

comply with the provisions of this Preservation Agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of § 3.25(f) of the Commission's rules; or

b. The day the order becomes final.

4. From the time BAT and B&W sign this Preservation Agreement until the date the order becomes final, BAT and B&W shall:

a. Take such actions as are necessary to maintain the viability and marketability of the Reidsville Assets by preventing the destruction, removal, wasting, deterioration, sale, transfer, encumbrance or impairment of any of the Reidsville Assets except for ordinary wear and tear, and

b. Take such actions as are necessary to maintain the viability and marketability of the ATC Brands Assets by preventing the destruction, sale, transfer, encumbrance or impairment of any of the ATC Brands Assets.

5. BAT and B&W also waive all rights to contest the validity of this agreement.

6. For the purpose of determining or securing compliance with this agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to counsel for BAT or B&W, BAT or B&W shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of BAT or B&W, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of BAT or B&W relating to compliance with this agreement; and

b. Upon five (5) days' notice to BAT or B&W and without restraint or interference from them, to interview officers or employees of BAT or B&W, who may have counsel present, regarding any such matters.

7. This agreement shall not be binding on the Commission until approved by the Commission.

#### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("the Commission") has accepted, subject to final approval, an agreement containing a proposed consent order from B.A.T Industries p.l.c. ("BAT") and Brown & Williamson Tobacco Corporation ("B&W"). The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record.

After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation of this matter concerns the acquisition of The American Tobacco Company ("ATC"), a wholly-owned subsidiary of American Brands, Inc. by BAT. B&W, BAT's wholly-owned subsidiary, and ATC are the third and fifth largest manufacturers of cigarettes, respectively, in the United States. In its administrative complaint, the Commission alleges, among other things, that the United States cigarette market is highly concentrated and would become substantially more concentrated as a result of the acquisition. The Commission also alleges that it has reason to believe that the acquisition would have anticompetitive effects and would violate section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act. The agreement containing consent order would, if finally accepted by the Commission, settle charges that the acquisition may substantially lessen competition in the manufacture and sale of cigarettes in the United States.

The order, accepted for public comment, contains provisions requiring BAT and B&W to divest certain brands of cigarettes and cigarette manufacturing facilities. The order requires BAT and B&W to divest, within twelve (12) months, six discount cigarette brands, formerly owned by ATC, including Montclair, Riviera, Malibu, Bull Durham, Crowns and Special Tens. The order also requires BAT and B&W to divest to the purchaser of the discount brands, three former ATC full revenue brands, Tareyton, Silva Thins and Tall, and the former-ATC cigarette manufacturing facility located at Reidsville, North Carolina. Under the terms of the divestiture, BAT and B&W may satisfy the divestiture requirements without divesting the full revenue brands and/or the Reidsville facility, if the Commission approves the divestiture of only the discount brands as satisfying the remedial concerns of the order. The purpose of the divestiture is to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint and, therefore, if the Reidsville facility is divested, it is to be used only for the production of cigarettes in the United States principally for sale and consumption in the United States.

Under the terms of the order, if BAT and B&W fail to complete the divestiture within the required period, the Commission may appoint a trustee to divest the six discount cigarette brands, the Reidsville facility and Belair, a B&W full revenue cigarette.

Any proposed divestiture pursuant to the order must be approved by the Commission after the divestiture proposal has been placed on the public record for reception of comments from interested persons. The Preservation Agreement executed as part of the agreement containing the consent order requires BAT and B&W, until the order becomes final, to take actions as are necessary to maintain the viability and marketability of the former ATC brands of cigarettes and the Reidsville facility.

For a period of ten years from the date the order becomes final, the order prohibits BAT and B&W from acquiring, without prior Commission approval, stock or assets of, or interests in, any company engaged in the manufacture and sale of cigarettes in the United States.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Benjamin I. Berman,**

*Acting Secretary.*

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#### GENERAL ACCOUNTING OFFICE

##### Notice of Transmittal of the United States General Accounting Office Compliance Report to the President and the Congress Covering Reports Issued During the Session of Congress Ending December 1, 1994

Pursuant to the Omnibus Budget Reconciliation Act of 1990, Section 254(b), the United States General Accounting Office hereby reports that it has submitted its Compliance Report covering reports issued during the session of Congress ending December 1, 1994 to the President of the United States, the President of the Senate, and the Speaker of the House of Representatives.

**Susan J. Irving,**

*Associate Director, Budget Issues, Accounting and Information Management Division.*

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