

Complaint

IN THE MATTER OF

MANHEIM AUCTIONS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket C-3982; File No. 0010098

Complaint, November 13, 2000--Decision, November 13, 2000

This consent order addresses the \$1,000,000,000.00 acquisition by Manheim Auctions, Inc., owned by Cox Entertainment, Inc., of ADT Automotive Holdings, Inc., owned by Tyco International, Ltd. The complaint alleges that the proposed acquisition would lessen competition, increase concentration, and create a monopoly in the provision of wholesale motor vehicle auction services in Kansas City, Missouri, the Colorado Front Range, which includes Denver and Colorado Springs, Colorado, Atlanta, Georgia, San Francisco, California, Seattle, Washington, and the I-4 corridor of Florida, which includes Tampa, Orlando, and Daytona Beach, Florida. The order requires Respondents to divest eight of the acquire ADT auctions to ADESA and to maintain the auctions as they would in the ordinary course of business until the time of the divestiture.

Participants

For the Commission: *Joe Lipinsky, John B. Kirkwood, K. Shane Woods, Steven Balster, Virginia Davidson, Robert J. Schroeder, Daniel P. Ducore, Ezra Friedman, and Jeffrey Fischer.*

For the Respondents: *Timothy J. O'Rourke and John H. Pomeroy, Dow, Lohnes & Albertson, and Steve Newborn, Clifford Chance Rogers & Wells.*

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 (ACommission@), having reason to believe that Respondents Manheim Auctions,

Complaint

Inc. (AManheim@), Cox Enterprises, Inc. (ACox@), ADT Automotive Holdings, Inc. (AADT@) and Tyco International, Ltd. (ATyco@), have entered into an agreement whereby Manheim would acquire all of the voting securities of ADT 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 (AFTC 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 pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. ' 21, and Section 5(b) of the FTC Act, as amended, 15 U.S.C. ' 45(b), stating its charges as follows:

Manheim and Cox

1. Manheim 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 1400 Lake Hearn Drive, N.E., Atlanta, Georgia 30319.
2. Manheim is a wholly owned subsidiary of Cox, a corporation with its office and principal place of business located at 1400 Lake Hearn Drive, N.E., Atlanta, Georgia 30319.
3. Manheim is the largest wholesale motor vehicle auction company in the United States. It operates 65 auctions in the United States and auctioned more than 6.5 million motor vehicles in 1998.
4. At all times relevant herein, Respondents Manheim and Cox have been and are now engaged in commerce as Acommerce@ is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. ' 12, and are corporations whose businesses are in or affecting commerce as Acommerce@ is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 44.

Complaint

ADT and Tyco

5. ADT 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 435 Metroplex Drive, Nashville, Tennessee 37211.

6. ADT is a wholly owned subsidiary of Tyco, a corporation organized, existing and doing business under and by virtue of the laws of Bermuda with its office and principal place of business located at The Zurich Center, Second Floor, 90 Pitts Bay Road, Pembroke HM08, Bermuda. Tyco's principal operating subsidiary in the United States is located at One Tyco Park, Exeter, New Hampshire 03833.

7. ADT is the third largest wholesale motor vehicle auction company in the United States with 28 auctions across the country. In 1998, it auctioned 2.1 million vehicles.

8. At all times relevant herein, Respondents ADT and Tyco have been and are now engaged in commerce as Acommerce@ is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. ' 12, and are corporations whose businesses are in or affecting commerce as Acommerce@ is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. ' 44.

The Proposed Acquisition

9. Pursuant to an agreement among Manheim and ADT, dated January 13, 2000, Manheim agreed to purchase all voting securities of ADT for a purchase price of approximately \$1 billion (the AADT Acquisition@).

Complaint

Count One B Kansas City

10. One relevant line of commerce is the provision of wholesale motor vehicle auction services by major motor vehicle auctioneers (AWMVA services@). These services include marshaling motor vehicles before auctions (picking up vehicles and transporting them to the auction), preparing condition reports, reconditioning the motor vehicles, promoting and marketing auctions to potential buyers, auctioning motor vehicles, and reporting the results of those auctions. Major motor vehicle auctions use sophisticated technology to serve large institutional sellers that have thousands of vehicles to sell.

11. One relevant section of the country is the greater metropolitan area of Kansas City, Missouri. This section consists of the following Missouri counties: Cass, Clay, Clinton, Jackson, Lafayette, Platte, and Ray. This section consists of the following Kansas counties: Johnson, Leavenworth, Miami, and Wyandotte.

12. Respondent Manheim owns and operates the Kansas City Auto Auction in Kansas City, Missouri.

13. Respondent ADT owns and operates the Metro Auto Auction of Kansas City Inc. in Lee=s Summit, Missouri.

14. Respondents Manheim and ADT are direct and substantial competitors in the business of providing WMVA services in the relevant section of the country set out in Complaint Paragraph 11.

15. The business of providing WMVA services in the relevant section of the country set out in Complaint Paragraph 11 is highly concentrated. The ADT Acquisition would significantly increase concentration in this relevant section of the country, resulting in a Herfindahl-Hirschman Index (commonly referred to as AHHI@) of 10,000. That is, the ADT Acquisition would result in a monopoly in the relevant product market and section of the country set out in Complaint Paragraphs 10 and 11.

Complaint

16. The effect of the proposed ADT Acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the provision of WMVA services in the relevant section of the country set out in Complaint Paragraph 11, 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. the ADT Acquisition would eliminate actual and potential competition between Manheim and ADT to provide WMVA services in this relevant section of the country; and

b. Manheim would be likely to exact anticompetitive price increases from buyers of WMVA services in this relevant section of the country.

17. Entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant section of the country set out in Complaint Paragraph 11.

Count Two B Colorado Front Range

18. One relevant line of commerce is the provision of WMVA services.

19. One relevant section of the country includes the Colorado Front Range, which includes the greater metropolitan areas of Denver, Colorado and Colorado Springs, Colorado. This section consists of the following counties: Adams, Arapahoe, Boulder, Denver, Douglas, El Paso, Jefferson, and Weld.

20. Respondent Manheim owns and operates the Denver Auto Auction in Denver, Colorado and the Colorado Auto Auction in Commerce City, Colorado.

Complaint

21. Respondent ADT owns and operates the Colorado Springs Auto Auction Inc., in Fountain, Colorado.

22. Respondents Manheim and ADT are direct and substantial competitors in the provision of WMVA services in the relevant section of the country set out in Complaint Paragraph 19.

23. The business of providing WMVA services in the relevant section of the country set out in Complaint Paragraph 19 is highly concentrated. The ADT Acquisition would significantly increase concentration in this relevant section of the country, resulting in an HHI of 10,000. That is, the ADT Acquisition would result in a monopoly in the relevant product market and section of the country set out in Complaint Paragraphs 18 and 19.

24. The effect of the proposed ADT Acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the provision of WMVA services in the relevant section of the country set out in Complaint Paragraph 19, 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. the ADT Acquisition would eliminate actual and potential competition between Manheim and ADT to provide WMVA services in this relevant section of the country; and

b. Manheim would be likely to exact anticompetitive price increases from buyers of WMVA services in this relevant section of the country.

25. Entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant section of the country set out in Complaint Paragraph 19.

Count Three B Atlanta, Georgia

26. One relevant line of commerce is the provision of WMVA services.

Complaint

Complaint

27. One relevant section of the country is the greater metropolitan area of Atlanta, Georgia. This section consists of the following counties: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, and Walton.

28. Respondent Manheim owns and operates the Atlanta Auto Auction in Atlanta, Georgia, the Bishop Brothers= Auto Auction in Atlanta, Georgia and the Georgia Dealers= Auto Auction in Atlanta, Georgia.

29. Respondent ADT owns and operates the Southern States Vehicle Auction in Newnan, Georgia.

30. Respondents Manheim and ADT are direct and substantial competitors in the provision of WMVA services in the relevant section of the country set out in Complaint Paragraph 27.

31. The business of providing WMVA services in the relevant section of the country set out in Complaint Paragraph 27 is highly concentrated. The ADT Acquisition would significantly increase concentration in this relevant section of the country, resulting in an HHI of 10,000. That is, the ADT Acquisition would result in a monopoly in the relevant product market and section of the country set out in Complaint Paragraphs 26 and 27.

32. The effect of the proposed ADT Acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the provision of WMVA services in the relevant section of the country set out in Complaint Paragraph 27, 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. the ADT Acquisition would eliminate actual and potential competition between Manheim and ADT to provide WMVA services in this relevant section of the country; and

Complaint

b. Manheim would be likely to exact anticompetitive price increases from buyers of WMVA services in this relevant section of the country.

33. Entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant section of the country set out in Complaint Paragraph 27.

Count Four B San Francisco, California

34. One relevant line of commerce is the provision of WMVA services.

35. One relevant section of the country is the greater metropolitan area of San Francisco, California. This section consists of the following counties: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano and Sonoma.

36. Respondent Manheim owns and operates the Bay Cities Auto Auction in Hayward, California.

37. Respondent ADT owns and operates the Golden Gate Auto Auction in Fremont, California.

38. Respondents Manheim and ADT are direct and substantial competitors in the provision of WMVA services in the relevant section of the country set out in Complaint Paragraph 35.

39. The business of providing WMVA services in the relevant section of the country set out in Complaint Paragraph 35 is highly concentrated. The ADT Acquisition would significantly increase concentration in this relevant section of the country, resulting in an HHI of 10,000. That is, the ADT Acquisition would result in a monopoly in the relevant product market and section of the country set out in Complaint Paragraphs 34 and 35.

Complaint

40. The effect of the proposed ADT Acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the provision of WMVA services in the relevant section of the country set out in Complaint Paragraph 35, 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. the ADT Acquisition would eliminate actual and potential competition between Manheim and ADT to provide WMVA services in this relevant section of the country; and

b. Manheim would be likely to exact anticompetitive price increases from buyers of WMVA services in this relevant section of the country.

41. Entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant section of the country set out in Complaint Paragraph 35.

Count Five B Seattle, Washington

42. One relevant line of commerce is the provision of WMVA services.

43. One relevant section of the country is the greater metropolitan area of Seattle, Washington. This section consists of the following counties: Island, King, Kitsap, Pierce, and Snohomish.

44. Respondent Manheim owns and operates the South Seattle Auto Auction in Seattle, Washington.

45. Respondent ADT owns and operates the Puget Sound Auto Auction Inc., in Auburn, Washington.

Complaint

46. Respondents Manheim and ADT are direct and substantial competitors in the provision of WMVA services in the relevant section of the country set out in Complaint Paragraph 43.

47. The business of providing WMVA services in the relevant section of the country set out in Complaint Paragraph 43 is highly concentrated. The ADT Acquisition would significantly increase concentration in this relevant section of the country, resulting in an HHI of 10,000. That is, the ADT Acquisition would result in a monopoly in the relevant product market and section of the country set out in Complaint Paragraphs 42 and 43.

48. The effect of the proposed ADT Acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the provision of WMVA services in the relevant section of the country set out in Complaint Paragraph 43, 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. the ADT Acquisition would eliminate actual and potential competition between Manheim and ADT to provide WMVA services in this relevant section of the country; and

b. Manheim would be likely to exact anticompetitive price increases from buyers of WMVA services in this relevant section of the country.

49. Entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant section of the country set out in Complaint Paragraph 43.

Count Six B I-4 Corridor of Florida

50. One relevant line of commerce is the provision of WMVA services.

Complaint

51. One relevant section of the country is the I-4 corridor of Florida, which is approximated by the route of the Interstate highway between Daytona and Tampa, and includes the greater metropolitan areas of Tampa, Orlando, and Daytona Beach. This section consists of the following counties: Flagler, Hernando, Hillsborough, Lake, Orange, Osceola, Pasco, Pinellas, Seminole, and Volusia.

52. Respondent Manheim owns and operates the Daytona Auto Dealers= Exchange in Daytona Beach, Florida, the Florida Auto Auction of Orlando in Ocoee, Florida, the Greater Tampa Bay Auto Auction in Tampa, Florida, the Imperial Auto Auction in Lakeland, Florida, the Lakeland Auto Auction in Lakeland, Florida, Manheim=s Central Florida Auto Auction in Orlando, Florida, Manheim=s Orlando Orange County Auto Auction in Orlando, Florida and the St. Pete Auto Auction in Clearwater, Florida.

53. Respondent ADT owns and operates the Bayside Auto Auction of Tampa in Tampa, Florida, the Clearwater Auto Auction in Clearwater, Florida, and the Dealers= Auto Auction of Sanford Inc., in Sanford, Florida.

54. Respondents Manheim and ADT are direct and substantial competitors in the provision of WMVA services in the relevant section of the country set out in Complaint Paragraph 51.

55. The business of providing WMVA services in the relevant section of the country set out in Complaint Paragraph 51 is highly concentrated. The ADT Acquisition would significantly increase concentration in this relevant section of the country, resulting in an HHI of 10,000. That is, the ADT Acquisition would result in a monopoly in the relevant product market and section of the country set out in Complaint Paragraphs 50 and 51.

Complaint

56. The effect of the proposed ADT Acquisition, if consummated, may be substantially to lessen competition or to tend to create a monopoly in the provision of WMVA services in the relevant section of the country set out in Complaint Paragraph 51, 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. the ADT Acquisition would eliminate actual and potential competition between Manheim and ADT to provide WMVA services in this relevant section of the country; and
- b. Manheim would be likely to exact anticompetitive price increases from buyers of WMVA services in this relevant section of the country.

57. Entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant section of the country set out in Complaint Paragraph 51.

Count Seven B Phoenix, Arizona

58. One relevant line of commerce is the provision of WMVA services.

59. One relevant section of the country is the greater metropolitan area of Phoenix, Arizona. This section consists of the following counties: Maricopa and Pinal.

60. JM Family Enterprises, Inc. (AJMF@), is a Delaware corporation with its office and principal place of business located at 100 NW 12th Avenue, Deerfield Beach, Florida.

61. As a result of a 1996 agreement between Manheim and JMF, Manheim acquired a controlling interest in two major wholesale motor vehicle auctions B Manheim=s Greater Auto Auction and Southwest Auto Auction (the APhoenix

Complaint

Acquisition@). Manheim had previously owned the Southwest Auto Auction.

62. The business of providing WMVA services in the relevant section of the country set out in Complaint Paragraph 59 is highly concentrated. The Phoenix Acquisition has significantly increased concentration in this relevant section of the country, resulting in an HHI of 10,000. That is, a monopoly presently exists in the relevant product market and section of the country set out in Complaint Paragraphs 58 and 59.

63. The effect of the Phoenix Acquisition may have substantially lessened competition in the relevant market in the following ways, among others:

- a. by eliminating direct competition between Manheim and JMF; and
- b. by increasing the likelihood that Manheim has been unilaterally exercising and will continue to unilaterally exercise market power;

each of which increases the likelihood that the prices of WMVA services will increase and that services to customers of WMVA will decrease.

64. Entry has not been timely or sufficient to prevent anticompetitive effects in the relevant section of the country set out in Complaint Paragraph 59.

Violations Charged

65. The acquisition described in Complaint Paragraph 9, 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.

Decision and Order

66. The acquisition described in Complaint Paragraph 61 constitutes 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.

WHEREFORE THE PREMISES CONSIDERED, the Federal Trade Commission, on this thirteenth day of November, 2000, issues its Complaint against said Respondents.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission (ACommission@) having initiated an investigation of the acquisition by Respondent Manheim Auctions, Inc. (AManheim@), a wholly owned subsidiary of Respondent Cox Enterprises, Inc. (ACox@), of Respondent ADT Automotive Holdings, Inc. (AADT@), a wholly owned subsidiary of Respondent Tyco International, Ltd. (ATyco@), and Respondents having been furnished thereafter with draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued, would charge Respondents 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (AConsent Agreement@), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute

Decision and Order

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 Respondents have violated said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. ' 2.34, the Commission issues its complaint, and hereby makes the following jurisdictional findings and issues the following Order:

1. Respondent Manheim 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 1400 Lake Hearn Drive, N.E., Atlanta, Georgia 30319.
2. Respondent Manheim is a wholly owned subsidiary of Respondent Cox Enterprises Inc. (ACox@), a corporation with its office and principal place of business located at 1400 Lake Hearn Drive, N.E., Atlanta, Georgia 30319.
3. Respondent ADT 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 435 Metroplex Drive, Nashville, Tennessee 37211.
4. Respondent ADT is a wholly owned subsidiary of Respondent Tyco International Ltd. (ATyco@), a corporation organized, existing and doing business under and by virtue of the laws of Bermuda, with its office and principal place of business located at The Zurich Center,

Decision and Order

Second Floor, 90 Pitts Bay Road, Pembroke HM08, Bermuda. Tyco's principal operating subsidiary in the United States is located at One Tyco Park, Exeter, New Hampshire 03833.

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

ORDER**I.**

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. **AManheim@** means Manheim Auctions, Inc., its directors, officers, employees, agents and representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Manheim Auctions, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. **ACox@** means Cox Enterprises, Inc., its directors, officers, employees, agents and representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Cox Enterprises, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. **AADT@** means ADT Automotive Holdings, Inc., its directors, officers, employees, agents and representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by ADT Automotive Holdings, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

Decision and Order

- D. ATyco@ means Tyco International, Ltd., its directors, officers, employees, agents and representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Tyco International, Ltd., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- E. ARespondents@ means Manheim, Cox, ADT and Tyco, individually and collectively.
- F. ACommission@ means Federal Trade Commission.
- G. AADESA@ means ADESA Corporation, a corporation with its principal place of business at Two Parkwood Crossing, 310 East 96th Street, Suite 400, Indianapolis, Indiana 46240.
- H. "Acquirer(s)" means the entity or entities approved by the Commission to acquire the Assets To Be Divested pursuant to this Order, individually and collectively, other than ADESA.
- I. "Assets To Be Divested" means the Auctions listed below:
 - 1. AMetro Auto Auction,@ the ADT Auction located at 101 Southwest Oldham Parkway, Lees Summit, Missouri 64081.
 - 2. AColorado Springs Auto Auction,@ the ADT Auction located at 500 Willow Springs Road, Fountain, Colorado 80817.
 - 3. ASouthern States Vehicle Auction,@ the ADT Auction located at 300 Raymond Hill Road, Newman, Georgia 30265.
 - 4. AGolden Gate Auto Auction,@ the ADT Auction located at 6700 Stevenson Boulevard, Fremont, California 94538.

Decision and Order

5. APuget Sound Auto Auction,@ the ADT Auction located at 621 37th Street, N.W. Auburn, Washington 98002.
 6. ABayside Auto Auction,@ the ADT Auction located 3225 North 50th Street, Tampa, Florida 33619.
 7. AClearwater Auto Auction,@ the ADT Auction located at 5153 126th Avenue, North, Clearwater, Florida 33760.
 8. ADealer=s Auto Auction of Sanford,@ the ADT Auction located at 3895 State Road 46 East, Sanford, Florida 32771.
 9. ASouthwest Auto Auction,@ the Manheim Auction located at 400 North Beck Avenue, Chandler, Arizona 85526.
- J. AAuction@ means a wholesale motor vehicle auction, including all tangible and intangible assets used in the business and operations of auctioning used automobiles, including related reconditioning, transportation and repair services, including, but not limited to:
1. All land and buildings and other improvements and fixtures thereon, leasehold interests, easements, licenses, rights to access, rights-of-way, and other real property interests;
 2. All machinery, equipment, tools, computer hardware and software, vehicles, furniture, leasehold improvements, office equipment, plant inventory, spare parts, supplies (including office and reconditioning supplies) and other tangible personal property;
 3. All contracts, agreements, options, leases, commitments, and undertakings, written and oral, and other similar rights and interests;

Decision and Order

4. All rights, titles and interest in and to all licenses and other governmental permits and authorizations;
 5. All accounts receivable, pre-paid expenses, deposits (other than bank deposits), machinery and equipment warranties, customer lists, files and records; and
 6. Goodwill and going concern value.
- K. **Acquisition@** means the proposed acquisition by Manheim of ADT as described in the January 13, 2000, Stock Purchase Agreement between Manheim and ADT General Holdings, Inc.
- L. **Key Employees@** means those individuals employed by Respondents whose principal work relates to any Asset To Be Divested and who hold one of the following positions or perform the duties generally performed by persons with the following titles: (a) General Manager, (b) Assistant General Manager, (c) Fleet/Lease Manager, (d) General Sales Manager, (e) Operations Manager, (f) Controller, and (g) Factory Manager.
- M. **Divestiture Agreement@** means the Asset Purchase Agreement dated July 28, 2000, by and between Manheim and ADESA.
- N. "Third Party Consents" means all consents, waivers and approvals from any person, private or public, that are necessary to effect the complete transfer to ADESA or to the Acquirer(s), as applicable, of the Assets To Be Divested pursuant to this Order.

II.

IT IS FURTHER ORDERED that:

Decision and Order

- A. Respondents shall divest the Assets To Be Divested to ADESA pursuant to and in accordance with the Divestiture Agreement (which agreement shall not vary from or contradict or be construed to vary from or contradict the terms of this Order). The divestiture shall be made no later than three (3) months after Respondent Manheim consummates the Acquisition. Failure to comply with the Divestiture Agreement shall constitute a failure to comply with this Order. PROVIDED, HOWEVER, that if Respondents have divested the Assets To Be Divested to ADESA prior to the date the Order becomes final, and if, at the time the Commission determines to make the Order final, the Commission notifies Respondents that ADESA is not an acceptable acquirer or that the Divestiture Agreement is not an acceptable manner of divestiture, then Respondents shall immediately rescind the transaction with ADESA and shall divest the Assets To Be Divested within six (6) months of the date the Order becomes final. Respondents shall divest the Assets To Be Divested only to an Acquirer(s) that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- B. Respondents shall obtain all material Third Party Consents prior to the closing of the divestitures required by Paragraph II.A.
- C. The purpose of the divestitures of the Assets To Be Divested is to ensure the continued use of the assets in the same businesses in which they were engaged at the time of the announcement of the proposed Acquisition and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

III.

IT IS FURTHER ORDERED that:

Decision and Order

- A. From the date Respondents sign the Consent Agreement until the divestiture is completed pursuant to the terms of this Order, Respondents shall take, or cause to be taken, reasonable steps, including implementing appropriate incentive plans (such as vesting or crediting of all current and accrued benefits and pensions to which Key Employees are entitled) and paying bonuses, to cause Key Employees to accept offers of employment from ADESA or the Acquirer(s), as applicable.
- B. For a period of one year following the divestiture of the Assets To Be Divested, Manheim shall not, directly or indirectly, solicit or otherwise attempt to induce any Key Employees of the ADT Auctions to terminate their employment relationship with ADESA or other Acquirer(s); *provided, however*, it shall not be deemed to be a violation of this provision if (i) Manheim advertises for employment opportunities in newspapers, trade publications or other media not targeted specifically at the Key Employees, or (ii) Manheim hires Key Employees who apply for employment with Manheim, as long as such Key Employees were not solicited by Manheim in violation of this Paragraph III. B. During the one-year period following the divestiture of the Assets To Be Divested pursuant to the Divestiture Agreement, Manheim shall not, directly or indirectly, hire or enter into any arrangement for the services of any Key Employees employed by Southwest Auto Auctions on the date hereof; *provided, however*, that Manheim shall not be prohibited from hiring, during that one-year period, any Key Employees of Southwest Auto Auctions who are terminated by ADESA or other Acquirer or who move out of the state of Arizona for reasons unrelated to their employment.

IV.

IT IS FURTHER ORDERED that Respondents shall maintain the viability, marketability, and competitiveness of the Assets To Be Divested, and shall not cause the wasting or deterioration of the Assets To Be Divested, nor shall they cause

Decision and Order

the Assets To Be Divested to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber or otherwise impair the viability, marketability or competitiveness of the Assets To Be Divested. Respondents shall comply with the terms of this Paragraph until such time as Respondents have divested the Assets To Be Divested pursuant to the terms of this Order. Respondents shall conduct or cause to be conducted the business of the Assets To Be Divested in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance efforts) and shall preserve the existing relationships with suppliers, customers, employees, and others having business relations with the Assets To Be Divested in the ordinary course of business and in accordance with past practice. Respondents shall not terminate the operation of any Asset To Be Divested. Respondents shall continue to maintain the inventory of each Asset To Be Divested at levels and selections consistent with those maintained by Manheim or ADT at such Auction in the ordinary course of business consistent with past practice. Respondents shall keep the organization and properties of each Asset To Be Divested intact, including current business operations, physical facilities, working conditions, and a work force of equivalent size, training, and expertise associated with the Auction. Included in the above obligations, Respondents shall, without limitation:

- A. Maintain operations and departments and neither reduce hours nor change the schedule of auctions at each Asset To Be Divested;
- B. Not transfer inventory from any Asset To Be Divested other than in the ordinary course of business consistent with past practice;
- C. Make any payment required to be paid under any contract or lease when due, and otherwise pay all liabilities and satisfy all obligations associated with any Asset To Be Divested, in each case in a manner consistent with past practice;

Decision and Order

D. Maintain the books and records of each Asset To Be Divested;

Decision and Order

- E. Not display any signs or conduct any advertising that indicates that any Respondent is moving its operations from an Asset To Be Divested to another location, or that indicates an Asset To Be Divested will close or will be owned by another entity; and
- F. Not change or modify in any material respect the existing advertising practices, programs and policies for any Asset To Be Divested, other than changes in the ordinary course of business consistent with past practice for Auctions of Manheim and ADT not being closed or relocated.

V.**IT IS FURTHER ORDERED** that:

- A. If Respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the Assets To Be Divested within the time required by Paragraph II of this Order, the Commission may appoint a trustee to divest the Assets To Be Divested.
- B. In the event that the Commission brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. ' 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission 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.

Decision and Order

- C. If a trustee is appointed by the Commission or a court pursuant to Paragraph V.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 receipt of 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 Assets To Be Divested.
 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 each divestiture required by this Order.
 4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in Paragraph V.C.3. to accomplish the divestitures, 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 the period for no more than two (2) additional periods.

Decision and Order

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. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. 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 expeditiously at no minimum price. The divestitures shall be made in a manner that receives the prior approval of the Commission and to Acquirer(s) that receive the prior approval of the Commission; *provided, however*, if the trustee receives bona fide offers for an Asset To Be Divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such asset to the acquiring entity or entities selected by Respondents from among those approved by the Commission; provided further, however, that Respondents shall select such entity within five (5) 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,

Decision and Order

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 divestitures 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 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 Assets To Be Divested.

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 losses, claims, damages, liabilities, 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 V.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 each divestiture required by this Order.
11. In the event that the trustee determines that he or she is unable to divest the Assets To Be Divested in a manner consistent with the Commission's purpose as described in Paragraph II, the trustee may divest assets similar and

Decision and Order

corresponding to the Assets To Be Divested of Respondents as necessary to achieve the remedial purposes of this Order.

12. The trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.
13. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish each divestiture required by this Order.

VI.

IT IS FURTHER ORDERED that, for a period commencing on the date this Order becomes final and continuing for ten (10) years, Respondents shall not, without providing advance written notification to the Commission, acquire, directly or indirectly, through subsidiaries or otherwise, any ownership, leasehold, or other interest, in whole or in part, in any facility that has operated as an Auction, within six (6) months of the date of such proposed acquisition, in the relevant sections of the country stated in the Complaint.

Said notification 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 *Athe 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 Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the

Decision and Order

Afirst 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 C.F.R. ' 803.20), Respondents shall not consummate the transaction until twenty (20) 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.

VII.**IT IS FURTHER ORDERED** that:

- A. 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 through V 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 through V 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 through V of the Order, including a description of all substantive contacts or negotiations relating to the divestitures and the approvals. Respondents shall include in their compliance reports copies, other than of privileged materials, of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestitures and approvals. The final compliance report required by this Paragraph VII.A. shall include a statement that the divestitures have been accomplished in the manner approved by the Commission and shall include the dates the divestitures were accomplished.

Decision and Order

- B. One (1) year 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, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

VIII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the Respondents that may affect compliance obligations arising out of this 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.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, Respondents 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 non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matter contained in this Order; and
- B. Upon five (5) days= notice to Respondents and without restraint or interference from them, to interview officers,

Analysis to Aid Public Comment

directors, or employees of Respondents, who may have counsel present, regarding any such matters.

X.

IT IS FURTHERED ORDERED that this Order shall terminate:

- A. With respect to Respondents Manheim and Cox, on November 13, 2010.
- B. With respect to Respondents ADT and Tyco, when the transfer of the Assets To Be Divested to Respondent Manheim has been completed pursuant to the Acquisition.

By the Commission.

**Analysis of the Complaint and Proposed Consent Order to
Aid Public Comment**

I. Introduction

The Federal Trade Commission (“Commission”) has accepted for public comment an Agreement Containing Consent Order (“proposed order”) with Manheim Auctions, Inc. (“Manheim”), Tyco International, Ltd. (“Tyco”), ADT Automotive Holdings, Inc. (“ADT”), and Cox Enterprises, Inc. (“Cox”) (collectively “Proposed Respondents”). The proposed order seeks to remedy the anticompetitive effects of Manheim’s proposed acquisition of ADT’s wholesale motor vehicle auctions by requiring Manheim to divest eight of the acquired ADT auctions in locations where Manheim already owns auctions and its ownership of these acquired auctions would likely injure competition. Moreover, the proposed order seeks to remedy the anticompetitive effects of Manheim’s 1996 acquisition of an auction in the Phoenix,

Analysis to Aid Public Comment

Arizona area by requiring Manheim to divest one of its Phoenix-area auctions.

II. Description of the Parties and the Proposed Acquisition

Manheim, a Delaware corporation, is a wholly-owned subsidiary of Cox and is the largest auto auction company in the United States. Manheim operates 65 auctions nationwide and reported sales of 4.1 million vehicles in 1999. Manheim has acquired 55 auctions in the last 10 years. ADT, a Delaware corporation, is a wholly owned subsidiary of Tyco and is the third-largest auction company in the United States. ADT operates 28 auctions nationwide and reported sales of 1.3 million automobiles in 1999.

By the terms of a Stock Purchase Agreement dated January 13, 2000, Manheim will acquire all of ADT's outstanding voting stock for approximately \$1 billion.

In a separate transaction that occurred in 1996, Manheim acquired JM Family Enterprises, Inc., its sole competitor in the provision of wholesale motor vehicle auction services in the greater metropolitan area of Phoenix, Arizona.

III. The Proposed Complaint

The proposed complaint alleges that the relevant line of commerce (i.e., the product market) in which to analyze this transaction is the provision of wholesale motor vehicle auction services ("WMVA services") by major vehicle auctioneers. These services include marshaling motor vehicles before auctions, preparing condition reports, reconditioning the motor vehicles, promoting and marketing auctions to potential buyers, auctioning motor vehicles, and reporting the results of those auctions.

Major wholesale auctions serve automakers and large institutional lessors that sell large quantities of used motor

Analysis to Aid Public Comment

vehicles. They are equipped with advanced computer systems and technology that allow them to deal with larger customers than the smaller wholesale auto auctions can handle. Moreover, this technological sophistication and the resulting benefits and services simultaneously attract a large number of buyers and sellers to each auction. These attributes distinguish major wholesale auction services from the broader market, which consists of services provided by small, independent wholesale auctions that serve regional customers. Typically, major wholesale auctions serve a trade area consisting of a large city and the surrounding metropolitan area.

The proposed complaint further alleges that Manheim's proposed acquisition of ADT, if consummated, may substantially lessen competition 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 trade areas (i.e., the geographic markets): (a) the greater metropolitan area of Kansas City, Missouri; (b) the Colorado Front Range, which includes the greater metropolitan areas of Denver and Colorado Springs; (c) the greater metropolitan area of Atlanta, Georgia; (d) the greater metropolitan area of San Francisco, California; (e) the greater metropolitan area of Seattle, Washington; and (f) the I-4 Corridor of Florida, which includes the greater metropolitan areas of Tampa, Orlando, and Daytona Beach. The acquisition would substantially increase concentration and create a monopoly in the provision of WMVA services, as evidenced by post-acquisition Herfindahl-Hirschman Indices ("HHIs") of 10,000 in each of these geographic markets. After the proposed acquisition, Manheim would have the ability to unilaterally increase prices charged for WMVA services and to substantially decrease the quality and range of services offered to auction customers in these areas.

The proposed complaint also alleges that in 1996 Manheim acquired JM Family Enterprises, Inc., its sole competitor in the provision of WMVA services in the greater Phoenix, Arizona area. The effect of that acquisition, which also resulted in an HHI of 10,000, may have been to substantially lessen competition and

Analysis to Aid Public Comment

create a monopoly in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. Manheim may have both unilaterally increased prices charged for WMVA services and reduced the quality and range of services offered to auction customers in the greater Phoenix area.

The proposed complaint further alleges that new entry into the relevant geographic markets will not be likely, timely or sufficient to prevent or counteract these anticompetitive effects. Building an auction requires substantial amounts of capital and entails significant assumption of risk. Other companies have recently required more than two years to complete construction of major auctions. Moreover, even if built, a competing auction would not likely provide significant competition to an existing firm. Because of the large capital investment required, major auctions must sell a high volume of motor vehicles to be profitable, while sellers are reluctant to use the services of an auction that does not have an existing base of strong buyers and buyers are reluctant to attend an auction that does not have a significant number of participating sellers. Consequently, existing auctions possess a considerable first-mover advantage over new entrants. Thus, even if a competitor entered the market, it might not attract enough business to restore competition. In the Phoenix area, no new competitors have entered since 1996.

IV. Terms of the Agreement Containing Consent Order

The proposed order is designed to remedy the alleged anticompetitive effects of the proposed acquisition. Under the terms of the proposed order, the Proposed Respondents must divest to ADESA eight of the acquired ADT auctions and one Manheim auction that currently operate in the geographic markets described above.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that

Analysis to Aid Public Comment

existed prior to the acquisition. A proposed buyer of divested assets must not itself present competitive problems.

The Commission is satisfied that ADESA is a well-qualified acquirer of the divested assets. Based in Indianapolis, Indiana, ADESA is a large chain with 30 auction sites throughout the United States. ADESA possesses the necessary industry expertise to replace the competition that existed prior to the proposed acquisition in the divestiture markets. Furthermore, ADESA poses no separate competitive issues as the acquirer of the divested assets.

The proposed order requires that Proposed Respondents divest the nine auctions to ADESA, in accordance with an agreement between Manheim and ADESA, within 3 months after Manheim acquires ADT. If, at the time the Commission decides to make the proposed order final, the Commission notifies the Proposed Respondents that ADESA is not an acceptable acquirer, or that the agreement with ADESA is not an acceptable manner of divestiture, then Proposed Respondents must immediately rescind the transaction and divest the auction, within 6 months after the proposed order becomes final, to an acquirer approved by the Commission.

The proposed order also includes a provision requiring Proposed Respondents to use their best efforts to maintain the auctions as they would in the ordinary course of business until the divestiture occurs. Moreover, the proposed order prohibits Proposed Respondents from soliciting and hiring employees away from the divested auctions for a period of one year after the divestitures occur.

Additionally, for a period of 10 years after the proposed order becomes final, Proposed Respondents must provide written notice to the Commission prior to acquiring any interest in any wholesale auction facility. Furthermore, Proposed Respondents must provide the Commission with a report of compliance with the proposed order within 30 days after the proposed order becomes final and every 30 days thereafter until they have

Analysis to Aid Public Comment

complied with their divestiture obligations. Respondents are also required to provide annual reports during the term of the proposed order. For Manheim and Cox, the term of the proposed order is 10 years; for ADT and Tyco, the term ends when the eight ADT auctions are transferred to Manheim.

In the event that Proposed Respondents fail to divest the required auctions within the time allotted, the proposed order enables the Commission to appoint a trustee to divest any assets necessary to satisfy the requirements of the proposed order. Appointment of a trustee is in addition to civil penalties and other relief available from Proposed Respondents for non-compliance with any provision of the proposed order.

V. Opportunity for Public Comment

The proposed order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty 30 days, the Commission will again review the proposed order and the comments received and will decide whether it should withdraw from the proposed order or make it final. By accepting the proposed order subject to final approval, the Commission anticipates that the competitive problems alleged in the proposed complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed order, including the proposed divestitures, to aid the Commission in its determination of whether to make the proposed order final. This analysis is not intended to constitute an official interpretation of the proposed order, nor is it intended to modify the terms of the proposed order in any way.

Complaint

IN THE MATTER OF

AGRIUM, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT*Docket C-3981; File No. 0010100**Complaint, November 13, 2000--Decision, November 13, 2000*

This consent order addresses the acquisition by Agrium of the nitrogen fertilizer business of Unocal Corporation. The complaint alleges that the proposed acquisition would substantially lessen competition in the markets for urea, ammonia, and UAN 32% in the Northwest United States. The order would require Agrium to divest Unocal's deepwater terminal at Rivergate, part of its upriver terminal at Hedges and the leases on three UAN terminals to J.R. Simplot Company. The order also requires Agrium to provide a long term lease on ammonia storage at Hedges and perpetual access to the Hedges dock, roadway, railspur and weight scales.

Participants

For the Commission: *John B. Kirkwood, K. Shane Woods, Patricia A. Hensley, Joe Lipinsky, Michael Lewkonja, Nathan Rush, Virginia A. Davidson, Robert J. Schroeder, Daniel P. Ducore, James M. Ferguson, and Louis Silvia.*

For the Respondents: *William Blumenthal, King & Spalding and John Collins, Dewy Ballantine.*

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 (ACommission@) having reason to believe that Respondents Agrium Inc. (AAgrium@), and Union Oil Company of California and Unocal Corporation (AUnocal@), have entered into an agreement whereby Agrium would acquire certain assets owned by Unocal 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 (AFTC