

IN THE MATTER OF
COMMONWEALTH LAND TITLE INSURANCE COMPANY

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-3835. Complaint, Nov. 10, 1998--Decision, Nov. 10, 1998

This consent order requires, among other things, Commonwealth Land Title Insurance Company, a Pennsylvania-based corporation, to relocate its operations and to maintain them as a fully functional title plant in competition with First American Title Insurance Company. In addition, the consent order requires that Commonwealth, for ten years, provide prior notice to the Commission before it merges, combines or consolidates its operations with any other title plant serving the District of Columbia.

Participants

For the Commission: *Patrick Roach, Michael Antalics, William Baer, John Simpson, and Jonathan Baker.*

For the respondent: *John Graybeal, Parker, Poe, Adams & Bernstein, Raleigh, N.C.*

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 ("Commission"), having reason to believe that respondent Commonwealth Land Title Insurance Company ("Commonwealth"), a corporation subject to the jurisdiction of the Commission, has engaged in certain conduct that constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and of Section 7 of the Clayton Act, as amended (15 U.S.C. 18); and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act, (15 U.S.C. 45(b)), stating its charges as follows:

I. DEFINITIONS

1. For the purposes of this complaint, the following definitions apply:

a. "*Respondent*" or "*Commonwealth*" means Commonwealth Land Title Insurance Company, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its direct and indirect parents, subsidiaries, divisions, groups and affiliates controlled by or under common control with Commonwealth Land Title Insurance Company, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

b. "*First American*" means First American Title Insurance Company, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its direct and indirect parents, subsidiaries, divisions, groups and affiliates controlled by or under common control with First American Title Insurance Company, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

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

d. "*Title plant*" means a privately owned collection of records and/or indices regarding the ownership of and interests in real property. The term includes such collections that are regularly maintained and updated by obtaining information or documents from the public records, as well as such collections of information that are not regularly updated.

e. "*Title plant services*" means providing selected information contained in a title plant to a customer or user or permitting a customer or user to have access to information contained in a title plant.

f. "*Commonwealth Washington DC Title Plant*" means the title plant owned by Commonwealth containing information pertaining to real property in the District of Columbia, which was located prior to November 1997 at 1828 L Street, N.W., Washington, DC, including all updates of such information.

g. "*First American Washington DC Title Plant*" means the title plant owned by First American containing information pertaining to real property in the District of Columbia.

h. "*First American Capitol Hill Premises*" means the premises owned or leased by First American at or adjacent to 605 Pennsylvania Avenue, S.E., Washington, DC.

II. THE RESPONDENT

2. Commonwealth is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its office and principal place of business located at 1700 Market Street, Philadelphia, Pennsylvania.

3. Commonwealth is, and at all times relevant herein has been, a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended (15 U.S.C. 44).

III. TRADE AND COMMERCE

4. The relevant market is the production and sale of title plant services in the District of Columbia. Title plant services are used by abstractors, title insurers, title insurance agents, and others to determine ownership of and interests in real property in connection with the underwriting and issuance of title insurance policies and for other purposes.

5. The relevant market is highly concentrated.

6. There are no commercially reasonable substitutes for title plant services in the relevant market.

7. Entry into the relevant markets is difficult or unlikely to occur at a sufficient scale to deter or counteract the effect of the conduct that is the basis of the complaint.

IV. THE CONDUCT AT ISSUE

8. At all times relevant herein, Commonwealth has been the owner of a title plant containing information pertaining to real property in the District of Columbia and has been engaged in providing title plant services for its own use and for customers and users including abstractors, title insurers and title insurance agents.

9. At all times relevant herein, First American has been the owner of a title plant containing information pertaining to real property in the District of Columbia and has been engaged in providing title plant services for its own use and for customers and users including abstractors, title insurers and title insurance agents.

10. Commonwealth and First American are direct competitors in the production and sale of title plant services in the District of Columbia. There exists no other privately-owned collection of title records for the District of Columbia that is comparable in

completeness, accuracy and ease of use to the title plants of Commonwealth and First American.

11. Beginning as early as 1996 and continuing in 1997, Commonwealth and First American engaged in discussions concerning the consolidation of their title plants in the District of Columbia. In September 1997, Commonwealth and First American executed a letter setting forth their understanding that they would consolidate their respective title plant operations at the First American Capitol Hill Premises. In late November 1997, Commonwealth relocated the Commonwealth Washington DC Title Plant to the First American Capitol Hill Premises, which was also the location of the First American Washington DC Title Plant.

12. Over a period of several months prior to the relocation of the Commonwealth Washington DC Title Plant to the First American Capitol Hill Premises, Commonwealth acted to terminate existing contracts with customers and users of its title plant. Customers and users of both Commonwealth and First American wishing to obtain title plant services after the relocation of the Commonwealth Washington DC Title Plant were required to execute a form "Interim Plant Use Agreement" setting prices, terms and conditions for such services and reciting that the title plant services were jointly provided by Commonwealth and First American pending formation of a joint title plant entity.

13. The prices, terms and conditions for title plant services set in the Interim Plant Use Agreement were the same for customers and users of both Commonwealth and First American. For many users, the price for title plant services was significantly higher under the Interim Plant Use Agreement than under their prior contracts for title plant services. The Interim Plant Use Agreement did not permit some forms of title plant access which had been available to customers and users under their prior contracts for title plant services. Customers and users began to be charged for title plant services under the terms of the Interim Plant Use Agreements beginning in early December 1997.

V. EFFECTS

14. By engaging in the conduct at issue Commonwealth and First American have acted to increase prices and restrict output in the relevant market.

15. The conduct at issue has had the effect of raising, fixing, and maintaining the price, terms and conditions of compensation paid for title plant services in the District of Columbia, in violation Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

16. As demonstrated by the actual effects of the conduct at issue in the relevant market, the effect of a consolidation of the Commonwealth Washington DC Title Plant and the First American Washington DC Title Plant described in paragraph 11, if consummated, 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 Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

- a. By eliminating direct actual competition between Commonwealth and First American in the relevant market; and
- b. By increasing the likelihood that Commonwealth and First American, acting in concert, can exercise market power in the relevant market.

VI. VIOLATIONS CHARGED

17. The conduct at issue constitutes a combination, agreement, or understanding between competitors to raise, fix, and maintain the price, terms and conditions of compensation paid for title plant services in the District of Columbia, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

18. The consolidation of the Commonwealth Washington DC Title Plant and the First American Washington DC Title Plant described in paragraph 11, 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 Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of the respondent, Commonwealth Land Title Insurance Company ("Commonwealth"), a subsidiary of LandAmerica Financial Group, Inc. ("LandAmerica") (formerly known as Lawyers Title Corporation); and the respondent and LandAmerica having been furnished thereafter with a copy of a

draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act and the Clayton Act; and

The respondent, LandAmerica and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent and LandAmerica 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 or LandAmerica 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 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. Commonwealth is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its office and principal place of business located at 1700 Market Street, Philadelphia, Pennsylvania.

2. LandAmerica, formerly known as Lawyers Title Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia with its office and principal place of business located at 6630 West Broad Street, Richmond, Virginia. LandAmerica is the parent corporation of Commonwealth and has agreed to be bound by the order herein as the parent corporation of Commonwealth.

3. 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 "*Commonwealth*" means Commonwealth Land Title Insurance Company, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its direct and indirect parents, subsidiaries, divisions, groups and affiliates controlled by or under common control with Commonwealth Land Title Insurance Company, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

B. "*First American*" means First American Title Insurance Company, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its direct and indirect parents, subsidiaries, divisions, groups and affiliates controlled by or under common control with First American Title Insurance Company, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

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

D. "*Title plant*" means a privately owned collection of records and/or indices regarding the ownership of and interests in real property. The term includes such collections that are regularly maintained and updated by obtaining information or documents from the public records, as well as such collections of information that are not regularly updated.

E. "*Title plant services*" means providing selected information contained in a title plant to a customer or user or permitting a customer or user to have access to information contained in a title plant.

F. "*Commonwealth Washington DC Title Plant*" means the title plant owned by Commonwealth containing information pertaining to real property in the District of Columbia, which was located prior to November 1997 at 1828 L Street, N.W., Washington, DC, including all updates of such information.

G. "*First American Washington DC Title Plant*" means the title plant owned by First American containing information pertaining to real property in the District of Columbia.

H. "*First American Capitol Hill Premises*" means the premises owned or leased by First American at or adjacent to 605 Pennsylvania Avenue, S.E., Washington, DC.

I. "*Interim Plant Use Agreement*" means an agreement entered into with any customer or user of the Commonwealth Washington DC Title Plant or the First American Washington DC Title Plant, pursuant to which Commonwealth and First American would jointly provide title plant services to such customer or user pending formation of a joint plant entity by Commonwealth and First American.

II.

It is further ordered, That:

A. Respondent shall, no later than the date the agreement containing consent order is signed by respondent, physically segregate all contents of the Commonwealth Washington DC Title Plant located at the First American Capitol Hill Premises from all contents of the First American Washington DC Title Plant.

B. Respondent shall, no later than thirty days after the date the agreement containing consent order is signed by respondent, relocate the Commonwealth Washington DC Title Plant to premises within the District of Columbia that are separate and distinct from the First American Washington DC Title Plant, the First American Capitol Hill Premises, and any other premises in which First American has any direct or indirect interest of any kind. Following such relocation respondent shall operate and maintain the Commonwealth Washington DC Title Plant as a fully functional title plant providing title plant services in competition with the First American Washington DC Title Plant.

C. Respondent shall, no later than the date the agreement containing consent order is signed by respondent, cause to be rescinded all Interim Plant Use Agreements and any other agreements under which respondent purported to or did provide title plant services in the District of Columbia jointly with First American, and shall cease and desist from claiming any right, title or interest pursuant to any such agreements.

D. Respondent shall, for a period of no less than one year after the agreement containing consent order is signed by respondent, provide title plant services in the District of Columbia to all customers or users of the Commonwealth Washington DC Title Plant on the most

recent prices, terms and conditions applicable to such customer or user prior to the relocation of the Commonwealth Washington DC Title Plant in November 1997 to the First American Capitol Hill Premises.

E. Respondent shall refund to all customers or users of the Commonwealth Washington DC Title Plant all amounts paid for title plant services provided during the period when the Commonwealth Washington DC Title Plant was located at the First American Capitol Hill Premises, to the extent such payments exceed the amount which would have been payable by each such customer or user under the most recent prior prices, terms and conditions applicable to such customer or user. Respondent shall conduct a review of its own files and all other relevant information available to it to determine to whom and in what amount such refunds are or may be payable and shall, no later than fourteen days after the agreement containing consent order is signed by respondent, pay the full amount of such refunds. Respondent, as part of its reports submitted pursuant to paragraph 6 of the agreement containing consent order and paragraph VI of this order, shall state each person or entity as to whom it has made a determination that such a refund is or is not payable, and the date and amount of any refund paid, and shall provide copies of all documents and all other information in its possession pertaining to payments by or amounts due from each such person or entity for title plant services provided during and for six months prior to the period when the Commonwealth Washington DC Title Plant was located at the First American Capitol Hill Premises. Respondent shall, no later than fourteen days after the agreement containing consent order is signed by respondent, notify in writing each customer or user of the Commonwealth Washington DC Title Plant of the availability of refunds and of the customer's or user's rights under this paragraph. In the event that the respondent shall receive (from the customer or user or from any other source) further evidence that a refund is payable under the terms of this paragraph, it shall pay such refund to any customer or user no later than seven days after receiving such evidence. In the event of any dispute between respondent and any customer or user concerning a refund pursuant to this paragraph, respondent shall immediately pay to the customer or user any portion of such refund that is not in dispute, and shall negotiate in good faith with the customer or user in an attempt to resolve the dispute. If the dispute is not resolved within fourteen days, respondent shall offer

the customer or user the option of referring such dispute to the Commission for resolution, whose determination shall be binding on Commonwealth.

III.

It is further ordered, That:

A. If respondent has not complied absolutely and in good faith with all of the requirements set forth in paragraph II, within three months from the date the agreement containing consent order is signed by respondent, the Commission may appoint a trustee to accomplish the required actions. 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, respondent 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. 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 carry out the actions specified in paragraph II that have not been accomplished by the respondent.

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 accomplish the actions required by this order.

4. The trustee shall have three (3) months from the date the Commission approves the trust agreement described in paragraph III.B.3 to accomplish the actions specified by paragraph II. If, however, at the end of the three-month period, the trustee has submitted a plan of action or believes that the required actions can be accomplished within a reasonable time, the period for accomplishing the required actions 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 properties specified in paragraph II and 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 required actions. Any delays in the required actions caused by respondent shall extend the time for accomplishing the required actions 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. To the extent consistent with the terms of paragraph II, the trustee shall use his or her best efforts to negotiate expeditiously the most favorable price and terms available in connection with each required action, subject to respondent's absolute and unconditional obligation to accomplish the required actions.

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 expenses incurred and monies received in connection with the required actions. 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 amounts due to the trustee shall be paid by 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 promptly accomplishing the actions required by paragraph II.

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 actions required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the properties specified in paragraph II.

12. The trustee shall report in writing to respondent and the Commission every thirty (30) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That:

A. For a period of ten (10) years from the date this order becomes final, respondent shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

1. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, that has any direct or indirect ownership interest in a title plant serving the District of Columbia; or

2. Acquire any assets (other than in the ordinary course of business) or ownership interest in a title plant serving the District of Columbia; or

3. Sell or transfer any stock, share capital, equity or other interest in, or any assets of, the Commonwealth Washington DC Title Plant to any person or concern, corporate or non-corporate, that has any direct or indirect ownership interest in a title plant serving the District of Columbia; or

4. Merge, combine or otherwise consolidate the Commonwealth Washington DC Title Plant with any other title plant serving the District of Columbia; or

5. Enter into any contract, venture or arrangement to provide title plant services for the District of Columbia jointly with any person or concern, corporate or non-corporate, that has any direct or indirect ownership interest in a title plant serving the District of Columbia.

Notification is not required to be made pursuant to this paragraph IV with respect to any acquisition by respondent of a copy of title records or other information from a person or entity which thereafter retains the original information in its ownership and control, and where competition in the ordinary course between the parties is not otherwise restrained.

B. Notification pursuant to this paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction.

C. Respondent shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 CFR 803.20), respondent shall not consummate the transaction until twenty days after submitting such additional information or documentary material. Early termination of the waiting periods in

this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

V.

It is further ordered, That, for a period extending until November 10, 2018, respondent, directly or indirectly or through any corporate or other device in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, shall forthwith cease and desist from entering into, attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, or continuing or attempting to continue, any combination, agreement, or understanding, express or implied, for the purpose or with the effect of raising, lowering, fixing, maintaining or stabilizing the price, terms or other forms or conditions of compensation paid for title plant services in the District of Columbia; or encouraging, advising, pressuring, assisting, inducing, or attempting to induce any person to engage in any action prohibited by this order.

VI.

It is further ordered, That:

A. 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 accomplishment of the required actions 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.

B. One year (1) from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with paragraphs IV and V of this order.

VII.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate 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.

VIII.

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 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, or employees of respondent.

IN THE MATTER OF
TOYS "R" US, INC.

Docket 9278. Interlocutory Order, Dec. 1, 1998

ORDER GRANTING PARTIAL STAY

Upon considering respondent's application to stay enforcement of the Commission's order, issued October 13, 1998,

It is ordered, That enforcement of paragraphs II.C and II.E of the Commission's Final Order of October 13, 1998, be stayed upon the filing of a timely petition for review of Commission's order in an appropriate court of appeals and until the court issues a ruling disposing of the petition for review.

OPINION OF THE COMMISSION ON RESPONDENT'S
APPLICATION FOR STAY OF THE COMMISSION'S FINAL ORDER

On November 2, 1998, respondent Toys "R" Us, Inc. ("TRU") applied for a stay pending appeal of the Commission's order of October 13, 1998. TRU's application for a stay was received by the Commission on November 3, 1998. Complaint counsel opposes the granting of a stay. For the reasons stated below, the Commission stays the enforcement of paragraphs II.C and II.E of its order, effective upon the filing of a timely petition for review of that order in an appropriate court of appeals and until the court of appeals issues a ruling disposing of the petition for review. The Commission denies the application of TRU in all other respects.

APPLICABLE STANDARD

Section 5(g) of the Federal Trade Commission Act (the "FTC Act") provides that Commission adjudicatory orders (except divestiture orders) shall take effect "upon the sixtieth day after" the date of service, unless "stayed, in whole or in part and subject to such conditions as may be appropriate by . . . the Commission" or "an appropriate court of appeals." 15 U.S.C. 45(g)(2). A party seeking a stay must first apply for such relief to the Commission. TRU has done so in its November 2 application.