

IN THE MATTER OF

ROHM AND HAAS COMPANY, ET AL.

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-3387. Complaint, July 31, 1992--Decision, July 31, 1992*

This consent order permits, among other things, Rohm and Haas, a Pennsylvania-based company, to acquire the Union Oil Company's emulsion polymer assets, as long as it divests Union Oil's straight acrylics business to Union Carbide, or another FTC-approved buyer, within 180 days. If divestiture is not effected within that period, Rohm and Haas is required to consent to the appointment of a trustee. In addition, the consent agreement requires the respondents to assist the buyer in making the transition to full production and, for 10 years, requires the respondents to obtain FTC approval before acquiring any entity that produces straight acrylics for exterior house paint.

Appearances

For the Commission: *Marc G. Schildkraut* and *Joseph S. Brownman*.

For the respondents: *Stephen A. Stack, Jr., Dechert, Price & Rhoads*, Philadelphia, PA. *Harold E. Zahner*, in-house counsel, for respondent Union Oil Company of CA., Los Angeles, CA.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Rohm and Haas Company ("Rohm and Haas"), a corporation, and Union Oil Company of California ("Union Oil"), a corporation, have entered into an agreement that violates Section 5 of the Federal Trade Commission Act, and that, if consummated, would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, and it appearing to the Commission that a proceeding in respect

thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

I. RESPONDENT ROHM AND HAAS COMPANY

PARAGRAPH 1. Respondent Rohm and Haas is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at Independence Mall West, Philadelphia, Pennsylvania.

PAR. 2. Respondent Rohm and Haas had over \$2.8 billion in sales in 1990, with assets valued at over \$2.8 billion. Respondent's 1990 sales of all types of emulsion polymers, resins, and monomers were about \$1.2 billion.

PAR. 3. Respondent Rohm and Haas produces a full line of emulsion polymers in seven United States plants located at Bristol, Pennsylvania; Chicago Heights, Illinois; Illiopolis, Illinois; Knoxville, Tennessee; Hayward, California; Carson, California; and Louisville, Kentucky.

PAR. 4. At all times relevant herein, Respondent Rohm and Haas has been engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

II. RESPONDENT UNION OIL COMPANY OF CALIFORNIA

PAR. 5. Union Oil 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 located at 1201 West Fifth Street, Los Angeles, California.

PAR. 6. Union Oil is the nation's fifth largest producer of emulsion polymers. Respondent Union Oil produces a full line of emulsion polymers in six manufacturing facilities, located at La Mirada, California; Newark, California; Lemont, Illinois; Kankakee, Illinois; Mallard Creek, North Carolina; and Orr Road, North Carolina. The company's 1990 sales of all types of emulsion polymers were about \$162 million.

PAR. 7. At all times relevant herein, respondent Union Oil has been engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

III. THE ACQUISITION

PAR. 8. On or about November 18, 1991, Rohm and Haas and Union Oil executed a letter of intent in which Rohm and Haas agreed to acquire substantially all of Union Oil's emulsion polymers business for \$175 million. The assets to be acquired consist of Union Oil's six emulsion polymer manufacturing facilities, a technical service center, inventory, intellectual property, and accounts receivable.

IV. THE RELEVANT PRODUCT MARKET

PAR. 9. The relevant line of commerce in which to evaluate the effects of the acquisition is acrylic emulsion polymers for exterior architectural coatings. Architectural coatings are house paint.

V. THE RELEVANT GEOGRAPHIC MARKET

PAR. 10. The relevant geographic market is the United States as a whole.

VI. NATURE OF TRADE AND COMMERCE

PAR. 11. In 1991, total United States sales of acrylic emulsion polymers for exterior house paint were approximately \$160 million.

PAR. 12. Emulsion polymers are water-based, long-chained chemical compounds having binding and adhesion properties. Acrylic emulsion polymers are derived from the esters of acrylic acid (acrylates) and/or methacrylic acid (methacrylates).

PAR. 13. Acrylic emulsion polymers are used, among other things, as binders in the manufacture of exterior latex house paint. Binders are employed in house paint to adhere to the pigment, and upon drying, produce a film that adheres to the painted substrate. Some of the properties of acrylic emulsion polymers that make it

desirable for use in exterior house paint are flexibility, allowing wood or other surfaces to change with temperature conditions without causing the paint to crack, and durability, which allows the paint to hold up better under adverse weather conditions and UV rays.

VII. MARKET STRUCTURE

PAR. 14. The relevant market is very highly concentrated, whether measured by the Herfindahl-Hirschmann index ("HHI") or by two-firm and four-firm concentration ratios. Rohm and Haas is the leading firm in the market with about an 82% share of sales. Union Oil has about a 1% share of sales.

VIII. CONDITIONS OF ENTRY

PAR. 15. Entry into the relevant market is difficult and time-consuming. An entrant would need to spend years developing a product, and testing, monitoring, and collecting satisfactory results from test-fence data. Additional years would be required for paint company customers to qualify the product of a new entrant.

IX. EFFECTS OF THE ACQUISITION

PAR. 16. The acquisition would increase concentration substantially. The HHI would increase by more than 100 points.

PAR. 17. The acquisition may substantially lessen competition or tend to create a monopoly in the production and sale of acrylic emulsion polymers for exterior house paint, in the following ways, among others:

1. Substantial actual competition between Rohm and Haas and Union Oil will be eliminated;
2. The market power of Rohm and Haas, and its ability to exercise market power unilaterally, will increase;
3. Prices to paint companies and to consumers of paint are likely to increase; and
4. Services to paint companies and to consumers are likely to decrease.

X. VIOLATION CHARGED

The acquisition agreement between Rohm and Haas and Union Oil for Rohm and Haas to acquire the emulsion polymers business of Union Oil constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and would, if consummated, constitute a violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, 15 U.S.C. 18.

DECISION AND ORDER

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition by Rohm and Haas Company ("Rohm and Haas") of certain assets of Union Oil Company of California ("Union Oil"), and Rohm and Haas and Union Oil having been furnished with a copy of a draft complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Rohm and Haas and Union Oil with violations of the Federal Trade Commission Act and the Clayton Act; and

Respondents Rohm and Haas and Union Oil, their attorneys, and counsel for the Commission, having thereafter executed an agreement containing consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the draft 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 respondents 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, 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:

A. Respondent Rohm and Haas Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its offices and principal place of business located at Independence Mall West, Philadelphia, Pennsylvania.

B. Respondent Union Oil 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 located at 1201 West Fifth Street, Los Angeles, California.

C. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondents Rohm and Haas and Union Oil, and the proceeding is in the public interest.

ORDER

I.

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

1. "*Rohm and Haas*" means Rohm and Haas Company, its predecessors, subsidiaries, divisions, groups, and affiliates controlled by Rohm and Haas, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

2. "*Union Oil*" means Union Oil Company of California, its predecessors, subsidiaries, divisions, groups, and affiliates controlled by Union Oil, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

3. "*Union Carbide*" means Union Carbide Chemicals and Plastics Company, Inc., a New York Corporation, and any subsidiary or division thereof.

4. "*Acquirer*" means the firm or firms that acquire the Union Oil Architectural Acrylic Assets pursuant to paragraph II of this order.

5. "*Architectural Acrylic Emulsion Polymers*" means emulsion polymers that are derived solely from or consist of at least 90% by weight of the esters of acrylic acid (acrylates) and/or methacrylic acid (methacrylates) and are used, in whole or in part, in the manufacture

of exterior paints to be applied to residential, commercial, or industrial buildings.

6. "*Union Oil Architectural Acrylic Assets*" means all product inventories, product technology (including product recipes, application know-how, reports, and any and all process know-how licenses), customer information, technical information, licenses to applicable patents, copyrights, trademarks, and test fences, necessary for the Acquirer to manufacture and sell the following Union Oil products: RES 60605, RES 6510, RES 6004, and RES 6034.

7. The "*Divested Products*" means RES 60605, RES 6510, RES 6004, and RES 6034.

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

9. "*Viability and Competitiveness*" of the Union Oil Architectural Acrylic Assets means that such assets when used in conjunction with the assets of the Acquirer are capable of producing and selling the Divested Products at the same rate as currently (at competitive prices) and are capable of functioning independently and competitively in the Architectural Acrylic Emulsion Polymers business.

II.

It is further ordered, That:

(A) No later than one hundred eighty (180) days after the date this order becomes final Rohm and Haas shall, directly or through assignment by Union Oil, in good faith (a) divest all of the Union Oil Architectural Acrylic Assets to Union Carbide pursuant to the terms of the Assignment and Assumption Agreement between Rohm and Haas and Union Carbide dated May 4, 1992 (the "Carbide Agreement") or (b) absolutely divest all of the Union Oil Architectural Acrylic Assets and also shall divest such additional ancillary assets and businesses and effect such arrangements that are necessary to assure the Viability and Competitiveness of the Union Oil Architectural Acrylic Assets, including manufacturing facilities if necessary, to an acquiring entity or entities that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

(B) If the divestiture is accomplished pursuant to paragraph II.(A)(b) of this order, Rohm and Haas shall demonstrate the Viability and Competitiveness of the Union Oil Architectural Acrylic Assets in its application for approval of a proposed divestiture. The purpose of the divestiture of the Union Oil Architectural Acrylic Assets is to ensure the continuation of the assets as ongoing, viable businesses engaged in the manufacture and sale of Architectural Acrylic Emulsion Polymers and to remedy any lessening of competition resulting from the acquisition as alleged in the Commission's complaint.

(C) Until the completion of the divestiture required by paragraph II. (A) of this order, Rohm and Haas and Union Oil shall take such action as is necessary to maintain the viability, competitiveness and marketability of the Union Oil Architectural Acrylic Assets and shall not cause or permit the destruction, removal or impairment of these Assets.

III.

It is further ordered, That, as part of the divestiture pursuant to paragraph II. (A) of this order,

(A) If the divestiture is accomplished pursuant to paragraph II. (A) (a) of this order, Rohm and Haas shall, for a period of one (1) year from the date of the divestiture pursuant to this order, or for such shorter period as Union Carbide shall determine,

1. Make available, at no cost to Union Carbide, such technical assistance and know-how as Union Carbide shall require to enable Union Carbide to manufacture the Divested Products according to their current product specifications and performance characteristics; and

2. Produce and ship for Union Carbide at prices set forth in the Carbide Agreement from one or more of the manufacturing facilities that had been producing the Divested Products for Union Oil, such quantities of Divested Products as Union Carbide shall require.

(B) If the divestiture is accomplished pursuant to paragraph II. (A) (b) of this order,

1. Rohm and Haas shall enter into an agreement with the Acquirer for a period of one (1) year from the date of the divestiture pursuant to this order, or for such shorter period as the Acquirer shall determine and the Commission shall approve, which shall effect such good faith arrangements as may be necessary to assure the continued Viability And Competitiveness of the Union Oil Architectural Acrylic Assets in the hands of the Acquirer. These arrangements shall include:

a. Making available, at no cost to the Acquirer, such technical assistance and know-how as the Acquirer may require to enable the Acquirer to manufacture the Divested Products according to their current product specifications and performance characteristics;

b. Producing and shipping for the Acquirer at a price as close to Rohm and Haas' manufacturing and shipping cost as may reasonably be determined, from one or more of the manufacturing facilities that had been producing the Divested Products for Union Oil, such quantities of Divested Products as the Acquirer shall require;

c. Performing such other arrangements as may be necessary to assure the continued Viability and Competitiveness of the Union Oil Architectural Acrylic Assets in the hands of the Acquirer; and

2. Such agreement shall receive the prior approval of the Commission and shall be effected only in a manner that receives the prior approval of the Commission. In its application for approval of a proposed divestiture, Rohm and Haas shall demonstrate how the agreement in conjunction with the divestiture maintains the Viability and Competitiveness of the Union Oil Architectural Acrylic Assets and how it is consistent with the purpose of the divestiture as set out in paragraph II. (B) of this order.

IV.

It is further ordered, That, for a period of one (1) year from the date of the divestiture pursuant to this order, Union Oil shall make

available, at no cost to the Acquirer, such technical assistance and know-how in its possession, in order to assist the Acquirer in the manufacture and sale of the Divested Products according to their current product specifications and performance characteristics.

V.

It is further ordered, That Rohm and Haas shall comply with all terms of the Preservation Agreement, attached to this order and made a part hereof as Appendix I. Said Agreement shall continue in effect until the Union Oil Architectural Acrylic Assets have been divested or until such other time as the Preservation Agreement provides.

VI.

It is further ordered, That:

(A) If Rohm and Haas does not divest the Union Oil Architectural Acrylic Assets to an Acquirer pursuant to paragraph II. (A) of this order one hundred eighty (180) days after the date this order becomes final, Rohm and Haas shall consent to the appointment of a trustee by the Commission to effectuate the obligations set out in paragraph II. (A) of this order. In the event the Commission or the Attorney General brings an action 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, Rohm and Haas 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 under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Rohm and Haas to comply with this order.

(B) If a trustee is appointed by the Commission or a court pursuant to paragraph VI. (A) of this order, Rohm and Haas shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

(a) The Commission shall select the trustee subject to Rohm and Haas' consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

(b) The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to effectuate the agreements required by paragraph III of this order and to divest the Union Oil Architectural Acrylic Assets and such other properties acquired by Rohm and Haas from Union Oil or such other properties of Union Oil as may be reasonably necessary to assure the continued Viability and Competitiveness of the Union Oil Architectural Acrylic Assets in the hands of a third party.

(c) The trustee shall have one year from the date the trust agreement is executed to accomplish the divestiture. If, however, at the end of one year the trustee has submitted a plan of divestiture or believes that divestiture may be accomplished within a reasonable period, the divestiture period may be extended by the Commission.

(d) The trustee may, subject to a determination by the Commission that it would be necessary to accomplish the required divestiture, add such other assets of Rohm and Haas acquired from Union Oil or other assets of Union Oil as may be required to effectuate the remedial purposes of this order.

(e) Subject to an appropriate confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records, and facilities regarding the Union Oil Architectural Acrylic Assets, and Rohm and Haas shall develop such financial or other information relevant to the assets to be divested as such trustee may reasonably request. Rohm and Haas shall cooperate with the trustee, and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Rohm and Haas shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

(f) Subject to Rohm and Haas' absolute and unconditional obligation to divest at no minimum price, and the purpose of the divestiture as required by this order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms for the

Union Oil Architectural Acrylic Assets and other assets that may need to be divested.

(g) The trustee shall serve without bond or other security at the cost and expense of Rohm and Haas on such reasonable and customary terms and conditions as the Commission or a court for a court-appointed trustee may set. The trustee shall have authority to employ at the cost and expense of Rohm and Haas such consultants, accountants, attorneys, business brokers, appraisers, and other representatives and assistants (all of whom shall be subject to appropriate confidentiality agreements) as are reasonably necessary to assist in the divestiture. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission or court, as the case may be, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to Rohm and Haas 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 upon the trustee's divesting the Union Oil Architectural Acrylic Assets and any other assets to be divested in accordance with this order.

(h) Except in the case of reckless disregard of his or her duties or intentional wrongdoing, Rohm and Haas shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this order.

(i) Within thirty (30) days of the appointment of the trustee, Rohm and Haas shall, subject to the approval of the Commission, and of the court for a court-appointed trustee, and consistent with the provisions of this order, execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture and enter into the agreements required by paragraph III of this order.

(j) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner under the same conditions as required by this order.

(k) 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 divestiture required by this order.

(l) The trustee shall have no obligation or authority to operate or maintain the assets to be divested.

(m) The trustee shall report in writing to the Commission, and to Rohm and Haas, every sixty (60) days from the date the trust agreement is executed, regarding the trustee's efforts to accomplish the divestiture required under this order.

VII.

It is further ordered, That:

(A) For a period commencing on the date this order becomes final and continuing for ten (10) years, Rohm and Haas shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, assets located in the United States, used for or, within one (1) year of the date of the agreement to acquire, that had been used for the production of Architectural Acrylic Emulsion Polymers. For a period commencing on the date this order becomes final and continuing for ten (10) years, Rohm and Haas also shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock or share capital of, or any equity or other interest in, any entity that owns or operates assets located in the United States that are engaged in or, within one (1) year of the date of the agreement to acquire, have been engaged in, the production of Architectural Acrylic Emulsion Polymers. *Provided, however,* these prohibitions shall not relate to:

1. The construction of new facilities or the acquisition of new assets for use in existing facilities;
2. The acquisition of any used equipment for an acquisition price less than \$250,000;
3. The acquisition, for investment purposes only, of the stock or share capital of an entity if as a result of such acquisition, Rohm and Haas would own less than one (1) percent of each class of securities of such entity; and
4. The acquisition of a non-exclusive license.

(B) One year after the date this order becomes final, and annually thereafter for nine (9) more years, Rohm and Haas shall file with the Commission a verified written report of its compliance with the provisions of this order.

VIII.

It is further ordered, That Rohm and Haas and Union Oil shall each file with the Commission a verified report in writing thirty (30) days after the date this order becomes final, and every sixty (60) days thereafter until the obligations of paragraphs II and III of this order have been fully satisfied, setting forth in detail the manner and form in which each has complied, is complying, or intends to comply with the terms of this order.

IX.

It is further ordered, That, for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Rohm and Haas or to Union Oil, as applicable, made to its principal office, Rohm and Haas and Union Oil shall permit any duly authorized representatives of the Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and designate for copying all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Rohm and Haas or of Union Oil, as applicable, relating to any matters contained in this order; and

(B) Upon five days notice to Rohm and Haas or to Union Oil as applicable, and without restraint or interference from Rohm and Haas or Union Oil, to interview officers or employees of Rohm and Haas and Union Oil, who may have counsel present, regarding such matters.

X.

It is further ordered, That Rohm and Haas and Union Oil shall each notify the Commission at least thirty (30) days prior to any proposed change in their respective structures, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, assignment or sale of substantially all of its assets, or any other change, that may affect compliance obligations arising out of the order or that may affect the company's Architectural Acrylic Emulsion Polymers business.

APPENDIX I

PRESERVATION AGREEMENT

This Preservation Agreement is by and between Rohm and Haas Company, a corporation organized under the laws of the State of Delaware, with its principal offices located at Independence Mall West, Philadelphia, Pennsylvania, and the Federal Trade 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.*

PREMISES FOR AGREEMENT

Whereas, Rohm and Haas, pursuant to an agreement dated November 18, 1991, agreed to purchase substantially all of the emulsion polymers business of Union Oil Company of California; and

Whereas, the Commission is now investigating the proposed acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, the Commission has reason to believe that the agreement would violate Section 5 of the Federal Trade Commission Act, and that, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, statutes enforced by the Commission; and

Whereas, if the parties accept the attached Agreement Containing Consent Order to Divest, the Commission is required to place it on the public record for a period of sixty (60) days for public comment 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 agreement is not reached preserving the *status quo ante* of the assets during the period prior to their divestiture, when those assets will be in the hands of Rohm and Haas, that any divestiture resulting from any administrative proceeding challenging the legality of the acquisition might not be possible, or might produce a less than effective remedy; and

Whereas, the Commission is concerned that prior to divestiture to the acquirer, it may be necessary to preserve the continued viability and competitiveness of the Union Oil Architectural Acrylic Assets; and

Whereas, the purpose of this agreement and of the consent order is to preserve the Union Oil Architectural Acrylic Assets pending the divestiture to the acquirer approved by the Federal Trade Commission under the terms of the order, in order to remedy any anti-competitive effects of the acquisition; and

Whereas, Rohm and Haas' entering into this agreement shall in no way be construed as an admission by Rohm and Haas that the acquisition is illegal; and

Whereas, 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, in consideration of the Commission's agreement that, unless the Commission determines to reject the consent order, it will not seek further relief from the parties with respect to the acquisition, except that the Commission may exercise any and all rights to enforce this agreement and the consent order annexed hereto and made a part thereof, and, in the event the required divestiture is not accomplished, to seek the divestiture of such assets as may be required to maintain the viability and competitiveness of the assets required to be preserved pursuant to this Agreement, and other relief the parties agree as follows:

TERMS OF AGREEMENT

1. Rohm and Haas agrees to execute, and upon its issuance to be bound by, the attached consent order.

2. Unless the Commission brings an action to seek to enjoin the proposed acquisition pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), and obtains a temporary restraining order or preliminary injunction blocking the proposed acquisition, Rohm and Haas will be free to close the acquisition with Union Oil after 11:59 a.m., May 13, 1992.

3. Rohm and Haas agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 3.a - 3.b it will comply with the provisions of this Agreement:

a. Three 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. On the day the divestiture set out in the consent order has been completed.

4. From the time Rohm and Haas acquires Union Oil Architectural Acrylic Assets until the divestiture set out in the Consent Order has been completed, Rohm and Haas shall maintain the viability, competitiveness and marketability of the Union Oil Architectural Acrylic Assets, and shall not cause the wasting or deterioration of the assets, nor shall it sell, transfer, encumber or otherwise impair their marketability or viability.

5. Should the Federal Trade Commission seek in any proceeding to compel Rohm and Haas to divest itself of the Union Oil Architectural Acrylic Assets or to seek any other injunctive or equitable relief, Rohm and Haas shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has not sought to enjoin the acquisition. Rohm and Haas 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 Rohm and Haas made to its principal offices, Rohm and Haas shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Rohm and Haas, 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 Rohm and Haas relating to compliance with this agreement; and

b. Upon five (5) days' notice to Rohm and Haas and without restraint or interference from them, to interview officers or employees of Rohm and Haas, who may have counsel present, regarding any such matters.

7. This agreement shall not be binding until approved by the Commission.

IN THE MATTER OF

THE GOOD GUYS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
MAGNUSON-MOSS WARRANTY ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3388. Complaint, July 31, 1992--Decision, July 31, 1992

This consent order requires, among other things, a California-based chain of consumer electronics stores to comply with the Magnuson-Moss Warranty Act and the Pre-Sale Availability of Written Warranty Terms Rule, which require retailers to make manufacturers' warranty information available to consumers, either (1) by displaying the text of the warranty near the warranted product, or (2) by furnishing the text of the warranty to customers upon request prior to sale, and prominently displaying signs advising customers of the availability of such warranties.

Appearances

For the Commission: *Jeffrey Klurfeld* and *Gerald Wright*.

For the respondent: *Kevin O'Brien, Thelen, Marrin, Johnson & Bridges*, San Francisco, CA.

COMPLAINT

Pursuant to the provisions of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.*, and Rule 702, 16 CFR Part 702, promulgated thereunder, and the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that The Good Guys, Inc., a corporation ("respondent"), has violated the provisions of said Acts and Rule 702 promulgated under the Magnuson-Moss Warranty Act, and it appearing to the Commission that a proceeding by it would be in the public interest, alleges:

PARAGRAPH 1. The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, and in