interested parties asking that the comment period be extended for sixty (60) days. The requests noted that the proposed Consent Decree is the first proposed settlement of claims for resource damages caused by hazardous substances released from facilities along the Duwamish Waterway. The letters noted the complexity of the subject matter and stated that the original thirty (30) day comment period was not sufficient to adequately evaluate the proposed Consent Decree.

The natural resource trustees who are parties to the Proposed Consent decree have decided to allow the full 60-day extension of the comment period that was requested. Therefore, the Department of Justice will receive written comments relating to the proposed Consent Decree for an additional sixty (60) days after the original comment period, until and including August 9, 2010. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America et al.* v. *The Boeing Company,* DJ Reference No. 90–11–3–07227/1.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Washington, Office of the United States Attorney for the Western District of Washington, 5200 United States Courthouse, 700 Stewart Street, Seattle, WA 98101–1271. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $26.75 (25 cents per page reproduction cost) payable to the United States Treasury or, if requesting by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 2010–14449 Filed 6–15–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. *Amcor, Ltd., et al.;* Proposed Final Judgment and Competitive Impact Statement

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 of America* v. *Amcor Ltd., et al.,* Civil Action No. 1:10–cv–00973. On June 10, 2010, the United States filed a complaint alleging that the proposed acquisition by Amcor of the Alcan Packaging Medical Flexibles business of Rio Tinto would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Amcor to divest Alcan Packaging's Marshall, North Carolina plant, which produces vented bags for medical use, as well as certain tangible and intangible assets associated with the plant.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, (telephone: 202–307–0924).

J. Robert Kramer II,

Director of Operations.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, Plaintiff, v. *Amcor LTD.,* 109 Burwood Road, Hawthorn VIC 3122, Australia, and Rio Tinto PLC, 2 Eastbourne Terrace, London, W2 6LG, United Kingdom, and Alcan Corporation, 8770 West Bryn Mawr Avenue, Chicago, IL 60631, Defendants.

Case No.: 1:10–cv–00973.
Description: Antitrust.
Judge: Kollar-Kotelly, Colleen.
Date Stamp: 6/10/2010.

Complaint

The United States of America ("United States"), acting under the direction of the Attorney General, brings this civil antitrust action against defendants Amcor Ltd. ("Amcor"), Rio Tinto plc ("Rio Tinto"), and Alcan Corporation to enjoin Amcor's proposed acquisition from Rio Tinto of the Alcan Packaging Medical Flexibles business ("Alcan Packaging") and to obtain other equitable relief. The United States complains and alleges as follows:

I. Nature of This Action

1. Defendants Amcor Ltd. and Rio Tinto plc entered into an asset purchase agreement dated December 21, 2009, pursuant to which Amcor agreed to acquire the Alcan Packaging Medical Flexibles business from Rio Tinto for $65 million.

2. Amcor and Alcan Packaging are two of the three leading suppliers of vented bags for medical use in the United States.

3. The proposed acquisition would eliminate competition between Amcor and Alcan Packaging. For significant customers, Amcor and Alcan Packaging are the two best sources of vented bags for medical use. Elimination of the competition between Amcor and Alcan Packaging likely will result in Amcor's ability to raise prices to these customers. In addition, by eliminating Alcan Packaging, the transaction increases the likelihood of coordinated interaction between Amcor and the other leading supplier of vented bags for medical use. As a result, the proposed acquisition likely would substantially lessen competition in the development, production, and sale of vented bags for medical use in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. The Defendants

4. Amcor is organized under Australian law and is headquartered in Melbourne, Australia. Amcor is a global packaging manufacturer that had total sales of AUD $9.53 billion for the fiscal year ending in June 2009. That same year, Amcor had approximately $170 million in U.S. sales of flexible packaging for medical use.

5. Rio Tinto is organized under the laws of and headquartered in the United Kingdom. Its 2009 sales totaled approximately $44 billion. Rio Tinto acquired Alcan Corporation in 2007.

6. Alcan Corporation is a wholly owned subsidiary of Rio Tinto. Alcan Corporation is a Texas corporation headquartered in Chicago, Illinois. Alcan Packaging develops, produces, and sells flexible packaging for medical use in the United States. In 2008, Alcan Packaging sold approximately $115 million of flexible packaging for medical use.

III. Jurisdiction and Venue

7. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

8. Defendants themselves, or through wholly owned subsidiaries, produce and sell vented bags for medical use in the flow of interstate commerce. Defendants' activities in the development, production, and sale of vented bags for medical use substantially affect interstate commerce. This Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a) and 1345.

9. Defendants have consented to venue and personal jurisdiction in the District of Columbia. Venue is therefore proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c). Venue is also proper in the District of Columbia for defendants Amcor and Rio Tinto under 28 U.S.C. 1391(d).

IV. Trade and Commerce

A. Background

1. Overview of Flexible Packaging for Medical Use

10. Flexible packaging is any package the shape of which can be readily changed. Flexible packaging is distinguishable from rigid packaging such as trays, bottles, vials, and other hard plastic or glass containers. Flexible packaging for medical use includes bags, pouches, tubing, forming films, rollstock, and lidding, made in different styles and using different materials. Packaged products include items ranging from scalpels, intravenous tubes, and syringes to large surgery trays and kits.

11. Generally, flexible packaging is produced by a "converter," which makes the flexible packaging according to a common production blueprint. The basic production steps can be described as: (1) The processing of resins into plastic film, either by "casting" or "blowing" (which is the extrusion of resin pellets through a die); (2) the conversion of the film by laminating multiple sheets together, applying coatings, and/or printing on the sheets; and (3) the finishing of the product by slitting and placing it on large rolls, or forming it into bags, pouches or other constructions.

12. If a converter performs all three of the process steps in-house, it is considered to be vertically integrated. Many converters purchase film that is blown or cast by another company and simply convert and finish the film, however. Also, many large medical device manufacturers have the capability to form the packaging product themselves and, instead of purchasing "converted products" (*e.g.,* bags or pouches), purchase "rollstock," which is film supplied as a roll.

13. The seeming simplicity of the production process is misleading. A single piece of film—the starting point for the conversion process—itself may contain as many as eleven or more separate layers that have been formed together during the extrusion process. The combination of layers in the film, with each layer extruded from a specific type of resin, provides the finished structure with the particular characteristics needed to properly contain the product for which that flexible package is intended. Furthermore, manufacturing a converted product from these films is difficult because the manufacturer must balance the package's ability to maintain its seal with its ability to open easily.

14. Producers of flexible packaging sell their packaging to medical device manufacturers that package their products for wholesale distribution or sale to end-users in the medical industry. End-users include hospitals, doctors' offices, and laboratories.

15. Sterilizable flexible packaging for medical use ("medical flexibles") is different from other types of flexible packaging for several reasons. First, medical flexibles must be able to withstand the sterilization process because the medical device is sterilized after it has been placed in the package. The most common sterilization process is the forcing of ethylene-oxide gas into and out of the package (known as "EtO sterilization"), which requires a "vented" or "breathable" package that incorporates some porous material. This porous material must act as a vent for the EtO gas to enter and exit but also must maintain the sterile barrier. The most widely used venting material is Tyvek, a durable, effective, Dupont-patented plastic material.

16. Second, medical flexibles must conform to strict quality and qualification requirements. Before a medical device manufacturer purchases any medical flexible product, it first must "qualify" the particular product. The product qualification process is meant to guard against the risk of the package's failure. A failure of the package could expose the medical device to microbes, bacteria, or particulates, which could cause a patient's injury, sickness, or even death. The risks associated with packaging failure dictate a rigorous product qualification process, whereby the customer performs numerous tests, including quality testing, sterilization testing, seal strength testing, aging simulations, and shipping and handling simulations.

17. Sterilization testing during qualification is especially rigorous. The EtO sterilization process is an aggressive process that forces gas into and out of the flexible packaging through the venting material. During this process, the gas may not be able to escape quickly enough through the venting material, bursting the seams of the packaging. In addition, EtO sterilization can weaken the plastic films of the packaging, weaken seals, cause discoloration of the package, and cause other types of harm to the package. Producing medical flexible packaging that can withstand this process is difficult, and even products from large, established suppliers may fail customers' sterilization tests.

2. Vented Bags for Medical Use

18. Vented bags for medical use are formed by sealing two pieces of film rollstock together on three sides, leaving the fourth side open for filling and sealing. There are two different styles of EtO-sterilizable vented bags for medical use: (1) "Header bags," which are sealed on one end by a long, thin venting strip running the length of the bag, and (2) "patch bags" or "breather bags," which have one or more circular venting patches on the sides of the bag instead of a strip over the end. Both styles of vented bag perform the same functions for the same end uses, and are generally

considered to be interchangeable. As with medical flexibles generally, Tyvek is the leading venting material for vented bags for medical use.

19. Each manufacturer produces vented bags for medical use with a range of features and characteristics. These include, among others: Size, ease of opening, film composition, film gauge, seal strength, venting style, and venting design. Customers decide which vented bag for medical use to purchase by weighing the relative importance of these features.

20. Despite their generic name, vented bags for medical use are specialized, hard-to-make products. Because Tyvek is expensive, vented bags for medical use incorporate as little Tyvek into their design as possible. Minimizing the use of Tyvek, however, makes it more likely that, during sterilization, the EtO gas may not escape quickly enough through the venting material, bursting the seams of the packaging and breaking the sterile barrier. Designing and producing vented bags for medical use that strike the proper balance between using as little Tyvek as possible and providing sufficient venting for the EtO gas to escape is difficult and requires specialized knowledge and processes.

B. Relevant Market

21. The development, production, and sale of vented bags for medical use to U.S. customers is a line of commerce and a relevant market within the meaning of Section 7 of the Clayton Act.

22. Vented bags for medical use have specific end-uses, for which other types of medical flexibles cannot be used. Vented bags for medical use typically are used to accommodate larger and heavier items, such as surgical gowns and surgical kits and trays. Other types of flexible packaging, such as vented pouches for medical use, cannot handle these larger, heavier items because they are designed differently. Therefore, the relevant product is vented bags for medical use.

23. U.S. customers have unique qualification requirements that allow producers to price discriminate against them without regard to prices of foreign producers. Based on the locations of customers for vented bags for medical use, the relevant geographic market is the United States.

24. A small but significant increase in the price of vented bags for medical use to U.S. customers would not cause those customers to turn to other types of flexible packaging or to engage in arbitrage by purchasing through customers located outside of the United States, or otherwise to reduce purchases of vented bags for medical use, in volumes sufficient to make such a price increase unprofitable.

C. Market Participants

25. Amcor, Alcan Packaging, and one other competitor are the only significant competitors in the U.S. market for vented bags for medical use. Smaller suppliers are not significant competitors in the U.S. market for vented bags for medical use because their products generally serve niche applications, such as low-volume products, non-standard sizes, and small customers, and are not price competitive. Foreign suppliers are not significant competitors in the U.S. market for vented bags for medical use because currently they do not sell into the United States, and they would not do so in the event of a small but significant increase in price because of the qualification barriers they would face. Thus, there are no other providers of vented bags for medical use to which a medical device manufacturer could turn if faced with a small but significant increase in the price of vented bags for medical use.

V. Likely Anticompetitive Effects of the Proposed Acquisition

A. How Competition Occurs in the U.S. Market for Vented Bags for Medical Use

26. Producers of vented bags for medical use must work closely with medical device manufacturers to ensure that their packaging material meets their customers' qualifications, that they meet the promised lead times, and that they continuously find ways to cut the customers' costs. Producers also must engage in research and development to deliver better packaging products in order to compete effectively.

27. Prices for vented bags for medical uses are customer-specific and based on, among other things, an individual customer's unique requirements and specifications. The price charged to one customer likely will be different from the price charged to another customer. Additionally, arbitrage is unlikely because customer-specific printing, branding, and labeling on vented bags for medical use prevents sales among customers.

28. Price competition in the market for vented bags for medical use occurs in two ways. First, customers may issue a request for proposal, through which they invite potential suppliers to bid on supplying packaging that meets the customers' specifications. Customers evaluate the competing bids on the basis of, among other things, compliance with their specifications, price, delivery times, and the services provided by each producer. Second, price competition may also occur less formally if a customer seeks or receives an offer from an alternative supplier and the incumbent is given a chance to respond.

29. Because of the risk-averse nature of medical device manufacturers, the time-consuming and difficult qualification process, and the high quality requirements, switching suppliers can involve significant time and expense. Consequently, competition tends to take the form of competition for a stream of new business, which the winner expects to keep for some years.

B. Likely Anticompetitive Effects in the U.S. Market for Vented Bags for Medical Use

30. The proposed acquisition of Alcan Packaging by Amcor likely would substantially lessen competition in the U.S. market for vented bags for medical use. Amcor, Alcan Packaging, and one other company are the three primary competitors in the U.S. market for vented bags for medical use. Currently, Amcor and Alcan Packaging account for 27 percent and 33 percent, respectively, of U.S. sales in the market for vented bags for medical use. If the transaction is not enjoined, three firms collectively would account for approximately 95 percent of sales of vented bags for medical use in the United States. Using a measure called the Herfindahl-Hirschman Index ("HHI") (explained in Appendix A), the HHI would increase by more than 1,790 points, resulting in a post-acquisition HHI of more than 4,830 points.

31. Due to Amcor and Alcan Packaging's collective overall expertise in meeting the needs of customers and other technical and commercial factors for vented bags for medical use, including, among other things, price, quality, ability to pass the customer's rigorous qualification procedures, delivery times, service, and technical support, Amcor and Alcan Packaging frequently are perceived by each other, by other bidders, and by customers as two of the three most significant competitors in the market.

32. Amcor's and Alcan Packaging's bidding behavior often has been constrained by the possibility of losing business to the other. For significant customers of vented bags for medical use, Amcor and Alcan Packaging are their two best substitutes. By eliminating Alcan Packaging, Amcor likely would gain the incentive and ability to profitably increase its bid prices, reduce quality, offer fewer and less attractive supply-chain options, reduce technical support, and reduce innovation below what it would have been absent the acquisition.

33. Customers have benefited from competition between Amcor and Alcan Packaging through lower prices, higher quality, better supply-chain options (including delivery times and volume-purchase requirements), technical support, and numerous innovations. The combination of Amcor and Alcan Packaging would eliminate this competition and future benefits to customers, and likely would result in harmful unilateral price effects.

34. In addition, by reducing the number of significant competitors in the U.S. market for vented bags for medical use from three to two, Amcor and the one other competitor would gain the incentive and likely ability to raise prices through coordinated interaction. The fringe competitors would be unable to render the coordination unprofitable by repositioning or expansion. Coordination would be more likely because, for example, the merger would make customer allocation easier. Each competitor could be reasonably certain as to the identity of the other's customers, making cheating easier to detect and discipline and, because each competitor is at or near capacity, the ability of each profitably to expand sales and steal business from the other would be limited.

35. Customers have benefited from competition between Amcor, Alcan Packaging, and the other significant competitor through lower prices, higher quality, better supply-chain options (including delivery times and volume-purchase requirements), technical support, and numerous innovations. The combination of Amcor and Alcan Packaging would eliminate this competition and future benefits to customers, and likely would result in harmful coordinated price effects.

36. The proposed acquisition, therefore, likely would substantially lessen competition in the United States for the development, production, and sale of vented bags for medical use, which likely would lead to higher prices, lower quality, less favorable supply-chain options, reduced technical support, and less innovation, in violation of Section 7 of the Clayton Act.

C. Entry or Expansion Is Unlikely To Prevent Anticompetitive Harm

37. In order to compete effectively in the U.S. market for vented bags for medical use, a competitor must be vertically integrated. Other converters produce vented bags for medical use similar to those produced by Amcor and Alcan Packaging. Unlike Amcor, Alcan Packaging, and the other leading competitor, however, those companies are not vertically integrated (*i.e.,* they do not make their own films) and do not benefit from similar economies of scale or scope, and they therefore operate at a cost disadvantage.

38. Amcor and Alcan Packaging, as a consequence of the efficiencies they possess due to vertical integration, are able to offer vented bags for medical use to customers at lower prices and higher volumes than are the non-vertically integrated competitors. In order to compete effectively with Amcor and Alcan Packaging, other converters must begin producing their own films and expand production to capture similar scale and scope benefits. Expanding to compete with the vertically integrated converters would require a significant capital investment and would take years, as the expanding company still would have to qualify each of its products at each new customer. These suppliers likely would not be able to expand to meet customers' required specifications or quality requirements cost-effectively within a commercially reasonable amount of time, and therefore would be deterred from attempting to expand.

39. Likewise, de novo entry into the market for vented bags for medical use would not be timely, likely, or sufficient to deter anticompetitive post-merger pricing. A new supplier would need to construct production lines capable of producing vented bags for medical use that meet the rigorous standards set forth by major buyers of such films. Construction of manufacturing facilities would require a significant capital investment and the entrant would have to be committed to research and development. In addition, the technical know-how necessary to design and successfully manufacture packaging that is able to pass customers' qualification tests is difficult to obtain and is learned through a time-consuming trial-and-error process.

40. Even after a new entrant has developed the capability to supply vented bags for medical use, the entrant's product must be qualified by potential customers, demonstrating that its products can meet rigorous quality and performance standards. For example, because the qualifying process for vented bags for medical use typically requires a simulated aging test, where sample products are packaged in the vented bag, sterilized, and then stored in an accelerated aging room for extended periods of time, the process can take many months. Further, initial attempts to qualify are not guaranteed to be successful, and even current market participants have had to repeat the process multiple times. In such cases, the qualification process can take several years with no guarantee of success. Moreover, because customer specifications are unique, qualification with one customer does not guarantee qualification with another.

41. Even if a new entrant were to develop the capability to supply vented bags for medical use and can pass qualification tests, the new entrant still would face the same barriers to expansion as those faced by converters currently producing vented bags for medical use. In addition, in the medical industry, where the costs of packaging failure are high, medical device manufacturers are reluctant to work with suppliers that have not established reputations for quality, the establishment of which occurs gradually over many years.

42. As a result of these barriers, expansion by non-vertically integrated vented bag converters or entry by new firms into the market for the development, production, and sale of vented bags for medical use would not be timely, likely, or sufficient to prevent a likely exercise of market power by Amcor after the acquisition.

VI. The Proposed Acquisition Violates Section 7 of the Clayton Act

43. Amcor's proposed acquisition of the Alcan Packaging business likely would substantially lessen competition in the development, production, and sale of vented bags for medical use in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

44. Unless enjoined, the proposed acquisition likely would have the following anticompetitive effects, among others:

(a) Actual and potential competition between Amcor and Alcan Packaging in the market for the development, production, and sale of vented bags for medical use in the United States would be eliminated;

(b) Competition in the market for the development, production, and sale of vented bags for medical use in the United States likely would be substantially lessened; and

(c) For vented bags for medical use in the United States, prices likely would increase, quality likely would decrease, supply-chain options likely would be less favorable, technical support likely would be reduced, and innovation likely would decline.

VII. Requested Relief

45. The United States requests that this Court:

(a) Adjudge and decree Amcor's proposed acquisition of the Alcan

Packaging business to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) Enjoin defendants and all persons acting on their behalf from consummating the proposed acquisition of the Alcan Packaging business by Amcor, or from entering into or carrying out any other agreement, plan, or understanding, the effect of which would be to combine Amcor with the Alcan Packaging business;

(c) Award the United States its costs for this action; and

(d) Award the United States such other and further relief as the Court deems just and proper.

FOR PLAINTIFF UNITED STATES OF AMERICA:

/s/

William F. Cavanaugh, Jr.,
Acting Assistant Attorney General.

/s/

Maribeth Petrizzi,
Chief, Litigation II Section,
D.C. Bar # 435204.

/s/

J. Robert Kramer II,
Director of Operations

/s/

Dorothy B. Fountain,
Assistant Chief, Litigation II Section,
D.C. Bar # 439469.

/s/

Dando B. Cellini,
Brian E. Rafkin,
Janet A. Nash,
Ferdose al-Taie,
(D.C. Bar # 467730),
Stephen A. Harris,
Attorneys,
United States Department of Justice,
Antitrust Division,
450 Fifth Street, N.W., Suite 8700,
Washington, DC 20530,
(202) 307–0829.

Dated: June 10, 2010

Appendix A

Definition of HHI

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20%, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1,000 and 1,800 points are considered to be moderately concentrated, and markets in which the HHI is in excess of 1,800 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* ¶ 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission. *See id.*

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Amcor Ltd., and Rio Tinto PLC, and Alcan Corporation,* Defendants.

Case No.:
Description: Antitrust.
Judge:
Date Stamp:

Proposed Final Judgment

Whereas, Plaintiff United States of America filed its Complaint on June 10, 2010, the United States and defendants Amcor Ltd., Rio Tinto plc, and Alcan Corporation, 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 the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by defendants to assure 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 the 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. "Acquirer" means the entity to whom Amcor shall divest the Divestiture Assets.

B. "DuPont Tyvek Authorized Converter" means the owner of a license issued by DuPont that permits its owner to purchase directly from DuPont any medical-grade type of DuPont's patented Tyvek material, and to use, promote, and resell Tyvek or products incorporating Tyvek.

C. "Amcor" means defendant Amcor Ltd., organized under the laws of Australia and headquartered in Melbourne, Australia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Rio Tinto" means defendant Rio Tinto plc, organized under the laws of and headquartered in the United Kingdom, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

E. "Alcan Packaging" means defendant Alcan Corporation, a Texas corporation that is a wholly owned subsidiary of Rio Tinto headquartered in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

F. "Divestiture Assets" means:

(1) Alcan Packaging's facility located at 100 Kenpack Lane, Marshall, North Carolina 28753 ("Marshall Facility");

(2) All tangible assets that comprise the Marshall Facility, including, research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used exclusively in connection with the Marshall Facility; all licenses, permits and authorizations issued by any governmental organization relating to the Marshall Facility; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to the Marshall Facility, including supply agreements;

all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the Marshall Facility; and

(3) The following intangible assets:

(a) All intangible assets used exclusively or primarily in the design, development, production, marketing, servicing, distribution, and/or sale of any product produced at the Marshall Facility, including, but not limited to, all patents, licenses and sub-licenses, intellectual property, copyrights, trade names or trademarks, including, but not limited to, "Kwikbreathe," "Kwiktear," "Ultimate Header Film," "Ultimate Header Bag," "Ultimate Tyvek® Header Bag," "Ultimate Kwiktear Bag," "KWAdvent," "Direct Seal," or any derivation thereof, service marks, service names, technical information, designs, trade dress, and trade secrets; computer software, databases, and related documentation; know-how, including, but not limited to, recipes, formulas, and machine settings; information relating to plans for, improvements to, or line extensions of, any product produced at the Marshall Facility; drawings, blueprints, designs, design protocols, specifications for materials, and specifications for parts and devices; marketing and sales data; quality assurance and control procedures; design tools and simulation capability; contractual rights; manuals and technical information provided by Alcan Packaging to its own employees, customers, suppliers, agents, or licensees; safety procedures for the handling of materials and substances; research information and data concerning historic and current research and development efforts, including, but not limited to, designs and experiments and the results of successful and unsuccessful designs and experiments; and

(b) With respect to any intangible assets that are not included in paragraph II(F)(3)(a), above, and that prior to the filing of the Complaint in this matter were used in connection with the design, development, production, marketing, servicing, distribution, and/or sale both of products produced at the Marshall Facility and products produced at any other Alcan Packaging facility, a non-exclusive, non-transferable license for such intangible assets to be used for the design, development, production, marketing, servicing, distribution, and/or sale of any product produced at the Marshall Facility, and only products produced at the Marshall Facility, for the period of time that defendants have rights to such assets; provided, however, that any such license is transferable to any future purchaser of all or any relevant portion of the Marshall Facility.

III. Applicability

A. This Final Judgment applies to Amcor, Rio Tinto, and Alcan Packaging, 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. If, prior to complying with Section IV or V of this Final Judgment, defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Amcor is ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Amcor agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, Amcor promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Amcor shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Amcor shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process, except such information or documents subject to the attorney-client privilege or work-product doctrine. Amcor shall make available such information to the United States at the same time that such information is made available to any other person.

C. Amcor shall provide the Acquirer and the United States information relating to the personnel involved in the production, operation, development and sale of any product by the Marshall Facility to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the operation of the Marshall Facility, and the development, production, and sale of vented bags for medical use.

D. Amcor shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the Marshall Facility; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Amcor shall warrant to the Acquirer that each asset will be operational on the date of sale.

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

G. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Marshall Facility.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business in the development, production, and sale of vented bags for medical use. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

(1) Shall be made to an Acquirer with a readily available supply of Tyvek, such as a DuPont Tyvek Authorized Converter or one that has, or will have on the date of divestiture, a supply agreement with a DuPont Tyvek Authorized Converter;

(2) 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

development, production, and sale of vented bags for medical use; and

(3) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer and defendants 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 Amcor has not divested the Divestiture Assets within the time period specified in Section IV(A), Amcor shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture 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(D) of this Final Judgment, the trustee may hire at the cost and expense of Amcor 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.

C. 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.

D. The trustee shall serve at the cost and expense of Amcor, on such terms and conditions as the United States 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 the 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 Amcor 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.

E. 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 secret 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.

F. After its appointment, the trustee shall file monthly reports with the United States and the 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 the 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.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after the trustee's appointment, the trustee shall promptly file with the 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 the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The 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, Amcor shall notify the United States of any proposed divestiture required by Section IV of this Final Judgment. Within two (2) business days following execution of a definitive divestiture agreement, the trustee shall notify the United States and defendants of any proposed divestiture required by Section V of this Final Judgment. 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 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 the trustee, if applicable, 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(C) 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 shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or 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) calendar days thereafter until the divestiture has been completed under Section IV or V, Amcor shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar 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 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 Amcor has taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, 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 Amcor, including limitations 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, Amcor shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Amcor 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 authorized representatives of the United States Department of Justice Antitrust Division, including consultants and other persons retained by the United States, shall, upon written request of an 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 the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

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

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this 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 information or documents are furnished by defendants to the United States, defendants 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)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Notification

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), Amcor, without providing advance notification to the Antitrust Division, shall not directly or indirectly acquire any assets of or any interest—including any financial, security, loan, equity, or management interest—in any entity in the business of developing, producing or selling vented bags for medical use in the United States during the term of this Final Judgment.

Such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about vented bags for medical use. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XII. No Reacquisition

Amcor may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIII. Retention of Jurisdiction

This 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.

XIV. Expiration of Final Judgment

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

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

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

_____

United States District Judge

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Amcor LTD., and Rio Tinto PLC, and Alcan Corporation,* Defendants.

Case No.: 1:10–cv–00973.
Description: Antitrust.
Judge: Kollar-Kotelly, Colleen.
Date Stamp: 6/10/2010.

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 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

Defendants Amcor Ltd. and Rio Tinto plc entered into an asset purchase agreement dated December 21, 2009, pursuant to which Amcor agreed to acquire the Alcan Packaging Medical Flexibles business from Rio Tinto for $65 million.

The United States filed a civil antitrust Complaint against Amcor, Rio Tinto, and Alcan Corporation on June 10, 2010, seeking to enjoin Amcor's acquisition of the Alcan Packaging Medical Flexibles business. The Complaint alleged that the acquisition likely would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, in the United States for the development, production, and sale of vented bags for medical use. That loss of competition likely would result in higher prices, decreased quality, less favorable supply-chain options, reduced technical support, and lesser innovation in the U.S. market for vented bags for medical use.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order ("Hold Separate") and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of Amcor's acquisition of the Alcan Packaging Medical Flexibles business. Under the proposed Final Judgment, which is explained more fully below, defendants are required to divest Alcan Packaging's facility that produces all of its vented bags for medical use, all of the tangible assets necessary to operate the facility, and all of the intangible assets (*i.e.,* intellectual property and know-how) related to the facility.

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 the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

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

A. The Defendants and the Industry

1. The Defendants

Amcor is organized under Australian law and is headquartered in Melbourne, Australia. Amcor is a global packaging manufacturer that had total sales of AUD $9.53 billion for the fiscal year ending in June 2009. That same year, Amcor had approximately $170 million in U.S. sales of flexible packaging for medical use.

Rio Tinto is organized under the laws of and headquartered in the United Kingdom. Its 2009 sales totaled approximately $44 billion. Rio Tinto acquired Alcan Corporation in 2007. Alcan Corporation is a wholly owned subsidiary of Rio Tinto. Alcan Corporation is a Texas corporation headquartered in Chicago, Illinois. Alcan Packaging develops, produces, and sells flexible packaging for medical use in the United States. In 2008, Alcan Packaging sold approximately $115 million of flexible packaging for medical use.

2. Overview of Flexible Packaging for Medical Use

Flexible packaging is any package the shape of which can be readily changed. Flexible packaging is distinguishable from rigid packaging such as trays, bottles, vials, and other hard plastic or glass containers. Flexible packaging for medical use includes bags, pouches, tubing, forming films, rollstock, and lidding, made in different styles and using different materials. Packaged products include items ranging from scalpels, intravenous tubes, and syringes to large surgery trays and kits.

Generally, flexible packaging is produced by a "converter," which makes the flexible packaging according to a common production blueprint. The basic production steps can be described as: (1) The processing of resins into plastic film, either by "casting" or "blowing" (which is the extrusion of resin pellets through a die); (2) the conversion of the film by laminating multiple sheets together, applying coatings, and/or printing on the sheets; and (3) the finishing of the product by slitting and placing it on large rolls, or forming it into bags, pouches or other constructions.

If a converter performs all three of the process steps in-house, it is considered to be vertically integrated. Many converters purchase film that is blown or cast by another company and simply convert and finish the film, however. Also, many large medical device manufacturers have the capability to form the packaging product themselves and, instead of purchasing "converted products" (*e.g.,* bags or pouches), purchase "rollstock," which is film supplied as a roll.

The seeming simplicity of the production process is misleading. A single piece of film—the starting point for the conversion process—itself may contain as many as eleven or more separate layers that have been formed together during the extrusion process. The combination of layers in the film, with each layer extruded from a specific type of resin, provides the finished structure with the particular characteristics needed to properly contain the product for which that flexible package is intended. Furthermore, manufacturing a converted product from these films is difficult because the manufacturer must balance

the package's ability to maintain its seal with its ability to open easily.

Producers of flexible packaging sell their packaging to medical device manufacturers that package their products for wholesale distribution or sale to end-users in the medical industry. End-users include hospitals, doctors' offices, and laboratories.

Sterilizable flexible packaging for medical use ("medical flexibles") is different from other types of flexible packaging for several reasons. First, medical flexibles must be able to withstand the sterilization process because the medical device is sterilized after it has been placed in the package. The most common sterilization process is the forcing of ethylene-oxide gas into and out of the package (known as "EtO sterilization"), which requires a "vented" or "breathable" package that incorporates some porous material. This porous material must act as a vent for the EtO gas to enter and exit but also must maintain the sterile barrier. The most widely used venting material is Tyvek, a durable, effective, DuPont-patented plastic material.

Second, medical flexibles must conform to strict quality and qualification requirements. Before a medical device manufacturer purchases any medical flexible product, it first must "qualify" the particular product. The product qualification process is meant to guard against the risk of the package's failure. A failure of the package could expose the medical device to microbes, bacteria, or particulates, which could cause a patient's injury, sickness, or even death. The risks associated with packaging failure dictate a rigorous product qualification process, whereby the customer performs numerous tests, including quality testing, sterilization testing, seal strength testing, aging simulations, and shipping and handling simulations.

Sterilization testing during qualification is especially rigorous. The EtO sterilization process is an aggressive process that forces gas into and out of the flexible packaging through the venting material. During this process, the gas may not be able to escape quickly enough through the venting material, bursting the seams of the packaging. In addition, EtO sterilization can weaken the plastic films of the packaging, weaken seals, cause discoloration of the package, and cause other types of harm to the package. Producing medical flexible packaging that can withstand this process is difficult, and even products from large, established suppliers may fail customers' sterilization tests.

3. Vented Bags for Medical Use

Vented bags for medical use are formed by sealing two pieces of film rollstock together on three sides, leaving the fourth side open for filling and sealing. There are two different styles of EtO-sterilizable vented bags for medical use: (1) "Header bags," which are sealed on one end by a long, thin venting strip running the length of the bag, and (2) "patch bags" or "breather bags," which have one or more circular venting patches on the sides of the bag instead of a strip over the end. Both styles of vented bag perform the same functions for the same end uses, and are generally considered to be interchangeable. As with medical flexibles generally, Tyvek is the leading venting material for vented bags for medical use.

Each manufacturer produces vented bags for medical use with a range of features and characteristics. These include, among others: size, ease of opening, film composition, film gauge, seal strength, venting style, and venting design. Customers decide which vented bag for medical use to purchase by weighing the relative importance of these features.

Despite their generic name, vented bags for medical use are specialized, hard-to-make products. Because Tyvek is expensive, vented bags for medical use incorporate as little Tyvek into their design as possible. Minimizing the use of Tyvek, however, makes it more likely that, during sterilization, the EtO gas may not escape quickly enough through the venting material, bursting the seams of the packaging and breaking the sterile barrier. Designing and producing vented bags for medical use that strike the proper balance between using as little Tyvek as possible and providing sufficient venting for the EtO gas to escape is difficult and requires specialized knowledge and processes.

B. Relevant Market

The development, production, and sale of vented bags for medical use to U.S. customers is a line of commerce and a relevant market within the meaning of Section 7 of the Clayton Act.

Vented bags for medical use have specific end-uses, for which other types of medical flexibles cannot be used. Vented bags for medical use typically are used to accommodate larger and heavier items, such as surgical gowns and surgical kits and trays. Other types of flexible packaging, such as vented pouches for medical use, cannot handle these larger, heavier items because they are designed differently. Therefore, the relevant product is vented bags for medical use.

U.S. customers have unique qualification requirements that allow producers to price discriminate against them without regard to prices of foreign producers. Based on the locations of customers for vented bags for medical use, the relevant geographic market is the United States.

A small but significant increase in the price of vented bags for medical use to U.S. customers would not cause those customers to turn to other types of flexible packaging or to engage in arbitrage by purchasing through customers located outside of the United States, or otherwise to reduce purchases of vented bags for medical use, in volumes sufficient to make such a price increase unprofitable.

C. Market Participants

Amcor, Alcan Packaging, and one other competitor are the only significant competitors in the U.S. market for vented bags for medical use. Smaller suppliers are not significant competitors in the U.S. market for vented bags for medical use because their products generally serve niche applications, such as low-volume products, non-standard sizes, and small customers, and are not price competitive. Foreign suppliers are not significant competitors in the U.S. market for vented bags for medical use because currently they do not sell into the United States, and they would not do so in the event of a small but significant increase in price because of the qualification barriers they would face. Thus, there are no other providers of vented bags for medical use to which a medical device manufacturer could turn if faced with a small but significant increase in the price of vented bags for medical use.

D. Competitive Effects

1. How Competition Occurs in the U.S. Market for Vented Bags for Medical Use

Producers of vented bags for medical use must work closely with medical device manufacturers to ensure that their packaging material meets their customers' qualifications, that they meet the promised lead times, and that they continuously find ways to cut the customers' costs. Producers also must engage in research and development to deliver better packaging products in order to compete effectively.

Prices for vented bags for medical uses are customer-specific and based on, among other things, an individual customer's unique requirements and specifications. The price charged to one customer likely will be different from the price charged to another customer. Additionally, arbitrage is unlikely

because customer-specific printing, branding, and labeling on vented bags for medical use prevents sales among customers.

Price competition in the market for vented bags for medical use occurs in two ways. First, customers may issue a request for proposal, through which they invite potential suppliers to bid on supplying packaging that meets the customers' specifications. Customers evaluate the competing bids on the basis of, among other things, compliance with their specifications, price, delivery times, and the services provided by each producer. Second, price competition may also occur less formally if a customer seeks or receives an offer from an alternative supplier and the incumbent is given a chance to respond.

Because of the risk-averse nature of medical device manufacturers, the time-consuming and difficult qualification process, and the high quality requirements, switching suppliers can involve significant time and expense. Consequently, competition tends to take the form of competition for a stream of new business, which the winner expects to keep for some years.

2. Likely Anticompetitive Effects in the U.S. Market for Vented Bags for Medical Use

The proposed acquisition of Alcan Packaging by Amcor likely would substantially lessen competition in the U.S. market for vented bags for medical use. Amcor, Alcan Packaging, and one other company are the three primary competitors in the U.S. market for vented bags for medical use. Currently, Amcor and Alcan Packaging account for 27 percent and 33 percent, respectively, of U.S. sales in the market for vented bags for medical use. If the transaction is not enjoined, three firms collectively would account for approximately 95 percent of sales of vented bags for medical use in the United States. Using a measure called the Herfindahl-Hirschman Index ("HHI"), the HHI would increase by more than 1,790 points, resulting in a post-acquisition HHI of more than 4,830 points.

Due to Amcor and Alcan Packaging's collective overall expertise in meeting the needs of customers and other technical and commercial factors for vented bags for medical use, including, among other things, price, quality, ability to pass the customer's rigorous qualification procedures, delivery times, service, and technical support, Amcor and Alcan Packaging frequently are perceived by each other, by other bidders, and by customers as two of the three most significant competitors in the market.

Amcor's and Alcan Packaging's bidding behavior often has been constrained by the possibility of losing business to the other. For significant customers of vented bags for medical use, Amcor and Alcan Packaging are their two best substitutes. By eliminating Alcan Packaging, Amcor likely would gain the incentive and ability to profitably increase its bid prices, reduce quality, offer fewer and less attractive supply-chain options, reduce technical support, and reduce innovation below what it would have been absent the acquisition.

Customers have benefited from competition between Amcor and Alcan Packaging through lower prices, higher quality, better supply-chain options (including delivery times and volume-purchase requirements), technical support, and numerous innovations. The combination of Amcor and Alcan Packaging would eliminate this competition and future benefits to customers, and likely would result in harmful unilateral price effects.

In addition, by reducing the number of significant competitors in the U.S. market for vented bags for medical use from three to two, Amcor and the one other competitor would gain the incentive and likely ability to raise prices through coordinated interaction. The fringe competitors would be unable to render the coordination unprofitable by repositioning or expansion. Coordination would be more likely because, for example, the merger would make customer allocation easier. Each competitor could be reasonably certain as to the identity of the other's customers, making cheating easier to detect and discipline and, because each competitor is at or near capacity, the ability of each profitably to expand sales and steal business from the other would be limited.

Customers have benefited from competition between Amcor, Alcan Packaging, and the other significant competitor through lower prices, higher quality, better supply-chain options (including delivery times and volume-purchase requirements), technical support, and numerous innovations. The combination of Amcor and Alcan Packaging would eliminate this competition and future benefits to customers, and likely would result in harmful coordinated price effects.

The proposed acquisition, therefore, likely would substantially lessen competition in the United States for the development, production, and sale of vented bags for medical use, which likely would lead to higher prices, lower quality, less favorable supply-chain options, reduced technical support, and less innovation, in violation of Section 7 of the Clayton Act.

E. Entry/Expansion

In order to compete effectively in the U.S. market for vented bags for medical use, a competitor must be vertically integrated. Other converters produce vented bags for medical use similar to those produced by Amcor and Alcan Packaging. Unlike Amcor, Alcan Packaging, and the other leading competitor, however, those companies are not vertically integrated (*i.e.,* they do not make their own films) and do not benefit from similar economies of scale or scope, and they therefore operate at a cost disadvantage.

Amcor and Alcan Packaging, as a consequence of the efficiencies they possess due to vertical integration, are able to offer vented bags for medical use to customers at lower prices and higher volumes than are the non-vertically integrated competitors. In order to compete effectively with Amcor and Alcan Packaging, other converters must begin producing their own films and expand production to capture similar scale and scope benefits. Expanding to compete with the vertically integrated converters would require a significant capital investment and would take years, as the expanding company still would have to qualify each of its products at each new customer. These suppliers likely would not be able to expand to meet customers' required specifications or quality requirements cost-effectively within a commercially reasonable amount of time, and therefore would be deterred from attempting to expand.

Likewise, de novo entry into the market for vented bags for medical use would not be timely, likely, or sufficient to deter anticompetitive post-merger pricing. A new supplier would need to construct production lines capable of producing vented bags for medical use that meet the rigorous standards set forth by major buyers of such films. Construction of manufacturing facilities would require a significant capital investment and the entrant would have to be committed to research and development. In addition, the technical know-how necessary to design and successfully manufacture packaging that is able to pass customers' qualification tests is difficult to obtain and is learned through a time-consuming trial-and-error process.

Even after a new entrant has developed the capability to supply vented bags for medical use, the entrant's product must be qualified by potential customers, demonstrating that its products can meet rigorous quality

and performance standards. For example, because the qualifying process for vented bags for medical use typically requires a simulated aging test, where sample products are packaged in the vented bag, sterilized, and then stored in an accelerated aging room for extended periods of time, the process can take many months. Further, initial attempts to qualify are not guaranteed to be successful, and even current market participants have had to repeat the process multiple times. In such cases, the qualification process can take several years with no guarantee of success. Moreover, because customer specifications are unique, qualification with one customer does not guarantee qualification with another.

Even if a new entrant were to develop the capability to supply vented bags for medical use and can pass qualification tests, the new entrant still would face the same barriers to expansion as those faced by converters currently producing vented bags for medical use. In addition, in the medical industry, where the costs of packaging failure are high, medical device manufacturers are reluctant to work with suppliers that have not established reputations for quality, the establishment of which occurs gradually over many years.

As a result of these barriers, expansion by non-vertically integrated vented bag converters or entry by new firms into the market for the development, production, and sale of vented bags for medical use would not be timely, likely, or sufficient to prevent a likely exercise of market power by Amcor after the acquisition.

III. Explanation of the Proposed Final Judgment

The divestiture required by the proposed Final Judgment will eliminate the anticompetitive effects that otherwise likely would result from Amcor's acquisition of the Alcan Packaging Medical Flexibles business. This divestiture will preserve competition in the U.S. market for vented bags for medical use by establishing a new, independent, and economically viable competitor.

The proposed Final Judgment requires the divestiture of the entire business that currently produces Alcan Packaging's vented bags for medical use, which includes the one plant currently producing vented bags for medical use, as well as all of the tangible and intangible assets associated with the plant. The goal of the proposed Final Judgment is to provide the acquirer of the Divestiture Assets with everything needed to replace the competition that would otherwise be lost as a result of the transaction. In addition, because vertical integration is important to being able to compete effectively in the U.S. market for vented bags for medical use, the Divestiture Assets include sufficient film extrusion assets and capabilities to support current and future demand for vented bags for medical use.

To that end, the Divestiture Assets include the entirety of Alcan Packaging's facility located at 100 Kenpack Lane, Marshall, North Carolina 28753 ("Marshall Facility"). The Marshall Facility produces all of Alcan Packaging's vented bags for medical use. The Marshall Facility is vertically integrated, meaning that it both produces its own films and converts those films into vented bags for medical use. In addition, the Marshall Facility has an established record as a high-quality, efficient production facility with product offerings that have been qualified by its customers and sufficient capacity to meet current and future demand for its products.

The Marshall Facility also produces forming films and plastic liners, which are not products of concern. Nevertheless, rather than removing these product lines from the integrated facility, the entire facility will be divested. Moreover, their inclusion will ensure that the Marshall Facility can be operated as a profitable, stand-alone entity.

The proposed Final Judgment also requires divestiture of tangible and intangible assets associated with the production of vented bags for medical use. These assets will provide the acquirer with the physical tools (*e.g.,* equipment, inventory, business records, etc.), and the bank of knowledge and rights (*e.g.,* manufacturing know-how, contractual rights, etc.) needed to create an independent producer of vented bags for medical use equivalent to Alcan Packaging's current operations. The Divestiture Assets also include: (1) All intangible assets used exclusively or primarily by the Marshall Facility in the design, development, production, marketing, servicing, distribution or sale of any product produced at the Marshall Facility; and (2) with respect to any intangible assets not included in (1) above, and that prior to the filing of the Complaint in this matter were used in connection with the design, development, production, marketing, servicing, distribution, or sale of any product produced at the Marshall Facility, a non-exclusive, non-transferable license for such intangible assets to be used for the design, development, production, marketing, servicing, distribution, or sale of any product produced at the Marshall Facility. These assets are to be divested regardless of whether they are currently used at the Marshall Facility.

Another necessary requirement to compete effectively in the U.S. market for vented bags for medical use is access to DuPont's patented Tyvek venting material in order to manufacture vented bags for medical use incorporating that material. Therefore, the proposed Final Judgment requires that the acquirer of the Divestiture Assets must have a readily available supply of Tyvek; thus, it must be able to purchase Tyvek directly from DuPont or have a Tyvek supply agreement with a company, other than Amcor, that is able to purchase Tyvek directly from DuPont.

The proposed Final Judgment requires that Amcor must give advance notice of future acquisitions in the U.S. market for vented bags for medical use. This requirement is necessary because an acquisition of certain competitors in the U.S. market for vented bags for medical use would likely not be reportable under the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects that likely would result if Amcor acquired the Alcan Packaging Medical Flexibles business because the acquirer will have the ability to develop, produce, and sell vented bags for medical use in the United States in competition with Amcor.

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 court to recover three times the damages the person has suffered, as well as costs 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 *prima facie* effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the

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**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the 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 could have continued the litigation and sought preliminary and permanent injunctions against Amcor's acquisition of the Alcan Packaging Medical Flexibles business. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the development, production, and sale of vented bags for medical use in the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

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

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, 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)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, 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 Microsoft,* 56 F.3d at 1458–62. 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) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he 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.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees

[1] The 2004 amendments substituted "shall" for "may" in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C.(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ").

following a finding of liability in a litigated matter. "[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.'" *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17.

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; see also *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because 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 did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications,* courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he 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." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

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: June 10, 2010.

Respectfully submitted,

Brian E. Rafkin, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, (202) 616–1583.

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[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("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."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,127]

Hewlett-Packard Company, Inkjet Consumer Solutions, HP Consumer Hardware Inkjet Lab, Including Leased Workers From Hightower Technology Capital, Inc., Syncro Design, VMC, PDG Oncore, K Force, Supply Source, Sigma Design, Novo Engineering, Act, Stilwell Baker, and Beyondsoft, Vancouver, WA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 23, 2008, applicable to all workers of Hewlett-Packard Company, Inkjet Consumer Solutions, HP Consumer Hardware Inkjet Lab, Vancouver, Washington. The notice was published in the **Federal Register** on November 10, 2008 (73 FR 66676). The notice was amended on January 9, 2009 to include on-site leased workers from Hightower Technology Capital, Inc. The notice was published in the **Federal Register** on January 26, 2009 (74 FR 4460).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers developed research design, engineering specifications, and drawings used in the manufacturing of HP Deskjet and Photosmart printers.

New information shows that workers leased from Syncro Design, VMC, PDG Oncore, K Force, Supply Source, Sigma Design, Novo Engineering, ACT, Stilwell Baker and BeyondSoft were employed on-site at the Vancouver, Washington location of Hewlett Packard Company, Inject Consumer Solutions, HP Consumer Hardware Inject Lab. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Syncro Design, VMC, PDG Oncore, K Force, Supply Source, Sigma Design, Novo Engineering, ACT, Stilwell Baker and BeyondSoft working on-site at the