required actions. Information available to the Commission indicates that Commonwealth has complied with these remedial provisions of the proposed Order.

The Consent Order also includes a requirement that for ten years the respondent provide the Commission with prior notice of various future transactions by the respondent involving title plant interests in the District of Columbia. A prior notice provision is appropriate in this matter because the small transaction size of most individual title plant acquisitions is below the threshold of reportability under the Hart-Scott-Rodino Act (Clayton Act § 7A, 15 U.S.C. § 18a) and because the underlying conduct at issue establishes a credible risk that the respondent will but for an order to the contrary, engage in otherwise unreportable anticompetitive mergers.[3] In addition, the Consent Order prohibits Commonwealth, for a period of twenty years, from entering into or attempting to enter into agreements or understandings to raise, fix or stabilize prices for title plant services in the District of Columbia.

Properly structured joint ventures between competitors relating to the production of needed supplies or services can reduce costs and improve economic efficiency without unreasonably restricting competition, where the joint venture preserves the freedom and incentives for the joint venture partners to price and market their goods or services competitively. *See, e.g., United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619 (W.D. Ky. 1985) (DOJ Consent); *Ethyl Corp.* and *The Associated Octel Company Limited, and Great Lakes Chemical Corporation*, Docket Nos. C–3814 and C–3815 (June 16, 1998). The proposed Consent Order does not prohibit Commonwealth from entering into arrangements with First American or anyone else to share or reduce the costs of carrying on its title plant operations, so long as the arrangements do not compromise Commonwealth's pricing independence or fix or stabilize the prices or rates for title plant services. Any such arrangements would be subject to review by the Commission under the prior notice provisions of the proposed Order.

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

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–23449 Filed 8–31–98; 8:45 am]

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[3] See Statement of FTC Policy Concerning Prior Approval and Prior Notice Provisions (June 21, 1995).

FEDERAL TRADE COMMISSION

[File No. 951–0097]

Merck & Co., Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 2, 1998.

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

FOR FURTHER INFORMATION CONTACT: William Baer or Willard Tom, FTC/H–394, Washington, D.C. 20580. (202) 326–2932 or 326–2786.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned 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. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 27, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. 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 section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an Agreement Containing Consent Order from Merck and Co., Inc. (''Merck'') and Merck-Medco Managed Care, LLC (''Medco''), (or ''Proposed Respondents'') in resolution of antitrust concerns arising from Merck's acquisition of Medco.

The proposed consent order (''Order'') has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

The Commission has reason to believe that Merck's acquisition of Medco may substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18 and Section 5 of the FTC Act, as amended, 15 U.S.C. 45. The Order, if issued by the Commission, would settle the allegations of the proposed Complaint (''Complaint'').

The Complaint in this matter alleges that Merck is engaged in the development, production and sale of pharmaceutical products, including Mevacor and Zocor, which are HMG-CoA reductase inhibitors used for treating high cholesterol; and Prinivil and Vasotec, which are ACE Inhibitors used for treating hypertension, high blood pressure and heart disease. It further alleges that Merck's subsidiary, Medco, is engaged in the business of providing pharmacy benefit management services to corporations, insurance companies, labor unions, third party payors, and other members of the healthcare industry.

The Complaint further alleges that a relevant line of commerce within which to analyze the effects of this acquisition is the provision of pharmacy benefit management (''PBM'') services by national full-service PBM firms, and any narrower markets contained therein. Other relevant lines of commerce within which to analyze the effects of this acquisition are the development, manufacture and sale of pharmaceutical products in specific therapeutic

categories, and narrower markets contained therein (including, but not limited to, the markets for HMG-CoA reductase inhibitors and ACE Inhibitors). It further alleges that the relevant market for PBM services by national full-service PBM firms, as well as the relevant markets for pharmaceutical products in specific therapeutic categories, are moderately to highly concentrated.

The Complaint further alleges that there are substantial barriers to entry into the relevant markets. Even if new entry were to occur, it would take a long time, during which time substantial harm to competition could occur.

The Complaint further alleges that as part of its PBM services, Medco maintains a drug formulary, which is a listing, by therapeutic category, of ambulatory drug products that are approved for use by the U.S. Food & Drug Administration, and which is made available to pharmacies, physicians, third-party payors, and other persons, to guide in the prescribing and dispensing of pharmaceuticals. Merck pharmaceutical products are included on the Medco formulary. Medco provides a variety of other PBM services, including claims processing, drug utilization review, pharmacy network administration, mail service, and related services. Medco negotiates with pharmaceutical manufacturers, including Merck, concerning placement of drugs on the Medco formulary, rebates, discounts, prices to be paid for pharmaceutical products purchased pursuant to pharmacy benefit plans managed by Medco, and similar matters. Medco thereby influences the prices of pharmaceutical products and the availability of such products under the Medco pharmacy benefit plans.

The Complaint further alleges that the effects of the acquisition of Medco by Merck may be substantially to lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

(a) Products of manufacturers other than Merck are likely to be foreclosed from Medco's formularies;

(b) Reciprocal dealing, coordinated interaction, interdependent conduct, and tacit collusion among Merck and other vertically integrated pharmaceutical companies will be enhanced;

(c) Medco has been eliminated as an independent negotiator of pharmaceutical prices with manufacturers;

(d) Incentives of other manufacturers to develop innovative pharmaceuticals will be diminished; and

(e) Pharmaceutical prices are likely to increase and the quality of the pharmaceuticals available to consumers is likely to diminish.

The Complaint further alleges that the acquisition of Medco by Merck violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

The Order requires Merck to cause Medco to maintain and make available an Open Formulary, and provides that the Medco ''Universal Formulary'' complies with this provision. A copy of this formulary is appended to the Order. For the purposes of the Order, an open formulary is defined as a formulary that allows the inclusion of any ambulatory (*i.e.*, non-hospital) prescription drug product which the Medco independent Pharmacy and Therapeutics Committee (''P&T Committee'') determines is appropriate for inclusion in such formulary.

The Order requires that Medco appoint an independent P&T Committee to administer the formulary. This committee will make all decisions concerning the inclusion and exclusion of drugs on the Open Formulary. The Order sets forth the parameters under which the P&T Committee is to operate.

The Order also requires that Merck cause Medco to accept all discounts, rebates or other concessions offered by any other manufacturer of pharmaceutical products on the Open Formulary, and requires that all such discounts, rebates and concessions be truthfully and accurately reflected in determining relative rankings of products on the Open Formulary. Nothing in the Order prohibits Medco from offering closed formularies as well as the Open Formulary.

The Order also prohibits Merck and Medco from providing, disclosing, or otherwise making available to each other Non-Public Information, with certain exceptions for attorneys and auditors. This includes information concerning other persons' bids, proposals, contracts, prices, rebates, discounts, and or other terms and conditions of sale.

The Order also requires Merck for five years to retain all documents, and to cause Medco to separately retain all documents, relating to the exclusion of any prescription drugs from the Open Formulary, any preference or ranking accorded to any prescription drug on the Open Formulary, and statements or indications of discounts, rebates or other concessions.

The Order also requires Merck and Medco to make known the availability of the Open Formulary to persons who currently have a PBM service agreement or formulary agreement with Medco, and (for a period of five years) to prospective customers.

The Order also compels Merck and Medco to fulfill certain standard notification, reporting and inspection requirements.

The Order terminates seven years from the date it becomes final.

It is anticipated that the Order would resolve the competitive problems alleged in the Complaint. The purpose of this analysis is to facilitate public comment on the Order, and it is not intended to constitute an official interpretation of the agreement and Order or to modify it in any way.

The proposed consent order has been entered into for settlement purposes only, and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the complaint.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–23450 Filed 8–31–98; 8:45 am]

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FEDERAL TRADE COMMISSION

[Docket 9286]

Summit Technology, Inc.; and VISX, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: The two consent agreements in these matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that the Commission issued on March 24, 1998, and the terms of the consent orders—embodied in the consent agreements—that would settle most of these allegations.

DATES: Comments must be received on or before November 2, 1998.

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

FOR FURTHER INFORMATION CONTACT: William Baer or Willard Tom, FTC/H–374, Washington, DC 20580. (202) 326–2932 or 326–2786.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade