

**ADDRESSES:** Six paper copies of each request to participate should be submitted to the Office of the Secretary, Federal Trade Commission, Room 159, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. Requests should include the requester's telephone number and a FAX number if available. Requests should be captioned: "Made in USA Workshop—Request to Participate," FTC File No. P894219. You may include this request with your comment.

**FOR FURTHER INFORMATION CONTACT:** Robert Easton, Special Assistant, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580, telephone 202-326-2823.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The October 18, 1995 Federal Register Notice (60 FR 53922, hereafter referred to as the "first Notice") announced the public workshop and requested comment on a number of specific questions relating to advertising and labeling claims of "Made in USA." The first Notice described in detail the substance of the issues to be discussed at the workshop and the issues on which written comments were requested. The first Notice, however, left open the specific dates and location for the workshop. This second Notice addresses these matters, as well as the procedure for requesting the opportunity to participate.

As stated in the first Notice, the intent of the workshop will not be to achieve a consensus among participants, or between participants and Commission staff, with regard to any issue raised in this proceeding. However, the Commission will consider the views and suggestions made during the workshop, in addition to any written comments, in formulating its future policy regarding "Made in USA" claims.

**B. The Workshop**

The Commission expects the workshop to be conducted over two days, with separate morning and afternoon panels on each day. A third day of the workshop will be held if there is a need to do so. The subjects to be discussed at each of the panels will be determined after reviewing the substantive comments received pursuant to the first Notice. An agenda for each panel will be announced as soon as practical. The workshop will be open to the public.

As mentioned in the first Notice, the Commission is currently conducting a consumer research project regarding consumer perception of "Made in USA"

claims. Results of the project will be made available to participants and the public before the workshop. Participants who wish to discuss the consumer perception study at the workshop will be asked to submit an outline or short statement of their views prior to the workshop for the purpose of arranging the workshop's agenda. Others who wish to submit comments on the study are welcome to do so.

The record of the proceeding will be open for a month after the workshop is concluded for the receipt of any additional comments on the study or other issues discussed at the workshop. This will allow workshop participants and others to clarify any views expressed at the workshop or to rebut the comments and views of others in the event that there is insufficient time to fully address all pertinent issues.

A neutral, third-party facilitator may be retained for the public workshop. The discussion during the workshop will be transcribed and the transcript will be placed on the public record.

**C. Selection of Workshop Participants**

If the number of parties who request to participate in the workshop is so large that including all requesters would inhibit effective discussion among the participants, Commission staff will select as participants a limited number of parties to represent the interests of those who submit written comments. Selection will be based on the following criteria:

1. The party must have submitted a substantive written comment by January 16, 1996 in response to the first Federal Register notice (60 FR 53922, Oct. 18, 1995).
2. The party must have submitted a request to participate pursuant to this Federal Register notice by January 16, 1996.
3. The party's attendance would promote the representation of a balance of interests at the conference.
4. The party's attendance would promote the consideration and discussion of the issues presented in the workshop.
5. The party has expertise in issues raised in the workshop.
6. The party adequately reflects the views of the affected interest(s) which it purports to represent.
7. The party has been designated by one or more interested parties (who timely file requests to participate and written comments) as a party who shares group interests with the designator(s).
8. The number of parties selected will not be so large as to inhibit effective discussion among them.

If it is necessary to limit the number of participants, those not selected to participate, but who submit both requests to participate and written comments, will be afforded an opportunity, if at all possible, at the end of one or more sessions to present statements during a limited time period. The time allotted for these statements will be based on the amount of time necessary for discussion of the issues by the selected parties, and on the number of persons who wish to make statements.

Requesters will be notified as soon as possible after January 16, 1996 if they have been selected to participate. To assist in making this notification, please include in your request to participate a telephone number and a FAX number if available.

**D. Date, Time and Location of Workshop**

The workshop is scheduled to be held in room 432 of the FTC headquarters building, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. on March 26 and 27, 1996, from 8:30 a.m. until 5 p.m. Depending on the number of issues raised by the comments, the workshop may be extended through an additional day, March 28, 1996. The workshop is open to the public.

**E. Procedure for Requesting Opportunity to Participate in Workshop**

To be eligible to participate at the workshop, you must:

1. File a written substantive comment by January 16, 1996 pursuant to the first Federal Register notice.
2. File a written request to participate by January 16, 1996 pursuant to this Federal Register notice.

You may combine the written substantive comment and the written request to participate in one document.

Authority: 15 U.S.C. 41 *et seq.*  
By direction of the Commission,  
Commissioner Starek dissenting.  
Donald S. Clark,  
Secretary.

[FR Doc. 95-30833 Filed 12-18-95; 8:45 am]

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[File No. 951 0072]

**Devro International PLC; Proposed Consent Agreement With Analysis to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** This consent agreement, accepted subject to final Commission approval, settles alleged violations of

federal law prohibiting unfair or deceptive acts and practices and unfair methods of competition allegedly arising from the acquisition by Devro International of Teepak International. Devro and Teepak are the two largest producers of collagen sausage casings (the skins into which various meat products are stuffed before being cooked or smoked) in the United States. The consent agreement, among other things, would require Devro to divest Devro North America, the assets it uses to manufacture and distribute collagen sausage casings in the United States and Canada. The assets to be divested include a manufacturing plant in Somerville, New Jersey, and a finishing plant in Ontario, Canada. The divestiture would have to be completed within three months of the date the order becomes final, and the assets would have to be sold to a buyer (1) that does not already produce collagen sausage casings for sale in the United States, and (2) that is approved by the Commission. If the divestiture is not completed on time, the consent agreement would permit the Commission to appoint a trustee to complete it.

**DATES:** Comments must be received on or before February 20, 1996.

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

**FOR FURTHER INFORMATION CONTACT:** William Baer, FTC/H-374, Washington, DC 20580 (202) 326-2932; Ronald Rowe, FTC/S-2602, Washington, DC 20580 (202) 326-2610; or Joseph Brownman, FTC/S-2108, Washington, DC 20580 (202) 326-2950.

**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 Devro International plc and Devro Inc. of the outstanding voting securities of Teepak International, Inc. and it now appearing that Devro International plc and Devro Inc. (hereinafter sometimes referred to as the "Proposed Respondents") are willing to enter into an agreement containing an order to divest certain assets and providing for other relief:

It is hereby agreed by and between the Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission, that:

1. Proposed Respondent Devro International plc is a corporation organized, existing, and doing business under and by virtue of the laws of Scotland, with its office and principal place of business at Moodiesburn, Chryston, G69 0JE, Scotland.

2. Proposed Respondent Devro Inc. 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 at Southside Avenue, Somerville, New Jersey.

3. Teepak International, Inc. 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 at Three Westbrook Corporate Center, Suite 1000, Westchester, Illinois 60153.

4. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

5. Proposed Respondents waive:

- 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.

6. Proposed Respondents shall submit, within five (5) days of the date this Agreement is signed by Proposed Respondents, an initial compliance report, as contemplated by Rules 2.33 and 4.9(b)(7) of the Commission's Rules of Practice and Procedure, 16 C.F.R. 2.33 and 4.9(b)(7), duly signed by the Proposed Respondents, setting forth in precise detail the manner in which Proposed Respondents will comply with Parts II and III of the proposed consent order, when and if entered, the Agreement to Condition Acquisition, and the Agreement to Hold Separate. Among other things, the report shall include:

a. A full and complete description of Proposed Respondents' compliance and planned compliance with the terms and conditions of the Agreement to Hold Separate, including:

(1) The names, telephone numbers, and business affiliations of the persons that Proposed Respondents intend to appoint, or are considering appointing, or have appointed, as members of the Management Team, pursuant to Paragraph 4 (a) of the Agreement to Hold Separate;

(2) the name(s), telephone number(s), and business affiliation(s) of the person(s) that Proposed Respondents intend to appoint, are considering appointing, or have appointed, as independent auditor/manager, pursuant to Paragraph 4 (b) of the Agreement To Hold Separate; and

(3) copies of all written communications, internal memoranda, and reports and recommendations concerning the terms of the Agreement to Hold Separate.

b. A full and complete description of Proposed Respondents' compliance and planned compliance with the terms and conditions of the Agreement to Condition Acquisition, including:

(1) The resolution, or draft resolution, that Devro International plc will present to its shareholders;

(2) the date that Devro International plc anticipates that its shareholders will vote on the resolution;

(3) the date that Devro International plc anticipates learning the outcome of the vote by the shareholders on the resolution; and

(4) copies of all written communications, internal memoranda, and reports and recommendations concerning the terms of the Agreement to Condition Acquisition.

c. A full and complete description of the efforts planned or underway to comply with the terms and conditions of the proposed order, including:

(1) A list of the firms to which Proposed Respondents (i) have offered, and (ii) intend to offer, the Assets To Be Divested;

(2) the names and telephone numbers of the representatives of the firms listed in response to part c. (1) of this Paragraph that Proposed Respondents have already contacted to offer the Assets To Be Divested;

(3) the names, addresses, telephone numbers and business affiliations of at least three (3) potential trustees that would be acceptable to Proposed Respondents should the appointment of a trustee be deemed appropriate by the Commission;

(4) the procedures that Proposed Respondents will employ in finding a

proposed acquirer of the Assets To Be Divested;

(5) all criteria that Proposed Respondents will employ for choosing a proposed acquirer of the Assets To Be Divested in the event that offers for these assets are made by more than one firm;

(6) a full and complete description of all of the Assets To Be Divested;

(7) all descriptions, characterizations, and explanations of the Assets To Be Divested that may already have been provided, or that Proposed Respondents intend to provide, to potential acquirers;

(8) a full and complete description of the financial condition and potential viability as an independent business of the Assets To Be Divested;

(9) all descriptions, characterizations, and explanations of the financial condition and potential viability as an independent business of the Assets To Be Divested that may already have been provided, or that Proposed Respondents intend to provide, to potential acquirers; and

(10) copies of all written communications, internal memoranda, and reports and recommendations concerning divestiture.

7. 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 the Proposed Respondents, 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 disposition of the proceeding.

8. This Agreement is for settlement purposes only and does not constitute an admission by the Proposed Respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

9. 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 the Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint

here attached and its decision containing the following order to divest in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to divest 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 U.S. Postal Service of the complaint and decision containing the agreed-to order to the Proposed Respondents' counsel at the address as stated in this Agreement shall constitute service. The Proposed Respondents waive any right they 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.

10. The Proposed Respondents have read the proposed complaint and order contemplated hereby. The Proposed Respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. The Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

11. Proposed Respondents agree to be bound by all of the terms of the Agreement to Condition Acquisition and the Agreement to Hold Separate, attached to this Agreement and made a part hereof as Appendix I and Appendix II, respectively, upon acceptance by the Commission of this Agreement Containing Consent Order for public comment.

12. Proposed Respondents agree to notify the Commission's Bureau of Competition in writing, within twenty-four (24) hours, of the action taken by the shareholders of Devro International plc regarding (a) the proposed acquisition by Devro International plc of Teepak International, Inc. ("the Acquisition"), (b) the divestiture of the Assets To Be Divested under the terms of this Agreement Containing Consent Order ("the Divestiture"), and (c) the unlimited indemnification of the independent auditor/manager, retroactive as of the date of the appointment of the auditor/manager, pursuant to the Agreement to Condition Acquisition and the Agreement to Hold Separate ("the Retroactive Indemnification").

13. Subsequent to approval of this Agreement Containing Consent Order and acceptance for public comment of the Consent Order by the Commission and unconditional approval by the shareholders of Devro International plc of (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification, with written notice having been given to the Commission's Bureau of Competition, in writing, within twenty-four (24) hours, of the unconditional approval by the shareholders, Devro International plc may consummate the Acquisition.

14. In the event the shareholders of Devro International plc, prior to the expiration of the sixty (60) day public comment period, fail unconditionally to approve (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification, Proposed Respondents, having no authority to consummate the Acquisition, will, within twenty-four (24) hours of the failure of the shareholders of Devro International plc unconditionally to approve (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification, notify the Commission of such failure and withdraw any Hart-Scott-Rodino Premerger Notification and Report Form that may have been filed under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a. After such timely notification and withdrawal, pursuant to the terms of this Paragraph, the Commission will not issue the following divestiture order.

#### *Order*

I

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

A. "Devro International plc" means that company and its predecessors, subsidiaries, divisions, groups and affiliates controlled by Devro International plc, and its respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of each.

B. "Devro Inc." means that company and its predecessors, subsidiaries, divisions, groups and affiliates controlled by Devro Inc. and its respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of each.

C. "Devro Canada" means DCI Devro Canada Inc., and its predecessors, subsidiaries, divisions, groups and affiliates controlled by DCI Devro Canada Inc. and its respective directors, officers, employees, agents, and

representatives, and the respective successors and assigns of each.

D. "Teepak" means Teepak International, Inc., and its predecessors, subsidiaries, divisions, groups and affiliates controlled by Teepak International, Inc. and its respective directors, officers, employees, agents, and representatives, and the respective successors and assigns of each. The definition of "Teepak" specifically excludes Devro International plc, Devro Inc., and Devro Canada. For purposes of Parts VII and VIII of this Order, after the Acquisition, Teepak will be regarded as part of Respondent Devro International plc.

E. "Respondents" means Devro International plc and Devro Inc.

F. "Acquisition" means the proposed acquisition by Devro International plc of the outstanding voting securities of Teepak International, Inc.

G. "Assets To Be Divested" means:

1. All assets related to the collagen sausage casings business of Devro Inc. and Devro Canada, including, but not limited to:

a. All production and finishing facilities, plant, and equipment of Devro Inc., including the plant located at Somerville, New Jersey, and, wherever located, all machinery, fixtures, equipment, kitchen facilities, laboratory testing equipment and facilities, research and development facilities and programs, vehicles, transportation facilities, furniture, tools and other tangible personal property, customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, technical information, and management information systems;

b. All production and finishing facilities, plant, and equipment of Devro Canada, including the plant located in Markham, Ontario, Canada, and, wherever located, and to the extent they exist, all machinery, fixtures, equipment, kitchen facilities, laboratory testing equipment and facilities, research and development facilities and programs, vehicles, transportation facilities, furniture, tools and other tangible personal property, customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, technical information, and management information systems;

c. All intellectual property, including product and process patents, patent rights, patent improvements, process improvements, trademarks, service marks, copyrights, technology, knowhow, basic research, trade secrets, goodwill, or trademarks that Devro Inc. or Devro Canada use, license, have rights to, or otherwise have an interest in; provided, however, that Devro

International may retain all rights to the trademark Devro®, tradename "Devro", and the stylized letter "D";

d. All Devro Inc. and Devro Canada inventory and storage capacity;

e. All rights, titles, and interest in and to real property owned or leased by Devro Inc. and Devro Canada, together with all appurtenances, licenses, and permits;

f. All rights, titles, and interests in and to contracts entered into in the ordinary course of business between Devro Inc. and Devro Canada with customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors, and consignees;

g. All rights of Devro Inc. and Devro Canada, under warranties and guarantees, express or implied;

h. All books, records, and files of Devro Inc. and Devro Canada;

i. All items of prepaid expense to Devro Inc. and Devro Canada; and

2. From Devro International plc:

a. On a non-exclusive basis, with no right to sub-license to a third party, all rights to any information or intellectual property relating to Devro International (but not any information or intellectual property of Teepak in existence at the time of the Acquisition) in development or already developed by Devro International at the time of the divestiture, plus all enhancements, improvements or perfections thereof within twenty-four (24) months of the divestiture, including information or intellectual property relating to product and process patents, patent rights, patent improvements, technology, knowhow, basic research, or trade secrets regarding any research and development programs or activities, wherever located, to the extent that such information or intellectual property relate to the manufacture, finishing, distribution, or sale of collagen sausage casings; and

b. All additional tangible and intangible assets of Devro International, wherever located, reasonably necessary to enable the acquirer of the Assets To Be Divested to manufacture, finish, distribute, and market collagen sausage casings in substantially the same manner, quality, and quantity achieved by Devro Inc. and Devro Canada prior to the divestiture, other than any tangible or intangible assets of Teepak in existence at the time of the Acquisition.

H. "Excluded Assets" means the following entities: Devro Limited, Devro Holdings Limited, Devro Pty Limited, Devro BV, Devro Asia Limited, Devro GmbH, and Devro KK, and Teepak and its tangible and intangible assets in

existence at the time of the Acquisition. The term "Excluded Assets" does not include (that is, the following assets are not Excluded Assets) specifically identifiable tangible and intangible assets of these excluded entities (other than those of Teepak at the time of the divestiture) related to the manufacture and finishing of collagen sausage casings.

I. "Commission" means the Federal Trade Commission.

## II

*It is further ordered That:*

A. Within three (3) months of the date the order becomes final, Respondents shall divest, absolutely and in good faith, at no minimum price, the Assets To Be Divested.

B. The purpose of the divestiture of the Assets To Be Divested is to ensure the continued use of the Assets To Be Divested as a viable, competitive, and independent business, in the same business in which the Assets To Be Divested are engaged at the time of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

C. The proposed acquirer shall not be a firm that has been engaged in the manufacture of collagen sausage casings for sale, other than to itself, in the United States.

D. The Assets To Be Divested shall be divested only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

## III

*It is further ordered That:*

A. If Respondents have not divested the Assets To Be Divested, absolutely and in good faith, with the Commission's prior approval, within three (3) months of the date this Order becomes final, the Commission may appoint a trustee to divest the Assets To Be Divested. In the event that the Commission or the Attorney General brings an action pursuant to section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the

Commission, for any failure by Respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III. A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, and consistent with the provisions of Paragraphs II. B.-D. of this Order, the trustee shall have the exclusive power and authority to divest the Assets To Be Divested.

3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

4. The trustee shall have six (6) months from the date the Commission approves the trust agreement described in Paragraph III. B. 3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the six-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times for up to an additional twelve (12) months each time.

5. The trustee shall, to the extent not prohibited by United States or Canadian law, have full and complete access to the personnel, books, records and facilities related to the Assets To Be Divested or to any other relevant information, as the trustee may reasonably request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee.

Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer as set out in Part II of this Order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondents, and at reasonable fees, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Assets To Be Divested.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross

negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III. A. of this Order.

10. In the event the trustee is unable to divest the Assets To Be Divested, the trustee may divest such additional assets of Respondent Devro International, other than the Excluded Assets, as may be reasonably necessary to enable the trustee to divest the Assets To Be Divested.

11. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

12. The trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.

13. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

#### IV

##### *It is further ordered That:*

A. Upon reasonable notice to Respondents from the acquirer approved by the Commission pursuant to this Order, Respondents shall provide such assistance to the acquirer as is reasonably necessary to enable the acquirer to manufacture, finish, distribute and market collagen sausage casings in substantially the same manner, quality, and quantity achieved by Devro Inc. and Devro Canada prior to the divestiture. Such assistance shall include reasonable consultation with knowledgeable employees of Respondents and training at the acquirer's facility for a period of time sufficient to ensure that the acquirer's personnel are appropriately trained in the manufacture, finishing, distribution, and marketing of collagen sausage casings in the manner carried on by Devro Inc. and Devro Canada prior to the divestiture. Respondents, however, shall not be required to continue providing such assistance for more than two (2) years from the date of the divestiture. Respondents may charge the acquirer at a rate no greater than their direct costs for providing such technical assistance.

B. Respondents shall facilitate and not interfere with the hiring by the acquirer approved by the Commission of employees of Devro Inc. and Devro

Canada who may desire to undertake employment.

C. Pending divestiture of the Assets To Be Divested, Respondents shall take such actions as are reasonably necessary to maintain the viability and marketability of the Assets To Be Divested and to prevent their destruction, removal, wasting, deterioration or impairment of any kind, except for ordinary wear and tear.

#### V

*It is further ordered* That Respondents shall continue to comply with all terms of the Agreement to Hold Separate attached to this Order and made a part hereof as Appendix II. Said Agreement shall remain in force and effect until the Assets To Be Divested have been divested as required by this Order.

#### VI

*It is further ordered* That:

Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Parts II, III, and IV of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, or have complied with this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order, and their compliance with the terms and conditions of the Agreement To Condition Acquisition and the Agreement To Hold Separate, and set forth the monthly sales of Devro Inc. and Devro Canada during the preceding two months and compared to the monthly sales during the same months in the preceding calendar year. Respondents shall include in their compliance reports copies of all written communications, internal memoranda, and reports and recommendations concerning divestiture and the manner in which the Assets To Be Divested are being held separate.

#### VII

*It is further ordered* That, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and reasonable notice, each Respondent shall permit any duly authorized representative 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 the appropriate Respondent, and without restraint or interference, to interview officers, directors, or employees of the Respondent, who may have counsel present.

#### VIII

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

#### Appendix I

##### Agreement To Condition Acquisition on Shareholder Approval of Divestiture and Retroactive Indemnification

This Agreement To Condition Acquisition on Shareholder Approval of Divestiture and Retroactive Indemnification ("Agreement To Condition Acquisition") is by and between Devro International plc, a corporation organized, existing, and doing business under and by virtue of the laws of Scotland, with its office and principal place of business at Moodiesburn, Chryston, Scotland; Devro Inc., 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 at Somerville, New Jersey; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

Whereas Devro International plc entered into an agreement with Hillside Industries Incorporated for Devro International plc to acquire the outstanding voting securities of Teepak International Inc. ("Teepak"), a Delaware corporation (hereinafter "the Acquisition");

Whereas Devro International plc and Devro Inc. manufacture, finish, distribute, and sell collagen sausage casings, and DCI Devro Canada Inc. ("Devro Canada") finishes, distributes, and sells collagen sausage casings;

Whereas Teepak, with principal offices located at Westchester, Illinois, among other things, also manufactures, finishes, distributes, and sells collagen sausage casings;

Whereas the Commission is investigating the Acquisition to determine whether it would violate any statute enforced by the Commission;

Whereas Devro International plc and Devro Inc. are willing (a) to enter into an Agreement Containing Consent Order requiring them to

divest certain Assets To Be Divested, as defined in Part I of the proposed Consent Order of the Agreement Containing Consent Order, which include the collagen sausage casings business of Devro Inc., Devro Canada, and assets of Devro International plc related thereto (hereinafter "the Divestiture"); (b) to enter into an Agreement To Hold Separate requiring that the Assets To Be Divested be held separate and apart from the remainder of the assets of Devro International pending their divestiture; and (c) to arrange and provide for the unlimited indemnification for the independent auditor/manager, retroactive as of the date of the appointment of the auditor/manager, pursuant to this Agreement To Condition Acquisition and the Agreement To Hold Separate (hereinafter "the Retroactive Indemnification");

Whereas if the Commission accepts the attached Agreement Containing Consent Order, which would require the divestiture of the Assets To Be Divested, the Commission is required to place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Rule 2.34 of the Commission's Rules of Practice and Procedure, 16 C.F.R. 2.34;

Whereas the Commission is advised and concerned that, under the applicable law of the United Kingdom, Devro International will be unable to commit to, or be bound by, certain of the terms of the Agreement Containing Consent Order and the Agreement To Hold Separate unless and until those terms are approved by the shareholders of Devro International plc;

Whereas the Commission is advised that, under the applicable law of the United Kingdom, Devro International plc will not be able to seek shareholder approval for (a) the Divestiture or (b) the Retroactive Indemnification, until after all of the terms of the Agreement Containing Consent Order, the Agreement To Hold Separate, and this Agreement To Condition Acquisition are made known to the shareholders of Devro International plc, which can only happen after the Commission accepts the Agreement Containing Consent Order for public comment, and the Agreement To Hold Separate and the Agreement To Condition Acquisition;

Whereas the Commission will not accept for public comment an Agreement Containing Consent Order or an Agreement to Hold Separate that is not binding on the Proposed Respondents;

Whereas the undersigned officials of Devro International plc and Devro Inc. and their attorneys at this time are authorized to make the following binding commitments:

1. Devro International plc and Devro Inc. will seek shareholder approval for, at the same time, as part of a single package, and as a mutually contingent matter, (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification;

2. the shareholder approval will be sought, and if unconditionally obtained, (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification will be fully authorized, no less than seven (7) days prior to the completion of the sixty (60) day public comment period during which the

Agreement Containing Consent Order will have been placed on the public record;

3. Devro International plc and Devro Inc. will advise the Commission's Bureau of Competition in writing, within twenty-four (24) hours, of all actions taken by the shareholders in connection with the effort to obtain approval for (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification; and

4. Devro International plc, Devro Inc., and all entities controlled by either of them will not acquire, directly or indirectly, Teepak or any of its assets without unconditional shareholder approvals having been obtained and fully authorized for (a) the Divestiture and (b) the Retroactive Indemnification;

Whereas Devro International plc represents to the Commission that (1) the directors of Devro International plc will officially recommend to the shareholders of Devro International plc that they approve (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification; (2) Devro International plc will use its best efforts to obtain shareholder approval for (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification; (3) in light of (1) and (2) above, it would be highly unusual if the shareholders of Devro International plc were to reject (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification; and (4) Devro International plc fully expects the shareholders of Devro International plc to approve (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification;

Whereas shareholder approval of (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification will be presented to the shareholders for their approval as part of a single resolution, to be voted upon as a package only, and Devro International plc and Devro Inc. will not be authorized to consummate the Acquisition unless and until they are also authorized (a) to make the Divestiture and (b) to grant the Retroactive Indemnification;

Whereas shareholder approval for (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification will be sought, and determined, prior to the time that the Commission will consider whether to accept the final Agreement Containing Consent Order under the Commission's Rules;

Whereas the Commission is concerned that if an agreement is not reached regarding the nature and timing of the shareholder approval and the commitment on the part of Devro International and Devro Inc. not to consummate the acquisition unless and until the requisite shareholder approvals are obtained, appropriate divestiture resulting from any proceeding challenging the Acquisition might not be possible or might produce a less than effective remedy;

Whereas the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the Divestiture and the continued viability and competitiveness of the Assets To Be Divested;

Whereas Devro International plc and Devro Inc.'s entering into this Agreement shall in no way be construed as an admission by them that the Acquisition is illegal;

Whereas Devro International plc and Devro Inc. understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement;

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Devro International plc or Devro Inc. with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the Agreement to Hold Separate, and the Consent Order to which this Agreement is annexed and made a part thereof, as follows:

1. The Acquisition by Devro International plc or Devro Inc. of Teepak is contingent upon shareholder approval.

2. Devro International plc and Devro Inc. will not seek shareholder approval for the Acquisition without, at the same time, and as part of the same package, also seeking mutually contingent shareholder approval for (a) the Divestiture and (b) the Retroactive Indemnification.

3. Unconditional shareholder approval will be sought, and if obtained, be fully authorized, no less than seven (7) days prior to the completion of the sixty (60) day public comment period during which the Agreement Containing Consent Order will have been placed on the public record.

4. In no event will Devro International plc or Devro Inc. or any entity controlled by either acquire, directly or indirectly, Teepak or any of its assets without unconditional shareholder approvals having been obtained and fully authorized for (a) the Divestiture and (b) the Retroactive Indemnification.

5. Unless and until unconditional shareholder approval is obtained for (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification, Devro International plc and Devro Inc., or any entity controlled by either, will not acquire, directly or indirectly, Teepak or any of its assets.

6. At such time as the shareholders of Devro International may unconditionally approve (a) the Acquisition, (b) the Divestiture, and (c) the Retroactive Indemnification, Devro International and Devro Inc., by and through their authorized representatives, shall notify the Commission's Bureau of Competition, in writing, within twenty-four (24) hours, of the action taken.

7. Devro International and Devro Inc., by and through their signatories, warrant that they are fully authorized to enter into the terms of this Agreement to Condition Acquisition and to bind Devro International plc and Devro Inc. to all of its terms and conditions.

8. This Agreement shall be binding when approved by the Commission.

## Appendix II

### Agreement to Hold Separate

This Agreement to Hold Separate ("Agreement") is by and between Devro International plc, a corporation organized, existing, and doing business under and by virtue of the laws of Scotland, with its office and principal place of business at Moodiesburn, Chryston, Scotland; Devro Inc., 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 at Somerville, New Jersey; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.*

Whereas Devro International plc entered into an agreement with Hillside Industries Incorporated for Devro International plc to acquire the outstanding voting securities of Teepak International, Inc. ("Teepak"), a Delaware corporation (hereinafter "Acquisition");

Whereas Devro International plc and Devro Inc. manufacture, finish, distribute, and sell collagen sausage casings, and DCI Devro Canada Inc. ("Devro Canada") finishes, distributes, and sells collagen sausage casings;

Whereas Teepak, with principal offices located at Westchester, Illinois, among other things, also manufactures, finishes, distributes, and sells collagen sausage casings;

Whereas the Commission is investigating the Acquisition to determine whether it would violate any statute enforced by the Commission;

Whereas if the Commission accepts the attached Agreement Containing Consent Order, which would require the divestiture of certain Assets To Be Divested, as defined in Part I of the Consent Order, which include the collagen sausage casings business of Devro Inc., Devro Canada, and assets of Devro International plc related thereto, the Commission is required to place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules of Practice and Procedure, 16 C.F.R. 2.34;

Whereas the Commission is concerned that if an understanding is not reached preserving the *status quo ante* of the Assets To Be Divested during the period prior to the acceptance of the final Consent Order by the Commission, after the 60-day notice period, divestiture resulting from any proceeding challenging the Acquisition might not be possible or might produce a less than effective remedy;

Whereas the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Assets To Be Divested and the continued viability and competitiveness of the Assets To Be Divested;

Whereas the purpose of this Agreement and the Consent Order is to:

1. Preserve and maintain the Assets To Be Divested as a viable, competitive and independent business engaged in the manufacture, finishing, distribution and sale of collagen sausage casings pending divestiture;

2. Limit the potential for interim competitive harm during the period between the Acquisition and the required divestiture; and

3. Remedy any anticompetitive effects of the Acquisition;

Whereas Devro International plc and Devro Inc.'s entering into this Agreement shall in no way be construed as an admission by them that the Acquisition is illegal;

Whereas Devro International plc and Devro Inc. understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement;

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Devro International plc or Devro Inc. with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the Agreement to Condition Acquisition, and the Consent Order to which this Agreement is annexed and made a part thereof, as follows:

1. Devro International plc and Devro Inc. agree to execute the Agreement Containing Consent Order and be bound by the Consent Order.

2. Devro International plc and Devro Inc. agree to execute and be bound by the Agreement To Condition Acquisition.

3. Devro International plc and Devro Inc. agree that until the earlier of the dates listed in subparagraphs 3(a) and 3(b) of this Paragraph, they will comply with the provisions of Paragraph 4 of this Agreement:

(a) Three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. 2.34; or

(b) The day after the divestiture required by the Consent Order has been completed.

4. To ensure the complete independence and viability of Devro Inc., Devro Canada, and the Assets To Be Divested, and to further ensure that no competitive information is exchanged between Devro International plc and Devro Inc., Devro Canada, and the persons responsible for maintaining and operating the Assets To Be Divested, Devro International plc shall hold Devro Inc., Devro Canada, and the Assets To Be Divested, as defined in the Consent Order, separate and apart from all of its other operations, on the following terms and conditions:

(a) Devro International plc will appoint three persons to manage and maintain the business and assets of Devro Inc., Devro Canada, and the Assets To Be Divested. These persons ("the Management Team") shall agree to be bound by this Agreement and shall manage Devro Inc., Devro Canada, and the Assets To Be Divested independent

of the management of Devro International plc's other business operations, including those of Teepak, after Devro International plc acquires Teepak. The persons on the Management Team shall not be involved in any way in the manufacture, finishing, distribution, or sale of sausage casings by Devro International plc or Teepak. The management team shall conduct the business operations of Devro Inc., Devro Canada, and the Assets To Be Divested.

(b) The Management Team, in its capacity as such, shall report directly and exclusively to an independent auditor/manager, to be appointed by Devro International plc. The independent auditor/manager, who shall not be an employee or agent of Devro International plc or a person likely to be an employee or agent of Devro International plc within two years of the divestiture, shall have expertise in the manufacture, finishing, distribution, or sale of collagen sausage casings. The independent auditor/manager shall agree to be bound by this Agreement and shall have exclusive control over the operations of Devro Inc., Devro Canada, and the Assets To Be Divested, with responsibility for their management and maintaining their independence. The independent auditor/manager shall not be involved in any way in the business of manufacturing, finishing, distribution, or sale of sausage casings by Devro International plc or Teepak.

(c) Devro International plc shall not exercise direction or control over, or influence directly or indirectly, the independent auditor/manager, or the Management Team, or Devro Inc., Devro Canada, or the Assets To Be Divested, other than as may reasonably be necessary to assure compliance with this Agreement and with all applicable laws.

(d) Devro International plc shall not change the composition of the Management Team without the consent of the independent auditor/manager.

(e) Devro International plc shall maintain the viability, competitiveness, and marketability of the Assets To Be Divested and shall neither cause nor permit the destruction, removal, wasting, deterioration, or impairment of the Assets To Be Divested, except as may occur in the ordinary course of business and except for ordinary wear and tear, and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their viability, competitiveness, or marketability.

(f) Except for the Management Team, Devro International plc shall not permit any Devro International plc Board Member, officer, director, employee, or agent to be involved in the business operations of the Assets To Be Divested.

(g) Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, complying with requirements of the London Stock Exchange and independent auditors, defending investigations or defending or prosecuting litigation, negotiating agreements to divest assets, or complying with this Agreement or the Consent Order, Devro International plc shall not receive or have access to, or use or

continue to use, any material confidential information about Devro Inc., Devro Canada, or the Assets To Be Divested, in connection with the operation of Devro International plc or its operation of the Teepak business.

"Material confidential information" means competitively sensitive or proprietary information not in the public domain, including, but not limited to, customer lists, price lists, marketing methods, patent rights, knowhow, technologies, processes, process improvements or other trade secrets or confidential business information.

(h) Devro International plc, Devro Inc. and Devro Canada shall circulate to all employees of Devro Inc. and Devro Canada, and display in a conspicuous place at Devro Inc. and Devro Canada manufacturing facilities, notice of this Agreement to Hold Separate and the proposed Consent Order in the form attached hereto as Attachment A.

(i) Devro International plc shall give funds to the Management Team for all capital expenditures relating to Devro Inc. and Devro Canada previously planned or approved by Devro International plc to the extent Devro Inc. does not generate sufficient cash flow to fund such capital expenditures. The Management Team shall expend the funds for these previously planned capital expenditures.

(j) The Management Team shall take all steps reasonably necessary to optimize the profitable operations and continued viability of Devro Inc., Devro Canada, and the Assets To Be Divested, including, but not limited to:

(1) Paying all direct costs and indirect overheads relating to the business of Devro Inc., Devro Canada, and the Assets To Be Divested;

(2) Making available funds for advertising and other marketing and promotional activities at no less than the level for the comparable period in the preceding calendar year;

(3) Providing no less than the same level of sales commissions or incentives for sales personnel as were provided for the comparable period in the preceding calendar year;

(4) Maintaining the same level of resources involved in sales and marketing as was the case in the normal course of business prior to the Acquisition; and

(5) Expending funds sufficient to perform all reasonably necessary routine maintenance to, and replacements of, the Assets To Be Divested.

In the event that Devro Inc., Devro Canada, and the Assets To Be Divested do not generate sufficient cash flow to fund the activities reasonably necessary to optimize the profitable operations and viability of Devro Inc., Devro Canada, and the Assets To Be Divested, Devro International plc shall advance such sums as are reasonably necessary to pay for same, to be repaid by the acquirer at no interest within two (2) years.

(k) The compensation and expenses of the independent auditor/manager shall be the responsibility of Devro International plc. Devro Inc., Devro Canada, and the Assets To Be Divested shall not be charged by Devro International plc with those costs and expenses.

(l) Devro International plc shall indemnify the independent auditor/manager against any



losses or claims of any kind that might arise out of his or her involvement under this Agreement, not to exceed \$5 million, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts or bad faith; provided however, upon shareholder approval of the unlimited indemnification of the auditor/manager, retroactive as of the date of the appointment of the auditor/manager, the \$5 million liability limitation shall become null and void, under the terms of the Agreement to Condition Acquisition.

(m) If the independent auditor/manager fails to act, or ceases to act, diligently, a substitute auditor/manager shall be appointed by Devro International plc in the manner provided in Paragraph 4 (b) of this Agreement.

(n) The independent auditor/manager shall have access to, and be informed about, the names of the companies who may inquire about, or seek or propose to buy, Devro Inc., Devro Canada, or the Assets To Be Divested. Devro International plc may require the independent auditor/manager to sign a confidentiality agreement prohibiting the auditor/manager from disclosing any material confidential information obtained as a result of his or her role as independent auditor/manager, to anyone other than the Commission.

(o) All material transactions other than those in the ordinary course of business, if not precluded by this Paragraph, shall be subject to a majority vote of the Management Team. In the event of a tie vote, the independent auditor/manager shall cast the deciding vote.

5. Should the Federal Trade Commission seek in any proceeding to compel Devro International plc or Devro Inc. to divest any of the Assets To Be Divested, or any additional assets, as provided in the Consent Order, or to seek any other injunctive or equitable relief for any failure to comply with the Consent Order or this Agreement, as defined in the draft complaint attached to the Agreement Containing Consent Order, Devro International plc and Devro Inc. shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission permitted the Acquisition. Devro International plc and Devro Inc. also waive all their rights to contest the validity of this Agreement.

6. To the extent that this Agreement requires Devro International plc or Devro Inc. to take, or prohibits them from taking, certain actions that otherwise may be required or prohibited by contract, Devro International plc and Devro Inc. shall abide by the terms of this Agreement and the Consent Order and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the terms of this Agreement or Consent Order.

7. 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, Devro International plc and Devro Inc. shall permit any duly authorized representative or representatives of the Commission:

(a) Access during the office hours of Devro International plc and Devro Inc., and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in their possession or under their control relating to compliance with this Agreement; and

(b) Upon five (5) days' notice to counsel, and without restraint or interference from counsel, to interview officers or employees of Devro International plc and Devro Inc., who may have counsel present, regarding any such matters.

8. This Agreement shall not be binding until approved by the Commission. Devro International plc and Devro Inc. acknowledge that from the date they sign this Agreement until such time as the Commission may approve this Agreement, they will undertake to maintain the Assets To Be Divested in a viable condition.

9. Subsequent to acceptance for public comment of the Agreement Containing Consent Order by the Commission and after the unconditional approval by the shareholders of Devro International obtained not less than seven (7) days prior to the end of the 60-day public comment period, of (a) the Acquisition, (b) the divestiture of the Assets To Be Divested under the terms of the Agreement Containing Consent Order, and (c) the retroactive indemnification, under the definitions and terms of the Agreement To Condition Acquisition and this Agreement to Hold Separate, with written notice having been given to the Commission's Bureau of Competition, in writing, within twenty-four (24) hours, of the unconditional approval by the shareholders, Devro International plc may consummate the Acquisition.

10. This Agreement shall be binding when approved by the Commission.

11. Devro International plc and Devro Inc., by and through their signatories, warrant that they are fully authorized to enter into the terms of this Agreement to Hold Separate and to bind Devro International plc and Devro Inc. to all of its terms and conditions.

#### Attachment A Important Notice

As you know, Devro International plc has entered into an agreement with the Federal Trade Commission (FTC) in connection with the proposed acquisition of Teepak International, Inc. Under the terms of the agreement with the FTC, Devro International must sell Devro Inc. and DCI Devro Canada Inc. to a third party that is acceptable to the FTC. We anticipate that this will occur within the next several months.

The agreement with the FTC also requires that, until Devro Inc. and Devro Canada are sold, Devro International must preserve and maintain them as competitive and independent businesses separate from Devro International.

To ensure that Devro Inc. and Devro Canada are kept separate from Devro International, a three-person

management team, composed of

\_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, will assume the management of Devro Inc. and Devro Canada. This management team, which will operate totally independently of Devro International, will report directly and exclusively to \_\_\_\_\_, an independent auditor/manager.

The effect of Devro International's agreement with the FTC is that, for all intents and purposes, Devro International will no longer be playing any role in the management and operation of Devro Inc. and Devro Canada. Until such time as the future owners of Devro Inc. and Devro Canada are determined, it is the responsibility of every employee of Devro Inc. and Devro Canada to cooperate with the new management team and to help to preserve Devro Inc. and Devro Canada as competitive and independent businesses.

#### Analysis to Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from Devro International plc and its United States subsidiary, Devro Inc. (collectively referred to as "Devro") an Agreement Containing Consent Order. This agreement has been placed on the public record for sixty (60) days for receipt 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 consent order in the agreement.

According to the draft of complaint that the Commission intends to issue, Devro and Teepak International, Inc. ("Teepak") are competitors, nationwide and worldwide, in the manufacture of collagen sausage casings. Sausage casings are the skins into which various sausage-meat products are stuffed before being cooked or smoked. Among the sausage products using collagen sausage casings are beef jerkys, small sausages, and frankfurters. Unlike other types of synthetic sausage casings, such as fibrous sausage casings, used principally to make salamis and hams, and cellulose sausage casings, used principally to make skinless frankfurters, most collagen sausage casings are edible. Edible sausage casings produce a "bite" to a sausage when eaten.

The Commission's draft of complaint states that Devro entered into an agreement with Hillside Industries, Inc.,

the current owners of Teepak, for Devro to acquire all of Teepak for approximately \$135 million. The Commission is concerned that the proposed merger would eliminate substantial competition between Devro and Teepak, increase concentration in the highly concentrated collagen sausage casings markets, and lead to higher prices and fewer customer services. The Commission stated it has reason to believe that the proposed acquisition would have anticompetitive effects and be in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

According to the Commission's draft complaint, the anticompetitive effects of the proposed acquisition will be felt in an all-collagen sausage casings product market as well as in an edible collagen sausage casings product market, in both the United States and the world as a whole. In the United States all-collagen sausage casings and edible sausage casings markets, only four firms sell collagen sausage casings, and Devro and Teepak are the nation's top two producers. The proposed acquisition would increase the Herfindahl-Hirschman Index ("HHI"), the customary measure of industry concentration, by a substantial amount. For example, in the United States all-collagen sausage casings market, the HHI will increase by approximately 2000 points and produce an industry concentration of approximately 4700 points. In the United States edible collagen sausage casings market, the HHI would increase by approximately 3300 points and produce an industry concentration of approximately 6800 points. In the world all-collagen and edible sausage casings markets, the proposed acquisition would affect concentration as measured by four-firm concentration and the HHI by very similar orders of magnitude.

The Agreement Containing Consent Order, if finally issued by the Commission, would settle all of the charges alleged in the Commission's complaint. Under the terms of the proposed consent order, Devro will be required to divest all of its collagen sausage casings business assets in the United States and Canada ("Devro North America") to an acquirer acceptable to the Commission. Devro North America consists primarily of a collagen sausage casings manufacturing plant in Somerville, New Jersey, and a collagen sausage casings finishing plant in Markham, Ontario, Canada. Because the Canadian and United States facilities constitute a single operation, Devro is required to divest the Canadian facility along with the United States plant. This

will insure that the divested assets will continue to operate as a viable, competitive business. Devro will also be required to make available to the acquirer of these assets, on a non-exclusive basis, any new technology that Devro may develop related to collagen sausage casings for a period of two (2) years following the final entry of the order.

Devro will be required to complete the required divestiture within three (3) months of the Commission's final issuance of the consent order. In the event Devro does not divest Devro North America to an acquirer acceptable to the Commission in the requisite time, procedures for the appointment of a trustee to sell the assets have been agreed to and will be triggered.

An additional feature of the consent order accepted for public comment is that it limits to some extent the class of potential acquirers for Teepak that would be acceptable to the Commission. Firms already producing collagen sausage casings for sale in the United States are excluded as prospective acquirers of Devro North America. The purpose of this exclusion is to preclude Devro from attempting to divest Devro North America to a competitor where there are likely to be further anticompetitive effects.

Accompanying the Agreement Containing Consent Order are two ancillary agreements. The first is an Agreement to Condition Acquisition and the second is an Agreement to Hold Separate.

The Agreement to Condition Acquisition requires that Devro may not acquire Teepak until Devro is authorized by its shareholders to divest Devro North America and related assets. The purpose of this agreement is to ensure that the Commission, through the appointed trustee, will have an enforceable divestiture remedy available should Devro acquire Teepak and not divest Devro North America. For reasons related to United Kingdom procedure and practice, Devro believes it cannot seek shareholder approval for the proposed acquisition of Teepak, or for the proposed divestiture of Devro North America, unless and until the Commission accepts the Agreement Containing Consent Order for public comment. Under the terms of the Agreement to Condition Acquisition, Devro is required to seek shareholder approval of the divestiture at the same time that it seeks shareholder approval of the acquisition, and these approvals must be obtained unconditionally and at least 7 days before the end of the 60-day public comment period. Devro will not be permitted to acquire Teepak unless it

has shareholder approval to divest Devro North America. Also, when the Commission decides whether to issue the final order, the Commission will know whether the conditions have been satisfied. If the Devro shareholders reject the proposed resolution that, if passed, would authorize Devro to acquire Teepak and divest Devro North America, no anticompetitive acquisition will occur and the Commission will not issue the final consent order.

The Agreement to Hold Separate requires that Devro preserve Devro North America's assets and operate Devro North America as a separate, ongoing business apart from Devro and Teepak. The purpose of this agreement is to help insure that the competitive value of Devro North America will be maintained after Devro acquires Teepak but before the assets are actually divested.

By accepting the consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or in any way to modify their terms.

By direction of the Commission.  
Donald S. Clark,  
Secretary.

#### **Concurring Statement of Commissioner Mary L. Azcuenaga in Devro International PLC**

[File No. 951-0072]

Although I have voted to accept the proposed consent order requiring divestiture for public comment, I have reservations about the provision of the order that excludes some incumbent firms from eligibility to acquire the assets to be divested.<sup>1</sup> According to the Notice to Aid Public Comment, the "purpose of this exclusion is to preclude Devro from attempting to divest Devro North America to a competitor where there are likely to be further anticompetitive effects." Since any proposed divestiture under the order must be approved by the Commission,<sup>2</sup> an attempt by Devro to make an anticompetitive divestiture likely would be fruitless. In addition, Devro would risk appointment under the order of a trustee to accomplish

<sup>1</sup> Order Paragraph II.C of the proposed order states that the proposed acquirer of the assets to be divested "shall not be a firm that has been engaged in the manufacture of collagen sausage casings for sale, other than to itself, in the United States."

<sup>2</sup> Order Paragraph II.D.

divestiture and incurring civil penalties for failure to make a timely divestiture.

Attempts to define in advance the field of eligible acquirers under a divestiture order are unnecessary, at best, potentially inefficient and possibly even anticompetitive. It is an inefficient use of resources to attempt to assess in advance the competitive effects of a transaction that Devro might or might not propose (especially if the exclusion covers more than one firm), even if the transaction-specific information necessary to our merger analysis were available. As a practical matter, any such exclusions will be based on something less than an adequate factual examination of the various possible proposed divestitures and will necessarily involve the risk of excluding firms that might have been acceptable and even procompetitive acquirers. That risk is unnecessary and should be unacceptable in view of the requirement to obtain the Commission's approval before any divestiture can take place and the availability of other sanctions for failing to make a timely divestiture.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration on Aging

#### Statement of Organization, Functions, and Delegations of Authority

This notice amends Part B of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration on Aging (AoA), as follows: continues the Office of the Assistant Secretary for Aging; establishes two Offices, the Office of Program Operations and Development, and the Office of Governmental Affairs and Elder Rights; the operating grant programs (Titles III and VI) and the developmental grant program (Title IV) are placed under the Office of Program Operations and Development; all inter- and intra-governmental cooperative programs, domestic and international, as well as the elder rights services of Titles II and VII are placed under the Office of Governmental Affairs and Elder Rights; the executive secretariat and policy coordination functions are moved to the Office of the Assistant Secretary; supervision of the Regional Offices is moved to the Director, Office of Program Operations and Development; planning functions are moved to the Office of Management; and the former Office of

the Deputy Assistant Secretary for Program Operations and Intergovernmental Affairs, Office of the Deputy Assistant Secretary for Program Development and Elder Rights Programs, Office of Field Operations, and Office of Policy Coordination and Analysis and the division structure under the Office of State and Community Programs and the sub-offices under the Office of Program Development are abolished.

The language to implement these changes is as follows: Part B, Chapter B, "The Administration on Aging," as published in the Federal Register on September 13, 1991 (56 FR 46620); amended on December 24, 1992 (57 FR 61433); and further amended on March 2, 1993 (58 FR 12040) is amended as follows.

Delete B.00 and replace with the following:

#### B.00 Mission

The Administration on Aging, an Operating Division of the Department of Health and Human Services, is the principal agency designated to carry out the provisions of the Older Americans Act ("OAA" or "The Act") of 1965, as amended, 42 U.S.C. 3001 *et seq.* Serves as the effective and visible advocate for older persons within the Department of Health and Human Services and with other Federal departments and agencies. Directly assists the Secretary in all matters pertaining to problems of the aging. Advocates for the needs of older persons in program planning and policy development within the Department and in other Federal agencies. Gives priority to older persons in greatest economic or social need. Develops standards and issues best practice guidelines; disseminates information; provides technical assistance; and initiates policy related to services funded by the Department and provided to older persons. Advises the Secretary, Department components and other Federal departments and agencies on the characteristics, circumstances and needs of older people and develops policies, plans and programs designed to promote their welfare; under Title III of the Act (45 CFR Part 1321) administers a program of formula grants to States to establish State and community programs for older persons; administers a program of grants to American Indians, Alaskan Natives and Native Hawaiians to establish programs for older Native Americans under Title VI of the Act (45 CFR parts 1326 and 1328). Provides policy and procedural direction, advice and assistance to States and Native American grantees to promote the development of State and

Native American administered, community-based systems of comprehensive social services for older persons. Administers long term care ombudsman and protective services programs, legal services development programs, and outreach, counseling and assistance programs for older people under Title VII of the Act. Approves or disapproves State plans and Native American funding applications. Administers programs of training, research and demonstration under Title IV of the Act. Administers national centers for service development and assistance, and information dissemination benefitting older persons. Promotes through the State and Area Agencies on Aging and Indian Tribal Organizations a national community-based long term care program for older persons. Develops and issues program designs, guidelines, standards and assistance to State and Area Agencies, Indian Tribal Organizations and nutrition providers to support Titles III and VI nutrition services and disseminate nutrition education material.

Delete B.10 and replace with the following:

#### B.10 Organization

The Administration on Aging is headed by the Assistant Secretary for Aging and consists of:

- Office of the Assistant Secretary Congressional and White House Liaison
- Executive Secretariat and Policy Coordination
- Office of Governmental Affairs and Elder Rights
- Office of Elder Rights Protection
- Office of Management
- Division of Budget and Finance
- Division of Personnel and Planning
- Division of Grants and Contracts Management
- Division of Information Resources Management
- Office of Program Operations and Development
- Regional Offices on Aging
- Office of State and Community Programs
- Office for American Indian, Alaskan Native and Native Hawaiian Programs
- Office of Program Development

Delete B.20, A-I, and replace with the following:

#### B.20. Functions

##### A. Office of the Assistant Secretary (BA)

The Office of the Assistant Secretary serves as the focal point for OAA programs through the development,