OHUJHU 5HPHOLH

6WDWHPHQW RI WKH %XUHDX RI &RPSHWLWLR()HGHUDO 7UDGH &RPPLVV

> 5LFKDUG)HLQVWHLQ 'LUHFWRU

-DQXDU

7KH YLHZV H[SUHVKVRHVCH KRHUWHKLKQ SDXIHHWDX RI & RPSHV LWLRQ DQG GR QRW QHFHVVDULO\ UHIOHFW WKH YLLZV RI WK & RPPLVVLRQ RU RI DQ\ LQGLYLGXDO & RPPLVVLRQHU

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

7KHHDO7DHRPPK#DRIRPSHWWRQMMWWODWHPHW
KKRHMQHWRWKMQRWDWMWWOHPHWQPHHEDM 7MQH
KWDQPDQIWHTNWRQWWIHTNWODMDQWHSHWHQRWDWRQ ,Q
DWRQHQDWHKWHMWHRPPKQDWFRPSODWKHDQODWHG
RFRHWWRMHDRKHSRKWRWWMRPPKQMTNQDWFDMV
DFRHHQMRMMDQQRSRMQPHWDONWHRWKSDWEWDIDFWKI
WHFDM \$FRQWWWWRRPPKQDFFHSWHGSDWEWDSRKWMSDWDO
QWRQMWEDDORQEHSHMMWRWWWDPHSRKQWGHDFFHSWHQQEDWWHU
7KRPPKQQWDIDHFRWDQWOOHDQRPWHHSHHQHSRKQ
SHKKDMWRWSRMQEHQPDQWEHDFFHSWDEOHQKMTNQWFDM

7WDWHPHWDKHWRWWKWDIIRMHWIHERQHWRSRSRMRU FREPDWHWDQFWRQWRWWKPHEDWHDWDIIDHHRWDWDMWWOHPHW 7WDWHPHWDHMMDWHIROORDHDWKDMWWREHMWHDQ DFFHSWDEOHENWKHWWMDHHPHWDWRQORHSRKQHWR ROMSDDWHDQPDWDQMWSHQWWMMWWMDSSOEDWRQQ WPD 4

6HHWWSZWFREFEHWSDFWEHUWP IRWDUSWDQODWHG KPKQIWHKNKSWEWWKIMDNOGQHHHPHEMHDOK HTNQONHCNWRQERWOHHRQQV2HBRKQW WWSZWFREFPHHIDTWP DQYHMDRIRPSHWWRQWWM6WNW WWSZWFREFPHHIDTWP DQYHMDRIRPSHWWRQWWM16WNW

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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.

7HRPPKQQHWDIIDQOHSKSRMRERQPDWHRHIDHWIHQ
FRPSHWIJKRHWHPQHWHWHIDOFDMRIMFDMDQVERPSHWIJMHIIHFWIQ
KODWRQI6HFWRQIWHQDWRQW,IWDIIHWHPQWRWDQJERPSHWIJMHIIHFWIJH
ONHOWOOZWWISDWHMWIJWHOQQQWWJEHOHMIJQFFHSWDEOH
HPHQWQOMWRPDQJQHWRHFRPSHWIJKRQWHPDNHWIJIHFWHGWHPHIIG
QRWDWHIJWWOHPHQJWHQWRDFHMWRWHPHIJHHOOORIJWHSDWHWRSKIFHHG
IJWWDWHHIJWGREOHPDWESRWRQ

7HSDWHFWHFHMWHWHWRHQHQWWOHPHQEKWWH WDII 2QYHRPPKWWHEKQOQOMWHRPPKWDRI RPSHWWRQOWHRPSODQHKQQYHNDRIFRQPEZQYHSDWHXEWHPEWKPPOMOQONPHWHpXOOH &BORPHWWHRQNPHWHpRPSODRWHPHH\$ ORWPHHEDMOMRRODOPHHOWNRPPKSHIHWKWNO
HOHIWHIRPRIDHWWWWWRHPHWHDWERPSHWWMHIIHFWKIDODIWRKWDO
PHHURWKWWORERWHOHIPDDOK EHHTNORIDHTNHWWWWWR
HPHWRMHIIHFWKKRWRQOHOHIPDDOMSSODHHPHWMPSORHH
REODWRORCHWDOWSRWHFWRQQWNSRKWFHDWRSSRWDKFHWO
HWWWN ROWHOHIDORPDEHHTNWRHPHWHDWERPSHWWMHIIHFWKID
MWEDOPHHCKKROWHOHIPDDOM DHTNPHWWRHHFWIHDOOWRSKWHFW
FROHWDOORPDWRODHTNPHWQWWRIDKEHWDOWWYN

7HWDIIRRWONHOWRDFFHSWWHSDWHWIIHWRHWDQXWRQPRKQQ EQWWHWFRPSHDWOHDWRQSDWHWHEQWHHOHDWPDNHW 6KK HPHDOPRWPHDWHOHOPQWHWHFRPSHWWMSREOHPWHDWHEWHPHHE\ SHMQHFHDWQWHWDIWWWDWXKDQWHWDDWHOHDWDPRQWRIM,W DOKHTHWHRPPKQQWHWDIIWRPDNHWHIHMWDXSWRQERXWWHPDNHWDQ WYDWESDQWDQERXWWHDEDWDQRPSHWWMQKIWHSRSRMHWWM

7KSDWHKWEHSHSDHWRKWHWWHENWFRWDQOOFRPSRQQV QFHDWRRSHDWHDWRQPRWWHWWMKSHDWHDWRQPRWWHWWMHDEOHIRP WKSDHWDWRWWKWWMDOEHDEOHWRPDWDQHWRHFRPSHWWRQOPRW PPHDWHO\7KEUSHRSOHKWEHSHSDHWRHŞODWKWWWSHDWRQ DWRSKHHOHDWIQQDOQRPDWRQUSDDWHIQQDOGFRHWWMG EHORDSKSRDOKWRIWHWHTHWHWDIIWRDNDWRQOTHWRQQRQWIWKU DQODDHWWFRPSOHWHRWDWRDOONHOWDNHPRHWPH

7HWDIIØOHPPĘDSRSRM₩WWNWREWHPĘMWHWĘOMDOORIWH WWRPSRĘW∀HMFRPSRĘWMĘDOOĘOM

t	PD	M	$\mathbf{F}\mathbf{W}$	DR 1	NHID	FD	\mathbf{WHV}
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- **‡DFFHWRNHEWDQWHESO**\
- **†DFFHWRPDNHWMDDOODRWSWV**
- **#HMDERGMORSPHWFDSDEDW**
- **# WHOOHFWNOSRSHWMWKRPROEHDG**
- #WHFWORDOWRKDWDHMFHWDMOODKRPDWRWHFWORJ

FRWNG
DFTNOMWWKRPPKUTNWHHSRQWWRHRDUWKFRPSDWRWK
MSDDWHWDQORUWWWRQRIWKPIn the matter of Chicago Bridge & Iron
&'RFN aff'd Chicago Bridge & Iron Company v. Federal Trade Commission
&LUDDLDUW

‡**HWIEDWRQIDQ**FFHWRSH**KQ**O

‡PDNHW**DWEX**WR**O**DSDEDWHV

‡XSOMUHDQXVRPHHODWR

‡FDSWDOH**KK**HV

#DWWOMFFHDWRFRPSHWHHIIHFWMOWNHOHDWPDNHW

7NSRSRMSDFNDHPDDORQONEQVRPSRQQVMODWQVRPDNHWXXVH WHHOHDQJHRDSKRSRKWPDNHWIKKRPSRQQVDHQFHDWRDMWRWWN ENHWDQWHDPHHIIEHQHWRWWHHSRQQVBQRHDPSOHMQVHSRKWK PDNHWHQQVEXWHWKWMSRKWWMDMWWREHHWHPDQONDMWV HODWQVRWHMRWMSRKWQHWRHPDQIIEHQV6PDDOQMWEDOQVHDWRQ DQSRWDQVFRPSHWWMHOHPHQWPDEHQFHDWRQONDMWDWPRHWRQQOHMORI WHQU

• 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.

"IWNSDWHMHNWRHFONDQIWNMFRPSRQWWNPWHSODWH FRPSRQWDHQWQONDQWDEMMONWHDGHSDWHFWDONHSODQ RWHENDOEHDEOHWRWHDWHWMMWHERPSRQWWRWMQSHDWRWRRSHDWH FRPSHWWMO\7MSDWHWSHDWRQOHPSORHHWHWREHWMPRWNQDHHDEOHDERWWMM M%SSOHWWRPHWRPSHWWRDQWMSRWOHEMMDDOKSRMWWWM HMQHWMSDWHKWEHSHSDHWRPDNHKMMQHDDDDEOHIQFHDRHFWWM WDIIWRMHWFD@HREWDQG

© EODQHWDMWRQWHSDWHWBWFHWDQRPSRQQWRHDPSOHWHHMDEK DQMORSPHQWQHHWDOHQDOOQWEHSHMM 7HSDWHK®G SRMHMQHWBWWHFDMRXWDOQWQPQWHEMWEDWRERPSHWWMQV RWDQHDQSODQWRQWBWDQMDFFHSWDEOHWRWHRPPKQOBMWKQ HMDERQMORSPHQWPDEHSHMMIWMSDWHXRMHMQHWRXSRWWM HSODQWRQNSDWHWDDOKHPRQVDWHWBWPDQDFWBB DQXWBDSORHHMApIDFpp€€ 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.

"IWKSDWHSRSRMWR#WPRHOEWHEMWWWWWWSDOOFRQMB
SDFNDHRQLWKSRSRMR#WHFIHDRIRWEMWRWWWSDWHFW
HQIDQFFHSWDEOHENDQWQRWDWHIQOHDQHFWHWKSRRMDHHPHQV
DQOODQDODDHHPHQWWWEWEHIRHWDIIIRWWKSRSRMR#WRWK
RPPKQKWDIIDOFDHIWOHMERWWKENDQWDHHPHQVEHIRHPDNWV
HFRPPHQWRQKSRSRMR#DOSHFIEDOOHQUWKENDQTNHWWW
WRWENSRQWRWKHMIOU HHPHQWKDHHPHQVDOEHDWWDFHOD
FRQHQVDOHEWDQRSRDWHQVRWKR#THWWWNWRWKQPHERQYEMU
PWEHFRPSOHWHEPHOWHODIWHWKRPPKQFFHSWWKSRSRMR#QKTQ
DQRQENWHWHWDIIMHNWRPQHWKIWWEWWKHDOQWPRDC@PHD@SINIRQEWEWWHSWOPOWE
PORHFRPP###WWNWRDRIRQENONWRPQSWWK KPUWBWWDWWHSWDQ#P#DDOWNHWWWWWW

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.

HWHWHENERWREIRWWPWEHREWEWFDEDWDEHWRH
FRPSHWWREVHOHDWPDNHWDIWHDFTWHEWHOMWTHWDIIDOWHHIRH
HDONWHDSRSRMENWREWHPEUMWHWRWHIQEDOFDSDEDWDEHWMV
WRDFTMDESHDWHWHDMWDWHFRPSHWWMDEDWWRPDWDEHWRH
FRPSHWWREWHPDNHW

7HWDIIØOEHSHSDHWREWWHSDWHDQFFHSWDEOHENW FRDFWHWEYWKIMWHHYRQDWRIWHSDWHWRSRSRWWHENDQV EMEHORWHSDWHWWWWWWWWWWWWHENDFFHSWDEOH 3RSRQENWRWRHV QWFOHDODWWWHQFHDEWHDØOHODDSSRØO

7HWDIIHQDOORQSHIHHQHDWRWHPHWRWHSDWHMWRMOHFWDQ
DFFHSWDEOHENGRPHSDWHSHSDHDQIIHQHPRDQWPHWPHWWHHOSRI
DQWPHWEDQDQOEWEGRPHSDWHDSSRDFQOIPWBWWHEHOHM
PDEHDFFHSWDEOHENQWHSREDDWDQKWRGRFHWWRSRFHMMM
WHDDQVDHRIHFOQVHSDWHMPWHMOHFWRQIWHSRSRMEHMENRQ
WHRWHAQVHHQDDQWHWWWWHAPPKQODSSRMWHQHWH
KHPDEHIRHDPSOHDQXEHWWBWWDMSHQWFRPSHWWMFRQHQU
DIQQDOQWRWBWODFNWHHSHWMWMFHQWWWDQWKGHWDIIK
QWRSSRMWRDQKWRQWRQWFDQHFRPSOHWHWQWHTTNWPHSHRG
DOWKKDWHMMWSEDOOEHHQOKWDQWWRMDKWRQHFDMRIWHDWRQOWPH
QOMGWHIWQVDQHRMMWHSDWHMOHFWWHMDEKHWRGRWWHSDWHV
BMDQNWRQERWWHPHWRWHQWHQRMWHXWERQWWDIIDKRQV
SREOH

7HWDIIOOHDONWHDSRSRMENNEDHIBOWREWHPENWHWIENN
IQQDOODQRPSHWWMODEOH 7HSDWHKBWMDONWHDQOHFWDSRSRMG
ENWWHMFWHDQQHSRSRMENWQQDOFRWREWEH
WRRWWQEHMQDOODHMHWDQWHIQQDOOWDWREWHPQ
MWHWHENBWHQFHDQQDOHKKHVRSRWHFWWHENWRPSHWWMO\
MWMIRPDWRQMSDWHKBHMFRQORKPHRWHWEDWDWHWBWHU
RQQSHRSOHFRQWWHHMZHWDIIWMKIDENDOEHERDHWRWH
SDWHFWFRQWUWHUHFRQQOQEDWDMWQHDOQWRHHE\
WHRPPKQRPPKQHHWWWMWHSDWHFWWDWHQWRQ\
WRWWKSRSRMENBWHIQQDODEDWWRFORMRWHSRSRMWDQFWRQWDOK
WRWWKSRSRMENBWHIQQDODEDWDQFFRQPEQHWMWRPDWDQHWRHFRPSHWWRQ
WHWWFRWWWHIQQDODEDWDQFFRQPEQHWMWRPDWDQHWRHFRPSHWWRQ

EIRINRPSIMINERPPLIZRO

not

PMURPHWDLWWWUHPPH

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.

EMWHWDIIDOWRREDEDHIOOHHWHHWWNDHHPHW 6WDIIDOHTHWEEDWREEDEWHDEWHDOEWHDHHPHWWWH ENWHDODESHDWREOSHEEODPREWHTHENERDWREEWHPHO\ PSRWDW WHIWKWHENEHHWWHDHHPHWDEEDHHWWHPV WDIIPDEEWHOHYHWREEKWEWWHENEDFFHSWHGHRPPKEDEW HOKOHORWHENEHWWWREMHFWHKIWKEEHFDMWHENW EHWMPDEWHFHDDFREHWWHRPPKEEMHFWM

7HRPPKWEMHFWHWRHPHWHPHHWNHODWERPSHWWHHIHFWDQ WRPDWDQHWRHFRPSHWWRWHHOHDWPDNHW 7HENWHWMWRHQDWHDQ

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

MWWNRIDQWRQPRKQQQQOORIWNFRPSRQQXID
EQUINGERMWRDDEOHENDOQYMPDMRWRIFDMWPHDWHOFHDWH
DFRPSHWWRERPSDDEOHWRWNFRPSHWWRWRWRWBWHBHEHHQDWRWDIWHWNPHHU
MWWNRIOHWBQQWRQPRKQQQWDOQWFHDWHWBWHWWYDWN
ENEDQOQYHDSDDQWXRPSAE0HQOQYWWWphHWRW
HOD

ŲPD•ÌŠĎOODHŒFRPSÅPHWÀWSŒDMREŒĐÀŊŦÌŒ₽\$3FRPSÅÄPEŒEDEOHSŒDMRŒVŦĚŒÄDDEŒŲPŒ

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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.

QHWRKOMSDDWHRPDQWDQMWØODORDWRHWHRPPKQR
DSSRQVDQSHQQWWDWWRRHWHWHWHOMSDDWHEQKPRQVRWHSDWHY
FRPSODQHWWHRHLQQHWRPDQVDQMWWHQSHQQWWEDWDORM
IQWRQDDWRWKMRIWHPRQVRWMGERMHRMDOEHWHHHDQDV
RIWHRPPKQQWDIIDQWWHWDIIDWHDM,QQHWRROG
MSDDWHWHQSHQQWEDWRKPHWWPRHHWHQREODWRQRMDO
PRQVRERPSODQHEWDODOKRMMHWHRSHDWRQIWHHOMSDDWHEQVHWDII
NGFEHWHIQWRQIWHWQOEDQORQVRDFBPDQIWHERDG

7NSDWHVDQŞHWHWNPDWWHIWNDWESDWHWQHDQHWNRQDEK IRDQSSRSDWHPRQVRDMDODSREOH 7NWDIIDORMWRHMWNQOW TNOIEDWRQWNDHHPHQVEHWIHQWHPRQWRDQWNSDWHKRDQOREWN SRFHWFHSWDEOHPRQVRDHWKMWKWDQWMHŞHHQHQWNPDNHWDQ IQQDORRWNWHWRDQIWNSDWHQOMGNRPPKQDSSRQWHQOV WNHGDFNRQVRWNDVRQVRQOQWHHHFWMVRQWDQWDQ ODUWSDWESDHWDWRHSHHQH 7NWDIIDOEHDDODEOHWREXWN FNDFWHWEKIDQFFHSWDEOHPRQVRU

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.

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 ZKLIVHWWOHPHQW DIWHU WKH FRPPHQW SHULRG DQG WKHQ EURXJ