

IN THE MATTER OF

NIPPON SHEET GLASS COMPANY, LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3298. Complaint, July 26, 1990—Decision, July 26, 1990

This consent order requires, among other things, the float glass manufacturers to repeal the challenged portion of the Float Glass Capacity Agreement. In addition, the consent agreement prohibits respondents from entering into any agreement which has the purpose or effect of restraining competition by either limiting float glass manufacturing capacity in North America or restricting imports to North America.

Appearances

For the Commission: *Robert W. Doyle, Jr.* and *James C. Egan, Jr.*

For the respondents: *Robert S. Scholsberg* and *Caswell O. Hobbs, III, Morgan, Lewis & Bockius*, Washington, D.C. and *Bruce D. Sokler, Mintz, Levin, Cohn, Ferris, Glovsky & Popep*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that respondent Nippon Sheet Glass Company, Ltd. ("Nippon") and its subsidiary, respondent NSG Holding USA, Inc. ("NSG-USA"), corporations subject to the jurisdiction of the Commission, have pursuant to a Common Stock Purchase Agreement ("Purchase Agreement"), offered to purchase approximately 20% of the stock or voting securities of respondent Libbey-Owens-Ford Co., ("LOF"), a subsidiary of respondent Pilkington plc ("Pilkington") and said Purchase Agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

I. DEFINITIONS

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

a. "*Nippon*" means respondent Nippon Sheet Glass Company, Ltd., as well as its officers, employees, agents, divisions, subsidiaries (including but not limited to NSG-USA), successors, assigns, and the officers, employees, or agents of Nippon's divisions, subsidiaries, successors and assigns.

b. "*NSG-USA*" means respondent NSG Holding USA, Inc., a wholly owned subsidiary of Nippon, as well as its officers, employees, agents, divisions, subsidiaries, successors, assigns, and the officers, employees, or agents of NSG-USA's divisions, subsidiaries, successors and assigns.

c. "*Pilkington*" means respondent Pilkington plc, as well as its officers, employees, agents, divisions, subsidiaries (including but not limited to LOF), successors, assigns, and the officers, employees or agents of Pilkington's divisions, subsidiaries, successors and assigns.

d. "*LOF*" means respondent Libbey-Owens-Ford Co., a wholly owned subsidiary of Pilkington, as well as its officers, employees, agents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of LOF's divisions, subsidiaries, successors and assigns.

e. "*Capacity Agreement*" means the Float Glass Capacity Agreement which is Exhibit E to the Common Stock Purchase Agreement between and among Respondents, dated May 21, 1989.

f. "*Float glass*" means either clear or tinted flat glass manufactured by floating molten glass over a bed of molten material or materials.

II. THE PARTIES

2. Respondent Nippon is a corporation organized, existing, and doing business under and by virtue of the laws of Japan with its principal offices at 5-11, Doshomacho 3-chome, Chuo-Ku, Osaka, Japan.

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

4. Respondent NSG-USA, a wholly owned subsidiary of respondent

Nippon, is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 1209 Orange Street, Wilmington, Delaware.

5. Respondent NSG-USA is, and at all times relevant herein has been, a corporation whose business is affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

6. Respondent Pilkington is a corporation organized, existing, and doing business under and by virtue of the laws of England with its principal offices at Prescott Road, St. Helens, Merseyside, England WA10 3TT.

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

8. Respondent LOF, a wholly owned subsidiary of respondent Pilkington, is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal place of business at 811 Madison Avenue, Toledo, Ohio.

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

III. THE AGREEMENTS

10. Pursuant to a Common Stock Purchase Agreement with respondent Pilkington and respondent LOF dated May 21, 1989, respondent Nippon, through respondent NSG-USA, agreed to purchase approximately 20% of respondent LOF's stock or voting securities.

11. The Capacity Agreement, if enforced, would prohibit both respondent Nippon and respondent Pilkington from building or acquiring capacity for the production or fabrication of float or other flat glass except through respondent LOF for a period of five (5) years.

IV. COMPETITION

12. Respondent Nippon is engaged in the manufacture and sale of float glass. Respondent Pilkington is engaged in the manufacture and sale of float glass. Respondents Nippon and Pilkington are engaged in the sale of float glass in North America.

V. EFFECTS

13. The purpose and effect of the Capacity Agreement, if enforced, may be to unreasonably restrain competition in the manufacture, sale and fabrication of float glass in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

VI. VIOLATIONS CHARGED

14. The Capacity Agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and would, if enforced, constitute an unfair method of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof relating to the proposed acquisition of certain stock or voting securities of Libbey-Owens-Ford Co. ("LOF"), a subsidiary of Pilkington plc ("Pilkington") by NSG Holding USA, Inc. ("NSG-USA"), a subsidiary of Nippon Sheet Glass Company, Ltd. ("Nippon"), pursuant to a Common Stock Purchase Agreement, and respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the 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, 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 Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record

for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, not in further conformity with the procedure prescribed 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 Nippon is a corporation organized, existing and doing business under the laws of Japan, with its office and principal place of business located at 5-11, Doshomacho 3-chome, Chuo-Ku, Osaka, Japan.

2. Respondent NSG-USA, a wholly owned subsidiary of proposed respondent Nippon, is a corporation organized, existing and doing business under the laws of Delaware, with its office and principal place of business located at 1209 Orange Street, Wilmington, Delaware.

3. Respondent Pilkington is a corporation organized, existing and doing business under the laws of England, with its office and principal place of business located at Prescott Road, St. Helens, Merseyside, England WA10 3TT.

4. Respondent LOF, a wholly owned subsidiary of proposed respondent Pilkington, is a corporation organized, existing and doing business under the laws of Delaware, with its office and principal place of business located at 811 Madison Avenue, Toledo, Ohio.

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

ORDER

For the purposes of this order the following definitions shall apply:

1. "*Nippon*" means respondent Nippon Sheet Glass Company, Ltd., as well as its officers, employees, agents, divisions, subsidiaries (including but not limited to NSG-USA), successors, assigns, and the officers, employees, and agents of Nippon's divisions, subsidiaries, successors and assigns.

2. "*NSG-USA*" means respondent NSG Holding USA, Inc., as well as its officers, employees, agents, divisions, subsidiaries, successors, assigns, and the officers, employees, and agents of NSG-USA's divisions, subsidiaries, successors and assigns.

3. "*Pilkington*" means respondent Pilkington plc, as well as its officers, employees, agents, divisions, subsidiaries (including but not limited to LOF), successors, assigns, and the officers, employees and agents of Pilkington's divisions, subsidiaries, successors and assigns.

4. "*LOF*" means respondent Libbey-Owens-Ford Co., as well as its officers, employees, agents, divisions, subsidiaries, successors, assigns, and the officers, employees and agents of LOF's divisions, subsidiaries, successors and assigns.

5. "*Respondents*" means Nippon, NSG-USA, Pilkington, and LOF.

6. "*Float glass*" means either clear or tinted flat glass manufactured by floating molten glass over a bed of molten material or materials.

7. "*Capacity Agreement*" means the Float Glass Capacity Agreement which is Exhibit E to the Common Stock Purchase Agreement between and among respondents, dated May 21, 1989.

8. "*ASEAN Agreement*" means the ASEAN Float License Agreement between Nippon and Pilkington, dated August 8, 1983.

9. "*North America*" means the United States, Canada and Mexico.

I.

It is ordered, That respondent Nippon and respondent Pilkington, directly or indirectly, or through any corporate or other device, in or in connection with the offering for sale, sale or manufacture of float glass in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall cease and desist from entering into, cooperating in or carrying out any agreement, combination, conspiracy, understanding or planned common course of action with each other which has the purpose or effect of:

A. Prohibiting, restricting, or otherwise restraining the building, expanding, acquiring, reducing or otherwise limiting float glass manufacturing capacity in North America, *provided that*, nothing in this order shall be construed to prohibit Nippon and Pilkington in connection with the operation of respondent LOF from jointly making decisions relating to the float glass manufacturing capacity of LOF; or

B. Prohibiting, restricting, or otherwise restraining the importation of float glass to North America, *provided that*, this order shall not be construed to affect the ASEAN Agreement between Nippon and Pilkington.

II.

It is further ordered, That respondents shall abrogate, delete and otherwise cease and desist from enforcing paragraph 2(3) of the Capacity Agreement.

III.

It is further ordered, That respondent Pilkington shall, upon written request of respondent Nippon, license to Nippon technology sufficient to enable Nippon to manufacture and sell float glass in North America and to export such float glass to Japan. Such license shall be on terms and conditions and with the scope at least as favorable to Nippon as those contained in the ASEAN Agreement, *provided that:*

A. (1) Pilkington shall in such new license agreement be entitled to adjust the amount of license payments contained in such new license agreement from those contained in the ASEAN Agreement to account for inflation as measured by the change in the United States Consumer Price Index from August 1983 until the effective date of the new license; (2) Pilkington shall not be obligated to enter into any provision in such new license that conflicts with Article VIII ("Restriction on Manufacture of Subject Products in Mexico") of the Agreement between Pilkington and Fomento de Industria y Comercio S.A., dated March 29, 1965; and (3) Pilkington shall not be obligated in such new license to grant to Nippon geographic rights greater than those sufficient to enable Nippon to manufacture and sell float glass in North America and to export such float glass to Japan;

B. Nothing contained in this order shall be: (1) deemed to immunize or exempt from the antitrust laws or any law enforced by the Commission any licensing practice engaged in by Pilkington; (2) interpreted as prohibiting Pilkington in any respect from licensing its technology in any manner and upon any terms that it chooses, other than as specifically set forth in this order; and (3) interpreted to mean that Nippon is or is not legally obligated to obtain a license from Pilkington prior to building float glass manufacturing capacity in North America.

IV.

It is further ordered, That within thirty (30) days after the date this

order becomes final, and at such other times as the Commission or its staff may require, each respondent shall submit to the Commission a verified report setting forth in detail the manner and form in which it has complied with this order.

V.

It is further ordered, That for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request by the Commission or its staff and on reasonable notice to any respondent made to their principal offices, such respondent shall permit duly authorized representatives of the Commission:

A. Reasonable access during respondent's office hours, in the presence of counsel, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of respondent relating to any matters contained in this order, for inspection and copying; and

B. An opportunity, subject to respondent's reasonable convenience, to interview, in the presence of counsel, officers or employees of respondent regarding such matters.

VI.

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

CONCURRING STATEMENT OF COMMISSIONERS MARY L. AZCUENAGA
AND ANDREW J. STRENIO, JR.

Because there is reason to believe that the collateral agreement that is the subject of the consent order is anticompetitive, we have voted in favor of the order. At the same time, the settlement does not resolve other competitive concerns raised by this acquisition. We also find reason to believe that the acquisition by Nippon Sheet Glass of 20 percent of the voting securities of Libbey-Owens-Ford Co., which

currently is owned by Pilkington plc, was likely substantially to lessen competition in the float glass market. Accordingly, a Commission challenge to the acquisition—and not just to the collateral agreement—also would have been in the public interest. The public comment provides no basis for deciding that these conclusions are incorrect.

IN THE MATTER OF
BELLINGHAM-WHATCOM COUNTY
MULTIPLE LISTING BUREAU

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3299. Complaint, Aug. 2, 1990—Decision, Aug. 2, 1990

This consent order prohibits, among other things, a Washington state multiple listing service from refusing to publish exclusive agency or conditional listings or listings containing reserve clauses; from restricting the solicitation of homeowners with current listings for future business; and from suggesting or fixing any commission split or other fees between any listing broker and any selling broker. In addition, the order requires respondent to distribute a statement describing the provisions of the order to all its members.

Appearances

For the Commission: *Randall H. Brook.*

For the respondent: *Stephen C. Watson, Seattle WA.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent Bellingham-Whatcom County Multiple Listing Bureau ("BWCMLB"), a corporation, has violated and is violating Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. As used in this complaint:

(1) "*Multiple listing service*" shall mean a clearinghouse through which member real estate brokerage firms regularly exchange information on listings of real estate properties and share commissions with other members.

(2) "*Listing agreement*" shall mean any agreement between a real

estate broker and a property owner for the provision of real estate brokerage services.

(3) "*Listing broker*" shall mean any broker who lists a real estate property with a multiple listing service pursuant to a listing agreement with the property owner.

(4) "*Selling broker*" shall mean any broker, other than the listing broker, who locates the purchaser for a listed property.

(5) "*Exclusive agency listing*" shall mean any listing under which a property owner appoints a broker as exclusive agent for the sale of the property at an agreed commission, but reserves the right to sell the property personally to a direct buyer (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission owed to the agent broker.

(6) "*Exclusive right to sell listing*" shall mean any listing under which a property owner appoints a broker as exclusive agent for the sale of the property, and agrees to pay the broker an agreed commission if the property is sold, whether the purchaser is located by the broker or any other person, including the owner.

(7) "*Reserve clause listing*" shall mean any exclusive right to sell listing that includes a provision reserving the property owner's right to sell the property to one or more persons individually named in the listing agreement without owing a full commission to the broker.

(8) "*Conditional listing*" shall mean any exclusive agency or exclusive right to sell listing that makes sale of the property conditional on the purchase or sale of other property.

PAR. 2. BWCMLB is a Washington corporation with its office and principal place of business at 1801 "F" Street, Bellingham, Washington.

PAR. 3. BWCMLB is and has been at all times relevant to this complaint a corporation organized for the profit of its members within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 4. In the course and conduct of their businesses, and through the policies, acts, and practices described below, BWCMLB and its members are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. BWCMLB is, and for some time has been, providing a multiple listing service for member real estate brokerage firms. BWCMLB maintains a computerized database of residential real estate available for sale in the Bellingham, Washington area and its

surroundings (BWCMLB's "service area"). It distributes the information to its members through online terminals and frequent publication of books containing property listings.

PAR. 6. BWCMLB's member firms are owned and operated by real estate brokers who, for a commission, provide the service of bringing together buyers and sellers of residential real estate as well as other services designed to facilitate sales of these properties. Each BWCMLB member agrees to submit all of its exclusive right to sell listings for residential real estate located within BWCMLB's service area for publication to the entire membership of the multiple listing service, and to share commissions with those member firms that successfully locate purchasers for properties it has listed. Only members may participate in the multiple listing service.

PAR. 7. Membership in BWCMLB's multiple listing service provides valuable competitive advantages in the brokering of residential real estate sales in BWCMLB's service area. Membership significantly increases the opportunities for brokerage firms to enter into listing agreements with residential property owners, and significantly reduces the costs of obtaining current and comprehensive information on listings and sales.

PAR. 8. Publication of listings through BWCMLB's multiple listing service generally is considered by sellers and their brokers to be the fastest and most effective means of obtaining the broadest market exposure for residential property in BWCMLB's service area.

PAR. 9. BWCMLB is the sole multiple listing service in the Bellingham, Washington area. The vast majority of brokers that deal in residential real estate in this area are members of BWCMLB. The vast majority of broker-assisted sales of residential real estate in this area go through BWCMLB. Sales of residential real estate listings published by BWCMLB totaled about \$88 million in 1986.

PAR. 10. Except to the extent that competition has been restrained as described herein, BWCMLB members are and have been in competition among themselves in the provision of residential real estate brokerage services within BWCMLB's service area.

PAR. 11. In adopting the policies and engaging in the practices described in paragraphs twelve through sixteen below, BWCMLB has been and is acting as a combination of its members, or in conspiracy with some of its members, to restrain trade in the provision of residential real estate brokerage services within BWCMLB's service area.

PAR. 12. BWCMLB has been and is now refusing to publish any exclusive agency listing through its multiple listing service.

PAR. 13. BWCMLB has been and is now refusing to publish any reserve clause listing through its multiple listing service.

PAR. 14. BWCMLB has been and is now refusing to publish any conditional listing through its multiple listing service.

PAR. 15. BWCMLB has enacted a rule prohibiting any member other than the listing broker from soliciting the listing of any property, the listing of which is filed with the multiple listing service, until the filed listing has expired.

PAR. 16. BWCMLB has enacted a rule providing that the listing broker receive 40% and the selling broker receive 60% of the commission due on the sale of residential real estate subject to an exclusive right to sell listing in the event that the listing broker fails to specify a selling broker's share on the listing form submitted to BWCMLB.

PAR. 17. The purpose, capacity, tendency, or effect of the combination or conspiracy described in paragraphs twelve through sixteen has been, and continues to be, to restrain competition among brokers and to injure consumers by, *inter alia*:

(a) Preventing brokers from accepting certain contractual terms, such as terms that allow the property owner to pay a reduced commission or no commission if the owner sells the property other than through the broker, thereby restraining competition among brokers based on their willingness to offer or accept different contract terms that may be attractive and beneficial to consumers;

(b) Restricting brokers from competing with the listing broker and with each other to obtain renewal of listings of properties, thereby depriving owners of property of information and the advantage of price and service competition that would otherwise be offered; and

(c) Restraining competition among brokers based on their willingness to offer or accept varying commission splits, thereby depriving consumers of the advantages of competition with regard to such splits.

PAR. 18. The policies, acts, practices, and combinations or conspiracies described in paragraphs eleven through sixteen above constitute unfair methods of competition or unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The alleged conduct, or the effects thereof, are continuing and will continue or recur in the absence of the relief requested.

Commissioner Azcuenaga dissenting with respect to paragraph 16 of the complaint and paragraph I.C of the order.

DECISION AND ORDER

The Federal Trade Commission has initiated an investigation of certain acts and practices of Bellingham-Whatcom County Multiple Listing Bureau ("BWCMLB"). BWCMLB has been furnished with a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge BWCMLB with violation of the Federal Trade Commission Act.

BWCMLB, its attorney, and counsel for the Commission have executed an agreement containing a consent order, an admission by BWCMLB of all the jurisdictional facts set forth in the draft of complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by BWCMLB that the law has been violated as alleged in the complaint, and waivers and other provisions as required by the Commission's Rules.

The Commission having thereafter considered the matter and having determined that it had reason to believe that BWCMLB has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having accepted the executed consent agreement and placed that agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission issues its complaint, makes the following jurisdictional findings, and enters the following order:

(1) Respondent BWCMLB is a Washington corporation with its office and principal place of business at 1801 "F" Street, Bellingham, Washington.

(2) The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

The following definitions shall apply to this order:

(1) "*Multiple listing service*" shall mean a clearinghouse through which member real estate brokerage firms regularly exchange information on listings of real estate properties and share commissions with other members.

(2) "*Listing agreement*" shall mean any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

(3) "*Listing broker*" shall mean any broker who lists a real estate property with a multiple listing service pursuant to a listing agreement with the property owner.

(4) "*Selling broker*" shall mean any broker, other than the listing broker, who locates the purchaser for a listed property.

(5) "*Exclusive agency listing*" shall mean any listing under which a property owner appoints a broker as exclusive agent for the sale of the property at an agreed commission, but reserves the right to sell the property personally to a direct buyer (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission owed to the agent broker.

(6) "*Reserve clause listing*" shall mean any listing that includes a provision reserving the property owner's right to sell the property to one or more persons individually named in the listing agreement without owing a full commission to the broker.

(7) "*Conditional listing*" shall mean any exclusive agency or exclusive right to sell listing that makes sale of the property conditional on the purchase or sale of other property.

(8) "*BWCMLB*" shall mean Bellingham-Whatcom County Multiple Listing Bureau and its successors, assigns, directors, officers, committees, agents, representatives, members, and employees.

I.

It is ordered, That respondent BWCMLB, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with the operation of a multiple listing service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Restricting or interfering with:

1. The publication on BWCMLB's multiple listing service of any exclusive agency listing of a member; or

2. The publication on BWCMLB's multiple listing service of any reserve clause listing or conditional listing of a member.

B. Adopting or maintaining any policy, or taking any other action that has the purpose, tendency, or effect of restricting or interfering with the solicitation of a listing agreement for any property.

Provided, however, that nothing contained in this subpart shall prohibit BWCMLB from adopting or enforcing any reasonable and nondiscriminatory policy that prohibits any member from using information provided to it by BWCMLB that pertains to a specific listed property in the solicitation of a listing agreement for that property. Such reasonable and nondiscriminatory policy may include adoption of a rebuttable presumption that any member soliciting sellers for listings then listed with BWCMLB by another member used information provided to it by BWCMLB in the solicitation, as long as the soliciting member may fully rebut the presumption by providing a declaration under oath or other evidence that the solicitation was based upon information obtained from sources other than BWCMLB.

C. Suggesting or fixing any rate, range, or amount of any division or split of commission or other fees between any selling broker and any listing broker.

II.

It is further ordered, That BWCMLB shall:

A. Within thirty (30) days after this order becomes final, furnish an announcement in the form shown in Appendix A to each member of BWCMLB.

B. Within sixty (60) days after this order becomes final, amend its bylaws, rules and regulations, and all other of its materials to conform to the provisions of this order, and provide each member with a copy of the amended bylaws, rules and regulations, and other amended materials.

C. For a period of three (3) years after this order becomes final, furnish an announcement in the form shown in Appendix A to each new member of BWCMLB within thirty (30) days of the new member's admission.

III.

It is further ordered, That BWCMLB shall:

A. Within ninety (90) days after this order becomes final, submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which BWCMLB has complied and is complying with this order.

B. In addition to the report required by paragraph III(A), annually for a period of three (3) years on or before the anniversary date on which this order becomes final, and at such other times as the Federal Trade Commission or its staff may by written notice to BWCMLB require, file a verified written report with the Federal Trade Commission setting forth in detail the manner and form in which BWCMLB has complied and is complying with this order.

C. For a period of five (5) years after this order becomes final, maintain and make available to the Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which BWCMLB has complied with this order.

D. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in BWCMLB, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in BWCMLB that may affect compliance obligations arising out of this order.

Commissioner Azcuenaga dissenting with respect to paragraph 16 of the complaint and paragraph I.C of the order.

APPENDIX A

[BWCMLB's Regular Letterhead]

As you may be aware, the Federal Trade Commission has entered into consent decrees with several multiple listing services in order to halt certain multiple listing service practices that have been alleged to be unlawful restraints of trade. To avoid litigation, Bellingham-Whatcom County Multiple Listing Bureau ("BWCMLB") has entered into such a consent agreement. The agreement is not an admission that BWCMLB or any of its members has violated any law. For your information, BWCMLB is prohibited from the following practices:

A. Restricting or interfering with:

1. the publication on BWCMLB's multiple listing service of any exclusive agency listing of a member; or

2. the publication on BWCMLB's multiple listing service of any reserve clause listing or conditional listing of a member.

B. Adopting or maintaining any policy, or taking any other action that has the purpose, tendency, or effect of restricting or interfering with the solicitation of a listing agreement for any property.

Provided, however, that nothing contained in this subpart shall prohibit BWCMLB from adopting or enforcing any reasonable and nondiscriminatory policy that prohibits any member from using information provided to it by BWCMLB that pertains to a specific listed property in the solicitation of a listing agreement for that property. Such reasonable and nondiscriminatory policy may include adoption of a rebuttable presumption that any member soliciting sellers for listings then listed with BWCMLB by another member used information provided to it by BWCMLB in the solicitation, as long as the soliciting member may fully rebut the presumption by providing a declaration under oath or other evidence that the solicitation was based upon information obtained from sources other than BWCMLB.

C. Suggesting or fixing any rate, range, or amount of any division or split of commission or other fees between any selling broker and any listing broker.

SEPARATE STATEMENT OF COMMISSIONER MARY L. AZCUENAGA,
CONCURRING IN PART AND DISSENTING IN PART

Although I have voted to accept the consent orders in *Bellingham-Whatcom County* and *Puget Sound Multiple Listing Association*, I have dissented from a paragraph in each complaint and the corresponding relief, because I have not found reason to believe that the rule concerning default commission splits is unlawful. The default split rule specifies how the commission shall be split between the listing and selling brokers but applies only if the listing broker fails to specify the split on the property listing form submitted to the multiple listing service. The rule does not affect the level of commissions (price), it does not mandate the division of commissions and it applies only in those apparently rare situations in which the listing broker fails to specify a split. I find it difficult to imagine how the rule could be anticompetitive, and, at the margin, the rule may speed the process of listing properties with the service and may reduce subsequent transaction costs.

IN THE MATTER OF
PUGET SOUND MULTIPLE LISTING ASSOCIATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3300. Complaint, Aug. 2, 1990—Decision, Aug. 2, 1990

This consent order prohibits, among other things, a Washington state multiple listing service from refusing to publish exclusive agency or listings containing reserve clauses; from restricting the solicitation of homeowners with current listings for future business; and from suggesting or fixing any commission split or other fees between any listing broker and any selling broker. In addition, the order requires respondent to distribute a statement describing the provisions of the order to all its members.

Appearances

For the Commission: *Randall H. Brook.*

For the respondent: *Stephen C. Watson, Seattle WA.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent Puget Sound Multiple Listing Association ("PSMLA"), a corporation, has violated and is violating Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. As used in this complaint:

(1) "*Multiple listing service*" shall mean a clearinghouse through which member real estate brokerage firms regularly exchange information on listings of real estate properties and share commissions with other members.

(2) "*Listing agreement*" shall mean any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

(3) "*Listing broker*" shall mean any broker who lists a real estate

property with a multiple listing service pursuant to a listing agreement with the property owner.

(4) "*Selling broker*" shall mean any broker, other than the listing broker, who locates the purchaser for a listed property.

(5) "*Exclusive agency listing*" shall mean any listing under which a property owner appoints a broker as exclusive agent for the sale of the property at an agreed commission, but reserves the right to sell the property personally to a direct buyer (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission owed to the agent broker.

(6) "*Exclusive right to sell listing*" shall mean any listing under which a property owner appoints a broker as exclusive agent for the sale of the property, and agrees to pay the broker an agreed commission if the property is sold, whether the purchaser is located by the broker or any other person, including the owner.

(7) "*Reserve clause listing*" shall mean any exclusive right to sell listing that includes a provision reserving the property owner's right to sell the property to one or more persons individually named in the listing agreement without owing a full commission to the broker.

PAR. 2. PSMLA is a Washington corporation with its office and principal place of business at 11961 124th Avenue N.E., Kirkland, Washington.

PAR. 3. PSMLA is and has been at all times relevant to this complaint a corporation organized for the profit of its members within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 4. In the course and conduct of their businesses, and through the policies, acts, and practices described below, PSMLA and its members are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. PSMLA is, and for some time has been, providing a multiple listing service for member real estate brokerage firms. PSMLA maintains a computerized database of residential real estate available for sale in the Seattle metropolitan area and its surroundings (PSMLA's "service area"). It distributes the information to its members through online terminals and frequent publication of books containing property listings.

PAR. 6. PSMLA's member firms are owned and operated by real estate brokers who, for a commission, provide the service of bringing together buyers and sellers of residential real estate as well as other

services designed to facilitate sales of these properties. Each PSMLA member agrees to submit all of its exclusive right to sell listings for residential real estate located within PSMLA's service area for publication to the entire membership of the multiple listing service, and to share commissions with those member firms that successfully locate purchasers for properties it has listed. Only members may participate in the multiple listing service.

PAR. 7. Membership in PSMLA's multiple listing service provides valuable competitive advantages in the brokering of residential real estate sales in PSMLA's service area. Membership significantly increases the opportunities for brokerage firms to enter into listing agreements with residential property owners, and significantly reduces the costs of obtaining current and comprehensive information on listings and sales.

PAR. 8. Publication of listings through PSMLA's multiple listing service generally is considered by sellers and their brokers to be the fastest and most effective means of obtaining the broadest market exposure for residential property in PSMLA's service area.

PAR. 9. PSMLA is the sole multiple listing service in the Seattle metropolitan area. The vast majority of brokers that deal in residential real estate in this area are members of PSMLA. The vast majority of broker-assisted sales of residential real estate in this area go through PSMLA. Sales of residential real estate listings published by PSMLA totaled about \$2.8 billion in 1986.

PAR. 10. Except to the extent that competition has been restrained as described herein, PSMLA members are and have been in competition among themselves in the provision of residential real estate brokerage services within PSMLA's service area.

PAR. 11. In adopting the policies and engaging in the practices described in paragraphs twelve through fifteen below, PSMLA has been and is acting as a combination of its members, or in conspiracy with some of its members, to restrain trade in the provision of residential real estate brokerage services within PSMLA's service area.

PAR. 12. PSMLA has been and is now refusing to publish any exclusive agency listing through its multiple listing service.

PAR. 13. PSMLA has been and is now refusing to publish any reserve clause listing through its multiple listing service.

PAR. 14. PSMLA has enacted a rule prohibiting any member other than the listing broker from soliciting the listing of any property, the

listing of which is filed with the multiple listing service, until the filed listing has expired.

PAR. 15. PSMLA has enacted rules providing that the listing broker and selling broker each receive 50% of the commission due on the sale of residential real estate subject to an exclusive right to sell listing in the event that the listing broker fails to specify a selling broker's share on the listing form submitted to PSMLA.

PAR. 16. The purpose, capacity, tendency, or effect of the combination or conspiracy described in paragraphs twelve through fifteen has been, and continues to be, to restrain competition among brokers and to injure consumers by, *inter alia*:

(a) Preventing brokers from accepting certain contractual terms, such as terms that allow the property owner to pay a reduced commission or no commission if the owner sells the property other than through the broker, thereby restraining competition among brokers based on their willingness to offer or accept different contract terms that may be attractive and beneficial to consumers;

(b) Preventing brokers other than the listing broker from competing to obtain renewal of listings of properties, thereby depriving owners of property of information and the advantage of price and service competition that would otherwise be offered; and

(c) Restraining competition among brokers based on their willingness to offer or accept varying commission splits, thereby depriving consumers of the advantages of competition with regard to such splits.

PAR. 17. The policies, acts, practices, and combinations or conspiracies described in paragraphs eleven through fifteen above constitute unfair methods of competition or unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The alleged conduct, or the effects thereof, are continuing and will continue or recur in the absence of the relief requested.

Commissioner Azcuenaga dissenting with respect to paragraph 15 of the complaint and paragraph I.C. of the order.

DECISION AND ORDER

The Federal Trade Commission has initiated an investigation of certain acts and practices of Puget Sound Multiple Listing Association ("PSMLA"). PSMLA has been furnished with a draft of complaint which the Seattle Regional Office proposed to present to the

Commission for its consideration and which, if issued by the Commission, would charge PSMLA with violation of the Federal Trade Commission Act.

PSMLA, its attorney, and counsel for the Commission have executed an agreement containing a consent order, an admission by PSMLA of all the jurisdictional facts set forth in the draft of complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by PSMLA that the law has been violated as alleged in the complaint, and waivers and other provisions as required by the Commission's Rules.

The Commission having thereafter considered the matter and having determined that it had reason to believe that PSMLA has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having accepted the executed consent agreement and placed that agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission issues its complaint, makes the following jurisdictional findings, and enters the following order:

(1) Respondent PSMLA is a Washington corporation with its office and principal place of business at 11961 124th Avenue N.E., Kirkland, Washington.

(2) The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

The following definitions shall apply to this order:

(1) "*Multiple listing service*" shall mean a clearinghouse through which member real estate brokerage firms regularly exchange information on listings of real estate properties and share commissions with other members.

(2) "*Listing agreement*" shall mean any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

(3) "*Listing broker*" shall mean any broker who lists a real estate property with a multiple listing service pursuant to a listing agreement with the property owner.

(4) "*Selling broker*" shall mean any broker, other than the listing broker, who locates the purchaser for a listed property.

(5) "*Exclusive agency listing*" shall mean any listing under which a property owner appoints a broker as exclusive agent for the sale of the property at an agreed commission, but reserves the right to sell the property personally to a direct buyer (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission owed to the agent broker.

(6) "*Reserve clause listing*" shall mean any listing that includes a provision reserving the property owner's right to sell the property to one or more persons individually named in the listing agreement without owing a full commission to the broker.

(7) "*PSMLA*" shall mean Puget Sound Multiple Listing Association and its successors, assigns, directors, officers, committees, agents, representatives, members, and employees.

I.

It is ordered, That respondent PSMLA, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with the operation of a multiple listing service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Restricting or interfering with:

1. The publication on PSMLA's multiple listing service of any exclusive agency listing of a member; or
2. The publication on PSMLA's multiple listing service of any reserve clause listing of a member.

B. Adopting or maintaining any policy, or taking any other action that has the purpose, tendency, or effect of restricting or interfering with the solicitation of a listing agreement for any property.

Provided, however, that nothing contained in this subpart shall prohibit PSMLA from adopting or enforcing any reasonable and nondiscriminatory policy that prohibits any member from using information provided to it by PSMLA that pertains to a specific listed property in the solicitation of a listing agreement for that property.

Such reasonable and nondiscriminatory policy may include adoption of a rebuttable presumption that any member soliciting sellers for listings then listed with PSMLA by another member used information provided to it by PSMLA in the solicitation, as long as the soliciting member may fully rebut the presumption by providing a declaration under oath or other evidence that the solicitation was based upon information obtained from sources other than PSMLA.

C. Suggesting or fixing any rate, range, or amount of any division or split of commission or other fees between any selling broker and any listing broker.

II.

It is further ordered, That PSMLA shall:

A. Within thirty (30) days after this order becomes final, furnish an announcement in the form shown in Appendix A to each member of PSMLA.

B. Within sixty (60) days after this order becomes final, amend its bylaws, rules and regulations, and all other of its materials to conform to the provisions of this order, and provide each member with a copy of the amended bylaws, rules and regulations, and other amended materials.

C. For a period of three (3) years after this order becomes final, furnish an announcement in the form shown in Appendix A to each new member of PSMLA within thirty (30) days of the new member's admission.

III.

It is further ordered, That PSMLA shall:

A. Within ninety (90) days after this order becomes final, submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which PSMLA has complied and is complying with this order.

B. In addition to the report required by paragraph III(A), annually for a period of three (3) years on or before the anniversary date on which this order becomes final, and at such other times as the Federal Trade Commission or its staff may by written notice to PSMLA require, file a verified written report with the Federal Trade

Commission setting forth in detail the manner and form in which PSMLA has complied and is complying with this order.

C. For a period of five (5) years after this order becomes final, maintain and make available to the Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which PSMLA has complied with this order.

D. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in PSMLA, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in PSMLA that may affect compliance obligations arising out of this order.

Commissioner Azcuenaga dissenting with respect to paragraph 15 of the complaint and paragraph I.C of the order.

APPENDIX A

[PSMLA's Regular Letterhead]

As you may be aware, the Federal Trade Commission has entered into consent decrees with several multiple listing services in order to halt certain multiple listing service practices that have been alleged to be unlawful restraints of trade. To avoid litigation, Puget Sound Multiple Listing Association ("PSMLA") has entered into such a consent agreement. The agreement is not an admission that PSMLA or any of its members has violated any law. For your information, PSMLA is prohibited from the following practices:

A. Restricting or interfering with:

1. the publication on PSMLA's multiple listing service of any exclusive agency listing of a member; or
2. the publication on PSMLA's multiple listing service of any reserve clause listing of a member.

B. Adopting or maintaining any policy, or taking any other action that has the purpose, tendency, or effect of restricting or interfering with the solicitation of a listing agreement for any property.

Provided, however, that nothing contained in this subpart shall prohibit PSMLA from adopting or enforcing any reasonable and nondiscriminatory policy that prohibits any member from using information provided to it by PSMLA that pertains to a specific listed property in the solicitation of a listing agreement for that property. Such reasonable and nondiscriminatory policy may include adoption of a rebuttable presumption that any member soliciting sellers for listings then listed with PSMLA by another member used information provided to it by PSMLA in the solicitation, as long as the soliciting member may fully rebut the presumption by providing a declaration under oath or other evidence that the solicitation was based upon information obtained from sources other than PSMLA.

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Separate Statement

C. Suggesting or fixing any rate, range, or amount of any division or split of commission or other fees between any selling broker and any listing broker.

SEPARATE STATEMENT OF COMMISSIONER MARY L. AZCUENAGA,
CONCURRING IN PART AND DISSENTING IN PART

Although I have voted to accept the consent orders in *Bellingham-Whatcom County* and *Puget Sound Multiple Listing Association*, I have dissented from a paragraph in each complaint and the corresponding relief, because I have not found reason to believe that the rule concerning default commission splits is unlawful. The default split rule specifies how the commission shall be split between the listing and selling brokers but applies only if the listing broker fails to specify the split on the property listing form submitted to the multiple listing service. The rule does not affect the level of commissions (price), it does not mandate the division of commissions and it applies only in those apparently rare situations in which the listing broker fails to specify a split. I find it difficult to imagine how the rule could be anticompetitive, and, at the margin, the rule may speed the process of listing properties with the service and may reduce subsequent transaction costs.

IN THE MATTER OF

INSTITUT MERIEUX S.A.

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

Docket C-3301. Complaint, Aug. 6, 1990—Decision, Aug. 6, 1990

This consent order requires, among other things, a Lyon, France based firm that sells rabies vaccine and inactivated polio vaccine in the United States, to lease a rabies vaccine business—acquired from Connaught BioSciences, Inc.—in Toronto, Ontario, Canada, for at least 25 years, to a Commission-approved lessee. Respondent also is required, for a period of ten years, to obtain FTC approval before acquiring any interest in a company that produces a human vaccine for a disease for which it currently manufactures a vaccine.

Appearances

For the Commission: *Claudia R. Higgins* and *James C. Egan, Jr.*

For the respondent: *William R. Norfolk, Sullivan & Cromwell*, New York City and *Victor Friedman, Fried, Frank, Harris, Shriver & Jacobson*, New York, N.Y.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that the respondent, Institut Merieux S.A. (“Merieux”), a corporation subject to the jurisdiction of the Commission, has offered to purchase all of the voting securities of Connaught BioSciences, Inc. (“Connaught”) and such offer, if completed, would violate the provisions 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; that said agreement constitutes a violation of Section 5 of the FTC Act, 15 U.S.C. 45; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

I. DEFINITIONS

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

a. "*Merieux*" means Institut Merieux S.A., a corporation organized, existing, and doing business under and by virtue of the laws of France with its principal offices at 58 Avenue Leclerc, BP 7046, 69342 Lyon Cedex 07, France, as well as its officers, employees, agents, parents, divisions, subsidiaries, successors, assigns, and the officers, employees, or agents of Merieux's divisions, subsidiaries, successors and assigns.

b. "*Connaught*" means Connaught BioSciences Inc., a corporation organized, existing, and doing business under and by virtue of the laws of Canada with its principal offices at Suite 1500, 55 University Avenue, Toronto, Ontario, Canada, M5J 2H7, as well as its officers, employees, agents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of Connaught's divisions, subsidiaries, successors and assigns.

c. "*Inactivated polio vaccine*" means a vaccine used to prevent poliovirus disease administered by means of injection.

d. "*Rabies vaccine*" means a vaccine used to prevent or treat rabies disease.

II. THE PARTY

2. Merieux is a corporation organized and existing under the laws of France, with its principal place of business at 58 Avenue Leclerc, BP 7046, 69342 Lyon Cedex 07, France. Merieux's wholly-owned subsidiary, Merieux Institute Inc., organized and existing under the laws of Delaware, has its principal place of business at 7855 N.W. 12th Avenue, Suite 114, Miami, Florida.

3. In fiscal year 1988, Merieux estimates its sales of rabies vaccine at approximately \$5 million in the United States. Merieux is expected to have sales of inactivated polio vaccine of approximately \$1 million in the United States in the first full year that the vaccine is sold.

4. Merieux 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 affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. THE PROPOSED ACQUISITION

5. On or about September 28, 1989, Merieux offered to purchase all of Connaught's voting securities. The transaction is valued at approximately \$798 million. Merieux is engaged in the manufacture and sale of rabies vaccine, as well as the development of inactivated polio vaccine. Connaught is engaged in the manufacture and sale of inactivated polio vaccine, as well as the development of rabies vaccine. After the acquisition, Merieux will be the dominant firm in the manufacture and sale of both rabies vaccine and inactivated polio vaccine.

IV. TRADE AND COMMERCE

6. A relevant line of commerce in which to analyze the proposed acquisition of Connaught is rabies vaccine. Another relevant line of commerce in which to analyze this proposed acquisition is inactivated polio vaccine.

7. The relevant geographic market is the United States.

V. MARKET STRUCTURE

8. The manufacture and sale of rabies vaccine and inactivated polio vaccine is a highly concentrated market in the United States. In the rabies vaccine market, Merieux is the only firm selling rabies vaccine nationwide with Connaught being one of two potential entrants. In the inactivated polio market, Connaught is the monopolist with Merieux being one of two potential entrants.

VI. ENTRY CONDITIONS

9. Entry into the relevant markets is difficult or unlikely.

VII. COMPETITION

10. Merieux and Connaught are potential competitors in the manufacture and sale of both rabies vaccine and inactivated polio vaccine. This acquisition would make Merieux the dominant firm in each relevant market.

VIII. EFFECTS

11. The effect of the acquisition, if consummated, may be substantially to lessen competition in the relevant lines of commerce in the United States in violation of Section 7 of Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

IX. VIOLATIONS CHARGED

12. The proposed acquisition of Connaught by Merieux violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and would, if consummated, violate Section 7 of the Clayton Act, 15 U.S.C. 18 and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

Commissioners Azcuenaga and Owen dissenting.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of respondent's proposed acquisition of certain voting securities of Connaught BioSciences, Inc., and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Clayton Act and the Federal Trade Commission Act; and

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

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

