

Complaint

125 F.T.C.

IN THE MATTER OF

CUC INTERNATIONAL INC., 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-3805. Complaint, May 4, 1998--Decision, May 4, 1998*

This consent order requires, among other things, the New Jersey-based corporation to divest all of its Interval timeshare exchange business assets to Interval Acquisition Corporation, a new entrant into the timeshare exchange services market controlled by a venture capital firm, Willis Stein & Partners, L.P.

Appearances

For the Commission: *Jacqueline Mendel, Eric Elmore, Ann Malester and William Baer.*

For the respondents: *Ilene Knable Gotts, Wachtell, Lipton, Rosen & Katz, New York, N.Y. and Michael L. Weiner, Skadden, Arps, Slate & Meagher, New York, N.Y.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that CUC International Inc. has agreed to acquire HFS Incorporated, both corporations subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent CUC International Inc. ("CUC") 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 located at 707 Summer Street, Stamford, Connecticut.

2. Respondent HFS Incorporated ("HFS") 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 located at 6 Sylvan Way, Parsippany, New Jersey.

3. For purposes of this proceeding, respondents are, and at all times relevant herein have been, engaged in commerce as

"commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

II. THE ACQUISITION

4. Pursuant to an Agreement and Plan of Merger dated May 27, 1997, CUC will acquire all of the voting shares of HFS for approximately \$8.7 billion ("the Acquisition").

III. THE RELEVANT MARKET

5. For purposes of this complaint, the relevant line of commerce in which to analyze the effect of the Acquisition is the sale of timeshare exchange services to timeshare developers and owners. A significant benefit of timeshare ownership is the right to exchange the use of that unit for another comparable unit at a different resort property (or at the same resort for a different time period). The ability of timeshare owners to trade timeshare ownerships for vacation through worldwide exchange networks is a major reason why consumers decide to purchase timeshare interests. In lieu of returning to the same resort every year for a vacation, the timeshare exchange program allows an owner the opportunity to stay at many different vacation destinations. The owner of a particular resort unit relies on the timeshare exchange company to provide the exchange properties and to process the exchange. Exchange companies label time periods according to whether they are high, mid, or low season. They also grade and rate each property to provide for an equal or fair exchange.

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

7. The relevant market set forth in paragraphs five and six is highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios. CUC and HFS are the only two competitors in the relevant market; thus the Acquisition would result in a monopoly in the relevant market.

8. Entry into the relevant market, which requires significant sunk costs, would not be timely, likely and sufficient to deter or counteract the adverse competitive effects described in paragraphs nine and ten because of, among other things, the difficulty of establishing a worldwide network of timeshare resorts in order to provide the relevant services. The significant network externalities in this market result in high entry barriers: a new entrant cannot sign up members unless it already has a substantial membership and it cannot get a substantial membership if it cannot sign up new members. Thus, it is

extremely unlikely that a new entrant not already in the timeshare exchange business could enter successfully.

IV. EFFECTS OF THE ACQUISITION

9. The effect of the Acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating direct actual competition between CUC and HFS;
- b. By increasing the likelihood that the firm created by the merger of CUC and HFS would unilaterally exercise market power;
- c. By increasing the likelihood that timeshare resort developers and timeshare owners would be forced to pay higher affiliation and exchange fees; and
- d. By increasing the likelihood that timeshare exchange service provided to developers and owners would be reduced.

10. All of the above increase the likelihood that the only firm in the relevant market would increase prices or reduce services in the near future and in the long term.

V. VIOLATIONS CHARGED

11. The acquisition agreement described in paragraph four constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

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

Commissioner Thompson not participating.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition of HFS Incorporated by CUC International Inc., and the respondents 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 respondents 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of 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 a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments received, 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 CUC 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 located at 707 Summer Street, Stamford, Connecticut.

2. Respondent HFS Incorporated 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 located at 6 Sylvan Way, Parsippany, New Jersey.

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

ORDER

I.

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

A. "*CUC*" means CUC International Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its present and future subsidiaries, divisions, groups, and affiliates controlled by CUC International Inc., and the respective directors, officers, employees, agents and representatives, successors, and assigns of each. CUC, after consummation of the Acquisition, includes HFS Incorporated.

B. "*HFS*" means HFS Incorporated, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its present and future subsidiaries, divisions, groups, and affiliates controlled by HFS Incorporated, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

C. "*Respondents*" means CUC and HFS, individually and collectively.

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

E. "*Acquisition*" means the merger of HFS with and into CUC pursuant to the Agreement and Plan of Merger dated as of May 27, 1997.

F. "*Interval*" means (a) Interval Holdings, Inc., a wholly-owned subsidiary of CUC International Inc., organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 6262 Sunset Drive, Miami, Florida; (b) CUC Vacation Exchange, Inc., a wholly-owned subsidiary of CUC International Inc., organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 707 Summer Street, Stamford, Connecticut; and (c) all assets of and equity interests in all direct and indirect subsidiaries of Interval Holdings, Inc. or CUC Vacation Exchange, Inc., except for those subsidiaries listed in Appendix A to the order.

G. "*RCI*" means Resort Condominiums International, Inc., a wholly-owned subsidiary of HFS, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 3502 Woodview Trace, Indianapolis, Indiana, and all assets of and equity interests in all direct and indirect subsidiaries of Resort Condominiums International, Inc., including, but not limited to, Resort Computer Corporation.

H. "*Timeshare Exchange*" means the offering for exchange, trade, barter or other temporary use of the right to accommodations at a vacation development previously allocated to any individual, corporation, partnership or other business entity for a specified period of time each year, for a specified number of years (including for perpetuity)("such properties") in exchange for the temporary use of such properties at other times and/or locations.

I. "*Timeshare Exchange Business*" means the business of conducting Timeshare Exchanges including, without limitation, the provision of those goods and services associated with conducting such Timeshare Exchanges.

J. "*CUC Timeshare Exchange Business*" means:

1. Interval;
2. All books, records, and files relating to the Timeshare Exchange Business as operated by CUC prior to the Acquisition;
3. All copies of all customer lists, distribution agreements, vendor lists, catalogs, sales promotion literature and advertising materials relating to the Timeshare Exchange Business as operated by CUC prior to the Acquisition;
4. All rights, titles and interests in contracts entered into in the ordinary course of business with customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees relating to the Timeshare Exchange Business as operated by CUC prior to the Acquisition;
5. All rights under any trademarks used in the Timeshare Exchange Business as operated by CUC prior to the Acquisition, including, but not limited to, all rights under trademarks held by CUC Publishing, Inc.; and
6. All rights under warranties and guarantees, express or implied relating to the Timeshare Exchange Business as operated by CUC prior to the Acquisition.

K. "*HFS Timeshare Exchange Business*" means:

1. RCI;
2. All books, records and files relating to the Timeshare Exchange Business as operated by HFS prior to the Acquisition;
3. All copies of all customer lists, distribution agreements, vendor lists, catalogs, sales promotion literature and advertising materials relating to the Timeshare Exchange Business as operated by HFS prior to the Acquisition;
4. All rights, titles and interests in contracts entered into in the ordinary course of business with customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees relating to the Timeshare Exchange Business as operated by HFS prior to the Acquisition; and
5. All rights under warranties and guarantees, express or implied relating to the Timeshare Exchange Business as operated by HFS prior to the Acquisition.

L. "*IAC*" means Interval Acquisition Corp., a Delaware corporation, or an affiliate thereof, formed, and controlled, directly

or indirectly, by Willis Stein & Partners, L.P. for the purpose of acquiring the CUC Timeshare Exchange Business from CUC.

M. "*Stock Purchase Agreement*" means the stock purchase agreement entered into between CUC and IAC dated as of October 29, 1997.

N. "*Non-public member information*" means any information not in the public domain furnished by Interval to CUC prior to the effective date, or during the term, of a transition services agreement contemplated by paragraph V of this order for the purpose of securing services from CUC for Interval members. Non-public information shall not include (i) information which subsequently falls within the public domain through no violation of this order by CUC, or (ii) information which subsequently becomes known to CUC from a third party, which to the knowledge of CUC is not in breach of a confidential disclosure agreement with Interval.

O. "*RCC software*" means the computer software which has been designed and developed, or may be designed and developed, by RCI or its affiliates, in each case, for use by timeshare property developers in managing their respective timeshare properties, including, but not limited to, such software which has been offered under the names "RCC Premier" and "RCC Express."

II.

It is further ordered, That:

A. (1) Respondents shall divest, absolutely and in good faith, the CUC Timeshare Exchange Business to IAC, pursuant to the Stock Purchase Agreement, no later than ten (10) days after the Acquisition.

(2) If respondents have not divested the CUC Timeshare Exchange Business as required by paragraph II.A(1) of the order, and if the Acquisition has occurred, respondents shall divest the HFS Timeshare Exchange Business within six (6) months after the date on which respondents signed the agreement containing consent order. Respondents shall divest the HFS Timeshare Exchange Business 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.

(3) Provided, however, that if respondents have divested the CUC Timeshare Exchange Business to IAC pursuant to the Stock Purchase Agreement prior to the date the order becomes final, and if, at the time the Commission determines to make the order final, the Commission notifies respondents that IAC is not an acceptable acquirer, or the Stock Purchase Agreement is not an acceptable manner of divestiture, then respondents shall immediately rescind the transaction with IAC and shall divest within one hundred twenty

(120) days of the date the order becomes final either (a) the CUC Timeshare Exchange Business, or (b) the HFS Timeshare Exchange Business. Respondents shall divest the CUC Timeshare Exchange Business or the HFS Timeshare Exchange Business 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.

B. The purpose of the divestiture of the CUC Timeshare Exchange Business or the HFS Timeshare Exchange Business is to ensure the continued use of the CUC Timeshare Exchange Business or the HFS Timeshare Exchange Business, as the case may be, in the same business in which it is 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. Pending divestiture of the CUC Timeshare Exchange Business or the HFS Timeshare Exchange Business, as the case may be, respondents shall take such actions as are necessary to maintain the viability, marketability and competitiveness of the CUC Timeshare Exchange Business and the HFS Timeshare Exchange Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets of the CUC Timeshare Exchange Business and the HFS Timeshare Exchange Business except for ordinary wear and tear.

III.

It is further ordered, That:

A. If respondents fail to divest absolutely and in good faith the CUC Timeshare Exchange Business or the HFS Timeshare Exchange Business pursuant to paragraph II.A of this order, the Commission may appoint a trustee to divest the HFS Timeshare Exchange Business. 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, 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(l) 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(s), 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, the trustee shall have the exclusive power and authority to accomplish the divestiture described in paragraph III.A of the order.

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 twelve (12) 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 twelve (12) month period, the trustee has submitted a plan for the divestiture required by this order or believes that the divestiture required by this order can be achieved within a reasonable time, then that 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 the period for the divestiture only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the HFS Timeshare Exchange Business or to any other relevant information, as the trustee may 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 any divestiture caused by respondents shall extend the time for that 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 expeditiously at no minimum price. The divestiture shall be made in the manner consistent with the terms 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 accomplishing the divestiture required by paragraph III.A.

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 this paragraph.

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 reasonably necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability and the viability and competitiveness of the HFS Timeshare Exchange Business.

12. The trustee shall have no obligation or authority to operate or maintain the HFS Timeshare Exchange Business.

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

IV.

It is further ordered, That, if respondents divest the CUC Timeshare Exchange Business pursuant to paragraph II.A of the order:

A. For the period beginning on the date the sale of the CUC Timeshare Exchange Business closes ("Closing Date") and ending two years following the Closing Date (the "Extended Restricted Period"), respondents shall not:

1. Hire or solicit for employment any person who is employed with Interval either as of the date respondents sign the agreement containing consent order or as of the Closing Date;

2.a. (i) Solicit, induce or attempt to induce any customer or client (including developers) of Interval as of the date respondents sign the agreement containing consent order or the Closing Date ("Interval Client") to terminate any existing contract between such Interval Client and Interval (each, an "Existing Interval Contract"); or (ii) in the case of any Existing Interval Contract which by its terms expires or terminates during the Extended Restricted Period, solicit the Interval Client which is a party to such Existing Interval Contract to not renew such Existing Interval Contract; or

b. Solicit any Interval Client to transfer to respondents during the term of any Existing Interval Contract any projects (including adjacent locations) which are subject to such Existing Interval Contract;

provided, however, that the restrictions in this paragraph IV.A.2 shall in no event limit any activity of respondents with respect to any Existing Interval Contract after the term of such Existing Interval Contract;

3. Enter into any contract with any Interval Client with respect to any project (including adjacent locations) subject to an Existing Interval Contract during the term of such Existing Interval Contract

(except for contracts entered into in the second year of the Extended Restricted Period with any Interval Client which will not take effect with respect to any project (including adjacent locations) subject to an Existing Interval Contract during the period such project is subject to such Existing Interval Contract); or

4. Enter into any contract with respect to the Timeshare Exchange Business with any Interval Client relating to a project subject to an Existing Interval Contract which Existing Interval Contract may be terminated by such Interval Client as a result of the transactions contemplated by this agreement and is terminated pursuant to such right.

B. During the Extended Restricted Period, respondents shall make available to timeshare property developers who are, at any time during the Extended Restricted Period, actual or prospective clients of Interval, licenses for use of RCC software. Such licenses shall be at the same price or prices and on substantially the same terms with respect to:

1. The availability of any third party software which is required in connection with the use or operation of such RCC Software; and

2. The duration of the license and the availability of ongoing maintenance and support services

as respondents are, at the applicable time, then making available to those clients of RCI having substantially the same requirements, installations and other qualifications; provided, however, that such licenses of RCC software may not require that actual or prospective clients of Interval or any owners' association or other entity associated with such client enter into any timeshare exchange affiliation agreement with respondents.

C. For the period beginning on the Closing Date and ending one year following the Closing Date (the "Initial Restricted Period"), respondents shall not:

1. Solicit, induce or attempt to induce any Interval Client with an Existing Interval Contract which expires or terminates by its terms during the Initial Restricted Period, not to renew such Existing Interval Contract or otherwise to do business with the respondents with respect to projects subject to such Existing Interval Contract, whether or not the term of such Existing Interval Contract has expired or terminated; or

2. Enter into any contract with any Interval Client with respect to any project (including adjacent locations) subject to an Existing Interval Contract during the term of such Existing Interval Contract.

Nothing in this paragraph IV shall restrict respondents' ability to (1) do business with, or take action with respect to, any Interval Client to the extent such business pertains to any project or matter that is not subject to an Existing Interval Contract; or (2) make general solicitations with respect to natural persons who are members of the HFS Timeshare Exchange Business at the time of such solicitations, provided that respondents shall not intentionally target natural persons who are members of both the CUC Timeshare Exchange Business and the HFS Timeshare Exchange Business; or (3) engage in general advertising or marketing activities which are not directed at the termination of specific Existing Interval Contract(s).

V.

It is further ordered, That, if respondents divest the CUC Timeshare Exchange Business:

A. At the acquirer's request, for a period of no more than seven (7) years from the Closing Date, respondents shall supply to the CUC Timeshare Exchange Business certain services that respondents currently supply to the CUC Timeshare Exchange Business, including services relating to travel, entertainment, dining, shopping, and credit card registration (the "Services"), to enable the CUC Timeshare Exchange Business to continue to offer on an uninterrupted basis the services it provides to its members, including, but not limited to, those Services that are part of the World Card Preferred program.

B. All Services provided by respondents to the CUC Timeshare Exchange Business shall be performed substantially in the same manner in which, and the extent to which, such Services were performed prior to the date of the closing. Respondents shall utilize the same method for determining the charges for the Services that they used prior to the Acquisition.

C. Respondents shall not provide, disclose, or otherwise make available to any employee of the HFS Timeshare Exchange Business any non-public member information nor shall respondents use any non-public member information obtained by them in their capacity as a provider of services to the CUC Timeshare Exchange Business for any purpose other than providing such services to the CUC Timeshare Exchange Business.

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 paragraphs II and III of this order, respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the requirements of 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 paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their 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 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 respondents that may affect compliance obligations arising out of the order.

VIII.

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

B. Upon five days' notice to respondents and without restraint or interference from respondents, to interview officers, directors, or employees of respondents.

Commissioner Thompson not participating.

Modifying Order

125 F.T.C.

IN THE MATTER OF

RITE AID CORPORATION

MODIFYING 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-3546. Consent Order, Dec. 15, 1994--Modifying Order, May 18, 1998*

This order reopens a 1994 consent order -- that required the respondent to divest the Bucksport asset and two other pharmacies -- and this order modifies the consent order by eliminating the requirement to divest a retail pharmacy in Bucksport, Maine, that the company acquired when it bought the LaVerdiere's chain of drug stores, and this order substitutes the prior approval requirement with prior notification and waiting period requirements.

ORDER REOPENING AND MODIFYING ORDER

On March 3, 1998, Rite Aid Corporation ("Rite Aid"), the respondent named in the above-referenced consent order ("order") issued by the Commission on December 15, 1994, filed its Petition to Reopen and Vacate Consent Order ("Petition"). Rite Aid asks that the Commission reopen and set aside the order pursuant to Section 5(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 C.F.R. 2.51, based on changed facts and the public interest 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").¹ The thirty-day public comment period on Rite Aid's Petition ended on April 14, 1998. No comments were received.

The Commission has determined to grant, in part, Rite Aid's Petition by reopening the order and modifying it to set aside the requirements of paragraph II, but to deny the request to set aside the order in its entirety. Rather, the Commission has determined to substitute for the prior approval requirement of paragraph IV prior notification and waiting period requirements based on those of Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly referred to as the Hart-Scott-Rodino ("HSR") Act, for all non-HSR reportable acquisitions otherwise meeting the specifications of paragraph IV.

The complaint in this matter alleges that Rite Aid's acquisition of the voting stock of LaVerdiere's Enterprises, Inc. ("LEI"), would

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