

IN THE MATTER OF

MUSTAD INTERNATIONAL GROUP NV, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3624. Complaint, Oct. 30, 1995--Decision, Oct. 30, 1995*

This consent order requires, among other things, a Switzerland corporation and its Connecticut subsidiary to either divest all of their Connecticut horseshoe nail manufacturing assets, or to divest four nail machines and to grant a license of technology and know-how to operate them, to a Commission-approved acquirer by May 15, 1996.

Appearances

For the Commission: *Howard Morese, Joseph G. Krauss and William Baer.*

For the respondents: *Peter L. Costas, Pepe & Hazard*, Hartford, CT.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondents Mustad Connecticut, Inc. ("Mustad Connecticut"), a Connecticut corporation, and Mustad International Group NV ("Mustad Group") have acquired all of the assets of Cooper Horseshoe Nail Co., Ltd., a majority interest in Emcoclavos S.A., and the horseshoe nail assets of Sterward Engineering Company, Ltd., and that such acquisitions violate 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 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. THE RESPONDENTS AND JURISDICTION

1. Respondent Mustad Connecticut, wholly-owned by Mustad International Group NV, is a corporation organized, existing and

doing business under and by virtue of the laws of the State of Connecticut, with its principal place of business at 1395 Blue Hills Avenue, Bloomfield, Connecticut.

2. Respondent Mustad Group is a corporation organized, existing and doing business under and by virtue of the laws of the Netherlands Antilles with its principal place of business at St. Pierhalsteeg 5, NL-1012 GL Amsterdam.

3. Respondents Mustad Connecticut and Mustad Group (collectively "Mustad") manufacture, distribute, and sell rolled and forged horseshoe nails in the United States and worldwide.

4. Mustad Connecticut and Mustad Group are, and at all times relevant herein have been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affect commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

II. THE ACQUISITIONS

5. On or about July 30, 1985, Mustad Connecticut agreed to acquire and did acquire all of the assets relating to the horseshoe nail business of Capewell Manufacturing Company ("Capewell") (the "Capewell acquisition"). Capewell, which was headquartered in Hartford, Connecticut, manufactured and sold rolled horseshoe nails in the United States prior to its acquisition by Mustad Connecticut.

6. On or about March 5, 1986, Mustad Connecticut agreed to acquire and did acquire all of the assets of the Cooper Horseshoe Nail Co., Ltd. ("Cooper"), a division of Frederick Cooper plc (the "Cooper acquisition"). Cooper, which was headquartered in Wolverhampton, West Midlands, England, manufactured rolled horseshoe nails in England. Cooper exported virtually all of its production of horseshoe nails, prior to its acquisition by Mustad Connecticut, to the United States.

7. In February 1990, Mustad Group acquired a majority interest in Emcoclavos S.A. ("Emcoclavos") (the "Emcoclavos acquisition"). Emcoclavos, which is headquartered in Bogota, Colombia, manufactures and sells horseshoe nails, including rolled horseshoe nails for sale in the United States. Emcoclavos exported rolled horseshoe nails to the United States prior to its acquisition by Mustad Group.

8. On or about January 4, 1993, Mustad Connecticut agreed to acquire and did acquire all of the assets relating to horseshoe nail manufacturing of Sterward Engineering Company, Ltd. ("Sterward"), a British corporation, (the "Sterward acquisition"). Sterward, which was headquartered in Tipton, West Midlands, England, designed and manufactured tooling and equipment used in the production of rolled horseshoe nails. The Sterward assets that were purchased by Mustad Connecticut were designed to produce rolled horseshoe nails for sale in the United States.

9. Concurrent with the Sterward acquisition and the Cooper acquisition, Mustad Connecticut entered into agreements prohibiting Sterward and Cooper from producing horseshoe nails or equipment used or useful in the manufacture of horseshoe nails or otherwise competing directly or indirectly in the manufacture or sale of horseshoe nails for at least 20 years.

10. Mustad undertook the Cooper acquisition, the Emcoclavos acquisition, and the Sterward acquisition with the willful intention and effect of restraining, lessening, or eliminating competition, or creating or maintaining a monopoly in the market for rolled horseshoe nails.

III. THE RELEVANT MARKET

11. One relevant line of commerce within which to analyze the effects of Mustad's acquisitions is the manufacture and sale of rolled horseshoe nails. Rolled horseshoe nails are softer and slimmer than forged nails, which gives them different handling characteristics. Rolled horseshoe nails are preferred by customers in the United States and are not considered to be reasonably interchangeable with forged nails.

12. The relevant section of the country or geographic area within which to analyze the effects of the acquisitions is either the entire United States or the world. Rolled horseshoe nails are used and sold principally in the United States.

IV. MARKET STRUCTURE

13. Prior to the Capewell acquisition, Cooper acquisition, Emcoclavos acquisition, and Sterward acquisition the market for rolled horseshoe nails was extremely concentrated as measured by the Herfindahl-Hirschmann Index ("HHI").

14. Prior to its acquisition in 1985, Capewell had approximately 50% of U.S. sales of horseshoe nails. Prior to its acquisition in 1986, Cooper had approximately 40% of U.S. sales of horseshoe nails. Prior to its acquisition in 1990, Emcoclavos had approximately 10% of U.S. sales of horseshoe nails.

15. Mustad, because of the acquisitions of Capewell, Cooper, Emcoclavos, and Sterward, is the largest producer and seller of rolled horseshoe nails in the world, with more than a 90% share of sales.

16. Mustad possesses monopoly power, or has a dangerous probability of obtaining monopoly power, in the market for rolled horseshoe nails.

V. ENTRY

17. Entry into the production and sale of rolled horseshoe nails would take well in excess of two years and is unlikely, among other reasons, because of the difficulty of designing and building the specialized and complex machinery required to produce such nails, the high capital expenditures relative to market size, substantial sunk costs, static demand, the need for technical expertise, and the need for a brand name and reputation for a quality product.

VI. EFFECTS OF THE ACQUISITIONS

18. The effect of the Cooper acquisition, Emcoclavos acquisition, and Sterward acquisition has been and may be to lessen competition substantially and to tend to create a monopoly in the relevant market in the following ways, among others:

- (a) By eliminating Capewell, Cooper, and Emcoclavos as substantial independent competitive forces in the relevant market;
- (b) By eliminating actual, direct and substantial competition between and among Capewell, Cooper, and Emcoclavos;
- (c) By eliminating actual potential competition between Mustad Connecticut and nails produced by the Steward machinery;
- (d) By substantially increasing concentration, as measured by the HHI, in the relevant market;
- (e) By substantially raising prices as much as 50-75% on the most popular, large volume sizes of horseshoe nails in the United States since the Cooper acquisition, Emcoclavos acquisition, and Sterward acquisition;

(f) By significantly enhancing the likelihood of coordinated behavior or collusion between Mustad Connecticut and any remaining rolled horseshoe nail manufacturing competitors;

(g) By significantly enhancing the likelihood that Mustad will unilaterally exercise market power; and

(h) By increasing barriers to new entry into the relevant market.

19. The Cooper acquisition, Emcoclavos acquisition, and Sterward acquisition restrained trade and created or maintained a monopoly in the rolled horseshoe nail market.

VII. OTHER ACTS AND PRACTICES

20. Mustad has destroyed saleable rolled horseshoe nail making machinery in order to prevent potential competitors from producing rolled horseshoe nails.

VIII. VIOLATIONS CHARGED

21. The acquisitions of Cooper, Emcoclavos, and Sterward by Mustad Connecticut and Mustad Group constitute 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.

22. The Sterward non-compete agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

23. Mustad Connecticut and Mustad Group, in making the Cooper acquisition, the Emcoclavos acquisition, and the Sterward acquisition, in destroying machinery, and in entering the non-compete agreements, attempted to monopolize and did monopolize the rolled horseshoe nail market in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acquisitions of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with

violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and

The respondents, Mustad International Group NV and Mustad Connecticut, Inc., their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law 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 prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Mustad Group is a corporation organized, existing and doing business under and by virtue of the laws of the Netherlands Antilles with its principal place of business at St. Pierhalsteeg 5, NL-1012 GL Amsterdam.

2. Respondent Mustad Connecticut, wholly owned by Mustad International Group NV, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal place of business at 1395 Blue Hills Avenue, Bloomfield, Connecticut.

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

ORDER

I.

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

A. "*Mustad Connecticut*" means Mustad Connecticut, Inc., a wholly owned subsidiary of Mustad International Group NV, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Mustad Connecticut, their successors and assigns, and their directors, officers, employees, agents and representatives.

B. "*Mustad Group*" means Mustad International Group NV, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Mustad Group, their successors and assigns, and their directors, officers, employees, agents and representatives.

C. "*Respondents*" or "*Mustad*" means Mustad Connecticut and Mustad Group.

D. "*Acquisitions*" means the acquisitions by Mustad of the assets of Cooper Horseshoe Nail Co., Ltd.; stock of Emcoclavos S.A.; and assets of Sterward Engineering Company, Ltd.

E. "*Capewell*" means substantially all assets of Capewell Horsenails, Inc., including assets, properties, business and goodwill, tangible and intangible, used in the manufacture and sale of rolled horseshoe nails, including the following:

1. Machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;
2. Customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;
3. Inventory of nails produced by Capewell;
4. Rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

5. Rights under warranties and guarantees, express or implied;
6. Books, records, files; and
7. Items of prepaid expense.

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

G. "*Rolled horseshoe nails*" means horseshoe nails that are produced by the rolling process of drawing the shank of the nail through a series of dies.

H. "*Functioning nail machine*" means a fully functioning and operational machine that has produced at least 800 pounds per week of city head no. 5 rolled horseshoe nails during the preceding year, or the equivalent production of other types and sizes of nails, including tooling used in the maintenance or operation of such nail machines, and capable of producing rolled horseshoe nails in at least the following sizes: city head 5, city head 6, slim blade 5, regular head 5, and race nail 3½.

I. "*Spare nail machine*" means a functioning or non-functioning machine suitable for use in providing spare and replacement parts for the functioning nail machines.

J. "*Nail machine*" means a functioning nail machine or spare nail machine.

K. "*Technology and know-how*" means all of Mustad's drawings, blueprints, patents, specifications, tests, and other documentation, and all information contained therein or available to Mustad personnel relating to the design, and the production methods, processes and systems used in the production of rolled horseshoe nails.

II.

It is further ordered, That:

A. Mustad shall divest, absolutely and in good faith, by May 15, 1996, either (i) Capewell as an ongoing business, or (ii) four (4) functioning nail machines and one (1) spare nail machine and shall grant a perpetual non-exclusive license of the technology and know-how to the acquirer.

B. The divestiture and granting of the license shall be made 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 and only in a manner that receives the prior approval of the

Commission. The purpose of the divestiture and licensing is to create an independent competitor in the production and sale of rolled horseshoe nails and to remedy the lessening of competition in the United States resulting from the Acquisitions as alleged in the Commission's complaint. Mustad shall divest such other ancillary assets and effect such other arrangements as are reasonably necessary for the acquirer to be viable, and competitive.

C. If Mustad divests the functioning nail machines and spare nail machine, then upon reasonable notice from the acquirer to respondents, respondents shall provide such assistance to the acquirer as is reasonably necessary to enable the acquirer to produce rolled horseshoe nails in substantially the same manner and quality employed or achieved by the respondent prior to divestiture. Such assistance shall include reasonable consultation with knowledgeable employees and training for a period of time sufficient to satisfy the acquirer's management that its personnel are appropriately trained in the production of rolled horseshoe nails. Respondents shall convey all know-how necessary to produce rolled horseshoe nails in substantially the same manner and quality employed or achieved by respondent prior to divestiture. However, respondents shall not be required to continue providing such assistance for more than one (1) year from the date of the divestiture. Respondents shall charge the acquirer its own direct costs for providing such assistance.

III.

It is further ordered, That, pending divestiture of Capewell or the functioning nail machines and spare nail machine pursuant to paragraph II.A., Mustad shall take such action as is necessary to maintain the viability and marketability of the nail machines to be divested and shall not cause or permit the destruction, removal, wasting, deterioration or impairment of such nail machines, except for ordinary wear and tear that does not affect the viability and marketability of the nail machines.

IV.

It is further ordered, That:

A. If respondents have not completed the divestiture required by paragraph II.A. by May 15, 1996, the Commission may appoint a trustee to divest four (4) functioning nail machines, one (1) spare nail machine, and license the technology and know-how. 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, Mustad 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 Mustad to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph IV.A. of this order, Mustad 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 Mustad, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Mustad has not opposed the selection of a proposed trustee within fifteen (15) days after notice by the Commission's staff to Mustad of the identity of the proposed trustee, Mustad shall be deemed to have consented to the selection of the proposed trustee.

(2) Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the nail machines and grant a license for the technology and know-how and to make any further arrangements that may be reasonably necessary to maintain the viability and competitiveness of the business.

(3) The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph IV.B.8. 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 the divestiture 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, that the Commission may extend this period only two (2) times and for a total period not to exceed two (2) years.

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

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

(6) The trustee shall serve, without bond or other security, at the cost and expense of Mustad, on such reasonable and customary terms and conditions as the Commission or, in the case of a court-appointed trustee, the court may set. The trustee shall have authority to employ, at the cost and expense of Mustad, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary and at reasonable cost to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and licensing 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 Mustad and the trustee's power shall be terminated. The trustee's compensation shall be based in significant part on a reasonable

commission arrangement contingent on the trustee's divesting the Nail Machines and licensing the technology and know-how.

(7) Mustad 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, losses, damages, claims, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith by the trustee.

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

(9) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph 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 the divestiture and licensing required by this order.

(11) The trustee shall have no obligation or authority to operate or maintain the nail machines.

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

V.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Mustad has fully complied with the provisions of paragraphs II or IV of this order, Mustad 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. Mustad 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 and IV of the order, including a description of all substantive contacts or negotiations for the divestiture and licensing and the identity of all parties contacted. Mustad also 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 year from the date that this order becomes final, annually for the next nine (9) years on the anniversary of the date on which this order becomes final, and at such other times as the Commission may require, Mustad shall file with the Commission a verified written report setting forth in detail the manner and form in which it has complied and is complying with paragraph VI of 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 providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, presently engaged in, within the two years preceding such acquisition engaged in, or in the process of attempting to engage in producing or selling horseshoe nails in the United States; or

B. Acquire any assets used for, or previously used for (and still suitable for use for) the production of horseshoe nails from any concern, corporate or non-corporate, presently engaged in, within the past two years engaged in, or in the process of attempting to engage in producing or selling horseshoe nails in the United States.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"). Respondent shall provide to the Commission at least thirty days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"), both the Notification and

supplemental information either in respondent's possession or reasonably available to respondent. Such supplemental information shall include a copy of the proposed acquisition agreement; the names of the principal representatives of respondent and of the firm respondent desires to acquire who negotiated the acquisition agreement; and any management or strategic plans discussing the proposed acquisition. If, within the first waiting period, representatives of the Commission make a written request for additional information, respondent shall not consummate the acquisition until twenty days after submitting such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a.

VII.

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, Mustad reasonably 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 Mustad relating to any matters continued in this order; and

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

VIII.

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

IN THE MATTER OF

KKR ASSOCIATES, L.P.

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3253. Consent Order, June 13, 1989--Set Aside Order, Oct. 31, 1995*

This order reopens a 1989 consent order--which required KKR Associates to divest, within twelve months, certain assets and businesses associated with RJR Nabisco or Beatrice/Hunt-Wesson, and prohibited them from making certain acquisitions without prior Commission approval--and sets aside the prior approval provisions of the consent order pursuant to the Commission's Prior Approval Policy Statement. Under that Policy Statement, the Commission presumes that the public interest requires reopening the prior approval provisions in outstanding merger orders and making them consistent with the policy.

ORDER SETTING ASIDE ORDER

On July 19, 1995, the respondents, KKR Associates, L.P., et al.,¹ filed their Petition To Reopen Proceedings and To Modify Consent Order ("Petition") in this matter. KKR asks that the Commission reopen and modify the 1989 consent order, as modified in 1993,² 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 and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Policy Concerning Prior Approval and Prior Notice Provisions, issued June 21, 1995 ("Prior Approval Policy Statement").³ KKR in its Petition requests that the Commission reopen and set aside the order in Docket No. C-3253 or, in the alternative, reopen and modify the order by deleting the

¹ All respondents in this matter joined in the Petition, and they are: KKR Associates, L.P., a limited partnership; Kohlberg Kravis Roberts & Company, L.P., a limited partnership; RJR Nabisco, Inc. (successor by merger to RJR Acquisition Corporation), a corporation; Whitehall Associates, L.P. (formerly known as RJR Associates, L.P.), a limited partnership; RJR Nabisco Inc. (for itself and as successor to RJR Nabisco Holdings Group, Inc.), a corporation; RJR Nabisco Holdings Corp. (formerly known as RJR Holdings Corp.), a corporation; Henry R. Kravis, a natural person; Robert I. MacDonnell, a natural person; Michael W. Michelson, a natural person; Paul E. Raether, a natural person; and George R. Roberts, a natural person (collectively, "respondents").

² The Commission previously modified the June 13, 1989, consent order in this matter on May 13, 1993.

³ 60 Fed. Reg. 39,745-47 (August 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241, at 20,991 (June 21, 1995).