

the back of each piece of glass. The first layer applied to the glass is a tin solution, which is an adhesion promoter so that the silver will bond to the glass. After the tin solution, a silver solution is applied, which creates a metal film on the glass surface, giving the mirror its reflective surface. The third step is to apply a copper solution, which helps keep the silver from oxidizing and creates a surface to which the mirror backing paint will adhere. Finally, the mirror backing paint is applied. This adds a hard coating that protects the solutions from becoming scratched or damaged and further protects the silver solution from corrosion.

Both Lilly and Valspar produce all of the components, other than glass, necessary to make a mirror. The United States mirror solutions and mirror backing paint markets are highly concentrated, and the proposed acquisition would produce a firm controlling over 90% of the mirror solutions markets and over 60% of the mirror backing paint market. Both companies have frequently competed against each other for customers. By eliminating competition between the two most significant competitors in these highly concentrated markets, the proposed acquisition would allow the combined firm to exercise market power unilaterally, thereby increasing the likelihood that purchasers of mirror solutions as well as mirror backing paint would be forced to pay higher prices and that innovation and service levels in these markets would decrease.

Significant impediments to new entry exist in the mirror solutions and mirror backing paint markets. A new entrant into any of these markets would need to undertake the difficult, expensive and time-consuming process of developing a competitive product, establishing reliable U.S. distribution and technical support, and developing a reputation among mirror manufacturers for consistently producing a high-quality product. Because of the difficulty of accomplishing these tasks, new entry into either the mirror solutions markets or the mirror backing paint market could not be accomplished in a timely manner. Additionally, new entry into any one of these markets is made more unlikely because of the limited sales opportunities available to new entrants.

The Consent Agreement effectively remedies the acquisition's anticompetitive effects in the United States mirror solutions and mirror backing paint markets by requiring Valspar to divest its mirror coatings business. Pursuant to the Consent Agreement, Valspar is required to divest its mirror coatings business to Spraylat

Corporation within ten days of the date the Commission places the Order on the public record. Should Valspar fail to do so, the Commission may appoint a trustee to divest the business.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed buyer of divested assets must not itself present competitive problems. The Commission is satisfied that Spraylat is a well-qualified acquirer of the divested assets. Based in Mount Vernon, New York, Spraylat is a family owned company that manufactures and sells specialty paints and coatings for industrial uses. Spraylat possesses the necessary industry expertise to replace the competition that existed prior to the proposed acquisition. Furthermore, Spraylat poses no separate competitive issues as the acquirer of the divested assets.

The Consent Agreement includes a number of provisions that are designed to ensure that the transfer of Valspar's mirror coatings business to the acquirer is successful. The Consent Agreement requires Valspar to provide incentives to certain key employees to accept employment, and remain employed, by the acquirer. Valspar is also prohibited from inducing key customers from terminating their contracts with the acquirer for a period of one year. Finally, Valspar employees involved with its mirror coating business are prohibited from disclosing any confidential information to employees involved with the Lilly business.

In order to ensure that the Commission remains informed about the status of the Valspar mirror coatings business pending divestiture, and about efforts being made to accomplish the divestiture, the Consent Agreement requires Valspar to report to the Commission within 30 days, and every thirty days thereafter until the divestiture is accomplished. In addition, Valspar is required to report to the Commission every 60 days regarding its obligations to provide transitional services and facilities management.

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

By direction of the Commission.

Donald S. Clark,
Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office for Civil Rights; Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Director, Office for Civil Rights (OCR), with authority to redelegate, the following authorities vested in the Secretary of Health and Human Services:

1. The authority under section 262 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, as amended, to the extent that these actions pertain to the Standards for the Privacy of Individually Identifiable Health Information, to:

A. impose civil monetary penalties, under section 1176 of the Social Security Act, for a covered entity's failure to comply with certain requirements and standards;

B. make exception determinations, under section 1178(a)(2)(A) of the Social Security Act, concerning when provisions of State laws that are contrary to the federal standards are not preempted by the federal provisions; and

2. The authority under section 264 of HIPAA, as amended, to administer the regulations, "Standards for the Privacy of Individually Identifiable Health Information," 45 CFR Part 164, and General Administrative Requirements, 45 CFR Part 160, as these requirements pertain to Part 164, and to make decisions regarding the interpretation, implementation and enforcement of these Standards and General Administrative Requirements.

I hereby affirm and ratify any actions taken by the Director of OCR, or any subordinates, involving the exercise of the authorities delegated herein prior to the effective date of this delegation. This Delegation of Authority is effective concurrent with the effective date of the regulations, 45 CFR Parts 160 through 164.

Dated: December 20, 2000.

Donna E. Shalala,
Secretary.

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