

## IN THE MATTER OF

## GLAXO 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-3586. Complaint, June 14, 1995--Decision, June 14, 1995*

This consent order requires, among other things, a British drug company to divest, within nine months, Wellcome's worldwide research and development assets for non-injectable drugs, or else agree to have a Commission-appointed trustee to complete the transaction. In addition, the consent order requires Glaxo, for a period of ten years, to obtain Commission approval before acquiring more than one percent interest in any entity involved in the clinical development, manufacture or sale of migraine drugs.

*Appearances*

For the Commission: *Claudia R. Higgins* and *Ann B. Malester*.

For the respondent: *Charles E. Koch, Simpson, Thatcher & Bartlett*, New York, N.Y.

## COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent Glaxo plc ("Glaxo"), a British corporation subject to the jurisdiction of the Commission, has proposed to acquire all of the capital stock of Wellcome plc ("Wellcome"), a British corporation subject to the jurisdiction of the 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, as amended, ("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. RESPONDENT

1. Respondent Glaxo plc is a corporation organized, existing, and doing business under and by virtue of the laws of England with its

principal executive offices located at Lansdowne House, Berkeley Square, London W1X 6BQ, England.

## II. JURISDICTION

2. 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 business affects commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

## III. THE ACQUIRED COMPANY

3. Wellcome is a corporation organized, existing and doing business under and by virtue of the laws of England, with its principal place of business located at Unicorn House, 160 Euston Road, London, NW1 2BP, England.

## IV. THE ACQUISITION

4. Glaxo proposes to acquire the outstanding capital stock of Wellcome for consideration valued at approximately \$15.15 billion ("Acquisition").

## V. THE RELEVANT MARKET

5. The relevant line of commerce in which to analyze the effects of the Acquisition is the research and development of non-injectable 5HT<sub>1D</sub> agonists. 5HT<sub>1D</sub> agonists are a specific class of drugs known to act on receptors in the human body that are responsible for migraine attacks.

6. For purposes of this complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition.

## VI. STRUCTURE OF THE MARKETS

7. The relevant market set forth in paragraphs five and six is highly concentrated as measured by the Herfindahl-Hirschmann Index.

8. Glaxo and Wellcome are actual competitors in the relevant market.

## VII. BARRIERS TO ENTRY

9. Entry into the relevant market is difficult and time consuming. Entry into the relevant market is governed by the requirements of the Food and Drug Administration ("FDA"). Entry into the relevant market requires the expenditure of significant resources over a period of many years with no assurance that a viable commercial product will result.

## VIII. EFFECTS OF THE ACQUISITION

10. 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 Glaxo and Wellcome in the relevant market;
- b. Decreasing the number of research and development tracks for non-injectable 5HT<sub>1D</sub> agonists; and
- c. Increasing Glaxo's ability to unilaterally reduce research and development of non-injectable 5HT<sub>1D</sub> agonists.

11. All of the above increase the likelihood that firms in the relevant market will restrict output of research and development both in the near future and in the long term.

## IX. VIOLATIONS CHARGED

12. The Acquisition described in paragraph four, 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 the proposed acquisition by respondent of Wellcome plc ("Wellcome"), and the respondent 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 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true 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 described 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 Glaxo plc is a corporation organized, existing and doing business under and by virtue of the laws of England, with its principal place of business located at Lansdowne House, Berkeley Square, London W1X 6BQ, England.

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

#### ORDER

##### I.

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

A. "*Respondent*" or "*Glaxo*" means Glaxo plc, its directors, officers, employees, agents and representatives, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Glaxo plc; and the respective directors, officers, employees, agents and representatives, and the respective successors and assigns of each.

B. "*Wellcome*" means Wellcome plc, its directors, officers, employees, agents and representatives, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Wellcome plc; and the respective directors, officers, employees, agents and representatives, and the respective successors and assigns of each.

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

D. "*Acquisition*" means the acquisition by Glaxo of the capital stock of Wellcome pursuant to an offer announced on January 23, 1995.

E. "*Sumatriptan*" means the compound with the formula 3-[2-(Dimethylamino)ethyl]-N-methylindole-5-methanesulfonamide and/or the butanedioate (I:I) salt thereof [*i.e.* the "succinate"] in respect of its therapeutic indication for the treatment of the disease migraine.

F. "*311C90*" means the compound with the formula (S)-4-[[3-2-(dimethylamino)ethyl]-]H-indol-5-yl)methyl]-2-oxazolidinone and/or a pharmaceutically acceptable salt thereof in respect of its therapeutic indication for the treatment of the disease migraine.

G. "*Wellcome's 311C90 Assets*" means Wellcome's worldwide assets relating to the worldwide research and development, manufacture, distribution and sale of 311C90 that are not part of Wellcome's physical facilities. "Wellcome's 311C90 Assets" include, but are not limited to, all formulations, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, distribution information, customer lists, information stored on management information systems (and specifications sufficient for the Acquirer to use such information), software used in connection with Wellcome's 311C90, inventory sufficient for the Acquirer to complete all clinical trials or bioequivalency studies necessary to obtain United States Food and Drug Administration ("FDA") approvals and all data, contractual rights, materials and information relating to obtaining FDA approvals and other government or

regulatory approvals for the United States or other countries for Wellcome's 311C90.

H. "*Glaxo's Sumatriptan Assets*" means Glaxo's worldwide assets relating to the worldwide research and development, manufacture, distribution and sale of Glaxo's Sumatriptan that are not part of Glaxo's physical facilities. "Glaxo's Sumatriptan Assets" include, but are not limited, to all formulations, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, distribution information, customer lists, information stored on management information systems (and specifications sufficient for the Acquirer to use such information), software used in connection with Glaxo's Sumatriptan, inventory sufficient for the Acquirer to complete all clinical trials or bioequivalency studies necessary to obtain FDA approvals and all data, contractual rights, materials and information relating to obtaining FDA approvals and other government or regulatory approvals for the United States or other countries for Glaxo's Sumatriptan.

I. "*Alternative Assets to be Divested*" means Wellcome's 311C90 Assets or Glaxo's Sumatriptan Assets at the discretion of the trustee to be appointed pursuant to paragraph IV. of this order.

J. "*Acquirer*" means the entity to whom Glaxo shall divest either Wellcome's 311C90 Assets or Glaxo's Sumatriptan Assets pursuant to this order.

K. "*Non-injectable 5HT<sub>1D</sub> agonists*" means any 5HT<sub>1D</sub> agonist medicine formulation intended for the treatment of the disease migraine to be administered to patients by any method other than subcutaneous, intramuscular or intravenous injection.

## II.

*It is further ordered, That:*

A. Respondent shall divest, absolutely and in good faith, within nine (9) months of the date this order becomes final, Wellcome's 311C90 Assets.

B. Respondent shall divest Wellcome's 311C90 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 Wellcome's 311C90 Assets is to ensure continued research and development of Wellcome's 311C90, in the same manner in which Wellcome's 311C90 would be researched and developed absent the proposed Acquisition, and to remedy the lessening of competition resulting from the proposed Acquisition as alleged in the Commission's complaint.

C. The time period for divestiture pursuant to this paragraph II. of this order shall be tolled if and when respondent:

1. Provides to the Commission objective evidence, including, but not limited to, results of clinical trials, indicating that, based on 311C90's medical profile, and through no fault of respondent, Wellcome's 311C90 Assets are not viable or marketable; and

2. Petitions the Commission to modify this order, pursuant to Section 5(b) of the FTC Act and Section 2.51 of the Commission's Rules of Practice, based on the circumstances described in subparagraph II.C.1 of this order.

This tolling of the time period for divestiture shall end when the Commission rules on respondent's petition to modify this order.

### III.

*It is further ordered, That:*

A. Within forty-five (45) days of the date this order becomes final, the Commission shall appoint a trustee to ensure that Glaxo expeditiously performs its responsibilities required by this order. Glaxo 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 respondent, which consent shall not be unreasonably withheld. If respondent 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 respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Within ten (10) days after the appointment of the trustee, Glaxo shall execute a trust agreement that, subject to the prior approval of

the Commission, confers on the trustee all the rights and powers necessary to permit the trustee to assure Glaxo's compliance with the terms of this order. As part of the trustee agreement, the trustee shall execute confidentiality agreement(s) with Glaxo.

3. The trustee shall serve until either (a) the Acquirer has filed with the FDA for approval to manufacture and sell a product based on Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to paragraph IV.A. of this order); (b) the trustee determines that the Acquirer has abandoned its efforts to obtain FDA approval to manufacture and sell a product based upon Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to paragraph IV.A. of this order); or (c) the trustee determines that the Acquirer has failed to exercise reasonable diligence in research and development toward obtaining FDA approval to manufacture and sell a product based upon Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to paragraph IV.A. of this order), which lack of diligence will have been certified to and accepted by the Commission, whichever comes first. The trustee's service shall continue for no more than two (2) years following divestiture of Wellcome's 311C90 Assets or the Alternative Assets to be Divested.

4. The trustee shall have full and complete access to the personnel, books, records, facilities and technical information related to Wellcome's 311C90 Assets and Glaxo's Sumatriptan Assets, or to any other relevant information, as the trustee may reasonably request, including but not limited to all records kept in the normal course of business that relate to the research and development of, and the cost of manufacturing, Wellcome's 311C90 and Glaxo's Sumatriptan. Respondent shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of his or her responsibilities pursuant to this order.

5. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the trustee's duties

and responsibilities. The trustee shall account for all expenses incurred. The Commission shall approve the account of the trustee, including fees for his or her services.

6. Respondent 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.

7. 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.

8. The Commission 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 requirements of this order.

9. The trustee shall report in writing to respondent and the Commission every one hundred and eighty (180) days concerning the trustee's obligations pursuant to this paragraph III.

B. Respondent shall comply with all reasonable directives of the trustee regarding respondent's obligations to comply with this order.

C. The trustee may require Glaxo to manufacture Wellcome's 311C90 (or Sumatriptan, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to paragraph IV.A. of this order) for use by the Acquirer in conducting clinical trials or bioequivalency studies if:

1. The Acquirer has depleted its inventory of 311C90 (or Sumatriptan, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to paragraph IV.A. of this order) acquired pursuant to the divestiture;

2. The Acquirer has a need to conduct further clinical development trials or bioequivalency studies prior to submission of an application to the FDA to manufacture and sell a product based on Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to paragraph IV.A. of this order); and

3. Despite good faith efforts to establish its own manufacturing capability for 311C90 (or Sumatriptan, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to paragraph IV.A. of this order), the Acquirer has not succeeded in doing so as of the time 311C90 (or Sumatriptan, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to paragraph IV.A. of this order) is needed for such clinical trials or bioequivalency studies.

The trustee shall determine reasonable compensation for Glaxo, based upon the costs of manufacture, for such production.

#### IV.

*It is further ordered, That:*

A. If Glaxo has not divested, absolutely and in good faith and with the Commission's prior approval, Wellcome's 311C90 Assets within the time required by paragraphs II.A. and II.C. of this order, the Commission may direct the trustee appointed pursuant to paragraph III. of this order to divest the Alternative Assets to be Divested. Neither the decision of the Commission to direct the trustee nor the decision of the Commission not to direct the trustee to divest the Alternative Assets to be Divested 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 the respondent to comply with this order.

B. If the trustee is directed under subparagraph A. of this paragraph to divest the Alternative Assets to be Divested, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall extend the authority and responsibilities of the trustee appointed under paragraph III. of this order to include divesting the Alternative Assets to be Divested.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Alternative Assets to be Divested.

3. Within ten (10) days after the extension of the trustee's authority and responsibilities, respondent shall amend the existing trust agreement in a manner 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 permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the extension of the trustee's authorities and responsibilities as described in paragraph IV.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records, facilities and technical information related to Wellcome's 311C90 Assets and Glaxo's Sumatriptan Assets, or to any other relevant information, as the trustee may reasonably request, including but not limited to all records kept in the normal course of business that relate to research and development of, and the cost of manufacturing, Wellcome's 311C90 and Glaxo's Sumatriptan. Respondent shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondent 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. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys 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 the respondent. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Alternative Assets to be Divested.

7. Respondent 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. 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.

9. 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.

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

11. If a divestiture application filed pursuant to this paragraph IV. is pending before the Commission, and respondent petitions the Commission to modify this order based on the conditions in paragraph II.C., then the Commission shall not approve the divestiture application until it rules on the petition to modify.

## V.

*It is further ordered, That:*

A. Upon reasonable notice and request from the Acquirer to Glaxo, Glaxo shall provide information, technical assistance and advice to the Acquirer with respect to Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to paragraph IV.A. of this order) such that the Acquirer will be capable of continuing the current research and development. Such assistance shall include reasonable

consultation with knowledgeable employees of Glaxo and training at the Acquirer's facility for a period of time sufficient to satisfy the Acquirer's management that its personnel are adequately knowledgeable about Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to paragraph IV.A. of this order). However, respondent shall not be required to continue providing such assistance for more than twelve (12) months after divestiture of Wellcome's 311C90 Assets or the Alternative Assets to be Divested. Respondent may require reimbursement from the Acquirer for all of its own direct costs incurred in providing the services required by this subparagraph V.A. Direct costs, as used in this subparagraph V.A., means all actual costs incurred exclusive of overhead costs.

B. Pending divestiture of Wellcome's 311C90 Assets pursuant to paragraph II. of this order or the Alternative Assets to be Divested pursuant to paragraph IV. of this order, respondent shall:

1. Take such actions as are necessary to prevent the destruction, removal, wasting, deterioration or impairment of Wellcome's 311C90 Assets and Glaxo's Sumatriptan Assets, except for ordinary wear and tear; and

2. Maintain research and development of Wellcome's 311C90 Assets and Glaxo's Sumatriptan Assets at the levels planned by Wellcome for 311C90 and Glaxo for Sumatriptan as of January 1, 1995.

C. Glaxo shall maintain physical assets necessary to manufacture Wellcome's 311C90 and Glaxo's Sumatriptan until the Acquirer has filed with the FDA for approval to manufacture and sell a product based upon Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested pursuant to paragraph IV.A. of this order). The maintenance of physical assets described in this subparagraph shall not exceed two (2) years following divestiture of Wellcome's 311C90 Assets or the Alternative Assets to be Divested. Provided however, that Glaxo shall be allowed to discontinue maintenance of the physical assets necessary to manufacture Glaxo's Sumatriptan if Glaxo divests Wellcome's 311C90 Assets pursuant to this order.

## VI.

*It is further ordered*, That, for a period of ten (10) years from the date this order becomes final, respondent shall not without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire more than 1% of the 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, (1) the clinical development of non-injectable 5HT<sub>1D</sub> agonists for approval by the FDA for the treatment of migraines or (2) the manufacture and sale of non-injectable 5HT<sub>1D</sub> agonists approved by the FDA for the treatment of migraines; or

B. Acquire any assets currently used for or previously used for (and still suitable for use for) (1) the clinical development of non-injectable 5HT<sub>1D</sub> agonists for approval by the FDA for the treatment of migraines or (2) the manufacture and sale of non-injectable 5HT<sub>1D</sub> agonists approved by the FDA for the treatment of migraines.

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

## VII.

*It is further ordered*, That:

A. Within sixty (60) days after the date this order becomes final and every sixty days (60) days thereafter until respondent has fully complied with the provisions of paragraphs II., III., IV., V.A. and V.B. of this order, respondent 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 paragraphs II., III., IV. and V. of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II., III., IV. and V. of this order, including a description of all substantive contacts or negotiations for accomplishing the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all

written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this order.

#### VIII.

*It is further ordered,* That, for the purpose of determining or securing compliance with this order, respondent 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 respondent, relating to any matters contained in this order; and

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

#### IX.

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

Set Aside Order

119 F.T.C.

IN THE MATTER OF

NATIONAL COMICS PUBLICATIONS, INC., ET AL.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF  
SEC. 2 OF THE CLAYTON ACT*Docket 7614. Consent Order, July 6, 1960--Set Aside Order, June 14, 1995*

The Federal Trade Commission has reopened a 1960 consent order (57 FTC 69) -- which required the companies to offer promotional allowances for their publications on proportionally equal terms to all customers -- and has set aside the consent order pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

ORDER REOPENING PROCEEDING  
AND SETTING ASIDE ORDER

On February 16, 1995, DC Comics and Warner Publisher Services, Inc. ("WPS"), as respondents and successors to National Comics Publications, Inc. and Independent News Company, Inc.<sup>1</sup> filed a Petition to Reopen and Set Aside Consent Order ("Petition"), in this matter. DC and WPS request that the Commission set aside the 1960 consent order in this matter pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and the Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders, issued on July 22, 1994, and published at 59 Fed. Reg. 45,286-92 (Sept. 1, 1994) ("Sunset Policy Statement"). In its Petition, DC and WPS affirmatively state that neither has engaged in any conduct violating the terms of the order. The Petition was placed on the public record, and the thirty-day comment period expired on March 27, 1995. No comments were received.

The Commission in its Sunset Policy Statement said, in relevant part, that "effective immediately, the Commission will presume, in

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<sup>1</sup> Since the Commission issued the order in this matter, National Comics has become DC Comics, a general partnership between Warner Communications, Inc., and Time Warner Entertainment Co., L.P. Independent has changed its name to Warner Publisher Services, Inc., and is now owned by Warner Communications Inc.