DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Amcor Limited and Bemis Company, Inc.; 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* v. *Amcor Limited and Bemis Company, Inc.,* Civil Action No. 1:19–cv–01592–TNM. On May 30, 2019, the United States filed a Complaint alleging that Amcor Limited's proposed acquisition of Bemis Company, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Amcor to divest medical flexible packaging assets, including facilities in Ashland, Massachusetts; Milwaukee, Wisconsin; and Madison, Wisconsin, along with certain tangible and intangible assets.

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, N.W., Suite 8700, Washington, D.C. 20530, Plaintiff, v. *AMCOR LIMITED, Thurgauerstrasse 34, CH-8050, Zurich, Switzerland,* and *BEMIS COMPANY, INC., One Neenah Center, Neenah, WI 54957,* Defendants.

Civil Action No.: 1:19-cv-01592-TNM

Judge: Hon. Trevor N. McFadden

COMPLAINT

The United States of America (''United States''), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants Amcor Limited (''Amcor'') and Bemis Company, Inc. (''Bemis'') to enjoin Amcor's proposed acquisition of Bemis. The United States complains and alleges as follows:

I. NATURE OF THE ACTION

1. Pursuant to a Transaction Agreement dated August 6, 2018, Amcor proposes to acquire all of the shares of Bemis for $6.8 billion, making the combined company the largest flexible packaging manufacturer in the world. Hospitals rely on flexible medical packaging to preserve the sterility of surgical tools, implants such as artificial hips, and a host of other medical devices. Improper packaging threatens the health of patients by allowing contamination from hazardous microbes and raises the cost of healthcare by exposing medical facilities to unnecessary risk.

2. In the United States, Amcor and Bemis are two of only three significant suppliers of three medical packaging products critical to the safe transportation and use of medical devices: heat-seal coated medical-grade Tyvek rollstock (''coated Tyvek''), heat-seal coated medical-grade paper rollstock (''coated paper''), and heat-seal coated medical-grade Tyvek die-cut lidding (''die-cut lids''). Tyvek is a spinbonded material made from high-density polyethylene fibers, while paper is made from cellulose fibers. Both coated Tyvek and coated paper are wound onto a roll (''rollstock'') for easy transport and later conversion into finished medical packaging. Pouches and bags made from coated Tyvek, for example, are used to package surgical kits and cardiac catheters, while coated paper pouches and bags are used to package gauze and other wound care products. Coated Tyvek also is a necessary input to die-cut lids when the lids are used by medical device manufacturers to package and transport heavy, expensive, sharp, or bulky devices such as implants or pacemakers.

3. The proposed acquisition will eliminate competition between Amcor and Bemis to supply these products to customers and likely lead to increased prices. As a result, the proposed acquisition likely would substantially lessen competition in the development, production, and sale of coated Tyvek, coated paper, and die-cut lids for medical use in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be enjoined.

II. THE PARTIES

4. Amcor, a global packaging manufacturer, is organized under Australian law and is headquartered in Zurich, Switzerland. In 2018, Amcor had total sales of over $9 billion, including approximately $288 million in sales of flexible packaging for medical use in the United States.

5. Bemis, a global packaging manufacturer, is a Missouri corporation headquartered in Neenah, Wisconsin. In 2018, Bemis had total sales of over $4 billion, including approximately $260.9 million in sales of flexible packaging for medical use in the United States.

III. JURISDICTION AND VENUE

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

7. Defendants themselves, or through wholly-owned subsidiaries, produce and sell coated Tyvek, coated paper, and die-cut lids in the flow of interstate commerce. Defendants' activities in the development, production, and sale of these products substantially affect interstate commerce. This Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

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

IV. INDUSTRY BACKGROUND

9. Medical flexible packaging protects medical devices from dangerous microbes and particulates that can cause medical complications and risk patient safety. Medical devices used every day in hospitals, medical offices, and labs—ranging from a patient's gown to a syringe or an orthopedic implant—are sterilized after they have been packaged and must remain that way until use. With lives potentially at stake if a sterile barrier fails, flexible packaging manufacturers use complex chemical engineering and substantial manufacturing know-how and expertise to make their packaging products.

10. Of the many materials available to make medical flexible packaging, two—

medical grade paper and Tyvek—are each necessary for packaging certain medical devices. Both products can be sold in rollstock form, or as a ''converted,'' or finished, packaging product, such as a die-cut lid, a bag, or a pouch.

11. Unlike any other medical flexible packaging materials, Tyvek and medical grade paper are compatible with all methods of medical device sterilization, including sterilization by ethylene-oxide gas (''EtO''), which requires a ''breathable,'' or porous, package. To limit the risk of contamination, medical devices are sterilized after they are packaged, and the most common way to sterilize a medical device is with EtO. Tyvek and paper allow EtO gas to enter and exit while maintaining a sterile barrier. Other breathable materials have been developed, but no other breathable material is currently used to package medical devices.

12. Tyvek often is preferred by medical device manufacturers over any other flexible packaging material because it is extremely durable. Once packaged and sterilized, medical devices are transported to hospitals, labs, or doctors' offices and stored until use. During transport and storage, medical device manufacturers rely on a device's packaging to withstand rough handling and preserve a sterile barrier. Because Tyvek is the most tear and puncture resistant medical flexible packaging material on the market, it is frequently used to protect bulky, heavy, or expensive devices such as hip implants and other orthopedics.

13. Medical device manufacturers require a heat-seal coating to be applied to Tyvek and paper when those materials are used to package certain medical devices or in conjunction with certain medical packaging conversion equipment. Developing a coating formula and perfecting the application of coating to Tyvek or paper is complicated and requires substantial know-how and expertise. Coatings are trade secrets and difficult to engineer and replicate. If a coating is not applied properly, a package's seal can fail, rendering the medical device inside hazardous to use.

14. When a medical device is used in a medical procedure, a number of risks arise that can compromise a device's function or sterility. Heat-seal coatings reduce the risk of contamination because they ensure that Tyvek and paper peel cleanly from the remainder of the package and do not generate particulates when opened. If the package is not easy to open, a medical professional could drop the device, touch it inadvertently, or cause it to touch the outside of the package or something else that is not sterile. Alternatively, if, at the time of opening, the packaging material releases particulates, those particulates can contaminate the device.

15. Coatings also may make certain seals between different materials possible. For example, hip implants are normally packaged in rigid trays with die-cut lids made of Tyvek that are cut to match the shape of the tray. Because of the combined durability of a rigid tray and coated Tyvek, the pairing often is preferred for packaging expensive, heavy, or unusually-shaped medical devices. Sealing Tyvek to a rigid tray, however, is not possible unless the Tyvek is coated. A coating may also make it possible for sealing to occur at a broader range of temperatures, which makes coatings particularly important for medical device manufacturers or converters with older equipment.

16. The Food and Drug Administration has established strict regulatory standards for evaluating, selecting, and using medical packaging materials. Medical device manufacturers have an obligation to ensure that their medical flexible packaging meets these standards, which requires qualification of the conditions in which a product will be manufactured and validation of the packaging's forming, sealing, and assembly processes.

17. Before a packaged medical device goes to market, the medical device manufacturer must qualify the packaging supplier's facilities, raw materials, and manufacturing line. Additionally, the combination of device and packaging must be validated by the medical device manufacturer. The validation process requires numerous tests, including quality testing, sterilization testing, seal-strength testing, real-time aging simulations, and shipping and handling simulations. These safeguards protect patients from hazardous microbes, bacteria, or particulates that can breach the package's sterile barrier during transport, storage, or opening.

18. Qualification and validation of new packaging for a medical device can take years to complete and cost thousands of dollars. Even small changes to an existing package can necessitate requalification or revalidation.

V. RELEVANT MARKETS

A. Product Markets

a. Heat-Seal Coated Medical-Grade Tyvek Rollstock

19. Heat-seal coated medical-grade Tyvek rollstock (''coated Tyvek'') is a properly defined relevant product market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

20. There are no substitutes for coated Tyvek for certain packaging applications. Uncoated Tyvek lacks the peelability, sealability, and particulate control of coated Tyvek and does not adhere to a rigid tray. Medical-grade paper in coated or uncoated form also generally is not a substitute for coated Tyvek because medical-grade paper lacks the same degree of durability that Tyvek delivers.

21. In the event of a small but significant non-transitory price increase for coated Tyvek, customers would not substitute away from coated Tyvek in sufficient volume so as to render the price increase unprofitable.

b. Heat-Seal Coated Medical Grade Paper Rollstock

22. Heat-seal coated medical-grade paper rollstock (''coated paper'') is a properly defined relevant product market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

23. There are no substitutes for coated paper for certain packaging applications. Uncoated paper lacks the peelability and particulate control of coated paper. Tyvek rollstock in coated or uncoated form also generally is not a substitute for applications that rely upon coated paper, because the price of Tyvek is so much higher than the price of coated paper that a customer would not switch to Tyvek even considering Tyvek's superior durability.

24. In the event of a small but significant non-transitory price increase for coated paper, customers would not substitute away from coated paper in sufficient volume so as to render the price increase unprofitable.

c. Heat-Seal Coated Tyvek Die-Cut Lids

25. Heat-seal coated Tyvek die-cut lids (''die-cut lids'') are a properly defined relevant product market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

26. There are no substitutes for die-cut lids when used for certain applications. Uncoated materials are not substitutes for die-cut lids because coating is necessary for a lid to adhere to a rigid tray. Similarly, lids made of paper are not a substitute for die-cut lids because paper lids lack the same degree of durability as Tyvek.

27. In the event of a small but significant non-transitory price increase for die-cut lids, customers would not substitute away from die-cut lids in sufficient volume so as to render the price increase unprofitable.

B. Geographic Market

28. The relevant geographic market for each of the relevant product markets is the United States. Producers of the relevant products can target customers based on their locations. Due to shipping costs and unique specifications there is no ability to arbitrage. Therefore, the relevant geographic market for each relevant product market is defined as sales made to customers in the United States.

VI. ANTICOMPETITIVE EFFECTS

29. The proposed acquisition of Bemis by Amcor likely would substantially lessen competition for U.S. customers the three relevant product markets. Amcor, Bemis, and one other company are the three primary competitors in each of these markets. The Defendants' combined share is over 70% in coated Tyvek and coated paper, and over 50% in die-cut lids.

30. Market concentration is a useful indication of how rigorous competition is in a market and whether a transaction is likely to cause competitive effects. Concentration in relevant markets is typically measured by the Herfindahl-Hirschman Index (or ''HHI''). Markets in which the HHI is in excess of 2,500 points are considered highly concentrated. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, *Horizontal Merger Guidelines* ¶ 5.3 (revised August 19, 2010) (''Merger Guidelines''), *https://www.justice.gov/atr/horizontal-merger-guidelines-08192010*.

31. As demonstrated in the table below, which is based on Defendants' 2017 revenues, each of these markets is highly concentrated and would become significantly more concentrated as a result of the proposed acquisition.

Market	Pre-acquisition HHI	Post-acquisition HHI	HHI delta
Coated Tyvek	3300	More than 5800 ..	2500
Coated Paper	3900	8000	4200
Die-Cut Lids	3600	4900	1300

32. The proposed acquisition leads to an increase in the HHI of more than 200 points in each of these product markets, making the acquisition presumptively harmful under the Horizontal Merger Guidelines.

33. The transaction also eliminates head-to-head competition between Amcor and Bemis and threatens the benefits that customers have realized from that competition in the form of lower prices and better service. Due to Amcor and Bemis's collective overall expertise in meeting the needs of customers and other technical and commercial factors, including among other things, price, quality, and the ability to pass each customer's rigorous qualification and validation procedures, Amcor and Bemis are frequently viewed by each other and by customers as two of the three most significant competitors in the market.

34. Amcor and Bemis competed against each other to win business, and they proposed pricing and products to customers that reflected an awareness of that competition. As a result, the ability of each company to raise prices, reduce quality, or limit technical support services to Medical Device Manufacturers has been constrained by the possibility of losing business to the other. For many customers, Amcor and Bemis are their two best substitutes. By eliminating Bemis as a competitor, Amcor likely would gain the incentive and ability to increase its bid prices, reduce quality, and reduce technical support below what it would have been absent the acquisition.

35. Customers have benefitted from competition between Amcor and Bemis through lower prices and higher quality. The combination of Amcor and Bemis would eliminate this competition and future benefits to customers and likely would result in harmful unilateral price effects.

VII. ENTRY

36. Entry is unlikely to prevent or remedy the acquisition's likely anticompetitive effects. Entry into the development, production, and sale of the foregoing relevant products is costly and unlikely to be timely or sufficient to prevent the harm to competition caused by the elimination of Bemis as an independent supplier.

37. Barriers to entry include the significant technical expertise required to design a coating and production process that satisfies customer requirements. A new supplier would first need to develop and produce a heat-seal coating sufficient to meet the rigorous standards set by potential customers. The supplier would then need to develop a system to apply the coating to meet customers' rigorous standards. In addition, the technical know-how necessary to pass customers' qualification tests is difficult to obtain and is learned through a time-consuming trial-and-error process.

38. Even after a new entrant has developed the necessary capabilities, the entrant's product must be qualified and validated by potential customers, demonstrating that its products can meet rigorous quality and performance standards. These qualification and validation requirements discourage entry by imposing substantial costs on potential suppliers with no guarantee that their products will be successful in the market. They also take substantial time—in some cases, years—to complete.

VIII. VIOLATIONS ALLEGED

39. The acquisition of Bemis by Amcor is likely to lessen competition substantially in each of the relevant markets set forth above in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

40. The transaction will likely have the following anticompetitive effects, among others:

a. actual and potential competition between Amcor and Bemis in the relevant markets will be eliminated;

b. competition generally in the relevant markets will be substantially lessened; and

c. prices in the relevant markets will likely increase.

41. The United States requests that this Court:

a. adjudge and decree Amcor's acquisition of Bemis to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. enjoin Defendants and all persons acting on their behalf from consummating the proposed acquisition of Bemis by Amcor or from entering into or carrying out any other agreement, plan, or understanding the effect of which would be to combine Amcor with Bemis;

c. award the United States its costs of this action; and

d. grant the United States such other relief as the Court deems just and proper.

Dated: May 30, 2019

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. *AMCOR LIMITED* and *BEMIS COMPANY, INC.,* Defendants.

Case No.: 1:19-CV-01592-TNM
JUDGE: Hon. Trevor N. McFadden

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on May 30, 2019, the United States and Defendants, Amcor Limited, and Bemis Company, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

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

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

AND WHEREAS, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

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

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

I. JURISDICTION

The 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 Tekni-Plex, Inc. or the entity to which Defendants divest the Divestiture Assets.

B. ''Amcor'' means Defendant Amcor Limited, organized under the laws of Australia and headquartered in Zurich, Switzerland, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Bemis'' means Defendant Bemis Company, Inc., a Missouri corporation headquartered in Neenah, Wisconsin, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. Tekni-Plex means Tekni-Plex, Inc., a Delaware corporation with its headquarters in Wayne, Pennsylvania, 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. All interests and rights the Defendants hold in the facilities located at the following addresses:

a. 6161 North 64th Street, Milwaukee, Wisconsin 53218 (''Milwaukee Facility'');

b. 150 Homer Avenue, Ashland, Massachusetts 01721 (''Ashland Facility''); and

c. 4101 Lien Road, Madison, Wisconsin 53704 (''Madison Facility'');

2. All tangible assets that comprise the Medical Flexibles Divestiture Business including, but not limited to, research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, qualifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records; and all other records; and

3. All intangible assets used in the design, development, production, distribution, sale, or service of Medical Flexibles Packaging, including, but not limited to, all patents; licenses and sublicenses; intellectual property; copyrights; trademarks; trade names; service marks; product codes; service names; technical information; computer software 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 research data concerning historic and current research and development efforts relating to the Divestiture Assets, including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments.

F. ''Medical Flexibles Divestiture Business'' means all Amcor business conducted at the Milwaukee Facility and the Ashland Facility, and all Amcor business conducted at the Madison Facility in the design, development, production, distribution, sale, or service of Medical Flexible Packaging.

G. ''Medical Flexible Packaging'' means any package the shape of which can be readily changed for medical uses and includes (i) heat-seal coated Tyvek rollstock, (ii) heat-seal coated Tyvek die-cut lids, and (iii) heat-seal coated paper rollstock.

H. ''Core-Peel Technology'' means all intellectual property, whether or not patented, relating to Core-Peel technology owned by Amcor, including (1) the International Patent Application Number PCT/EP2017/082146 (the ''Application'') and all know-how relating to the subject matter described therein and (2) any patent related to

Core-Peel Technology that is granted to Amcor in the United States, including all patents granted in the United States that are part of the ''patent family'' of the patent.

I. ''Tyvek,'' a registered trademark of DuPont, means spinbonded material made from high-density polyethylene fibers.

III. APPLICABILITY

A. This Final Judgment applies to Amcor and Bemis, 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, Defendants shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. DIVESTITURES

A. Defendants are ordered and directed, within 30 calendar days after the entry of the Hold Separate Stipulation and Order in this matter to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total and shall notify the Court in such circumstances. 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 Tekni-Plex, Defendants promptly shall make known, by usual and customary means, 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. 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 information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the design, development, production, distribution, sale, or service of Medical Flexible Packaging 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 design, development, production, distribution, sale, or service of Medical Flexible Packaging.

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

E. Amcor may elect to sublease a portion of the Madison Facility for the sole purpose of continuing its current production, distribution, sale, or servicing of products other than Medical Flexible Packaging. If Amcor elects to enter into such a sublease, Amcor must, within six (6) months of the divestiture required under this Final Judgment, construct a permanent, structural partition dividing the Madison Facility into two distinct and separate units.

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. At the option of the Acquirer, Defendants shall enter into a supply agreement for Tyvek sufficient to meet all or part of the Acquirer's needs for a period of up to twelve (12) months. The United States, in its sole discretion, may approve one or more extensions of this agreement, for a total of up to an additional twelve (12) months. If the Acquirer seeks an extension of the term of this agreement, Defendants shall notify the United States in writing at least three (3) months prior to the date the agreement expires. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions for Tyvek.

I. Defendants shall grant a perpetual, royalty-free license to the Acquirer to use Core-Peel technology.

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

K. Unless the United States otherwise consents in writing, the divestiture 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, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business of the design, development, production, distribution, sale, and service of Medical Flexible Packaging. If any of the terms of an agreement between Defendants and the Acquirer to effectuate the divestitures required by the Final Judgment varies from the terms of this Final Judgment then, to the extent that Defendants cannot fully comply with both terms, this Final Judgment shall determine Defendants' obligations. The divestiture, 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, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of the design, development, production, distribution, sale, and service of Medical Flexible Packaging; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. APPOINTMENT OF 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 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 divestiture to an Acquirer acceptable to the United States, in its sole discretion, 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 the 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 agents, investment bankers, attorneys, accountants, or consultants, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such agents or consultants 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 any of 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 that provides the Divestiture Trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished, but the timeliness of the divestiture 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 fourteen (14) calendar days of the 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 agents or consultants, 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 divestiture. The Divestiture Trustee and any agents or consultants 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 provide or develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets; 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 divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. 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 divestiture 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 divestiture; (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has 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, the United States may recommend the Court appoint a substitute Divestiture Trustee.

VI. NOTICE OF PROPOSED DIVESTITURE

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 divestiture required herein, shall notify the United States of any proposed divestiture 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 divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, 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, in its sole discretion, it objects to the Acquirer or any other aspect of the proposed divestiture. If the United

States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under 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, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or Section V of this Final Judgment.

VIII. HOLD SEPARATE

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by the Court. Defendants shall take no action that would jeopardize the divestiture ordered by the Court.

IX. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or 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 divestiture has 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, including agents and consultants 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 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, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time that Defendants furnish information or documents 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. LIMITS ON ACQUISITIONS AND COLLABORATIONS

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment. In addition, Defendants and Acquirer shall not, without the prior written consent of the United States, enter into any new collaboration or expand the scope of any existing collaboration involving any of the Divestiture Assets during the term of this Final Judgment. The decision whether or not to consent to a collaboration shall be within the sole discretion of the United States.

XII. RETENTION OF JURISDICTION

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

XIII. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the 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 Defendants waive any

argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that 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. In connection with any successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved prior to litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four (4) years after the expiration of the Final Judgment pursuant to Section XIV, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action under this Section, (2) any appropriate contempt remedies, (3) any additional relief needed to ensure the Defendant complies with the terms of the Final Judgment, and (4) fees or expenses as called for in Paragraph XIII(C).

XIV. EXPIRATION OF FINAL JUDGMENT

Unless the 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.

XV. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, 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 responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

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

_____

United States District Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. *AMCOR LIMITED* and *BEMIS COMPANY, INC.,* Defendants.

Case No.: 1:19-CV-01592-TNM
JUDGE: Hon. Trevor N. McFadden
Deck Type: Antitrust

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On August 6, 2018, Defendants Amcor Limited (''Amcor'') and Bemis Company, Inc. (''Bemis'') entered into a Transaction Agreement, pursuant to which Amcor proposes to acquire all of the shares of Bemis for $6.8 billion. The United States filed a civil antitrust Complaint on May 30, 2019, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition in the development, production, and sale of heat-seal coated medical-grade Tyvek (''coated Tyvek''), heat-seal coated medical-grade paper (''coated paper''), and heat-seal coated Tyvek die-cut lids (''die-cut lids''), in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition likely would result in higher prices and lower-quality medical flexible packaging products.

At the same time the Complaint was filed, the United States 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, Amcor is required to divest its Ashland, Massachusetts, Milwaukee, Wisconsin, and Madison, Wisconsin facilities, along with certain tangible and intangible assets (collectively, ''Divestiture Assets''). Under the terms of the Hold Separate, Amcor will take certain steps to ensure that the Divestiture Assets are operated as a competitively independent, economically viable and ongoing business concern, that will remain independent and uninfluenced by Amcor, and that competition is maintained during the pendency of the ordered divestitures.

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

Amcor and Bemis are global manufacturers of flexible packaging, rigid containers, specialty cartons, closures, and services for the food, beverage, pharmaceutical, medical-device, home, and personal care industries. Amcor, which is headquartered in Zurich, Switzerland, sold more than $9 billion in packaging products in 2018, including approximately $288 million in sales of flexible packaging for medical use (''Medical Flexible Packaging'') in the United States. Bemis, which is headquartered in Neenah, Wisconsin, sold more than $4 billion in packaging products in 2018, including approximately $260.9 million in sales of Medical Flexible Packaging in the United States.

In the United States, Amcor and Bemis are two of only three significant suppliers of three highly-engineered

medical packaging products that protect medical devices throughout their journey from a medical device manufacturer's facility into the hands of a medical professional: heat-seal coated medical-grade Tyvek rollstock (''coated Tyvek''), heat-seal coated medical-grade paper rollstock (''coated paper''), and heat-seal coated medical-grade Tyvek die-cut lidding (''die-cut lids''). In 2017, Amcor and Bemis represented more than 70% of sales in coated Tyvek and coated paper in the United States and over 50% of sales in die-cut lids in the United States. The proposed transaction, as initially agreed to by Defendants, would lessen competition substantially for these medical packaging products, which are the subject of the Complaint and proposed Final Judgment filed by the United States on May 30, 2019.

B. The Competitive Effects of the Transaction

An extensive investigation by the United States revealed that Amcor's proposed acquisition of Bemis likely would result in increased prices and lower-quality service for U.S. customers purchasing coated Tyvek, coated paper, and die-cut lids. Amcor and Bemis are two of only three primary suppliers of these products, and for many customers, they are each other's closest competitor. The transaction will harm customers by eliminating the benefits of competition that these customers have realized due to head-to-head competition.

1. *Relevant Markets*

As alleged in the Complaint, coated Tyvek, coated paper, and die-cut lids are relevant product markets under Section 7 of the Clayton Act. Of the many materials used in Medical Flexible Packaging, medical-grade paper and Tyvek have particular properties—breathability (*i.e.*, the ability to be permeated by ethylene oxide gas during sterilization) and, for Tyvek, durability—that make them uniquely suited for sterilizing and packaging certain medical devices. Medical-grade paper and Tyvek may be wound on a roll (''rollstock'') or ''converted'' into a finished product such as a lid, bag, or pouch, and both materials may be heat-seal coated to impart additional properties on a medical device's package. Heat-seal coatings may be required by medical device manufacturers for certain packaging applications, to reduce the risks of contamination that arise when a package is difficult to open and to make seals between different materials possible.

There are no substitutes for coated Tyvek, coated paper, or die-cut lids for certain packaging applications. Alternatives to coated Tyvek lack the necessary peelability, sealability, and particulate control attributes, and do not adhere to rigid trays. Alternatives to coated paper lack the necessary peelability and particulate control attributes, or are more expensive than coated paper. Finally, alternatives to die-cut lids lack the durability or the ability to adhere that lidding made of Tyvek possesses.

The Complaint alleges that the relevant geographic market for each of the relevant product markets is the United States. Producers of Medical Flexible Packaging know the locations of their customers and can adjust their pricing based on the availability of alternatives to a customer at a particular location. Due to shipping costs and unique specifications, there is no ability for customers to arbitrage. Therefore, the relevant geographic market for each relevant product market is defined as sales made to customers in the United States.

2. *Competitive Effects*

As explained in the Complaint, the proposed acquisition would eliminate competition between Amcor and Bemis to supply coated Tyvek, coated paper, and die-cut lids, resulting in higher prices and lower-quality products. The relevant markets are highly concentrated and would become significantly more concentrated as a result of the proposed acquisition, making the transaction presumptively harmful under the Horizontal Merger Guidelines. Amcor and Bemis have established themselves as two of only three suppliers in the market with the necessary expertise to meet the price, quality, technical service, and regulatory rigors of manufacturing the relevant products. Competition between the two companies has constrained the ability of either company to raise prices, reduce quality, or limit technical support to customers. These constraints would no longer exist after the proposed acquisition is consummated.

3. *Entry*

According to the Complaint, entry is unlikely to prevent or remedy the anticompetitive effects caused by the elimination of Bemis as an independent supplier. An entrant first would need a high-quality coated paper, coated Tyvek, or die-cut lid product to sell. Creating such a product would require development of a coating formula and a methodology for applying coating that would meet the rigorous standards of medical device manufacturers. The quality of the entrant's product then would need to be proven through a series of qualification and validation exercises that can take years to complete. These qualification and validation requirements discourage entry by imposing substantial costs on potential suppliers with no guarantee that their products will be successful in the market.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestitures required by the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition with respect to coated Tyvek, coated paper, and die-cut lids by establishing a new, independent, and economically viable competitor. The proposed Final Judgment requires Defendants, within 30 calendar days after the entry of the Hold Separate by the Court, to divest the Divestiture Assets in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and must cooperate with prospective purchasers.

The proposed Final Judgment requires Defendants to divest the Divestiture Assets to an Acquirer acceptable to the United States, in its sole discretion. Because the Divestiture Assets are distributed across multiple sites, the United States required an upfront buyer to provide additional certainty that the transaction can be accomplished without disruption to the Medical Flexible Packaging business. The United States has approved Tekni-Plex, Inc. as the Acquirer of the Divestiture Assets. Tekni-Plex, Inc. is an experienced and well-known flexible packaging and medical product supplier.

The proposed Final Judgment requires the divestitures of all interests and rights in three Amcor facilities involved in the design, development, production, distribution, sale, or service of Medical Flexible Packaging: one in Ashland, Massachusetts (''Ashland Facility''), one in Milwaukee, Wisconsin (''Milwaukee Facility''), and one in Madison, Wisconsin (''Madison Facility''). The Divestiture Assets include all tangible and intangible assets at Amcor's Milwaukee and Ashland Facilities, as well as all tangible and intangible Medical Flexible Packaging assets in the

Madison Facility.[1] The divestitures of the Ashland, Milwaukee, and Madison Facilities will eliminate the anticompetitive effects of the acquisition without disrupting the supply chain of existing medical device manufacturer customers of those facilities, which otherwise would require those medical device manufacturers to revalidate their packaging or requalify alternative facilities, raw materials, or manufacturing lines.

Paragraph IV(E) of the proposed Final Judgment provides that, for the sole purpose of manufacturing products other than Medical Flexible Packaging (for example, food packaging or personal care packaging), Amcor may sublease a portion of the Madison Facility. This provision ensures that the non-medical customers that Amcor currently serves from the Madison Facility can continue to be served from that facility. If production of those customers' products were instead moved to another facility, most such customers would be forced to incur significant expenses and supply disruptions associated with revalidating packaging or requalifying alternative facilities, raw materials, or manufacturing lines. These requalification procedures can take significant time to complete and create substantial supply risks to customers. Requalification also would likely create a long-term entanglement between Amcor and the Acquirer during the period in which the business was transitioned out of the Madison facility to a different Amcor facility. To avoid these issues, during the term of the Final Judgment, Amcor is permitted under the Final Judgment to continue its manufacturing operations in flexible packaging for food and other products other than those relating to Medical Flexible Packaging. If Amcor chooses to enter into a sublease, however, Amcor must, within six months of the divestitures required by the Proposed Final Judgment, construct a permanent, structural partition that physically isolates Amcor's operations from the Acquirer's. The partition ensures that Amcor and the Acquirer's businesses will be physically separated and that each company's competitively sensitive information will remain protected. Because Amcor and the Acquirer will not be producing competing products at the same facility during the term of the Final Judgment, there is no risk of competitive information sharing.

To facilitate the Acquirer's immediate use of the Divestiture Assets, Paragraph IV(H) of the proposed Final Judgment provides the Acquirer with the option to enter into a supply agreement for Tyvek sufficient to meet the Acquirer's needs for a period of up to 12 months. The United States may approve one or more extensions of the supply agreement for a total of up to an additional 12 months.

Paragraph IV(A) of the proposed Final Judgment requires Amcor to complete its divestitures within 30 days after the entry of the Hold Separate Stipulation and Order. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and must cooperate with prospective purchasers.

In the event that Defendants do not accomplish the divestitures within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures.

The proposed Final Judgment also contains provisions designed to promote compliance and make the enforcement of the Final Judgment as effective as possible. Paragraph XIII(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 XIII(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore all competition that would otherwise be harmed by the merger. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XIII(C) of the proposed Final Judgment 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 XIII(C) provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved prior to litigation, that Defendant agrees to reimburse the United States for attorneys' fees, experts' fees, or costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Paragraph XIII(D) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated under Section XIV. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XIV of the proposed Final Judgment provides that the Final Judgment shall expire ten years from the date of its entry, except that after five 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.

The divestitures of these assets to an Acquirer acceptable to the United States will eliminate the anticompetitive effects of the acquisition in the relevant markets by establishing a new, independent, and economically viable competitor.

[1] In addition to assets used to manufacture coated Tyvek, coated paper, and die-cut lids, the Divestiture Assets include other Medical Flexible Packaging manufacturing assets used to manufacture laminates and cold seal products. Paragraph IV(I) of the proposed Final Judgment also requires Amcor to grant a license to the Acquirer for current or future intellectual property rights in Core-Peel technology.

IV.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V.

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

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

The APPA provides a period of at least 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 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 5th St. N.W.
Suite 8700
Washington, D.C. 20530

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

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Defendant's acquisition of Bemis. The United States is satisfied, however, that the divestitures of assets described in the proposed Final Judgment will preserve competition for the provision of Medical Flexible Packaging in the relevant markets identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII.

STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-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); *United States v. U.S. Airways Grp, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 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'').

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 in the government's complaint, whether the Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether the Final Judgment may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the Final Judgment, 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. Instead:

> [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]

The United States' predictions with respect to the efficacy of the remedy are to be afforded deference by the Court. *See, e.g.*, *Microsoft*, 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case'''); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' (internal citations omitted)); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained in the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.''' *Microsoft*, 56 F.3d at 1461 (*quoting United States v. Western Elec. Co.*, 900 F.2d 283, 309 (D.C. Cir. 1990)).

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 75 (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.

In its 2004 amendments to the APPA,[3] Congress made clear its intent to preserve the practical benefits of utilizing consent Final Judgments 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 76 (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). This language explicitly wrote into the statute what Congress intended when it first 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). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000)).

VIII.

DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: June 14, 2019

Respectfully submitted,

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[2] *See also 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'').

[3] Pub. L. 108-237, § 221.

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Canon Inc. and Toshiba Corporation; 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* v. *Canon Inc. and Toshiba Corporation,* Civil Action No. 1:19–cv–01680. On June 10, 2019, the United States filed a Complaint alleging that Canon Inc. and Toshiba Corporation violated the premerger notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, in connection with Canon Inc.'s acquisition of Toshiba Medical Systems Corporation from Toshiba Corporation. The proposed Final Judgment, filed at the same time as the Complaint, requires the companies each to pay a civil penalty of $2.5 million and to implement HSR compliance programs and comply with inspection and reporting requirements, among other obligations imposed under the consent order.

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 Kenneth A. Libby, Special Attorney, United States, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW, CC–8404, Washington, DC