

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
KRRHHDHWRWKMQRWDWDMWWOHPHQDPHHEDM 7KH
KQQRPDRIWKTNRWQFWIHTNQODMDQSHSHWHRWDWRQ ,Q
DWRPHQDWHKQHHYKRPPKDFRPSODQRKDDODWHG
RFRHQWRMHDEKHSRQFWWRPPKMTNSDWFDMV
DFRHHQNKAMDQSRMHPHMDONWHRQKSDWEDDIDFWKI
WKFDMFRQDWEWWHRPPKDFHSHWSDWEDSRQKSDWDO
QWRQFWEDDORQEHSHMFWWWPHSRKQGHDFHSHWQDZDWWHU
7KRPPKQWDIIDHFRQDQOQHDHPWKHSHHQSRQ
SHKDMWFSRHEHQPDQWEHDFHSHWDEOHQKMTNQFDM

7WDWHPHQDKHWEWWKWDIIMHQIHERHQESRSRHRU
FRPDWHQDQFWRQFWWWKPHQDWHQDIIIDHQRWDWDMWWOHPHQ
7WDWHPHQDMMDDKIROORDHDWDMWWREHFWHQ
DFFHSWDEOHEFWWWNDHHPHQDWRQORHSRQHR
ROMSDDWHDRPDQDQWSHQFWWWNDSSOEDWRQ
WED⁴

6HHWSZFRFEHWSDFWEHQWP IRWDESWDQODWHG
KPRQWKRKNSWFWWWKMDHQRPHHHPHMDOK
HTNQONHCNWRQERW0HHEQ2HBRQW
WWSZFRFPHTWP DQKMDRIRPSHWWRQWVW6WVW
WWSZFRKHWVNSG

Table of Contents

The Proposed Divestiture 4
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. 4
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
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-
If the parties propose to divest primarily intellectual property or other limited

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
FRPSHWVRWRGWHPHFWKWVDFDMDQVERPSHWVHHIHFVQ
KODWRQI6HFWRQIWHQDWRQW ,IWDIHWHPQWFWQVERPSHWVHHIHFVQH
ONHOWDQVWHSWVHEWVFOHDHQWVEHOHDDQFFHSWDEOH
HHPVQONWRPDQDRHWRFPSHWVROKPDNHWDIHFVHGWKPHH\$
QRWDWHFWWOHPHQVHQWRDFHFWVWHPHSHDOORVHSWVHWRSFHHG
VWVPHHQSREOHPDWESRWRQ

7KSDWHFWVHFHFWKWRHRHQVWOHPHQVWVWV
WDII 2QVHRPPEQVWKEKQOHVWRPPEQDRI
RPSHWVROQVHRPSODEHEQVHMDRIFRQPEVQVHSWVHEWHPENVp000PHHPpDOHT
QORPHWWHRVPHHPVPSODRQKPHH\$

0RWPHEDEMOHRQ/DOPHHQ/HRPPESHHWFWNO
HOHQ/KIRPRIDHWL/NWRHPHWKQ/ERPSHWL/HHIHFWKIDQ/DNRQ/DO
PHURQ/FW/NORERQ/WHOHIPDDOK EHTNQ/RIDHTNHWL/NWR
HPHW/KHHIHFW/6KW/RQ/OHOHIPDQ/ONSOD/HHPHQ/MPSORHH
REODWRQ/RHQ/DO/WSEW/HFW/RQ/QW/HSRQ/HFH/WRSR/WDFHW
HWL/NRQ/WHO/HIDOK/PDEHTN/WR/HPHW/KQ/ERPSHWL/HHIHFWKID
HW/EDOP/H/6KKRQ/WHO/HIPDQ/DHTN/PHQ/WR/HHF/WI/H/OOWRSE/WHF/W
FR/HQ/DO/RQ/DWRQ/DHTN/PHQ/R/WWRID/KEHW/DHQ/W/HV

7KWDIIRWONHOWRDFHSSWWHSDW/HR/IIHW/RFWDDWRQ/PRKQ
EQ/W/WFRPSH/DWOHDWRQ/SDW/HQ/HEQ/KHOHDQ/PDNHW/6KK
HPH/O/PRWEPH/DWHO/HOPQ/WHWK/FRPSHWL/MSREOH/PHD/WHEW/KPHHE/
SHM/HFH/DW/H/FRPSHWL/HWDW/XRQ/HQ/DDW/HOHDW/DPR/RIN,W
DOKHTN/WK/RPPKQ/HWDIIWR/PDNHW/KI/H/WDSWRQ/ER/W/KPDNHWDQ
W/SDW/EDQ/DQER/W/H/EDQ/RPSHWL/H/KI/W/HSR/H/W/W

7KSDWHKQ/ESHSDH/W/RK/WFWW/HEM/WFRQ/DDO/FRPSR/HQ/V
HFHDW/RRS/DWHDW/RQ/PRO/W/W/W/RS/DW/HQ/W/RQ/PRO/W/W/W/H/DE/OH/IRP
W/KS/DH/Q/DQ/W/W/HQ/W/H/OE/HE/OH/W/RP/DQ/D/RH/W/RH/FR/PSH/W/RQ/O/PRW
EPH/DWHO/7KEM/HR/SO/H/KQ/ESHSDH/W/RH/SODQ/HQ/W/RS/DW/RQ
DQ/RSE/H/HO/HQ/DQ/DQ/DQ/RP/DWRQ/SDD/W/HI/Q/DQ/R/HQ/W/MG
EHOR/S/SE/SR/DOK/WRI/W/WHTN/WK/W/DIIWR/DMDQ/RQ/OTN/W/RQ/RQ/WI/W/KU
DQ/D/HQ/W/FR/PSO/H/W/R/W/DWRQ/OON/HOW/DN/HPR/H/WEH

7KWDII/OHDP/H/DS/ESR/H/W/W/W/RH/W/H/PH/W/KI/W/DQ/H/OORI/W/H
W/R/PSR/HQ/V/H/FR/PSR/HQ/H/Q/OO/DQ

- ‡PDR/FW/RQ/W/H/D/FD/W/HV
- ‡DFHWR/NH/W/DQ/W/K/SO\
- ‡DFHWR/PDNHW/RDQ/DOD/W/S/W/V
- ‡HMDE/KQ/MORS/PHQ/FDS/DEQ\
- ‡Q/HOO/HFW/NOSRSHW/W/KRQ/RQ/EH/MG
- ‡WHF/RQ/RQ/RQ/D/H/HFW/D/OODQ/R/DWRQ/HF/RQ/J

FRQ/MG
DFT/MOM/W/W/K/RPPKQ/TN/W/K/HSR/QQ/W/RHR/DH/W/K/FR/PSDQ/R/W/K
MSDD/W/H/W/DQ/OR/HQ/W/R/HI/W/KP *In the matter of Chicago Bridge & Iron
& RFW aff'd Chicago Bridge & Iron Company v. Federal Trade Commission*
W/LUDDLDQW

‡HVIEDWRQIDQFFHWRSHRQO
‡PDNHWDQWEXRQDSDEDWHV
‡SOMLHDQWRPHHODWRN
‡FDSWDOHKKHV
‡DQWROMHGFHDWRFRPSHWHHIHFWMODKHOHDQWPDNHW

7HSRSMGDFNDHPDDORQONENVRPSRQWHDODWDRPDNHWRKWH
WKHOHDQWHRDSKRSEFWPDNHWIKRPSRQWHDQFHWRDMWFWWH
ENHWDQWKPHEHEHQHWFWWKHSRQWQRHDPSONHQSSEWL
PDNHWDQWEXHWRKHSRQWWDHWWREHFWHHPDQNDHWW
HODWDRWHRMRWHSRQWQHWRHPDQHEHQ 6DDOHWEDODHWRQ
DQSRWDQFRPSHWWMHOHPHQWPDHEHQFHWRQONDMWDPWRHWRQHOHMORI
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.

,JWHSDWHMHNWRHFONDRQWHRFRPSRQWHPWHSODQK
FRPSRQWDRQWQONDRQWDEKQWHDGHSDWHFWDOKHSODQ
KWKENDOEHDEOHWRQWHDWHWKWHERPSRQWWRWKSHDWRQWRRSHDWH
FRPSHWWMO7KSDWHSKSHDWRQOHPSORHHWHQREHWKPRWNQOHDEOHDERRWWH
MSSOHWRPHFRPSHWWRQWHSRQWHEHEDDOKSRQWQWH
HMQHWKSDWHSKSHSDHWRPDNHKHHQHDDODEOHIFHDQRFWWK
WDIWRKHFDFDQHREWDHG

QODQHWDHWRQWHSDWHWFHWDQRPSRQWRHDPSONHWHHDEK
DQHORSPOWDRQWQFHDDOHHQDOORWEHSHMM 7KSDWHRKQ
SRHHQHWFWWFDRWDRQWQWKEHEDWRERPSHWWMHV
RQDQHDQSDQWRQWWDQNDFFHSWDEOHWRWHRPPQOHHWKQ
HMDERQHORSPOWPDHSHMMLWHSDWHSRHHQHWRSSRWWK
HSODQWRQKSDWHPDDOKHPRQDWHWFWPDQFWEDQWFSORHHMIDFppE

not

~~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
ENQHDODQSHDWRQOSHQQODPRQWVKENQREDWRQWHPHO\
PSRWDQXHMQRKWHENEMMTCW KDHPHQDQDHHQWRWWHPV
WDIIPDRQWQHOHYNWRSRQVWVWKENEDFFHSWHGKRPPEDQW
HOKOHORQKENQHQWWRDFKHWKREMHFWHRKIWKHEHFDMWKENQ
QHQMFDQRWQFHDDFRQHWWRPPQEMHFWM~~

~~7KRPPQEMHFWMWRHPHWKPHHQNHODQERPSHWVHHIHFWDQ
WRPDQDRHWRRHFRPSHWVROKHOHDQPDNHW7KENQHQWWRHQDWHDO~~

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
HWWRIOHWEDQWRQPRKQDQOQWFHDWHWFWHWWQDWK
ENEDQOQKDSDDQERPSAPQHQQOQWWWpHWRW
HQ
QPD-ENQOODHFRPSAPHWAW50DMRQDQVTEH3FRPSANPAEDEOH50DMRQVTEHNDDEQVPC

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

>2 >3

8 6 & † D

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

