

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

the trustee within the additional twelve (12) months provided in paragraph VII (including any extension of that divestiture period by the Commission or the court pursuant to subparagraphs VII.B.3 and VII.B.4), then the McConnellsville facility and the thinwall engine bearing assets shall be divested.

B. T&N shall have nine (9) months after expiration of the divestiture period provided in paragraph VII in which to accomplish divestiture of the McConnellsville facility and the thinwall engine bearing assets; *provided, however*, that if the Commission has not approved or disapproved of a proposed divestiture within sixty (60) 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.

C. If T&N has not divested the McConnellsville facility and the thinwall engine bearing assets within nine (9) months after expiration of the divestiture period provided in paragraph VII (including any extension of that divestiture period pursuant to subparagraph VIII.B), T&N shall consent to the appointment by the Commission of a secondary trustee who shall have the power and authority to divest the McConnellsville facility and the thinwall engine bearing assets.

D. If a secondary trustee is appointed by the Commission pursuant to subparagraph VIII.C of this order, T&N shall consent to the following terms and conditions regarding the secondary trustee's powers, authorities, duties and responsibilities:

(1) The Commission shall select the secondary trustee, who shall be the original trustee appointed pursuant to paragraph VII of this order, unless the original trustee failed to act diligently in the sale of the thinwall engine bearing assets or the tri-metal heavywall engine bearing assets. If a new trustee is selected, such trustee shall be subject to the consent of T&N, which consent shall not be unreasonably withheld, and the new trustee shall be a person with experience and expertise in acquisitions and divestitures.

(2) Within thirty (30) days after appointment of the secondary trustee and subject to the approval of the Commission, T&N shall execute a trust agreement that transfers to the secondary trustee all rights and powers necessary to permit the secondary trustee to effect

the divestiture of the McConnellsville facility and the thinwall engine bearing assets.

(3) Subject to the prior approval of the Commission, the secondary trustee shall have the exclusive power and authority to divest the McConnellsville facility and the thinwall engine bearing assets. The secondary trustee shall have fifteen (15) months from the date of appointment to accomplish the divestiture. If, however, at the end of the fifteen-month period the secondary 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; *provided, however*, that the Commission may only extend the divestiture period for an additional period not to exceed one (1) year.

(4) The secondary 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 secondary trustee may reasonably request and shall cooperate with the secondary trustee. T&N shall take no action to interfere with or impede the secondary 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.

(5) Subject to T&N's absolute and unconditional obligation to divest the McConnellsville facility and the thinwall engine bearing assets at no minimum price, the secondary trustee shall use his or her best efforts to negotiate the most favorable price and terms available with the acquiring entity for the divestiture of the McConnellsville facility and the thinwall engine bearing assets. If the secondary 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 secondary trustee shall divest to the acquiring entity or entities selected by T&N from among those approved by the Commission.

(6) The secondary 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 may set. The secondary 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 secondary

trustee's duties and responsibilities. The secondary trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission of the account of the secondary trustee, including fees for his or her services, all remaining monies shall be paid to T&N and the secondary trustee's power shall be terminated. The secondary trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the secondary trustee's divesting the McConnellsville facility and the thinwall engine bearing assets.

(7) T&N shall indemnify the secondary trustee and hold the secondary trustee harmless against any losses, claims, damages, or liabilities to which the secondary trustee may become subject, arising in any manner out of, or in connection with, the secondary 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 secondary trustee.

(8) If the secondary trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in subparagraphs VIII.C and VIII.D.

(9) The Commission may, on its own initiative or at the request of the secondary trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture of the McConnellsville facility and the thinwall engine bearing assets.

(10) The secondary trustee shall report in writing to T&N and the Commission every sixty (60) days concerning the secondary trustee's efforts to accomplish divestiture of the McConnellsville facility and the thinwall engine bearing assets.

IX.

It is further ordered, That, pending divestiture of the thinwall engine bearing assets, the tri-metal heavywall engine bearing assets and the McConnellsville facility, T&N shall take such action as is necessary to maintain the viability and marketability of the assets covered in paragraphs III, IV and VIII of this order and shall not cause or permit the destruction, removal, or impairment of any such asset it may be required to divest except in the ordinary course of business and except for ordinary wear and tear.

X.

It is further ordered, That T&N shall, within sixty (60) days from the date this order becomes final and every sixty days thereafter until the divestitures required by this order are accomplished, submit in writing to the Commission a verified written report setting forth in detail the manner and form in which T&N intends to comply, is complying, and has complied with the terms of this order and such additional information relating thereto as may from time to time reasonably be required by the Commission. All such compliance reports shall include, among other things that may be required from time to time, a full description of all contacts or negotiations with anyone relating to the divestiture of the thinwall engine bearing assets, the tri-metal heavywall engine bearing assets and, if required by this order, the McConnelsville facility, including the names and addresses of all parties contacted, copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning the divestitures pursuant to the provisions of this order.

XI.

It is further ordered, That, for a period of ten (10) years from the date on which this order becomes final, T&N shall not, directly or indirectly, acquire any stock, share capital, assets or equity interest in any concern, corporate or noncorporate, engaged in the design, manufacture or sale in or to the United States of any engine bearings without the prior approval of the Commission, if such concern:

A. Is incorporated in one of the United States or organized under the laws of the United States or has its principal offices within the United States; or

B. At the time of the acquisition designs or manufactures plain engine bearings in the United States; or

C. Had net sales of thinwall plain engine bearings in or to the United States of one and one-half (1.5) million dollars or more in any of the three (3) calendar years preceding the date of the acquisition, or had net sales of tri-metal heavywall engine bearings in or to the United States of three hundred thousand (300,000) dollars or more in any of the three (3) calendar years preceding the date of the acquisition.

Provided, however, that nothing in this paragraph shall prohibit T&N from acquiring used machinery or equipment associated with or related to the manufacture of plain engine bearings from an entity that continues, to substantially the same extent as before the acquisition, in the business of manufacturing such bearings and selling them in or to the United States; and *provided, further,* that nothing in this paragraph shall prohibit T&N from purchasing from any such entity any plain engine bearings for resale in the United States in the ordinary course of business.

On the anniversary of the date on which this order becomes final, and on every anniversary thereafter for the following nine (9) years, T&N shall file with the Commission a verified written report of its compliance with this paragraph.

XII.

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 T&N made to its principal office, T&N shall permit access for any duly authorized representatives of the Commission:

A. During office hours and in the presence of T&N's counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of T&N relating to any matter contained in this order.

B. Upon five (5) days' notice to T&N and without restraint or interference from T&N, to interview officers or employees of T&N, who may have counsel present regarding such matters.

XIII.

It is further ordered, That T&N 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 this order.

Commissioner Azcuenaga dissenting.

APPENDIX A

486 Primary Part Numbers in Current Use
US Gasoline Applications—Aftermarket

(Not Published Herein)

APPENDIX B

US DIESEL APPLICATIONS MANUFACTURED BY GLACIER
KILMARNOCK FOR SALES INTO US AFTERMARKET

<u>AE AUTO PARTS</u>	<u>1990 TRANSFER</u>	<u>MIN. BATCH</u>
<u>PT. NO.</u>	<u>PRICE (EX WORKS)</u>	<u>QUANTITY</u>
	<u>STERLING (EXCL. :</u>	
	<u>FREIGHT & DUTY)</u>	
—		—
<u>CASE</u>		
M5355B	26.80	500
<u>CATERPILLAR</u>		
M5347SB	7.37	1400
M5360SB	14.25	750
M5384SB	15.02	1500
M5385SB	19.06	500
M5404SB	31.15	300
M7267SB	21.61	1170
M7318SB	53.79	250
M7356SB	10.15	1000
M7383SB	43.45	210
B4458SB	11.49	1750
B6422SB	17.10	1160
B6548SC	30.49	180
B8106SB	9.84	310
B8111SC	40.52	140
C5063SA	15.01	560
C50685A	5.50	400
S6599L	2.69	500
W2260SA	3.15	1000
W2288SA	4.32	500
19 ITEMS		
<u>CUMMINS</u>		
M4237LC	5.20	4500
M5275LC	6.35	3000
M7401LC	37.70	1500
M7401LC/TW	51.09	1500

Decision and Order

113 F.T.C.

<u>AE AUTO PARTS</u>	<u>1990 TRANSFER</u>	<u>MIN. BATCH</u>
<u>PT. NO.</u>	<u>PRICE (EX WORKS)</u>	<u>QUANTITY</u>
	<u>STERLING (EXCL. :</u>	
	<u>FREIGHT & DUTY)</u>	
-		-
B6461LC	6.06	2500
B6494LC	11.96	330
B6534LC	11.73	375
B6576LC	33.57	400
B8098LC	7.99	1875
B8104LC	17.35	140
C5069S	6.41	1000
S6628L	19.34	400
W2202SA	7.81	375
W4009A	13.50	560
14 ITEMS		
<u>NAVISTAR</u>		
M1013LC	1.90	4500
M5149SA	10.70	1250
M7372SB	45.29	400
B1080LC	1.55	6000
B1081LC	2.16	1250
B4205SA	5.29	310
B4297SA	2.66	1250
B6547LC	11.14	210
C1010S	1.34	1000
S1509L	0.65	2000
S4565L	1.54	375
S6607L	2.73	250
12 ITEMS		
<u>MACK TRUCK</u>		
M7367LC	42.74	500
B6527LC	17.84	125
2 ITEMS		
<u>SUMMARY</u>		
	<u>ITEMS</u>	
CASE	1	
CATERPILLAR	19	
CUMMINS	14	
NAVISTAR	12	
MACK	<u>2</u>	
	48	

PART NUMBERING SYSTEM.

PREFIX M = MAIR BEARINGS SET
B = CONNECTING ROD BEARING SET
C = CAMSHAFT BUSH SET
S = SMALL END BUSH SET
W = THRUST WASHER SET

APPENDIX C

ASSET MAINTENANCE AND IMPROVEMENT AGREEMENT

This Asset Maintenance and Improvement Agreement (the "Agreement") is by and between T&N plc ("T&N") and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, "the Parties").

Premises

Whereas, T&N commenced a tender offer for all of the outstanding stock of J.P. Industries, Inc. ("JPI") on March 30, 1990, with the intent of effecting a merger of T&N Automotive Components Inc., an indirect, wholly-owned subsidiary of T&N, into JPI (the "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the thinwall engine bearing assets and the McConnellsville facility pending divestiture of the thinwall engine bearing assets, the tri-metal heavywall engine bearing assets, and, if required by the Consent Order, the McConnellsville facility, divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible or might be a less than effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is

consummated, it will be necessary to preserve the Commission's right to seek to restore viable competitors in the design, manufacture and sale of engine bearings and to preserve the Commission's ability to require the divestiture of the thinwall engine bearing assets, as defined in paragraph I.10 of the Consent Order; the tri-metal heavywall engine bearing assets, as defined in paragraph I.12 of the Consent Order; and the McConnellsville facility, as defined in I.15 of the Consent Order; and

Whereas, the purpose of this Agreement is to:

(1) Preserve the thinwall engine bearing assets, including preservation of T&N's Vandervell America ("VanAm") subsidiary as a viable independent business, and continue the state of competition between T&N and JPI in the sale of thinwall engine bearings in the United States aftermarket pending divestiture of the thinwall engine bearing assets;

(2) Maintain and make necessary improvements to the McConnellsville facility to preserve it as a viable independent business and continue the state of competition between T&N and JPI in the sale of tri-metal heavywall engine bearings in the United States pending divestiture of the tri-metal heavywall engine bearing assets or, if required by the Consent Order, the divestiture of the McConnellsville facility;

(3) Remedy any anticompetitive effects of the Acquisition; and

(4) Preserve VanAm and the McConnellsville facility as ongoing concerns engaged in the same business in which they are presently engaged in the event that divestiture of the thinwall engine bearing assets and the tri-metal heavywall engine bearing assets is not achieved as required in the Consent Order; and

Whereas, T&N's entering into this Agreement shall in no way be construed as an admission by T&N that the Acquisition is illegal or anticompetitive; and

Whereas, T&N understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, upon an understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from T&N with respect to the Acquisition (except that the

Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof and, in the event the divestitures required in paragraphs III and IV of the Consent Order are not accomplished, to seek divestiture of the thinwall engine bearing assets and the McConnellsville facility), the Parties agree as follows:

1. T&N agrees to execute and be bound by the attached Consent Order. T&N and the Commission further agree that each word defined in the Consent Order shall have the same definition in this Agreement.

2. T&N agrees that from the date this Agreement is accepted until the earlier of the dates listed in subparagraphs 2.(a) and 2.(b), it will comply with the provisions of paragraphs 3 through 7 of this Agreement:

(a) Three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

(b) The day after all of the divestitures required by the Consent Order have been completed.

3. T&N shall hold VanAm separate and apart on the following terms and conditions:

(a) T&N shall take all reasonable measures to preserve the viability and marketability of VanAm and shall continue to operate VanAm's business as it is presently operated. In addition, T&N shall maintain and preserve all of the intangible rights and other assets of VanAm. Without limiting any of T&N's obligations under the Consent Order or this Agreement, T&N agrees to observe the limitations and restrictions set forth in the remaining subparagraphs of this paragraph 3.

(b) T&N shall refrain from taking any actions that may cause any material adverse change in the financial condition of VanAm.

(c) T&N shall maintain separate records as to the sales and cost of goods sold of each of the products of VanAm and on an aggregate basis for VanAm as a whole.

(d) T&N shall refrain from, directly or indirectly, selling, disposing of, or causing to be transferred any assets, property or business of VanAm, except that T&N may sell or otherwise dispose of manufactured products in the ordinary course of business, and may sell or otherwise dispose of assets, property or business of VanAm pursuant to paragraphs III, VII and VIII of the Consent Order.

(e) T&N shall refrain from mortgaging or pledging the assets of

VanAm pursuant to any loan transaction, except in connection with divestiture of the thinwall engine bearing assets pursuant to the Consent Order.

(f) T&N shall refrain from causing VanAm to guarantee any debts or obligations pursuant to any loan transaction, except in connection with divestiture of the thinwall engine bearing assets pursuant to the Consent Order.

4. T&N shall hold the McConnelsville facility separate and apart on the following terms and conditions:

(a) T&N shall take all reasonable measures to preserve the viability of the McConnelsville facility as an independent competitor, shall maintain all of the intangible rights and other assets of the McConnelsville facility and may make such improvements in the McConnelsville facility as T&N deems appropriate. Without limiting any of T&N's obligations under the Consent Order or this Agreement, T&N agrees to observe the limitations and restrictions set forth in the remaining subparagraphs of this paragraph 4.

(b) Except as otherwise provided in this Agreement, T&N (other than the T&N members of the Management Committee and the technical experts appointed to assist them in improving the McConnelsville facility) shall not receive or have access to, or the use of, any of the material confidential information of the McConnelsville facility that is not in the public domain, except (i) as required by law; (ii) to the extent that such information is necessarily exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating an agreement to divest the tri-metal heavywall engine bearing assets or the McConnelsville facility pursuant to the Consent Order; and (iii) to the extent that such information would be available to T&N in the normal course of business absent the Acquisition. (*"Material confidential information,"* as used throughout this Agreement, means competitively sensitive or proprietary information not independently known to T&N from sources other than the McConnelsville facility, and includes, but is not limited to, customer lists, unpublished price lists, marketing methods, patents, technologies, processes, other trade secrets and non-public financial and accounting books and records.) *Provided, however,* that T&N may obtain such financial information from the McConnelsville facility as is necessary for T&N to prepare and file financial reports, including balance sheets, and tax reports to relevant government entities, shareholders of T&N and T&N's Chairman and

Board of Directors; *provided further, however*, that (i) for purposes of financial reports to T&N's Chairman and Board of directors, T&N shall seek and obtain only the following items on an aggregated basis: revenues; cost of goods sold; general and administrative expenses; income before interest; interest expense; income before taxes; tax expense; and net income; (ii) information required for the preparation of such financial reports or tax reports shall be provided or disclosed only to designated individuals within T&N's controller and tax departments responsible for the preparation of such reports; and (iii) T&N shall use such information only for the preparation and filing of such financial reports and tax reports and not for any other purpose whatsoever.

(c) Designated individuals within T&N's controller department shall have access to such information as may be necessary to make or comply with covenants, representations or warranties in connection with existing agreements with any financial institution or with any third party in an existing arm's-length transaction.

(d) T&N shall prevent any communication between employees of the McConnellsville facility and T&N concerning material confidential information of the McConnellsville facility (as such information is defined and subject to the exceptions listed in subparagraph 4.(b)) and concerning T&N's competitively sensitive information not independently known to employees of the McConnellsville facility from sources other than T&N, including, but not limited to, customer lists, unpublished price lists, marketing methods and nonpublic financial and accounting books and records. This Agreement shall be published to the employees of the McConnellsville facility and to those employees of T&N involved in the design, manufacture or sale of tri-metal heavywall engine bearings.

(e) T&N shall refrain from taking any actions that may cause any material adverse change in the business or financial condition of the McConnellsville facility.

(f) T&N shall refrain from, directly or indirectly, selling, disposing of, or causing to be transferred any assets, property or business of the McConnellsville facility, except that T&N may sell or otherwise dispose of assets in the ordinary course of business, and may sell or otherwise dispose of assets, property or business pursuant to paragraphs IV, VII and VIII of the Consent Order.

(g) T&N shall refrain from mortgaging or pledging the assets of the McConnellsville facility pursuant to any loan transaction, except in

connection with the divestiture of the tri-metal heavywall engine bearing assets or the McConnellsville facility pursuant to the Consent Order.

(h) T&N shall refrain from causing the McConnellsville facility to guarantee any debts or obligations pursuant to any loan transaction, except in connection with the divestiture of the tri-metal heavywall engine bearing assets or the McConnellsville facility pursuant to the Consent Order.

(i) Consistent with the provisions of this paragraph 4, T&N shall exercise such direction and control over the McConnellsville facility as is necessary to assure compliance with this Agreement, including such steps as may be necessary or appropriate to preserve the value of the business of the McConnellsville facility.

(j) Except for the T&N members of the Management Committee and the technical experts appointed to assist them in improving the McConnellsville facility, T&N shall not permit any director, officer, employee, agent or representative of T&N, other than present employees of JPI, to be a member of the Management Committee or an employee of the McConnellsville facility.

(k) T&N shall not cause any change in the composition of the management of the McConnellsville facility, except that members of the Management Committee may fill vacancies as they occur, remove employees for poor performance or for cause, and make additions or changes in the management necessary to improve the McConnellsville facility.

(l) Except in connection with divestiture of the tri-metal heavywall bearing assets or the McConnellsville facility to be made in conformity with the Consent Order, all material transactions out of the ordinary course of business and not otherwise precluded by this paragraph 4 shall be subject to a majority vote of the Management Committee.

(m) T&N shall create a five-person Management Committee once it has acquired JPI. T&N shall select the members of the Management Committee; *provided, however*, that such Management Committee shall consist of no more than two current directors, officers, employees, or agents of T&N not having operating responsibilities with respect to T&N's Vandervell Limited or The Glacier Metal Co. Ltd. subsidiaries, and no fewer than two current directors, officers, employees or agents of JPI, of which one shall be the general manager of the McConnellsville facility who is not now an employee of T&N. T&N may appoint up to two technical experts to assist the T&N

members of the Management Committee in improving the McConnellsville facility. Subject to the exceptions in subparagraph 4.(b), the T&N members of the Management Committee and the technical experts appointed to assist them shall not disclose any material confidential information received under this Agreement to T&N or use it to obtain any advantage for T&N in its other businesses. All members of the Management Committee and the technical experts appointed to assist the T&N members shall enter into a confidentiality agreement prohibiting disclosure of confidential information to T&N or the use of such information to obtain any advantage for T&N in its other businesses. The T&N members of the Management Committee shall participate in matters which come before the Management Committee for the limited purposes of making improvements in the McConnellsville facility and carrying out T&N's responsibility to assure that the McConnellsville facility is maintained in such a manner as will permit its divestiture as an ongoing, viable asset. Except as permitted by this Agreement, the T&N members of the Management Committee shall not participate in, or attempt to influence the votes of the other members of the Management Committee with respect to, any matter that would involve a conflict of interest if T&N and the McConnellsville facility were separate and independent entities.

(n) Nothing herein shall prevent the Management Committee or T&N from negotiating or entering into agreements to dispose of assets located at the McConnellsville facility pursuant to the terms of the Consent Order, provided that any disposition of assets in connection with the divestiture of the tri-metal heavywall engine bearing assets or the McConnellsville facility shall be made only in accordance with the terms of the Consent Order.

(o) T&N and the McConnellsville facility shall not transfer physical assets between them (except for the purchase and sale of commercial products at arm's length in the ordinary course of business), nor engage in any joint activity, except as such physical asset transfer or joint activity is necessary to ensure compliance with this Agreement. The McConnellsville facility shall continue to prepare separate periodic statements of revenue, expenses and profitability, and shall provide the Commission's Bureau of Competition with quarterly and annual operating statements.

(p) Earnings and profits of the McConnellsville facility shall be retained separately in the McConnellsville facility to the extent necessary to provide the McConnellsville facility with sufficient

working capital to operate at its current rate, or if that rate of operation is increased, at such increased rate. T&N shall provide the McConnellsville facility with working capital in addition to the retained earnings and profits if necessary to operate the McConnellsville facility at its current rate, or if that rate of operation is increased, at such increased rate.

5. Should the Federal Trade Commission seek in any proceeding to compel T&N to divest the thinwall engine bearing assets or the McConnellsville facility, or to seek any other injunctive or equitable relief, T&N shall not raise any objection based upon the expiration of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 or the fact that the Commission has permitted the Acquisition. T&N also waives all rights to contest the validity of this Agreement.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to T&N made to its principal office, T&N shall permit any duly authorized representative or representatives of the Commission:

(a) During the office hours of T&N 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 T&N relating to compliance with this Agreement.

(b) Upon five (5) days' notice to T&N and without restraint or interference from it, to interview officers or employees of T&N, who may have counsel present, regarding any such matters.

7. In the event the Commission has not finally issued the Consent Order within one hundred twenty (120) days of its publication in the Federal Register, T&N may, at its option, terminate this Agreement by delivering written notice of termination to the Commission, which termination shall be effective ten (10) days after the Commission's receipt of such notice, and this Agreement shall thereafter be of no further force and effect. If this Agreement is so terminated, the Commission may take such action as it deems appropriate, including, but not limited to, an action pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b). Termination of this Agreement shall in no way operate to terminate the Consent Order that T&N has entered into in this matter.

8. This Agreement shall not be binding until it has been approved by the Commission.

DISSENTING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I dissent from the Commission's decision to accord final approval to this consent order. It seems unlikely that requiring divestiture of the minimal and unusual package of assets identified in the order will ensure competition in the relevant markets. In addition, certain provisions of the order, such as those controlling transfer pricing and supply agreements, are overly regulatory and may lead to numerous enforcement problems.

IN THE MATTER OF
UNITED STATES SALES CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
TEXTILE FIBER PRODUCTS IDENTIFICATION ACT AND
THE FEDERAL TRADE COMMISSION ACT

Docket C-3313. Complaint, Nov. 21, 1990—Decision, Nov. 21, 1990

This consent order prohibits, among other things, a California mail order company from failing to disclose in future mail-order catalogs and promotional materials that the textile fiber products offered are processed or manufactured in the United States, imported, or both.

Appearances

For the Commission: *Robert E. Easton.*

For the respondent: *Daniel H. Carlin, Loeb & Loeb, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that United States Sales Corporation (formerly United States Sales Corp.), a corporation, hereinafter referred to as respondent, has violated the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby alleges:

PARAGRAPH 1. Respondent United States Sales Corporation (formerly United States Sales Corp.) is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business presently located at 8550 Balboa Boulevard, Northridge, California.

It also does business under the name of United States Purchasing Exchange.

All stock in respondent is owned by Ronald D. Goldman and Theodore J. Slavin who are officers of said corporation.

PAR. 2. Respondent is now, and for some time past has been, engaged, by means of mail order catalogs, in the advertising, offering