

0 H U J H U 5 H P H Q L H

6 W D W H P H Q W R I W K H  
% X U H D X R I & R P S H W L W L R Q  
) H G H U D O 7 U D G H & R P P L V V

5 L F K D U G ) H L Q V W H L Q  
' L U H F W R U

- D Q X D U \

7 K H Y L H Z V H [ S U H V K R V H G K R H U W H L Q D X H H D X R I & R P S H W L W L R Q  
D Q G G R Q R W Q H F H V V D U L O \ U H I O H F W W K H Y L H Z V R I W K  
& R P P L V V L R Q R U R I D Q \ L Q G L Y L G X D O & R P P L V V L R Q H U

Statement of the Federal Trade Commission's Bureau of Competition  
on Negotiating Merger Remedies

7KHHD07DHRPPKDRIRPSHWWRQMHGKWDWHPHQ  
KRRHWHWRWKMQRWDWDMWWOHPHQDPHHEDM 7KH  
KQQRPDRIWKTNRWRQFWIHTNQODMDQSHSHWHQRWDWRQ ,Q  
DWRQHEDWHRKQHWRPPKDFRPSODQRKDDODWHG  
RFRHQWRMHDFRHSRQFWWRPPKMTNSDWFDMV  
DFRHHQNKAMDQSRMRHPHEDONWHRQKSDWEDDIDFWKI  
WKFDMFRQDWRWWWRPPKDFHSHWSDWEDSRQKSDWDO  
QRWRQFWEDDORQEHSHMFWWRWPHSRKQGHDFHSHWQDZDWWHU  
7KRPPEQWWDIIDHFRQDQOQHDHFPWKHSHHQSRQ  
SHKDMWFWSRHQEHQPDQWEHDFHSHWDEOHQKMTNQFDM

7WDWHPHQDKHWEWVWWDIIMHQIHERQHESRSRMRU  
FRPDWHQDQFWRQDWRWKPHEWHDQDIIDHQRWDWDMWWOHPHQ  
7WDWHPHQDMMDDKIROORDHDWDMWWREHFWHQ  
DFFHSWDEOHEFWVWVNDHHPHQDWRQORHSRQHW  
ROMSDDWHDQDQDQWVSHQVWVWVNDSSOEDWRQ  
WED<sup>4</sup>

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6HHWSZFRFEHWSDFWEHQWP IRWDESWDQODWHG  
KPRQIWKKNKSWVWVWVMDMORPHHHPHMMHDK  
HTNQONHCNWRQERW0HHEQ2HBRQW  
WWSZFRFPHTW DQKMDRIRPSHWWRQWVWV6WVW  
WWSZFRKHWVNSG

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## The Proposed Divestiture

‡ Anticompetitive horizontal mergers are most often remedied by a divestiture; a proposal to divest one party's demonstrably autonomous, on-going business unit will usually expedite settlement.

7KRPPEQVFWDIIDQOHSESRMRERFPDWHCHHEHWVHQ  
FRPSHWVRWRQWHPHFWKWVVOFDNRBMFDMQVERPSHWVHHIIFWQ  
KODWRQI6HFWRQIWHQDWRQW ,IWDIHWHPQWFWQVERPSHWVHHIIFWVH  
ONHOWDQEWKSDVHEWVFOHDHQWVEHOHDDQFFHSWDEOH  
HHPVQONWRPDQDRHWRHFWRPSHWVROKPDNHVDDIIFWHEWVPHH\$  
QRWDWHFWWOHPHQVHQWRDFHFWVWHPHSHDOORQKSDVHWRSFHHG  
VWVPHHQSREOHPDWESRWRQ

7KSDVHWVHFHFWKWRHQRQVWOHPHQVWVWV  
WDII 2QKRPPEQWKEKQOQOHWRPPEQDRI  
RPSHWVROQKRPSONDEHQVHMDRIFRQPEVQKSDVHWKFWHPENVp0000PHHHPDQHT  
QORPHWWHRQVPHHHPRPSODRQKPHH\$

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0RWPHEHEDHOMRRO/DOPHHOQHRPPESHIFWFWNO  
HOHQKIRRIDHFWNWRHPHWKDOERPSHWVHHIHFWKIDQDORRO/DO  
PHHURQFWNORERQWHOHIPDDOK EHHTNQRIDHTHFWVWNR  
HPHWKMHIFWV6KWRQOHOHIPDQONSODHHPHQMPSORHH  
REODWRQRHQ/DOWSRWHFWRQQRWKSREHFWWRSSRWDFHW  
FWVN RQWHOHIDOKPDEHHTHWRHPHWKDOERPSHWVHHIHFWKID  
HWEDOPHH6KKRQWHOHIPDQON DHTNPHQWRHHFWIHHOOWRSEWHFW  
FRHQ/DOQRDWRQDHTNPHQQRWWRIDKEHWHDQVHV

7KWDIIRWONHOWRDFHSSWWHSDWHKIIHWRHWDQWRQPRKQ  
EQWVWFRPSHDWOHDWRQSDWVQHEHQVHHOHDQ/PDNHW 6KK  
HPPROPRWPHQWHOHOHQDQWHWKFRPSHWVMSREOHPHDWHHWKPHHE/  
SHHDFHDWVWFRPSHWVHWWDWXRDOHQDOWHOHDWDPRQRIN ,W  
DOKHTHWKRPPKQVHWDIWRPDNHWKIHWVWDSWRQERXWKPDNHWDQ  
VSDWESDQDQERXWHDEDVQDRPSHWVHHKIWKSRSRHHWVW

7KSDWHKQEHSHSDHWREKVFWWHEMVFRQDQOFRPSRQV  
HFHDVRRSHDWHDXRQPRQVFWVFKSHDWHQWRQPRQVFWVHHDEOHIRP  
WKSdqDQVFWVHQQVNDQOEHDEOHWRPDQDRHWRFHFRPSHWV/RQOPRW  
EPHqWHO/7KENVHRSOHKEHSHSDHWRHSDQHWVFKSHDWRQ  
DQRSEHHOHDQVQDQOQRDWRQSDDWHIQDQDQFRHQVNG  
EHORSESRDOKWRIWVWHTHWKWDIWRDMDWRQOTHWRRQVWIKU  
DQDQDHWFRPSOHVFRWDWRQOONHOWDNHPRHWEH

7KWDIIOHDPHDSRSRHHWVWNRHWHPHHVHWKIDQONDOORIWH  
VFRPSRQVVKHFRPSRQVHQDOOQON

- ‡PDQFWRQWHIDFDWHV
- ‡DFHWRNHQVDRWKSQ\
- ‡DFHWRPDNHWRDQDODQSWV
- ‡HMDKQHORSPHQFDSDED\
- ‡QHOHFVWVOSRSHVWVRRQOEHQG
- ‡WHFRORQORQVQDHFHWVHOODQREDWRQHFQORJ

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FRQNG  
DFTNOMWWKRPPEHTNWKHSRQVWRHRDHWKFRPSDQRWV  
MSDDWHWDQORQHQWRRIWHP *In the matter of Chicago Bridge & Iron  
& RFW aff'd Chicago Bridge & Iron Company v. Federal Trade Commission*  
WLUDDLQW

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‡HVIEDWRQIDQFFHWRSHRQO  
‡PDNHWDQWEXRQDSDEDWHV  
‡SOMLHDQWRPHHODWRN  
‡FDSWDOHKKHV  
‡DQWROMHFHDWRFRPSHWHHIHFWMOQKHOHDQPDNHW

7HSRSMCDFNDHPDDORQONENVRPSRQWHDWDRPDNHWRKWH  
WKHOHDQWRDSCRSEFWPDNHWIKRPSRQWHDHFHDWRDMWFWWH  
ENHWDQWKPHEHEHQHWFWWKHSRQWQRHDPSONHQWSEKWL  
PDNHWHQWEXHWRKHSRQWWDHWWREHFWHHPDQNDHWW  
HODWDRWHRMRWHSRQWQRWRHPDQHEHQ 6DDOIMWEDODHWRQ  
DQSRWDQFRPSHWWMHOHPHQWPDHEHFHDWRQONDMWDPWRHWRQHOHMORI  
WKWU

- If the proposed package of assets does not comprise a separate business unit that has operated autonomously in the past, the staff is unlikely to recommend that the Commission accept such a proposal until the parties show that the package includes all necessary components, or that those components are otherwise available to a prospective buyer.

,JWHSDWHMHNWRHFONDRQWFRPSRQWHPWHSODQK  
FRPSRQWDRQWQONDRQWDEKQWHDGHSDWHFWDOKHSODQ  
KWKENDOEHDEOHWRQWHDWHWKEWHERPSRQWWRWKRSHDWRQRRSHDWH  
FRPSHWWMO7KSDWHKSHDWRQOHPSORHHWHQREHWKPRWNQOHDEOHDERRWWH  
MSSOHWRPHFRPSHWWRQWHSRQWHEHEDDOKSRQWFWH  
HMQHWKSDWHKQEHSHSDHQWRPDNHKKEHQHDDODEOHIFHDWRHFWWK  
WDIWRKHWFDQHREWDHG

EQDQHWDMWRQWHSDWHWFHWDQRPSRQWRHDPSONHWHHDEK  
DQMORSPOWDRQWQFHDDOHHQDOORWEHSHMM 7KSDWHKKG  
SRHHQHWFWWFDRWDRQWQFWKEMEDWRERPSHWWMHV  
RQDQHDQSDQWRQWWDQNDFFHSWDEOHWRWRPPQOBNWKO  
HMDERQMORSPOWPDHSHMMLWHSDWHSRHHQHWRSRWWK  
HSDQWRQKSDWHFDOKHPRQDWHWFWDQDFWEDQWESORHHMIDFppE

The Commission will typically require an up-front buyer if the parties seek to divest assets comprising less than an autonomous, on-going business or if the to-be-divested assets are susceptible to deterioration pending divestiture.

,IWKSDWHSRSRHWREWPRHOPVHDMWWWKWDIIOOW\$EDOOFRQNE  
SDFNDHRQIWKHSRSRMRHSHFIHDSIROENUWFWWKSDWHFW  
HQIDQFFHSWDEOHEHNDQKQRWDWHIQOHQHFVHWKSKEMDHHPHQ  
DQOODQDODDHHPHQVWWEWENEHIRHWDIIRVWHSRSRMRHWRWK  
RPPKQKWDIIOFDHIOOHMERWWEHNDQKDHHPHQEHIRHPDNV  
HFRPPHQWRQKHSRSRMRHOSHFIEDOOHQIWKENDQTHWVW  
WRWWEWENSQWRWKHMJOU HHPHQWHDHHPHQDOEHDWWDFKOD  
FRHQDOHKWDRSRDWHQWRWRHUKHWWVHWWRWHQPHSROENU  
PWEHFRPSOHWHPHDWHODIWHWKRPPKQFFHSWWSRSRMRHUTQ  
DSIROENUWWDIIMHNWRPPHWHMWWKHHOQWpADCEPHDHSIROEWHWSWOP0WF  
P0RHRFPPEHWWVHWWRDQROENONWRPPSWWK EpIWEWWDWWHSWDDQpDQOQVHWV







An Acceptable Buyer

‡ To be acceptable, a buyer must be competitively and financially viable; a proposed buyer that does not satisfy these tests will be rejected, and the parties will be required to propose an acceptable one.

KWHWKENRWRHRSRQWVPEHRHWFDFDDQDQHRH  
FRPSHWVROKHODQPDNHWDIWHDFTVKHWHCWVWVDIOWKHIRH  
HDOFWHDSERSRHENWRHWHPHKWHVFWHIDDODFSDEDWDDHQV  
WRDFTNDQSHDWHWHDWVDFRPSHWVHDEDVWRPDDQDQHRH  
FRPSHWVROKPDNHW

7KWDIIOEHSHSDHWREWVHSWVHDDFFHSWDEOHEH  
FDFFWHWEYWKVWVHSRQDWRIVKSDVHWRSRSRWKENDQV  
EMGHORVWSWVHWKVVWVWHEHFFHSWDEOH3RSRQENWVWRHV  
QWFOHDDVWVWVHFHDFVHDDOHODDSSRO

7KWDIIOEHOORRSHIHQHDWRWKPHWVWVHSWVHWVWVWVWVWVWVW  
DFFHSWDEOHEHMRPHSDVHSHSDHDDQIHDFRDRPHWVHVVWVWVWVW  
DQWPHVEDDQOEVEGRPHSDVHDSRDFQOIEWVWVWVHFOHM  
PDEHDFHSDWDEOHEHWRHSREDDQKWRSRFHVKWRSEFHHH  
WVDDVDIRHFOVKSVDVHPVWVWVWVWVWVWVWVWVWVWVWVW  
WKRWVHVKHQHQDDQHHWVWVWVWVWVWVWVWVWVWVWVWVWVWVW  
KHPDEHIRHPSONDRHCVWVWVWVWVWVWVWVWVWVWVWVWVWVW  
DIQDODQWRVWVWODFNVWVWVWVWVWVWVWVWVWVWVWVWVWVW  
QWRSSRMWRDQKWRDQRDFDQFRPSOHVWVWVWVWVWVWVWVWVWVW  
DOWKVDWVW  
QONGVW  
VW  
VW  
SREOH

7KWDIIOHDOFWHDSERSRHENHEDHIOWRHWHPHKWHVFWKWHEN  
IQDODDQFRPSHWVWVHDEOH7KSDVHVKVWVWVWVWVWVWVWVWVWVW  
ENWVW  
WKRWWVW  
KWHWKENWVW  
VW  
RQVW  
SDVW  
WKRPPKQPPKQHVVWVWVWVWVWVWVWVWVWVWVWVWVWVWVWVWVW  
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~~ERRRPSERRRPPPLLRQ~~

~~PXURRFDLRSUHHGH~~

‡ In evaluating the terms of the divestiture agreement, the staff will rely primarily on information obtained from the buyer; however, the staff remains aware that the buyer's incentives may not always be consistent with the Commission's objectives.

~~EMGWWDIIOOWRRRODQDHIOOHMZKHWWNDDHHPHQ  
6WDIIOOHTHWIREDWRQRPWHENDQWKOQOEWKDHPHQVWK  
ENQHDODQSHDWRQOSHQQODPRQWVVENQREDWRQVWHPHO\  
PSRWDQVHMQRKWHENEMMTCW KDHPHQVDQDHHQVWVWHPV  
WDIIPDRQVWVHOHYVWRSRQVWVWVENEDFFHSWHGKRPPEDQW  
HOKOHORQVENHQVWWRDFKHWKREMHFVWKIWKHEHFDVWKENQ  
QHQMFDQVQFHDDFRQHVWKRPPQEMHFVW~~

~~7KRPPQEMHFVWVWRHPHWKPHHQNHODQVERPSHWVWHIHFVWQ  
WRPDQDRHWRFPSHWVWVQKHODQVDPNHW7KENHQVWVWRHQDWHQDQ~~



## Additional Order Provisions

‡ In some cases, the buyer may need additional, short-term assistance from the merging parties, particularly when less than the entire business of one party is being divested

HWWRIDQWRQPRKQDQOORIWFRPSRQWKID  
ENDEGERHWRDDEOHENQOQKPDMRWRIFDHEPHBWHOFDWH  
DFRPSHWWRERPSDDEOHWRWFRPSHWWRVFWKQHEHHQDORWDIWHWKPHEHU  
HWWRRIQHWEDQWRQPRKQDQOQWFHDWHWFWHWWQDWK  
ENEDQOQKDSDDQERPSAPQHQQOQWWWpHWRW  
HQ  
QPD-ENQODHFRPSAPHWAW50DMRQDQVTEH3FRPSAPPEDEOH50DMRQVTEHADDEQVPE

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The order to hold separate or maintain assets will include the appointment of an independent third party to oversee the operations of the held separate business or monitor the parties' compliance with the order.

~~QHWKROHSDDWHREDDQDQWDDODOKDWRHWRPPQR  
DSSRDQSHQWEDWWRRHWHHWHHOSDDWHEQRPRQWRKSDWHY  
FRPSODQHWRHRHUQRHWRPDQDQWWHHSHQWEDWDDMM  
IQWRDDWRWKMRIWHPROYREMBERMKRMOEHWHHHDDU  
RIWHRPPEDQWDIIDQWVHWIIDWHDH,QQHWKROG  
MSDDWHWHHSHQWEDWFKPHFWPRHHVHQRREODWRQRMO  
PROYRERPSODQHEWDDODOKRMMHWKRSHDWRQIWKHOSDDWHEQVHWDI  
BVEHGWKIQWRQIWFVNOEDQORQYRDFBEDQIWKERDG~~

~~7KSDWHFDQSHQHWKHPDWVHLWKPQESDWHWQHQQHWKRRDEK  
IRDQSSKSDWHPRQRDMDODSREOH7KWDIIDOBMWRHMMVHQOY  
TNOIEDWRQQKDHHPHQEHWHHQKPROYRDQKSDWHKRDORRYH  
SEFHWFHSWDEOHPRQRDHWKMMVQWQVHSHHQHQKPDNHWDQ  
IQDORRWVHWWRDQIWKSDWHVQOMGRPPEDSSRDYHQOV  
VHHGDFNQRHMDPRQRQVWHHFWVFRQWDQDQ  
ODVWSDWENDHDDWRHSHHQ7KWDIIDOEHDHDDDEOHWRVW  
FEDFWHWEKIDQFFHSWDEOHPRQRU~~

### Divestiture Applications

- In cases requiring a post-order divestiture, the respondent has the burden of showing that the proposed divestiture meets the order's specific requirements and satisfies the order's remedial purposes.

~~,VNOODOORIWHRPPEDQHWVWHTNDSRWRHFWVHW  
HSRQVHHQWRVWFHWDQWVRFHWQPHSHRWRDENVFW  
HFHHWKSSEDSRORIWHRPPEDQPDQVFWHFHHWKSSEDSRDO  
RIWHRPPEDQRPPEDQWSSRMRWVHENRIWHDWWDQH  
PDQRIWKSSESRHVVN i.e. ~~RFKQHRQDFDQOHV  
DUHQRVRRQRVRSRQRV  
DDQVUH\$HLILFUHKUHDDMLVWHDSKSRM~~~~

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*See Dr Pepper/Seven-Up Companies Inc. v. FTC & LU*  
~~LDSURFHQFBUERULRUDSSURDDIDSURSRQRV  
RRIRRPPLRQRVRRPPLRQRVRRIR  
SURSRADUHVRRVRSURRIRQRVDDVWHV  
KEDQW~~

~~FRD~~

**The respondent must include in its application all information and documents sufficient to satisfy its burden and should en**

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7KH JUHDW PDMRULW\ RI SURSRVHG VHWWOHPHQWV KDY.  
PRGLILFDWLRQ :H DUH QRW DZDUH RI DQ\ LQVWDQFH LQ ZKL  
VHWWOHPHQW DIWHU WKH FRPPHQW SHULRG DQG WKHQ EURXJ

5XOH I RI WKH &RPPLVVLRQ¶V 5XOH RI 3UDFWLFH



