

Complaint

127 F.T.C.

IN THE MATTER OF
ABB AB, 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-3867. Complaint, April 14, 1999--Decision, April 14, 1999

This consent order, among other things, requires the respondents to divest, within six months to a Commission-approved acquirer, the analytical division assets of Elsag Bailey Process Automation, which is involved in the manufacture and sale of process gas chromatographs and the research and development of a process mass spectrometer.

Participants

For the Commission: *Steven K. Bernstein, Pamela Taylor, Ann Malester, Naomi Licker, Daniel Ducore, William Baer, J. Elizabeth Callison, and David Meyer.*

For the respondents: *M. Elaine Johnston, White & Case, New York, N.Y.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondents, ABB AB and ABB AG (collectively hereinafter "ABB"), corporations subject to the jurisdiction of the Commission, have agreed to acquire Elsag Bailey Process Automation N.V. (hereinafter "Elsag Bailey"), a corporation 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, as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

1. "*Process Gas Chromatograph*" means an analytical instrument used in process manufacturing to measure the chemical composition of a gas or a liquid using gas chromatography.

2. "*Process Mass Spectrometer*" means an analytical instrument used in process manufacturing to measure the chemical composition of a gas or a liquid using mass spectrometry.

II. RESPONDENTS

3. Respondent ABB AB is a corporation organized, existing, and doing business under and by virtue of the laws of Sweden with its principal place of business located at P.O. Box 7373, S10391, Stockholm, Sweden. ABB AB owns 50% of ABB Asea Brown Boveri, Ltd., which is the holding company for the ABB Group. The ABB Group includes approximately 1,000 companies around the world.

4. Respondent ABB AG is a corporation organized, existing, and doing business under and by virtue of the laws of Switzerland with its principal place of business located at P.O. Box 58, CH-5441, Baden, Switzerland. ABB AG owns 50% of ABB Asea Brown Boveri, Ltd.

5. Respondents are engaged in, among other things, the research, development, manufacture and sale of Process Gas Chromatographs and Process Mass Spectrometers.

6. 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 affect 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

7. Eltag Bailey Process Automation N.V. is a corporation organized, existing, and doing business under and by virtue of the laws of the Netherlands, with its principal place of business located at Schiphol Boulevard 157, 1118 BG Luchthaven Schiphol, The Netherlands.

8. Eltag Bailey, through its Applied Automation, Inc. division, is engaged in, among other things, the research, development, manufacture and sale of Process Gas Chromatographs and the research and development of Process Mass Spectrometers.

9. Eltag Bailey 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.

IV. THE ACQUISITION

10. Pursuant to an October 26, 1998 cash tender offer, ABB has agreed to acquire 100% of the issued and outstanding voting securities of Elsag Bailey for \$1.1 billion ("Acquisition").

V. THE RELEVANT MARKETS

11. For purposes of this complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are:

- (a) The manufacture and sale of Process Gas Chromatographs; and
- (b) The manufacture and sale of Process Mass Spectrometers.

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

VI. STRUCTURE OF THE MARKETS

13. The market for the manufacture and sale of Process Gas Chromatographs is highly concentrated as measured by the Herfindahl-Hirschman Index ("HHI"). The post-acquisition HHI is 4,764 points, which is an increase of 2,310 points over the pre-acquisition HHI level. ABB and Elsag Bailey are the two leading suppliers of Process Gas Chromatographs in the world, and combined would have a market share of almost 70%.

14. ABB and Elsag Bailey are actual competitors in the relevant market for the manufacture and sale of Process Gas Chromatographs.

15. The market for the manufacture and sale of Process Mass Spectrometers is highly concentrated as measured by the HHI. The pre-acquisition HHI is 4,150. ABB is the world's leading supplier of Process Mass Spectrometers, and Elsag Bailey is involved in the research and development of a Process Mass Spectrometer which it plans to begin manufacturing and selling in 1999.

16. ABB is an actual competitor in the relevant market for the manufacture and sale of Process Mass Spectrometers. Elsag Bailey is an actual potential competitor in the relevant market for the manufacture and sale of Process Mass Spectrometers.

VII. BARRIERS TO ENTRY

17. Entry into either of the relevant markets, other than Elsig Bailey's imminent introduction of a new Process Mass Spectrometer, would not occur in a timely manner to deter or counteract the adverse competitive effects described in paragraph 18 because of, among other things, the difficulty of designing and developing a new product, performing product testing, establishing a track record for product quality, and developing a service and support network.

VIII. EFFECTS OF THE ACQUISITION

18. The effects of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant markets 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 ABB and Elsig Bailey in the relevant market for the manufacture and sale of Process Gas Chromatographs;

(b) By increasing the likelihood that ABB will unilaterally exercise market power in the relevant market for the manufacture and sale of Process Gas Chromatographs;

(c) By increasing the likelihood that customers of Process Gas Chromatographs would be forced to pay higher prices;

(d) By reducing innovation in the relevant market for the manufacture and sale of Process Gas Chromatographs;

(e) By eliminating actual potential competition between ABB and Elsig Bailey in the relevant market for the manufacture and sale of Process Mass Spectrometers;

(f) By increasing the likelihood that customers of Process Mass Spectrometers would be forced to pay higher prices;

(g) By reducing innovation in the relevant market for the manufacture and sale of Process Mass Spectrometers.

IX. VIOLATIONS CHARGED

19. The Acquisition agreement described in paragraph 10 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

20. The Acquisition described in paragraph 10, 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 having initiated an investigation of the proposed acquisition by respondents of all of the outstanding shares of Elsag Bailey Process Automation, N.V., 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 a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed agreement containing consent order 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 ABB AB is a corporation organized, existing and doing business under and by virtue of the laws of Sweden, with its office and principal place of business located at P.O. Box 7373, S-10391, Stockholm, Sweden.

2. Respondent ABB AG is a corporation organized, existing and doing business under and by virtue of the laws of Switzerland, with its office and principal place of business located at P.O. Box 58, CH-5441 Baden, Switzerland.

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. "*ABB AB*" means ABB AB, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; the subsidiaries, including Elsig Bailey after the proposed acquisition, divisions, groups and affiliates controlled by ABB AB, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

B. "*ABB AG*" means ABB AG, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; the subsidiaries, including Elsig Bailey after the proposed acquisition, divisions, groups and affiliates controlled by ABB AG, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

C. "*Respondents*" means ABB AB and ABB AG.

D. "*Elsig Bailey*" means Elsig Bailey Process Automation, N.V., a corporation organized, existing and doing business under and by virtue of the laws of The Netherlands, having its principal place of business at World Trade Center, Schiphol Boulevard 157, 1118 BG Luchthaven Schiphol, The Netherlands.

E. "*Applied Automation*" means Applied Automation, Inc., a Delaware corporation having its principal office and place of business located at Pawhuska Road, Bartlesville, Oklahoma.

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

G. "*Analytical Division Assets*" means:

1. All assets, properties, businesses and goodwill, tangible and intangible, of Applied Automation relating to the research, development, manufacture or sale of Process Gas Chromatographs and

Process Mass Spectrometers, including, without limitation, the following:

a. All owned or leased real property and improvements, buildings, plants, manufacturing operations, machinery, fixtures, equipment, furniture, tools and other tangible personal property located in Applied Automation's Bartlesville Facility, Chicago Facility and Houston Facility;

b. All intellectual property, inventions, technology, know-how, patents, trademarks, trade names, trade secrets and copyrights;

c. All research materials, technical information, management information systems, software, specifications, designs, drawings, processes and quality control data;

d. All customer lists, vendor lists, catalogs, sales promotion literature and advertising materials;

e. Inventory and storage capacity;

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

g. All rights, titles and interests in and to contracts relating to the research and development of any Process Gas Chromatograph or Process Mass Spectrometer, including, but not limited to, the August 1, 1992 Research and Development Agreement between Applied Automation and Jencourt, Inc., as amended; the August 1, 1992 Stockholders Agreement by and among Duane P. Littlejohn, Fritz H. Schlereth, Barry Schlereth, and Applied Automation, as amended; the August 1, 1992 Management Agreement by and among Applied Automation, Jencourt, Inc., Duane P. Littlejohn, and Fritz H. Schlereth, as amended; the August 1, 1992 Employment Agreement between Jencourt, Inc. and Duane P. Littlejohn, as amended; and the July 1992 Development Agreement between Leybold Inficon, Inc. and Jencourt Inc.;

h. 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;

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

j. All books, records and files;

k. All items of prepaid expense; and

2. All additional assets of Elsag Bailey or any of its subsidiaries (but excluding owned or leased real property and improvements) relating to Process Gas Chromatographs and Process Mass Spectrometers, including, but not limited to:

- a. All Sales and Service Operations;
- b. All Systems Integration Operations; and
- c. All intellectual property, inventions, technology, know-how, patents, trademarks, trade names, trade secrets and copyrights.

H. "*Applied Automation Assets*" means:

1. All assets, properties, business and goodwill, tangible and intangible, of Applied Automation, including, without limitation, the following:

a. All owned or leased real property and improvements, buildings, plants, manufacturing operations, machinery, fixtures, equipment, furniture, tools and other tangible personal property located in Applied Automation's Bartlesville Facility, Chicago Facility and Houston Facility;

b. All intellectual property, inventions, technology, know-how, patents, trademarks, trade names, trade secrets and copyrights;

c. All research materials, technical information, management information systems, software, specifications, designs, drawings, processes and quality control data;

d. All customer lists, vendor lists, catalogs, sales promotion literature and advertising materials;

e. Inventory and storage capacity;

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

g. All rights, titles and interests in and to the contracts entered into for the research and development of any Process Gas Chromatograph or Process Mass Spectrometer, including, but not limited to, the August 1, 1992 Research and Development Agreement between Applied Automation and Jencourt, Inc., as amended; the August 1, 1992 Stockholders Agreement by and among Duane P. Littlejohn, Fritz H. Schlereth, Barry Schlereth, and Applied Automation, as amended; the August 1, 1992 Management Agreement by and among Applied Automation, Jencourt, Inc., Duane P. Littlejohn, and Fritz H. Schlereth, as amended; the August 1, 1992 Employment Agreement

between Jencourt, Inc. and Duane P. Littlejohn, as amended; and the July 1992 Development Agreement between Leybold Inficon, Inc. and Jencourt Inc.;

h. 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;

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

j. All books, records and files;

k. All items of prepaid expense; and

2. All additional assets of Elsasg Bailey or any of its subsidiaries (but excluding owned or leased real property and improvements) relating to Process Gas Chromatographs and Process Mass Spectrometers, including, but not limited to:

a. All Sales and Service Operations;

b. All Systems Integration Operations; and

c. All intellectual property, inventions, technology, know-how, patents, trademarks, trade names, trade secrets and copyrights.

I. "*Acquisition*" means the proposed acquisition by ABB AB and ABB AG of all of the voting securities of Elsasg Bailey.

J. "*Bartlesville Facility*" means Applied Automation's manufacturing plant located at Pawhuska Road, Bartlesville, Oklahoma.

K. "*Chicago Facility*" means Applied Automation's sales and service facility located at 500 Joliet Road, Willowbrook, Illinois.

L. "*Houston Facility*" means Applied Automation's manufacturing plant located at 7101 Hollister Street, Houston, Texas.

M. "*Process Gas Chromatograph*" means an analytical instrument used in process manufacturing to measure the chemical composition of a gas or a liquid using gas chromatography.

N. "*Process Mass Spectrometer*" means an analytical instrument used in process manufacturing to measure the chemical composition of a gas or a liquid using mass spectrometry.

O. "*Sales and Services Operations*" means all of Elsasg Bailey's assets, properties, business and goodwill, tangible and intangible, used in the sale or service of Applied Automation's Process Gas Chromatographs or Process Mass Spectrometers, including all contracts with employees or independent contractors.

P. "*Systems Integration Operations*" means all of Elsag Bailey's assets, properties, business and goodwill, tangible and intangible, located in Telford (United Kingdom), Praunheim (Germany) and Singapore, used to provide systems integration services for Applied Automation's Process Gas Chromatographs or Process Mass Spectrometers.

II.

It is further ordered, That:

A. Respondents shall divest, absolutely and in good faith, within six months from the date this agreement containing consent order is signed by respondents, the Analytical Division Assets.

B. Respondents shall divest the Analytical Division Assets 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 Analytical Division Assets is to ensure the continued use of the Analytical Division Assets in the same business in which the Analytical Division Assets are engaged at the time of the acquisition, and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint.

C. Pending divestiture of the Analytical Division Assets or the Applied Automation Assets as required by this order, respondents shall take such actions as are necessary to maintain the viability and marketability of the Analytical Division Assets and the Applied Automation Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Analytical Division Assets or Applied Automation Assets except for ordinary wear and tear.

D. Respondents shall comply with all of the 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 respondents have divested all the Analytical Division Assets or the Applied Automation Assets as required by this order.

E. At the time of the execution of a purchase agreement between respondents and a proposed acquirer of the Analytical Division Assets or the Applied Automation Assets, respondents shall provide the proposed acquirer with a complete list of all non-clerical, salaried employees of Applied Automation or Elsag Bailey who have been

involved in the research, development, manufacture, sale, service or customization of any Process Gas Chromatograph or Process Mass Spectrometer at any time during the period from January 1, 1998 until the date of the purchase agreement. Respondents shall also provide the proposed acquirer with a complete list of all independent contractors involved in the research, development, manufacture, sale, service or customization of any Process Gas Chromatograph or Process Mass Spectrometer from January 1, 1998 until the date of the purchase agreement. The lists shall state each individual's name, position or positions held from January 1, 1998 until the date of the purchase agreement, address, telephone number, and a description of the duties and work performed by the individual in connection with any Process Gas Chromatograph or Process Mass Spectrometer researched, developed, manufactured or sold by Applied Automation or Elsag Bailey.

F. Respondents shall provide the proposed acquirer with an opportunity to inspect the personnel files and other documentation relating to the individuals identified in paragraph II.E. of this order to the extent permissible under applicable laws, at the request of the proposed acquirer any time after the execution of the purchase agreement.

G. Respondents shall provide the individuals identified in paragraph II.E. of this order with financial incentives to continue in their employment positions during the period covered by the Hold Separate Agreement, hereto attached, and to accept employment with the Commission-approved acquirer at the time of the divestiture. Such incentives shall include:

1. Continuation of all employee benefits offered by Applied Automation or Elsag Bailey until the date of the divestiture; and
2. A bonus equal to 20 percent of an employee's annual salary (including any other bonuses) as of the date this order becomes final for any individual who agrees to accept an offer of employment from the Commission-approved acquirer, payable by respondents upon the beginning of the employee's employment by the Commission-approved acquirer.

H. For a period of one (1) year commencing on the date of the individual's employment by the Commission-approved acquirer, respondents shall not re-hire any of the individuals identified in

paragraph II.E. of this order who accept employment with the Commission-approved acquirer, unless the individual's employment has been terminated by the acquirer.

III.

It is further ordered, That:

A. If respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the Analytical Division Assets within six months from the date this agreement containing consent order is signed, the Commission may appoint a trustee to divest the Applied Automation Assets. 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 to divest the Applied Automation Assets. 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 respondents to comply with this order.

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

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

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Applied Automation Assets.

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-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 Applied Automation Assets 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 divestiture caused by respondents shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to an acquirer as set out in paragraph II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by respondents from among those approved by the Commission; provided further, however, that respondents shall select such entity within five (5) business days of receiving notification of the Commission's approval.

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, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Applied Automation Assets.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A. of this order.

10. 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 Applied Automation Assets.

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

IV.

It is further ordered, That:

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. or III. of this order, respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with paragraphs II. and III. 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 divestiture.

V.

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

VI.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request, 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 it, to interview officers, directors, or employees of respondents, who may have counsel present, regarding any such matters.

APPENDIX I

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate is by and between ABB AB, a corporation headquartered in Sweden, ABB AG, a corporation headquartered in Switzerland (collectively "ABB"), Elsag Bailey Process Automation, N.V. ("Elsag Bailey"), a company headquartered in Amsterdam, The Netherlands, 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, ABB has proposed to acquire one hundred percent of the issued and outstanding voting securities of Elsag Bailey ("Proposed Acquisition"); and

Whereas, ABB manufactures and markets, among other things, process gas chromatographs and process mass spectrometers; and

Whereas, Elsag Bailey, through its Applied Automation, Inc., subsidiary, manufactures and markets, among other things, process gas chromatographs, and is involved in the research and development of process mass spectrometers; 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, ABB has entered into an Agreement Containing Consent Order ("Consent Agreement"), which requires, among other things, ABB to divest the Analytical Division Assets of Elsag Bailey, as defined in Paragraph I of the Consent Agreement, or the Applied Automation Assets, as defined in Paragraph I of the Consent Agreement; 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 quo ante* of the Analytical Division Assets and the Applied Automation Assets, as defined in

Paragraph I. of the Consent Agreement, 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, the purposes of this Agreement to Hold Separate and the Consent Agreement are:

A. To preserve the Analytical Division Assets and the Applied Automation Assets as viable, competitive, and independent businesses pending divestiture of the Analytical Division Assets or the Applied Automation Assets, as required by the Consent Agreement, and

B. To remedy any anticompetitive effects of the Proposed Acquisition; and

Whereas, ABB and Elsig Bailey entering into this Agreement to Hold Separate shall in no way be construed as an admission by ABB or Elsig Bailey that the Proposed Acquisition constitutes a violation of any law; and

Whereas, ABB and Elsig Bailey understand 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 applicable to the Proposed Acquisition, ABB and Elsig Bailey agree as follows:

1. ABB and Elsig Bailey agree to execute and be bound by the terms of the order contained in the Consent Agreement, as if it were final, from the date ABB and Elsig Bailey sign the Consent Agreement.

2. ABB and Elsig Bailey agree that from the date ABB and Elsig Bailey sign the Consent Agreement until the earlier of the dates listed in subparagraphs 2.a. - 2.b., they will comply with the provisions of Paragraph 3 of this Agreement to Hold Separate:

a. Three (3) 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;

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

3. To ensure the complete independence and viability of the Analytical Division Assets and the Applied Automation Assets and to assure that no Material Confidential Information ("Material Confidential Information" as used herein, means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes or other trade secrets) is exchanged between ABB and the Analytical Division Assets or the Applied Automation Assets, ABB shall hold the Applied Automation Assets separate and apart on the following terms and conditions:

a.. The Applied Automation Assets shall be held separate and apart and shall be managed and operated independently of ABB, except to the extent that ABB must exercise direction and control over such assets to assure compliance with this Agreement to Hold Separate, or with the Consent Agreement, and except as otherwise provided in this Agreement to Hold Separate.

b. ABB will appoint a Manager ("the Manager") within three (3) business days of the date the Proposed Acquisition is consummated to manage and maintain the Applied Automation Assets. The Manager shall not make any changes to the Applied Automation Assets other than changes made in the ordinary course of business. The Manager shall manage the Applied Automation Assets independently of the management of ABB's other businesses. The Manager shall not be involved in any way in the operations or management of any other ABB business.

c. The Manager shall have exclusive control over the Applied Automation Assets, with responsibility for the management of the Applied Automation Assets and for maintaining the independence of that business.

d. ABB shall not exercise direction or control over, or influence directly or indirectly the Manager relating to the operation of the

Applied Automation Assets; provided, however, that ABB may exercise only such direction and control over the Manager and the Applied Automation Assets as is necessary to assure compliance with this Agreement to Hold Separate and with all applicable laws.

e. ABB and Elsag Bailey shall maintain the marketability, viability, and competitiveness of the Applied Automation Assets and shall not sell, transfer, encumber them (other than in the normal course of business or to assure compliance with the Consent Agreement), and shall not cause or permit the destruction, removal, wasting or deterioration, or otherwise impair the marketability, viability or competitiveness of the Applied Automation Assets.

f. ABB and Elsag Bailey shall ensure that the Applied Automation Assets have appropriate funds for research and development, quality control, manufacturing and marketing of the products produced by the Applied Automation Assets at a level not lower than that budgeted for the 1998 fiscal year, and shall increase such spending as the Manager shall reasonably determine. ABB and Elsag Bailey shall also ensure that the Applied Automation Assets have sufficient working capital to operate at a level no less than that described in the regularly prepared annual operating plan(s) in effect during the twelve (12) months preceding the date of this Hold Separate Agreement.

g. Employees of the Applied Automation Assets shall not be involved in any other ABB business.

h. 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, obtaining legal advice, negotiating agreements to divest assets, or complying with this Agreement to Hold Separate or the Consent Agreement, ABB shall not receive or have access to any Material Confidential Information about the Applied Automation Assets or the activities of the Manager or support service employees involved in the Applied Automation Assets.

i. ABB and Elsag Bailey shall circulate to all their salaried, non-clerical employees employed in the research, development, manufacture, or sale of Process Gas Chromatographs or Process Mass Spectrometers and all other salaried, non-clerical employees of the Applied Automation Assets, and appropriately display, a copy of this Agreement to Hold Separate and the Consent Agreement.

j. If the Manager ceases to act or fails to act diligently, ABB shall appoint a substitute Manager, subject to Commission approval.

k. The Manager shall have access to and be informed about all companies who inquire about, seek or propose to buy the Analytical Division Assets or the Applied Automation Assets. ABB 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 Manager to anyone other than the Commission.

1. Within thirty (30) days after the date this Agreement to Hold Separate is signed and every thirty (30) days thereafter until this Agreement to Hold Separate terminates, the Manager shall report in writing to the Commission concerning his or her efforts to accomplish the purposes of this Agreement to Hold Separate.

4. Should the Commission seek in any proceeding to compel ABB to divest itself of the Analytical Division Assets or the Applied Automation Assets, as provided in the Consent Agreement, or to seek any other injunctive or equitable relief, ABB and Elsig Bailey shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Proposed Acquisition. ABB and Elsig Bailey shall also waive all rights to contest the validity of this Agreement to Hold Separate.

5. To the extent that this Agreement to Hold Separate requires ABB or Elsig Bailey to take, or prohibits ABB or Elsig Bailey from taking, certain actions that otherwise may be required or prohibited by contract, ABB and Elsig Bailey shall abide by the terms of this Agreement to Hold Separate or the Consent Agreement, and shall not assert as a defense such contract requirements in any action brought by the Commission to enforce the terms of this Agreement to Hold Separate or the Consent Agreement.

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 ABB made to its principal office, ABB shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of ABB 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 ABB relating to compliance with this Agreement to Hold Separate; and

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

7. 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 Elsasg Bailey made to its principal office, Elsasg Bailey shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Elsasg Bailey 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 Elsasg Bailey relating to compliance with this Agreement to Hold Separate; and

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

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

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Complaint

IN THE MATTER OF

THE BRITISH PETROLEUM COMPANY P.L.C., 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-3868. Complaint, April 19, 1999--Decision, April 19, 1999

This consent order, among other things, requires BP and Amoco to divest, to Williams Energy Ventures, Inc., or an acquirer approved by the Commission, 134 gas stations in eight markets and nine light petroleum products terminals.

Participants

For the Commission: *Dennis Johnson, Arthur Nolan, Anthony Low Joseph, Kirsten Wolfe, Constance Salemi, Richard Liebeskind, Phillip Broyles, Naomi Licker, Daniel Ducore, William Baer, Charlotte Wojcik, and Leslie Farber.*

For the respondents: *Robert Osgood, Sullivan & Cromwell, New York, N.Y. and Ilene Knable Gotts, Wachtell, Lipton, Rosen & Katz, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("FTC" or "Commission"), having reason to believe that respondents The British Petroleum Company p.l.c. ("BP"), a corporation, and Amoco Corporation ("Amoco"), a corporation, have entered into an agreement and plan of merger whereby BP proposes to acquire all of the outstanding common stock of Amoco, that such agreement and plan of merger violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that such agreement and merger, if consummated, would violate 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 BP and Amoco having merged into a corporation ultimately controlled by BP Amoco p.l.c. ("BP Amoco"), 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: