

IN THE MATTER OF

NORTEK, 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-3831. Complaint, Oct. 8, 1998--Decision, Oct. 8, 1998*

This consent order requires, among other things, Nortek, Inc., to divest M & S, its wholly-owned subsidiary and seller of hard-wired residential intercoms, to a Commission-approved third-party within six months, and to provide technical assistance at the purchaser's request, for up to one year after the sale. The consent order also requires that Nortek preserves and maintains the competitive viability of M & S and operates M & S separately from Nortek until the divestiture is completed.

Participants

For the Commission: *Paul Block, Gary Cooper, Colleen Lynch, David Keniry, Andrew Caverly, William Baer, Leslie Farber, Hajime Hadeishi, and Jonathan Baker.*

For the respondent: *Kevin Arquit, Rogers & Wells, New York, N.Y. and John Christie, Hale & Dorr, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Nortek, Inc., a corporation subject to the jurisdiction of the Commission, through its wholly-owned subsidiary NTK Sub, Inc., has agreed to acquire all the outstanding shares of the capital stock of NuTone Inc., a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that such acquisition, if consummated, would be in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and 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. DEFINITIONS

1. "*Hard-Wired Residential Intercoms*" means electrical devices installed in residences to provide audio-only room-to-room or room-

to-entrance communication or monitoring functions through in-the-wall low voltage wiring, including, but not limited to, such devices that incorporate music features.

II. RESPONDENT

2. Respondent Nortek, Inc. is a corporation 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 50 Kennedy Plaza, Providence, Rhode Island. In 1997, Respondent Nortek, Inc. had net sales of \$1.13 billion. M & S Systems LP is a limited partnership 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 2861 Congressman Lane, Dallas, Texas. Broan Mfg. Co., Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its principal place of business located at 926 W. State Street, Hartford, Wisconsin. M & S Systems LP and Broan Mfg. Co., Inc. are wholly-owned subsidiaries of Nortek, Inc.

3. Respondent, through its wholly-owned subsidiaries M & S Systems LP and Broan Mfg. Co., Inc., is engaged in, among other things, the manufacture, production and sale of Hard-Wired Residential Intercoms. In 1997, respondent's total sales of these products were approximately \$14 million.

4. Respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business 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.

III. THE ACQUIRED COMPANY

5. NuTone Inc. is a corporation 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 Madison & Red Banks Roads, Cincinnati, Ohio. In 1997, NuTone Inc.'s net sales were approximately \$199 million. NuTone Inc. is a wholly-owned subsidiary of Williams Y&N Holdings, Inc., which is a corporation 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 700 Nickerson Road, Marlborough, Massachusetts.

Williams Y&N Holdings, Inc. is a wholly-owned subsidiary of Williams U.S. Holdings Inc., which is a corporation 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 700 Nickerson Road, Marlborough, Massachusetts. Williams U.S. Holdings Inc. is a wholly-owned subsidiary of Williams PLC, which is a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom, with its office and principal place of business located at Pentagon House, Sir Frank Whittle Road, Derby DE2 4XA England.

6. NuTone Inc. is engaged in, among other things, the manufacture, production and sale of Hard-Wired Residential Intercoms. In 1997, NuTone Inc.'s total sales of these products were approximately \$25 million.

7. NuTone Inc., Williams Y&N Holdings, Inc., Williams U.S. Holdings Inc., and Williams PLC 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

8. On or about March 9, 1998, Williams Y&N Holdings, Inc. and NTK Sub, Inc. entered into a stock purchase and sale agreement whereby NTK Sub, Inc., a wholly-owned subsidiary of respondent Nortek, Inc., agreed to acquire all of the outstanding shares of the capital stock of NuTone Inc. for approximately \$242.5 million ("Acquisition").

V. THE RELEVANT MARKETS

9. The relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture, production and sale of Hard-Wired Residential Intercoms.

10. The United States is the relevant geographic market in which to analyze the effects of the Acquisition in the relevant line of commerce.

VI. STRUCTURE OF THE MARKET

11. The parties to the Acquisition are the two leading producers and suppliers of Hard-Wired Residential Intercoms in the United States. Respondent Nortek, Inc. has an approximately 31% share and NuTone Inc. has an approximately 56% share. The market for the manufacture, production and sale of Hard-Wired Residential Intercoms is very highly concentrated, whether measured by the Herfindahl-Hirschmann Index ("HHI"), or the two-firm and four-firm concentration ratios. The two-firm concentration ratio is approximately 87%; the four-firm concentration ratio is approximately 98%; and the post-acquisition HHI would be over 7600.

VII. CONDITIONS OF ENTRY

12. Entry into the market for the manufacture, production and sale of Hard-Wired Residential Intercoms would not be timely, likely, or sufficient to deter or counteract the adverse competitive effects described in paragraph thirteen because of, among other things, the difficulty of establishing a network of wholesale distributors, and gaining brand name recognition and customer acceptance.

VIII. EFFECTS OF THE ACQUISITION

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

(a) By eliminating actual, direct and substantial competition between respondent Nortek, Inc. and NuTone Inc. in the relevant market;

(b) By increasing the likelihood that respondent Nortek, Inc. will unilaterally exercise market power in the relevant market; and

(c) By increasing the likelihood of or facilitating collusion or coordinated interaction between respondent Nortek, Inc. and its remaining competitors in the relevant market;

each of which increases the likelihood that the prices of Hard-Wired Residential Intercoms will increase, and that services and innovation will decline.

IX. VIOLATIONS CHARGED

14. The Acquisition agreement described in paragraph eight constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

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

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition by the respondent Nortek, Inc. ("Nortek"), through its wholly-owned subsidiary NTK Sub, Inc., of all the outstanding shares of the capital stock of NuTone Inc., and respondent having been furnished with a draft of complaint which, if issued by the Commission, would charge respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and

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

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

1. Respondent Nortek 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 50 Kennedy Plaza, Providence, Rhode Island.

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 "*Nortek*" means Nortek, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, including but not limited to M & S Systems LP, and its divisions, groups and affiliates controlled by Nortek, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. M & S Systems LP ("M & S") is a limited partnership 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 2861 Congressman Lane, Dallas, Texas. M & S is a wholly-owned subsidiary of Nortek.

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

D. "*Hard-Wired Residential Intercoms*" means electrical devices installed in residences to provide audio-only room-to-room or room-to-entrance communication or monitoring functions through in-the-wall low voltage wiring, including, but not limited to, such devices that incorporate music features.

E. "*Assets To Be Divested*" means M & S and all its assets, properties, business and goodwill, tangible and intangible, including, but not limited to, the following:

1. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;

2. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, trade secrets, intellectual property, patents and patent applications and formulas, technology, know-how, specifications, designs, engineering, drawings, processes and quality control data;

3. All copyrights, brands, brand names, trade marks and trade names owned or used by M & S, and all rights relating thereto, except that the Broan and Novi trade names and trade marks shall not be included;

4. Inventory and storage capacity;

5. All rights, titles and interests in and to owned or leased real property, together with appurtenances, licenses and permits;

6. All rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

7. All rights under warranties and guarantees, express or implied;

8. All books, records, and files; and

9. All items of prepaid expense.

F. "*Proposed Acquisition*" means the proposed acquisition by Nortek of all of the shares of the capital stock of NuTone Inc.

II.

It is further ordered, That:

A. Respondent shall divest at no minimum price, absolutely and in good faith, within six (6) months from the date respondent executes the agreement containing consent order, the Assets To Be Divested.

B. Respondent shall divest the Assets To 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. The purpose of the divestiture of the Assets To Be Divested is to ensure the continued use of the Assets To Be Divested in the same business in which the Assets To Be Divested are engaged at the time of the Proposed Acquisition, and to remedy the lessening of competition in the manufacture, production and sale of Hard-Wired Residential Intercoms resulting from the Proposed Acquisition as alleged in the Commission's complaint.

C. Pending divestiture of the Assets To Be Divested, respondent shall take such actions as are necessary to maintain the viability and marketability of the Assets To Be Divested and to prevent the

destruction, removal, wasting, deterioration, or impairment of any of the Assets To Be Divested except for ordinary wear and tear.

D. Upon reasonable notice from the acquirer to respondent, respondent shall provide such technical assistance to the acquirer as is reasonably necessary to enable the acquirer to manufacture and sell products in substantially the same manner and quality as they were manufactured and sold prior to the divestiture of the assets described in paragraph I.E of this agreement, except that Nortek shall only be required to provide such technical assistance that is within its operation or control and shall not be required to provide third-party technical assistance. Such assistance shall include reasonable consultation with knowledgeable employees and training at the acquirer's or the respondent's facility, at the acquirer's option, for a period of time sufficient to satisfy the acquirer's management that its personnel are appropriately trained in the skills necessary to manufacture and sell the products. Respondent shall convey all know-how necessary to manufacture and sell the products in substantially the same manner and quality as they were manufactured and sold prior to the divestiture. However, respondent shall not be required to continue providing such assistance for more than one year from the date of the divestiture. Respondent shall charge the acquirer at a rate no more than its own direct costs for providing such technical assistance.

E. Respondent shall comply with all terms of the Agreement to Hold Separate, attached to this order and made a part hereof as Appendix I. The Agreement to Hold Separate shall continue in effect until such time as respondent has divested all the Assets To Be Divested as required by this order.

III.

It is further ordered, That:

A. If Nortek has not divested, absolutely and in good faith and with the Commission's prior approval, the Assets To Be Divested within the time period in paragraph II, 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(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, Nortek 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 the respondent 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, respondent 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 respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, 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, respondent 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-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 Assets To Be Divested or to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondent shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall 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 respondent's absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner 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 determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, 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 respondent, 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. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's

duties, including all reasonable fees of counsel and other expenses incurred in connection with the 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. 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 Assets To Be Divested.

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

IV.

It is further ordered, That within thirty (30) days after the date this order becomes final and every thirty (30) days thereafter until respondent has fully complied with the provisions of paragraphs II or III of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with paragraphs II and III of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture. The final compliance report shall include a statement that the divestiture has been accomplished in the manner approved by the Commission and shall include the date the divestiture was accomplished.

V.

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

VI.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request, respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to all facilities and access 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 days' notice to respondent and without restraint or interference from it, to interview officers, directors, employees, agents or independent contractors of respondent.

APPENDIX I

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate is by and between Nortek, Inc. ("Nortek"), a corporation organized and existing under the laws of the State of Delaware, M & S Systems LP ("M & S"), a limited partnership organized and existing under the laws of the State of Delaware and a wholly-owned subsidiary of Nortek, 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, Nortek, through its wholly-owned subsidiary NTK Sub, Inc., has proposed to acquire all the outstanding shares of the capital stock of NuTone Inc. ("Proposed Acquisition"); 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, Nortek has entered into an Agreement Containing Consent Order ("Consent Agreement"), which requires, among other things, Nortek to divest certain assets of M & S, as defined therein; and

Whereas, if the Commission accepts the 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 the status of M & S 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, Nortek and M & S entering into this Agreement to Hold Separate shall in no way be construed as an admission by Nortek that the Proposed Acquisition constitutes a violation of any statute; and

Whereas, Nortek understands that no act or transaction contemplated by this Agreement to Hold Separate 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 to Hold Separate.

Now, therefore, upon the understanding that the Commission has not yet determined whether it will challenge the Proposed Acquisition, 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, Nortek and M & S agree as follows:

1. Nortek 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 Nortek signs the Consent Agreement.
2. The terms capitalized herein shall have the same definitions as in the Consent Agreement.

3. Nortek agrees that from the date the Proposed Acquisition is consummated until the earlier of the dates listed in subparagraphs 3.a - 3.b, it will comply with the provisions of paragraph 4 of this Agreement to Hold Separate:

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

b. The day after the divestiture required by the Consent Order has been completed.

4. To ensure the complete independence and viability of M & S and to assure that no competitive information is exchanged between the M & S and Nortek, Nortek shall hold M & S separate and apart on the following terms and conditions:

a. Nortek will cause to be appointed, within three (3) days of the date the Proposed Acquisition is consummated, Richard Denman to manage and maintain M & S who will make no changes to M & S other than changes made in the ordinary course of business. This individual ("the Manager") shall manage M & S independently of the management of Nortek's other businesses. The Manager shall not be involved in any way in the operations or management of any other Nortek business.

b. The Manager shall have exclusive control over M & S, with responsibility for the management of M & S and for maintaining the independence of M & S.

c. Nortek shall not exercise direction or control over, or influence, directly or indirectly, the Manager relating to the operation of M & S; provided, however, that Nortek may exercise only such direction and control over the Manager and M & S as is necessary to assure compliance with this Agreement to Hold Separate and with all applicable laws.

d. Nortek and M & S shall maintain the marketability, viability, and competitiveness of M & S and shall not sell, transfer, encumber it (other than in the normal course of business or to assure compliance with the Consent Agreement), or otherwise impair its marketability, viability or competitiveness.

e. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Proposed Acquisition, defending investigations or litigation, negotiating

and executing agreements to divest the Assets To Be Divested, complying with this Hold Separate Agreement or the consent order, or as necessary to comply with its reporting requirements as a public company, Nortek shall not receive or have access to, or the use of, non-public business information, or any material confidential information about M & S or the activities of the Manager or support service employees involved in the operation of M & S, not in the public domain. In addition, Nortek may receive aggregate financial information relating to M & S, but only to the extent necessary to allow Nortek to prepare federal and state consolidated financial reports or tax returns and to comply with its reporting requirements as a public company. Such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

f. Nortek shall circulate to all its employees involved with M & S, or any line of products that M & S manufactures and sells, and appropriately display, a copy of this Agreement to Hold Separate and the Consent Agreement.

g. If the Manager ceases to act or fails to act diligently, a substitute Manager shall be appointed subject to the Commission's approval.

h. The Manager shall have access to and be informed about all companies who inquire about or seek or propose to buy any of the Assets To Be Divested. M & S may require the Manager to sign a confidentiality agreement prohibiting the disclosure of any material confidential information gained as a result of his or her role as a Manager to anyone other than the Commission.

i. The Manager shall report in writing to the Commission every thirty (30) days concerning his or her efforts to accomplish the purposes of this Agreement to Hold Separate.

5. Nortek waives all rights to contest the validity of this Agreement to Hold Separate.

6. For the purpose of determining or securing compliance with this Agreement to Hold Separate, subject to any legally recognized privilege, and upon written request, and on reasonable notice, to Nortek made to its principal office, Nortek and M & S shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Nortek and M & S, and in the presence of counsel, to inspect any facilities and to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Nortek or M & S relating to compliance with this Agreement to Hold Separate; and

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

7. This Agreement to Hold Separate shall not be binding until accepted by the Commission.

IN THE MATTER OF

TOYS "R" US, INC.

FINAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9278. Complaint, May 22, 1996—Final Order, Oct 13, 1998*

This final order prohibits, among other things, the nation's largest toy retailer from continuing, entering into, or attempting to enter into, vertical agreements with its suppliers to limit the supply of, or refuse to sell, toys to a toy discounter. The order also prohibits Toys "R" Us from facilitating, or attempting to facilitate, an agreement between or among its suppliers relating to the sale of toys to any retailer, and from urging or coercing suppliers to restrict sales to any toy discounter.

Participants

For the Commission: *L. Barry Costilo, Richard Dagen, Patrick Roach, Sarah Allen, James Frost, Michael Antalics, William Baer, Richard Ludwick, David Glasner, and Jonathan Baker.*

For the respondent: *Michael Tumolo, in-house counsel, Paramus, N.J., Michael Feldberg, Schulte, Roth & Zabel, New York, N.Y. and Irving Scher, Weil, Gotshal & Manges, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Toys "R" Us, Inc., a corporation (sometimes referred to as "TRU" or "respondent"), has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Toys "R" Us, Inc. ("TRU") is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at 461 From Road, Paramus, New Jersey.

PAR. 2. TRU is the largest toy retailer in the United States. It has approximately 600 stores located throughout the United States and 300 stores in foreign countries, which sell toys, infant supplies and