B.F. Goodrich* precludes contrary findings in this case, in particular that the competitive factors have not changed significantly "in the short time" since *B.F. Goodrich*, and that *stare decisis* mandates that the Commission reverse the decision of the ALJ. R.A.B. at 46, 1. I agree with the majority that "each case must be decided on its own facts," even where the same market is involved. Slip op. at 28. A contrary conclusion may mean that declining to find a violation when the market is in the 1000 range would preclude challenges to subsequent mergers in the same market as concentration progressively increased. An increase in the HHI from one merger to the next requires, at a minimum, a reassessment of the likelihood of anticompetitive effects given the higher concentration. Factors that may convince us that collusion is unlikely when there are 8 or 9 firms, may not convince us when there are 6 or 7 firms.

However, the differences in concentration between this case and *B.F. Goodrich* are slight; and some of the record is identical. Therefore, the Commission should be certain that the evidence in this case is sufficient and distinguishable to outweigh the evidence upon which it earlier relied in finding no violation in this market. I disagree with the majority that Complaint Counsel has met its burden in this regard.

In B.F. Goodrich, the Commission noted that "differences in product quality may make price differentials necessary to product a stable market equilibrium, and achieving a consensus on such differentials is likely to be difficult." *Id.* at 315 (footnote omitted). There are three categories of PVC resins: pipe, general purpose, and speciality. Within each category,⁹ there are different grades of PVC, and within particular grades there are perceived differences in quality. *Id.* at 315-16. According to the record in B.F. Goodrich, 75% of PVC resin was commodity grades, while 25% was specialty grades. *Id.* at 316.

Not only does such relative product heterogeneity make reaching a collusive agreement more difficult, because multiple prices must be agreed to, it also makes policing compliance more difficult. Multiple prices facilitate cheating on a cartel agreement, because a producer can sell a higher priced grade of PVC, and invoice it at a lower grade, effectively cutting the price to the buyer by the difference in the prices of the grades.

In this case, the majority focuses on two indicia of product homogeneity: (1) customers' ability to substitute one producer's PVC for another's; and (2) producers' ability to obtain a "premium price" for product. Premium prices are defined as charging higher prices than other producers for the same type and grade of PVC. Slip op. at 34-36. The majority concludes that customers, in fact, do substitute between producers, and that it is not possible for a producer to obtain a premium price for his product. The majority concludes that PVC is homogeneous "within grade," slip op. at 34-36, 41, and that collusion would be facilitated. I do not agree.

The ability of producers to obtain premium prices would make it objectively difficult to reach a collusive price agreement. However, the absence of such premiums does not mandate a conclusion that it would be easy to arrive at collusive prices. There continue to be multiple prices for different types and grades of PVC resins -- not only the so-called commodity-type grades of PVC, pipe resin, general purpose resin (priced one cent higher than pipe grade), and film grade resin (priced an additional cent higher than general purpose), that the

⁹ The evidence is unclear as to whether there is more than one grade of pipe grade PVC. There are multiple grades within the other categories.

majority primarily focuses on, slip op. at 41-42, but also specialty grades of mass and suspension PVC homopolymer. The multiplicity of types and grades of PVC makes it more difficult to collude, even if each producer can produce each type and grade of PVC, and it also makes it easier to cheat on any collusive agreement, since producers can always disguise price discounts through deceptive billing.

B. Production Cost Differences

Differences in the costs of producing different types and grades of PVC are reflected in the price differentials between them. Some of the cost differences are due to the type of reactor used, large reactors having lower unit costs than small reactors. These cost differences for the various types and grades of PVC make achieving a price consensus more difficult.

The Commission in *B.F. Goodrich* determined that "PVC production costs differ significantly from one firm to another." 110 FTC at 321. Like the majority here, the Commission acknowledged that such costs were similar for producers using large reactors, which constituted two-thirds of installed capacity. *Id.* However, the Commission focused on the remaining small reactors that produce a variety of specialty resins, with resulting significant variations in production costs, and noted that "[m]ost firms operate several different sizes of reactor." *Id.* at 321 n.177. The Commission cited, for instance, evidence from the record showing that total plant operating costs varied among plants from 14 cents per pound to almost 22 cents per pound, because "different firms use reactors of different sizes to produce different PVC resins . . . accentuated by the fact that different PVC producers emphasize the production of different PVC grades". *Id.* at 322.¹⁰ It also noted cost differences stemming from the less efficient nature of the small reactors, and the greater technical customer service required with respect to specialty resins. *Id.*

¹⁰ The majority points to evidence suggesting a smaller, but significant, difference in production costs between large and small reactors (*i.e.*, 14 to 22 percent of price). *See* slip op. at 7 n.19.

In this case, the majority acknowledges the substantial differences in costs of production, but concludes that the "difference in reactor size has led to two tiers of products, . . . rather than disparate costs among producers." Slip op. at 47. The majority concludes that the price differences are so great that PVC made in small reactors would not undercut price increases on PVC grades made in large reactors. *Id.*¹¹

However, the majority's definition of the product market, in which I have concurred, does not divide the market into submarkets, and the opinion does not share the quite correct emphasis of the B.F. Goodrich opinion on the additional difficulties in colluding in the market defined by the majority. Moreover, the majority dismisses the ability of the small reactors to have an impact on the prices of PVC produced in large reactors, because small reactors are owned by the same manufacturers who produce PVC in large reactors. Such manufacturers, the argument goes, would have no incentive to undercut price agreements on PVC produced in large reactors. This approach does not take into sufficient account the question of whether companies, who own different proportions of small (high cost) and large (low cost) reactor capacity, would find it easy to reach a collusive agreement, and the fact that the variations undermine collusion. Such differences increase the number of variables that must be agreed upon, and are available as a source of cheating.

C. Transportation Cost Differentials

In finding that mass and suspension PVC is "relatively heterogeneous," the Commission in B.F. Goodrich also pointed to transportation cost differences. The Commission noted that, while several manufacturers operate plants in the Gulf Coast area, others are "in widely scattered locations." 110 FTC at 317. While acknowledging that mass and suspension PVC is "generally sold on a delivered price basis," the Commission concluded that it was not clear whether that price was uniform throughout the geographic market, and that any lack of uniformity would "complicate the task

¹¹ Like the majority here, the Commission in B.F. Goodrich acknowledged the trend toward large reactors. 110 FTC at 321.

of developing a single consensus price, particularly given the fact that PVC plants are scattered all over the country." *Id.* at 317 n.152, 322.

The majority determines, based on the record in this case, that PVC is "sold on a uniform delivered price basis throughout the United States, usually with a two cent premium for customers west of the Rockies," slip op. at 43; that transportation differences are a small part of the selling price; that the locational differences are insignificant; and concludes that any such differences, to the extent that they exist, "are not sufficient to complicate collusion and thereby to decrease the likelihood of anticompetitive effects stemming from this acquisition." *Id.* at 43-45. I disagree.

Transportation costs can make it harder for producers in an industry to reach and police a collusive uniform delivered price agreement, whenever those costs are significant, and plants are widely spread geographically so that the cost of servicing a particular customer location will vary from producer to producer. Differences in transportation costs make it harder to reach a consensus on prices because plants that have relatively higher transportation costs will seek to have a higher collusive price than plants with lower transportation costs. Differences in transportation costs make it harder to police a collusive price agreement, because each plant will have an incentive to cheat on the agreement to obtain customers closest to its own location.

The majority acknowledges that shipment costs vary, depending on the location of the plant and the customer, but argues that transportation costs are relatively small and the effects are relatively insignificant. However, the evidence cited by the majority suggests to me, as similar evidence did to the B.F. Goodrich Commission, that such costs are significant, vary widely, and may have a significant impact on the ability to collude. Slip op. at 43-44 n.98 (transportation costs range from 2.7 percent to 12 percent). Transportation costs are a significant variable cost; participants in the market do indeed vary their transportation costs by choosing a particular plant location to serve a given customer, a custom that could facilitate cheating on a price agreement.

The majority denies that the plant locations are consequential in terms of defeating collusion. However, the plants discussed, *See* slip op. at 44-45, have not changed location since the Commission's

decision in B.F. Goodrich; they are the same plants with the same relative differences in transportation costs.¹² Similarly, the majority's argument that PVC transportation cost differences may be offset by VCM transportation cost differences was previously rejected by the Commission in Goodrich because "VCM may originate in a location different and distant from the destination of the PVC into which it is converted." 110 FTC 322 n.182. The record in this case, in my view, does not support changing the basic finding in B.F. Goodrich that transportation cost differences do make collusion more difficult.

D. Demand Elasticity Differences

The Commission concluded in B.F. Goodrich that the "likelihood of anticompetitive effects . . . increases as the price elasticity of demand for the product at issue declines." 110 FTC at 318 (footnote omitted). Firms find it easier to collude and the incentives to collude increase. *Id.* The opinion acknowledges that the price elasticity of demand for bulk and suspension PVC is relatively low, but notes that "an effort on the part of PVC producers to raise PVC prices to supracompetitive levels may be constrained to some degree by the higher price elasticity of demand for many PVC end use products, and made more difficult by variations in price elasticity from one PVC end product to another." *Id.* at 339 (footnote omitted). In other words, different types and grades of PVC face different elasticities of demand. *Id.* at 319. Because the makers of PVC produce different mixes and would face different losses of sales from a collusive price increase, reaching a collusive price increase would be more difficult.

The majority points to new evidence in the record, showing, in its view, that the elasticity of demand is lower than the Commission

¹² The majority also suggests that large reactor plants tend to be located near one another, while small reactor plants are more geographically dispersed, but that the small reactor specialty homopolymer plants make products that do not directly compete with suspension PVC homopolymer made in large reactor plants. Slip op. at 44-45. As a result, it is effectively argued, only transportation differences between large reactor plants, which are primarily located on the Gulf Coast, are important. As in the discussion of production cost differences *supra*, I find this line of argument inconsistent with the definition of the market to include the production and sale of all mass and suspension PVC homopolymer.

believed in B.F. Goodrich. The opinion addresses pipe grade resins,¹³ bottle applications, and calendaring applications.¹⁴ Slip op. at 48-50. However, it does not discuss other types of resin, and does not address the issue raised by the Commission in B.F. Goodrich of whether the elasticity of demand for PVC sold for different uses is different, even if the elasticity is relatively low throughout the industry. This difference in elasticity is important to firms attempting to reach a collusive price agreement, because it means that the firms will have different incentives with respect to the proposed price increases. Those firms that produce and sell relatively more PVC for the end uses where the demand is relatively elastic will want a collusive price level that is lower than firms that produce and sell relatively more PVC for end uses where the demand is relatively inelastic. I do not believe the evidence in this record sufficient to overturn the Commission's conclusion in B.F. Goodrich that varying elasticities of demand contribute to undermining the ability to collude in this industry.

¹³The majority notes that, over time, the price of pipe grade resins rose, and yet demand stayed strong or increased, and concludes that demand must be very inelastic. Slip op. at 48-49. I do not believe that such anecdotal evidence is sufficient to conclude that the demand for pipe grade resins is necessarily inelastic. As the price of pipe grade resins rose over time, other changing economic variables may have induced an increase in the demand for pipe grade resin. In assessing the elasticity of demand for the various types of PVC resins, it is unclear whether all other variables have been held constant in the anecdotal evidence.

¹⁴ The majority notes that specialty PVC used for calendaring applications sells for more than general purpose PVC. The opinion concludes that "[t]he ability to obtain a price premium for PVC sold in the calendaring segment is consistent with the conclusion that the price elasticity of demand for PVC is low." Slip op. at 50. Since the cost of producing specialty PVC for calendaring is higher than the cost of producing general purpose PVC, it would be reasonable to expect the price of specialty PVC for calendaring to exceed the price of general purpose PVC. However, this does not address the elasticity of demand for either specialty PVC for calendaring or general purpose PVC. The elasticity of demand measures the change in quantity demanded in response to a change in the price. The higher price for specialty PVC for calendaring can be consistent with either an elastic or inelastic demand for specialty PVC for calendaring.

E. Conclusion

While, as the majority points out, the Commission in B.F. Goodrich also noted some elements of homogeneity in this market, the Commission's purpose was to suggest that certain aspects of heterogeneity, that would complicate the life of potential colluders, also exist. While each of these elements might not, in and of itself, defeat a collusion story, all of these factors must be viewed as a whole. Irrespective of evidence cited by the majority, I believe that sufficient doubt still exists about prospects for potential collusion due to a variety of factors, in light of the marginal structure of the post-merger market. Accordingly, with respect to the majority's finding of a violation in this market, and its ordered divestiture of the Pasadena, Texas plant, I dissent.

FINAL ORDER

This matter having been heard on the appeal of the respondents from the initial decision and on briefs and oral argument in support of and in opposition to the appeal, for the reasons stated in the attached opinion, the Commission has determined to deny the appeal. Accordingly,

It is ordered, That the following order be and the same hereby is entered:

I.

It is ordered, That the following definitions apply:

A. "*Occidental*" means Occidental Petroleum Corporation and Occidental Chemical Corporation, two corporations organized under the laws of California with their principal places of business in Los Angeles, California, and their directors, officers, agents and employees and their subsidiaries, divisions, affiliates, successors and assigns;

B. "*Tenneco*" means Tenneco, Inc., and Tenneco Polymers, Inc., two corporations organized under the laws of Delaware with their

principal places of business in Houston, Texas, and their directors, officers, agents and employees and their subsidiaries, divisions, affiliates, successors and assigns;

C. "*Acquired PVC assets*" means the suspension PVC homopolymer manufacturing facility located at Pasadena, Texas, the suspension PVC and dispersion PVC manufacturing facility located at Burlington, New Jersey, and all assets, titles, properties, interests, rights and privileges, tangible and intangible, related to the PVC business that were acquired by Occidental from Tenneco on or about April 30, 1986, together with all improvements thereto;

D. "*PVC*" means any vinyl chloride homopolymer with the repeating unit $\text{CH}_2=\text{CHCl}$ and any copolymer of vinyl chloride with varying amounts of other chemicals, including vinyl acetate, ethylene, propylene, vinylidene chloride or acrylates;

E. "*Mass PVC*" means PVC produced from vinyl chloride by the mass (also referred to as "bulk") process;

F. "*Suspension PVC homopolymer*" means PVC homopolymer produced from vinyl chloride by the suspension process;

G. "*Suspension PVC copolymer*" means any copolymer of vinyl chloride and vinyl acetate produced by the suspension process and containing more than 50 percent by weight of vinyl chloride;

H. "*Dispersion PVC*" means PVC produced by the emulsion or dispersion process.

II.

It is ordered, That within twelve (12) months from the date this order, becomes final, Occidental shall divest, absolutely and in good faith, at no minimum price, the acquired PVC assets. The purpose of the divestiture is to establish the acquired PVC assets, either singly or separately, as a viable competitor in PVC, by ensuring the continuation of the assets as ongoing, viable enterprises in the PVC industry, and to remedy the lessening of competition resulting from the acquisition of the acquired PVC assets by Occidental. The divestiture(s) shall be made only to an acquirer or acquirers and only in a manner that receives the prior approval of the Federal Trade Commission.

Pending divestiture, Occidental shall take all measures necessary to maintain the acquired PVC assets in their present condition and to prevent any deterioration, except for normal wear and tear, of any part of the acquired PVC assets, so as not to impair the present operating viability and market value of the acquired PVC assets.

III.

It is further ordered, That at the time of the divestiture required by this order, Occidental shall provide to the acquirer or acquirers of the acquired PVC assets, on a nonexclusive basis, all PVC technology (including patent licenses and know-how) used by Occidental or developed by Occidental for use in connection with the acquired PVC assets; and

For a period of one (1) year following the divestiture required by this order, Occidental shall provide the acquirer or acquirers of the acquired PVC assets, if the acquirer(s) so requests, such additional know-how as may reasonably be required to enable the acquirer(s) to manufacture and sell PVC. Occidental shall charge the acquirer(s) no more than its own costs for providing such additional know-how.

IV.

It is further ordered, That at the time of the divestiture required by this order, Occidental shall assign to the acquirer(s) of the acquired PVC assets all supply agreements for VCM and other feedstocks for the manufacture of PVC, all PVC sales, toll or exchange agreements, and all PVC customer records and files relating to PVC produced in (or supplied by Occidental at any time since May 1, 1986, from) the acquired PVC assets.

V.

It is further ordered, That if Occidental has not divested the acquired PVC assets within the twelve-month period provided in paragraph II of this order, the Federal Trade Commission may appoint a trustee to effect the divestiture. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

Neither the appointment of a trustee nor a Commission decision not to appoint a trustee under this paragraph V of the order shall preclude the Commission from seeking civil penalties and other relief available to it, including a court-appointed trustee, for any failure by Occidental to comply with this order.

Any trustee appointed by the Commission pursuant to this paragraph V shall have the following powers, authority, duties and responsibilities:

A. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest the acquired PVC assets. The trustee shall have twelve (12) months from the date of appointment to accomplish the divestiture. 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.

B. The trustee shall have full and complete access to the personnel, books, records and facilities of the acquired PVC assets, and Occidental shall develop such financial or other information relevant to the acquired PVC assets as the trustee may reasonably request. Occidental shall cooperate with the trustee and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Occidental shall extend the time for divestiture under this paragraph V in an amount equal to the delay, as determined by the Commission.

C. 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 at no minimum price and with the purposes of the divestiture, as stated in paragraph II of this order, subject to the prior approval of the Commission.

D. The trustee shall serve without bond or other security and at the cost and expense of Occidental on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have authority to retain, at the cost and expense of Occidental, such consultants, attorneys, investment bankers, business brokers, accountants, appraisers and other representatives and assistants as are reasonably necessary to assist in the divestiture. The trustee shall

account for all monies derived from the divestiture and for all expenses incurred. After approval by the Commission of the account of the trustee, including fees for the trustee's services, all remaining monies shall be paid to Occidental, 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 acquired PVC assets.

E. Occidental shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages or liabilities arising in any manner out of or in connection with the trustee's duties under this order, unless the Commission determines that such losses, claims, damages or liabilities arose out of the misfeasance, gross negligence or the willful or wanton acts or bad faith of the trustee.

F. Promptly upon appointment of the trustee and subject to the approval of the Commission, Occidental shall, subject to the Federal Trade Commission's prior approval and consistent with the provisions of this order, transfer to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

G. If the trustee ceases to act or fails to act diligently, the Commission may appoint a substitute trustee.

H. The Commission 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 divestiture required by this order.

I. The trustee shall have no obligation or authority to operate or maintain the acquired PVC assets.

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

VI.

It is further ordered, That for a period of ten (10) years from the date this order becomes final, Occidental shall not directly or indirectly acquire -- other than the acquisition of manufactured product in the ordinary course of business -- all or any part of the stock or assets of, or any interest in, any producer of PVC located in

