

Complaint

118 F.T.C.

IN THE MATTER OF

TCH CORPORATION, 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-3519. Complaint, Aug. 16, 1994--Decision, Aug. 16, 1994

This consent order requires, among other things, two California-based corporations to divest, within one year, to a Commission-approved buyer, the pharmacy business in either the PayLess or the Thrifty or Bi-Mart stores in six designated areas, requires the respondents to ensure that the assets to be divested remain viable and marketable, and for ten years requires that the respondents obtain Commission approval prior to acquiring any stock or other interest in any entity engaged in the business of selling prescription drugs at retail stores in the six areas designated.

Appearances

For the Commission: *Laura Wilkinson, Ann B. Malester, Claudia R. Higgins, Melissa K. Heydenreich, Meribeth Petrizzi and Jacqueline K. Mendal.*

For the respondents: *Harvey I. Saferstein, George S. Cary, Aimee H. Goldstein and Stephanie Kaufman, Irell & Mannella, Newport Beach, CA.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondents, TCH Corporation ("TCH"), a Delaware corporation, and Green Equity Investors, L.P. ("GEI"), a Delaware investment limited partnership (collectively, "respondents"), subject to the jurisdiction of the Federal Trade Commission, have agreed to acquire certain assets of Kmart Corporation, a corporation subject to the jurisdiction of the Federal Trade Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45; 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. DEFINITIONS

For the purposes of this complaint the following definitions apply:

1. “*TCH*” or “*Thrifty*” means TCH Corporation, a corporation organized, existing, and doing business under and by the virtue of the laws of Delaware, its directors, officers, agents and representatives, its domestic and foreign parents, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, agents and representatives of its domestic and foreign successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures. The words “subsidiary,” “affiliate” and “joint venture” refer to any firm in which there is partial (10 percent or more) or total ownership or control between corporations or partnerships.

2. “*GEP*” means Green Equity Investors, L.P., an investment limited partnership organized, existing, and doing business under and by the virtue of the laws of Delaware, its general partners, directors, officers, agents and representatives, its domestic and foreign parents, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, agents and representatives of its domestic and foreign successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures. The words “subsidiary,” “affiliate” and “joint venture” refer to any firm in which there is partial (10 percent or more) or total ownership or control between corporations or partnerships.

3. “*Kmart*” means Kmart Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of Michigan, its directors, officers, employees, agents and representatives, its domestic and foreign parents, predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, employees, agents and representatives of its domestic and foreign predecessors, successors, assigns, divisions, subsidiaries, affiliates, partnerships and joint ventures.

II. RESPONDENTS

4. Respondent TCH is a corporation organized and existing under the laws of Delaware, with its principal place of business at 3424 Wilshire Boulevard, Los Angeles, CA.

5. Respondent GEI is an investment limited partnership organized and existing under the laws of Delaware, with its principal place of business at 333 South Grand Avenue, Suite 5400, Los Angeles, CA. GEI controls TCH.

6. For purposes of this proceeding, respondents are, and at all times relevant herein have been, engaged in commerce as commerce is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are either corporations, or partnerships whose business or practices are in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

III. ACQUIRED COMPANY

7. Kmart is a corporation organized and existing under the laws of the State of Michigan, with its headquarters at 3100 West Big Beaver Road, Troy, Michigan.

8. Kmart is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITION

9. On or about December 1, 1993, TCH and Kmart agreed to enter into an agreement whereby GEI, through TCH, will acquire from Kmart Corporation all of the stock of PayLess Drug Stores Northwest, Inc., a wholly-owned subsidiary of Kmart, for consideration totaling approximately \$1.162 billion ("Acquisition").

V. THE RELEVANT MARKETS

10. For purposes of this complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the sale of prescription drugs in retail stores.

11. For purposes of this complaint, the relevant sections of the country in which to analyze the effects of the Acquisition are: Bishop, California; Fort Bragg/Mendocino, California; Mt. Shasta, California; Taft, California; Florence, Oregon; and Ellensburg, Washington.

12. The relevant markets set forth in paragraphs ten and eleven are highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios.

13. Entry into the relevant markets is difficult or unlikely.

14. TCH and Kmart are actual competitors in the relevant markets.

VI. EFFECTS OF THE ACQUISITION

15. The effect of the Acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation of 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, in the following ways, among others:

- a. By eliminating direct actual competition between TCH and Kmart;
- b. By increasing the likelihood that TCH will unilaterally exercise market power; or
- c. By increasing the likelihood of collusion in the relevant markets.

16. All of the above increase the likelihood that firms in the relevant markets will increase prices and restrict output both in the near future and in the long term.

VII. VIOLATIONS CHARGED

17. The acquisition agreement described in paragraph nine constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

18. The acquisition described in paragraph nine, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of respondents' proposed acquisition of certain voting securities and

assets of PayLess Drug Stores Northwest, Inc., a wholly-owned subsidiary of Kmart Corporation, and the respondents having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of the 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 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 respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter by an interested person pursuant to Section 2.34, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent TCH Corporation ("TCH" or "Thrifty") is a corporation organized and existing under the laws of Delaware with its office and principal place of business at 3424 Wilshire Boulevard, Los Angeles, CA.

2. Respondent Green Equity Investors, L.P. ("GEI") is a Delaware investment limited partnership organized and existing under the laws of Delaware with its office and principal place of business at 333 South Grand Avenue, Suite 5400, Los Angeles, CA.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

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

A. “*TCH*” or “*Thrifty*” means TCH Corporation, a corporation organized, existing, and doing business under and by the virtue of the laws of Delaware, its subsidiaries, divisions, and groups controlled by TCH, and their respective directors, officers, agents, representatives, and their respective successors and assigns.

B. “*GEI*” means Green Equity Investors, L.P., an investment limited partnership organized, existing, and doing business under and by the virtue of the laws of Delaware, its general partners, subsidiaries, divisions, and groups controlled by GEI, and their respective directors, officers, agents, representatives, and their respective successors and assigns.

C. “*Respondents*” means TCH and GEI.

D. “*Commission*” means the Federal Trade Commission.

E. “*Acquisition*” means the acquisition of the voting stock of PayLess Drug Stores Northwest, Inc., a wholly-owned subsidiary of Kmart Corporation, by respondents TCH and GEI.

F. “*Acquirer*” means the party or parties to whom respondents TCH and GEI divest the assets herein ordered to be divested.

G. “*Prescription drugs*” means ethical drugs available at retail only by prescription.

H. “*PayLess Pharmacy Business*” means PayLess’s business of selling prescription drugs at retail stores located in any of the cities or towns listed in paragraph I.L. of this order, but does not include PayLess’s business of selling other products in those retail stores.

I. “*PayLess Pharmacy Assets*” means all assets constituting the PayLess Pharmacy Business, excluding those assets pertaining to the PayLess trade name, trade dress, trade marks and service marks, and including but not limited to:

1. Leases and properties, at the acquirer’s option;
2. Zoning approvals and registrations, at the acquirer’s option;
3. Books, records, reports, dockets and lists relating to the PayLess Pharmacy Business;

4. Lists of stock keeping units ("SKUs"), *i.e.*, all forms, package sizes and other units in which prescription drugs are sold and which are used in records of sales and inventories;

5. Lists of all customers, including but not limited to third party insurers, including all files of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales, by product, to each customer;

6. All names of prescription drug manufacturers and distributors under contract with PayLess;

7. All price lists for prescription drugs, operating manuals, and advertising and promotional materials, at the acquirer's option, but only if the divestiture is to an acquirer that does not already operate a pharmacy in any location; and

8. Goodwill, tangible and intangible, utilized in the sale of prescription drugs.

J. "*Thrifty and Bi-Mart Pharmacy Business*" means Thrifty's business of selling prescription drugs at retail stores located in any of the cities or towns listed in paragraph I.L. of this order, but does not include Thrifty's business of selling other products in those retail stores.

K. "*Thrifty and Bi-Mart Pharmacy Assets*" means all assets constituting the Thrifty and Bi-Mart Pharmacy Business, excluding those assets pertaining to the Thrifty and Bi-Mart trade names, trade dress, trade marks and service marks, and including but not limited to:

1. Leases and properties, at the acquirer's option;
2. Zoning approvals and registrations, at the acquirer's option;
3. Books, records, manuals, dockets and lists, relating to the Thrifty and Bi-Mart Pharmacy Business;

4. Lists of SKUs, *i.e.*, all forms, package sizes and other units in which prescription drugs are sold and which are used in records of sales and inventories;

5. Lists of all customers, including but not limited to third party insurers, including all files of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales, by product, to each customer;

6. All names of prescription drug manufacturers and distributors under contract with Thrifty;

7. All price lists for prescription drugs, operating manuals, and advertising and promotional materials, at the acquirer's option, but only if the divestiture is to an acquirer that does not already operate a pharmacy in any location; and

8. Goodwill, tangible and intangible, utilized in the sale of prescription drugs.

L. "*Assets To Be Divested*" means either the PayLess Pharmacy Assets or the Thrifty and Bi-Mart Pharmacy Assets located in the following cities or towns:

1. Bishop, California;
2. Fort Bragg/Mendocino, California;
3. Mt. Shasta, California;
4. Taft, California;
5. Florence, Oregon; and
6. Ellensburg, Washington.

II.

It is further ordered, That:

A. Respondents shall divest, absolutely and in good faith, within one (1) year of the date this order becomes final, the Assets To Be Divested.

B. Divestiture of the Assets To Be Divested by respondents shall be made 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 of the Assets To Be Divested is to ensure the continuation of the Assets To Be Divested as ongoing viable pharmacies engaged in the same businesses in which the Assets To Be Divested are presently employed and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint.

C. Pending final divestiture of the Assets To Be Divested, respondents shall take such action as is necessary to maintain the viability and marketability of the Assets To Be Divested and shall not cause or permit the destruction, removal wasting, deterioration, or impairment of any Assets To Be Divested except in the ordinary course of business and except for ordinary wear and tear.

D. If a divestiture includes a lease of physical space, and if pursuant to that lease a respondent through default of the lease or otherwise regains possession of the space, respondents must notify the Commission of such repossession within thirty (30) days and must redinvest such assets or interest pursuant to paragraph II of this order within six (6) months of such repossession.

III.

It is further ordered, That:

A. If respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the Assets To Be Divested within one (1) year of the date this order becomes final, respondents shall consent to the appointment by the Commission of a trustee to divest the Assets To Be Divested. Provided, however, that if the Commission has not approved or disapproved a proposed divestiture within 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 the divestiture. In the event 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, respondents 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 for any failure by respondents to comply with this order.

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

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondents have not opposed, in writing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondents of the

identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Assets To Be Divested.

3. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.B.8. of this order to accomplish the divestiture. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the twelve-month divestiture period may be extended by the Commission, or in the case of a court appointed trustee by the court; provided, however, the Commission may extend the twelve (12) month divestiture period only two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Assets To Be Divested, or to any other relevant information, as the trustee may reasonably request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondents shall extend the time for divestiture under paragraph III.B.3. in an amount equal to the delay, as determined by the Commission or for a court-appointed trustee, by the court.

5. Subject to respondents' absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in paragraph II.B., the trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission. The divestiture shall be made in the manner set out in paragraph II of this order. Provided, however, if the trustee receives bona fide offers from more than one acquirer, and if the Commission determines to approve more than one such acquirer, the trustee shall divest to the acquirer selected by respondents from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of respondents, 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 respondents, 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 divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondents 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 To Be Divested.

7. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

8. Within ten (10) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, respondents shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A. of this order.

10. The Commission or, 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.

11. The trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.

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

IV.

It is further ordered, That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondents have fully complied with the provisions of paragraphs II. and III. of this order, respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with those provisions. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraph II. and III. of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondents also shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

V.

It is further ordered, That, for a ten (10) year period commencing on the date this order becomes final, respondents shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise: (A) Acquire any stock, share capital, equity, leasehold or other interest in any concern, corporate or non-corporate, engaged in the business of selling prescription drugs at retail stores located in any of the cities or towns listed in paragraph I.L. of this order or previously engaged in the business of selling prescription drugs at retail stores located in any of the cities or towns listed in paragraph I.L. of this order within the six-month period prior to such acquisition; or (B) Acquire any assets used for, or previously used for (and still suitable for use for), the business of selling prescription drugs at retail stores located in any of the cities or towns listed in paragraph I.L. of this order. Provided, however, that these prohibitions shall not relate to the construction of new facilities or the acquisition or lease of facilities that have not operated as pharmacies within six months of the date of the offer to acquire or lease. Provided further, that the requirement of prior Commission approval set out in this paragraph shall not apply to a respondent contemplating an acquisition otherwise subject to prior Commission

approval if, at the time of such acquisition, that respondent does not own, directly or indirectly, any interest in the whole or any part of the stock or share capital of, any company that is engaged in the business of selling prescription drugs at retail stores located in any of the cities or towns listed in paragraph I.L. of this order or any asset used or previously used within the previous six-months in (and still suitable for use in) the business of selling prescription drugs at retail stores located in any of the cities or towns listed in paragraph I.L. of this order. Provided, however, that for any such acquisition exempted from the requirements of this paragraph, each acquiring respondent shall provide written notice to the Commission of such acquisition at least ten (10) days prior to such acquisition. Notwithstanding the foregoing, respondent GEI may acquire, for investment purposes only, an interest of not more than five (5) percent of the stock or share capital of any concern. One year from the date this order becomes final, annually thereafter for the next nine (9) years on the anniversary of the date this order became final, and at such other times as the Commission may require, respondents shall file with the Commission a verified written report setting forth in detail the manner and form in which they have complied and are complying with paragraph V. of this order.

VI.

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 respondents, respondents shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondents relating to any matters contained in this consent order; and

B. Upon five (5) days notice to respondents, and without restraint or interference from respondents, to interview officers or employees of respondents, who may have counsel present, regarding such matters.

VII.

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

Commissioner Owen dissenting.

STATEMENT OF COMMISSIONER DEBORAH K. OWEN

I find reason to believe that the proposed acquisition of certain assets of Kmart Corporation by TCH Corporation and Green Equity Investors, L.P. may violate Section 5 of the FTC Act by substantially lessening competition with respect to acute care prescription drugs sold to cash customers in three California markets: Bishop, Mt. Shasta, and Fort Bragg/Mendocino.¹ In the absence of further investigation, I cannot find reason to believe that the Act has been violated with respect to the remaining geographic markets alleged in the Commission's complaint.² I therefore dissent with respect to those allegations, and with respect to any provisions in the order that are unnecessary to remedy the alleged anticompetitive effects in the product and geographic markets that I have supported.

¹ I define acute care prescription drugs as those drugs which are prescribed to fill an immediate need and are rarely refilled, such as antibiotics. Maintenance drugs, by contrast, are those prescribed on an on-going basis and are regularly refilled, such as blood pressure medicine. The latter are more susceptible to competition from mail-order firms. I define cash customers to mean persons whose prescription drug purchases are not covered by managed care or other third-party payors. Such customers are less able to resist a price increase.

² The rationale underlying my unwillingness to support a complaint and consent agreement where, due to insufficient investigation, the record does not establish reason to believe that the law has been violated, is detailed in my dissenting statement in the matter of QVC Network, Inc./Paramount Communications, Inc. (File No. 941- 0008).

IN THE MATTER OF

DOMINICAN SANTA CRUZ HOSPITAL, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED
VIOLATION OF SEC. 7 OF THE CLAYTON ACT

Docket C-3521. Complaint, Aug. 18, 1994--Decision, Aug. 18, 1994

This consent order prohibits, among other things, the California non-profit corporations from acquiring, for ten years, without prior Commission approval, all or any significant part of a general acute care hospital in Santa Cruz County, CA. The consent order also prohibits, for ten years, the respondents from selling or transferring any hospital in the county to a non-respondent prior to the acquirer agreeing to be bound by the Commission's order.

Appearances

For the Commission: *Jeffrey A. Klurfeld, David M. Newman and John P. Wiegand.*

For the respondents: *Toby Singer and Philip Proger, Jones, Day, Reavis & Pogue, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Catholic Healthcare West and Dominican Santa Cruz Hospital have acquired AMI-Community Hospital in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C.18, 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 the provisions of Section 11 of the Clayton Act, as amended, 15 U.S.C. 21, stating its charges as follows:

I. DEFINITIONS

1. For the purposes of this complaint, the following definitions shall apply:

(a) "*General acute care hospital*," herein referred to as "*hospital*," means a health facility, other than a federally owned facility, having a duly organized governing body with overall