

BACKGROUND MATERIALS ON PREMERGER COORDINATION

**To Accompany
Remarks of William Blumenthal
Before the Association of Corporate Counsel**

In re Insilco Corp.

- 125 F.T.C. 293 (1998).
- File No. 961-0106 (F.T.C. June 1997), 1997 WL 530775.

Insilco agreed to purchase Helmut Lingemann's U.S. facilities for manufacturing aluminum tubing for automobiles, Helima-Helvetion, International. This transaction would have made Insilco the sole North American supplier of large welded aluminum tubes. It would also have given Insilco a 90% market share for small welded aluminum tubes, leaving only one small rival in that market. Prior to receiving regulatory clearance for this transaction, Helima provided Insilco with customer-specific price information, current and future pricing plans, competitive strategies, and price formulas.

The FTC challenged both the acquisition itself under Section 7 of the Clayton Act and Section 5 and the data exchange under Section 5. In a consent agreement, Insilco agreed to divest itself of two Helima mills plus ancillary assets. In addition, Insilco agreed to provide the purchaser of the divested mills with needed training help to ensure that it could become a viable competitor. Insilco also agreed to an injunction prohibiting it from receiving non-aggregated, customer-specific information prior to the closing of future transactions.

In re Commonwealth Land Title Insurance Co.

- FTC Docket No. C-3835 (Nov. 1998), 1998 WL 784323.
- 126 F.T.C. 680 (1998).
- FTC File No. 981-0127 (Aug. 1998), 1998 WL 538814.

Commonwealth and First American operated the only two title facilities in the Washington, D.C. area. The companies signed a letter of intent to establish a joint venture within which they could consolidate their facilities, and Commonwealth moved its title plant to First American's premises. The companies then terminated their separate customer agreements and required their customers to sign new "Interim Plant Use Agreements" with identical prices, terms, and conditions to govern the companies' provision of services until the consolidated facility could be created. The new agreements required customers to pay two to three times more than they had been previously paying, despite receiving a more limited range of services.

Commonwealth agreed further to restore customers to their most recent previous prices, to refund any excess payments that had been made, and not to claim legal rights under the interim customer agreements.

United States v. Input/Output, Inc.

- No. 99-0912 (D.D.C. filed Apr. 12, 1999).
- Complaint, No. 99-0912 (D.D.C. filed Apr. 12, 1999), *available at* <http://www.ftc.gov/os/1999/04/inputoutput.pdf>.
- Press Release, Federal Trade Commission, Companies to Pay \$450,000 Civil Penalty for Violation of Hart-Scott-Rodino Waiting Period (Apr. 12, 1999), *available at* <http://www.ftc.gov/opa/1999/04/input.htm>.

Input/Output agreed to purchase Laitram's

United States v. Computer Associates International, Inc.

- No. 01-02062, 2002 WL 31961456 (D.D.C. Nov. 20, 2002).
- No. 01-02062, 2002 WL 32387915 (D.D.C. Apr. 22, 2002).

In the purchase agreement between Computer Associates and Platinum, which were direct rivals, Computer Associates imposed an extraordinary series of pre-consummation restrictions on Platinum's operations, pricing, information management, and employees. Computer Associates installed at Platinum's office one of its own employees, who was given the authority to review and approve customer contracts. Platinum's sales representatives were expressly required to get prior approval of contracts granting discounts greater than 20% off list price, even though such discounts previously had been routine and sometimes even approached 80%. Whereas Platinum previously had been willing to incorporate non-standard terms in its contracts, Computer Associates prohibited such deviations without prior approval. Computer Associates also required Platinum to cease offering software consulting contracts for a fixed fee that lasted more than thirty days. In the course of monitoring and supervising Platinum's management and sales activities, Computer Associates' employees received competitively sensitive information, including the prices and amount of discounts that specific customers were offered and the justifications for those proposals. Computer Associates also denied Platinum permission to participate in a trade show where Platinum could have displayed its products and sought future sales. In sum, Computer Associates prematurely took control of Platinum's

