prominent place on the cover page and/or the first page. (*See* Handbook for Electonic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: January 10, 2018.

Katherine M. Hiner,

Supervisory Attorney.

[FR Doc. 2018–00605 Filed 1–12–18; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Vulcan Materials Company, SPO Partners II, L.P., and Aggregates USA, LLC, 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, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Vulcan Materials Company, SPO Partners, II, L.P., and Aggregates USA, LLC,* Civil Action No. 1:17–cv–02761. On December 22, 2017, the United States and the State of Tennessee filed a Complaint alleging that Vulcan Material Company's proposed acquisition of Aggregates USA, LLC 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 Defendants to divest all of Aggregates USA's active quarries, plants, and yards in the Knoxville, Tennessee, Tri-Cities, Tennessee, and Abingdon, Virginia areas. These divestitures include seventeen Aggregates USA facilities.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.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, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Maribeth Petrizzi, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530 (telephone: (202) 307–0924).

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, 450 Fifth Street NW, Suite 8700, Washington, DC 20530 and *State of Tennessee, Attorney General's Office, 500 Charlotte Avenue, Nashville, Tennessee 37202 Plaintiffs*, v. *Vulcan Materials Company, 1200 Urban Center Drive, Birmingham, Alabama 35242, SPO Partners II, L.P., 591 Redwood Highway, Suite 3215, Mill Valley, California 94941*, and *Aggregates USA, LLC, 3300 Cahaba Road, Suite 320, Birmingham, Alabama 35223 Defendants.*

Civil Action No: 1:17–cv–02761
Judge: Amit Mehta

COMPLAINT

Plaintiffs, the United States of America (''United States''), acting under the direction of the Attorney General of the United States, and the State of Tennessee, acting by and through the Attorney General of Tennessee, bring this civil antitrust action against Defendants to enjoin Vulcan Materials Company's (''Vulcan'') proposed acquisition of Aggregates USA, LLC (''Aggregates USA'') from SPO Partners II, L.P. (''SPO Partners''). Plaintiffs complain and allege as follows:

I. INTRODUCTION

1. Vulcan's proposed acquisition of Aggregate USA's quarries would secure Vulcan's control over the supply of coarse aggregate necessary to complete various construction projects in parts of east Tennessee and southwest Virginia. Coarse aggregate is one of the primary materials used to build, pave, and repair roads and is used widely in other types of construction. Coarse aggregate is an essential input in asphalt concrete, which is used to pave roads, and ready mix concrete, which is used to create bridges and is a structural element of many buildings. Coarse aggregate is also needed for other phases of construction, such as the base layer of rock that provides a foundation for paved roads and large buildings. Vulcan currently supplies coarse aggregate in east Tennessee and southwest Virginia and already holds a significant market share in each region.

2. Vulcan and Aggregates USA are the primary suppliers of coarse aggregate for projects in parts of east Tennessee and southwest Virginia, together supplying nearly all of the coarse aggregate purchased directly by the Tennessee and Virginia Departments of Transportation (''DOT'') or purchased by contractors for use in Tennessee and Virginia DOT projects. Vulcan and Aggregates USA are also the two leading suppliers of coarse aggregate used in private construction projects in parts of east Tennessee and southwest Virginia. The proposed acquisition would eliminate the head-to-head competition between Vulcan and Aggregates USA.

As a result, prices for coarse aggregate would likely increase significantly if the acquisition is consummated.

3. The states of Tennessee and Virginia spend hundreds of millions of dollars on new construction and road maintenance projects each year. Without competing suppliers for the necessary inputs for road construction and other building projects, individuals, the states of Tennessee and Virginia, as well as federal and state taxpayers, would pay the price for Vulcan's control over these important markets. In light of these market conditions, Vulcan's acquisition of Aggregates USA's quarries would cause significant anticompetitive effects in the markets for coarse aggregate in parts of east Tennessee and southwest Virginia. Therefore, the proposed acquisition violates Section 7 of the Clayton Act, 15 U.S.C. 18, and should be enjoined.

II. THE PARTIES AND THE PROPOSED TRANSACTION

4. Defendant Vulcan is incorporated in New Jersey with its headquarters in Birmingham, Alabama. Vulcan produces and sells coarse aggregate for the construction industry in 20 states as well as the District of Columbia. Vulcan also produces coarse aggregate in Mexico, which it distributes and sells at numerous terminals and yards along the Gulf Coast of the United States. In 2016, Vulcan reported net sales of $3.5 billion.

5. Defendant SPO Partners is a Delaware limited partnership headquartered in Mill Valley, California. With more than $7 billion in assets under management, SPO Partners invests in a wide range of industries, including industrial materials, media, telecommunications, energy, power and real estate. SPO Partners acquired Aggregates USA in 2010.

6. Defendant Aggregates USA is headquartered in Birmingham, Alabama. Aggregates USA produces and sells coarse aggregate in four states: Florida, Georgia, Tennessee and Virginia. In 2016, Aggregates USA reported net sales of approximately $124 million.

7. On May 25, 2017, Vulcan announced a definitive agreement with SPO Partners to acquire Aggregates USA for approximately $900 million. The primary assets acquired are Aggregates USA's 13 active quarries, including nine quarries in east Tennessee and one quarry in southwest Virginia, the equipment used to operate those quarries, and several inactive quarries in east Tennessee.

III. JURISDICTION AND VENUE

8. The United States brings this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 4 and 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

9. The State of Tennessee brings this action under Section 16 of the Clayton Act, 15 U.S.C. 26, to prevent and restrain Vulcan and Aggregates USA from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The State of Tennessee, by and through the Attorney General of Tennessee, brings this action as *parens patriae* on behalf of the citizens, general welfare, and the general economy of the State of Tennessee.

10. Defendants produce and sell coarse aggregate in the flow of interstate commerce. Defendants' activity in the production and sale of coarse aggregate substantially affects interstate commerce. 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.

11. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c).

IV. TRADE AND COMMERCE

A. Coarse Aggregate is an Essential Input for Many Construction Projects

12. Coarse aggregate is a category of material used for construction projects and in various industrial processes. Produced in quarries, mines, and gravel pits, coarse aggregate is predominantly limestone, granite, or trap rock. Different types and sizes of rock are needed to meet different specifications for use in asphalt concrete, ready mix concrete, industrial processes, and other products. Asphalt concrete consists of approximately 95 percent coarse aggregate, and ready mix concrete is made of up of approximately 75 percent coarse aggregate. Coarse aggregate thus is an integral input for road and other construction projects.

13. For each construction project, a customer establishes specifications that must be met for each application for which coarse aggregate is used. For example, state DOTs, including the Tennessee and Virginia DOTs, set specifications for coarse aggregate used to produce asphalt concrete, ready mix concrete, and road base for state DOT projects. State DOTs specify characteristics such as hardness and durability, size, polish value, and a variety of other characteristics. The specifications are intended to ensure the longevity and safety of the projects that use coarse aggregate.

14. For Tennessee and Virginia DOT projects, to ensure that the stone for an application meets proper specifications, the respective DOTs qualify quarries according to the end uses of the coarse aggregate. In addition, the Tennessee and Virginia DOTs test the coarse aggregate at various points: At the quarry before it is shipped; when the coarse aggregate is sent to the purchaser to produce an end product such as asphalt concrete; and after the end product has been produced. Many cities, counties, commercial entities, and individuals in Tennessee and Virginia use their respective state DOT-qualified coarse aggregate specifications when building roads, bridges, and other construction projects in order to optimize longevity.

B. Transportation is a Significant Component of the Cost of Coarse Aggregate

15. Coarse aggregate is priced by the ton and is a relatively inexpensive product, with prices typically ranging from approximately five to twenty dollars per ton. A variety of approaches are used to price coarse aggregate. For small volumes, coarse aggregate often is sold according to a posted price. For large volumes, customers typically either negotiate prices for a particular job or seek bids from multiple coarse aggregate suppliers.

16. In areas where coarse aggregate is locally available, it is transported from quarries to customers by truck. Truck transportation is expensive and, for construction projects located more than a few miles from a quarry, transportation costs can become a significant portion of the total cost of coarse aggregate.

C. Relevant Markets

1. State DOT-Qualified Coarse Aggregate is a Relevant Product Market

17. Within the broad category of coarse aggregate, different types and sizes of stone are used for different purposes. For instance, coarse aggregate qualified for use as road base may not be the same size and type of rock as coarse aggregate qualified for use in asphalt concrete. Accordingly, they are not interchangeable for one another and demand for each is separate. Thus, each type and size of coarse aggregate likely is a separate line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

18. State DOT-qualified coarse aggregate is coarse aggregate qualified

by the state DOT for use in road construction in that particular state. State DOT-qualified coarse aggregate meets particular standards for size, physical composition, functional characteristics, end uses, and availability. A customer whose job specifies state DOT-qualified coarse aggregate cannot substitute non-DOT-qualified coarse aggregate or other materials, including coarse aggregate qualified by a different state DOT.

19. Although numerous narrower product markets exist, the competitive dynamic for most types of state DOT-qualified coarse aggregate is nearly identical, as a quarry can typically produce all, or nearly all, types of state DOT-qualified coarse aggregate for a particular state. Therefore, most types of state DOT-qualified coarse aggregate for a particular state may be combined for analytical convenience into a single relevant product market for the purpose of evaluating the competitive impact of the acquisition.

20. A small but significant increase in the price of state DOT-qualified coarse aggregate would not cause a sufficient number of customers to substitute to another type of coarse aggregate or another material so as to make such a price increase unprofitable. Accordingly, the production and sale of Tennessee DOT-qualified coarse aggregate and Virginia DOT-qualified coarse aggregate (hereinafter ''DOT-qualified coarse aggregate'') are distinct lines of commerce and relevant product markets within the meaning of Section 7 of the Clayton Act.

2. The Relevant Geographic Markets are Local

21. Coarse aggregate is a relatively low-cost product that is bulky and heavy. As a result, the cost of transporting coarse aggregate is high as compared to the value of the product.

22. When customers seek price quotes or bids, the distance from the quarry to the project site or plant location will have a considerable impact on the selection of a supplier, due to the high cost of transporting coarse aggregate relative to the low value of the product. Suppliers know the importance of transportation cost to a potential customer's selection of a coarse aggregate supplier; they know the locations of their competitors, and they often will factor the cost of transportation from other suppliers into the price or bid that they submit.

23. The primary factor that determines the area a supplier can serve is the location of competing quarries. When quoting prices or submitting bids, coarse aggregate suppliers will account for the location of the project site or plant, the cost of transporting coarse aggregate to the project site or plant, and the locations of the competitors that might bid on a job. Therefore, depending on the location of the project site or plant, suppliers are able to adjust their bids to account for the distance other competitors are from a job.

a. The Knoxville area is a Relevant Geographic Market

24. Vulcan owns and operates eleven quarries that serve Knox, Loudon, Jefferson, and Grainger Counties in Tennessee as well as portions of surrounding counties (hereinafter referred to as the ''Knoxville area''). Customers with plants or jobs in the Knoxville area may, depending on the location of their plant or job sites, also economically procure Tennessee DOT-qualified coarse aggregate from four quarries operated by Aggregates USA. Other more distant quarries cannot compete successfully on a regular basis for customers with plants or jobs in the Knoxville area because they are too far away and transportation costs are too great.

25. A small but significant post-acquisition increase in the price of Tennessee DOT-qualified coarse aggregate to customers with plants or job sites in the Knoxville area would not cause those customers to procure coarse aggregate from suppliers other than Vulcan and Aggregates USA in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the Knoxville area is a relevant geographic market for the production and sale of Tennessee DOT-qualified coarse aggregate within the meaning of Section 7 of the Clayton Act.

b. The Tri-Cities area is a Relevant Geographic Market

26. Vulcan owns and operates four quarries that serve Washington, Sullivan, Carter and Unicoi Counties in Tennessee as well as portions of surrounding counties (hereinafter referred to as the ''Tri-Cities area''). Customers with plants or jobs in the Tri-Cities area may, depending on the location of their plant or job site, also economically procure Tennessee DOT-qualified coarse aggregate from five quarries operated by Aggregates USA. Other more distant quarries cannot compete successfully on a regular basis for customers with plants or jobs in the Tri-Cities area because they are too far away and transportation costs are too great.

27. A small but significant post-acquisition increase in the price of Tennessee DOT-qualified coarse aggregate to customers with plants or job sites in the Tri-Cities area would not cause those customers to procure coarse aggregate from suppliers other than Vulcan and Aggregates USA in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the Tri-Cities area is a relevant geographic market for the production and sale of Tennessee DOT-qualified coarse aggregate within the meaning of Section 7 of the Clayton Act.

c. The Abingdon area is a Relevant Geographic Market

28. Vulcan owns and operates one quarry that serves parts of Washington County in Virginia and portions of surrounding counties (hereinafter referred to as the ''Abingdon area''). Customers with plants or jobs in the Abingdon area may, depending on the location of their plant or job sites, also economically procure Virginia DOT-qualified coarse aggregate from a quarry operated by Aggregates USA. Other more distant quarries cannot compete successfully on a regular basis for customers with plants or jobs in the Abingdon area because they are too far away and transportation costs are too great.

29. A small but significant post-acquisition increase in the price of Virginia DOT-qualified coarse aggregate to customers with plants or job sites in the Abingdon area would not cause those customers to procure coarse aggregate from suppliers other than Vulcan and Aggregates USA in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the Abingdon area is a relevant geographic market for the production and sale of Virginia DOT-qualified coarse aggregate within the meaning of Section 7 of the Clayton Act.

D. Vulcan's Acquisition of Aggregates USA is Anticompetitive

30. Vigorous competition between Vulcan and Aggregates USA on price and customer service in the production and sale of DOT-qualified coarse aggregate has benefitted customers in the Knoxville, Tri-Cities, and Abingdon areas (the ''Relevant Areas''), all of which face similar competitive conditions.

31. The competitors that could constrain Vulcan and Aggregates USA from raising prices on DOT-qualified coarse aggregate in the Relevant Areas are limited to those who are qualified by the Tennessee and Virginia DOTs to supply coarse aggregate and can economically transport the coarse aggregate into these areas.

32. Since the Relevant Areas are each exclusively served today by Vulcan and Aggregates USA, the proposed acquisition will reduce from two to one the number of suppliers of DOT-qualified coarse aggregate in each of those areas. Further, the proposed acquisition will substantially increase the likelihood that Vulcan will unilaterally increase the price of DOT-qualified coarse aggregate to a significant number of customers in the Relevant Areas.

33. For many customers, a combined Vulcan and Aggregates USA will have the ability to increase prices for DOT-qualified coarse aggregate. The combined firm could also decrease service for these same customers by limiting availability or delivery options. DOT-qualified coarse aggregate producers know the distance from their own quarries or yards and their competitors' quarries to a customer's job site. Generally, because of transportation costs, the farther a supplier's closest competitor is from a job site, the higher the price and margin that supplier can expect for that project. Post-acquisition, in instances where Vulcan and Aggregates USA quarries or yards are the closest locations to a customer's project, the combined firm, using the knowledge of its competitors' locations, will be able to charge such customers higher prices or decrease the level of customer service.

34. The proposed acquisition will substantially lessen competition in the market for the production and sale of DOT-qualified coarse aggregate in the Relevant Areas, which is likely to lead to higher prices and reduced customer service for consumers of such products, in violation of Section 7 of the Clayton Act.

E. Difficulty of Entry

35. Timely, likely, and sufficient entry in the production and sale of DOT-qualified coarse aggregate in the Relevant Areas is unlikely, given the substantial time and cost required to open a quarry.

36. Quarries are particularly difficult to locate and permit. First, securing the proper site for a quarry is difficult and time-consuming. Finding land with the correct rock composition requires extensive investigation and testing of candidate sites, as well as the negotiation of necessary land transfers, leases, and/or easements. Further, the location of a quarry close to likely job sites is extremely important due to the high cost of transporting coarse aggregate. Once a location is chosen, obtaining the necessary permits is difficult and time-consuming. Attempts to open a new quarry often face fierce public opposition, which can prevent a quarry from opening or make opening it much more time-consuming and costly. Finally, even after a site is acquired and permitted, the owner must spend significant time and resources to prepare the land and purchase and install the necessary equipment.

37. Because of the cost and difficulty of establishing a quarry, entry will not be timely, likely or sufficient to mitigate the anticompetitive effects of Vulcan's proposed acquisition of Aggregates USA.

V. VIOLATION ALLEGED

38. Vulcan's proposed acquisition of Aggregates USA likely will substantially lessen competition in the production and sale of DOT-qualified coarse aggregate in the Relevant Areas, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

39. Unless enjoined, the proposed acquisition likely will have the following anticompetitive effects, among others:

(a) actual and potential competition between Vulcan and Aggregates USA in the market for the production and sale of DOT-qualified coarse aggregate in the Relevant Areas will be eliminated; and

(b) prices for DOT-qualified coarse aggregate likely will increase and customer service likely will decrease.

VI. REQUESTED RELIEF

40. Plaintiffs request that this Court:

(a) adjudge and decree that Vulcan's acquisition of Aggregates USA would be unlawful and violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) preliminarily and permanently enjoin and restrain the Defendants and all persons acting on their behalf from consummating the proposed acquisition of Aggregates USA by Vulcan, or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine Vulcan with Aggregates USA;

(c) award Plaintiffs their costs for this action; and

(d) award Plaintiffs such other and further relief as the Court deems just and proper.

FOR PLAINTIFF UNITED STATES OF AMERICA:

/s/ _____

Makan Delrahim

Assistant Attorney General.

/s/ _____

Andrew C. Finch

Principal Deputy Assistant Attorney General.

/s/ _____

Maribeth Petrizzi (DC Bar #435204)

Chief, Defense, Industrials, and Aerospace Section.

/s/ _____

Stephanie A. Fleming

Assistant Chief, Defense, Industrials, and Aerospace Section.

/s/ _____

Bernard A. Nigro Jr. (DC Bar #412357)

Deputy Assistant Attorney General.

/s/ _____

Patricia A. Brink

Director of Civil Enforcement.

/s/ _____

Jay D. Owen

Stephen A. Harris

Christine A. Hill *(DC Bar #461048),*

Attorneys, United States Department of Justice, Antitrust Division, Defense, Industrials, and Aerospace Section, 450 Fifth Street NW, Suite 8700, Washington, DC 20530, (202) 598–2987, jay.owen@usdoj.gov.

Dated: December 22, 2017.

FOR PLAINTIFF STATE OF TENNESSEE:

Herbert H. Slatery III

Attorney General and Reporter.

/s/ _____

Victor J. Domen Jr.

Senior Counsel, Tennessee Attorney General's Office, 500 Charlotte Avenue, Nashville, TN 37202, Phone: 615–(253)–3327, vic.domen@ag.tn.gov.

Dated: December 22, 2017.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America and *State of Tennessee,* Plaintiffs, v. *Vulcan Materials Company, SPO Partners II, L.P.,* and *Aggregates USA, LLC,* Defendants.

Civil Action No: 1:17–cv–02761

Judge: Amit Mehta

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiffs, United States of America and the State of Tennessee, filed their Complaint on December 22, Plaintiffs and Defendants, VulCan Materials Company, SPO Partners II, LP., and Aggregates USA, LLC, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

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

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

AND WHEREAS, Plaintiffs require Defendants to make certain divestitures

for the purpose of remedying the loss of competition alleged in the Complaint;

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

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

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

II. DEFINITIONS

As used in this Final Judgment:

A. ''Acquirer'' means Blue Water Industries or another entity to which Defendants divest the Divestiture Assets.

B. ''Vulcan'' means Defendant Vulcan Materials Company, a corporation headquartered in Birmingham, Alabama, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Aggregates USA'' means Defendant Aggregates USA, LLC, a corporation headquartered in Indianapolis, Indiana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Blue Water Industries'' means Blue Water Industries LLC, a wholly owned subsidiary of Blue Water Industries Holdings LLC, headquartered in Palm Beach, Florida, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''Divestiture Assets'' means:

1. Abingdon, Virginia Area

Aggregates USA's quarry located at 21339 & 21490 Gravel Lake Rd., Abingdon, Virginia 24210;

2. Tri-Cities, Tennessee Area

a. Aggregates USA's quarry located at 350 W. Fourth Ave., Watauga, Tennessee 37694;

b. Aggregates USA's quarry located at 210 Judger Ben Allen Rd., Elizabethton, Tennessee 37643;

c. Aggregates USA's quarry located at 4175 Marbleton Rd., Unicoi, Tennessee 37692;

d. Aggregates USA's quarry located at 164 Asphalt Plant Rd., Jonesborough, Tennessee 37659; and

e. Aggregates USA's quarry located at 736 Centenary Rd., Blountville, Tennessee 37617;

3. Knoxville, Tennessee Area

a. Aggregates USA's quarry at 2107 Big Hill Road, Lenoir City, Tennessee 37772;

b. Aggregates USA's quarry at 2303 Gov. John Sevier Hwy., Knoxville, Tennessee 37914;

c. Aggregates USA's quarry at 9600 Mascot Rd., Mascot, Tennessee 37806;

d. Aggregates USA's quarry at 1949 E Raccoon Valley Rd., Heiskell, Tennessee 37754;

e. Aggregates USA's quarry at 605 Cherokee Explosives Rd., Rutledge, Tennessee 37861;

f. Aggregates USA's quarry at 450 and 461 Rocktown Road, Jefferson City, Tennessee 37760;

g. Aggregates USA's quarry at 1001 Park St., New Market, Tennessee 37820;

h. Aggregates USA's quarry at 1550 Quarry Road, New Market, Tennessee 37820;

i. Aggregates USA's Coy Stone Plant at 345 E. Broadway Blvd., Jefferson City, Tennessee 37760;

j. Aggregates USA's Coster Yard at 224 Heiskell Ave., Knoxville, Tennessee 37917; and

k. Aggregates USA's Young Yard at 1977 West Andrew Johnson Highway, Strawberry Plains, Tennessee 37871.

4. all tangible assets used at the quarries and yards listed in Paragraphs II(E)(1)–(3), including, but not limited to, all manufacturing equipment, tooling, and fixed assets, mining equipment, aggregate reserves, personal property, inventory, office furniture, materials, supplies, on- or off-site warehouses or storage facilities, and other tangible property and all assets used in connection with the facilities listed in Paragraphs II(E)(1)–(3); all licenses, permits, and authorizations issued by any governmental organization relating to the facilities listed in Paragraphs II(E)(1)–(3); all contracts, agreements, teaming arrangements, leases (including renewal rights), commitments, certifications and understandings, including sales agreements and supply agreements relating to the facilities listed in Paragraphs II(E)(1)–(3); all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the facilities listed in Paragraphs II(E)(1)–(3); and

5. all intangible assets used in the production and sale of aggregate at the quarries and yards listed in Paragraphs II(E)(1)–(3), including but not limited to, all contractual rights, patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software (including dispatch software and management information systems) and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees, and all data (including aggregate reserve testing information) concerning the facilities listed in Paragraphs II(E)(1)–(3).

III. APPLICABILITY

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

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

IV. DIVESTITURES

A. Defendants are ordered and directed, within 45 calendar days after the Court's signing of the Hold Separate Stipulation and Order in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment to Blue Water Industries or an alternative Acquirer acceptable to the United States, in its sole discretion, after consultation with the State of Tennessee. 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 the event Defendants are attempting to divest the Divestiture

Assets to an Acquirer other than Blue Water Industries, Defendants promptly shall make known, by usual and customary means (to the extent Defendants have not already done so), the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment.

C. In accomplishing the divestitures ordered by 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 privileges 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.

D. Defendants shall provide the Acquirer and the United States with information relating to the personnel involved in the operation of the Divestiture Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any Defendant employee whose primary responsibility is the operation of the Divestiture Assets.

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

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

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

H. Defendants shall warrant to the Acquirer that (1) there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and (2) following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

I. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by Divestiture 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, after consultation with the State of Tennessee, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business in the production and sale of DOT-qualified coarse aggregate. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer that, in the United States' sole judgment, after consultation with the State of Tennessee, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of producing and selling DOT-qualified coarse aggregate; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with the State of Tennessee, 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 DIVESTITURE TRUSTEE

A. If Defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), Defendants shall notify the United States and the State of Tennessee of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture 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 Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestitures to an Acquirer acceptable to the United States, after consultation with the State of Tennessee, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture 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 Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestitures. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

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

D. The Divestiture Trustee shall serve at the cost and expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestitures and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and Defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within 14 calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestitures. The Divestiture Trustee and any consultants, accountants, attorneys, and other agents retained by

the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestitures.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the Divestiture 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 Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestitures ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestitures, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestitures have not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture 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 Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VI. NOTICE OF PROPOSED DIVESTITURES

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States and the State of Tennessee of any proposed divestitures required by Section IV or Section V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestitures 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, after consultation with the State of Tennessee, may request from Defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestitures, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

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

VIII. HOLD SEPARATE

Until the divestitures required by this Final Judgment have 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 divestitures 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 divestitures have been completed under Section IV or Section V, Defendants shall deliver to the United States an affidavit, signed by each Defendant's Chief Financial Officer and General Counsel, which shall describe the fact and manner of Defendants' compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (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. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, 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 year after such divestitures have been completed.

X. COMPLIANCE INSPECTION

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

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

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

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

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

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. NOTIFICATION

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), Defendants, without providing advance notification to the United States, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity, or management interest, related to the production and sale of DOT-qualified coarse aggregate in Knox, Loudon, Jefferson, Grainger, Washington, Sullivan, Carter, and Unicoi Counties in Tennessee, or Washington County, Virginia, during the term of this Final Judgment.

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

XII. NO REACQUISITION

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

XIII. RETENTION OF JURISDICTION

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

XIV. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including its right to seek an order of contempt from this Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and they waive any argument that a different standard of proof should apply.

B. In any enforcement proceeding in which the Court finds that the Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. Defendants agree to reimburse the United States for any attorneys' fees, experts' fees, and costs incurred in connection with any effort to enforce this Final Judgment.

XV. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

XVI. PUBLIC INTEREST DETERMINATION

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

Date:

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

United States District Judge.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America and *State of Tennessee, Plaintiffs,* v. *Vulcan Materials Company, SPO PARTNERS II, L.P.,* and *Aggregates USA, LLC, Defendants.*

Civil Action No: 1:17–cv–02761

Judge: Amit Mehta

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

Defendant Vulcan Materials Company (''Vulcan'') and Defendant SPO Partners II, L.P. (''SPO'') entered into an agreement, dated May 25, 2017, pursuant to which Vulcan would acquire SPO's aggregates business, Aggregates USA, LLC (''Aggregates USA''), for approximately $900 million. The United States and the State of Tennessee filed a civil antitrust Complaint on December 22, 2017, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this proposed acquisition would be to substantially lessen competition in the production and sale of Department of Transportation (''DOT'')-qualified coarse aggregate in the Knoxville, Tri-Cities and Abingdon areas (the 'Relevant Areas''), in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition likely would result in increased prices and decreased customer service for customers in those areas.

At the same time the Complaint was filed, Plaintiffs also filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants are required, among other things, to divest Aggregates USA's active quarries and yards in the Relevant Areas. Under the terms of the Hold Separate, Defendants will take certain steps to ensure that the quarries and yards are operated as a competitively independent, economically viable and ongoing business concern, that they will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestitures.

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

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

Defendant Vulcan is incorporated in New Jersey with its headquarters in Birmingham, Alabama. Vulcan produces and sells coarse aggregate for the construction industry in 20 states as well as the District of Columbia. Vulcan also produces coarse aggregate in Mexico, which it distributes and sells at numerous terminals and yards along the Gulf Coast of the United States. In 2016, Vulcan reported net sales of $3.5 billion.

Defendant SPO Partners is a Delaware limited partnership headquartered in Mill Valley, California. With more than $7 billion in assets under management, SPO Partners invests in a wide range of industries, including industrial materials, media, telecommunications, energy, power and real estate. SPO Partners acquired Aggregates USA in 2010.

Defendant Aggregates USA is headquartered in Birmingham, Alabama. Aggregates USA produces and sells coarse aggregate in four states: Florida, Georgia, Tennessee and Virginia. In 2016, Aggregates USA reported net sales of approximately $124 million.

The proposed transaction, as initially agreed to by Defendants on May 25, 2017, would lessen competition substantially as a result of Vulcan owning nearly all of the quarries and yards that supply DOT-qualified aggregate to the Relevant Areas. This acquisition is the subject of the Complaint and proposed Final Judgment filed by Plaintiffs on December 22, 2017.

B. Coarse Aggregate is an Essential Input for Many Construction Projects

Coarse aggregate is a category of material used for construction projects and in various industrial processes. Produced in quarries, mines, and gravel pits, coarse aggregate is predominantly limestone, granite, or trap rock. Different types and sizes of rock are needed to meet different specifications for use in asphalt concrete, ready mix concrete, industrial processes, and other products. Asphalt concrete consists of approximately 95 percent coarse aggregate, and ready mix concrete is made of up of approximately 75 percent coarse aggregate. Coarse aggregate thus is an integral input for road and other construction projects.

For each construction project, a customer establishes specifications that must be met for each application for which coarse aggregate is used. For example, state DOTs, including the Tennessee and Virginia DOTs, set specifications for coarse aggregate used to produce asphalt concrete, ready mix concrete, and road base for state DOT projects. State DOTs specify characteristics such as hardness and durability, size, polish value, and a variety of other characteristics. The specifications are intended to ensure the longevity and safety of the projects that use coarse aggregate.

For Tennessee and Virginia DOT projects, to ensure that the stone for an application meets proper specifications, the respective DOTs qualify quarries according to the end uses of the coarse aggregate. In addition, the Tennessee and Virginia DOTs test the coarse aggregate at various points: at the quarry before it is shipped; when the coarse aggregate is sent to the purchaser to produce an end product such as asphalt concrete; and after the end product has been produced. Many cities, counties, commercial entities, and individuals in Tennessee and Virginia use their respective state DOT-qualified coarse aggregate specifications when building

roads, bridges, and other construction projects in order to optimize longevity.

C. Transportation is a Significant Component of the Cost of Coarse Aggregate

Coarse aggregate is priced by the ton and is a relatively inexpensive product, with prices typically ranging from approximately five to twenty dollars per ton. A variety of approaches are used to price coarse aggregate. For small volumes, coarse aggregate often is sold according to a posted price. For large volumes, customers typically either negotiate prices for a particular job or seek bids from multiple coarse aggregate suppliers.

In areas where coarse aggregate is locally available, it is transported from quarries to customers by truck. Truck transportation is expensive and, for construction projects located more than a few miles from a quarry, transportation costs can become a significant portion of the total cost of coarse aggregate.

D. Relevant Markets

1. State DOT-Qualified Coarse Aggregate is a Relevant Product Market

Within the broad category of coarse aggregate, different types and sizes of stone are used for different purposes. For instance, coarse aggregate qualified for use as road base may not be the same size and type of rock as coarse aggregate qualified for use in asphalt concrete. Accordingly, they are not interchangeable for one another and demand for each is separate. Thus, each type and size of coarse aggregate likely is a separate line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

State DOT-qualified coarse aggregate is coarse aggregate qualified by the state DOT for use in road construction in that particular state. State DOT-qualified coarse aggregate meets particular standards for size, physical composition, functional characteristics, end uses, and availability. A customer whose job specifies state DOT-qualified coarse aggregate cannot substitute non-DOT-qualified coarse aggregate or other materials, including coarse aggregate qualified by a different state DOT.

Although numerous narrower product markets exist, the competitive dynamic for most types of state DOT-qualified coarse aggregate is nearly identical, as a quarry can typically produce all, or nearly all, types of state DOT-qualified coarse aggregate for a particular state. Therefore, most types of state DOT-qualified coarse aggregate for a particular state may be combined for analytical convenience into a single relevant product market for the purpose of evaluating the competitive impact of the acquisition.

A small but significant increase in the price of state DOT-qualified coarse aggregate would not cause a sufficient number of customers to substitute to another type of coarse aggregate or another material so as to make such a price increase unprofitable. Accordingly, the production and sale of Tennessee DOT-qualified coarse aggregate and Virginia DOT-qualified coarse aggregate (hereinafter ''DOT-qualified coarse aggregate'') are distinct lines of commerce and relevant product markets within the meaning of Section 7 of the Clayton Act.

2. The Relevant Geographic Markets are Local

Coarse aggregate is a relatively low-cost product that is bulky and heavy. As a result, the cost of transporting coarse aggregate is high as compared to the value of the product.

When customers seek price quotes or bids, the distance from the quarry to the project site or plant location will have a considerable impact on the selection of a supplier, due to the high cost of transporting coarse aggregate relative to the low value of the product. Suppliers know the importance of transportation cost to a potential customer's selection of a coarse aggregate supplier; they know the locations of their competitors, and they often will factor the cost of transportation from other suppliers into the price or bid that they submit.

The primary factor that determines the area a supplier can serve is the location of competing quarries. When quoting prices or submitting bids, coarse aggregate suppliers will account for the location of the project site or plant, the cost of transporting coarse aggregate to the project site or plant, and the locations of the competitors that might bid on a job. Therefore, depending on the location of the project site or plant, suppliers are able to adjust their bids to account for the distance other competitors are from a job.

a. The Knoxville area is a Relevant Geographic Market

Vulcan owns and operates eleven quarries that serve Knox, Loudon, Jefferson, and Grainger Counties in Tennessee as well as portions of surrounding counties (hereinafter referred to as the ''Knoxville area''). Customers with plants or jobs in the Knoxville area may, depending on the location of their plant or job sites, also economically procure Tennessee DOT-qualified coarse aggregate from four quarries operated by Aggregates USA. Other more distant quarries cannot compete successfully on a regular basis for customers with plants or jobs in the Knoxville area because they are too far away and transportation costs are too great.

A small but significant post-acquisition increase in the price of Tennessee DOT-qualified coarse aggregate to customers with plants or job sites in the Knoxville area would not cause those customers to procure coarse aggregate from suppliers other than Vulcan and Aggregates USA in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the Knoxville area is a relevant geographic market for the production and sale of Tennessee DOT-qualified coarse aggregate within the meaning of Section 7 of the Clayton Act.

b. The Tri-Cities area is a Relevant Geographic Market

Vulcan owns and operates four quarries that serve Washington, Sullivan, Carter and Unicoi Counties in Tennessee as well as portions of surrounding counties (hereinafter referred to as the ''Tri-Cities area''). Customers with plants or jobs in the Tri-Cities area may, depending on the location of their plant or job site, also economically procure Tennessee DOT-qualified coarse aggregate from five quarries operated by Aggregates USA. Other more distant quarries cannot compete successfully on a regular basis for customers with plants or jobs in the Tri-Cities area because they are too far away and transportation costs are too great.

A small but significant post-acquisition increase in the price of Tennessee DOT-qualified coarse aggregate to customers with plants or job sites in the Tri-Cities area would not cause those customers to procure coarse aggregate from suppliers other than Vulcan and Aggregates USA in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the Tri-Cities area is a relevant geographic market for the production and sale of Tennessee DOT-qualified coarse aggregate within the meaning of Section 7 of the Clayton Act.

c. The Abingdon area is a Relevant Geographic Market

Vulcan owns and operates one quarry that serves parts of Washington County in Virginia and portions of surrounding counties (hereinafter referred to as the ''Abingdon area''). Customers with plants or jobs in the Abingdon area may, depending on the location of their plant or job sites, also economically procure

Virginia DOT-qualified coarse aggregate from a quarry operated by Aggregates USA. Other more distant quarries cannot compete successfully on a regular basis for customers with plants or jobs in the Abingdon area because they are too far away and transportation costs are too great.

A small but significant post-acquisition increase in the price of Virginia DOT-qualified coarse aggregate to customers with plants or job sites in the Abingdon area would not cause those customers to procure coarse aggregate from suppliers other than Vulcan and Aggregates USA in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the Abingdon area is a relevant geographic market for the production and sale of Virginia DOT-qualified coarse aggregate within the meaning of Section 7 of the Clayton Act.

E. Vulcan's Acquisition of Aggregates USA is Anticompetitive

Vigorous competition between Vulcan and Aggregates USA on price and customer service in the production and sale of DOT-qualified coarse aggregate has benefitted customers in the Relevant Areas, all of which face similar competitive conditions.

The competitors that could constrain Vulcan and Aggregates USA from raising prices on DOT-qualified coarse aggregate in the Relevant Areas are limited to those who are qualified by the Tennessee and Virginia DOTs to supply coarse aggregate and can economically transport the coarse aggregate into these areas.

Since the Relevant Areas are each exclusively served today by Vulcan and Aggregates USA, the proposed acquisition will reduce from two to one the number of suppliers of DOT-qualified coarse aggregate in each of those areas. Further, the proposed acquisition will substantially increase the likelihood that Vulcan will unilaterally increase the price of DOT-qualified coarse aggregate to a significant number of customers in the Relevant Areas.

For many customers, a combined Vulcan and Aggregates USA will have the ability to increase prices for DOT-qualified coarse aggregate. The combined firm could also decrease service for these same customers by limiting availability or delivery options. DOT-qualified coarse aggregate producers know the distance from their own quarries or yards and their competitors' quarries to a customer's job site. Generally, because of transportation costs, the farther a supplier's closest competitor is from a job site, the higher the price and margin that supplier can expect for that project. Post-acquisition, in instances where Vulcan and Aggregates USA quarries or yards are the closest locations to a customer's project, the combined firm, using the knowledge of its competitors' locations, will be able to charge such customers higher prices or decrease the level of customer service.

The proposed acquisition will substantially lessen competition in the market for the production and sale of DOT-qualified coarse aggregate in the Relevant Areas, which is likely to lead to higher prices and reduced customer service for consumers of such products, in violation of Section 7 of the Clayton Act.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

A. Divestiture Provisions

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the production and sale of DOT-qualified coarse aggregate in the Knoxville, Tri-Cities and Abingdon areas by establishing a new, independent, and economically viable competitor. Paragraph IV(A) of the proposed Final Judgment requires Defendants to divest, as a viable, ongoing business, Aggregates USA's active quarries and yards in the Relevant Areas to Blue Water Industries LLC or an alternative Acquirer acceptable to the United States, in its sole discretion, after consultation with the State of Tennessee, within forty-five (45) days after the signing of the Hold Separate. The assets must be divested in such a way as to satisfy the United States in its sole discretion, after consultation with the State of Tennessee, that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant markets. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

The proposed Final Judgment also contains provisions intended to facilitate the Acquirer's efforts to hire the employees involved with the Aggregates USA business. Paragraph IV(D) of the proposed Final Judgment requires Defendants to provide the Acquirer with information relating to the personnel involved in the operation of the Divestiture Assets to enable the Acquirer to make offers of employment, and provides that Defendants will not interfere with any negotiations by the Acquirer to hire these employees.

In the event that Defendants do not accomplish the divestitures within the period prescribed in the proposed Final Judgment, Paragraph V(A) of the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, Paragraph V(D) of the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. Paragraph V(F) of the proposed Final Judgment requires that, after his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestitures. Paragraph V(G) of the proposed Final Judgment requires that, 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, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

B. Notification

Section XI of the proposed Final Judgment requires Defendants to provide notification to the Antitrust Division of certain proposed acquisitions not otherwise subject to filing under the Hart-Scott-Rodino Act, 15 U.S.C 18a (the ''HSR Act''), and in the same format as, and per the instructions relating to the notification required under that statute. The notification requirement applies in the case of any direct or indirect acquisitions of any assets related to the production and sale of DOT-qualified coarse aggregate in Knox, Loudon, Jefferson, Grainger, Washington, Sullivan, Carter, and Unicoi Counties in Tennessee, or Washington County, Virginia, during the term of the proposed Final Judgment. Section XI further provides for waiting periods and opportunities for the United States to obtain additional information similar to the provisions of the HSR Act before such acquisitions can be consummated.

C. Enforcement and Expiration of the Final Judgment

The proposed Final Judgment contains provisions designed to promote compliance and make the enforcement of Division consent decrees as effective as possible. Paragraph XIV(A) provides

that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XIV(B) of the proposed Final Judgment further provides that should the Court find in an enforcement proceeding that Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of the proposed Final Judgment, Paragraph XIV(B) requires Defendants to reimburse the United States for attorneys' fees, experts' fees, or costs incurred in connection with any enforcement effort.

Finally, Section XV of the proposed Final Judgment provides that the Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

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

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

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to:

Maribeth Petrizzi, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW, Suite 8700, Washington, DC 20530.

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

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

Plaintiffs considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. Plaintiffs could have continued the litigation and sought preliminary and permanent injunctions against Vulcan's acquisition of Aggregates USA. Plaintiffs are satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the production and sale of DOT-qualified coarse aggregate in the Relevant Areas. Thus, the proposed Final Judgment would achieve all or substantially all of the relief Plaintiffs 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. *U.S. Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the

complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

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

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *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 U.S. Airways,* 38 F. Supp. 3d at 74 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft,* 56 F.3d at 1461); *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 U.S. Airways,* 38 F. Supp. 3d at 74 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable; *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 75 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. 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] A court can make its public interest determination based on the competitive impact statement and

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court 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).

[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.,* No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (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.'').

response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 75.

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: December 22, 2017.

Respectfully Submitted,

/s/

Jay D. Owen,

United States Department of Justice, Antitrust Division, Defense, Industrials, and Aerospace Section, 450 Fifth Street NW, Suite 8700, Tel.: (202) 598–2987, Washington, DC 20530, Fax: (202) 514–9033, Email: jay.owen@usdoj.gov.

[FR Doc. 2018–00578 Filed 1–12–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement: United States v. TransDigm Group Incorporated

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *TransDigm Group Incorporated,* Civil Action No. 1:17–cv–2735. On December 21, 2017, the United States filed a Complaint alleging that TransDigm Group Incorporated's (TransDigm) February 2017 acquisition of SCHROTH Safety Products GmbH and substantially all the assets of Takata Protection Systems, Inc. (collectively, ''SCHROTH'') from Takata Corporation violated Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment, filed at the same time as the Complaint, requires TransDigm to divest the entirety of SCHROTH.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.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, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Maribeth Petrizzi, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530 (telephone: 202–307–0924).

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Department of Justice, Antitrust Division, 450 5th Street NW, Suite 8700, Washington, DC 20530, Plaintiff, v. *TransDigm Group Incorporated, 1301 East 9th Street, Suite 3000, Cleveland, Ohio 44114,* Defendant.

Civil Action No.: 1:17–cv–2735

Judge: Amy Berman Jackson

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action for equitable relief against defendant TransDigm Group Incorporated (''TransDigm'') to remedy the harm to competition caused by TransDigm's acquisition of SCHROTH Safety Products GmbH and substantially all the assets of Takata Protection Systems, Inc. from Takata Corporation (''Takata''). The United States alleges as follows:

I. NATURE OF THE ACTION

1. In February 2017, TransDigm acquired SCHROTH Safety Products GmbH and substantially all the assets of Takata Protection Systems, Inc. (collectively, ''SCHROTH'') from Takata. TransDigm's AmSafe, Inc. (''AmSafe'') subsidiary is the world's dominant supplier of restraint systems used on commercial airplanes. Prior to the acquisition, SCHROTH was AmSafe's closest competitor and, indeed, its only meaningful competitor for certain types of restraint systems.

2. Restraint systems are critical safety components on every commercial airplane seat that save lives and reduce injuries in the event of turbulence, collision, or impact. There are a wide range of restraint systems used on commercial airplanes, including traditional two-point lapbelts, three-point shoulder belts, technical restraints, and more advanced ''inflatable'' restraint systems such as airbags. The airplane type, seat type, and seating configuration dictate the proper restraint type for each airplane seat.

3. Prior to the acquisition, SCHROTH was a growing competitive threat to AmSafe. Until 2012, AmSafe, the long-standing industry leader, was nearly unrivaled in the markets for restraint systems used on commercial airplanes. Certification requirements and other entry barriers reinforced AmSafe's position as the dominant supplier to the industry. However, beginning in 2012, after being acquired by Takata, SCHROTH embarked on an ambitious plan to capture market share from AmSafe by competing with AmSafe on price and heavily investing in research and development of new restraint technologies. Over the next five years, the increasing competition between AmSafe and SCHROTH resulted in lower prices for restraint system products for commercial airplanes and the development of innovative new restraint technologies such as inflatable restraints. TransDigm's acquisition of SCHROTH removed SCHROTH as an independent competitor and eliminated the myriad benefits that customers had begun to realize from competition in this industry.

4. Accordingly, TransDigm's acquisition of SCHROTH is likely to substantially lessen competition in the development, manufacture, and sale of restraint systems used on commercial airplanes worldwide, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and should be enjoined.

II. DEFENDANT AND THE TRANSACTION

5. TransDigm is a Delaware corporation headquartered in Cleveland, Ohio. TransDigm operates as a holding company and owns over 100 subsidiaries. Through its subsidiaries, TransDigm is a leading global designer, manufacturer, and supplier of highly engineered airplane components. TransDigm's fiscal year 2016 revenues were approximately $3.1 billion. TransDigm is the ultimate parent company of AmSafe, a Delaware corporation headquartered in Phoenix, Arizona. AmSafe develops, manufactures, and sells a wide range of restraint systems used on commercial airplanes. AmSafe had global revenues of approximately $198 million in fiscal year 2016.

6. Takata is a global automotive and aerospace parts manufacturer based in Japan. Takata was the ultimate parent entity of SCHROTH Safety Products GmbH, a German limited liability corporation base in Arnsberg, Germany, and Takata Protection Systems, Inc., a