

Concurring Statement of Commissioner Mary L. Azcuenaga

in American Home Products Corp., File No. 971-0009

I concur in the decision to accept the consent agreement for public comment and write separately to invite comment on whether and when the Commission should require the firm divesting assets to give up patent rights beyond those acquired in the transaction at issue. Paragraph IID of the proposed order requires American Home Products (AHP) not only to license the intellectual property that it acquired from Solvay S.A., but also to agree not to sue the acquiring firm for infringement of vaccine patents that AHP owned before the acquisition. The firm purchasing the divested assets will obtain Solvay's intellectual property free and clear of any claim that the Solvay vaccines infringe AHP's patents. Should the Commission resolve the patent dispute regarding whether Solvay's vaccines infringed AHP's patents, and if so, how should such a dispute be resolved?