

Complaint

119 F.T.C.

IN THE MATTER OF

RECKITT & COLMAN 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-3571. Complaint, April 4, 1995--Decision, April 4, 1995

This consent order allows, among other things, Reckitt & Colman to acquire L&F Products Inc., with the required prior approval, on the condition that it sells its own rug cleaning assets, within six months, to a Commission approved acquirer. If the divestiture is not completed on time, the consent order permits the Commission to appoint a trustee to complete the transaction. In addition, the consent order requires the respondent to obtain Commission approval, for ten years, before acquiring any interest in the carpet-deodorizer business in the United States.

Appearances

For the Commission: *Ann Malester, Michael R. Moiseyev, David L. Inglefield and Elizabeth A. Jex.*

For the respondent: *Jeffrey Schmidt, Pillsbury, Madison & Sutro, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Reckitt & Colman plc ("Reckitt & Colman"), a corporation subject to the jurisdiction of the Federal Trade Commission, has agreed to acquire substantially all of the assets and liabilities of the household products, professional products and personal products businesses of L&F Products Inc., 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. "*Carpet deodorizer products*" means powder products designed to combat and eliminate offensive odors in rugs and carpets that are distributed to consumers primarily through grocery, drug, and mass merchandise stores.

II. RESPONDENT

2. Respondent Reckitt & Colman is a corporation organized, existing, and doing business under and by virtue of the laws of England and Wales, with its principal place of business located at One Burlington Lane, London, England W4 2RW. Reckitt & Colman does business in the United States through its wholly-owned subsidiary Reckitt & Colman Inc., with its principal place of business located at 1655 Valley Road, Wayne, New Jersey.

III. THE ACQUIRED COMPANY

3. L&F Products Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its principal place of business at 225 Summit Avenue, Montvale, New Jersey.

IV. JURISDICTION

4. Respondent 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 businesses affect commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

V. THE ACQUISITION

5. On September 26, 1994, Reckitt & Colman entered into an asset purchase agreement with Eastman Kodak Company ("Kodak"), L&F Products Inc. ("L&F"), a wholly-owned subsidiary of Kodak, and Sterling Winthrop Inc., a wholly-owned subsidiary of L&F, to

acquire substantially all of the assets and liabilities of the household products, professional products and personal products businesses of L&F ("the Acquisition"). Reckitt & Colman will also purchase 100% of the outstanding voting securities of Schulke & Mayr GmbH and certain other wholly-owned subsidiaries of L&F (collectively, "the transferred subsidiaries"). Prior to the consummation of the sale of the L&F assets to Reckitt & Colman, Kodak intends to cause Sterling to transfer the assets and voting securities of the transferred subsidiaries to L&F and one or more affiliates of Kodak unless Reckitt & Colman otherwise consents.

VI. TRADE AND COMMERCE

6. The relevant line of commerce in which to analyze the effects of the Acquisition is the development, manufacture, marketing and sale for resale of carpet deodorizer products.

7. The relevant section of the country in which to evaluate the effects of the acquisition is the United States.

8. The relevant market set forth in paragraphs six and seven above is highly concentrated, whether measured by the Herfindahl-Hirschmann Index or two-firm and four-firm concentration ratios.

9. Entry into the development, manufacture, marketing and sale of carpet deodorizer products is difficult, time-consuming and expensive.

10. Reckitt & Colman and L&F are actual competitors in the relevant market.

VII. EFFECTS OF THE ACQUISITION

11. The effects of the Acquisition may be substantially to lessen competition or tend to create a monopoly in the relevant market in 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, by, among other things:

(a) Eliminating actual, direct and substantial competition between Reckitt & Colman and L&F in the relevant market; and

(b) Enhancing the likelihood of collusion or coordinated interaction between or among the firms in the relevant market.

VIII. VIOLATIONS CHARGED

12. The Acquisition described in paragraph five, 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.

13. The Acquisition agreement described in paragraph five constitutes a violation of 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 certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent 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

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that 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, 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 Reckitt & Colman plc ("Reckitt & Colman") is a corporation organized, existing and doing business under and by virtue of the laws of England and Wales with its principal executive offices located at One Burlington Lane, London, England W4 2RW. Reckitt & Colman does business in the United States through its wholly-owned subsidiary Reckitt & Colman Inc., with its offices and principal place of business at 1655 Valley Road, Wayne, New Jersey.

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. DEFINITIONS

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

A. "*Reckitt & Colman*" means Reckitt & Colman plc, its predecessors, successors and assigns, the divisions, subsidiaries, affiliates, companies, groups, partnerships and joint ventures that Reckitt & Colman controls, directly or indirectly, and their directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. "*Kodak*" means Eastman Kodak Company, its predecessors, successors and assigns, the divisions, subsidiaries, affiliates, companies, groups, partnerships and joint ventures that Kodak controls, directly or indirectly, and their directors, officers, employees, agents and representatives, and their respective successors and assigns.

C. "*L&F*" means the United States Assets and Businesses acquired by Reckitt & Colman in the Acquisition.

D. "*Respondent*" means Reckitt & Colman.

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

F. "*Acquisition*" means Reckitt & Colman's acquisition of substantially all of the assets and liabilities of the household products, professional products and personal products businesses of L&F Products Inc. pursuant to an asset purchase agreement dated September 26, 1994, with Eastman Kodak Company, L&F Products

Inc., a wholly-owned subsidiary of Kodak, and Sterling Winthrop Inc., a wholly-owned subsidiary of L&F Products Inc.

G. "*Carpet Deodorizer Products*" means powder products designed to combat and eliminate offensive odors in rugs and carpets that are distributed to consumers primarily through grocery, drug, and mass merchandise stores. Carpet Deodorizer Products does not include Rug Cleaning Products.

H. "*Carpet Deodorizer Assets*" means all of Reckitt & Colman's United States rights, title and interest in and to:

(1) Carpet Deodorizer Products, including, but not limited to, the brands, trademarks and tradenames "Carpet Fresh," "Rug Fresh"; and

(2) All of Reckitt & Colman's Carpet Deodorizer Products assets and businesses delineated in Schedule A, attached hereto and made a part hereof.

Carpet Deodorizer Assets excludes any assets or businesses acquired in the Acquisition.

I. "*Rug Cleaning Products*" means products designed to clean rugs and carpets that are applied by aerosol spray, or in liquid, foam or other forms and that are distributed to consumers primarily through grocery, drug, and mass merchandise stores. Rug Cleaning Products does not include Carpet Deodorizer Products.

J. "*Rug Cleaning Assets*" means all of Reckitt & Colman's United States rights, title and interest in and to:

(1) Rug Cleaning Products, including, but not limited to, the right to use the brands, trademarks and tradenames "Woolite Heavy Traffic Carpet Cleaner," "Woolite One Step Carpet Cleaner," "Woolite Spot & Stain Carpet Cleaner," "Woolite Fabric and Upholstery Cleaner," and "Woolite Pet Stain Carpet Cleaner" in connection with the production, marketing and sale of Rug Cleaning Products; and

(2) All of Reckitt & Colman's Rug Cleaning Products assets and businesses delineated in Schedule B, attached hereto and made a part hereof.

Rug Cleaning Assets excludes any assets or businesses acquired in the Acquisition.

K. "*Woolite Fabric Care Products*" means products designed to clean fabric and clothing that are applied by aerosol spray, or in

liquid, foam or other forms and that are distributed to consumers primarily through grocery, drug, and mass merchandise stores. Woolite Fabric Care Products excludes Rug Cleaning Products.

L. "*Woolite Assets*" means all of Reckitt & Colman's United States rights, title and interest in and to:

(1) Woolite Fabric Care Products, including, but not limited to, the brand and trademark "Woolite"; and

(2) All of Reckitt & Colman's Woolite Fabric Care Products assets and businesses delineated in Schedule C, attached hereto and made a part hereof.

Woolite Assets excludes any assets or businesses acquired in the Acquisition.

M. "*Air Freshener Products*" means products that are specifically designed to scent the air in the home that are applied by aerosol spray, or in liquid, solid, wick or other forms and that are distributed to consumers primarily through grocery, drug, and mass merchandise stores.

N. "*Air Freshener Assets*" means all of Reckitt & Colman's United States rights, title and interest in and to:

(1) Air Freshener Products, including, but not limited to, the brands and trademarks "Airwick," "Stick Ups," "Air Waves," "Wizard," "Botanicals," and "Airwick Neutra Air"; and

(2) All of Reckitt & Colman's Air Freshener Products assets and businesses delineated in Schedule D, attached hereto and made a part hereof.

Air Freshener Assets excludes any assets or businesses acquired in the Acquisition.

II. DIVESTITURE OF CARPET DEODORIZER ASSETS

It is ordered, That:

A. Reckitt & Colman shall divest the Carpet Deodorizer Assets, absolutely and in good faith, within six (6) months of the date this order becomes final, and shall also divest such additional ancillary assets and effect such arrangements as are necessary to assure the

marketability, viability, and competitiveness of the Carpet Deodorizer Assets; provided, however, that Reckitt & Colman is not required to divest any of the Carpet Deodorizer Assets identified in Schedule A, Part 2, if such assets are not required by the acquirer.

B. Reckitt & Colman shall divest the Carpet Deodorizer Assets only to an acquirer that receives 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 Carpet Deodorizer Assets is to ensure the continuation of the assets as an ongoing, viable enterprise engaged in the same businesses in which the Carpet Deodorizer Assets presently are employed, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Upon reasonable notice from the acquirer of the Carpet Deodorizer Assets to Reckitt & Colman, for a period of six (6) months following the date of the divestiture, Reckitt & Colman shall provide such personnel, information, assistance, advice and training to the acquirer as is necessary to transfer the Carpet Deodorizer Assets pursuant to paragraph II.A. of this order and establish such business as a viable, ongoing concern. Such assistance shall include reasonable consultation with knowledgeable employees of Reckitt & Colman as necessary to satisfy the acquirer's management that its personnel are appropriately trained in the manufacture, distribution and marketing of Carpet Deodorizer Products. Reckitt & Colman shall not charge the acquirer a rate more than its own direct costs for providing such assistance.

D. Reckitt & Colman shall cooperate and assist the acquirer in obtaining approvals for the transfer of all registrations, leases, licenses, certifications, permits, or similar documents relating to the Carpet Deodorizer Assets.

E. Reckitt & Colman shall take such actions as are necessary to maintain the viability and marketability of the Carpet Deodorizer Assets and to prevent the destruction, removal, wasting, deterioration or impairment of any of the Carpet Deodorizer Assets except in the ordinary course of business and except for ordinary wear and tear.

III. RUG CLEANING DIVESTITURE

It is further ordered, That:

A. Reckitt & Colman shall divest, absolutely and in good faith, within six (6) months of the date the Commission approves the Acquisition pursuant to paragraph V of the order in Docket No. C-3306, the Rug Cleaning Assets, and shall also divest such additional ancillary assets and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of the Rug Cleaning Assets; provided, however, that Reckitt & Colman is not required to divest any of the Rug Cleaning Assets identified in Schedule B, Part 2, if such assets are not required by the acquirer.

B. Reckitt & Colman shall divest the Rug Cleaning Assets only to an acquirer that receives 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 Rug Cleaning Assets is to ensure the continuation of the assets as an ongoing, viable enterprise engaged in the same businesses in which the Rug Cleaning Assets presently are employed, and to remedy the lessening of competition resulting from the Acquisition as described in the Commission's letter approving the Acquisition.

C. Upon reasonable notice from the acquirer of the Rug Cleaning Assets to Reckitt & Colman, for a period of six months following the date of the divestiture, Reckitt & Colman shall provide such personnel, information, assistance, advice and training to the acquirer as is necessary to transfer the Rug Cleaning Assets pursuant to paragraph III.A. of this order and establish such business as a viable, ongoing concern. Such assistance shall include reasonable consultation with knowledgeable employees of Reckitt & Colman to satisfy the acquirer's management that its personnel are appropriately trained in the manufacture, distribution and marketing of Rug Cleaning Products. Reckitt & Colman shall not charge the acquirer a rate more than its own direct costs for providing such assistance.

D. Reckitt & Colman shall cooperate and assist the acquirer in obtaining approvals for the transfer of all registrations, leases, licenses, certifications, permits, or similar documents relating to the Rug Cleaning Assets.

E. Reckitt & Colman shall take such actions as are necessary to maintain the viability and marketability of the Rug Cleaning Assets

to prevent the destruction, removal, wasting, deterioration or impairment of any of the Rug Cleaning Assets except in the ordinary course of business and except for ordinary wear and tear.

IV. TRUSTEE PROVISIONS

It is further ordered, That:

A. (1) If Reckitt & Colman has not divested, absolutely and in good faith and with the Commission's prior approval the Carpet Deodorizer Assets within six (6) months of the date this order becomes final, the Commission may appoint a trustee to divest the Carpet Deodorizer Assets and the Air Freshener Assets; provided, however, that the trustee is not required to divest any of the Carpet Deodorizer Assets identified in Schedule A, Part 2, or any of the Air Freshener Assets identified in Schedule D, Part 2, if such assets are not required by the acquirer.

(2) If Reckitt & Colman has not divested, absolutely and in good faith and with the Commission's prior approval the Rug Cleaning Assets within six (6) months of the date the Commission approves the Acquisition pursuant to the order in Docket No. C-3306, the Commission may appoint a trustee to divest the Rug Cleaning Assets and the Woolite Assets; provided, however, that the trustee is not required to divest any of the Rug Cleaning Assets identified in Schedule B, Part 2, or any of the Woolite Assets identified in Schedule C, Part 2, if such assets are not required by the acquirer.

B. 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, Reckitt & Colman 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(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Reckitt & Colman to comply with this order, or the order in Docket No. C-3306.

C. If a trustee is appointed by the Commission or a court pursuant to paragraph IV.A.(1) or paragraph IV.A.(2) of this order, Reckitt &

Colman 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 Reckitt & Colman, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Reckitt & Colman has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Reckitt & Colman of the identity of any proposed trustee, Reckitt & Colman shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission and under the terms and conditions described in paragraph IV.A. of this order, the trustee shall have the exclusive power and authority to divest the Carpet Deodorizer Assets and the Air Freshener Assets, and/or the Rug Cleaning Assets and the Woolite Assets, together with any additional, incidental assets of Reckitt & Colman that may be reasonably necessary to assure the viability and competitiveness of the Carpet Deodorizer Assets and the Air Freshener Assets, and/or the Rug Cleaning Assets and the Woolite Assets.

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

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph IV.C.3. of this order to accomplish the divestiture(s). If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture(s) can be accomplished within a reasonable time, the 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 only extend the divestiture period two (2) times.

5. The trustee shall have full and complete access (subject to the terms and conditions described in paragraph IV.A. of this order) to the personnel, books, records, and facilities related to the Carpet Deodorizer Assets, Air Freshener Assets, Rug Cleaning Assets and Woolite Assets and to any other relevant information, as the trustee

may reasonably request. Reckitt & Colman shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Reckitt & Colman shall take no action to interfere with or impede the trustee's accomplishment of the divestiture(s). Any delays in the divestiture(s) caused by Reckitt & Colman 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.

6. Subject to Reckitt & Colman's absolute and unconditional obligation to divest at no minimum price the assets described in paragraph IV.A. of this order (and subject to the terms and conditions described paragraph IV.A. of this order), and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint and as described in the Commission's letter approving the Acquisition, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquirer for each divestiture described in paragraph IV.A. of this order. If the trustee receives *bona fide* offers from more than one acquirer for each divestiture, and if the Commission determines to approve more than one such acquirer, the trustee shall divest the assets described in paragraph IV.A. of this order to each acquirer selected by Reckitt & Colman from among those approved by the Commission for each divestiture.

7. The trustee shall serve, without bond or other security, at the cost and expense of Reckitt & Colman, 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 Reckitt & Colman, 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 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 Reckitt & Colman 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 described in paragraph IV.A. of this order.

8. Reckitt & Colman 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 trusteeship, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith by the trustee.

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 IV.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 each divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the assets described in paragraph IV.A. of this order.

12. The trustee shall report in writing to Reckitt & Colman and to the Commission every thirty (30) days concerning the trustee's efforts to accomplish the divestitures.

V. HOLD SEPARATE

It is further ordered, That, Reckitt & Colman shall comply with all terms of the Agreement to Hold Separate, attached to this order and made a part hereof as Appendix I. The Agreement to Hold Separate shall continue in effect according to its terms until Reckitt & Colman has divested all of the Rug Cleaning Assets and all of the Carpet Deodorizer Assets as required by this order.

VI. PRIOR APPROVAL

It is further ordered, That, for a ten (10) year period commencing on the date this order becomes final, Reckitt & Colman shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships or otherwise:

(1) Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, engaged in at the time of

such acquisition, or within the two years preceding such acquisition engaged in the development, production, distribution, or sale for resale of Carpet Deodorizer Products in the United States; or

(2) Acquire any assets used or previously used (and still suitable for use) in the manufacture, distribution, or sale for resale of Carpet Deodorizer Products in the United States.

Provided, however, that this paragraph VI shall not apply to the acquisition of products or services acquired in the ordinary course of business.

VII. COMPLIANCE REPORTS

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Reckitt & Colman has fully complied with the provisions of paragraphs II, III, IV and V of this order, Reckitt & Colman shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with those provisions. Reckitt & Colman shall include in its compliance reports, among other things that are required from time to time, a full description of all substantive contacts or negotiations for each divestiture, including the identity of all parties contacted. Reckitt & Colman also shall include in its compliance reports, subject to any legally recognized privilege, copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning each divestiture.

B. One (1) year from the date this order becomes final and annually thereafter for nine (9) years on the anniversary date of this order, Reckitt & Colman shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied and is complying with this order.

VIII. ACCESS

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 Reckitt & Colman, Reckitt & Colman 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 Reckitt & Colman or L&F relating to any matters contained in this consent order; and

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

IX. CORPORATE CHANGE

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

SCHEDULE A

Reckitt & Colman shall divest all of the Carpet Deodorizer Products assets and businesses pursuant to the terms of this order. The assets and businesses identified in paragraph I.H.(2) of this order shall include all assets, properties, business and goodwill, tangible and intangible, utilized by Reckitt & Colman in the development, production, distribution and sale of Carpet Deodorizer Products in the United States, including, but not limited to, the following:

PART I

(1) All customer lists, vendor lists, catalogs, sales promotion literature, existing advertising materials, marketing information, product development information, research materials, technical information, management information systems, software, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data;

(2) Intellectual property rights, patents and patent applications and the formulas, copyrights, trademarks, trade names, tradedress, service marks, and UPC codes;

(3) All rights, title and interest in and to the contracts entered in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, brokers and distributors, agents, inventors, product testing and laboratory research institutions, providers of electronic data exchange services, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

(4) All rights under warranties and guarantees, express or implied;

(5) All Environmental Protection Agency and all other federal and state regulatory agency registrations and applications, and all documents related thereto;

(6) All books, records, files, financial statements, business plans and supporting documents;

(7) All items of prepaid expense; and

(8) A perpetual license at no royalty to use the brands, trademarks and tradedress "Airwick Neutra Air" and "Botanicals" in connection with the production, marketing and sale of Carpet Deodorizer Products in the United States.

PART 2

(1) A perpetual license at no royalty to use the brand, trademark and tradedress "Airwick" in connection with the production, marketing and sale of Carpet Deodorizer Products in the United States;

(2) All machinery, fixtures, equipment, molds, vehicles, furniture, tools and all other tangible personal property;

(3) Inventory;

(4) Accounts and notes receivable; and

(5) All rights, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits.

SCHEDULE B

Reckitt & Colman shall divest all of the Rug Cleaning Products assets and businesses pursuant to the terms of this order. The assets

and businesses identified in paragraph I.J.(2) of this order shall include all assets, properties, business and goodwill, tangible and intangible, utilized by Reckitt & Colman in the development, production, distribution and sale of Rug Cleaning Products in the United States, including, but not limited to, the following:

PART 1

(1) A perpetual license at no royalty to use the brand, trademark, and traddress "Woolite" in connection with the production, marketing and sale of Rug Cleaning Products in or into the United States;

(2) All customer lists, vendor lists, catalogs, sales promotion literature, existing advertising materials, marketing information, product development information, research materials, technical information, management information systems, software, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data;

(3) Intellectual property rights, patents and patent applications and the formulas, copyrights, trademarks, trade names, service marks, and UPC codes;

(4) All rights, title and interest in and to the contracts entered in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, brokers and distributors, agents, inventors, product testing and laboratory research institutions, providers of electronic data exchange services, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

(5) All rights under warranties and guarantees, express or implied;

(6) All Environmental Protection Agency and all other federal and state regulatory agency registrations and applications, and all documents related thereto;

(7) All books, records, files, financial statements, business plans and supporting documents; and

(8) All items of prepaid expense.

PART 2

(1) All machinery, fixtures, equipment, molds, vehicles, furniture, tools and all other tangible personal property;

- (2) Inventory;
- (3) Accounts and notes receivable; and
- (4) All rights, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits.

SCHEDULE C

The trustee shall divest all of the Woolite Fabric Care Products assets and businesses pursuant to the terms of this order. The assets and businesses identified in paragraph I.L.(2) of this order shall include all assets, properties, business and goodwill, tangible and intangible, utilized by Reckitt & Colman in the development, production, distribution and sale of Woolite Fabric Care Products in the United States, including, but not limited to, the following:

PART 1

- (1) All customer lists, vendor lists, catalogs, sales promotion literature, existing advertising materials, marketing information, product development information, research materials, technical information, management information systems, software, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data;
- (2) Intellectual property rights, patents and patent applications and the formulas, copyrights, trademarks, trade names, tradenames, service marks, and UPC codes;
- (3) All rights, title and interest in and to the contracts entered in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, brokers and distributors, agents, inventors, product testing and laboratory research institutions, providers of electronic data exchange services, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;
- (4) All rights under warranties and guarantees, express or implied;
- (5) All Environmental Protection Agency and all other federal and state regulatory agency registrations and applications, and all documents related thereto;
- (6) All books, records, files, financial statements, business plans and supporting documents; and
- (7) All items of prepaid expense.

PART 2

- (1) All machinery, fixtures, equipment, molds, vehicles, furniture, tools and all other tangible personal property;
- (2) Inventory;
- (3) Accounts and notes receivable; and
- (4) All rights, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits.

SCHEDULE D

The trustee shall divest all of the Air Freshener Products assets and businesses pursuant to the terms of this order. The assets and businesses identified in paragraph I.N.(2) of this order shall include all assets, properties, business and goodwill, tangible and intangible, utilized by Reckitt & Colman in the development, production, distribution and sale of Air Freshener Products in the United States, including, but not limited to, the following:

PART 1

- (1) All customer lists, vendor lists, catalogs, sales promotion literature, existing advertising materials, marketing information, product development information, research materials, technical information, management information systems, software, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data;
- (2) Intellectual property rights, patents and patent applications and the formulas, copyrights, trademarks, trade names, tradenames, service marks, and UPC codes;
- (3) All rights, title and interest in and to the contracts entered in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, brokers and distributors, agents, inventors, product testing and laboratory research institutions, providers of electronic data exchange services, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;
- (4) All rights under warranties and guarantees, express or implied;

(5) All Environmental Protection Agency and all other federal and state regulatory agency registrations and applications, and all documents related thereto;

(6) All books, records, files, financial statements, business plans and supporting documents; and

(7) All items of prepaid expense.

PART 2

(1) All machinery, fixtures, equipment, molds, vehicles, furniture, tools and all other tangible personal property;

(2) Inventory;

(3) Accounts and notes receivable; and

(4) All rights, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits.

APPENDIX I

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate ("Hold Separate") is by and between Reckitt & Colman plc ("Reckitt & Colman"), a corporation organized, existing, and doing business under and by virtue of the laws of England and Wales, with its office and principal place of business at One Burlington Lane, London 4W 2RW, England, which does business in the United States through its wholly-owned subsidiary Reckitt & Colman Inc., with its offices and principal place of business at 1655 Valley Road Wayne, New Jersey; 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, on September 26, 1994, Reckitt & Colman entered into an agreement with Eastman Kodak Company ("Kodak") to acquire substantially all of the United States assets and liabilities of the household products, professional products and personal products businesses of L&F Products Inc. (Such assets and businesses hereinafter referred to as "L&F"), as well as the voting securities of

certain wholly-owned subsidiaries of L&F or Kodak that sell products outside the United States (hereinafter "Acquisition"); and

Whereas, on October 22, 1990, the Commission, with the consent of Reckitt & Colman, issued its complaint and made final its order to settle charges that the acquisition by Reckitt & Colman of the Boyle-Midway Division of American Home Products Corporation violated 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 (In the Matter of Reckitt & Colman plc, FTC Docket No. C-3306); and

Whereas, the order in docket No. C-3306 provides that for a period of ten (10) years Reckitt & Colman shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise, any interest in, or the whole or any part of the stock or share capital of any person or business that is engaged in the rug cleaning products business in the United States, or, except in the ordinary course of business, any assets used or previously used in (and still suitable for use in) the rug cleaning products business; and

Whereas, Reckitt & Colman produces and markets, among other things, Carpet Deodorizer Products and Rug Cleaning Products, as defined in paragraph I of the agreement containing consent order ("consent agreement" or "consent order") to which this Hold Separate is attached and made a part thereof as Appendix 1; and

Whereas, L&F, with its principal office and place of business located at 225 Summit Avenue, Montvale, New Jersey, produces and markets, among other things, Carpet Deodorizer Products and Rug Cleaning Products, as defined in paragraph I of the consent order; and

Whereas, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission and whether the Commission should approve the Acquisition pursuant to the order In the Matter of Reckitt & Colman plc, FTC Docket No. C-3306; and

Whereas, the Commission has determined to grant Reckitt & Colman the prior approval required for its acquisition of L&F conditioned, however, upon Reckitt & Colman divesting, as required under the consent agreement, the Carpet Deodorizer Assets and the Rug Cleaning Assets, as defined in paragraph I of the consent agreement; and

Whereas, if the Commission accepts the consent agreement, 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 *status quo ante* of the Carpet Deodorizer Assets and the Rug Cleaning Assets, as defined in paragraph I of the consent agreement, during the period prior to the final acceptance and issuance of the order by the Commission (after the 60-day public comment period) divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Carpet Deodorizer Assets and the Rug Cleaning Assets, as defined in paragraph I of the consent agreement, and the Commission's right to have the Carpet Deodorizer Assets and the Rug Cleaning Assets continue as viable competitors; and

Whereas, the purpose of the Hold Separate and the consent agreement is:

1. To preserve the Carpet Deodorizer Assets, the Air Freshener Assets, and the Rug Cleaning Assets as viable, independent, ongoing enterprises pending the divestiture of the Carpet Deodorizer Assets, the Air Freshener Assets, and Rug Cleaning Assets required under the terms of the consent agreement;
2. To remedy any anticompetitive effects of the Acquisition; and
3. To preserve the Carpet Deodorizer Assets, the Air Freshener Assets, and the Rug Cleaning Assets as ongoing and competitive entities engaged in the same businesses in which they are presently employed until each of the respective divestitures required under the terms of the consent agreement is achieved; and

Whereas, Reckitt & Colman's entering into this Hold Separate shall in no way be construed as an admission by Reckitt & Colman that the Acquisition is illegal; and

Whereas, Reckitt & Colman understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or

exempt from the provisions of the antitrust laws of the FTC Act by reason of anything contained in this consent agreement.

Now, therefore, the Parties agree, upon the understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's conditional approval of the Acquisition and its agreement that, at the time it accepts the consent agreement, for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the consent agreement, it will not seek further relief from Reckitt & Colman with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Hold Separate and the consent agreement to which it is annexed and made a part thereof, and the order in Docket No. C-3306, and in the event the required divestiture of the Carpet Deodorizer Assets is not accomplished, to appoint a trustee to seek divestiture of the Air Freshener Assets as well as the Carpet Deodorizer Assets, and in the event the required divestiture of the Rug Cleaning Assets is not accomplished, to appoint a trustee to seek divestiture of the Woolite Assets as well as the Rug Cleaning Assets, or to seek civil penalties or a court appointed trust or other equitable relief, as follows:

1. Reckitt & Colman agrees to execute and be bound by the consent agreement.

2. Reckitt & Colman agrees that from the date this Hold Separate is accepted until the earlier of the dates listed below in subparagraphs 2.a and 2.b, it will comply with the provisions of paragraph four of this Hold Separate:

- 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 the divestiture of the Carpet Deodorizer Assets required by the consent order has been completed.

3. Reckitt & Colman agrees that from the date this Hold Separate is accepted until the day after the divestiture of the Rug Cleaning Assets required by the consent order has been completed it will comply with the provisions of paragraph five of this Hold Separate.

4. Reckitt & Colman agrees to manage and maintain the Carpet Deodorizer Assets and the Air Freshener Assets, as they are presently constituted, on the following term and conditions:

a. Reckitt & Colman shall appoint four individuals, one each from among Reckitt & Colman's current employees working in Reckitt & Colman's marketing, sales, materials management, and finance operations, to manage and maintain the Carpet Deodorizer Assets and the Air Freshener Assets. These individuals, ("the management team") shall manage the Carpet Deodorizer Assets and the Air Freshener Assets independently of the management of Reckitt & Colman's other businesses, except that these individuals will arrange for the Reckitt & Colman Carpet Deodorizer Products and the Reckitt & Colman Air Freshener Products to be marketed and sold by Reckitt & Colman's marketing and sales forces. The management team shall not thereafter, until the Carpet Deodorizer Assets are divested pursuant to the consent order, be in any way involved in the marketing, selling or materials management of any other Reckitt & Colman product.

b. The management team, in its capacity as such, shall report directly and exclusively to an independent auditor/manager, to be appointed by Reckitt & Colman. The independent auditor/manager shall have exclusive control over the operations of the Carpet Deodorizer Assets and the Air Freshener Assets, with responsibility for the management of the Carpet Deodorizer Assets and the Air Freshener Assets and for maintaining the independence of those businesses.

c. Reckitt & Colman shall not exercise direction or control over, or influence directly or indirectly, the independent auditor/manager or the management team or any of its operations relating to the operations of the Carpet Deodorizer Assets and the Air Freshener Assets; provided however, that Reckitt & Colman may exercise only such direction and control over the management team and the Carpet Deodorizer Assets and the Air Freshener Assets as is necessary to assure compliance with this Hold Separate or the consent order.

d. Reckitt & Colman shall maintain the viability and marketability of the Carpet Deodorizer Assets and the Air Freshener Assets and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or businesses it may have to divest except in the ordinary course of business and

except for ordinary wear and tear. Reckitt & Colman shall not sell, transfer, or encumber the Carpet Deodorizer Assets or the Air Freshener Assets except in the ordinary course of business, or to effect the divestitures contemplated by the consent order pursuant to the terms of the consent order.

e. Except for the management team, Reckitt & Colman shall not permit any other Reckitt & Colman employee, officer, or director to be involved in the of the Carpet Deodorizer Assets or the Air Freshener Assets except to the extent the services of Reckitt & Colman's sales, marketing, and materials management personnel are necessary as set forth in subparagraph 4.a.

f. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or defending or prosecuting litigation, or negotiating agreements to divest assets, Reckitt & Colman shall not receive or have access to, or the use of, any material confidential information not in the public domain about the Carpet Deodorizer Assets or the Air Freshener Assets or the activities of the management team in managing those businesses, nor shall the management team receive or have access to, or use of, any material confidential information not in the public domain about Reckitt & Colman's competing Carpet Deodorizer Products or Air Freshener Products businesses, or the activities of Reckitt & Colman in managing its Carpet Deodorizer Products or Air Freshener Products businesses. Reckitt & Colman may receive on a regular basis from the management team aggregate financial information necessary and essential to allow Reckitt & Colman to prepare United States consolidated financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in the subparagraph. ("Material confidential information" as used herein, means competitively sensitive or proprietary information not independently known to Reckitt & Colman from sources other than the management team, including, but not limited to, customer lists, price lists, marketing methods (except to the extent marketing and sales plans need to be divulged to the Reckitt & Colman marketing and sales force in the ordinary course of business), patents, technologies, processes, or other trade secrets).

g. Nothing in this Hold Separate shall prohibit Reckitt & Colman from providing cash management, tax preparation and/or insurance

functions for the Carpet Deodorizer Assets and the Air Freshener Assets heretofore provided by Reckitt & Colman. Reckitt & Colman personnel providing such support services must retain and maintain all material confidential information relating to the Carpet Deodorizer Assets and the Air Freshener Assets on a confidential basis and, except as permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing such information to or with any person whose employment involves any other Reckitt & Colman Carpet Deodorizer Product business or Rug Cleaning Products business. Reckitt & Colman personnel providing these support services to the Carpet Deodorizer Assets and the Air Freshener Assets shall execute a confidentiality agreement prohibiting the disclosure of any Carpet Deodorizer Assets or Air Freshener Assets confidential information.

h. Reckitt & Colman shall not change the composition of the management team, and the independent auditor/manager shall have the power to remove employees only for cause.

i. All material transactions, out of the ordinary course of business and not precluded by paragraph four hereof, shall be subject to a majority vote of the management team. In the case of a tie, the independent auditor/manager shall cast the deciding vote.

j. Reckitt & Colman shall establish written procedures to be approved by the independent auditor/manager, covering the management, maintenance, and independence of the Carpet Deodorizer Assets and the Air Freshener Assets and the conduct of the management team in accordance with this consent agreement. Reckitt & Colman shall also circulate to its employees and appropriately display a notice of this Hold Separate Agreement and consent order in the form attached hereto as Appendix A.

k. All earnings and profits from the Carpet Deodorizer Assets and the Air Freshener Assets shall be available for use in those businesses until divestiture. In computing earnings and profits for the Carpet Deodorizer Assets and the Air Freshener Assets, Reckitt & Colman may deduct from the revenues generated by the Carpet Deodorizer Assets and the Air Freshener Assets only direct product costs and indirect overheads allocated to those businesses.

l. Reckitt & Colman shall make available for use in the Carpet Deodorizer Assets and the Air Freshener Assets businesses until divestiture an amount not lower than those budgeted for 1995 and 1996 for advertising, trade promotion, and product development of

the Reckitt & Colman Carpet Deodorizer Products and Air Freshener Products, and shall increase such spending as deemed reasonably necessary by the management team in light of competitive conditions. If necessary, Reckitt & Colman shall provide the management team with any funds to accomplish the foregoing.

m. Reckitt & Colman shall pay all direct product costs and indirect overheads for the Carpet Deodorizer Assets and the Air Freshener Assets businesses. The management team and the independent auditor/manager shall serve at the cost and expense of Reckitt & Colman, and the Carpet Deodorizer Assets and the Air Freshener Assets businesses shall not be charged with the compensation and expenses of the independent auditor/manager.

n. If the independent auditor/manager ceases to act or fails to act diligently, a substitute independent auditor/manager shall be appointed in the same manner as provided in subparagraph 4.b. of this Hold Separate. Any replacement for independent auditor/manager shall be appointed with the consent of the Commission.

o. Reckitt & Colman shall indemnify the management team and the independent auditor/manager against any losses or claims of any kind that might arise out of involvement under this Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the management team or the independent auditor/manager.

p. The independent auditor/manager shall report in writing to the Commission every thirty (30) days concerning the efforts to accomplish the purposes of this Hold Separate.

5. To ensure the complete independence and viability of L&F and to assure that no competitive information is exchanged between L&F and Reckitt & Colman, Reckitt & Colman shall hold L&F as it is presently constituted separate and apart on the following terms and conditions:

a. L&F, as defined in paragraph I of the consent agreement, shall be held separate and apart and shall be operated independently of Reckitt & Colman, except to the extent that Reckitt & Colman must exercise direction and control over L&P to assure compliance with this Hold Separate Agreement, the consent order, or the order in Docket No. C-3306.

b. Reckitt & Colman shall assign to L&F its rights under the transition services agreements and all supply agreements contemplated, respectively, by Sections 5.12 and 5.13 of the September 26, 1994, Asset Purchase Agreement among Eastman Kodak Company, L&F Products Inc., Sterling Winthrop Inc., and Reckitt & Colman plc; and, as contemplated by Sections 5.12 and 5.13 of the September 26, 1994 Asset Purchase Agreement, Sterling Winthrop Inc. ("Sterling") personnel will continue the support and administrative services being provided by such Sterling personnel to L&F as of the date this Hold Separate was signed, and all arrangements, existing on the date this Hold Separate was signed, that provide for the supply by Sterling of materials to L&F will remain in place. Reckitt & Colman shall enforce all its rights to cause such Sterling personnel providing support and administrative services and maintaining existing supply arrangements to retain and maintain all material confidential information relating to L&F on a confidential basis and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person, whose employment involves any other Reckitt & Colman business, including the Reckitt & Colman Rug Cleaning Products business.

c. Reckitt & Colman shall appoint four individuals, one each from among L&F's current employees working in L&F's marketing, sales, materials management, and finance operations to manage and maintain L&F. These individuals, ("the management team") shall manage L&F independently of the management of Reckitt & Colman's other businesses. The management team shall not thereafter, until the Rug Cleaning Assets are divested pursuant to the consent order, be in any way involved in the marketing, selling or materials management of any competing Reckitt & Colman products.

d. The management team, in its capacity as such, shall report directly and exclusively to an independent auditor/manager, to be appointed by Reckitt & Colman. The independent auditor/manager shall have exclusive control over the operations of L&F with responsibility for the management of L&F and for maintaining the independence of those businesses. Provided, however, that the auditor/manager appointed pursuant to this paragraph five shall not be the same auditor/manager appointed pursuant to paragraph four.

e. Reckitt & Colman shall not exercise direction or control over, or influence directly or indirectly, L&F, the independent auditor/manager or the management team or any of their operations relating to the operations of L&F; provided however, that Reckitt & Colman may exercise only such direction and control over the management team and L&F as is necessary to assure compliance with this Hold Separate, the consent order, and the order in Docket No. C-3306.

f. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or defending or prosecuting litigations or negotiating agreements to divest assets, Reckitt & Colman shall not receive or have access to, or the use of, any material confidential information not in the public domain about L&F or the activities of the management team in managing L&F; nor shall L&F or the management team receive or have access to, or use of, any material confidential information not in the public domain about Reckitt & Colman's businesses or the activities of Reckitt & Colman in managing its businesses. Reckitt & Colman may receive on a regular basis from L&F aggregate financial information necessary and essential to allow Reckitt & Colman to prepare United States consolidated financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material confidential information" as used herein, means competitively sensitive or proprietary information not independently known to Reckitt & Colman from sources other than L&F or the management team including, but not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets).

g. Nothing in this Hold Separate shall prohibit Reckitt & Colman from providing cash management, tax preparation and/or insurance functions for L&F heretofore provided by Sterling or Kodak. Reckitt & Colman personnel providing such support services must retain and maintain all material confidential information relating to L&F on a confidential basis and, except as permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing such information to or with any person whose employment involves any other Reckitt & Colman Carpet Deodorizer Product business or Rug Cleaning

Products business. Reckitt & Colman personnel providing these support services to L&F shall not be involved in any other Reckitt & Colman Carpet Deodorizer Products business or Rug Cleaning Products business, and shall execute a confidentiality agreement prohibiting the disclosure of any L&F confidential information.

h. L&F shall be staffed with sufficient employees to maintain the viability and competitiveness of L&F, which employees shall be selected from L&F's existing employee base and may also be hired from sources other than L&F. Each director, officer and management employee of L&F shall execute a confidentiality agreement prohibiting the disclosure of any L&F confidential information.

i. Reckitt & Colman shall not change the composition of the management team and the independent auditor/manager shall have the power to remove employees only for cause.

j. All material transactions, out of the ordinary course of business and not precluded by paragraph five hereof, shall be subject to a majority vote of the management team. In case of a tie, the independent auditor/manager shall cast the deciding vote.

k. Reckitt & Colman shall establish written procedures to be approved by the independent auditor/manager, covering the management, maintenance, and independence of L&F and the conduct of the management team in accordance with this consent agreement.

l. All earnings and profits of L&F shall be retained separately by L&F. If necessary, Reckitt & Colman shall provide L&F with sufficient working capital to operate at the rate of operation in effect during the twelve (12) months preceding the date of this Hold Separate.

m. Reckitt & Colman shall cause L&F to continue to expend funds for the advertising, trade promotion, and product development of L&F products at levels not lower than those budgeted for 1995 and 1996, and shall increase such spending as deemed reasonably necessary by the management team in light of competitive conditions. If necessary, Reckitt & Colman shall provide L&F with any funds to accomplish the foregoing.

n. If the independent auditor/manager ceases to act or fails to act diligently, a substitute independent auditor/manager shall be appointed in the same manner as provided in subparagraph 5.d. of this Hold Separate. Any replacement for independent

auditor/manager shall be appointed with the consent of the Commission.

o. The management team and the independent auditor/manager shall serve at the cost and expense of Reckitt & Colman. Reckitt & Colman shall indemnify the management team and the independent auditor/manager against any losses or claims of any kind that might arise out of involvement under this Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the management team or the independent auditor/manager.

p. The independent auditor/manager shall report in writing to the Commission every thirty (30) days concerning the efforts to accomplish the purposes of this Hold Separate.

6. Should the Commission seek in any proceeding to compel Reckitt & Colman to divest itself of the Carpet Deodorizer Assets or the Rug Cleaning Assets or any additional assets, as provided in the consent agreement, or to seek any other equitable relief, Reckitt & Colman shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Reckitt & Colman also waives all rights to contest the validity of this Hold Separate.

7. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege, and upon written request with reasonable notice to Reckitt & Colman made to its principal office in the United States, Reckitt & Colman shall permit any duly authorized representative or 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 Reckitt & Colman or L&F relating to compliance with this Hold Separate; and

b. Upon five (5) days' notice to Reckitt & Colman, and without restraint or interference from it, to interview officers or employees of Reckitt & Colman or L&F, who may have counsel present, regarding any such matters.

8. This Hold Separate shall not be binding until approved by the Commission.

APPENDIX A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Reckitt & Colman has entered into a consent order and Hold Separate Agreement with the Federal Trade Commission relating to the divestiture of certain Reckitt & Colman carpet deodorizer assets and products, including Carpet Fresh, Rug Fresh, Botanicals, and Airwick Neutra Air; or alternatively, if that divestiture is not accomplished within six months, the additional divestiture of certain Reckitt & Colman air freshener assets and products, including Airwick, Stick Ups, Air Waves, Wizard, Botanicals, and Airwick Neutra Air. Until such divestitures as are required by the consent order are accomplished, the Reckitt & Colman carpet deodorizer assets and products, including Carpet Fresh, Rug Fresh, Botanicals, and Airwick Neutra Air, and the Reckitt & Colman air freshener assets and products, including Airwick, Stick Ups, Air Waves, Wizard, Botanicals, and Airwick Neutra Air must be managed and maintained as a separate, ongoing business, independent of all other competing lines of Reckitt & Colman as provided by the Agreement to Hold Separate. All competitive information relating to these product lines must be retained and maintained by the persons responsible for the management of these products on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing any such information to or with any other person whose employment involves any competing Reckitt & Colman carpet deodorizer or air freshener product. Similarly, all persons responsible for the management of any competing Reckitt & Colman carpet deodorizer product or air freshener product shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing any such information to or with any other person responsible for the Carpet Fresh, Rug Fresh, Botanicals, or Airwick Neutra Air carpet deodorizer products, or the Airwick, Stick Ups, Air Waves, Wizard, Botanicals, or Airwick Neutra Air air freshener products.

Any violation of the consent order or the Hold Separate Agreement, incorporated by reference as part of the consent order, subjects the violator to civil penalties and other relief as provided by law.

IN THE MATTER OF

ARKLA, INC.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3265. Consent Order, Oct. 10, 1989--Modifying Order, April 5, 1995

This order reopens a 1989 consent order that settled allegations that Arkla's acquisition of natural gas pipeline assets from TransArk Transmission Co. could reduce competition in the transportation of natural gas out of the Arkoma basin and the transmission of gas to consumers in the Russellville, Arkansas, area. This order modifies the consent order by deleting the divestiture requirement, because changed market conditions, such as regulatory changes and new entry in the market, make it no longer necessary.

ORDER MODIFYING ORDER

On December 6, 1994, NorAm Energy Corporation, successor to Arkla, Inc. ("Arkla"), filed a Petition To Reopen and Vacate or Modify Consent Order ("Petition") in Docket C-3265, pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice, 16 CFR 2.51. Arkla requests that the Commission reopen the consent order issued on October 10, 1989 ("order"), and set it aside or modify the order by eliminating the requirement to divest. For the reasons discussed below, the Commission has determined to reopen the order and to set aside the divestiture requirement.

I. BACKGROUND

The order, which became final on October 23, 1989, was issued by the Commission to remedy the alleged anticompetitive effects of Arkla's 1986 acquisition of a pipeline and right of way of TransArk Transmission Company ("TransArk Assets"). The Commission's complaint alleged that the acquisition eliminated the TransArk Assets as an actual and a potential competitor in the transportation of gas to consumers in the Russellville-Morrilton-Conway, Arkansas, area and in the transportation of gas out of the Affected portion of the Arkoma