medicine man of the Topowa Village on the Tohono O'odham Indian Reservation. The basket and the objects had been used for about 65 years in healing practices. Mr. Segundo retained other objects which had been stored in the basket, but agreed to sell the basket and the 17 objects described below with the understanding that he could buy them back in case he ever needed them again. Mrs. Harrington subsequently sold the basket and contents to Mr. and Mrs. Wetmore Hodges, who donated them to the Arizona State Museum in September 1939. The objects consist of 1 animal bone, 2 carved animal effigies, 1 carved human effigy, 1 feather, 1 wooden stick with feather, 1 wooden stick, 1 lot of animal hair, 1 bag of sand, 1 lump of earth, 2 animal tails, 1 bundle of sticks, 2 carved wooden symbols, 1 animal skin, and 1 lot of botanical material.

Curators and other staff of the Arizona State Museum participated in consultations with the Cultural Committee of the Tohono O'odham Nation regarding the four eagle feathers, the stone purifying bowl, the medicine basket and its contents. As a result of these consultations, it was determined that these objects are ceremonial objects that are needed by Tohono O'odham religious practitioners for traditional practices. It was furthermore determined that these 23 objects should be considered the property of the Tohono O'odham Nation as a whole and should not have been sold by individuals. There is specialized knowledge about these objects, which is not shared by everyone, and consequently those who sold the objects may not have been aware that these items could not be alienated or conveyed by any individual. Therefore, these objects have ongoing historical, traditional, and cultural importance to the Tohono O'odham Nation as a whole and should be considered to be objects that are both cultural patrimony and sacred.

In 1915, a medicine man's basket containing two reed wands wound with cotton yarn was found in the collections of the Arizona State Museum. The source from which the items were obtained and the date of the accession are unknown.

In April 1942, Ms. Jane Chesky obtained a medicine man's basket in four fragments, three gourd rattle fragments and one piece of a worked plant stalk from an unspecified location in the Sierra Blanca Mountains on the Tohono O'odham Indian Reservation. The rattle and stalk fragments were found in the medicine basket. Ms. Chesky subsequently donated the objects to the Arizona State Museum.

In April 1932, Mr. L.R. Caywood collected a medicine basket and medicine basket lid from a hill north of a shrine in Santa Rosa on the Tohono O'odham Indian Reservation. The basket was apparently lying on a talus slope below a shallow cave on the hill. On an unknown date prior to March 1949, the basket and its lid were donated to the Arizona State Museum and catalogued separately.

These three baskets are clearly of the same form as the medicine man's basket that was purchased by Mrs. Harrington in 1939. Consultations with the Cultural Committee of the Tohono O'odham Nation determined that these objects are ceremonial objects which are needed by Tohono O'odham religious practitioners for traditional practices. Furthermore, it was determined that these objects have ongoing cultural, traditional, and historical importance to the Tohono O'odham Nation as a whole and, therefore, must be considered to be objects of cultural patrimony.

Officials of the Arizona State Museum, University of Arizona, have determined, pursuant to 25 U.S.C. 3001(3)(B), that the 95 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Arizona State Museum, University of Arizona, also have determined, pursuant to 25 U.S.C. 3001(3)(C), that the five cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. In addition, officials of the Arizona State Museum, University of Arizona, have determined, pursuant to 25 U.S.C. 3001(3)(C) and (3)(D), the 36 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents and have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Arizona State Museum, University of Arizona, also have determined, pursuant to 25 U.S.C. 3001(2), that there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects, sacred objects, and sacred objects/objects of cultural patrimony and the Tohono O'odham Nation of Arizona.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects, sacred objects, and/or sacred objects/objects of cultural patrimony should contact John McClelland, NAGPRA Coordinator, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 626–2950, before June 13, 2011. Repatriation of the unassociated funerary objects, sacred objects, and sacred objects/objects of cultural patrimony to the Tohono O'odham Nation of Arizona may proceed after that date if no additional claimants come forward.

The Arizona State Museum, University of Arizona, is responsible for notifying the Tohono O'odham Nation of Arizona that this notice has been published.

Dated: May 9, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–11866 Filed 5–12–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Unilever N.V., 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 and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia, in *United States* v. *Unilever N.V., Unilever PLC,* Conopco, Inc. and Alberto-Culver Co., Civil Action No. 1:11-cv-00858–ABJ. On May 6, 2011, the United States filed a Complaint alleging that the proposed acquisition by Unilever of Alberto-Culver Co. 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 Unilever and Alberto-Culver to divest the Alberto VO5 and Rave brands and related assets.

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 the 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 Joshua H. Soven, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW., Suite 4100, Washington, DC 20530 (telephone: 202–307–0827).

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, United States Department of Justice, Antitrust Division, Litigation I Section, 450 Fifth Street, NW., Suite 4100, Washington, DC 20530, Plaintiff, v. *UNILEVER N.V., Weena 455, PO Box 760, 3000 DK Rotterdam, The Netherlands, UNILEVER PLC, Unilever House, 100 Victoria Embankment, London EC4Y 0DY United Kingdom, CONOPCO, INC., 800 Sylvan Avenue, Englewood Cliffs, New Jersey 07632,* and *ALBERTO–CULVER CO., 2525 Armitage Avenue, Melrose Park, Illinois 60160,* Defendants.

CASE NO.: 1:11-cv-00858
JUDGE: Jackson, Amy Berman
DATE FILED: 5/6/2011
DESCRIPTION: Antitrust

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the proposed acquisition of Alberto-Culver Co. (“Alberto Culver”) by Unilever N.V., Unilever PLC, and Conopco, Inc. (collectively, “Unilever”) and to obtain other equitable relief. The acquisition would likely substantially lessen competition in the United States in markets for value shampoo, value conditioner, and hairspray sold in retail stores in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and result in higher prices for consumers in these markets. The United States alleges as follows:

I. NATURE OF THE ACTION

1. Unilever and Alberto Culver are both large consumer products companies that sell shampoo, conditioner, hairspray, and many other products. On September 27, 2010, Unilever agreed to acquire Alberto Culver for approximately $3.7 billion.

2. Value shampoo and value conditioner (collectively, “value shampoo and conditioner”) are the lowest priced shampoos and conditioners sold in stores and almost always sell for less than $2.00 per bottle. Unilever sells value shampoo and conditioner under the Suave Naturals brand; Alberto Culver sells value shampoo and conditioner under the Alberto VO5 brand.

3. The proposed acquisition would eliminate substantial head-to-head competition between Unilever’s Suave Naturals and Alberto Culver’s Alberto VO5 brands and give Unilever a near monopoly of the sale of value shampoo and conditioner in the United States with shares of approximately 90 percent in these two markets.

4. The proposed acquisition would also eliminate substantial head-to-head competition between Unilever and Alberto Culver in the United States for hairspray sold in retail stores. Unilever sells hairspray mainly under the Suave, Suave Professional, Rave, and Dove brands. Alberto Culver sells hairspray primarily under the TRESemmé, Nexxus, and Alberto VO5 brands. The proposed acquisition would make Unilever the largest seller of hairspray in the United States by increasing its market share from approximately 24 percent to over 45 percent.

5. Because the acquisition likely substantially lessens competition in the United States for the sale of value shampoo, value conditioner, and hairspray sold in retail stores, it violates Section 7 of the Clayton Act.

II. JURISDICTION, VENUE, AND INTERSTATE COMMERCE

6. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18. The 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.

7. Defendants Unilever and Alberto Culver manufacture, market, and sell consumer products, including shampoo, conditioner, and hairspray, in the flow of interstate commerce, and their production and sale of these products substantially affect interstate commerce. Defendants Unilever and Alberto Culver transact business and are found in the District of Columbia, through, among other things, selling consumer products to customers in this District. Venue is proper for Alberto Culver and Conopco, Inc. in this District under 15 U.S.C. § 22. Venue is proper in the District of Columbia for Unilever N.V., a Dutch corporation, and Unilever PLC, an English corporation, under 28 U.S.C. § 1391(d).

8. Defendants have consented to personal jurisdiction and venue in this judicial district.

III. THE DEFENDANTS

9. Unilever N.V. and Unilever PLC are corporations respectively organized under the laws of the Netherlands and England, with headquarters in Rotterdam and London. They wholly own Conopco, Inc., a New York corporation and U.S. subsidiary of Unilever N.V. and Unilever PLC. In addition to hair care products, Unilever owns more than 400 brands of consumer products such as Hellmann’s, Lipton, Surf, Dove, Suave, and Vaseline. Unilever had $62 billion in sales in 2010.

10. Unilever’s Suave Naturals brand is the most popular U.S. brand of value shampoo and conditioner, accounting for approximately 50 percent of value shampoo and conditioner sales. Unilever’s hairspray brands (primarily Suave, Suave Professionals, Rave, and Dove) account for approximately 24 percent of U.S. hairspray sales.

11. Alberto Culver, a Delaware corporation headquartered in Melrose Park, Illinois, is a consumer products company that owns brands such as TRESemmé, Alberto VO5, Noxzema, Nexxus, St. Ives., Static Guard, and Mrs. Dash. Alberto Culver had $1.6 billion in sales for the fiscal year ending September 30, 2010.

12. Alberto Culver’s Alberto VO5 brand is the second most popular U.S. brand of value shampoo and conditioner, accounting for approximately 39 percent of value shampoo and conditioner sales. Alberto Culver’s hairspray brands (primarily TRESemmé, Nexxus, and Alberto VO5) account for approximately 22 percent of U.S. hairspray sales.

IV. RELEVANT MARKETS

A. Relevant Product Markets

1) Value Shampoo and Conditioner

13. Shampoo is a hair care product used to clean hair. Conditioner is a hair care product used to moisturize and enhance the appearance of hair.

14. Value shampoos and conditioners are the lowest priced shampoos and conditioners sold in retail stores, with current retail prices of approximately $1 per bottle for smaller sizes (e.g., 15–18 oz.) and almost always less than $1.65 per bottle for larger family sizes (e.g., 22.5–30 oz.). The parties’ business documents and the hair care industry

consistently refer to products in this price range as belonging to a "value," "opening-price-point," or "dollar" category. Industry participants, including manufacturers and retailers, widely recognize that shampoo and conditioner products within the value category compete more closely with each other than they do with higher priced shampoos or conditioners.

15. Several factors considered together, including product ingredients, attributes, industry recognition, and price, indicate that value shampoo and conditioner are not reasonably interchangeable with more expensive shampoo and conditioner.

16. Value shampoo and conditioner generally contain only inexpensive ingredients, such as basic soap and scent. More expensive shampoos and conditioners contain additional, more expensive ingredients, which are intended to provide specialized benefits not provided by value shampoo and conditioner such as smoothing, strengthening, repairing, adding volume, and benefits for different hair types (e.g., curly, fine, frizzy, or color-treated hair).

17. Reflecting this difference in input costs and perceived consumer benefits, a significant price gap exists between value shampoo and conditioner and the next-lowest-priced shampoos and conditioners. For 15–18 oz. bottles, the price differential is generally 100 percent or more; value shampoo and conditioner are priced around $1 and the next-lowest-priced shampoos and conditioners are priced between $2.15 and $2.80. For larger bottles, the price differential is also significant. For example, one large retailer's average price for a 30 oz. value brand bottle of shampoo is $1.67 while the next-lowest-priced shampoo of that same size is, on average, $2.98.

18. Total annual U.S. retail sales of value shampoo are approximately $177 million. Total annual U.S. retail sales of value conditioner are approximately $106 million.

19. Consumers purchase value shampoo and conditioner almost exclusively through retail food, drug, dollar, and mass merchandise stores (collectively, "retail stores"). Sales of value shampoo and conditioner through hairdressing salons are de minimis.

20. Purchasers of value shampoo and conditioner are unlikely to reduce their purchases of value shampoo and conditioner in response to a small but significant and non-transitory price increase to an extent that would make such a price increase unprofitable.

21. Value shampoo and value conditioner are each a relevant product market and a line of commerce within the meaning of Section 7 of the Clayton Act.

2) Hairspray Sold in Retail Stores

22. Hairspray is a product used to set or maintain a hair style after the hair has been dried and styled.

23. Mousses, gels, and other styling aids are not reasonably interchangeable with hairspray because consumers typically use those products in wet or damp hair to give hair form, shape, and style, not to set or maintain a hair style after the hair has been dried and styled.

24. The vast majority of consumers purchase hairspray in retail stores. Some consumers purchase hairspray through hairdressing salons. Several factors considered together indicate that hairspray sold in salons is not reasonably interchangeable with hairspray sold in retail stores, including (i) purchasing hairspray in salons is less convenient for many consumers who purchase hairspray in retail stores, (ii) many more brands are available in retail stores than are available in salons, (iii) the hair care industry views sales of hairspray in retail stores as separate from sales in salons and uses different marketing strategies in those different sales channels, and (iv) the average price of hairspray sold in salons is at least three times more than the average price of hairspray sold in retail stores.

25. Total annual U.S. retail sales of hairspray sold in retail stores are approximately $809 million.

26. Purchasers of hairspray sold in retail stores are unlikely to reduce their purchases of hairspray sold in retail stores in response to a small but significant and non-transitory price increase to an extent that would make such a price increase unprofitable.

27. Hairspray sold in retail stores is a relevant product market and a line of commerce within the meaning of Section 7 of the Clayton Act.

B. Relevant Geographic Markets

28. The relevant geographic markets, within the meaning of Section 7 of the Clayton Act, for the value shampoo, value conditioner, and hairspray product markets are no larger than the United States. Because of transportation costs, differences in brand presence and recognition, and U.S. regulations, a small but significant non-transitory price increase in each of these relevant product markets would not cause purchasers to switch to products sold outside of the United States to an extent that would make such a price increase unprofitable.

V. LIKELY ANTICOMPETITIVE EFFECTS

A. Value Shampoo and Conditioner

29. The markets for value shampoo and conditioner are highly concentrated. By unit volume, Unilever's share in each market is approximately 50 percent, and Alberto Culver's share is approximately 39 percent in each market. One other company accounts for almost all of the remaining sales in each market (approximately 10 percent).

30. If the proposed acquisition is consummated, the value shampoo and conditioner markets would become substantially more concentrated. The combined firm would control approximately 90 percent of the sales of value shampoo and conditioner.

31. Using a standard concentration measure called the Herfindahl-Herschman Index (or "HHI," defined and explained in Appendix A), the proposed acquisition would produce an HHI increase of approximately 3913 and a post-acquisition HHI of approximately 8602 for value shampoo, and an HHI increase of approximately 3902 and a post-acquisition HHI of approximately 8066 for value conditioner.

32. The proposed acquisition would reduce the number of significant competitors from three to two in the value shampoo and conditioner markets and would eliminate significant head-to-head competition between Unilever and Alberto Culver. Currently, Unilever and Alberto Culver compete in the United States on price, and through product innovation and various forms of promotions.

33. The significant increase in market concentration that the proposed acquisition would produce in the United States, combined with the loss of head-to-head competition, is likely to substantially lessen competition in violation of Section 7 of the Clayton Act, resulting in higher prices for consumers of value shampoo and conditioner.

B. Hairspray Sold in Retail Stores

34. The market for hairspray sold through retail stores in the United States is moderately concentrated. By unit volume, Unilever's market share is approximately 24 percent, and Alberto Culver's is approximately 22 percent. The three next largest competitors have shares of approximately 20 percent, nine percent, and eight percent.

35. If the proposed acquisition is consummated, the hairspray market would become substantially more concentrated, resulting in a highly concentrated market. The combined

firm would control approximately 46 percent of hairspray sold through retail stores. Post-merger, Unilever and the company with the next largest share would account for approximately 66 percent of the market.

36. The proposed acquisition would produce an HHI increase of approximately 1034 and a post-acquisition HHI of approximately 2654 for hairspray.

37. The proposed transaction would combine the two largest hairspray companies and would eliminate significant head-to-head competition between Unilever and Alberto Culver. Currently, Unilever and Alberto Culver compete in the United States on price and through product innovation, couponing and other promotions.

38. The significant increase in market concentration that the proposed acquisition would produce, combined with the loss of head-to-head competition, is likely to substantially lessen competition in violation of Section 7 of the Clayton Act, resulting in higher prices for consumers of hairspray sold through retail stores.

VI. ABSENCE OF COUNTERVAILING FACTORS

A. Entry

39. Responses from competitors and new entry likely will not prevent the proposed acquisition's likely anticompetitive effects. Barriers to entering these markets include: (i) the substantial time and expense required to build a brand reputation to overcome existing consumer preferences; (ii) the substantial sunk costs for promotional and advertising activity needed to secure the distribution and placement of a new entrant's product in retail outlets; and (iii) the difficulty of securing shelf-space in retail outlets.

40. Because of these entry barriers even sophisticated well-funded entrants have not been able to enter the value shampoo and conditioner markets. For example, one major U.S. manufacturer repositioned an existing brand into the value shampoo and conditioner markets in 2003, but discontinued it in 2004 because of low sales. Similarly, a major U.S. retailer introduced a private label value shampoo and conditioner in 2009, but also discontinued the product because of low sales.

41. Entry has been similarly difficult for hairspray sold in retail stores. In the last two years, no hairspray company has increased its unit sales by three percentage points or more.

B. Efficiencies

42. The proposed acquisition will not generate verifiable, merger-specific efficiencies sufficient to reverse the likely competitive harm of the acquisition.

VII. VIOLATION ALLEGED

43. The United States hereby incorporates paragraphs 1 through 42.

44. Unilever's proposed acquisition of Alberto Culver would likely substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and would likely have the following effects, among others:

a) actual and potential competition in the United States between Alberto Culver and Unilever for sales of value shampoo, value conditioner, and hairspray sold in retail stores would be eliminated;

b) competition generally in the United States for value shampoo, value conditioner, and hairspray sold in retail stores would be substantially lessened.

VIII. REQUEST FOR RELIEF

The United States requests:

a) That the Court adjudge the proposed acquisition to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b) That the Court permanently enjoin and restrain the Defendants from carrying out the proposed acquisition or from entering into or carrying out any other agreement, understanding, or plan by which Alberto Culver would be acquired by, acquire, or merge with Unilever;

c) That the Court award the United States the costs of this action; and

d) That the Court award such other relief to the United States as the Court may deem just and proper.

Dated: May 6, 2011

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

/s/ Christine A. Varney
Christine A. Varney,
Assistant Attorney General (DC Bar No. 411654).

/s/ Joseph F. Wayland
Joseph F. Wayland,
Deputy Assistant Attorney General.

/s/ Patricia A. Brink
Patricia A. Brink,
Director of Civil Enforcement.

/s/ Joshua H. Soven
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/s/ Peter J. Mucchetti
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APPENDIX A

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 percent, 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 1,500 and 2,500 points are considered to be moderately concentrated, and markets in which the HHI is in excess of 2,500 points are considered to be highly concentrated. See U.S. Department of Justice & FTC, Horizontal Merger Guidelines § 5.3 (2010). Transactions that increase the HHI by more than 200 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.

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. *UNILEVER N.V., UNILEVER PLC, CONOPCO, INC., and ALBERTO-CULVER COMPANY,* Defendants.

CASE NO.: 1:11-cv-00858
JUDGE: Jackson, Amy Berman
DATE FILED: 5/6/2011
DESCRIPTION: Antitrust

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

The United States filed a civil antitrust Complaint on May 6, 2011, seeking to enjoin the proposed acquisition of Alberto-Culver Company ("Alberto Culver") by Unilever N.V., Unilever PLC, and Conopco, Inc. (collectively "Unilever"), alleging that it likely would substantially lessen competition in three product markets—value shampoo, value conditioner, and hairspray sold in retail stores—in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The loss of competition from the acquisition likely would result in higher prices for value shampoo, value conditioner, and hairspray sold in retail stores in the United States.

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 that would result from Unilever's acquisition of Alberto Culver. Under the proposed Final Judgment, which is explained more fully below, Unilever is required to divest the Alberto VO5 and Rave brands and related assets to one or more acquirers approved by the United States. Pursuant to the Hold Separate, Unilever and Alberto Culver must take certain steps to ensure that the assets being divested continue to be operated in a competitively and economically viable manner and that competition for the products being divested is maintained during the pendency of the divestiture.

The United States and the 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. EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Acquisition

On September 27, 2010, Unilever N.V., Unilever PLC, and Conopco, Inc. agreed to acquire Alberto Culver for approximately $3.7 billion. Unilever N.V. and Unilever PLC are corporations respectively organized under the laws of the Netherlands and England, with headquarters in Rotterdam and London. They wholly own Conopco, Inc., a New York corporation and U.S. subsidiary of Unilever N.V. and Unilever PLC. Unilever sells consumer products in more than 100 countries under brands such as Hellmann's, Lipton, Surf, Dove, Suave, and Vaseline. Unilever has approximately 163,000 employees and had sales of $62 billion in 2010.

Alberto Culver, a Delaware corporation headquartered in Melrose Park, Illinois, sells consumer products in more than 100 countries under brands such as TRESemmé, Alberto VO5, Noxzema, Nexxus, St. Ives, Static Guard, and Mrs. Dash. Alberto Culver has approximately 2,500 employees and had sales of $1.6 billion for the fiscal year ending September 30, 2010.

Unilever's Suave Naturals brand is the most popular U.S. brand of value shampoo and conditioner, accounting for approximately 50 percent of value shampoo and conditioner sales. Unilever's hairspray brands (primarily Suave, Suave Professionals, Rave, and Dove) account for approximately 24 percent of hairspray sold in retail stores in the United States.

Alberto Culver's Alberto VO5 brand is the second most popular U.S. brand of value shampoo and conditioner, accounting for approximately 39 percent of value shampoo and conditioner sales. Alberto Culver's hairspray brands (primarily TRESemmé, Nexxus, and Alberto VO5) account for approximately 22 percent of hairspray sold in retail stores in the United States.

B. The Relevant Markets

1. Value Shampoo and Value Conditioner Are Relevant Product Markets

Shampoo is a hair care product used to clean hair. Conditioner is a hair care product used to moisturize and enhance the appearance of hair.

Value shampoos and conditioners are the lowest priced shampoos and conditioners sold in retail stores, with current retail prices of approximately $1 per bottle for smaller sizes (e.g., 15–18 oz.) and almost always less than $1.65 per bottle for larger family sizes (e.g., 22.5–30 oz.). The parties' business documents and the hair care industry consistently refer to products in this price range as belonging to a "value," "opening-price-point," or "dollar" category. Industry participants, including manufacturers and retailers, widely recognize that shampoo and conditioner products within the value category compete substantially more closely with each other than they do with higher priced shampoos or conditioners. Total annual U.S. retail sales of value shampoo are approximately $177 million. Total annual U.S. retail sales of value conditioner are approximately $106 million.

Several factors considered together, including product ingredients, attributes, industry recognition, and price, indicate that value shampoo and conditioner are not reasonably interchangeable with more expensive shampoo and conditioner. Value shampoo and conditioner generally contain only inexpensive ingredients, such as basic soap and scent. More expensive shampoos and conditioners contain additional, more expensive ingredients, which are intended to provide specialized benefits not provided by value shampoo and conditioner such as smoothing, strengthening, repairing, adding volume, and benefits for different hair types (e.g., curly, fine, frizzy, or color-treated hair).

Reflecting this difference in input costs and perceived consumer benefits, a significant price gap exists between value shampoo and conditioner and the next-lowest-priced shampoos and conditioners. For 15–18 oz. bottles, the price differential is generally 100 percent or more; value shampoo and conditioner are priced around $1 and the next-lowest-priced shampoos and conditioners are priced between $2.15 and $2.80. For larger bottles, the price differential is also significant. For example, one large retailer's average price for a 30 oz. value brand bottle of shampoo is $1.67 while the next-lowest-priced shampoo of that same size is, on average, $2.98.

Consumers purchase value shampoo and conditioner almost exclusively through retail food, drug, dollar, and mass merchandise stores (collectively, "retail stores"). Sales of value shampoo and conditioner through salons is de minimis. Purchasers of value shampoo and conditioner are unlikely to reduce their purchases of value shampoo and conditioner in response to a small but significant and non-transitory price increase to an extent that would make such a price increase unprofitable. Value shampoo and value conditioner are, therefore, each a relevant product market and a line of commerce within the meaning of Section 7 of the Clayton Act.

2. Hairspray Sold In Retail Stores Is a Relevant Product Market

Hairspray is a product used to set or maintain a hair style after the hair has been dried and styled. Mousses, gels, and other styling aids are not reasonably interchangeable with hairspray because consumers typically use those products

in wet or damp hair to give hair form, shape, and style, not to set or maintain a hair style after the hair has been dried and styled. Total annual U.S. retail sales of hairspray sold in retail stores are approximately $809 million.

The vast majority of consumers purchase hairspray in retail stores. Some consumers purchase hairspray through hairdressing salons. Several factors considered together indicate that hairspray sold in salons is not reasonably interchangeable with hairspray sold in retail stores, including (i) purchasing hairspray in salons is less convenient for many consumers who purchase hairspray in retail stores, (ii) many more brands are available in retail stores than are available in salons, (iii) the hair care industry views sales of hairspray in retail stores as separate from sales in salons and uses different marketing strategies in those different sales channels, and (iv) the average price of hairspray sold in salons is at least three times more than the average price of hairspray sold in retail stores.

Purchasers of hairspray sold in retail stores are unlikely to reduce their purchases of hairspray sold in retail stores in response to a small but significant and non-transitory price increase to an extent that would make such a price increase unprofitable. Hairspray sold in retail stores is, therefore, a relevant product market and a line of commerce within the meaning of Section 7 of the Clayton Act.

3. The Geographic Markets Are the United States

The Complaint alleges that the United States constitutes a relevant geographic market within the meaning of Section 7 of the Clayton Act for each of the three product markets. Defendants sell value shampoo, value conditioner, and hairspray through retail stores throughout the United States. For several reasons, a small but significant non-transitory price increase in each of these relevant product markets would not cause purchasers to switch to products sold outside of the United States to an extent that would make such a price increase unprofitable. First, brands preferred in the United States differ from brands preferred in foreign countries. Second, shipping relevant products from foreign countries to the United States would increase transportation costs to manufacturers and retailers. Finally, products sold outside the United States may not comply with U.S. regulations or have labeling suitable for the United States such that the product could be sold to consumers in the United States.

C. The Acquisition's Likely Anticompetitive Effects

1. Value Shampoo and Value Conditioner

The complaint alleges that the proposed acquisition would substantially lessen competition in the sale of value shampoo and conditioner in the United States, resulting in higher prices for consumers in these markets. Currently, Unilever and Alberto Culver compete in these markets on price and through product innovation and various forms of promotions. The combination would eliminate that significant head-to-head competition and reduce the number of significant competitors in the value shampoo and conditioner markets from three to two. In each market, Unilever's current share (by unit volume) is approximately 50 percent, and Alberto Culver's share is approximately 39 percent. One other competitor accounts for almost all of the remaining sales in each market (approximately 10 percent).

The markets for value shampoo and conditioner are already highly concentrated, and the acquisition would increase concentration significantly, resulting in Unilever controlling approximately 90 percent of both markets. Using a standard concentration measure called the Herfindahl-Herschman Index ("HHI"), the proposed acquisition would produce an HHI increase of approximately 3913 and a post-acquisition HHI of approximately 8602 for value shampoo, and an HHI increase of approximately 3902 and a post-acquisition HHI of approximately 8066 for value conditioner.

The acquisition would enable the combined firm to profit by unilaterally raising the prices of its products above the pre-merger price level. The parties' documents and diversion of sales caused by past price changes indicate that a significant fraction of customers purchasing Unilever's and Alberto Culver's value shampoos and conditioners view the other merging firm's value shampoo and conditioner as their next best choice. Consequently, a significant fraction of the sales lost due to price increases on Unilever's products would be diverted to products of Alberto Culver, and vice versa. See U.S. Dept. of Justice & FTC, Horizontal Merger Guidelines § 6.1 (2010). The pre-merger margins on the parties' value shampoo and conditioner products are sufficiently high that the amount of recaptured lost sales would make the price increases profitable even though such price increases would not have been profitable prior to the merger. See id. Consequently, the proposed acquisition would likely cause the combined firm to raise the prices that it charges for value shampoo and conditioner.

2. Hairspray

The complaint alleges that the proposed acquisition would substantially lessen competition in the sale of hairspray sold in retail stores in the United States, resulting in higher prices for consumers in this market. Currently, Unilever and Alberto Culver compete in this market on price and through couponing, product innovation, and various forms of promotions. The combination would eliminate that significant head-to-head competition. Unilever's current share (by unit volume) of this market is approximately 24 percent, and Alberto Culver's is approximately 22 percent. The three next largest competitors have shares of approximately 20 percent, nine percent, and eight percent.

If the proposed acquisition is consummated, the market for hairspray sold in retail stores would become substantially more concentrated, resulting in a highly concentrated market. Using the HHI concentration measure, the proposed acquisition would produce an HHI increase of approximately 1034 and a post-acquisition HHI of approximately 2654 for hairspray sold in retail stores.

The acquisition would enable the combined firm to profit by unilaterally raising hairspray prices above the pre-merger price level. The parties' documents and diversion of sales caused by past price changes indicate that a significant fraction of customers purchasing Unilever's and Alberto Culver's brands of hairspray view the other merging firm's brands of hairspray as their next best choice. Consequently, a significant fraction of the sales lost due to price increases on Unilever's products would be diverted to products of Alberto Culver, and vice versa. See U.S. Dept. of Justice & FTC, Horizontal Merger Guidelines § 6.1 (2010).

The significant fraction of customers that view Unilever's and Alberto Culver's hairspray brands as their next-best choice does not approach a majority. "However, unless pre-merger margins between price and incremental cost are low, that significant fraction need not approach a majority * * *. A merger may produce significant unilateral effects for a given product even though many more sales are diverted to products sold by non-merging firms than to products previously sold by the merger partner." Id. The pre-merger margins on the parties' hairspray products are

sufficiently high that the amount of recaptured lost sales would make the price increase profitable even though such price increases would not have been profitable prior to the merger.

3. Entry

The Complaint alleges that responses from competitors and new entry likely will not prevent the proposed acquisition's likely anticompetitive effects. Barriers to entering these markets include: (i) the substantial time and expense required to build a brand reputation to overcome existing consumer preferences; (ii) the substantial sunk costs for promotional and advertising activity needed to secure the distribution and placement of a new entrant's product in retail outlets; and (iii) the difficulty of securing shelf-space in retail outlets.

Because of these entry barriers even sophisticated, well-funded entrants have not been able to enter the value shampoo and conditioner markets. For example, one major U.S. manufacturer repositioned an existing brand into the value shampoo and conditioner markets in 2003, but discontinued it in 2004 because of low sales. Similarly, a major U.S. retailer introduced a private label value shampoo and conditioner in 2009, but also discontinued the product because of low sales.

Entry has been similarly difficult for hairspray sold in retail stores. In the last two years, no hairspray company has increased its unit sales by three percentage points or more.

Therefore, entry by new firms or the threat of entry by new firms would not defeat the substantial lessening of competition in the manufacture and sale of value shampoo, value conditioner, or hairspray in the United States that likely would result from Unilever's acquisition of Alberto Culver.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment requires significant divestitures that will preserve competition in the markets for value shampoo, value conditioner, and hairspray sold in retail stores. Within 90 calendar days after filing of the proposed Final Judgment or five calendar days after entry of a Final Judgment by the Court, whichever is later, the Defendants are required to divest the Alberto VO5 and Rave brands and associated assets to an acquirer or acquirers that has or have the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the business of value shampoo, value conditioner, and/or hairspray products.

The Alberto VO5 brand consists of value shampoo, value conditioner, hairspray, and other hair styling products. The Rave brand consists of hairspray and mousse products. The divestiture of the Alberto VO5 brand and associated assets is limited to the United States because a U.S.-only divestiture of Alberto VO5 is sufficient to address the competitive harm that the acquisition would produce in the United States. Alberto Culver has substantial sales of Alberto VO5 products in other countries. Sales of Rave outside of the United States are de minimis. Accordingly, the proposed Final Judgment requires divestiture of the worldwide rights to Rave because it is the most efficient way to divest the brand.

The divestiture of Alberto VO5, which accounts for 39 percent of the value shampoo and conditioner markets, will preserve the pre-merger competition in the value shampoo and conditioner markets by maintaining Alberto VO5 as a competitor to Suave Naturals. In particular, the United States' analysis of the proposed merger indicated that the merged company was likely to raise prices on Suave Naturals and Alberto VO5 because lost sales on one would be diverted to the other. Divestiture of the Alberto VO5 brand eliminates the merged firm's ability to raise prices on Alberto VO5 and preserves a competitor to Suave Naturals.

The divestitures of Rave and Alberto VO5, which together account for 8 percent of hairspray sold in retail stores, will reduce the merged firm's post-merger market share from approximately 46 percent to approximately 38 percent. These divestitures are sufficient to prevent an increase in the merged firm's incentives and ability to raise hairspray prices because the divestitures will significantly increase the amount of sales that would be diverted to products of non-merging firms.

In particular, the United States' analysis of the proposed merger indicated that the merged company was especially likely to raise prices on Suave, Suave Professionals, and Rave hairspray products because lost sales would be diverted to former Alberto Culver products (e.g., TRESemmé and Alberto VO5 hairspray). Divestiture of the Rave brand eliminates the merged firm's ability to raise prices on Rave hairspray products. Additionally, the United States' analysis indicated that Rave is a close substitute to Suave and Suave Professionals. Because Rave is a close substitute to Suave and Suave Professionals, Rave's divestiture will create a competitor that will significantly decrease the merged firm's incentive to raise prices on Suave and Suave Professionals products.

In addition to divestiture of the Alberto VO5 and Rave brands, the proposed Final Judgment requires divestiture of other related intangible assets and certain related tangible assets. The other intangible assets include the rights to trade dress, trade secrets, and other intellectual property used in the research, development, production, marketing, servicing, distribution, or sale of the Alberto VO5 and Rave brands. The tangible assets include equipment used primarily to manufacture the divested brands, and records, contracts, permits, customer information, inventory, molds, packaging, artwork, and other assets related to the divested brands. The proposed Final Judgment does not require divestiture of any manufacturing plants or real property because many contract manufacturers have the available capacity, plants, and ability to manufacture the Alberto VO5 and Rave products. Requiring the Defendants to divest one or more manufacturing facilities is unnecessary where independent capacity is readily available or can be quickly built.

The proposed Final Judgment provides that, at the purchaser's option, the Defendants must divest any equipment primarily used by the parties to manufacture the Alberto VO5 and Rave products. Potential buyers of the divested assets may not want to purchase this equipment because they will use contract manufacturers to make the divested products or because they already own equipment that is capable of efficiently making the divested products. The equipment is also widely available from others. However, due primarily to lead times of up to nine months for ordering and receiving new equipment, establishing a new manufacturing line can take up to a year. The option to purchase this equipment may, therefore, allow some potential purchasers to be ready to produce the divested products sooner than if this equipment were not available.

Defendants must use their best efforts to divest the assets as expeditiously as possible. The proposed Final Judgment provides that the assets must be divested in such a way as to satisfy the United States, in its sole discretion, that an acquirer can and will use the assets as part of a viable, ongoing business engaged in the sale of value shampoo, value conditioner, and/or hairspray in retail stores in the United States.

If Defendants do not accomplish the ordered divestitures within the prescribed time period, then Section V of the proposed Final Judgment provides that the Court will appoint a trustee, selected by the United States, to complete the divestitures. If a trustee is appointed, the proposed Final Judgment provides that Defendants must cooperate fully with the trustee and pay all of the trustee's costs and expenses. The trustee's compensation will be structured to provide an incentive for the trustee based on the price and terms of the divestitures and the speed with which they are accomplished. After the trustee's appointment becomes effective, the trustee will file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the required divestitures. At the end of six months, if the divestitures have not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate to carry out the purpose of the Final Judgment, including extending the trust or the term of the trustee's appointment.

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, Unilever, and Alberto Culver 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 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 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 before 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:

Joshua H. Soven
Chief, Litigation I Section
Antitrust Division
United States Department of Justice
450 Fifth Street, NW, Suite 4100
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 a judicial order enjoining Unilever's acquisition of Alberto-Culver. The United States is satisfied, however, that divestiture of the assets described in the proposed Final Judgment will preserve competition for the sale of value shampoo, value conditioner, and hairspray 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 mechanisms 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, a court considers under the APPA, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56

[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. § 16(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).

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; *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3; *United States v. Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). 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 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 the United States District Court for the District of Columbia 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 using 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). This language effectuates 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: May 6, 2011

Respectfully submitted,

/s/Amy R. Fitzpatrick

Amy R. Fitzpatrick (DC Bar No. 458680)

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. *UNILEVER N.V., UNILEVER PLC, CONOPCO, INC., and ALBERTO–CULVER CO.,* Defendants.

CASE NO.: 1:11–cv–00858
JUDGE: Jackson, Amy Berman
DATE FILED: 5/6/2011
DESCRIPTION: Antitrust

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on May 6, 2011, and the United States of America and defendants Unilever, N.V., Unilever PLC, Conopco, Inc., (collectively, "Unilever") and Alberto-Culver Company ("Alberto Culver") (collectively, "Defendants"), by their respective attorneys, have consented to the entry of this Final Judgment without

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[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' ").

[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 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.").

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 claims 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 person, persons, entity or entities to whom Defendants divest all or some of the Divestiture Assets.

(B) "Alberto Culver" means Defendant Alberto-Culver Co., a Delaware corporation with its headquarters in Melrose Park, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

(C) "Alberto VO5 Brand Name" means Alberto VO5 and any other name that uses, incorporates, or references the Alberto VO5 name in the United States, including but not limited to Alberto VO5 Extra Body Shampoo and Conditioner, Alberto VO5 Normal Shampoo and Conditioner, Alberto VO5 Repair and Protect Shampoo and Conditioner, Alberto VO5 2-in-1 Shampoo and Conditioner, Alberto VO5 Split Ends Shampoo and Conditioner, Alberto VO5 Moisture Milks Shampoo and Conditioner, Alberto VO5 Herbal Escapes Shampoo and Conditioner, Alberto VO5 Tea Therapy Shampoo and Conditioner, Alberto VO5 Silky Experiences Shampoo and Conditioner, Alberto VO5 Perfect Hold Aerosol Hairspray, Alberto VO5 Perfect Hold Non-Aerosol Hairspray, Alberto VO5 Perfect Hold Styling Mousse, Alberto VO5 Perfect Hold Styling Gel, Alberto VO5 Hair Spray Regular, Alberto VO5 Hair Spray Super, Alberto VO5 Hair Spray Brush Out, Alberto VO5 Hair Spray Extra Body, Alberto VO5 Hair Spray Unscented, Alberto VO5 Conditioning Hairdressing, Alberto VO5 Sheer Hairdressing Conditioning Cream, Alberto VO5 Hot Oil Shower Works Conditioning Treatment, Alberto VO5 Hot Oil Moisturizing Conditioning Treatment, Alberto VO5 Detangle and Shine Leave-in Conditioner, Alberto VO5 Total Hair Recovery Conditioning Treatment, and any extensions of any one or more of such products.

(D) "Alberto VO5 Business" means Alberto Culver's business engaged in the research, development, licensing (as licensor or as licensee), production, marketing, servicing or sale of any Alberto VO5 Product, including:

(i) All tangible assets used primarily in the research, development, marketing, or sale of any Alberto VO5 Product including but not limited to licenses, permits or authorizations issued by any governmental organization; contracts, teaming arrangements, agreements, leases commitments, certifications and understandings, including agreements with suppliers, distributors, wholesalers, retailers, marketers, or advertisers; customer lists; accounts, credit record, and related customer information; product inventory; packaging and artwork relating to such packaging; molds and silk screens; and all performance records and all other records. Provided, however, that Unilever may retain the portions of such tangible assets that relate to products other than any Alberto VO5 Product where such asset reasonably can be divided;

(ii) At the option of the Acquirer, all tangible assets used primarily in the manufacturing of any Alberto VO5 Product, including manufacturing equipment, materials and supplies. Provided, however, that Defendants have no obligation to divest any real property as part of the Alberto VO5 Business;

(iii) All legal rights to the Alberto VO5 Brand Name for use in the United States;

(iv) All intellectual property used primarily in the research, development, production, marketing, servicing, distribution or sale of any Alberto VO5 Product, including but not limited to all legal rights associated with the products, including patents, licenses, and sublicenses, copyrights, Licensed Marks, Trade Dress, and other intellectual property, for use in the United States; and a non-exclusive, transferable, royalty-free right to all other intellectual property used in the research, development, production, marketing, servicing distribution or sale of any Alberto VO5 Product for the purpose of the research, development, production, marketing, servicing, distribution or sale in the United States of any Alberto VO5 Product. Provided, however that with respect to any intellectual property divested pursuant to this subsection (iv) that Defendants have used in products not being divested, the Acquirer shall provide to Defendants a worldwide, non-exclusive, transferable, royalty-free right to use such intellectual property in the research, development, production, marketing, servicing, distribution or sale of any product not being divested; and

(v) All intangible assets, other than intangible assets set forth in subsection (iv) above, used in the research, development, production, marketing, servicing, distribution or sale of any Alberto VO5 Product in the United States for use in the United States, including all trade secrets; all technical information, computer software and related documentation, know-how, and Formulas, including information relating to plans for, improvement to, or line extensions of, the products under the Alberto VO5 Brand Name; all research, packaging, sales marketing, advertising and distribution know-how and documentation, including plan-o-grams, marketing and sales data, packaging designs, quality assurance and control procedures; all manuals and technical information Alberto Culver provides to its own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments. Provided, that with respect to any intangible assets that, prior to the merger, were being used in the research, development, production, marketing, servicing, distribution or sale of any Alberto VO5 Product and any product not being divested, Defendants may utilize and retain the portions of such

intangible assets that relate solely to products other than any Alberto VO5 Product where such assets reasonably can be divided, and may utilize and retain copies of such intangible assets that relate to both any Alberto VO5 Product and any other product not being divested.

(E) "Albert VO5 Product" means any product that Alberto Culver sold, sells, or has plans to sell under the Alberto VO5 Brand Name in the United States.

(F) "Defendants" mean Unilever and Alberto Culver.

(G) "Divestiture Assets" mean the Alberto VO5 Business and the Rave Business.

(H) "Formulas" mean all Defendants' formulas, processes, and specifications used by the Defendants in connection with the production and packaging associated with the goods manufactured, distributed, marketed, and sold under a brand name, including, without limitation, Defendants' ingredients, manufacturing processes, equipment and material specifications, trade and manufacturing secrets, know-how, and scientific and technical information.

(I) "Licensed Marks" mean all trademarks, service marks, or trade names belonging or licensed to Defendants (whether registered or unregistered, or whether the subject of a pending application) associated with the goods manufactured, distributed, marketed, and sold under a brand name.

(J) "Rave Brand Name" means Rave and any other name that uses, incorporates, or references the Rave name, including but not limited to Rave 4x Mega Scented Aerosol Hairspray, Rave 4x Mega Scented Non-Aerosol Hairspray, Rave 4x Mega Unscented Aerosol Hairspray, Rave 4x Mega Unscented Non-Aerosol Hairspray, Rave 2x Low Control Bodifying Mousse, Rave 2x Extra Bodifying Mousse, and any extensions of any one or more of such products.

(K) "Rave Business" means Unilever's business engaged in the research, development, licensing (as licensor or as licensee), production, marketing, servicing or sale of any Rave Product, including:

(i) All tangible assets used primarily in the research, development, marketing, or sale of any Rave Product including but not limited to licenses, permits or authorizations issued by any governmental organization; contracts, teaming arrangements, agreements, leases commitments, certifications and understandings, including agreements with suppliers, distributors, wholesalers, retailers, marketers, or advertisers; customer lists; accounts, credit record, and related customer information; product inventory; packaging and artwork relating to such packaging; molds and silk screens; and all performance records and all other records. Provided, however, that Unilever may retain the portions of such tangible assets that relate to products other than any Rave Product where such asset reasonably can be divided;

(ii) At the option of the Acquirer, all tangible assets used primarily in the manufacturing of any Rave Product, including manufacturing equipment, materials and supplies. Provided, however, that Defendants have no obligation to divest any real property as part of the Rave Business;

(iii) All legal rights to the Rave Brand Name. Provided, however, that Defendants shall not be required to give the Acquirer rights to use the terms "Unilever" or "Suave," or any derivative of the terms "Unilever" or "Suave;"

(iv) All intellectual property used primarily in the research, development, production, marketing, servicing, distribution or sale of any Rave Product, including but not limited to all legal rights associated with the products, including patents, licenses, and sublicenses, copyrights, Licensed Marks, Trade Dress, and other intellectual property; and a non-exclusive, transferable, royalty-free right to all other intellectual property used in the research, development, production, marketing, servicing distribution or sale of any Rave Product for the purpose of the research, development, production, marketing, servicing, distribution or sale of any Rave Product. Provided, however that with respect to any intellectual property divested pursuant to this subsection (iv) that Defendants have used in products not being divested, the Acquirer shall provide to Defendants a worldwide, non-exclusive, transferable, royalty-free right to use such intellectual property in the research, development, production, marketing, servicing, distribution or sale of any product not being divested; and

(v) All intangible assets, other than intangible assets set forth in subsection (iv) above, used in the research, development, production, marketing, servicing, distribution or sale of any Rave Product, including all trade secrets; all technical information, computer software and related documentation, know-how, and Formulas, including information relating to plans for, improvement to, or line extensions of, the products under the Rave Brand Name; all research, packaging, sales marketing, advertising and distribution know-how and documentation, including plan-o-grams, marketing and sales data, packaging designs, quality assurance and control procedures; all manuals and technical information Unilever provides to its own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments. Provided, that with respect to any intangible assets that, prior to the merger, were being used in the research, development, production, marketing, servicing, distribution or sale of any Rave Product and any product not being divested, Defendants may utilize and retain the portions of such intangible assets that relate solely to products other than any Rave Product where such assets reasonably can be divided, and may utilize and retain copies of such intangible assets that relate to both any Rave Product and any other product not being divested.

(L) "Rave Product" means any product that Unilever sold, sells, or has plans to sell under the Rave Brand Name anywhere in the world.

(M) "Trade Dress" means the print, style, color, labels, and other elements of trade dress currently used by Defendants and/or their subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures in association with the goods manufactured, distributed, marketed, and sold under a brand name.

(N) "Unilever" means defendants Unilever, N.V. and Unilever PLC, corporations respectively organized under the laws of the Netherlands and England, with headquarters in Rotterdam and London, and their successors and assigns, their subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees. Unilever includes Conopco, Inc., a New York corporation, a wholly owned subsidiary of Unilever N.V. and Unilever PLC.

III. Applicability

(A) This Final Judgment applies to all Defendants, as defined above, and all other persons in active concert or participation with the Defendants 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, license, or otherwise disposes of all or substantially all of their assets or of lesser business units that include the Divestiture Assets,

Defendants shall require the purchaser(s) to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer(s) of the assets divested pursuant to this Final Judgment.

IV. Divestitures

(A) Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Proposed Final Judgment or five (5) calendar days after 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 or Acquirers 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. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

(B) In accomplishing the divestiture ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person who inquires about 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. Defendants 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. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

(C) Defendants shall provide the Acquirer(s) and the United States with information relating to the personnel involved in the design, product development, management, operations, or sales activities relating to the Divestiture Assets to enable the Acquirer(s) to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer(s) to employ or contract with any Defendants' employee whose primary responsibility relates to the Divestiture Assets. Interference with respect to this paragraph includes, but is not limited to, offering to increase an employee's salary or benefits other than as a part of a company-wide increase in salary or benefits. In addition, for each employee who elects employment by the Acquirer or Acquirers, Defendants shall vest all unvested pension and other equity rights of that employee and provide all benefits to which the employee would have been entitled if terminated without cause.

(D) Defendants shall waive all noncompete agreements for any current or former employee employed in the design, development, production, marketing, servicing, distribution, and/or sale of any of the Divestiture Assets who the Acquirer(s) employs with relation to the Divestiture Assets.

(E) Defendants shall permit prospective Acquirers of the Divestiture Assets to (1) have reasonable access to personnel; (2) make reasonable inspections of the physical facilities; (3) access to any and all environmental, zoning, and other permit documents and information; and (4) access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

(F) Defendants shall warrant to the Acquirer(s) that the Divestiture Assets will be operational on the date of sale.

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

(H) In connection with the divestiture of the Divestiture Assets pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, at the option of the Acquirer(s), the Defendants shall enter into transitional supply and services agreements, up to six (6) months in length, for the supply of Alberto VO5 and/or Rave Products and the provision of services required to transfer the Alberto VO5 and/or Rave Businesses to the Acquirer(s). At the request of the Acquirer, the United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed twelve (12) months in total. The terms and conditions of such agreements must be acceptable to the United States in its sole discretion. Upon the expiration or termination of such agreements, the Defendants shall not enter into or have any supply or service agreements with the Acquirer(s) relating to the sale of the Alberto VO5 and/or Rave Products for a period of three (3) years thereafter.

(I) 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 will achieve the purposes of this Final Judgment and that the Divestiture Assets can and will be used by the Acquirer(s) as part of viable, ongoing business engaged in the sale of shampoo, conditioner, and/or hairspray. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

(i) shall be made to an Acquirer or Acquirers that, in the United States' sole judgment, has or have the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the sale of shampoo, conditioner and/or hairspray; and

(ii) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an 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 Defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), Defendants 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 Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

(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 Defendants, 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 Defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

(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 Divestiture Assets, and Defendants shall develop financial and other information relevant to the Divestiture Assets as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

(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 its 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 the report contains information that the trustee deems confidential, the report 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, Defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the 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(s), any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the trustee shall furnish to the United States 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(s), 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(s) 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, Defendants shall deliver to the United States an affidavit as to the fact and manner of their 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 Defendants have taken to solicit buyers for the Divestiture Assets and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Provided that the information set forth in the affidavit is true and complete, any objection by

the United States to information provided by Defendants, including any limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

(B) Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants 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. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

(C) Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one (1) 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, 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:

(i) 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

(ii) 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, including, but not limited to, any transitional supply and/or services agreements entered into between the Acquirer(s) and the Defendants pursuant to Section IV(H) of this Final Judgment.

(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. No Reacquisition

Defendants shall not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. 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.

XIII. Expiration of Final Judgment

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

XIV. Public Interest Determination

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 those comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses 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

[FR Doc. 2011–11865 Filed 5–12–11; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; One-Stop Workforce Information Grant Plan and Annual Performance Report

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, "One-Stop Workforce Information Grant Plan and Annual Performance Report," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 13, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*