

IN THE MATTER OF

DEVRO INTERNATIONAL PLC, 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-3650. Complaint, April 3, 1996--Decision, April 3, 1996

This consent order requires, among other things, the respondents to divest, within three months to a Commission-approved acquirer, the assets they use to produce collagen sausage casings in the United States and Canada. If the transaction is not completed in the prescribed time, the Commission may appoint a trustee to divest the assets.

Appearances

For the Commission: *Ronald B. Rowe* and *Joseph S. Brownman*.

For the respondents: *Bertram M. Kantor, Wachtell, Lipton, Rosen & Katz*, New York, N.Y. and *James A. Rhodes, ICA International*, New York, N.Y.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Devro International plc ("Devro International") and Teepak International, Inc. ("Teepak") have entered into an agreement in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that the terms of such agreement, were they to be satisfied, would result in a violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, 15 U.S.C. 18, 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 DEVRO INTERNATIONAL PLC

1. Respondent Devro International is a corporation organized, existing, and doing business under and by virtue of the laws of

Scotland, with its headquarters office and principal place of business located at Moodiesburn, Chryston, G69 OJE, Scotland.

2. Respondent Devro International manufactures collagen sausage casings at plants located in Somerville, New Jersey; Moodiesburn, Scotland; and Bathhurst and Kelso, Australia. Devro International uses these and other facilities to finish the collagen sausage casings produced at its three plants.

3. Respondent Devro International had \$140.1 million in sales in 1994. All these sales were of collagen sausage casings.

4. Respondent Devro International is, and at all times relevant herein has been, engaged in the manufacture and sale of collagen sausage casings in the relevant geographic markets.

5. Respondent Devro International is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

II. RESPONDENT DEVRO INC.

6. Respondent Devro Inc. is a corporation existing, and doing business under and by virtue of the laws of the State of Delaware with its headquarters and principal place of business located at Southside Avenue, Somerville, New Jersey.

7. Respondent Devro Inc. is a wholly-owned subsidiary of, and is operated under the direction and control of, respondent Devro International.

8. Respondent Devro Inc. manufactures collagen sausage casings at a plant located in Somerville, New Jersey. Collagen sausage casings produced by Devro Inc. are finished at facilities located in its Somerville facility and in Markham, Ontario, Canada. Most of the sausage casings produced by Devro Inc. are sold in the United States, Canada, and Japan.

9. Respondent Devro Inc. had \$29.4 million in sales in 1994. All these sales were of collagen sausage casings.

10. Respondent Devro Inc. is, and at all times relevant herein has been, engaged in the manufacture and sale of collagen sausage casings in the relevant geographic markets.

11. Respondent Devro Inc. is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce,

within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

III. THE ACQUISITION

12. Teepak is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its headquarters and principal place of business located at Three Westbrook Corporate Center, Suite 1000, Westchester, Illinois. Teepak is a wholly-owned subsidiary of Hillside Industries, Inc. Total sales in 1994 were more than \$300 million.

13. On or about December 14, 1994, respondent Devro International, Hillside Industries, and Teepak executed a letter of intent for Devro International to acquire Teepak. On or about June 14, 1995, Devro International and Teepak entered into a formal agreement for Devro International to acquire Teepak. The price is approximately \$135 million.

14. Among other things, Teepak manufactures and sells fibrous sausage casings, cellulose sausage casings, and collagen sausage casings. Teepak produces and finishes collagen sausage casings at a plant located in Sandy Run, South Carolina.

15. In 1994, Teepak had \$25.1 million in sales of collagen sausage casings in the United States and \$60.9 million in sales of collagen sausage casings worldwide.

16. Teepak is, and at all times relevant herein has been, engaged in the manufacture and sale of collagen sausage casings in the relevant geographic markets.

17. Teepak is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

IV. TRADE AND COMMERCE

A. Relevant Product Markets

18. Relevant product markets in which it is appropriate to assess the effects of the proposed acquisition are the manufacture of (a) all collagen sausage casings and (b) edible collagen sausage casings.

19. Sausage casings of all types are used by sausage makers and other meat processors to form, size, and hold together ingredients used to manufacture or process smoked meat or poultry products such as frankfurters, sausages, hams, salami and jerky. The distinctive property of a sausage casing is its ability to allow smoke to pass through the casing to the meat while not allowing the meat inside the casing to lose its moisture during the smoking process.

20. Synthetic sausage casings have replaced animal sausage casings in most commercial applications: cellulose sausage casings, used in part to make skinless frankfurters; fibrous sausage casings, used in part to make salami and other large sausages; and collagen sausage casings, used in part to make breakfast sausages and beef jerky.

21. There are four types of sausage casings: animal casings, produced primarily from sheep and goat intestines; cellulose sausage casings, produced from cellulose; fibrous sausage casings, produced from paper impregnated with cellulose; and collagen sausage casings, produced from the corium or collagen inner layer of cattle hides. Originally, all sausage casings were made from animal intestines.

22. What distinguishes collagen sausage casings from cellulose sausage casings and fibrous sausage casings is that most collagen sausage casings are edible. Edible collagen sausage casings impart a "bite" taste to the sausage products they are made with.

23. Because the various casing types are not substitutes for one another, the prices of the different casings types are determined independently of one another. There are no commercial substitutes for collagen sausage casings at or anywhere near the prevailing prices of collagen sausage casings.

B. Relevant Geographic Markets

24. Relevant geographic markets in which it is appropriate to assess the effects of the proposed acquisition are (a) the United States and (b) the world.

C. Conditions of Entry

25. Entry into the relevant markets is difficult, and would not be timely, likely or sufficient to prevent anticompetitive effects in the relevant markets.

26. A new entrant into the manufacture of collagen sausage casings would need to devote at least five years to learning and developing the technology, expertise, and knowhow that are essential to producing and finishing collagen sausage casings in a form that would be acceptable for commercial sale, and there is no guarantee that such a venture would be successful. After the technology is developed, an additional period of approximately two years would be necessary to construct manufacturing facilities to produce the collagen sausage casings.

27. Most of the major purchasers of collagen sausage casings also purchase cellulose and fibrous sausage casings. There are efficiencies associated with the selling, marketing, and distributing of more than one type of sausage casing. A new entrant would need to have, or be able to develop, the capability of producing or distributing other sausage casings in order to distribute and sell collagen sausage casings in the most efficient manner.

V. MARKET STRUCTURE

28. The relevant markets are highly concentrated, whether measured by the Herfindahl-Hirschmann Index (or "HHI") or by two-firm and four-firm concentration ratios. The proposed acquisition, if consummated, will substantially increase that concentration.

29. In the United States all-collagen and edible collagen product markets, there are only four firms, and Devro and Teepak are the top two firms. In the world all-collagen and edible collagen markets, only four firms, including Devro and Teepak, account for approximately 98% of all sales. In each relevant market, the proposed acquisition would convert a market now comprised only of four significant firms to a market that would be comprised only of three significant firms.

30. In the United States all-collagen sausage casings market, the proposed acquisition would increase the HHI by approximately 2000 points and produce an industry concentration of approximately 4700 points. In the United States edible collagen sausage casings market, the proposed acquisition would increase the HHI by approximately 3300 points and produce an industry concentration of approximately 6800 points. In the world all-collagen sausage casings market, the proposed acquisition would increase the HHI by approximately 1600 points and produce an industry concentration of approximately 4700

points. In the world edible collagen sausage casings market, the proposed acquisition would increase the HHI by approximately 3700 points and produce an industry concentration of approximately 5100 points.

VI. EFFECTS OF THE ACQUISITION

31. The acquisition may substantially lessen competition in the relevant markets in the following ways, among others:

(a) By eliminating direct competition between respondents and Teepak;

(b) By increasing the likelihood that respondents will unilaterally exercise market power; and

(c) By increasing the likelihood of, or facilitating, collusion or coordinated interaction;

each of which increases the likelihood that the prices of collagen sausage casings will increase, and services to customers of collagen sausage casings are likely to decrease.

VII. VIOLATIONS CHARGED

32. The letter of intent, and the subsequent agreement, entered into between respondent Devro International and Teepak, for Devro International to acquire Teepak, constitute a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. Further, if the acquisition is consummated, Devro International and Devro Inc. would be in violation of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, 15 U.S.C. 18.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Devro International plc and Devro Inc. of the outstanding voting securities of Teepak International, Inc. ("Teepak"), and it now appearing that Devro International plc and Devro Inc., hereinafter sometimes referred to as "respondents," have been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the

Commission for its consideration, and which, if issued by the Commission, would charge respondents with violations of the Clayton Act and Federal Trade Commission Act;

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments received, 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 Devro International plc is a corporation organized, existing, and doing business under and by virtue of the laws of Scotland, with its office and principal place of business at Moodiesburn, Chryston, G69 OJE, Scotland.

2. Respondent Devro Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at Southside Avenue, Somerville, New Jersey.

3. Teepak International, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at Three Westbrook Corporate Center, Suite 1000, Westchester, Illinois.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and over 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. "*Devro International plc*" means that company and its predecessors, subsidiaries, divisions, groups and affiliates controlled by Devro International plc, and its respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of each.

B. "*Devro Inc.*" means that company and its predecessors, subsidiaries, divisions, groups and affiliates controlled by Devro Inc. and its respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of each.

C. "*Devro Canada*" means DCI Devro Canada Inc., and its predecessors, subsidiaries, divisions, groups and affiliates controlled by DCI Devro Canada Inc. and its respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of each.

D. "*Teepak*" means Teepak International, Inc., and its predecessors, subsidiaries, divisions, groups and affiliates controlled by Teepak International, Inc. and its respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of each. The definition of "*Teepak*" specifically excludes Devro International plc, Devro Inc., and Devro Canada. For purposes of Parts VII and VIII of this order, after the Acquisition, Teepak will be regarded as part of respondent Devro International plc.

E. "*Respondents*" means Devro International plc and Devro Inc.

F. "*Acquisition*" means the proposed acquisition by Devro International plc of the outstanding voting securities of Teepak International, Inc.

G. "*Assets To Be Divested*" means:

1. All assets related to the collagen sausage casings business of Devro Inc. and Devro Canada, including, but not limited to:

a. All production and finishing facilities, plant, and equipment of Devro Inc., including the plant located at Somerville, New Jersey,

and, wherever located, all machinery, fixtures, equipment, kitchen facilities, laboratory testing equipment and facilities, research and development facilities and programs, vehicles, transportation facilities, furniture, tools and other tangible personal property, customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, technical information, and management information systems;

b. All production and finishing facilities, plant, and equipment of Devro Canada, including the plant located in Markham, Ontario, Canada, and, wherever located, and to the extent they exist, all machinery, fixtures, equipment, kitchen facilities, laboratory testing equipment and facilities, research and development facilities and programs, vehicles, transportation facilities, furniture, tools and other tangible personal property, customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, technical information, and management information systems;

c. All intellectual property, including product and process patents, patent rights, patent improvements, process improvements, trademarks, service marks, copyrights, technology, knowhow, basic research, trade secrets, goodwill, or trademarks that Devro Inc. or Devro Canada use, license, have rights to, or otherwise have an interest in; provided, however, that Devro International may retain all rights to the trademark Devro®, trade name "Devro", and the stylized letter "D";

d. All Devro Inc. and Devro Canada inventory and storage capacity;

e. All rights, titles, and interest in and to real property owned or leased by Devro Inc. and Devro Canada, together with all appurtenances, licenses, and permits;

f. All rights, titles, and interests in and to contracts entered into in the ordinary course of business between Devro Inc. and Devro Canada with customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors, and consignees;

g. All rights of Devro Inc. and Devro Canada, under warranties and guarantees, express or implied;

h. All books, records, and files of Devro Inc. and Devro Canada;

i. All items of prepaid expense to Devro Inc. and Devro Canada;
and

2. From Devro International plc:

a. On a non-exclusive basis, with no right to sub-license to a third party, all rights to any information or intellectual property relating to Devro International (but not any information or intellectual property of Teepak in existence at the time of the Acquisition) in development or already developed by Devro International at the time of the divestiture, plus all enhancements, improvements or perfections thereof within twenty-four (24) months of the divestiture, including information or intellectual property relating to product and process patents, patent rights, patent improvements, technology, knowhow, basic research, or trade secrets regarding any research and development programs or activities, wherever located, to the extent that such information or intellectual property relate to the manufacture, finishing, distribution, or sale of collagen sausage casings; and

b. All additional tangible and intangible assets of Devro International, wherever located, reasonably necessary to enable the acquirer of the Assets To Be Divested to manufacture, finish, distribute, and market collagen sausage casings in substantially the same manner, quality, and quantity achieved by Devro Inc. and Devro Canada prior to the divestiture, other than any tangible or intangible assets of Teepak in existence at the time of the Acquisition.

H. "*Excluded Assets*" means the following entities: Devro Limited, Devro Holdings Limited, Devro Pty Limited, Devro BV, Devro Asia Limited, Devro GmbH, and Devro KK, and Teepak and its tangible and intangible assets in existence at the time of the Acquisition. The term "*Excluded Assets*" does not include (that is, the following assets are not *Excluded Assets*) specifically identifiable tangible and intangible assets of these excluded entities (other than those of Teepak at the time of the divestiture) related to the manufacture and finishing of collagen sausage casings.

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

II.

It is further ordered, That:

A. Within three (3) months of the date the order becomes final, respondents shall divest, absolutely and in good faith, at no minimum price, the Assets To Be Divested.

B. The purpose of the divestiture of the Assets To Be Divested is to ensure the continued use of the Assets To Be Divested as a viable, competitive, and independent business, in the same business in which the Assets To Be Divested are engaged at the time of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. The proposed acquirer shall not be a firm that has been engaged in the manufacture of collagen sausage casings for sale, other than to itself, in the United States.

D. The Assets To Be Divested shall be divested 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.

III.

It is further ordered, That:

A. If respondents have not divested the Assets To Be Divested, absolutely and in good faith, with the Commission's prior approval, within three (3) months of the date this order becomes final, the Commission may appoint a trustee to divest the Assets To Be Divested. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by respondents to comply with this order.

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

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

2. Subject to the prior approval of the Commission, and consistent with the provisions of paragraphs II. B. - D. of this order, the trustee shall have the exclusive power and authority to divest the Assets To Be Divested.

3. Within ten (10) days after appointment of the trustee, respondents 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 permit the trustee to effect the divestiture required by this order.

4. The trustee shall have six (6) months from the date the Commission approves the trust agreement described in paragraph III. B. 3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the six-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 for up to an additional twelve (12) months each time.

5. The trustee shall, to the extent not prohibited by United States or Canadian law, have full and complete access to the personnel, books, records and facilities related to the Assets To Be Divested or to any other relevant information, as the trustee may reasonably request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondents shall extend the time for divestiture under 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 use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer as set out in Part II 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 respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondents, and at reasonable fees, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Assets To Be Divested.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the 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, gross 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 III. A. of this order.

10. In the event the trustee is unable to divest the Assets To Be Divested, the trustee may divest such additional assets of respondent Devro International, other than the Excluded Assets, as may be reasonably necessary to enable the trustee to divest the Assets To Be Divested.

11. 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.

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

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

IV.

It is further ordered, That:

A. Upon reasonable notice to respondents from the acquirer approved by the Commission pursuant to this order, respondents shall provide such assistance to the acquirer as is reasonably necessary to enable the acquirer to manufacture, finish, distribute and market collagen sausage casings in substantially the same manner, quality, and quantity achieved by Devro Inc. and Devro Canada prior to the divestiture. Such assistance shall include reasonable consultation with knowledgeable employees of respondents and training at the acquirer's facility for a period of time sufficient to ensure that the acquirer's personnel are appropriately trained in the manufacture, finishing, distribution, and marketing of collagen sausage casings in the manner carried on by Devro Inc. and Devro Canada prior to the divestiture. Respondents, however, shall not be required to continue providing such assistance for more than two (2) years from the date of the divestiture. Respondents may charge the acquirer at a rate no greater than their direct costs for providing such technical assistance.

B. Respondents shall facilitate and not interfere with the hiring by the acquirer approved by the Commission of employees of Devro Inc. and Devro Canada who may desire to undertake employment.

C. Pending divestiture of the Assets To Be Divested, respondents shall take such actions as are reasonably necessary to maintain the

viability and marketability of the Assets To Be Divested and to prevent their destruction, removal, wasting, deterioration or impairment of any kind, except for ordinary wear and tear.

V.

It is further ordered, That respondents shall continue to comply with all terms of the Agreement to Hold Separate attached to this order and made a part hereof as Appendix II. Said Agreement shall remain in force and effect until the Assets To Be Divested have been divested as required by this order.

VI.

It is further ordered, That:

Within thirty (30) days after the date this order becomes final and every thirty (30) days thereafter until respondents have fully complied with the provisions of Parts II, III, and IV of this order, respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, or have complied with this order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the order, and their compliance with the terms and conditions of the Agreement To Condition Acquisition and the Agreement To Hold Separate, and set forth the monthly sales of Devro Inc. and Devro Canada during the preceding two months and compared to the monthly sales during the same months in the preceding calendar year. Respondents shall include in their compliance reports copies of all written communications, internal memoranda, and reports and recommendations concerning divestiture and the manner in which the Assets To Be Divested are being held separate.

VII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and reasonable notice,

each respondent shall permit any duly authorized representative 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 the appropriate respondent, and without restraint or interference, to interview officers, directors, or employees of the respondent, who may have counsel present.

VIII.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents 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 corporations that may affect compliance obligations arising out of the order.

APPENDIX I

AGREEMENT TO CONDITION ACQUISITION ON SHAREHOLDER APPROVAL OF DIVESTITURE AND RETROACTIVE INDEMNIFICATION

This Agreement to Condition Acquisition on Shareholder Approval of Divestiture and Retroactive Indemnification ("Agreement to Condition Acquisition") is by and between Devro International plc, a corporation organized, existing, and doing business under and by virtue of the laws of Scotland, with its office and principal place of business at Moodiesburn, Chryston, Scotland; Devro Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at Somerville, New Jersey; and the Federal Trade Commission ("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.*

Whereas, Devro International plc entered into an agreement with Hillside Industries Incorporated for Devro International plc to acquire the outstanding voting securities of Teepak International Inc. ("Teepak"), a Delaware corporation (hereinafter "the Acquisition");

Whereas, Devro International plc and Devro Inc. manufacture, finish, distribute, and sell collagen sausage casings, and DCI Devro Canada Inc. ("Devro Canada") finishes, distributes, and sells collagen sausage casings;

Whereas, Teepak, with principal offices located at Westchester, Illinois, among other things, also manufactures, finishes, distributes, and sells collagen sausage casings;

Whereas, the Commission is investigating the Acquisition to determine whether it would violate any statute enforced by the Commission;

Whereas, Devro International plc and Devro Inc. are willing (a) to enter into an Agreement Containing Consent Order requiring them to divest certain Assets To Be Divested, as defined in Part I of the proposed consent order of the Agreement Containing Consent Order, which include the collagen sausage casings business of Devro Inc., Devro Canada, and assets of Devro International plc related thereto (hereinafter "the Divestiture"); (b) to enter into an Agreement To Hold Separate requiring that the Assets To Be Divested be held separate and apart from the remainder of the assets of Devro International pending their divestiture; and (c) to arrange and provide for the unlimited indemnification for the independent auditor/manager, retroactive as of the date of the appointment of the auditor/manager, pursuant to this Agreement to Condition Acquisition and the Agreement to Hold Separate (hereinafter "the Retroactive Indemnification");

Whereas, if the Commission accepts the attached Agreement Containing Consent Order, which would require the divestiture of the Assets To Be Divested, the Commission is required to place the consent order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Rule 2.34 of the Commission's Rules of Practice and Procedure, 16 CFR 2.34;

Whereas, the Commission is advised and concerned that, under the applicable law of the United Kingdom, Devro International will be unable to commit to, or be bound by, certain of the terms of the Agreement Containing Consent Order and the Agreement to Hold

Separate unless and until those terms are approved by the shareholders of Devro International plc;

Whereas, the Commission is advised that, under the applicable law of the United Kingdom, Devro International plc will not be able to seek shareholder approval for (a) the Divestiture or (b) the Retroactive Indemnification, until after all of the terms of the Agreement Containing Consent Order, the Agreement to Hold Separate, and this Agreement to Condition Acquisition are made known to the shareholders of Devro International plc, which can only happen after the Commission accepts the Agreement Containing Consent Order for public comment, and the Agreement to Hold Separate and the Agreement To Condition Acquisition;

Whereas, the Commission will not accept for public comment an Agreement Containing Consent Order or an Agreement to Hold Separate that is not binding on the proposed respondents;

Whereas, the undersigned officials of Devro International plc and Devro Inc. and their attorneys at this time are authorized to make the following binding commitments:

1. Devro International plc and Devro Inc. will seek shareholder approval for, at the same time, as part of a single package, and as a mutually contingent matter, (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification;

2. The shareholder approval will be sought, and if unconditionally obtained, (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification will be fully authorized, no less than seven (7) days prior to the completion of the sixty (60) day public comment period during which the Agreement Containing Consent Order will have been placed on the public record;

3. Devro International plc and Devro Inc. will advise the Commission's Bureau of Competition in writing, within twenty-four (24) hours, of all actions taken by the shareholders in connection with the effort to obtain approval for (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification; and

4. Devro International plc, Devro Inc., and all entities controlled by either of them will not acquire, directly or indirectly, Teepak or any of its assets without unconditional shareholder approvals having been obtained and fully authorized for (a) the Divestiture and (b) the Retroactive Indemnification;

Whereas, Devro International plc represents to the Commission that (1) the directors of Devro International plc will officially recommend to the shareholders of Devro International plc that they approve (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification; (2) Devro International plc will use its best efforts to obtain shareholder approval for (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification; (3) in light of (1) and (2) above, it would be highly unusual if the shareholders of Devro International plc were to reject (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification; and (4) Devro International plc fully expects the shareholders of Devro International plc to approve (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification;

Whereas, shareholder approval of (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification will be presented to the shareholders for their approval as part of a single resolution, to be voted upon as a package only, and Devro International plc and Devro Inc. will not be authorized to consummate the Acquisition unless and until they are also authorized (a) to make the Divestiture and (b) to grant the Retroactive Indemnification;

Whereas, shareholder approval for (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification will be sought, and determined, prior to the time that the Commission will consider whether to accept the final Agreement Containing Consent Order under the Commission's Rules;

Whereas, the Commission is concerned that if an agreement is not reached regarding the nature and timing of the shareholder approval and the commitment on the part of Devro International and Devro Inc. not to consummate the acquisition unless and until the requisite shareholder approvals are obtained, appropriate divestiture resulting from any proceeding challenging the Acquisition might not be possible or might produce a less than effective remedy;

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 and the continued viability and competitiveness of the Assets To Be Divested;

Whereas, Devro International plc and Devro Inc.'s entering into this Agreement shall in no way be construed as an admission by them that the Acquisition is illegal;

Whereas, Devro International plc and Devro Inc. understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement;

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the consent order, it will not seek further relief from Devro International plc or Devro Inc. with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the Agreement to Hold Separate, and the consent order to which this Agreement is annexed and made a part thereof, as follows:

1. The Acquisition by Devro International plc or Devro Inc. of Teepak is contingent upon shareholder approval.

2. Devro International plc and Devro Inc. will not seek shareholder approval for the Acquisition without, at the same time, and as part of the same package, also seeking mutually contingent shareholder approval for (a) the Divestiture and (b) the Retroactive Indemnification.

3. Unconditional shareholder approval will be sought, and if obtained, be fully authorized, no less than seven (7) days prior to the completion of the sixty (60) day public comment period during which the Agreement Containing Consent Order will have been placed on the public record.

4. In no event will Devro International plc or Devro Inc. or any entity controlled by either acquire, directly or indirectly, Teepak or any of its assets without unconditional shareholder approvals having been obtained and fully authorized for (a) the Divestiture and (b) the Retroactive Indemnification.

5. Unless and until unconditional shareholder approval is obtained for (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification, Devro International plc and Devro Inc., or any entity controlled by either, will not acquire, directly or indirectly, Teepak or any of its assets.

6. At such time as the shareholders of Devro International may unconditionally approve (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification, Devro International and Devro

Inc., by and through their authorized representatives, shall notify the Commission's Bureau of Competition, in writing, within twenty-four (24) hours, of the action taken.

7. Devro-International and Devro Inc., by and through their signatories, warrant that they are fully-authorized to enter into the terms of this Agreement to Condition Acquisition and to bind Devro International plc and Devro Inc. to all of its terms and conditions.

8. This Agreement shall be binding when approved by the Commission.

APPENDIX II

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate ("Agreement") is by and between Devro International plc, a corporation organized, existing, and doing business under and by virtue of the laws of Scotland, with its office and principal place of business at Moodiesburn, Chryston, Scotland; Devro Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business at Somerville, New Jersey; and the Federal Trade Commission ("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.*

Whereas, Devro International plc entered into an agreement with Hillside Industries Incorporated for Devro International plc to acquire the outstanding voting securities of Teepak International, Inc. ("Teepak"), a Delaware corporation (hereinafter "Acquisition");

Whereas, Devro International plc and Devro Inc. manufacture, finish, distribute, and sell collagen sausage casings, and DCI Devro Canada Inc. ("Devro Canada") finishes, distributes, and sells collagen sausage casings;

Whereas, Teepak, with principal offices located at Westchester, Illinois, among other things, also manufactures, finishes, distributes, and sells collagen sausage casings;

Whereas, the Commission is investigating the Acquisition to determine whether it would violate any statute enforced by the Commission;

Whereas, if the Commission accepts the attached Agreement Containing Consent Order, which would require the divestiture of certain Assets To Be Divested, as defined in Part I of the consent order, which include the collagen sausage casings business of Devro Inc., Devro Canada, and assets of Devro International plc related thereto, the Commission is required to place the consent order 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 of Practice and Procedure, 16 CFR 2.34;

Whereas, the Commission is concerned that if an understanding is not reached preserving the *status quo ante* of the Assets To Be Divested during the period prior to the acceptance of the final consent order by the Commission, after the 60-day notice period, divestiture resulting from any proceeding challenging the Acquisition might not be possible or might produce a less than effective remedy;

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 Assets To Be Divested and the continued viability and competitiveness of the Assets To Be Divested;

Whereas, the purpose of this Agreement and the consent order is to:

1. Preserve and maintain the Assets To Be Divested as a viable, competitive and independent business engaged in the manufacture, finishing, distribution and sale of collagen sausage casings pending divestiture;
2. Limit the potential for interim competitive harm during the period between the Acquisition and the required divestiture; and
3. Remedy any anticompetitive effects of the Acquisition;

Whereas, Devro International plc and Devro Inc.'s entering into this Agreement shall in no way be construed as an admission by them that the Acquisition is illegal;

Whereas, Devro International plc and Devro Inc. understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement;

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the consent order, it will not seek further relief from Devro International plc or Devro Inc. with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the Agreement to Condition Acquisition, and the consent order to which this Agreement is annexed and made a part thereof, as follows:

1. Devro International plc and Devro Inc. agree to execute the Agreement Containing Consent Order and be bound by the consent order.

2. Devro International plc and Devro Inc. agree to execute and be bound by the Agreement To Condition Acquisition.

3. Devro International plc and Devro Inc. agree that until the earlier of the dates listed in subparagraphs 3 (a) and 3 (b) of this paragraph, they will comply with the provisions of paragraph 4 of this Agreement:

(a) Three (3) business days after the Commission withdraws its acceptance of the consent order pursuant to the provisions of Commission Rule 2.34, 16 CFR 2.34; or

(b) The day after the divestiture required by the consent order has been completed.

4. To ensure the complete independence and viability of Devro Inc., Devro Canada, and the Assets To Be Divested, and to further ensure that no competitive information is exchanged between Devro International plc and Devro Inc., Devro Canada, and the persons responsible for maintaining and operating the Assets To Be Divested, Devro International plc shall hold Devro Inc., Devro Canada, and the Assets To Be Divested, as defined in the consent order, separate and apart from all of its other operations, on the following terms and conditions:

(a) Devro International plc will appoint three persons to manage and maintain the business and assets of Devro Inc., Devro Canada, and the Assets To Be Divested. These persons ("the Management Team") shall agree to be bound by this Agreement and shall manage

Devro Inc., Devro Canada, and the Assets To Be Divested independent of the management of Devro International plc's other business operations, including those of Teepak, after Devro International plc acquires Teepak. The persons on the Management Team shall not be involved in any way in the manufacture, finishing, distribution, or sale of sausage casings by Devro International plc or Teepak. The management team shall conduct the business operations of Devro Inc., Devro Canada, and the Assets To Be Divested.

(b) The Management Team, in its capacity as such, shall report directly and exclusively to an independent auditor/manager, to be appointed by Devro International plc. The independent auditor/manager, who shall not be an employee or agent of Devro International plc or a person likely to be an employee or agent of Devro International plc within two years of the divestiture, shall have expertise in the manufacture, finishing, distribution, or sale of collagen sausage casings. The independent auditor/manager shall agree to be bound by this Agreement and shall have exclusive control over the operations of Devro Inc., Devro Canada, and the Assets To Be Divested, with responsibility for their management and maintaining their independence. The independent auditor/manager shall not be involved in any way in the business of manufacturing, finishing, distribution, or sale of sausage casings by Devro International plc or Teepak.

(c) Devro International plc shall not exercise direction or control over, or influence directly or indirectly, the independent auditor/manager, or the Management Team, or Devro Inc., Devro Canada, or the Assets To Be Divested, other than as may reasonably be necessary to assure compliance with this Agreement and with all applicable laws.

(d) Devro International plc shall not change the composition of the Management Team without the consent of the independent auditor/manager.

(e) Devro International plc shall maintain the viability, competitiveness, and marketability of the Assets To Be Divested and shall neither cause nor permit the destruction, removal, wasting, deterioration, or impairment of the Assets To Be Divested, except as may occur in the ordinary course of business and except for ordinary wear and tear, and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their viability, competitiveness, or marketability.

(f) Except for the Management Team, Devro International plc shall not permit any Devro International plc Board Member, officer, director, employee, or agent to be involved in the business operations of the Assets To Be Divested.

(g) Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, complying with requirements of the London Stock Exchange and independent auditors, defending investigations or defending or prosecuting litigation, negotiating agreements to divest assets, or complying with this Agreement or the consent order, Devro International plc shall not receive or have access to, or use or continue to use, any material confidential information about Devro Inc., Devro Canada, or the Assets To Be Divested, in connection with the operation of Devro International plc or its operation of the Teepak business. "Material confidential information" means competitively sensitive or proprietary information not in the public domain, including, but not limited to, customer lists, price lists, marketing methods, patent rights, knowhow, technologies, processes, process improvements or other trade secrets or confidential business information.

(h) Devro International plc, Devro Inc. and Devro Canada shall circulate to all employees of Devro Inc. and Devro Canada, and display in a conspicuous place at Devro Inc. and Devro Canada manufacturing facilities, notice of this Agreement to Hold Separate and the proposed consent order in the form attached hereto as Attachment A.

(i) Devro International plc shall give funds to the Management Team for all capital expenditures relating to Devro Inc. and Devro Canada previously planned or approved by Devro International plc to the extent Devro Inc. does not generate sufficient cash flow to fund such capital expenditures. The Management Team shall expend the funds for these previously planned capital expenditures.

(j) The Management Team shall take all steps reasonably necessary to optimize the profitable operations and continued viability of Devro Inc., Devro Canada, and the Assets To Be Divested, including, but not limited to:

(1) Paying all direct costs and indirect overheads relating to the business of Devro Inc., Devro Canada, and the Assets To Be Divested;

- (2) Making available funds for advertising and other marketing and promotional activities at no less than the level for the comparable period in the preceding calendar year;
- (3) Providing no less than the same level of sales commissions or incentives for sales personnel as were provided for the comparable period in the preceding calendar year;
- (4) Maintaining the same level of resources involved in sales and marketing as was the case in the normal course of business prior to the Acquisition; and
- (5) Expending funds sufficient to perform all reasonably necessary routine maintenance to, and replacements of, the Assets To Be Divested.

In the event that Devro Inc., Devro Canada, and the Assets To Be Divested do not generate sufficient cash flow to fund the activities reasonably necessary to optimize the profitable operations and viability of Devro Inc., Devro Canada, and the Assets To Be Divested, Devro International plc shall advance such sums as are reasonably necessary to pay for same, to be repaid by the acquirer at no interest within two (2) years.

(k) The compensation and expenses of the independent auditor/manager shall be the responsibility of Devro International plc. Devro Inc., Devro Canada, and the Assets To Be Divested shall not be charged by Devro International plc with those costs and expenses.

(1) Devro International plc shall indemnify the independent auditor/manager against any losses or claims of any kind that might arise out of his or her involvement under this Agreement, not to exceed \$5 million, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts or bad faith; provided however, upon shareholder approval of the unlimited indemnification of the auditor/manager, retroactive as of the date of the appointment of the auditor/manager, the \$5 million liability limitation shall become null and void, under the terms of the Agreement to Condition Acquisition.

(m) If the independent auditor/manager fails to act, or ceases to act, diligently, a substitute auditor/manager shall be appointed by Devro International plc in the manner provided in paragraph 4 (b) of this Agreement.

(n) The independent auditor/manager shall have access to, and be informed about, the names of the companies who may inquire about,

or seek or propose to buy, Devro Inc., Devro Canada, or the Assets To Be Divested. Devro International plc may require the independent auditor/manager to sign a confidentiality agreement prohibiting the auditor/manager from disclosing any material confidential information obtained as a result of his or her role as independent auditor/manager, to anyone other than the Commission.

(o) All material transactions other than those in the ordinary course of business, if not precluded by this paragraph, shall be subject to a majority vote of the Management Team. In the event of a tie vote, the independent auditor/manager shall cast the deciding vote.

5. Should the Federal Trade Commission seek in any proceeding to compel Devro International plc or Devro Inc. to divest any of the Assets To Be Divested, or any additional assets, as provided in the consent order, or to seek any other injunctive or equitable relief for any failure to comply with the consent order or this Agreement, as defined in the draft complaint attached to the Agreement Containing Consent Order, Devro International plc and Devro Inc. shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission permitted the Acquisition. Devro International plc and Devro Inc. also waive all their rights to contest the validity of this Agreement.

6. To the extent that this Agreement requires Devro International plc or Devro Inc. to take, or prohibits them from taking, certain actions that otherwise may be required or prohibited by contract, Devro International plc and Devro Inc. shall abide by the terms of this Agreement and the consent order and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the terms of this Agreement or consent order.

7. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to counsel, Devro International plc and Devro Inc. shall permit any duly authorized representative or representatives of the Commission:

(a) Access during the office hours of Devro International plc and Devro Inc., and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other

records and documents in their possession or under their control relating to compliance with this Agreement; and

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

8. This Agreement shall not be binding until approved by the Commission. Devro International plc and Devro Inc. acknowledge that from the date they sign this Agreement until such time as the Commission may approve this Agreement, they will undertake to maintain the Assets To Be Divested in a viable condition.

9. Subsequent to acceptance for public comment of the Agreement Containing Consent Order by the Commission and after the unconditional approval by the shareholders of Devro International obtained not less than seven (7) days prior to the end of the 60-days public comment period, of (a) the Acquisition, (b) the divestiture of the Assets To Be Divested under the terms of the Agreement Containing Consent Order, and (c) the retroactive indemnification, under the definitions and terms of the Agreement To Condition Acquisition and this Agreement to Hold Separate, with written notice having been given to the Commission's Bureau of Competition, in writing, within twenty-four (24) hours, of the unconditional approval by the shareholders, Devro International plc may consummate the Acquisition.

10. This Agreement shall be binding when approved by the Commission.

11. Devro International plc and Devro Inc., by and through their signatories, warrant that they are fully authorized to enter into the terms of this Agreement to Hold Separate and to bind Devro International plc and Devro Inc. to all of its terms and conditions.

ATTACHMENT A

IMPORTANT NOTICE

As you know, Devro International plc has entered into an agreement with the Federal Trade Commission ("FTC") in connection with the proposed acquisition of Teepak International, Inc. Under the terms of the agreement with the FTC, Devro International must sell

Devro Inc. and DCI Devro Canada Inc. to a third party that is acceptable to the FTC. We anticipate that this will occur within the next several months.

The agreement with the FTC also requires that, until Devro Inc. and Devro Canada are sold, Devro International must preserve and maintain them as competitive and independent businesses separate from Devro International.

To ensure that Devro Inc. and Devro Canada are kept separate from Devro International, a three-person management team, composed of _____, _____, and _____, will assume the management of Devro Inc. and Devro Canada. This management team, which will operate totally independently of Devro International, will report directly and exclusively to _____, an independent auditor/manager.

The effect of Devro International's agreement with the FTC is that, for all intents and purposes, Devro International will no longer be playing any role in the management and operation of Devro Inc. and Devro Canada. Until such time as the future owners of Devro Inc. and Devro Canada are determined, it is the responsibility of every employee of Devro Inc. and Devro Canada to cooperate with the new management team and to help to preserve Devro Inc. and Devro Canada as competitive and independent businesses.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

Although I have voted to accept the consent order requiring divestiture, I have reservations about the provision of the order that excludes some incumbent firms from eligibility to acquire the assets to be divested.¹ According to the Notice To Aid Public Comment that accompanied the proposed order when it was published for comment, the "purpose of this exclusion is to preclude Devro from attempting to divest Devro North America to a competitor where there are likely to be further anticompetitive effects." Since any proposed divestiture under the order must be approved by the Commission,² an attempt by Devro to make an anticompetitive divestiture likely would be fruitless. In addition, Devro would risk appointment under the order

¹ Order paragraph II.C states that the acquirer of the assets to be divested "shall not be a firm that has been engaged in the manufacture of collagen sausage casings for sale, other than to itself, in the United States."

² Order paragraph II.D.

of a trustee to accomplish divestiture and incurring civil penalties for failure to make a timely divestiture.

Attempts to define in advance the field of eligible acquirers under a divestiture order are unnecessary, at best, potentially inefficient and possibly even anticompetitive. It is an inefficient use of resources to attempt to assess in advance the competitive effects of a transaction that Devro might or might not propose (especially if the exclusion covers more than one firm), even if the transaction-specific information necessary to our merger analysis were available. As a practical matter, any such exclusions will be based on something less than an adequate factual examination of the various possible proposed divestitures and will necessarily involve the risk of excluding firms that might have been acceptable and even procompetitive acquirers. That risk is unnecessary and should be unacceptable in view of the requirement to obtain the Commission's approval before any divestiture can take place and the availability of other sanctions for failing to make a timely divestiture.

IN THE MATTER OF

T&N PLC

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-3312. Consent Order, Nov. 8, 1990--Modifying Order, April 23, 1996

This order reopens a 1990 consent order -- that permitted the Manchester, England, corporation to acquire J.P. Industries, Inc., and required the respondent, for ten years, to obtain Commission approval before acquiring any engine bearing assets in the United States -- and this order modifies the consent order by terminating the provision requiring T&N to obtain prior Commission approval.

ORDER REOPENING AND MODIFYING ORDER

On January 4, 1996, T&N plc ("T&N" or "respondent"), the respondent named in the consent order issued by the Commission on November 8, 1990, in Docket No. C-3312 ("order"), filed its Request to Vacate Prior Approval Provision ("Request") in this matter.¹ T&N asks that the Commission reopen and modify the order 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 on June 21, 1995 ("Prior Approval Policy Statement" or "Statement").² Paragraph XI of the order requires T&N to seek prior Commission approval to acquire certain entities engaged in the design, manufacture or sale in or to the United States of engine bearings. T&N requests that the Commission reopen and modify the order to vacate the prior approval provision of paragraph XI of the order, or, in the alternative, to substitute a prior notice provision for the prior approval provision of paragraph XI.³ The thirty-day public comment period on T&N's Request expired on February 26, 1996. No comments were received.

¹ T&N is a United Kingdom corporation that manufactures and sells automotive components, including thinwall engine bearings for sale in the United States aftermarket.

² 60 Fed. Reg. 39745-47 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.

³ Request at 1.