

IN THE MATTER OF

L'AIR LIQUIDE SOCIETE ANONYME, ET AL.

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

Docket C-3216. Complaint, July 15, 1987—Decision, July 15, 1987

This consent order requires, among other things, L'Air Liquide to divest some assets to resolve any antitrust concerns in the production and sale of liquid gases and to obtain prior Commission's approval for similar acquisitions.

Appearances

For the Commission: *Ernest A. Nagata.*

For the respondents: *Robert A. Lipstein, Coudeot Brothers, Wash-
ington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that L'Air Liquide Societe Anonyme pour L'Etude et L'Exploitation des Procédes Georges Claude has undertaken an acquisition of the voting securities of Big Three Industries, and a proposed merger of Big Three Industries with a subsidiary of L'Air Liquide Societe Anonyme pour L'Etude et L'Exploitation des Procédes Georges Claude, either of which, if consummated, would result in a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. 21 and Section 5(b) of the Federal Trade Commission Act, as amended 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) "*L'Air Liquide*" means L'Air Liquide Societe Anonyme pour L'Etude et L'Exploitation des Procédes Georges Claude, its officers, directors, agents, representatives, employees, successors and assigns together with all subsidiaries it controls.

(b) "*BTI*" means Big Three Industries, its officers, directors, agents,

representatives, employees, successors and assigns together with all subsidiaries it controls.

(c) "*Acquisition*" means L'Air Liquide's acquisition of the voting securities of BTI.

(d) "*Merger*" means the proposed merger of BTI with a subsidiary of L'Air Liquide.

(e) "*Air separation gases*" means oxygen, nitrogen, and argon in gaseous or liquid form.

(f) "*Merchant*" oxygen, nitrogen, or argon means any such gas sold in liquid form or packaged in cylinders.

II. L'AIR LIQUIDE

2. L'Air Liquide is a corporation organized and doing business under the laws of France, with its principal office at 75 Quai d'Orsay, Paris 75321 France.

3. L'Air Liquide is an 88% stockholder in Liquid Air Corporation ("LAC"), a corporation organized and doing business under the laws of Delaware, with its principal office at California Plaza, 2121 North California Blvd., Walnut Creek, California.

4. For the year ending December 31, 1985, L'Air Liquide's total net sales were \$2.8 billion, and its total assets amounted to approximately \$3 billion.

5. L'Air Liquide does business in four areas: industrial gases; welding and cutting; engineering and construction; and chemicals and related activities.

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

III. BTI

7. BTI is a corporation organized and doing business under the laws of Texas, with its office and principal place of business located at 3535 West 12th Street, Houston, Texas.

8. In 1985, BTI's net sales totalled \$384 million, and its total assets were approximately \$1 billion.

9. BTI has worldwide operations in three product areas: industrial gas; oil field related tools, equipment and services; and welding equipment and supplies.

10. BTI, at all times relevant herein, has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in

or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITION AND MERGER

11. Pursuant to an Agreement and Plan of Merger dated August 12, 1986, L'Air Liquide has offered to purchase all outstanding shares of capital stock in BTI for \$29.00 per share. The parties have agreed, upon completion of the tender offer, to merge L'Air Liquide's wholly owned subsidiary, AAL Acquisition Corp., into and with BTI. The total value of the tender offer and merger is approximately \$1.2 billion.

V. TRADE AND COMMERCE

12. Relevant lines of commerce in which to evaluate the effects of the acquisition and merger are the production and sale of:

- (a) merchant argon; and
- (b) merchant oxygen and nitrogen.

13. The United States is a relevant area in which to evaluate the effects of the acquisition and merger in the production and sale of merchant argon.

14. Relevant sections of the United States in which to evaluate the effects of the acquisition and merger on the production and sale of merchant oxygen and nitrogen are:

- (a) the Southern Rocky Mountain region;
- (b) West Texas;
- (c) North Texas;
- (d) South Texas; and
- (e) Florida.

15. The production of merchant argon in the national market is highly concentrated. In terms of production, the Herfindahl-Hirschman Index ("HHI") for 1985 in the national merchant argon market was approximately 2500 and would increase approximately 125 points to approximately 2625 as a result of the acquisition and merger.

16. L'Air Liquide and BTI both are actual competitors in the production and sale of merchant argon in the national market.

17. The productive capacity of merchant oxygen and nitrogen in each relevant section of the country is highly concentrated. In terms of capacity, the HHI for 1985 in the:

- (a) Southern Rocky Mountain merchant oxygen and nitrogen market was approximately 2850 and would increase approximately 1050 points to approximately 3900 as a result of the acquisition and merger;

(b) West Texas merchant oxygen and nitrogen market was approximately 2150 and would increase approximately 1300 points to approximately 3450 as a result of the acquisition and merger;

(c) North Texas merchant oxygen and nitrogen market was approximately 2350 and would increase approximately 700 points to approximately 3050 as a result of the acquisition and merger;

(d) South Texas merchant oxygen and nitrogen market was approximately 3000 and would increase approximately 450 points to approximately 3450 as a result of the acquisition and merger; and

(e) Florida merchant oxygen and nitrogen market was approximately 2600 and would increase approximately 900 points to approximately 3500 as a result of the acquisition and merger.

18. L'Air Liquide and BTI both are actual competitors in the production, distribution and sale of merchant oxygen and nitrogen in each relevant section of the country.

19. The barriers to entry into the production and sale of merchant oxygen, nitrogen and argon in the relevant sections of the country are significant. Impediments to entry arise from sunk costs, minimum efficient scale plant size, demand elasticity and market size. These factors operate together to create a situation where rapid, new entry may not be available to restrain anticompetitive activity.

VI. EFFECTS

20. The effect of the proposed acquisition and merger may be substantially to lessen competition or tend to create a monopoly in the production and sale of merchant oxygen, nitrogen, and argon in the relevant sections of the country in the following ways, among others:

(a) actual competition between L'Air Liquide and BTI in the relevant lines of commerce and relevant sections of the country will be eliminated;

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

(c) concentration in the relevant lines of commerce and relevant sections of the country will be significantly increased; and

(d) the possibility of collusion or interdependent coordination among the remaining firms in the relevant lines of commerce and relevant sections of the country will be enhanced.

VII. VIOLATIONS CHARGED

21. The effect of the acquisition and merger may be substantially to lessen competition or tend to create a monopoly in the production and sale of merchant argon in the United States market and in the production and sale of merchant oxygen and nitrogen in the Southern Rocky Mountain region, West Texas, North Texas, South Texas and

Florida markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act; and

The respondent, its attorneys, 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 has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly 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 L'Air Liquide Societe Anonyme pour L'Etude et L'Exploitation des Procédes Georges Claude ("L'Air Liquide") is a corporation organized, existing and doing business under and by virtue of the laws of France, with its principal office located at 75 Quai d'Orsay, Paris 75321 France.

L'Air Liquide is an 88% stockholder in Liquid Air Corporation ("LAC"), a corporation organized and doing business under the laws of Delaware, with its principal office at California Plaza, 2121 North California Blvd., Walnut Creek, California.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondent, and the proceedings is in the public interest.

ORDER

I.

It is hereby ordered, That as used in this order the following definitions shall apply:

1. "*L'Air Liquide*" means L'Air Liquide Societe Anonyme pour L'Etude et L'Exploitation des Procedes Georges Claude, its officers, directors, agents, representatives, employees, successors, and assigns together with all subsidiaries it controls.

2. "*Liquid Air*" means Liquid Air Corporation, its officers, directors, agents, representatives, employees, successors, and assigns together with all subsidiaries it controls.

3. "*Big Three*" means Big Three Industries Inc., its officers, directors, agents, representatives, employees, successors, and assigns together with all subsidiaries it controls.

4. "*Air separation gases*" means oxygen, nitrogen and argon in gaseous or liquid form.

5. "*Air separation gases plant*" means a facility that produces air separation gases.

6. "*Merchant air separation gases*" means oxygen, nitrogen and argon sold in liquid form or packaged in cylinders.

7. "*Merchant air separation gases producer*" means any person that is engaged in all of the following: (i) production, (ii) distribution and (iii) sale of two or more merchant air separation gases.

8. "*Nrth Texas*" means that portion of the State of Texas within a 200 mile radius of Dallas, Texas, but does not include customers currently served by Liquid Air's Stafford or Odessa air separation gases plants.

9. "*Merchant Divestiture Assets*" means the assets described in paragraphs IIA and IIB of this order.

10. "*Material confidential information*" means competitively sensitive or proprietary information not independently known to L'Air Liquide and includes, but is not limited to, customer lists and price lists.

II.

It is further ordered, That:

A. Within 9 months from the date this order becomes final L'Air

Liquide shall divest or shall cause to be divested, absolutely and in good faith, all of its right, title and interest in the following properties. Divestiture shall be made only to a buyer or buyers, and only in a manner, that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the assets as ongoing, viable enterprises engaged in the same businesses and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint in this matter.

1. All of Liquid Air's existing merchant air separation gases customer, dealer and distributor contracts, excluding any contracts with Texas Instruments, specifying a delivery location in the state of Texas, together with associated storage vessels and cylinders;

2. Liquid Air's air separation gases plants located in Odessa, Texas and Stafford (Houston), Texas, together with associated distribution equipment, and distribution equipment sufficient to serve Liquid Air's merchant air separation gases customers located in North Texas;

3. Big Three's West Palm Beach, Florida air separation gases plant together with all associated distribution equipment, customer, dealer and distributor contracts, and associated storage vessels and cylinders;

4. Big Three's Albuquerque, New Mexico air separation gases plant, together with all associated distribution equipment, customer, dealer and distributor contracts, and associated storage vessels and cylinders;

5. Big Three's interest in the Palmer, Alaska air separation gases plant and associated merchant air separation gases customer, dealer and distributor contracts, storage vessels and distribution equipment. *Provided, however*, that if the aforementioned interest is divested to The Lincoln Electric Company, such divestiture will not require the prior approval of the Commissioner under this order.

B. L'Air Liquide shall also make available in North Texas for a period of up to 3 years from the date the divestiture of Liquid Air's existing merchant air separation gases customer, dealer and distributor contracts in North Texas is completed whether by L'Air Liquide or by the trustee identified in paragraph V, up to 50 T/D of liquid oxygen and 95 T/D of liquid nitrogen, which may be purchased by the acquirer of the merchant air separation gases customer, dealer and distributor contracts of Liquid Air in North Texas at a price equal to the electric power costs of the supplying air separation gases plant plus 5 cents/hundred cubic feet, F.O.B. the supplying plant.

C. Within 12 months from the date this order becomes final, L'Air Liquide shall enter into a contract to sell to an unrelated third party all argon to which Liquid Air is entitled under an Operating Agree-

ment among Borden, Inc., BASF Wyandotte Corporation, Liquid Air Corporation and LAI Properties, Inc., dated December 14, 1984, as amended. Such contract shall be made only with a buyer or buyers, and only in a manner, that receives the prior approval of the Commission. The purpose of requiring such contract is to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint in this matter.

III.

It is further ordered, That, pending the divestiture of all of the assets described in paragraphs IIA and IIB, above, L'Air Liquide will hold such assets separate and apart on the following terms and conditions:

A. Within 30 days from the date this order becomes final, L'Air Liquide shall cause all of its right, title and interest in the Merchant Divestiture Assets to be transferred to a separate corporation ("Nucorp"), whose management and directors will be independent of and separate from the management and directors of L'Air Liquide, Liquid Air, or Big Three.

B. Nucorp and the Merchant Divestiture Assets shall be operated independently of L'Air Liquide, Liquid Air or Big Three.

C. L'Air Liquide shall not exercise direction or control over, or influence directly or indirectly, the day-to-day operations of Nucorp or the Merchant Divestiture Assets, except as may be necessary (i) to assure compliance with this Order, (ii) to prevent an event of default under financing arrangements to which L'Air Liquide or any of its subsidiaries is a party, or (iii) to prevent wasting or deterioration of the Merchant Divestiture Assets.

D. Except as provided in paragraph III(C)(i)-(iii) or as required by law and except to the extent that necessary information is exchanged in the course of defending litigation or negotiating agreements to dispose of Nucorp or all or any part of the Merchant Divestiture Assets, L'Air Liquide shall not receive or have access to, or the use of, any "material confidential information" relating to the Merchant Divestiture Assets not in the public domain. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph.

E. Each transaction in the amount of \$100,000 or more, or transactions in the aggregate of \$500,000 or more which are not otherwise precluded to Nucorp by paragraph III(A)-(D), shall be subject to a majority vote of the Board of Nucorp. Prior to the Board of Nucorp approving any such transaction, such transaction must be submitted

for review and approval by an officer of L'Air Liquide only for the limited purpose of determining whether such transaction would impair L'Air Liquide's obligations under this order, including L'Air Liquide's ability to divest Nucorp or the Merchant Divestiture Assets, or would create an event of default under any financing arrangement. The submission of such proposed transactions to an executive of L'Air Liquide shall be made in writing only, and L'Air Liquide's response shall also be in writing only, and copies of all such writings shall be maintained by L'Air Liquide for two years following the divestiture of the Merchant Divestiture Assets. The approval of an officer of L'Air Liquide shall not be unreasonably withheld and shall be granted within a reasonable period of time.

F. Subject to the other provisions of this order:

1. L'Air Liquide shall have the sole right to determine the terms of sale of Nucorp or any of the Merchant Divestiture Assets, including timing of sale and purchase price, and to cause Nucorp management to enter into any agreements or arrangements, or to take any other action, to fulfill L'Air Liquide's obligations under this order, and

2. In the event L'Air Liquide has submitted one or more acquirers of the Merchant Divestiture Assets or of Nucorp to the Commission prior to the date this order becomes final, L'Air Liquide will not be required to cause those assets for which it has a contract or contracts to sell to be transferred to Nucorp, unless and until the Commission denies approval of such acquirers. If the Commission denies such approval, L'Air Liquide shall transfer the Merchant Divestiture Assets to Nucorp (a) within ten (10) calendar days, or (b) if L'Air Liquide has not as yet transferred assets to Nucorp pursuant to paragraph III(A), then L'Air Liquide shall be required to transfer the Merchant Divestiture Assets described in this subparagraph in accordance with paragraph III(A).

IV.

It is further ordered, That L'Air Liquide shall not cause or permit the wasting or deterioration of the assets and operations to be divested in accordance with paragraph II of this order in any manner that impairs the marketability of any such assets and operations or impairs in any manner the viability of the assets and operations as a going concern engaged in the production, sale or distribution of industrial gases. *Provided, however,* that deterioration in the ordinary course of operation and normal wear is not a violation of this paragraph.

V.

It is further ordered, That:

A. If L'Air Liquide has not divested all of the Merchant Divestiture Assets within the 9-month period, or has not obtained approval for the contract described in paragraph II(C) within the 12 month period, L'Air Liquide shall consent to the appointment of a trustee in any action that the Federal Trade Commission may bring pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45 (1), or any other statute enforced by the Commission. In the event the court declines to appoint a trustee, L'Air Liquide shall consent to the appointment of a trustee by the Commission pursuant to the order.

B. If a trustee is appointed by a court or the Commission pursuant to paragraph V(A) of the order, L'Air Liquide shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

1. The Commission shall select the trustee, subject to L'Air Liquide's consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have 18 months from the date of appointment to submit for prior approval the divestiture of any undivested assets, which shall be subject to the prior approval of the Commission, and if the trustee was appointed by the court, subject also to the prior approval of the court. If, however, at the end of the 18-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, if the trustee was appointed by a court.

3. The trustee shall have full and complete access to the personnel, books, records, and facilities relating to any undivested assets and Nucorp or L'Air Liquide shall develop such financial or other information relevant to the assets to be divested as such trustee may reasonably request. Nucorp and L'Air Liquide shall cooperate with the trustee and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

4. The power and authority of the trustee to divest shall be at the most favorable price and terms available consistent with the order's absolute and unconditional obligation to divest.

5. The trustee shall serve at the cost and expense of L'Air Liquide on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall account for all monies derived from asset sales and all expenses incurred. After approval by

the court or the Commission of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to L'Air Liquide 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 undivested assets.

6. Promptly upon appointment of the trustee, L'Air Liquide shall, subject to the Commission's prior approval and consistent with provisions of this order, execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to cause divestiture of undivested assets.

7. If the trustee ceases to act or fails to act diligently, the court or the Commission may, upon its own motion or by motion of L'Air Liquide, appoint a substitute trustee for the balance of the 18-month period specified in paragraph V(B)(2) or any extension thereof.

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

9. The trustee shall be authorized to retain independent legal counsel and other persons for purposes of discharging the functions set forth above. L'Air Liquide shall reimburse the trustee for the reasonable value of all expenses so incurred.

10. If L'Air Liquide and the trustee are unable to resolve a dispute regarding the reasonable value of his/her services or the reasonableness of an expenditure or obligation incurred by the trustee in connection with his/her efforts to divest the plant or plants, then L'Air Liquide and the trustee shall submit the dispute to the Commission for resolution. The trust agreement shall recite that the Commission's determination of the reasonable value of the trustee's services or the reasonableness of expenditures and other obligations incurred by the trustee shall be binding upon L'Air Liquide and the trustee.

VI.

It is further ordered, That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until L'Air Liquide has fully complied with the provisions of paragraphs II(A)-II(C) of this order, L'Air Liquide shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with those provisions. L'Air Liquide shall include in compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for divestiture, including the identity of all parties contacted.

VII.

It is further ordered, That for a period commencing on the date this order becomes final and continuing for ten (10) years from and after the date this order becomes final, L'Air Liquide shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock or share capital of any United States merchant air separation gases producer, or any of the merchant air separation gases assets of any United States merchant air separation gases producer, provided, however, that nothing in this order shall require L'Air Liquide to obtain prior Commission approval for acquisitions of (a) gas or any product for resale, (b) transportation, delivery or storage equipment, (c) cylinders, (d) converters, (e) bulk customer stations, or (f) plant equipment not incorporated in an operating merchant air separation gases plant, and provided further that nothing in this order or in the Commission's order entered in Docket C-2990 shall require L'Air Liquide to obtain prior Commission approval if L'Air Liquide increases its ownership in Liquid Air or causes Big Three to acquire Liquid Air. One year after the date this order becomes final, and annually thereafter, L'Air Liquide shall file with the Commission a verified written report of its compliance with this paragraph.

VIII.

It is further ordered, That for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to L'Air Liquide made to its principal office, L'Air Liquide shall permit any duly authorized representatives of the Commission access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of L'Air Liquide relating to any matters contained in this order.

IX.

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

DISSENTING STATEMENT OF CHAIRMAN DANIEL OLIVER

I would support a consent order in this matter that required the respondent—for a prescribed period of years—to furnish prior *notice* to the Commission before making additional acquisitions in the markets at issue. Unfortunately, the consent order the Commission has accepted requires the respondent—for ten years—to secure prior Commission *approval* before making acquisitions in those markets. The Commission has recently determined that the appropriateness of prior approval provisions depends on “industry market structure and market conditions.”¹ I do not support imposing the prior approval requirement in the consent order because it is not clear from the record that “market conditions and market structure in [the covered markets] are such that all such acquisitions . . . necessarily [would be] anticompetitive.”² I therefore respectfully dissent from final acceptance of the consent order in this matter.

¹ *American Medical International*, 104 FTC 1, 224 (1984); accord, *Hospital Corp. of America*, 106 FTC 361, 514 (1985), *aff'd*, 807 F.2d 1381 (7th Cir. 1986), *cert. denied*, — U.S. —, No. 86-1492 (May 3, 1987).

² See *American Medical International*, 104 FTC at 225; see also *Hospital Corp. of America*, 106 FTC at 513-17.

IN THE MATTER OF
TICOR TITLE INSURANCE COMPANY, ET AL.

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

Docket 9190. Complaint, Jan. 7, 1985—Decision, July 30, 1987

This consent order prohibits, among other things, Santa Ana, Calif.-based respondent, First American Title Insurance Co., from setting any rates for title search and examination and settlement services through any rating bureau in six states. Additionally, First American Title Insurance Co. agreed to withdraw from the law suit filed by the title insurance companies named in the 1985 complaint and requires the respondent to notify the Commission at least thirty days prior to any changes in the corporate respondent.

Appearances

For the Commission: *Michael Antalics.*

For the respondents: *Paul J. Laveroni, Frank D. Tatum, & Karen J. Kubin, Cooley, Godward, Castro, Huddleson & Tatum, San Francisco, Calif.*

COMPLAINT*

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

DEFINITIONS

PARAGRAPH 1. The following definitions shall apply in this complaint:

a. "*Title search and examination services*" means all activities which are designed to identify and describe the ownership of a particular parcel of real property as well as any other actual or potential rights to, encumbrances on, or interests in the property.

b. "*Settlement services*" means those services related to the closing

* The Decision and Order following this Complaint applies to respondent First American Title Insurance Company only. The Complaint against the other named respondents remain in litigation.