

IN THE MATTER OF

LITTON INDUSTRIES, INC.

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-3656. Complaint, May 7, 1996 -- Decision, May 7, 1996

This consent order requires, among other things, the California-based corporation to divest, within ninety days, PRC, Inc.'s \$40 million systems engineering and technical assistance contract for the Navy's Aegis destroyer program. If the divestiture is not completed as required, the Commission may appoint a trustee to finalize the divestiture.

Appearances

For the Commission: *Ann Malester, James Holden and William Baer.*

For the respondent: *Richard Parker and David Beddow, O'Melveny & Myers, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Litton Industries, Inc. ("Litton"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire all of the voting securities of PRC Inc. ("PRC"), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Litton is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its

principal executive offices located at 21240 Burbank Boulevard, Woodland Hills, California.

II. ACQUIRED COMPANY

2. PRC is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal executive offices located at 1500 Planning Research Boulevard, McLean, Virginia.

III. JURISDICTION

3. Litton and PRC 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 business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITION

4. On December 13, 1995, Litton and PRC entered into a Stock Purchase Agreement whereby Litton will acquire all of the issued and outstanding common shares of PRC for approximately \$425 million.

V. THE RELEVANT MARKETS

5. The relevant lines of commerce in which to analyze the effects of the acquisition are: (a) the research, development, manufacture and sale of Aegis destroyers for the United States Department of the Navy ("Aegis destroyers"); and (b) the provision of systems engineering and technical assistance services to the United States Department of the Navy's Aegis destroyer program ("SETA Services").

6. The United States is the relevant geographic area in which to analyze the effects of the acquisition in both relevant lines of commerce.

VI. STRUCTURE OF THE MARKETS

7. The market for the research, development, manufacture and sale of Aegis destroyers is highly concentrated as measured by the Herfindahl-Hirschmann Index ("HHI") or the two-firm and four-firm concentration ratios ("concentration ratios"). Respondent is one of only two producers of Aegis destroyers in the United States.

8. The market for SETA Services is highly concentrated as measured by the HHI or concentration ratios. PRC has been the only provider of SETA Services since the inception of the Aegis destroyer program.

9. Respondent, through the acquisition, would be engaged in both the research, development, manufacture and sale of Aegis destroyers and the provision of SETA Services.

VII. BARRIERS TO ENTRY

10. New entry into the market for the research, development, manufacture and sale of Aegis destroyers is difficult and unlikely.

11. New entry into the market for the provision of SETA Services is difficult and unlikely.

VIII. EFFECTS OF THE ACQUISITION

12. The effects of the acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the relevant markets set forth above in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. Respondent may gain access to competitively sensitive non-public information concerning the other Aegis destroyer manufacturer, so that actual competition between respondent and the other Aegis destroyer manufacturer will be reduced; and

b. Respondent may be in a position to disadvantage the other Aegis destroyer manufacturer, so that actual competition between respondent and the other Aegis destroyer manufacturers will be reduced.

IX. VIOLATIONS CHARGED

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

14. The Stock Purchase Agreement described in paragraph four constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondent of all of the assets and businesses of PRC Inc. ("PRC"), and the respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and Interim Agreement and placed such Agreements on the public record for a period of sixty (60) days, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Litton Industries, Inc. ("Litton") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal executive offices located at 21240 Burbank Boulevard, Woodland Hills, California.

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

ORDER

I.

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

A. "*Respondent*" or "*Litton*" means Litton Industries, Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Litton, and their respective directors, officers, employees, agents and representatives, successors, and assigns.

B. "*Ingalls*" means Ingalls Shipbuilding, Inc., a subsidiary of Litton, with its principal place of business at 100 W. River Road, Pascagoula, Mississippi, which is engaged in, among other things, the research, development, manufacture and sale of Aegis destroyers to the United States Department of the Navy, and its subsidiaries, divisions, groups and affiliates controlled by Ingalls, and their respective directors, officers, employees, agents and representatives, successors and assigns.

C. "*Bath Iron Works*" means Bath Iron Works Corporation, a subsidiary of General Dynamics Corporation, with its principal place of business at 700 Washington Street, Bath, Maine, which is engaged in, among other things, the research, development, manufacture and sale of Aegis destroyers to the United States Department of the Navy, and its subsidiaries, divisions, groups and affiliates controlled by Bath Iron Works, and their respective directors, officers, employees, agents and representatives successors and assigns.

D. "*PRC*" means PRC Inc., a Delaware corporation with its principal place of business at 1500 Planning Research Boulevard, McLean, Virginia, which is engaged in, among other things, the

provision of SETA Services to the United States Department of the Navy in support of the Aegis destroyer shipbuilding program, its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by PRC, and their respective directors, officers, employees, agents and representatives, successors, and assigns.

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

F. "*Acquisition*" means Litton's acquisition of all of the voting securities of PRC pursuant to a Stock Purchase Agreement dated December 13, 1995.

G. "*SETA Services Operations*" means all assets, properties, business and goodwill, tangible and intangible, held by PRC and used in the provision of SETA Services to the United States Department of the Navy under contract N00024-94-C-6430, including, without limitation, the following:

1. All rights, obligations and interests in contract N00024-94-C-6430 between the Naval Sea Systems Command and PRC;
2. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, financial information, technical information, management information and systems, software, software licenses, inventions, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;
3. All rights, title and interests in and to owned or leased real property, together with appurtenances, licenses and permits;
4. All rights, title 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. All rights under warranties and guarantees, express or implied;
6. All books, records, and files;
7. All data developed, prepared, received, stored or maintained under contract N00024-94-C-6430 or any predecessor contract or subcontract to support the Aegis shipbuilding program, including the Aegis technical library; and
8. All items of prepaid expense.

H. "*SETA Services*" means systems engineering and technical assistance services provided by PRC to the United States Department of the Navy in support of the Aegis destroyer shipbuilding program.

I. "*Non-public Aegis Information*" means any information not in the public domain furnished by Ingalls or Bath Iron Works or any other company to PRC in its capacity as provider of SETA Services under contract N00024-94-C-6430 and any predecessor contract.

II.

It is further ordered, That:

A. Litton shall divest, absolutely and in good faith, within ninety (90) days of the date Litton signs this order, the SETA Services Operations, and shall also divest such additional ancillary PRC assets as are necessary to assure the continued ability of the acquirer to provide SETA Services.

B. Litton shall divest the SETA Services Operations only to an acquirer that receives the prior approval of the Commission and of the United States Department of the Navy, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continued provision of SETA Services in the same manner as provided by PRC at the time of the proposed divestiture, at no increased cost to the United States Department of the Navy, and to remedy the lessening of competition alleged in the Commission's complaint.

C. Pending divestiture of the SETA Services Operations, Litton shall take such actions as are necessary to ensure the continued provision of SETA Services, and to maintain the viability and marketability of the assets used to provide SETA Services, and to prevent the destruction, removal, wasting, deterioration or impairment of the assets used to provide SETA Services, and to prevent the disclosure of Non-public Aegis Information.

D. Upon reasonable notice from the acquirer or from the United States Department of the Navy to respondent, respondent shall provide such technical assistance to the acquirer as is reasonably necessary to enable the acquirer to provide SETA Services in substantially the same manner and quality as provided by PRC prior to divestiture. Such assistance shall include reasonable consultation with knowledgeable employees and training at the acquirer's facility

for a period of time sufficient to satisfy the acquirer's management that its personnel are appropriately trained in the skills necessary to perform the SETA Services Operations. Respondent shall convey all know-how necessary to perform the SETA Services Operations in substantially the same manner and quality employed or achieved by PRC prior to divestiture. However, respondent shall not be required to continue providing such assistance for more than one (1) year from the date of the divestiture. Respondent shall charge the acquirer at a rate no more than its own costs for providing such technical assistance.

E. At the time of the execution of a purchase agreement between Litton and a proposed acquirer of the SETA Services Operations, Litton shall provide the acquirer with a complete list of all current full-time, non-clerical, salaried employees of PRC engaged in the provision of SETA Services on the date of the purchase agreement. Such list shall state each such individual's name, position, address, telephone number, and a description of the duties of and work performed by the individual in connection with the SETA Services Operations.

F. Litton shall provide the proposed acquirer with an opportunity to inspect the personnel files and other documentation relating to the individuals identified in paragraph II.E. of this order to the extent permissible under applicable laws. For a period of six (6) months following the divestiture, Litton shall further provide the acquirer with an opportunity to interview such individuals and negotiate employment contracts with them.

G. Litton shall provide all current employees identified in paragraph II.E. of this order with financial incentives to continue in their employment positions pending divestiture of the SETA Services Operations, and to accept employment with the acquirer at the time of the divestiture. Such incentives shall include continuation of all employee benefits offered by Litton until the date of the divestiture, and vesting of all pension benefits.

H. For a period of two (2) years commencing on the date of the individual's employment by the acquirer, Litton shall not re-hire any of the individuals identified in paragraph II.E. of this order who accept employment with the acquirer.

I. Prior to divestiture, Litton shall not transfer any of the individuals identified in paragraph II.E. of this order whose

employment responsibilities involve access to Non-public Aegis Information from SETA Services Operations to any other positions.

III.

It is further ordered, That:

A. Respondent shall not, absent the prior written consent of the proprietor of Non-public Aegis Information, provide, disclose, or otherwise make available to Ingalls or any other entity any Non-public Aegis Information.

B. PRC shall use any Non-public Aegis Information only in its capacity as provider of technical assistance to the acquirer, pursuant to paragraph II.D. of this order, unless PRC obtains the prior written consent of the proprietor of the Non-public Aegis Information.

IV.

It is further ordered, That:

A. If Litton has not divested, absolutely and in good faith, and with the prior approval of the Commission and the United States Department of the Navy, the SETA Services Operations within ninety (90) days of the date Litton signs this order, the Commission may appoint a trustee to divest the SETA Services Operations. In the event that 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, Litton 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 IV 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 Litton to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph IV.A., Litton 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 Litton, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Litton has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Litton of the identity of any proposed trustee, Litton 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 SETA Services Operations.

3. Within ten (10) days after appointment of the trustee, Litton 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 twelve (12) months from the date the Commission approves the trust agreement described in paragraph IV.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission and of the United States Department of the Navy. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the SETA Services Operations, or to any other relevant information, as the trustee may request. Litton shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Litton shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Litton 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 and to the United States Department of the Navy, subject to Litton's 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 paragraph II of this order, provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission and the United States Department of the Navy determine to approve more than one such acquiring entity, the trustee shall divest the SETA Services Operations to the acquiring entity or entities selected by Litton from among those approved by the Commission and the United States Department of the Navy.

7. The trustee shall serve at the cost and expense of Litton, without bond or other security unless paid for by Litton, 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 Litton, 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 Litton, 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 SETA Services Operations.

8. Litton 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 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 required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the SETA Services Operations.

12. The trustee shall also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability, viability and competitiveness of the SETA Services Operations.

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

V.

It is further ordered, That respondent shall comply with all terms of the Interim Agreement, attached to this order and made a part hereof as Appendix I. Said Interim Agreement shall continue in effect until the provisions in paragraphs II and III are complied with or until such other time as is stated in said Interim Agreement.

VI.

It is further ordered, That within thirty (30) days after the date this order becomes final and every thirty (30) days thereafter until Litton has fully complied with paragraphs II and IV of this order, Litton shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II and IV of this order. Litton 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 including a description of all substantive contacts or negotiations for the divestiture required by this order, including the identity of all parties contacted. Litton 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 the divestiture.

VII.

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

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

VIII.

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

IX.

It is further ordered, That, notwithstanding any other provision of this order, this order shall terminate ten (10) years from the date this order becomes final.

APPENDIX I

INTERIM AGREEMENT

This Interim Agreement is by and between Litton Industries, Inc. ("Litton"), a corporation organized and existing under the laws of the State of Delaware, and the Federal Trade Commission (the "Commission") an independent agency of the United States

Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

PREMISES

Whereas, Litton has proposed to acquire one hundred percent of the voting securities of PRC Inc., a subsidiary of Black & Decker Corporation; and

Whereas, the Commission is now investigating the proposed acquisition to determine if it would violate any of the statutes the Commission enforces; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving competition during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm and divestiture or other relief resulting from a proceeding challenging the legality of the proposed acquisition might not be possible, or might be less than an effective remedy; and

Whereas, Litton entering into this Interim Agreement shall in no way be construed as an admission by Litton that the proposed acquisition constitutes a violation of any statute; and

Whereas, Litton understands that no act or transaction contemplated by this Interim 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 Interim Agreement.

Now, therefore, Litton agrees, upon the understanding that the Commission has not yet determined whether the proposed acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. Litton agrees to execute and be bound by the terms of the order contained in the Consent Agreement, as if it were final, from the date Litton signs the Consent Agreement.

2. Litton agrees to deliver, within three (3) days of the date the Consent Agreement is accepted for public comment by the Commission, a copy of the Consent Agreement and a copy of this Interim Agreement to the United States Department of Defense and to General Dynamics Corporation.

3. Litton agrees to submit, within thirty (30) days of the date the Consent Agreement is signed by Litton, an initial report, pursuant to Section 2.33 of the Commission's Rules, signed by Litton setting forth in detail the manner in which Litton will comply with paragraphs II and III of the Consent Agreement.

4. Litton agrees that, from the date Litton signs the Consent Agreement until the first of the dates listed in subparagraphs 4.a and 4.b, it will comply with the provisions of this Interim Agreement:

a. Ten (10) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules;

b. The date the Commission finally issues its complaint and its Decision and Order.

5. Litton waives all rights to contest the validity of this Interim Agreement.

6. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege and applicable United States Government national security requirements, and upon written request, and on reasonable notice, to Litton made to its principal office, Litton shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Litton 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 Litton relating to compliance with this Interim Agreement; and

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

7. This Interim Agreement shall not be binding until accepted by the Commission.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I agree with my colleagues that the final decision and order that the Commission issues today properly addresses the anticompetitive implications of the proposed transaction. I concur in the Commission's action except to the extent that paragraph II.B. of the proposed order makes the Department of the Navy a participant with the Commission in giving antitrust approval to any divestiture proposed under paragraph II.A. of the order.

With due deference to the Department of Defense and in full recognition that the Department of the Navy has the power to decide with which firms it will contract for the provision of goods and services vital to the national security, no persuasive argument has been presented to suggest that the Navy has or should have a role in deciding the competitive implications of a particular divestiture. In addition, no showing has been made that this case is unique, that national security issues or concerns relating to the integrity of the AEGIS destroyer program, to the extent they may be affected by this order, could not have been addressed, as they apparently have been in other defense-related transactions,¹ without inclusion of the Department of the Navy as a necessary participant in a decision committed by statute to the Commission.

The need to obtain technical assistance in reviewing commercial transactions in sophisticated markets is not uncommon. Nor should the Commission forget that national security is the province of the country's defense agencies. The Commission might well find it necessary to consult with the Department of the Navy both to assess the viability of a proposed buyer of the PRC assets to be divested and to ensure that a proposed transaction is not inconsistent with national security. I would have preferred, however, to accommodate that need in this case by means other than making the Department of the Navy a partner with the Commission in interpreting and applying a final order of the Commission.

¹ See *Lockheed Corporation*, C-3576, decision and order (May 9, 1995); See also *ARKLA, Inc.*, 112 FTC 509 (1989).

IN THE MATTER OF

MRS. FIELDS COOKIES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3657. Complaint, May 13, 1996--Decision, May 13, 1996

This consent order prohibits, among other things, the Utah-based corporation from misrepresenting the fat, saturated fat, cholesterol or caloric content of baked food products.

Appearances

For the Commission: *Phoebe Morse* and *Colleen Lynch*.

For the respondent: *Jere Webb, Stoel Rives*, Portland, OR.

COMPLAINT

The Federal Trade Commission, having reason to believe that Mrs. Fields Cookies, Inc., a corporation ("Mrs. Fields" or "respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Mrs. Fields is a California corporation, with its principal office or place of business at 462 West Bearcat Drive, Salt Lake City, UT.

PAR. 2. Respondent has manufactured, advertised, labeled, offered for sale, sold and distributed Mrs. Fields Cookies, a "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for Mrs. Fields Cookies, including but not necessarily limited to the attached