In this action, the United States sought recovery under Section 107 of CERCLA of in excess of $2.7 million in response costs incurred by the United States in response to the release or threatened release of hazardous substances at the C&R Battery Company, Inc. Superfund Site (''Site''), located in Chesterfield, Virginia. The Consent Decree will resolve the claims against five defendants, Zacharias Brothers, a Virginia Partnership, Edward A. Zacharias, Mary D. Zacharias, William K. Zacharias and Carol K. Zacharias, for the payment, in aggregate, of $160,377.72 to the United States. The Consent Decree contains a covenant not to sue by the United States under Section 107 of CERCLA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Zacharias Brothers, a Virginia Partnership, et el.,* DOJ Ref. #90–11–2–692/4.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern Division of Virginia, Richmond Division, 600 E. Main Street, Suite 1800, Richmond, VA 23219; and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker Smith,

Acting Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 00–21285 Filed 8–21–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

L'Oreal USA, Inc. et al.; Competitive Impact Statements and Proposed Consent Judgments

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia, in *United States* v. *L'Oreal USA, Inc., L'Ordeal S.A., and Carson, Inc.,* Civ. Action No. 1:00CV01848 (Lamberth, J.).

On July 31, 2000, the United States filed a Complaint alleging that the proposed acquisition by L'Oreal USA, Inc. of Carson, Inc. would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, by substantially lessening competition in the development, production, and sale of adult women's hair relaxer kits through retail channels in the United States.

The proposed Final Judgment, also filed on July 31, 2000, requires Defendants to divest two brands, Gentle Treatment and Ultra Sheen, of ethnic hair care products, including adult women's hair relaxer kits, and certain other tangible and intangible assets.

Copies of the Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, NW., Washington, DC 20004 (telephone: (202) 514–2692), and at the Clerk's office of the U.S. District Court for the District of Columbia.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: (202) 307–0924).

Constance K. Robinson,

Director of Operation and Merger Enforcement.

Hold Separate Stipulation and Order

It Is Hereby Stipulated and Agreed by and between the undersigned parties, subject to approval and entry by this Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. ''Acquirer'' means the entity to whom Defendants or the trustee divest the Hair Care Assets or to whom the trustee divests the Divestiture Assets.

''L'Oreal'' means Defendant L'Oreal S.A., a French corporation headquartered in Paris, France, and Defendant L'Oreal USA, Inc., a Delaware corporation headquartered in New York, New York, and includes all successors and assigns, and all parents, subsidiaries, divisions (including Soft Sheen Products, Inc.), groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Carson'' means Defendant Carson, Inc., a Delaware corporation with its headquarters in Savannah, Georgia, and includes its successors and assigns, and its parents, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Hair Care Assets'' means:

(1)(a) All tangible assets used primarily in the research, development, marketing, servicing or sale of any product that Carson sold, sells, or has plans to sell under the Relevant Brand Names, including, but not limited to: materials, supplies, and other tangible property and all assets used primarily with such products, and

(b) All tangible assets relating to any product that Carson sold, sells or has plans to sell under the Relevant Brand Names, including, but not limited to, all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all agreements with retailers, wholesalers, or any other person regarding the sale, promotion, marketing, advertising or placement of such products; product inventory, packaging and artwork relating to such packaging; molds and silk screens; and all performance records and all other records.

(2) All intangible assets used in the research, development, production, marketing, servicing or sale of any product that Carson sold, sells, or has plans to sell under the Relevant Brand Names, including, but not limited to: all legal rights, including intellectual property rights, associated with the products, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property; all legal rights to use the names ''Johnson Products Co., Inc.'' and ''JP,'' and any derivation thereof; all trade secrets; all technical information, computer software and related documentation, and know-how, including, but not limited to, recipes and formulas, and information relating to plans for, improvements to, or line extensions of, the products; all research, packaging, sales, marketing, advertising and distribution know-how and documentation, including plan-o-grams, marketing and sales data, packaging designs, quality assurance and control procedures; all manuals and technical information Carson provided to their own employees, customers, suppliers, agents or licensees; all specifications for materials, and safety procedures for the handling of materials and substances; all research information and data concerning historic and current research and development efforts, including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments.

(3) With respect to any identifiable and specific trade secrets, recipes, formulas or know-how that, prior to the merger, were being used in the production or development of products sold under the Relevant Brand Names and any product not being divested, the Acquirer shall provide to Defendants a non-exclusive, transferable, royalty-free right to use any such trade secrets, recipes, formulas or know-how in the production or development of any non-divested product.

E. ''Plant Assets'' means all of the following assets: Carson's facility and property located at 8522 South Lafayette Avenue, Chicago, Illinois, and with respect to such facility, all manufacturing, research and development equipment, tooling and fixed assets, personal property, real property, titles, interests, leases, input inventory, office furniture, materials, supplies, drawings, blueprints, designs, design protocols, specifications for parts and devices, and safety procedures for the handling of plant equipment and substances, and all other tangible property.

F. ''Divestiture Assets'' means the Hair Care Assets and the Plant Assets.

G. ''Relevant Brand Names'' mean:

(1) Gentle Treatment;
(2) Ultra Sheen; and
(3) Any other name that uses, incorporates, or references either the Ultra Sheen or Gentle Treatment name, including, but not limited to, Ultra Sheen Supreme, Ultra Sheen Supreme Valu-Pak, Ultra Sheen Gro Natural, Ultra Sheen Extra Dry, Ultra Sheen Soft Touch, Ultra Sheen Hair Food, Ultra Sheen Anti-Itch, and Ultra Sheen Creme Satin Press, but not including the names Precise and Perfect Performance. With respect to the Precise name, Perfect Performance name or any other brand name or product, Defendants shall not use, incorporate or reference the names JP or Johnson Products, Co., Inc. (or any derivation thereof), or the names Gentle Treatment or Ultra Sheen.

II. Objectives

The Final Judgment filed in this civil action is meant to ensure prompt divestitures for the purpose of establishing a viable competitor in the ethnic hair care industry in order to remedy the effects that the United States alleges would otherwise result from L'Oreal's acquisition of Carson. The Hold Separate Stipulation and Order ensure, prior to such divestitures, that the Hair Care Assets remain economically viable as part of an ongoing business that will remain independently managed by the Designated Personnel (as defined in Section V(I) below) and not influenced by L'Oreal, and that competition is maintained during the pendency of the ordered divestitures.

III. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by this Court, upon the motion of any party or upon this Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with this Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by this Court, or until expiration of time for all appeals of any court ruling declining entry of the proposed Final Judgment. Defendants, from the date of the signing of this Stipulation by the parties, shall comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of this Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint filed in this action until after this Court has signed and entered this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to this Court.

E. In the event that (1) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any court ruling declining entry of the proposed Final Judgment, and this Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, or (2) the United States has withdrawn its consent, as provided in Section IV(A) above, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without evidentiary prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that Defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking this Court to modify any of the provisions contained therein.

V. Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the products sold under the Relevant Brand Names as an economically viable part of an ongoing competitive business, with management, research, development, promotions, marketing, and terms of sale of such products held entirely separate, distinct and apart from those of L'Oreal's other operations. L'Oreal shall not coordinate its management, research, development, promotions, marketing, or terms of sale with any products sold under any of the Relevant Brand Names. Within twenty (20) calendar days after either the filing of the Complaint or the entry of the Hold Separate Stipulation and Order, whichever is earlier, each Defendant shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendant has taken and all steps Defendant has implemented on an ongoing basis to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that: (1) The products sold under the Relevant Brand Names will be maintained and operated as independent, ongoing, economically viable and active competitive products in the ethnic hair care industry, including the adult women's hair relaxer kit market; (2) management of the Hair Care Assets will be conducted by the Designated Personnel and not be influenced by L'Oreal (or Carson); and (3) the books, records, competitively sensitive sales, marketing, promotion and pricing information, and decision-making concerning research, development, production, distribution, marketing, promotion or sales of products under any of the Relevant Brand Names will be kept separate and apart from Defendants' other operations.

C. Defendants shall use all reasonable efforts to maintain the research, development, sales, revenues, marketing, promotion, shelf-space, advertising, and distribution of the products sold under the Relevant Brand Names, and shall maintain at fiscal year 2000 or previously approved levels for fiscal year 2001, whichever are higher, all research, development, product improvement, promotional, advertising,

sales, distribution, technical assistance, marketing and merchandising support for those products. Defendants shall also ensure that all plans and efforts to improve current products sold, or to introduce new products under, the Relevant Brand Names are continued.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the products sold under the Relevant Brand Names as economically viable and competitive, ongoing products, consistent with the requirements of Sections V (A) and (B) above.

E. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than current capacity and sales, and shall maintain and adhere to normal repair, product improvement and upgrade, and maintenance schedules for the Divestiture Assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Divestiture Assets.

H. Carson's employees with primary responsibility for the research, development, marketing, promotion, production, operation, distribution, or sale of the products sold under the Relevant Brand Names, shall not be terminated, transferred or reassigned to other areas within Carson or L'Oreal except for transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy. Defendants shall provide the United States with ten (10) calendar days notice of such transfer. The Designated Personnel shall not be terminated, transferred or reassigned prior to a divestiture pursuant to the terms of the Final Judgment.

I. Until such time as the Hair Care Assets are divested pursuant to the terms of the Final Judgment, the Hair Care Assets shall be managed by Donald N. Riley and Curdedra N. Andrews (collectively ''Designated Personnel''). The Designated Personnel shall have complete managerial responsibility for the Hair Care Assets, subject to the provisions of this Order and the proposed Final Judgment, and will be responsible for Defendants' compliance with this Section. In the event that the Designated Personnel are unable to perform their duties, Defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should Defendants fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States shall appoint a replacement. Defendants shall take no action that would interfere with the ability of the Designated Personnel or any later appointed persons to oversee the Hair Care Assets.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer acceptable to the United States.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures required by the proposed Final Judgment or until further order of this Court.

Dated: 31 July 2000, Washington, D.C.

Respectfully submitted,

For Defendant L'Oreal USA Inc.:

John Sullivan, Esq.,
Senior Vice-President & General Counsel, L'Oreal USA, Inc., 575 Fifth Avenue, New York, N.Y. 10017, Phone: (212) 818–1500.

Peter D. Standish, Esq.,
Partner, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, N.Y. 10153, Phone: 212–310–8000.

For Defendant L'Oreal S.A.:

John Sullivan, Esq.,
Senior Vice-President & General Counsel, L'Oreal USA, Inc., 575 Fifth Avenue, New York, N.Y. 10017, Phone: (212) 818–1500.

For Defendant Carson, Inc.:

Charles Westland, Esq.,
Senior Attorney, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, N.Y. 10005, Phone: 212–530–5000.

For Plaintiff United States of America:

Anne Purcell,
Assistant Chief, Litigation II Section, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, Phone: 202–514–5803.

Order

It Is So Ordered by this Court, this day of , 2000.

United States District Judge

Appendix A

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on 31 July 2000, Plaintiff and Defendant L'Oreal S.A., Defendant L'Oreal USA, Inc. and Defendant Carson, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by this Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the Defendants to ensure that competition is not substantially lessened;

And Whereas, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking this Court to modify any of the divestiture provisions contained below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. ''L'Oreal'' means Defendant L'Oreal S.A., a French corporation headquartered in Paris, France, and Defendant L'Oreal USA, Inc., a Delaware corporation headquartered in New York, New York, and includes all successors and assigns, and all parents, subsidiaries, divisions (including Soft Sheen Products, Inc.), groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Carson'' means Defendant Carson, Inc., a Delaware corporation headquartered in Savannah, Georgia, and includes its successors and assigns, and its parents, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Acquirer'' means the entity to whom Defendants or the trustee divest the Hair Care Assets or to whom the trustee divests the Divestiture Assets.

D. ''Hair Care Assets'' mean:

(1)(a) All tangible assets used primarily in the research, development, marketing, servicing or sale of any product that Carson sold, sells or has plans to sell under the Relevant Brand Names, including, but not limited to: materials, supplies, and other tangible property and all assets used primarily with such products; and

(b) All tangible assets relating to any product that Carson sold, sells or has plans to sell under the Relevant Brand Names, including, but not limited to, all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts and credit records; all agreements with retailers, wholesalers, or any other person regarding the sale, promotion, marketing, advertising or placement of such products; product inventory, packaging and artwork relating to such packaging; molds and silk screens; and all performance records and all other records.

(2) All intangible assets used in the research, development, production, marketing, servicing or sale of any product that Carson sold, sells, or has plans to sell under the Relevant Brand Names, including, but not limited to: all legal rights, including intellectual property rights, associated with the products, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property; all legal rights to use the names ''Johnson Products Co., Inc.'' and ''JP.'' and any derivation thereof; all trade secrets; all technical information, computer software and related documentation, and know-how, including, but not limited to: recipes and formulas, and information relating to plans for, improvements to, or line extensions of, the products; all research, packaging, sales, marketing, advertising and distribution know-how and documentation, including plan-o-grams, marketing and sales data, packaging designs, quality assurance and control procedures; all manuals and technical information Carson provided to their own employees, customers, suppliers, agents or licensees; all specifications for materials, and safety procedures for the handling of materials and substances; all research information and data concerning historic and current research and development efforts, including, but not limited to: designs of experiments and the results of successful and unsuccessful designs and experiments.

(3) With respect to any identifiable and specific trade secrets, recipes, formulas or know-how that, prior to the merger, were being used in the production or development of products sold under the Relevant Brand Names and any product not being divested, the Acquirer shall provide to Defendants a non-exclusive, transferable, royalty-free right to use any such trade secrets, recipes, formulas or know-how in the production or development of any non-divested product.

E. ''Plant Assets'' means all or any of the following assets that the United States, in its sole discretion, determines are reasonably necessary for an Acquirer to compete effectively and viably in the sale of ethnic hair care products, including adult women's hair relaxer kits: Carson's facility and property located at 8522 South Lafayette Avenue, Chicago, Illinois, and with respect to such facility, all manufacturing, research and development equipment, tooling and fixed assets, personal property, real property, titles, interests, leases, input inventory, office furniture, materials, supplies, drawings, blueprints, designs, design protocols, specifications for parts and devices, and safety procedures for the handling of plant equipment and substances, and other tangible property.

F. ''Divestiture Assets'' mean the Hair Care Assets and the Plant Assets.

G. ''Plan'' or ''Plans'' means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

H. ''Relevant Brand Names'' mean:

(1) Gentle Treatment;

(2) Ultra Sheen; and

(3) Any other name that uses, incorporates, or references either the Ultra Sheen or Gentle Treatment name, including, but not limited to, Ultra Sheen Supreme, Ultra Sheen Supreme Valu-Pak, Ultra Sheen Gro Natural, Ultra Sheen Extra Dry, Ultra Sheen Soft Touch, Ultra Sheen Hair Food, Ultra Sheen Anti-Itch, and Ultra Sheen Creme Satin Press, but not including the names Precise and Perfect Performance. With respect to the Precise name, Perfect Performance name or any other brand name or product, Defendants shall not use, incorporate or reference the names JP or Johnson Products Co., Inc. (or any derivation thereof), or the names Gentle Treatment or Ultra Sheen.

III. Applicability

A. This Final Judgment applies to L'Oreal and Carson, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Hair Care Assets (and Plant Assets if offered for divestiture under Section V of this Final Judgment), that the Acquirer agrees to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by this Court, whichever is later, to divest the Hair Care Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion.

B. Defendants agree to use their best efforts to divest the Hair Care Assets as expeditiously as possible. The United States, in its sole discretion, may extend the time period for any such divestiture of the Hair Care Assets two additional periods of time, not to exceed thirty (30) calendar days each, and shall notify this Court in such circumstances.

C. In accomplishing the divestiture of the Hair Care Assets ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of such assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Hair Care Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Hair Care Assets (and Plant Assets if offered for divestiture under Section V of this Final Judgment) customarily provided in a due diligence process except such information or documents subject to the attorney-client or attorney work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the research, production, operation, development, marketing and sale of the Hair Care Assets (and Plant Assets if offered for divestiture under Section V of this Final Judgment) to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any Carson employee whose primary responsibility is the research, production, operation, development, marketing or sale of the Hair Care Assets (and Plant Assets if offered for divestiture under Section V of this Final Judgment).

E. Defendants shall permit prospective Acquirers of the Hair Care Assets (and Plant Assets if offered for

divestiture under Section V of this Final Judgment) to have reasonable access to personnel and to make inspections of the physical facilities of the Hair Care Assets (and Plant Assets if offered for divestiture under Section V of this Final Judgment); access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, sales, marketing, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant that each of the Hair Care Assets and those Plant Assets required to be divested under Section V of this Final Judgment will be operational on the date of sale.

G. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

H. Defendants shall warrant to the Acquirer of the Hair Care Assets (and those Plant Assets required to be divested under Section V of this Final Judgment) that there are no material defects in the environmental, zoning or other permits pertaining to the sale or operation of each asset, and that following the sale of the Hair Care Assets or Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the sale or operation of the Hair Care Assets or Divestiture Assets.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by a trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Hair Care Assets (and those Plant Assets required to be divested under Section V of this Final Judgment), and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the assets being divested can and will be used by the Acquirer as part of a viable, ongoing ethnic hair care products business, including the sale of adult women's hair relaxer kits. The divestiture pursuant to Section IV, or by a trustee appointed pursuant Section V, of this Final Judgment may only be made to an Acquirer, if it is demonstrated to the sole satisfaction of the United States that the assets being divested will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment.

(1) shall be made to an Acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of adult women's hair relaxer kits; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement among the Acquirer, L'Oreal and Carson give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If Defendants have not divested the Hair Care Assets within the time period specified in Section IV(A) of this Final Judgment, Defendants shall promptly notify the United States of that fact in writing. Upon application of the United States, this Court shall appoint a trustee selected solely by the United States and approved by this Court to effect the divestiture of the Hair Care Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Hair Care Assets. The trustee shall also have the right, upon notice to Defendants and sole approved by the United States, to sell the Plant Assets in addition to the Hair Care Assets. In the event that the Plant Assets are required to be divested to an Acquirer under this Section, the Acquirer shall, at L'Oreal's option, offer to L'Oreal a short-term, transitional agreement, not to exceed eighteen (18) months in length, pursuant to which the Acquirer shall manufacture and deliver to L'Oreal those undivested products that Carson had manufactured at the Plant Assets prior to Carson's acquisition by L'Oreal and on such terms and conditions as are agreeable to the Acquirer and L'Oreal and to the United States in its sole discretion. Pursuant to this mutually agreed upon agreement, L'Oreal, for the undivested Carson products, shall be entitled to final authority over product specifications, an assurance that the manufacture will conform to ''cosmetic good manufacturing practices'' as that term is understood throughout the industry, and, at L'Oreal's expense, on-site quality supervision. In the event that the Plant Assets are required to be divested to an Acquirer under this Section, Defendants shall, at the Acquirer's option and by sole approval of the United States, provide the Acquirer with reasonable access to the technical, service, production, or administrative employees of the Defendants involved in the operation of the Plant Assets.

C. The trustee shall have the power and authority to accomplish the divestiture of the Divestiture Assets to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(E) of this Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

D. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

E. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the Plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by this Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

F. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

G. After its appointment, the trustee shall file monthly reports simultaneously with the United States and this Court setting forth the trustee's

efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of this Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

H. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall promptly file with this Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of this Court. The trustee at the same time shall furnish such report to the United States. The United States and the Defendants shall have the right to make additional recommendations consistent with the purpose of the Final Judgment. This Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or Section V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Hair Care Assets or for divestitures under Section V of this Final Judgment, the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or, if applicable, the trustee additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section V(D) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V of this Final Judgment shall not be consummated. Upon objection by Defendants under Section V(D), a divestiture proposed under Section V shall not be consummated unless approved by this Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or Section V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) days thereafter until the divestiture has been completed under Section IV or Section V, each Defendant shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Hair Care Assets or Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Hair Care Assets or Divestiture Assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, each Defendant shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendant has taken and all steps Defendant has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at Plaintiff's option require Defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) To either interview informally or depose on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews or depositions shall be subject to the interviewee's reasonable convenience and without restraint or interference by Defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports, under oath if requested, relating to any of the matters contained in the Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time Defendants, the Acquirer, or any third party furnish information or documents to the United States under this Final Judgment, including, but not limited to, this Section and Sections IV and IX, they represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and if Defendants, the Acquirer, or any third party mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants, the Acquirer, or any third party ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the assets divested during the term of this Final Judgment.

XII. Retention of Jurisdiction

The Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Dated:

Washington, D.C.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, (''APPA'') 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the Proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On July 31, 2000, the United States filed a Complaint alleging that the acquisition of Carson, Inc. (''Carson'') by L'Oreal USA, Inc. (''L'Oreal'') would substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The Complaint alleges that Carson and L'Oreal are, respectively, the Nation's largest and third largest suppliers of adult women's hair relaxer kits sold in the United States. The proposed acquisition by Carson by L'Oreal will result in L'Oreal's controlling three of the top five selling brands and approximately 50 percent of adult women's hair relaxer kits sold through retail channels in the United States. As alleged in the Complaint, the elimination of Carson as a significant competitor substantially increases the likelihood that L'Oreal will raise prices of adult women's hair relaxer kits post-acquisition, thereby harming consumers. Accordingly, the prayer for relief in the Complaint seeks among other things: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) permanent injunctive relief that would prevent Defendants from carrying out the acquisition or otherwise combining their businesses or assets.

At the same time the Complaint was filed, the United States also filed a proposed settlement that would permit L'Oreal S.A. to complete their acquisition of Carson provided that certain assets are divested to preserve competition. The settlement consists of a Proposed Final Judgment and a Hold Separate Stipulation and Order.

The Proposed Final Judgment orders Defendants to divest the Gentle Treatment® and Ultra Sheen® brands and associated assets to an acquirer approved by the United States. Defendants must complete these divestitures within ninety (90) calendar days after the filing of the Complaint, or five days after the notice of the entry of the Final Judgment, whichever is later. If Defendants do not complete the divestitures within the prescribed time, then, under the terms of the proposed Final Judgment, this Court will appoint a trustee to sell the brands and associated assets. In the event a trustee is appointed, the Proposed Judgment provides that the trustee shall have the right, upon approval by the United States, to divest Carson's manufacturing facility in Chicago, Illinois.

The Hold Separate Stipulation and Order, which this Court entered on July 31, 2000, and the Proposed Final Judgment require Defendants to maintain the products sold under the Gentle Treatment® and Ultra Sheen® brands as an economically viable part of an ongoing competitive business, with competitively sensitive business information and decision-making relating to the products sold under the two brands kept separate from L'Oreal's other businesses. Defendants have designated two Carson employees to monitor and ensure their compliance with these requirements.

The United States and Defendants have stipulated that the Proposed Final Judgment may be entered after compliance with the APPA. Entry of the Proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify or enforce the provisions of the Proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

A. The Defendants

1. L'Oreal S.A. and L'Oreal USA, Inc.

L'Oreal S.A., a French corporation based in Paris, France, is the world's largest hair care and cosmetics company, with operations in over 150 countries and over 42,000 employees. Last year, L'Oreal S.A. reported over $10 billion in worldwide annual sales and $11 billion in total assets. Among L'Oreal S.A.'s wholly owned subsidiaries is L'Oreal USA, Inc. (''L'Oreal''), a Delaware corporation headquartered in New York, New York. Both L'Oreal S.A. and L'Oreal manufacture and market such well

known brands as L'Oreal®, Lancome®, Maybelline®, Laboratiries Garnier®, Redken 5th Ave NYC®, Ralph Lauren Fragrances®, Giorgio Armani Parfums®, Biotherm® and Helena Rubinstein®. Soft Sheen Products, Inc. (''Soft Sheen''), based in Chicago, Illinois, is a wholly owned subsidiary of L'Oreal. L'Oreal acquired Soft Sheen in 1998. Soft Sheen makes and sells ethnic hair care products, which are products primarily formulated for, and marketed to, African-American consumers. These products include hair relaxer kits, hair color kits, hair dressings, shampoos and conditioners. Soft Sheen's brands include Optimum Care®, the top-selling retail brand of adult women's hair relaxer kits in the United States. It also sells retail adult women's hair relaxer kits under the Alternatives® and Frizz Free® brands.

2. Carson, Inc.

Carson is a Delaware corporation headquartered in Savannah, Georgia. Founded in 1901, Carson is a global leader in products specifically formulated to address the physiological characteristics of hair of consumers of African descent. Carson makes and sells a complete line of ethnic hair care products, including hair relaxers, shampoos, conditioners, hair oils, hair colors, and shaving cremes. It is the Nation's leading manufacturer of adult women's hair relaxer kits, which are sold through retail channels under the brands Dark & Lovely®, Gentle Treatment®, and Ultra Sheen®. Carson reported worldwide sales for 1999 of approximately $169 million.

B. The Proposed Acquisition

On or about February 25, 2000, L'Oreal entered into an agreement with Carson to purchase for $5.20 per share the common stock of Carson. The value of the cash tender offer is approximately $79 million. This proposed combination, which would substantially lessen competition in the sale of adult women's hair relaxer kits in the United States, precipitated the United States's antitrust suit.

C. The Hair Relaxer Industry and the Competitive Effects of the Acquisition

1. The Relevant Market Is Adult Women's Hair Relaxer Kits Sold Through Retail Channels in the United States

The Complaint alleges that the development, production and sale of adult women's hair relaxer kits through retail outlets is a relevant product market under Section 7 of the Clayton Act. Hair relaxers are chemicals used primarily by African-American women to straighten their naturally curly hair prior to styling. Unless an African-American women with naturally curly hair relaxes her hair, any hair style she adopts, aside from a totally natural look, will be short-lived. By relaxing her hair, an African-American woman has more styling options. Between 65 and 80 percent of adult African-American women routinely relax their hair, spending in excess of $200 million annually on hair relaxers and associated products.

Adult women's hair relaxer kits are marketed specifically to African-American women for home use. Each relaxer kit typically contains everything needed to relax hair, including: (i) A complete set of instructions; (ii) gloves; (iii) two bottles of chemicals (the activator and relaxer base) that, when mixed, form the chemical that relaxes the hair (invariably the active chemical in relaxer kits is ''no-lye'' calcium hydroxide); (iv) a bottle of a neutralizing shampoo to deactivate the relaxer: (v) conditioners to repair split ends and make the hair appear thicker or fuller; and in some kits, (vi) a gel to protect against scalp injury.

There are no good substitutes for adult women's hair relaxer kits. The unique qualities and characteristics of these hair relaxer kits distinguish them from products such as hot combs and professional hair relaxers sold in bulk to beauticians. Because of the unique qualities and characteristics of adult women's hair relaxer kits, a small but significant increase in the price of women's hair relaxer kits would not cause a sufficient number of purchasers to switch to other products so as to make such a price increase unprofitable. Thus, the Complaint alleges that a relevant product market in which to assess the competitive effects of this acquisition is the development, production and sale of adult women's hair relaxer kits through retail outlets.

The Complaint further alleges that the United States constitutes a relevant geographic market within the meaning of Section 7 of the Clayton Act. L'Oreal's and Carson's adult women's hair relaxer kits are manufactured in, and sold and compete throughout, the United States. Virtually no adult women's hair relaxer kits are imported into the United States. A small but significant increase in the price of adult women's hair relaxer kits would not cause a sufficient number of purchasers to switch to hair relaxer kits manufactured outside the United States to make the price increase unprofitable.

2. Anticompetitive Consequences of the Acquisition

The Complaint alleges that L'Oreal's acquisition of Carson will likely have the following anticompetitive effects: (i) Competition generally in the development, production and sale of adult women's hair relaxer kits would be substantially lessened; (ii) the actual and potential competition between L'Oreal and Carson would be eliminated; and (iii) prices for adult women's hair relaxer kits would likely increase. Specifically, the Complaint alleges that Carson and L'Oreal are respectively the nation's largest and third largest suppliers of adult women's hair relaxer kits, and together own three of the top five selling brands. L'Oreal's Optimum Care®, Alternatives®, and Frizz Free® brands and Carson's Dark & Lovely®, Gentle Treatment®, and Ultra Sheen® brands of adult women's hair relaxer kits operate as significant competitive constraints on each firm's prices for its brands. If L'Oreal is permitted to acquire Carson, the substantial competition between the two companies would be eliminated, and L'Oreal would have the power to profitably increase prices unilaterally for one or more of its brands of retail adult women's hair relaxer kits to the detriment of consumers.

This acquisition would increase concentration significantly. The market for adult women's hair relaxer kits is highly concentrated under a standard measure of market concentration employed by economists, called the Herfindahl-Hirschman Index (''HHI''). In this highly concentrated market, with a HHI of approximately 2,100 L'Oreal has a share of about 17 percent and Carson has a share of about 33.5 percent of total dollar sales of adult women's hair relaxer kits through retail channels. After acquiring Carson, L'Oreal would dominate the market with approximately a 50.5 percent share, making it nearly twice the size of its next largest competitor. Following the acquisition, the HHI would increase by over 1100 points from approximately 2100 to over 3200, well in excess of levels that raise significant antitrust concerns.

The Complaint alleges that entry is unlikely to be timely, likely or sufficient to restore the competition lost through this transaction. Barriers to entering this market include: (1) The substantial time and expense required to build a brand reputation to overcome existing consumer preferences; (ii) the substantial sunk costs for promotional and advertising activity to secure the distribution and placement of a new

entrant's kit in retail outlets; (iii) the inability of a new entrant to recoup quickly its substantial and largely sunk costs [1] in promoting its brand; and (iv) the difficulty of securing shelf-space in retail outlets. Most hair relaxer kits introduced in recent years have been unable to gain significant sales within several years after entering. This is due in part to the degree of consumer loyalty and brand recognition for long-established, well-regarded brands such as Carson's Dark & Lovely®, Gentle Treatment® and Ultra Sheen® and L'Oreal's Optimum Care®. To succeed, an entrant must gain consumer confidence and trust, as hair relaxers contain powerful chemicals that may pose significant health risks, such as burning one's scalp and hair. Developing a reputation for quality, reliability, and performance of one's hair relaxer kit generally takes many years of effort. In short, new entry into the development, production and sale of adult women's hair relaxer kits through retail channels in the United States is time-consuming, expensive and difficult, and thus is unlikely to deter Defendants from exercising market power in the reasonable foreseeable future.

III. Explanation of the Proposed Final Judgment

The Proposed Final Judgment requires significant divestitures that will preserve competition in the sale of adult women's hair relaxer kits through retail channels in the United States. Within ninety (90) calendar days after July 31, 2000, the date the Complaint was filed, or five days after notice of entry of the Final Judgment, whichever is later, Defendants must divest the Gentle Treatment® and Ultra Sheen® brands and associated assets (including the ''Johnson Products Co., Inc.'' and ''JP'' names) to an acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of adult women's hair relaxer kits. [2] This relief has been tailored to ensure that the ordered divestitures restore competition that would have been eliminated as a result of the acquisition, and prevent L'Oreal from exercising market power in the adult women's hair relaxer kit market after the acquisition.

Defendants must use their best efforts to divest these assets as expeditiously as possible. The Proposed Final Judgment provides that the assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the acquirer can and will use the assets as part of a viable, ongoing business engaged in the sale of adult women's hair relaxer kit through retail channels in the United States. Until the ordered divestitures take place, Defendants must cooperate with any prospective purchasers.

If Defendants do not accomplish the ordered divestitures within the prescribed time period, then Section V of the Proposed Final Judgment provides that this Court will appoint a trustee, selected by the United States, to complete the divestitures. Section V of the Proposed Final Judgment also empowers the trustee to sell, if necessary, certain additional production assets to effect the divestitures. These additional assets entail all the assets at Carson's Chicago, Illinois facility that the United States determines are reasonable necessary for an acquirer to compete effectively and viably in the ethnic hair care industry.

If a trustee is appointed, the Proposed Final Judgment provides that Defendants must cooperate fully with the trustee and pay all of the trustee's costs and expenses. The trustee's compensation will be structured to provide an incentive for the trustee based on the price and terms of the divestiture and the speed with which it is accomplished. After the trustee's appointment becomes effective, the trustee will file monthly reports with the United States and this Court setting forth the trustee's efforts to accomplish the required divestiture. If at the end of six months after that appointment, the divestiture has not been accomplished, then the trustee, the United States, and Defendants will make recommendations to this Court, which shall enter such orders as appropriate to carry out the purpose of the Final Judgment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit and reasonable attorneys' fees. Entry of the Proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Proposed Final Judgment has no effect as *prima facie* evidence in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the Proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the Proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the Proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the Proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with this Court and published in the **Federal Register**. Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The Proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States is

[1] The term ''sunk costs'' as used in this context includes the costs of acquiring tangible and intangible assets that cannot be recovered through the redeployment of these assets outside the relevant market—in other words, costs uniquely incurred to enter the adult women's hair relaxer kits market, and which cannot be recovered when a firm leaves the market or enters another market.

[2] The assets to be divested are defined and described in the Proposed Final Judgment as the ''Hair Care Assets.'' *See* Section II(D) of the proposed Final Judgment. These assets also include other products (in addition to hair relaxer kits) sold under the Gentle Treatment® and *Ultra Sheen*® brands, but exclude the *Precise*® and *Perfect Performance*® brands. *See* Section II(H) of the Proposed Final Judgment. The divestiture of other ethnic hair care products sold under the *Gentle Treatment*® and *Ultra Sheen*® brands will enhance the acquirer's ability to compete post-divestiture.

satisfied, however, that the divestiture of the Gentle Treatment® and Ultra Sheen® brands, associated assets, and other relief contained in the Proposed Final Judgment will establish, preserve and ensure a viable competitor in the relevant market identified by the United States. Thus, the United States is convinced that the Proposed Final Judgment, once implemented by the Court, will prevent L'Oreal's acquisition of Carson from having adverse competitive effects.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the Proposed Final Judgment is ''in the public interest.'' In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [3] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[4]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS. Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also Microsoft, 56 F.3d at 1458. Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *''within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[5]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. A ''proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' [6]

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Since the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that the court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. *Id.*

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: August 8, 2000. Washington, D.C.

Respectfully submitted,

Maurice E. Stucke,
U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530, 202–305–1489.

Certificate of Service

I hereby certify that I served a copy of the foregoing Competitive Impact Statement via First Class United States Mail, this 8th day of August, 2000, on:

Peter D Standish, Esquire,
Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, NY 10153–0119, Counsel for Defendants L'Oreal USA, Inc. and L'Oreal S.A.

Charles Westland, Esquire,
Milbank, Tweed, Hadley & McCloy, LLP, One Chase Manhattan Plaza, New York, NY 10005, Counsel for Defendant Carson, Inc.

Damian G. Didden,
Trial Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307–0935.

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[3] 119 Cong. Rec. 24,598 (1973). See *United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538.

[4] *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977); see also *United States* v. *Loew's Inc.*, 783 F. Supp. 211, 214 (S.D.N.Y. 1992); *United States* v. *Columbia Artists Mgmt., Inc.*, 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

[5] *United States* v. *Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. See also *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984).

[6] *United States* v. *American Tel. & Tel. Co*, 552 F. Supp. 131, 151 (D.D.C. 1982) (quoting *Gillette*, 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985); *United States* v. *Carrols Dev. Corp.*, 454 F. Supp. 1215, 1222 (N.D.N.Y. 1978).