the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–16447 Filed 7–3–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3579]

Service Corporation International; Prohibited Trade Practices, and Affirmative Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition—in connection with Service Corporation International's acquisition of Uniservice Corporation—this consent order requires, among other things, the Texas corporation to divest, to a Commission-approved acquirer, the Uniservice Corporation assets and businesses in Medford, Oregon, within twelve months or transfer responsibility for the divestiture to a trustee appointed by the Commission, and to obtain prior Commission approval, for a period of ten years, before acquiring any interest in funeral establishments or cemeteries in Jackson County, Oregon.

DATES: Complaint and Order issued May 16, 1995.[1]

FOR FURTHER INFORMATION CONTACT:

K. Shane Woods or Charles A. Harwood, FTC/Seattle Regional Office, 2806 Federal Bldg., 915 Second Ave., Seattle, WA 98174 (206) 220–6350.

SUPPLEMENTARY INFORMATION: On Thursday, March 9, 1995, there was published in the **Federal Register**, 60 FR 12955, a proposed consent agreement with analysis In the Matter of Service Corporation International, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 95–16451 Filed 7–3–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3584]

Schwegmann Giant Super Markets, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition—in connection with Schwegmann's proposed acquisition of supermarkets owned by National Holdings, Inc.—this consent order requires among other things, the Louisiana-based corporation to divest, within twelve months, seven stores in the New Orleans area to Commission-approved purchasers, and requires the respondent, for ten years, to obtain Commission approval before acquiring an interest in a supermarket, or another entity that operates a supermarket, in the relevant area.

DATES: Complaint and Order issued June 2, 1995.[1]

FOR FURTHER INFORMATION CONTACT:

Ronald Rowe, FTC/S–2105, Washington, D.C. 20580. (202) 326–2610.

SUPPLEMENTARY INFORMATION: On Wednesday, March 15, 1995, there was published in the **Federal Register**, 60 FR 13993, a proposed consent agreement with analysis In the Matter of Schwegmann Giant Super Markets, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, D.C. 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 95–16452 Filed 7–3–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 951–0064]

Silicon Graphics, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Mountain View, California company to take steps to ensure that companies other than the two it is acquiring can develop and sell entertainment graphics software and the workstations to run it to produce sophisticated computer-based graphics for the entertainment industry.

DATES: Comments must be received on or before September 5, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mary Lou Steptoe, FTC/H–374, Washington, DC 20580. (202) 326–2584 or Howard Morse, FTC/S–3627, Washington, DC 20580. (202) 326–6320.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission (''Commission'') having initiated an investigation of the proposed acquisition by Silicon Graphics, Inc. (''SGI'') of the stock of Alias Research Inc. (''Alias''), and the stock of

Wavefront Technologies, Inc. (''Wavefront''), and it now appearing that SGI is willing to enter into an Agreement Containing Consent Order (''Agreement'') to port certain computer software to a computer system other than that of SGI, to establish and maintain an open architecture for SGI computers, and to provide for other relief,

It is hereby agreed by and between SGI, by its duly authorized officers and its attorneys, and counsel for the Commission that:

1. Proposed respondent SGI is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2011 North Shoreline Boulevard, Mountain View, California, 94043.

2. SGI admits all the jurisdictional facts set forth in the draft of Complaint.

3. SGI waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify SGI, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision in dispositon of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by SGI that the law has been violated as alleged in the draft of Complaint, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to SGI, (1) issue its Complaint corresponding in form and substance with the draft of Complaint and its decision containing the following Order in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to SGI's address as stated in this Agreement shall constitute service. SGI waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. SGI has read the proposed Complaint and Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the Order. SGI further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered That, as used in this Order, the following definitions shall apply:

A. ''SGI'' means Silicon Graphics, Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by SGI; and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

B. ''Alias'' means Alias Research Inc.

C. ''Wavefront'' means Wavefront Technologies, Inc.

D. ''Respondent'' means SGI.

E. ''Entertainment Products'' means the computer software ALIAS Animator™ and ALIAS PowerAnimator™ products sold as of May 1, 1995, including Additional Fonts and the Advanced Options for ALIAS PowerAnimator™, and any successor products or future versions or general releases of such products, including any additions, modifications, updates, and enhancements thereto released during such period as specified in the Porting Agreement.

F. ''Entertainment Software'' means modelling, animation, rendering, compositing and painting software, as individual software programs or in combination, used in the production of two-dimensational or three-dimensional images for film, video, electronic games, interactive programming, or other entertainment or educational uses, that compete with Entertainment Products or with any component thereof.

G. ''Porting Agreement'' means an agreement between Respondent and a Platform Partner, entered in good fatih, to work together to port the Entertainment Products to be compatible with the Platform Partner's computer systems in their supported configurations and with associated peripherals, which agreement shall provide, among other things, that Respondent shall use reasonable best efforts to optimize the operation of the Entertainment Products in the context of the Platform Partner's computer systems; and which Agreement shall provide that the porting shall occur as soon as reasonably practicable after the Porting Agreement is entered and receives the approval of the Commission; and which agreement shall state the method in which the ported Entertainment Products shall be sold and marketed on terms competitive with those applicable to Entertainment Products compatible with Respondent's computers; and which agreement shall provide for protection from disclosure or improper use of Non-public Information.

H. ''ISV Programs'' means programs and other arrangements that Respondent makes avilable generally to independent software developers that facilitate the development of software compatible with Respondent's computers and operating systems.

I. ''Platform Partner'' means a company with which Respondent has entered into a Porting Agreement pursuant to this Order.

J. ''Non-public Information'' means any information not in the public domain furnished by the Platform Partner to Respondent in its capacity as porter of the Entertainment Products, and (1) if written information, designated in writing by the Platform Partner as proprietary information by an appropriate legend, marking, stamp, or positive written identification on the face thereof, or (2) if oral, visual or other information, identified as proprietary information in writing by the Platform Partner prior to the disclosure or within thirty (30) days after such disclosure. Non-public Information shall not include: (1) Information already known to Respondent, (2) information which is

within the public domain through no violation of this order by Respondent, or (3) information which is known to Respondent from a person other than the Platform Partner not in breach of a confidential disclosure agreement.

K. ''Acquisitions'' means the acquisitions of Alias and Wavefront by SGI.

L. ''Commission'' means the Federal Trade Commission.

II

It is further ordered That,

A. Not later than March 31, 1996, Respondent shall enter into a Porting Agreement that receives the prior approval of the Commission. After such Commission approval, Respondent shall port the Entertainment Products to the Platform Partner's computer systems as provided in the Porting Agreement.

B. Respondent shall enter into such Porting Agreement either with Digital Equipment Corporation, Hewlett-Packard Corporation, IBM Corporation, or Sun Microsystems, Inc., or with another company that receives the prior approval of the Commission. Provided however, nothing in this Order shall prohibit Respondent from entering into additional porting agreements with one or more platform partners without the prior approval of the Commission.

C. The purpose of the Porting Agreement and the porting of the Entertainment Products, pursuant to the Porting Agreement, is to ensure that ported Entertainment Products compatible with the Platform Partner's computer system will be marketed and sold in competition with the Entertainment Products operating on Respondent's computer systems, and to remedy the lessening of competition resulting from the proposed Acquisitions as alleged in the Commission's complaint.

III

It is further ordered That, absent the prior written consent of the proprietor of Non-public Information or unless expressly permitted by any Porting Agreement, (1) Respondent shall use any Non-public Information only in porting the Entertain Products pursuant to such porting agreement, and (2) any persons involved in porting the Entertainment Products shall not provide, disclose, or otherwise make available any Non-public Information to other employees of Respondent.

IV

It is further ordered That Respondent shall:

A. Establish and maintain an open architecture, and publish the Application Program Interfaces (''APIs''), for Respondent's computers and operating systems in such manner that software developers and producers may develop and sell Entertainment Software, for use on Respondent's computers, in competition with Entertainment Software offered by Respondent; and

B. Respondent shall extend to developers of Entertainment Software the right to participate in ISV Programs on terms no less favorable to such developers than those terms applicable to developers of other software for use on Respondent's computers and operating systems.

C. The purpose of this Paragraph IV is to allow Entertainment Software developers and producers to develop and sell Entertainment Software for use on Respondent's computers and operating systems in competition with Respondent, and to remedy the lessening of competition resulting from the proposed Acquisitions as alleged in the Commission's compliant.

V

It is further ordered That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Respondent has fully complied with the provisions of Paragraph II of this order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with those provisions. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraph II of this order.

VI

It is further ordered That, one year from the date this Order becomes final, annually thereafter for the next four (4) years, and at other times as the Commission may require, Respondent shall file with the Commission verified written reports setting forth in detail the manner and form in which it has complied and is complying with Paragraphs II, III and IV of this order.

VII

It is further ordered That, for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Respondent, Respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and 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 Respondent relating to any matters contained in this order; and

B. Upon five (5) days notice to Respondent, and without restraint or interference from Respondent, to interview officers or employees of Respondent, who may have counsel present, regarding such matters.

VIII

It is further ordered That Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in Respondent, such as dissolution, assignment, sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of this Order.

IX

It is further ordered That this Order shall expire five (5) years from the date it becomes final.

Analysis to Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission (''the Commission'') has accepted, for public comment, an agreement containing a proposed Consent Order from Silicon Graphics, Inc. (''SGI''). The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments from 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 proposed acquisitions of Alias Research Inc. (''Alias'') and Wavefront Technology, Inc. (''Wavefront'') by SGI. The Commission's proposed complaint alleges that Alias and Wavefront are two of the top three developers of Unix-based, entertainment graphics and animation software (''entertainment graphics software'') in the world. Entertainment graphics software consists of compatible modelling, animation, rendering, compositing and painting software tools for use on entertainment graphics workstations in the production of high-resolution, 2D and 3D digital images for film, video, electronic games, interactive

programming, or other entertainment or educational, graphic media. Entertainment graphics workstations are computer workstations compatible with entertainment graphics software.

The Complaint alleges that the entertainment graphics workstation and software markets are extremely concentrated with SGI the dominant provider of entertainment graphics workstations, with over 90% of the market. According to the complaint, although various other companies manufacture workstations, most entertainment graphics software was developed for use on SGI workstations and is available only for SGI workstations. The complaint further states that alias and Wavefront compete principally with SoftImage Inc., a subsidiary of Microsoft Corp, and that other developers and producers of entertainment graphics software produce particular software tools that are used as complements rather than substitutes for the product suites offered by Alias, Wavefront and SoftImage, or produce software suites that have found limited customer acceptance relative to the entertainment graphics software offered by Alias, Wavefront and Soft Image.

The complaint further alleges that Alias, Wavefront, and SoftImage are the industry standards, and the ability to run Alias, Wavefront, or SoftImage entertainment graphics software is critical for any computer workstation manufacturer to compete successfully in the entertainment graphics workstation market. According to the complaint, before the proposed acquisitions, Alias negotiated with manufacturers of workstations, other than SGI, to port its entertainment graphics software products to those manufacturers' workstation platforms. The complaint alleges that the effect of such agreements, if consummated, would be to enable such workstation manufacturers to compete in the entertainment graphics workstation market. Also, according to the complaint, before the proposed acquisitions, SGI maintained an open software interface for its entertainment graphics workstations, sponsored independent software developer programs and shared with developers of entertainment graphics software advance information concerning new SGI products to facilitate and promote competitive development of entertainment graphics software.

The Commission complaint also alleges that the acquisition would have anticampetitive effects an would violate Section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act. The Commission alleges further that anticompetitive effects of the acquisitions may include, among other things, a foreclosure of workstation producers other than SGI from significant, independent sources of entertainment graphics software; SGI gaining proprietary, competitively sensitive information pertaining to other workstation producers if such workstation producers are able to get Alias or Wavefront entertainment graphics software ported to their workstations; a foreclosure of, or an increase in costs to, competitors to Alias and Wavefront in the entertainment graphics software market in developing software for use in connection with future entertainment graphics workstation products developed by SGI; and causing consumers to pay higher prices for, or reducing innovation competition among producers of, entertainment graphics software and workstations.

The agreement containing consent order would, if finally accepted by the Commission, settle charges that the acquisition may substantially lessen competition in the entertainment graphics software and hardware markets.

The order, accepted for public comment, contains provisions requiring SGI to enter into a Commission-approved porting agreement, by March 31, 1996, with Digital Equipment Corp., Hewlett-Packard Corp., IBM Corp. or Sun Microsystems, Inc., or another Commission-approved platform partner, and port Alias's two major entertainment graphics software programs, Animator™ and PowerAnimator™, and their successor programs. The porting agreement, to be approved by the Commission, will be an independent contract between SGI/Alias and a platform partner. The order requires, however, that the porting agreement contain provisions requiring SGI to exercise reasonable best efforts to optimize the operation of the entertainment graphics software in the context of the platform partner's computer systems; requiring SGI to port the entertainment graphics software as soon as reasonably practicable after the porting agreement is entered and receives the approval of the Commission; and stating the method in which the ported entertainment graphics software shall be sold and marketed on terms competitive with those applicable to entertainment graphics software compatible with SGI's computers. The order requires an information firewall, specifically prohibiting the exchange of non-public information between the platform partner porting the Alias software and those SGI/Alias employees not participating in the porting procedures. The purpose of the porting agreement and the porting of Alias software is to remedy the lessening of competition resulting from the acquisitions as alleged in the Commission's complaint.

The order also requires SGI to maintain an open architecture and publish its application programming interfaces. Additionally, pursuant to the order, SGI is required to refrain from discriminating against those software companies, other than Alias and Wavefront, that develop software for the SGI platform by continuing to maintain a software development program with no less favorable terms than those development programs SGI maintains for software developers who develop software for applications other than for entertainment graphics. The purpose of the open architecture and non-discrimination provisions is to allow entertainment graphics software developers and producers to develop and sell entertainment graphics software for use on SGI's computers and operating systems in competition with SGI, and to remedy the lessening of competition resulting from the acquisitions as alleged in the Commission's complaint.

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.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga in Silicon Graphics, Inc., File 951–0064

The proposed complaint in this matter alleges that the two companies that Silicon Graphics proposes to acquire, Alias and Wavefront, are two of the three leading developers and sellers of entertainment graphics software in a highly concentrated market in which entry is difficult and time consuming.[1] The Commission alleges, and I agree, that the elimination of competition between Alias and Wavefront will substantially lessen competition in violation of section 7 of the Clayton Act.[2] The evidence persuades me that the Commission has a strong case under section 7 based on this horizontal combination, and the obvious course of action would be to challenge the acquisitions on this basis. Such a challenge, if successful, would leave

[1] Complaint paragraphs 10, 11, and 15.

[2] Complaint paragraph 16e.

either Alias or Wavefront free to contract to produce entertainment graphics software for other hardware manufacturers.

Instead, the Commission chooses to rely on vertical foreclosure theory to impose requirements that fail to preserve existing competition and that ultimately may create inefficiency and reduce competition. To the extent that any vertical problems should concern us, they would be resolved by stopping the horizontal transaction. The proposed decision and order having failed to achieve straightforward relief for the real competitive problem, the combination of Alias and Waterfront, I dissent.

Dissenting Statement of Commissioner Roscoe B. Starek, III in the Matter of Silicon Graphics, Inc. (Alias Research, Inc., and Wavefront Technologies, Inc.)

File No. 951–0064

I respectfully dissent from the Commission's decision to initiate this proceeding against Silicon Graphics, Inc. (''SGI''). The proposed complaint alleges anticompetitive effects arising from the vertical integration of the leading manufacturer of entertainment graphics workstations, SGI, with two leading suppliers of entertainment graphics software, Alias Research, Inc., and Wavefront Technologies, Inc.[1] I am not persuaded that these vertical acquisitions are likely ''substantially to lessen competition'' in violation of section 7 of the Clayton Act, 15 U.S.C. 18. Moreover, even if one assumes the validity of the theories of anticompetitive effects, the proposed order does not appear to prevent the alleged effects and may create inefficiency.

The Commission alleges, inter alia, that the acquisitions will reduce competition through two types of foreclosure: (i) Nonintegrated software vendors will be excluded from the SGI platform; and (ii) rival hardware manufacturers will be denied access to Alias and Wavefront software, without which they cannot effectively compete against SGI.[2] Vertical foreclosure theories generally provide a weak basis for Section 7 enforcement;[3] and this double foreclosure scenario has particular problems, both logical and factual.

In general, the two types of foreclosure tend toward mutual exclusion. The very possibility of excluding independent software producers from the SGI-platform suggests the means by which competing workstation producers will avoid foreclosure. The nonintegrated software producers surely have incentives to supply the ''foreclosed'' workstation producers, and each workstation producer has incentives to induce nonintegrated software suppliers to write for its platform. Otherwise, ''we are left to imagine eager suppliers and hungry customers, unable to find each other, forever foreclosed and left to languish.''[4] This predicament is improbable in the dynamic markets at issue.

The acquisition appears very unlikely to give rise to significant, anticompetitive foreclosure of nonintegrated software producers. The proposed complaint's own description of the premerger state of competition tends to exclude this possibility. The complaint alleges that software producers other than Alias, Wavefront, and Microsoft's SoftImage are either competitively insignificant or complementary, and that there is virtually no likelihood of entry by producers of substitutable SGI-compatible software owing to the entrenched positions of Alias and Wavefront. If both propositions are true, then the merger cannot appreciably foreclose software entry or expansion. One cannot find both that the premerger supply elasticity of substitutable software is virtually zero and that the merger would result in the substantial post-merger foreclosure of software producers. In addition, SGI has strong incentives to induce expanded supply of SGI-compatible software: increasing the supply of compatible software (or of any complementary product) increases the demand for SGI's workstations.

It is perhaps more plausible that the transaction could result in reduced supplies of software, or higher costs of obtaining software, for SGI's workstation rivals. Even so, this would be primarily a consequence of the horizontal aspects of the transaction—i.e., the combining of two of the three principal vendors of the relevant software—rather than the vertical aspects. The Commission eschews an enforcement action based on a horizontal theory, however, because of its cost in foregone efficiencies. If the horizontal software combination is efficiency-enhancing, the net anticompetitive impact of these transactions comes from SGI's vertical integration with Alias and Wavefront. If this is so, why not seek injunctive relief against the vertical integration, and avoid the costs of the ineffective regulatory remedy presented in the proposed order?

There are at least two reasons for rejecting this course of action. The first is that there are demonstrable efficiencies associated with exclusive arrangements between hardware and software vendors;[5] the second is that the merger's anticompetitive effects are commensurately difficult to establish. More generally, in order to establish SGI's preeminence among producers of entertainment graphics workstations, the complaint alleges that entry into such hardware is extremely unlikely because of the substantial costs of porting SGI-specific software (especially the ''high end'' variants) to non-SGI platforms. This undermines the contention that the merger would induce a substantial lessening of competition in the entertainment graphics workstation market.[6]

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[1] The Commission apparently finds that the horizontal combination of Alias and Wavefront is not anticompetitive on net: the order addresses alleged vertical problems only.

[2] Precedent for this ''double foreclosure'' analysis lies uncomfortably in A.G. Spalding & Bros., Inc., 56 F.T.C. 1125 (1960), in which the Commission rejected Spalding's acquisition of Rawlings Manufacturing Co. Before the acquisition, Spalding did not manufacture baseball gloves, but instead purchased them for resale; Rawlings manufactured baseball gloves and sold them to other resellers. The Commission found that, ''by acquiring Rawlings, Spalding can not only prevent competitors from purchasing (gloves) from Rawlings but can also foreclose manufacturers of (gloves) from access to Spalding as a purchaser thereof.'' 56 F.T.C. at 2269.

[3] For a description of criticisms of pre- and post-Chicago theories of foreclosure, see David Reiffen and Michael Vita, *Is there New Thinking on Vertical Mergers?* A comment, 63 ANTITRUST L.J. _____ (1995). See also Roscoe B. Starek, III, ''Reinventing Antitrust Enforcement? Antitrust at the FTC in 1995 and Beyond,'' Remarks at ''A New Age of Antitrust Enforcement: Antitrust in 1995,'' Marina Del Rey, CA, Feb. 24, 1995.

[4] Robert Bork, THE ANTITRUST PARADOX 232 (1978). Referring to A.G. Spalding, Bork concludes that ''the Commission could cure (this problem) by throwing an industry social mixer.''

[5] A software producer's premerger exclusive commitment to SGI suggests an efficiency rationale for its subsequent integration with SGI: to avoid the expropriation by SGI of the software producer's SGI-specific assets. This is a well established procompetitive rationale for vertical mergers. See, e.g., Benjamin Klein, Robert G. Crawford, and Armen A. Alchian, Vertical Integration, Appropriable Rents, and the Competitive Contracting Process, 21 J.L. & ECON. 297 (1978); Kirk Monteverde and David J. Teece, Supplier Switching Costs and Vertical Integration in the Automobile Industry, 13 BELL J. ECON. 206 (1982a); Kirk Monteverde and David J. Teece, Appropriable Rents and Quasi-Vertical Integration, 25 J.L. & ECON. 321 (1982); Benjamin Klein, Vertical Integration as Organizational Ownership: The Fisher Body-General Motors Relationship Revisited, 4 J.L., ECON. & ORG. 199 (1988).

[6] All of the preceding assumes, arguendo, defining the relevant markets that are most favorable to the Commission's theory of competitive harm from vertical integration. Whether these narrowly defined markets are appropriate is questionable. For example, to the extent that PCs are becoming closer substitutes for entertainment graphics workstations, it is increasingly unlikely that a prerequisite for anticompetitive effects from

Overall, I am unpersuaded that this transaction diminishes competition in any relevant market.[7] Even had I concluded otherwise, however, I would not endorse the proposed consent, the terms of which would require (1) SGI to port its software to a workstation competitor and (2) SGI to maintain an open architecture and to provide access to software developers on nondiscriminatory terms. The problems with remedies of this sort are significant.[8] First, requiring a firm to sell an input to a rival is an ineffective remedy unless the Commission also regulates terms of the sale. Otherwise, the seller simply raises price and/or diminishes quality to the point where profitable entry is precluded. The Commission could seek an order that confers such regulatory power (the current order does not); however, the burden associated with enforcing such an order—the Commission would be required to determine the ''competitive price'' and ''competitive quality'' for such porting rights—cannot be overestimated. For this reason, the Commission historically has shied away from such remedies.

Second, requiring SGI to port entertainment graphics software to third parties will likely create substantial inefficiencies. The evidence clearly suggests that there are efficiencies associated with exclusive arrangements between software and hardware vendors; such arrangements existed well before the current transaction was proposed. Preventing SGI from availing itself of those efficiencies will not benefit consumers.

[FR Doc. 95–16453 Filed 7–3–95; 8:45 am]

BILLING CODE 6750–01–M

Senior Executive Service: Performance Review Board

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the standing Performance Review Board Roster.

DATES: July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Elliott H. Davis, Director of Personnel, Federal Trade Commission (FTC), 6th & Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2022.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall, among other things, review and evaluate the initial appraisal of a senior executive's performance by the supervisor, and make appropriate recommendations to the appointing authority.

The following persons are appointed to the FTC's Performance Review Board Roster: Office of the Chairman: James Hamill; Office of the Inspector General: Frederick Zirkel; Office of the Executive Director: Robert Walton, Rosemarie Straight, Alan Proctor, James Giffin, Richard Arnold; General Counsel: Stephen Calkins, Jay Shaffer, Ernest Isenstadt, Christian White; Office of the Secretary: Donald Clark; Bureau of Competition: William Baer, Mary Lou Steptoe, Mark Whitener, Ronald Rowe, Michael McNeely, Walter Winslow, Mark Horoschak; Bureau of Consumer Protection: Joan Bernstein, Teresa Schwartz, Lydia Parnes, David Medine, Eileen Harrington, Dean Graybill, C. Lee Peeler; Bureau of Economics: Jonathan Baker, Ronald Bond, Gary Roberts, Paul Pautler.

Donald S. Clark,

Secretary.

[FR Doc. 95–16448 Filed 7–3–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Title: Small Business Innovation Research Program ''Phase I Proposal Cover Sheet''.

OMB No.: 0980–0193.

Description: These forms are needed for inclusion in the Administration for Children and Families' biennial Research Program's research and development solicitation. They are required by Policy Directive from the Small Business Administration.

Respondents: State governments.

Title	Number of respondents	Number of responses per respondent	Average burden per response	Burden
Policy Directive SBIR	500	1	4	2000
Estimated Total Annual Burden: 2000.				

Additional Information: Copies of the proposed collection may be obtained from Bob Sargis of the Division of Information Resource Management, ACF, by calling (202) 690–7275.

OMB Comment: Consideration will be given to comments and suggestions received within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: June 26, 1995.

Roberta Katson,

Acting Director, Office of Information Resource Management.

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a vertical merger—premerger market power in a relevant market—is satisfied.

[7] The complaint also alleges that vertical integration of SGI with Alias and Wavefront will foster anticompetitive price discrimination against certain entertainment graphics customers. If the customers already are differentiable according to their demand elasticities for SGI workstations (or for the acquired software products), it is not clear how the vertical integration enhances the probability of price discrimination. To the extent that price discrimination possibilities are enhanced, it would appear to be as a result of the horizontal combination of Alias and Wavefront. And if SGI and the combined Alias/Wavefront would have market power in their respective complementary markets, the most likely effect of vertical integration may be lower prices.

[8] For a discussion of why nondiscrimination remedies are problematic, see Timothy Brennan, Why Regulated Firms Should Be Kept Out of Unregulated Markets: Understanding the Divestiture in *U.S.* v. *AT&T*, 32 Antitrust Bulletin 741 (1987).