Analysis to Aid Public Comment on Agreement Containing Consent Order
***In the Matter of* Libbey Inc. and Newell Rubbermaid Inc., Docket No. 9301**

I. Introduction

The Federal Trade Commission has accepted for public comment a Decision and Order ("Proposed Order"), pursuant to an Agreement Containing Consent Order ("Consent Agreement"), against Libbey Inc. and Newell Rubbermaid Inc. (collectively "Respondents"). The Proposed Order is intended to resolve anticompetitive effects in the United States food service glassware market stemming from the proposed acquisition by Libbey of Anchor Hocking Corporation, a wholly-owned subsidiary of Newell. Under the Proposed Order, Libbey cannot acquire any stock of Anchor or the assets of Anchor's food service glassware business without prior notice to the Commission. Additionally, Newell cannot sell or transfer all or a substantial part of the assets of Anchor's food service business without prior notice to the Commission.

II. The Parties, the Transaction and the History of the Litigation

Libbey is the largest maker and seller of food service glassware in the United States, with substantially more than half of the sales, and has plants located in Ohio, Louisiana and California. Libbey produces and sells food service glassware, a line of products that includes many different styles

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percent of the assets of Anchor, and the consideration to be paid by Libbey for Anchor would be reduced by less than 10 percent. Under the amended merger agreement, the assets to be transferred to RCP were most (not all) of the molds, customer relationships and certain other assets used in Anchor's food service glassware business. Anchor would have kept, and Libbey would still have acquired, key assets used by Anchor in the food service glassware business–most significantly, Anchor's two glassware manufacturing plants. Newell would not retain any capability to manufacture glassware.

In its Amended Complaint, filed February 22, 2002, the FTC alleged that the acquisition pursuant to the amended merger agreement would substantially lessen competition. The proposed merger would eliminate Anchor as a competitor from the food service glassware market and RCP would be unable to replace Anchor as a viable competitor. The Commission later issued a statement on April 2, 2002, in which it reaffirmed its position that the amended merger would result in a lessening of competition in violation of the Clayton and FTC Acts. Statement of the Federal Trade Commission Regarding *FTC v. Libbey Inc., et al.*, Apr. 2, 2002.

On April 22, 2002, the District Court granted the FTC's motion for a preliminary injunction pending the completion of administrative adjudication. Memorandum Opinion ("Op.") (*FTC v. Libbey Inc., et al.*, 2002 U.S. Dist. LEXIS 8867 (D.D.C., Apr. 22, 2002)).

In granting the FTC's motion, the Court found that Libbey dominates the food service glassware market with a 65 percent share, while Anchor, with seven percent of the market, has the third largest share. Op. at 3. Although Libbey's market share dwarfs Anchor's, the Court found that "Anchor is Libbey's most formidable competitor in the food service glassware market," because it is "the largest seller of Libbey look-alikes," id. at 18, and because its prices "are frequently 10 to 20 percent lower than Libbey's prices," id. at 5.

The Court concluded that both the acquisition and the amended merger likely would reduce competition in the food service glassware market; the food service glassware market was highly concentrated, and, "if what is now Anchor were eliminated from the market, there are no other viable alternatives to Libbey's food service glassware that consumers could [rely] upon to acquire their
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the FTC. Id. at 3.

comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received and will decide whether to make the Proposed Order final. By accepting the Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved.

The Commission invites public comment to aid the Commission in determining whether it should make final the Proposed Order contained in the Consent Agreement. The Commission does not intend this analysis to constitute an official interpretation of the Proposed Order, nor does this analysis modify in any way the terms of the Proposed Order.