On January 29, 2020, the ALJ issued Order No. 10, the subject ID, granting the motion. The ID finds that the motion complies with the Commission's Rules and that no extraordinary circumstances warrant denying the motion. No petitions for review of the subject ID were filed.

The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: February 25, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–04109 Filed 2–27–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Olympus Growth Fund VI, L.P., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, 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. *Olympus Growth Fund VI, L.P., et al.,* Civil Action No. 1:20–cv–00464. On February 19, 2020, the United States filed a Complaint alleging that the proposed acquisition of the Plastics Division of DS Smith plc by Olympus Growth Fund VI, L.P., through its portfolio company Liqui-Box, 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 Defendants to divest all of DS Smith's Bag-in-Box (BiB) product lines that overlap with BiB product lines offered by Liqui-Box in the United States, including those for dairy, post-mix, smoothie, and wine.

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 Katrina Rouse, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530 (telephone: 202–598–2459).

Amy Fitzpatrick,

Counsel to the Senior Director of Investigations and Litigation.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, U.S. Department of Justice, Antitrust Division, 450 5th Street NW, Suite 8700, Washington, DC 20530, Plaintiff, v. *OLYMPUS GROWTH FUND VI, L.P., One Station Place, Stamford, CT 06902, LIQUI-BOX, INC., 901 E. Byrd Street, Richmond, VA 23219, and DS SMITH PLC, 350 Euston Road, London, NW1 3AX,* Defendants.

Civil Action No.: 1:20–cv–00464
Judge: Hon. Christopher Cooper

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 Olympus Growth Fund VI, L.P. (''Olympus''), Liqui-Box, Inc. (''Liqui-Box''), and DS Smith plc (''DS Smith'') to enjoin Olympus's proposed acquisition of DS Smith's Plastics Division (''DS Smith Plastics''), through Liqui-Box, a portfolio company of Olympus. The United States complains and alleges as follows:

I. Nature of the Action

1. Pursuant to a Stock Purchase Agreement dated March 5, 2019, Liqui-Box proposes to acquire DS Smith Plastics for approximately $500 million, making the combined company one of the largest bag-in-box (''BiB'') suppliers in the United States.

2. BiBs are engineered plastic bags used to store and dispense liquids such as milk, post-mix (*e.g.,* soda syrups and other beverage concentrates), smoothies, and wine. BiBs are made up of a single or multi-layer plastic film bag and an attached fitment, which is a plastic component used to facilitate the transfer of the liquids into and out of the bags. After a BiB is manufactured, it is shipped empty to the customer, who fills the BiB with liquid and then sells the filled BiB. Customers, such as dairies, soft-drink manufacturers, and other food producers, rely on BiBs to preserve and safely transport their liquids to restaurants, convenience stores, other food service operators, and retail outlets.

3. In the United States, Liqui-Box and DS Smith are two of only three significant suppliers of BiBs for nearly all end uses, including dairy, post-mix, and smoothies. Liqui-Box and DS Smith also are two of only four significant suppliers of BiBs for wine in the United States. The proposed acquisition will eliminate competition between Liqui-Box and DS Smith to supply these BiBs to customers and is likely to lead to increased prices, lower quality and service, and less innovation.

4. As a result, the proposed acquisition likely would substantially lessen competition for the development, manufacture, and sale of dairy, post-mix, smoothie, and wine BiBs 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 and the Transaction

5. Olympus, a fund managed by private equity firm Olympus Partners, is a Delaware limited partnership with headquarters in Stamford, Connecticut. In 2018, Olympus Partners had approximately $8.5 billion total capital under management between its different funds, with Olympus comprising approximately $2.3 billion of that total.

6. Liqui-Box, a company owned by Olympus, is a Delaware corporation with headquarters in Richmond, Virginia. Liqui-Box is a global manufacturer of packaging and packaging equipment, including BiBs, with four U.S. manufacturing facilities, as well as additional facilities across the world. In 2018, Liqui-Box had total sales of $177 million, including approximately $123 million in the United States.

7. DS Smith is a United Kingdom public limited company with headquarters in London, England. DS Smith is a global manufacturer of packaging, packaging equipment, and recycled paper. DS Smith operates DS Smith Plastics, a division that manufactures flexible packaging and dispensing solutions, rigid packaging, injection-molded products, and foam products. Among DS Smith Plastics' flexible packaging products are BiBs, which are primarily sold under the Rapak brand name in the United States. DS Smith Plastics has its U.S. headquarters in Romeoville, Illinois,

and operates five plants in the United States, as well as additional plants across the world. In 2018, DS Smith Plastics had total sales of $479 million, including approximately $137 million in sales of BiBs and other goods in the United States.

8. Pursuant to a Stock Purchase Agreement dated March 5, 2019, Liqui-Box agreed to acquire DS Smith Plastics for approximately $500 million.

III. Jurisdiction and Venue

9. 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.

10. Defendants develop, manufacture, and sell BiBs throughout the United States in the flow of interstate commerce. Defendants' activities in the development, manufacture, and sale of BiBs 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.

11. 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

12. BiBs are used to store and dispense liquids such as milk, post-mix, smoothies, and wine. The components of a BiB include a flexible plastic bag and an attached fitment. BiBs typically hold between one and six gallons of liquid, but they also come in smaller and larger sizes. The attached fitment facilitates the transfer of liquids into and out of the bag.

13. The flexible plastic bag component of a BiB is typically made up of one to five layers of film. The films are most often made of polyethylene (''PE''), but also can be made with ethylene vinyl alcohol (''EVOH'') or other materials, and are bound together using heat sealing. Customers require different numbers and types of layers to meet individual product demands. For example, the most basic bags consist of a single layer of PE that secures the liquid during transport. More sophisticated bags have additional layers of engineered film that add durability, metallization, and oxygen, moisture, or temperature resistance.

14. The fitment component of a BiB typically is made from resin using injection molding and attached to the flexible plastic bag component via heat sealing. The design of the fitment is determined by the liquid that will go into the bag and the method that will be used to dispense the liquid out of the bag. For example, if the BiB is used to dispense post-mix into a soda dispenser, the fitment will be designed to attach to a soda dispenser. The simplest fitment is a basic cap, which can be flipped off or unscrewed to pour out the liquid. Highly engineered fitments can have specialized elements such as a built-in push-tap feature or an oxygen barrier to provide resistance to the elements. Fitments are often protected by patents due to the specialized nature and high degree of engineering that can be required in fitment manufacturing.

15. BiBs are shipped to the customer who fills the BiB with liquid using a filler machine that the customer typically purchases or leases from the BiB supplier. The customer then ships the filled BiB to a store, restaurant, or other food processor. For example, a post-mix manufacturer seeking to distribute its post-mix to a convenience store would purchase BiBs and a filler machine from a BiB supplier, fill the BiBs with the post-mix at its own facility, and then ship the filled BiBs to the convenience store for use in the convenience store's dispensing machine.

16. BiBs are distinct from and have numerous advantages over other forms of packaging. For example, compared to rigid containers (*e.g.,* jugs and bottles) and cartons, which are the other primary forms of packaging used for storing and transporting liquids, BiBs are smaller and thus reduce storage space and shelf space, both when empty and filled. In addition, BiBs can be a more hygienic form of dispensing liquids because they can reduce user contact and thus contamination. Further, BiBs can keep their contents fresher for longer than other types of packaging by allowing for minimal contact with air. Finally, BiBs can be more economical because they have features that allow the user to get all the liquid out of the bag and result in less packaging waste when they are empty and disposed of.

V. Relevant Markets

A. Product Markets

1. Dairy BiBs

17. BiBs for dairy products hold liquids such as ice cream mix, yogurt, milk, and cream. Dairy BiBs are typically durable bags made from PE and often have a flip-cap or screw-off cap fitment. Dairy BiBs are designed to reduce the risk of contamination and extend shelf life.

18. There are no substitutes for dairy BiBs. Dairy BiBs provide dairy liquids to customers in an easy to use, inexpensive format that other packaging does not offer. For example, rigid containers require more storage space, may not keep the dairy liquid as fresh, and may have a higher risk of contamination. BiBs for other end uses cannot be substituted for dairy BiBs due to the unique specifications for dairy BiBs.

19. In the event of a small but significant non-transitory price increase for dairy BiBs, customers would not substitute away from dairy BiBs in a sufficient volume to make the price increase unprofitable. Therefore, the development, manufacture, and sale of dairy BiBs is a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

2. Post-Mix BiBs

20. Post-mix BiBs hold concentrated drink mixes such as soda syrup and juice concentrates. These concentrates are often mixed with carbonated or non-carbonated water before being served. Post-mix BiBs are typically made with layers of PE or EVOH and a fitment that attaches to a drink dispensing machine. Bags used for post-mix must be very strong to accommodate high filling flow rates required by post-mix manufacturers. Post-mix BiBs are designed to maintain freshness and ensure all liquid is dispensed from the bag while minimizing leaks and spills and accurately dispensing the product.

21. There are no substitutes for post-mix BiBs. Post-mix BiBs must attach to a dispensing machine, which a rigid container cannot do. Moreover, BiBs for other end uses cannot be substituted for post-mix BiBs due to the unique fitments and bag design required for post-mix BiBs.

22. In the event of a small but significant non-transitory price increase for post-mix BiBs, customers would not substitute away from post-mix BiBs in a sufficient volume to make the price increase unprofitable. Therefore, the development, manufacture, and sale of post-mix BiBs is a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

3. Smoothie BiBs

23. Smoothie BiBs hold mixes and other ingredients for smoothies and other drinks. Smoothie BiBs are typically made with layers of PE that offer low oxygen permeability. Like post-mix BiBs, most fitments on smoothie BiBs are designed to be

attached to dispensing machines and are highly specialized for the particular types of machines they attach to. A smoothie BiB typically has a special cap into which a probe is inserted in order to dispense the liquid. Smoothie BiBs are designed to maintain the safety and freshness of the liquid, protect the taste and quality of these flavor-sensitive liquids, and reduce the risk of contamination.

24. There are no substitutes for smoothie BiBs. Rigid containers cannot be attached to the dispensing machines smoothie BiBs are used in. Further, rigid containers are more expensive and bulkier to transport, may not keep the liquid as fresh, and may have a higher risk of contamination. Moreover, BiBs for other end uses cannot be substituted for smoothie BiBs due to the unique specifications required for smoothie BiBs. Fitments for smoothie BiBs, for example, often are designed to specifically interact with the dispensing machines.

25. In the event of a small but significant non-transitory price increase for smoothie BiBs, customers would not substitute away from smoothie BiBs in a sufficient volume to make the price increase unprofitable. Therefore, the development, manufacture, and sale of smoothie BiBs is a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

4. Wine BiBs

26. Wine BiBs hold the wine inside of boxed wines, which are often sold in retail outlets. The bag component of wine BiBs is typically made from PE and EVOH and is designed to protect against oxidation and UV light. The fitment for wine BiBs is typically a push, pull, or twist tap that is specifically designed to avoid allowing oxygen into the bag when the wine is dispensed. This provides a longer shelf life for wine once opened as compared to traditional bottles. Because the fitments for wine BiBs are operated directly by individuals, they must be simple to operate and user friendly.

27. There are no substitutes for wine BiBs. BiBs for other end uses cannot be substituted for wine BiBs due to the unique specifications for wine BiBs. Both the bag and fitment are specially engineered to provide an oxygen barrier for the product that other BiBs typically do not provide. Bags and fitments that lack this specialized oxygen barrier would allow oxygen to seep in and degrade the wine, making it unsuitable for consumption after only a short time. Wine bottles are not adequate substitutes for wine BiBs. A wine BiB can keep wine fresh for up to four weeks after it is opened, significantly longer than a wine bottle can. Also, wine BiBs provide faster and more sanitary pouring for food service operators than bottles do, with no risk of broken glass.

28. In the event of a small but significant non-transitory price increase for wine BiBs, customers would not substitute away from wine BiBs in a sufficient volume to make the price increase unprofitable. Therefore, the development, manufacture, and sale of wine BiBs is a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

B. Geographic Market

29. Customers in the United States do not purchase dairy, post-mix, smoothie, and wine BiBs (collectively, the ''Relevant BiB Products'') from suppliers located outside the United States. Shipping these products from outside the United States generally would not be economical because the shipping costs are too large relative to the cost of the BiB itself. In addition, BiBs manufactured and sold outside the United States often have different specifications than those manufactured and sold in the United States due to, for example, differences in the liquids stored in the BiBs or differences in dispensing machines. Further, it is important for a supplier of BiBs in the United States to be able to timely provide service to its customers who have issues with the BiBs, such as leakage or breakage of the bags or problems with the attachment of the BiBs to the filler machines. Suppliers located outside the United States do not have employees located in the United States to timely service BiB customers in the United States.

30. In the event of a small but significant non-transitory increase in the price of the Relevant BiB Products, customers in the United States would not procure these products from suppliers located outside the United States in a sufficient volume to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

VI. Anticompetitive Effects

31. Liqui-Box, DS Smith, and one other company are the only significant suppliers of dairy, post-mix, and smoothie BiBs to customers located in the United States. Liqui-Box and DS Smith are two of only four suppliers of wine BiBs to customers located in the United States.

32. Liqui-Box and DS Smith compete vigorously with one another on the basis of price, quality, and service in the markets for the Relevant BiB Products in the United States. Competition between Liqui-Box and DS Smith has fostered innovation and led to the development of new types of BiBs and product features. The proposed acquisition would eliminate the substantial head-to-head competition between Liqui-Box and DS Smith and the benefits that customers have realized from that competition in the form of lower prices, better quality and service, and innovation. By eliminating DS Smith as a competitor in the development, manufacture, and sale of the Relevant BiB Products in the United States, the proposed acquisition of DS Smith Plastics would substantially increase the likelihood that Liqui-Box would increase prices, reduce quality and service, and diminish investment in research and development below what it would have been absent the acquisition.

33. The proposed acquisition, therefore, would likely substantially lessen competition in the development, manufacture, and sale of the Relevant BiB Products in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

VII. Entry

34. Entry into the development, manufacture, and sale of the Relevant BiB Products would not be timely, likely, or sufficient to prevent the harm to competition caused by Liqui-Box's proposed acquisition of DS Smith Plastics.

35. Entry into the markets for the Relevant BiB Products is costly and time consuming. Significant upfront capital expenditures are required to enter. The machinery to manufacture BiBs, including injection molding machines for the fitments and production lines that seal the bags and attach the fitments, is expensive and highly engineered. Manufacturing BiBs in accordance with customer requirements requires skilled employees and industry know-how that can take years to establish. Further, customers demand that suppliers have a proven ability to supply BiBs with the required specifications so that their BiBs do not leak or break and are able to store the liquids for the required amount of time without spoiling. This reputation for having a quality product takes significant time to build. Finally, a new entrant would need to hire trained technicians capable of providing timely service to customers when BiBs leak, break, or encounter other product quality issues.

VIII. Violations Alleged

36. The acquisition of DS Smith Plastics by Liqui-Box is likely to substantially lessen competition in each of the relevant markets set forth above in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

37. The transaction will likely have the following anticompetitive effects, among others, in the relevant markets:

a. Competition between Liqui-Box and DS Smith will be eliminated;

b. competition generally will be substantially lessened; and

c. prices will likely increase, quality and the level of service will likely decrease, and innovation will likely decline.

IX. Request for Relief

38. The United States requests that this Court:

a. Adjudge and decree Liqui-Box's acquisition of DS Smith Plastics 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 DS Smith Plastics by Liqui-Box or from entering into or carrying out any other agreement, plan, or understanding the effect of which would be to combine Liqui-Box with DS Smith Plastics;

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: February 19, 2020.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

Makan Delrahim,
(D.C. Bar #457795)
Assistant Attorney General.

Katrina H. Rouse,
(D.C. Bar #1013035)
Chief, Defense, Industrials, and Aerospace Section.

Bernard A. Nigro, Jr.,
(D.C. Bar #412357)
Principal Deputy Assistant Attorney General.

David E. Altschuler,
(D.C. Bar #983023)
Assistant Chief, Defense, Industrials, and Aerospace Section.

Kathleen S. O'Neill,
Senior Director of Investigations & Litigation.

Jay D. Owen,
Assistant Chief, Defense, Industrials, and Aerospace Section.

Christine A. Hill,*
(D.C. Bar #461048)
Rebecca Valentine,
(D.C. Bar #989607)
Daniel J. Monahan, Jr.,
Attorneys for the United States, Defense, Industrials, and Aerospace Section, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW, Suite 8700, Washington, DC 20530, Telephone: (202) 305–2738, Facsimile: (202) 514–9033, Email: christine.hill@usdoj.gov.

** Lead Attorney To Be Noticed.*

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Liqui-Box, Inc., Olympus Growth Fund VI, L.P.,* and *DS Smith PLC,* Defendants.

Civil Action No.: 1:20–cv–00464

Judge: Hon. Christopher Cooper

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on February 19, 2020, the United States and Defendants, Liqui-Box, Inc., Olympus Growth Fund VI, L.P., and DS Smith plc, 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, Defendants agree 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 divestiture required below can and will be made and that Defendants will not later raise any 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 TriMas or another entity to whom Defendants divest the Divestiture Assets.

B. ''Liqui-Box'' means Defendant Liqui-Box, Inc., a Delaware corporation with its headquarters in Richmond, Virginia; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Olympus Growth'' means Defendant Olympus Growth Fund VI, L.P., a Delaware limited partnership with its headquarters in Stamford, Connecticut; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''DS Smith'' means Defendant DS Smith plc, a United Kingdom corporation with the U.S. headquarters of its Plastics Division in Romeoville, Illinois; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''TriMas'' means TriMas Corporation, a Delaware corporation with its headquarters in Bloomfield Hills, Michigan; its successors and assigns; and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. ''BiB Products'' means all components of Bag-in-Box (''BiB'') packaging and solutions, including, but not limited to, bags and fitments, whether the bags or fitments are sold as part of a complete BiB solution or individually. The term ''BiB Products'' does not include components used solely for tea or coffee.

G. ''Rapak Business'' means the development, manufacture, and sale of BiB Products and filler machines for BiB Products by the Plastics Division of DS Smith in the United States.

H. ''Divestiture Assets'' means the Rapak Business, including:

1. All of Defendants' rights, title, and interests in the facilities located at the following addresses (the ''Divestiture Facilities''):

a. 7430 New Augusta Road, Indianapolis, Indiana 46268 (''Indianapolis Plant'');

b. 6907 Coffman Road, Indianapolis, Indiana 46268 (''Indianapolis Warehouse'');

c. 29959 Ahern Avenue, Union City, California 94587 (''Union City Plant''); and

d. 1020 Davey Road, Woodbridge, Illinois 60517;

2. The DS Smith production lines listed in Appendix A (the ''Divested Lines'');

3. The DS Smith injection molding machines listed in Appendix B and all molds and dies, fitment assembly machines, and machinery used to manufacture fitments for the Rapak Business (the ''Divested Fitment Equipment'');

4. At the option of Acquirer, all other tangible assets related to or used in connection with the Rapak Business, including but not limited to: All manufacturing equipment, quality assurance equipment, research and development equipment, machine assembly 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, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records; and all other records;

5. All intangible assets related to or used in connection with the Rapak Business, including but not limited to: All patents; licenses and sublicenses; intellectual property; copyrights; trademarks, trade names, service marks, and service names (including the Rapak name and all trademarks, service marks, and service names associated with the Rapak brand); technical information; computer software and related documentation; customer relationships, agreements, and contracts; 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 DS Smith provides to its own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts, including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments; and

6. At the option of Acquirer, inventory of BiB Products up to the amount sold by the Rapak Business in any two (2) months in 2019, with the specific months to be determined by Acquirer.

I. ''Relevant Employees'' means all employees engaged in the Rapak Business.

III. Applicability

A. This Final Judgment applies to Liqui-Box, Olympus Growth, and DS Smith, 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 must require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within forty-five (45) calendar days after the Court's entry of the Asset Preservation Stipulation and Order in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment to TriMas or an alternative 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 will notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. Prior to the divestiture of the Divestiture Assets pursuant to Paragraph IV(A), Defendants must relocate any Divested Lines located at DS Smith's facility located at 1201 Windham Parkway, Romeoville, Illinois 60446 (''Romeoville Plant'') to one or more of the Divestiture Facilities, as determined by Acquirer, and must ensure that all Divested Lines are fully operational at the time of the divestiture.

C. In the event Defendants are attempting to divest the Divestiture Assets to an Acquirer other than TriMas, Defendants promptly must make known, by usual and customary means, the availability of the Divestiture Assets. Defendants must 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 must 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 must make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants must provide Acquirer and the United States with reasonable access to Relevant Employees and with organization charts and all information relating to Relevant Employees, including name, job title, past experience relating to the Divestiture Assets, responsibilities, training and educational history, relevant certifications, and to the extent permissible by law, job performance evaluations, and current salary and benefits information, to enable Acquirer to make offers of employment. Upon request, Defendants must promptly make Relevant Employees available for interviews with Acquirer during normal business hours at a mutually agreeable location and will not interfere with efforts by Acquirer to employ Relevant Employees, such as by offering to increase the salary or benefits of Relevant Employees other than as part of a company-wide increase in salary or benefits granted in the ordinary course of business. Defendants' obligations under this paragraph will expire ninety (90) calendar days after the divestiture of the Divestiture Assets under Paragraph IV(A).

E. For any Relevant Employees who elect employment with Acquirer in the period provided for by Paragraph IV(D), Defendants must waive all noncompete and nondisclosure agreements, vest all unvested pension and other equity rights, and provide all other benefits that the Relevant Employees would generally be provided if transferred to a buyer of an ongoing business. For a period of twelve (12) months from the filing of the Complaint in this matter, Defendants may not solicit to hire, or hire, any Relevant Employee who was hired by Acquirer, unless: (1) The individual is terminated or laid off by Acquirer; or (2) Acquirer agrees in writing that Defendants may solicit or hire that individual. Nothing in Paragraphs IV(D) and (E) prohibits Defendants from maintaining any reasonable restrictions on the disclosure by any Relevant Employee who accepts an offer of employment with Acquirer of the Defendant's proprietary non-public

information that is: (1) Not otherwise required to be disclosed by this Final Judgment; (2) related solely to Defendants' businesses and clients; and (3) unrelated to the Divestiture Assets.

F. Defendants must permit prospective Acquirers of the Divestiture Assets to have reasonable access to make inspections of the physical facilities of the Divestiture Assets, the Divested Lines, and the Divested Fitment Equipment, wherever located; 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.

G. Defendants must warrant to Acquirer that each asset will be fully operational on the date of sale.

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

I. Defendants must make best efforts to assign, subcontract, or otherwise transfer all contracts related to the Divestiture Assets, including all supply and sales contracts, to Acquirer. Defendants must not interfere with any negotiations between Acquirer and a contracting party.

J. Within one-hundred and eighty (180) calendar days after the Court's entry of the Asset Preservation Stipulation and Order in this matter, Defendants must ensure that the Divested Fitment Equipment is relocated to, and fully operational at, one or more locations as specified by Acquirer.

K. At the option of Acquirer, Defendants must enter into a supply agreement for the manufacture of fitments for the Rapak Business sufficient to meet Acquirer's needs, as determined by Acquirer, for a period of up to six (6) months. Upon Acquirer's request, the United States, in its sole discretion, may approve one or more extensions of this supply agreement, for a total of up to an additional six (6) months. If Acquirer seeks an extension of the term of this supply agreement, Defendants must notify the United States in writing at least one (1) month prior to the date the supply agreement expires. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions for the Rapak Business.

L. At the option of Acquirer, Defendants must enter into a transition services agreement for service and support relating to the Rapak Business for a period of up to twelve (12) months. The United States, in its sole discretion, may approve one or more extensions of this transition services agreement, for a total of up to an additional six (6) months. If Acquirer seeks an extension of the term of this transition services agreement, Defendants must notify the United States in writing at least one (1) month 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 the services provided. The employee(s) of Defendants tasked with providing these transition services must not share any competitively sensitive information of Acquirer with any other employee of Defendants.

M. Defendants must warrant to 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.

N. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV or by a Divestiture Trustee appointed pursuant to Section V of this Final Judgment must include the entire Divestiture Assets and must 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 Acquirer as part of a viable, ongoing business in the development, manufacture, and sale of BiB Products for dairy, post-mix, smoothie, and wine. It must be demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and that the divestiture of such assets will remedy the competitive harm alleged in the Complaint. If any of the terms of an agreement between Defendants and 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 will determine Defendants' obligations. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

(1) Must 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 in the development, manufacture, and sale of BiB Products for dairy, post-mix, smoothie, and wine; and

(2) must 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 Acquirer's costs, to lower Acquirer's efficiency, or otherwise to interfere in the ability of 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 must 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 will have the right to sell the Divestiture Assets. The Divestiture Trustee will 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 will 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 or consultants, including, but not limited to, investment bankers, attorneys, and accountants, who will 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 will serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants will 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 will 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 will 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 agents and consultants retained by the Divestiture Trustee, all remaining money will be paid to Defendants and the trust will then be terminated. The compensation of the Divestiture Trustee and agents and consultants retained by the Divestiture Trustee must 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 will, 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 must 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 must have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants must 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 will take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee will 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 will 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 will describe in detail each contact with any such person. The Divestiture Trustee will 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 (6) months after its appointment, the Divestiture Trustee will 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 will not be filed in the public docket of the Court. The Divestiture Trustee will at the same time furnish such report to the United States, which will have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it deems 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, must 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 will similarly notify Defendants. The notice must 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 must furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties 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 will provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not, in its sole discretion, it objects to 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 must not be consummated. Upon objection by Defendants under Paragraph V(C), a divestiture proposed under Section V must not be consummated unless approved by the Court.

VII. Financing

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

VIII. Asset Preservation

Until the divestiture required by this Final Judgment has been accomplished, Defendants must take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by the Court. Defendants will 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 must deliver to the United States an affidavit, signed by each Defendant's Chief Financial Officer and highest-ranking officer or partner, which must describe the fact and manner of Defendants' compliance with Section IV or Section V of this Final Judgment. Each such affidavit must

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 must describe in detail each contact with any such person during that period. Each such affidavit must also include a description of the efforts Defendants have taken to complete the sale of or 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, must 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 must 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 must 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 must keep all records of all efforts made to preserve and divest the Divestiture Assets until one (1) year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Asset Preservation 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 retained by the United States, must, 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 must 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 must 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 Section X will 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 will give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

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

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 this Final Judgment 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. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleged was 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 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 before 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 following the expiration of the Final Judgment, 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 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 will 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

Appendix A

1. Production Line R01 (located at the Romeoville Plant);
2. Production Line R02 (located at the Romeoville Plant);
3. Production Line R12 (located at the Romeoville Plant);
4. Production Line UC01 (located at the Union City Plant);
5. Production Line UC03 (located at the Union City Plant);
6. Production Line N03 (located at the Indianapolis Plant); and
7. Production Line N04 (located at the Indianapolis Plant).

Appendix B

1. Injection Molding Machine (''IM'') 96 (located at the Worldwide Dispensers location at 78 2nd Avenue S, Lester Prairie, Minnesota 55354 (''Lester Prairie Plant''));
2. IM 542 (located at the Lester Prairie Plant);
3. IM 747 (located at the Lester Prairie Plant);
4. IM 599 (located at the Lester Prairie Plant);
5. IM 345 (located at the Lester Prairie Plant);
6. IM 515 (located at the Lester Prairie Plant);
7. IM 583 (located at the Worldwide Dispensers location at 595 Territorial Drive, Bolingbrook, Illinois 60440 (''Bolingbrook Plant'');
8. IM 373 (located at the Bolingbrook Plant);
9. IM 294 (located at the Bolingbrook Plant); and
10. IM 80 (located at the Bolingbrook Plant).

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Liqui-Box, Inc., Olympus Growth Fund VI, L.P.,* and *DS Smith Plc,* Defendants.

Civil Action No.: 1:20–cv–00464
Judge: Hon. Christopher Cooper

Competitive Impact Statement

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''APPA'' or ''Tunney Act''), 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 March 5, 2019, Defendant Olympus Growth Fund VI, L.P. (''Olympus''), through its portfolio company Defendant Liqui-Box, Inc. (''Liqui-Box''), agreed to acquire Defendant DS Smith plc's (''DS Smith'') Plastics Division (''DS Smith Plastics'') for approximately $500 million, making the combined company one of the largest bag-in-box (''BiB'') suppliers in the United States. The United States filed a civil antitrust Complaint on February 19, 2020, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition for the development, manufacture, and sale of dairy, post-mix, smoothie, and wine BiBs in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

At the same time the Complaint was filed, the United States filed an Asset Preservation Stipulation and Order (''APSO'') and proposed Final Judgment, which are designed to address the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, the Defendants are required to divest all of DS Smith's product lines that overlap with product lines offered by Liqui-Box in the United States, including its dairy, post-mix, smoothie, and wine BiB product lines. Under the terms of the APSO, the Defendants must take certain steps to ensure that the divested assets are preserved and operated in such a way as to ensure that the products and services produced by or sold under the divested assets continue to be ongoing, economically viable competitive product lines.

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

II. Description of Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Olympus, a fund managed by private equity firm Olympus Partners, is a Delaware limited partnership with headquarters in Stamford, Connecticut. In 2018, Olympus Partners had approximately $8.5 billion total capital under management between its different funds, with Olympus comprising approximately $2.3 billion of that total. Liqui-Box, a company owned by Olympus, is a Delaware corporation with headquarters in Richmond, Virginia. Liqui-Box is a global manufacturer of packaging and packaging equipment, including BiBs, with four U.S. manufacturing facilities, as well as additional facilities across the world. In 2018, Liqui-Box had total sales of $177 million, including approximately $123 million in the United States.

DS Smith is a United Kingdom public limited company with headquarters in London, England. DS Smith is a global manufacturer of packaging, packaging equipment, and recycled paper. DS Smith Plastics manufactures flexible packaging and dispensing solutions, rigid packaging, injection-molded products, and foam products. Among DS Smith Plastics' flexible packaging products are BiBs, which are primarily sold under the Rapak brand name in the United States. DS Smith Plastics has its U.S. headquarters in Romeoville, Illinois, and operates five plants in the United States, as well as additional plants across the world. In 2018, DS Smith Plastics had total sales of $479 million, including approximately $137 million in sales of BiBs and other goods in the United States.

Pursuant to a Stock Purchase Agreement dated March 5, 2019, Liqui-Box agreed to acquire DS Smith Plastics for approximately $500 million.

B. Industry Background

BiBs are used to store and dispense liquids such as milk, post-mix,

smoothies, and wine. The components of a BiB include a flexible plastic bag and an attached fitment. BiBs typically hold between one and six gallons of liquid, but they also come in smaller and larger sizes. The attached fitment facilitates the transfer of liquids into and out of the bag.

The flexible plastic bag component of a BiB is typically made up of one to five layers of film. The films are most often made of polyethylene (''PE''), but also can be made with ethylene vinyl alcohol (''EVOH'') or other materials, and are bound together using heat sealing. Customers require different numbers and types of layers to meet individual product demands. For example, the most basic bags consist of a single layer of PE that secures the liquid during transport. More sophisticated bags have additional layers of engineered film that add durability, metallization, and oxygen, moisture, or temperature resistance.

The fitment component of a BiB typically is made from resin using injection molding and attached to the flexible plastic bag component via heat sealing. The design of the fitment is determined by the liquid that will go into the bag and the method that will be used to dispense the liquid out of the bag. For example, if the BiB is used to dispense post-mix into a soda dispenser, the fitment will be designed to attach to a soda dispenser. The simplest fitment is a basic cap, which can be flipped off or unscrewed to pour out the liquid. Highly engineered fitments can have specialized elements such as a built-in push-tap feature or an oxygen barrier to provide resistance to the elements. Fitments are often protected by patents due to the specialized nature and high degree of engineering that can be required in fitment manufacturing.

BiBs are shipped to the customer, who fills the BiB with liquid using a filler machine that the customer typically purchases or leases from the BiB supplier. The customer then ships the filled BiB to a store, restaurant, or other food processor. For example, a post-mix manufacturer seeking to distribute its post-mix to a convenience store would purchase BiBs and a filler machine from a BiB supplier, fill the BiBs with the post-mix at its own facility, and then ship the filled BiBs to the convenience store for use in the convenience store's dispensing machine.

BiBs are distinct from and have numerous advantages over other forms of packaging. For example, compared to rigid containers (*e.g.,* jugs and bottles) and cartons, which are the other primary forms of packaging used for storing and transporting liquids, BiBs are smaller and thus reduce storage space and shelf space, both when empty and filled. In addition, BiBs can be a more hygienic form of dispensing liquids because they can reduce user contact and thus contamination. Further, BiBs can keep their contents fresher for longer than other types of packaging by allowing for minimal contact with air. Finally, BiBs can be more economical because they have features that allow the user to get all the liquid out of bag and result in less packaging waste when they are empty and disposed of.

C. Relevant Markets

1. Product Markets

a. Dairy BiBs

BiBs for dairy products hold liquids such as ice cream mix, yogurt, milk, and cream. Dairy BiBs are typically durable bags made from PE and often have a flip-cap or screw-off cap fitment. Dairy BiBs are designed to reduce the risk of contamination and extend shelf life.

As alleged in the Complaint, there are no substitutes for dairy BiBs. Dairy BiBs provide dairy liquids to customers in an easy to use, inexpensive format that other packaging does not offer. For example, rigid containers require more storage space, may not keep the dairy liquid as fresh, and may have a higher risk of contamination. BiBs for other end uses cannot be substituted for dairy BiBs due to the unique specifications for dairy BiBs.

The Complaint alleges that in the event of a small but significant non-transitory price increase for dairy BiBs, customers would not substitute away from dairy BiBs in a sufficient volume to make the price increase unprofitable. Therefore, the Complaint alleges that the development, manufacture, and sale of dairy BiBs is a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

b. Post-Mix BiBs

Post-mix BiBs hold concentrated drink mixes such as soda syrup and juice concentrates. These concentrates are often mixed with carbonated or non-carbonated water before being served. Post-mix BiBs are typically made with layers of PE or EVOH and a fitment that attaches to a drink dispensing machine. Bags used for post-mix must be very strong to accommodate high filling flow rates required by post-mix manufacturers. Post-mix BiBs are designed to maintain freshness and ensure all liquid is dispensed from the bag while minimizing leaks and spills and accurately dispensing the product.

The Complaint alleges that there are no substitutes for post-mix BiBs. Post-mix BiBs must attach to a dispensing machine, which a rigid container cannot do. Moreover, BiBs for other end uses cannot be substituted for post-mix BiBs due to the unique fitments and bag design required for post-mix BiBs.

As further alleged in the Complaint, in the event of a small but significant non-transitory price increase for post-mix BiBs, customers would not substitute away from post-mix BiBs in a sufficient volume to make the price increase unprofitable. Therefore, the Complaint alleges that the development, manufacture, and sale of post-mix BiBs is a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

c. Smoothie BiBs

Smoothie BiBs hold mixes and other ingredients for smoothies and other drinks. Smoothie BiBs are typically made with layers of PE that offer low oxygen permeability. Like post-mix BiBs, most fitments on smoothie BiBs are designed to be attached to dispensing machines and are highly specialized for the particular types of machines they attach to. A smoothie BiB typically has a special cap into which a probe is inserted in order to dispense the liquid. Smoothie BiBs are designed to maintain the safety and freshness of the liquid, protect the taste and quality of these flavor-sensitive liquids, and reduce the risk of contamination.

According to the Complaint, there are no substitutes for smoothie BiBs. Rigid containers cannot be attached to the dispensing machines smoothie BiBs are used in. Further, rigid containers are more expensive and bulkier to transport, may not keep the liquid as fresh, and may have a higher risk of contamination. Moreover, BiBs for other end uses cannot be substituted for smoothie BiBs due to the unique specifications required for smoothie BiBs. Fitments for smoothie BiBs, for example, often are designed to specifically interact with the dispensing machines.

The Complaint alleges that in the event of a small but significant non-transitory price increase for smoothie BiBs, customers would not substitute away from smoothie BiBs in a sufficient volume to make the price increase unprofitable. Therefore, the Complaint alleges that the development, manufacture, and sale of smoothie BiBs is a relevant product market and line of commerce within the meaning of

Section 7 of the Clayton Act, 15 U.S.C. 18.

d. Wine BiBs

Wine BiBs hold the wine inside of boxed wines, which are often sold in retail outlets. The bag component of wine BiBs is typically made from PE and EVOH and is designed to protect against oxidation and UV light. The fitment for wine BiBs is typically a push, pull, or twist tap that is specifically designed to avoid allowing oxygen into the bag when the wine is dispensed. This provides a longer shelf life for wine once opened as compared to traditional bottles. Because the fitments for wine BiBs are operated directly by individuals, they must be simple to operate and user friendly.

As alleged in the Complaint, there are no substitutes for wine BiBs. BiBs for other end uses cannot be substituted for wine BiBs due to the unique specifications for wine BiBs. Both the bag and fitment are specially engineered to provide an oxygen barrier for the product that other BiBs typically do not provide. Bags and fitments that lack this specialized oxygen barrier would allow oxygen to seep in and degrade the wine, making it unsuitable for consumption after only a short time. Wine bottles are not adequate substitutes for wine BiBs. A wine BiB can keep wine fresh for up to four weeks after it is opened, significantly longer than a wine bottle can. Also, wine BiBs provide faster and more sanitary pouring for food service operators than bottles do, with no risk of broken glass.

According to the Complaint, in the event of a small but significant non-transitory price increase for wine BiBs, customers would not substitute away from wine BiBs in a sufficient volume to make the price increase unprofitable. Therefore, the Complaint alleges that the development manufacture, and sale of wine BiBs is a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

2. Geographic Market

The Complaint alleges that customers in the United States do not purchase dairy, post-mix, smoothie, and wine BiBs (collectively, the ''Relevant BiB Products'') from suppliers located outside the United States. Shipping these products from outside the United States generally would not be economical because the shipping costs are too large relative to the cost of the BiB itself. In addition, BiBs manufactured and sold outside the United States often have different specifications than those manufactured and sold in the United States due to, for example, differences in the liquids stored in the BiBs or differences in dispensing machines. Further, according to the Complaint, it is important for a supplier of BiBs in the United States to be able to timely provide service to its customers who have issues with the BiBs, such as leakage or breakage of the bags or problems with the attachment of the BiBs to the filler machines. Suppliers located outside the United States do not have employees located in the United States to timely service BiB customers in the United States.

The Complaint alleges that, in the event of a small but significant non-transitory increase in the price of the Relevant BiB Products, customers in the United States would not procure these products from suppliers located outside the United States in a sufficient volume to make such a price increase unprofitable. Accordingly, the Complaint alleges that the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

D. Anticompetitive Effects

The Complaint alleges that Liqui-Box, DS Smith, and one other company are the only significant suppliers of dairy, post-mix, and smoothie BiBs to customers located in the United States. It also alleges that Liqui-Box and DS Smith are two of only four suppliers of wine BiBs to customers located in the United States.

According to the Complaint, Liqui-Box and DS Smith compete vigorously with one another on the basis of price, quality, and service in the markets for the Relevant BiB Products in the United States. Competition between Liqui-Box and DS Smith has fostered innovation and led to the development of new types of BiBs and product features. The proposed acquisition would eliminate the substantial head-to-head competition between Liqui-Box and DS Smith and the benefits that customers have realized from that competition in the form of lower prices, better quality and service, and innovation. By eliminating DS Smith as a competitor in the development, manufacture, and sale of the Relevant BiB Products in the United States, the proposed acquisition of DS Smith Plastics would substantially increase the likelihood that Liqui-Box would increase prices, reduce quality and service, and diminish investment in research and development below what it would have been absent the acquisition.

According to the Complaint, the proposed acquisition, therefore, would likely substantially lessen competition in the development, manufacture, and sale of the Relevant BiB Products in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

E. Entry

The Complaint alleges that entry into the development, manufacture, and sale of the Relevant BiB Products would not be timely, likely, or sufficient to prevent the harm to competition caused by Liqui-Box's proposed acquisition of DS Smith Plastics.

According to the Complaint, entry into the markets for the Relevant BiB Products is costly and time consuming. Significant upfront capital expenditures are required to enter. The machinery to manufacture BiBs, including injection molding machines for the fitments and production lines that seal the bags and attach the fitments, is expensive and highly engineered. Manufacturing BiBs in accordance with customer requirements requires skilled employees and industry know-how that can take years to establish. Further, customers demand that suppliers have a proven ability to supply BiBs with the required specifications so that their BiBs do not leak or break and are able to store the liquids for the required amount of time without spoiling. This reputation for having a quality product takes significant time to build. Finally, a new entrant would need to hire trained technicians capable of providing timely service to customers when BiBs leak, break, or encounter other product quality issues.

III. Explanation of the Proposed Final Judgment

The divestiture required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by establishing an independent and economically viable competitor with the scale and scope to compete effectively in the markets for the Relevant BiB Products in the United States. Paragraph IV(A) of the proposed Final Judgment requires the Defendants to divest DS Smith Plastics' Rapak Business within 45 calendar days of the Court's entry of the APSO to TriMas Corporation or another acquirer acceptable to the United States in its sole discretion.[1] The divestiture

[1] Paragraph II(G) of the proposed Final Judgment defines the ''Rapak Business'' as ''the development, manufacture, and sale of BiB Products and filler machines for BiB Products by the Plastics Division of DS Smith in the United States.'' Paragraph II(F) defines ''BiB Products'' as ''all components of Bag-in-Box (''BiB'') packaging and solutions, including, but not limited to, bags and fitments, whether the bags or fitments are sold as part of a complete BiB

Continued

includes four facilities (production facilities in Indianapolis, Indiana and Union City, California; an office and production facility in Woodbridge, Illinois; and a warehouse in Indianapolis, Indiana); seven production lines that are used to manufacture dairy, post-mix, smoothie, and wine BiBs as well as BiBs for other products; injection-molding and other equipment used to manufacture fitments; at the acquirer's option, all other tangible assets related to or used in connection with the Rapak Business; all intangible assets related to or used in connection with the Rapak Business (including the Rapak brand); and, at the acquirer's option, certain inventory. In order to enhance its viability, the divestiture includes not only DS Smith's dairy, post-mix, smoothie, and wine BiB product lines, but also all other DS Smith BiB product lines that overlap with product lines offered by Liqui-Box in the United States. This includes, for example, BiBs for edible oil, liquid egg, and tomato products. Paragraph IV(N) of the proposed Final Judgment requires that the divestiture assets must be divested in such a way as to satisfy the United States in its sole discretion that they can and will be operated by the purchaser as part of a viable, ongoing business that can compete effectively in the development, manufacture, and sale of dairy, post-mix, smoothie, and wine BiBs.

Paragraph IV(B) of the proposed Final Judgment requires that, prior to the divestiture, the Defendants must relocate any divested production lines that are currently located at DS Smith Plastics' Romeoville, Illinois production facility—a facility that is not being divested—to one or more of the production facilities included in the divestiture, with the specific facility to be determined by the acquirer. Defendants have both previously moved production lines for independent business reasons with little to no disruption in production or supply. The Defendants must also ensure that the divested production lines are fully operational in their new locations at the time of the closing of the divestiture. Three of the divested production lines are currently located at DS Smith Plastics' Romeoville facility. These production lines are to be moved to the divested production facilities and divested because they are used primarily for the manufacture of the Relevant BiB Products. In addition, Paragraph IV(J) requires that within 180 days after the Court's entry of the APSO, the Defendants must ensure that the fitment equipment to be divested is relocated to, and fully operational at, a facility or facilities specified by the acquirer.

The proposed Final Judgment contains several provisions to facilitate the immediate use of the divestiture assets by the acquirer. Paragraph IV(K) of the proposed Final Judgment requires the Defendants, at the acquirer's option, to enter into a supply contract for fitments sufficient to meet all or part of the acquirer's needs for a period of up to six months. Upon the acquirer's request, the United States, in its sole discretion, may approve one or more extensions of any such agreement for a total of up to an additional six (6) months. In addition, Paragraph IV(L) of the proposed Final Judgment requires the Defendants, at the acquirer's option, to enter into a transition services agreement for service and support relating to the Rapak Business for a period of up to twelve months. The paragraph further provides that the United States, in its sole discretion, may approve one or more extensions of this transition services agreement for a total of up to an additional six (6) months. Paragraph IV(L) also provides that employees of the Defendants tasked with providing any transition services must not share any competitively sensitive information of the acquirer with any other employee of the Defendants.

The proposed Final Judgment also contains provisions intended to facilitate the acquirer's efforts to hire employees engaged in the Rapak Business. Paragraph IV(D) of the proposed Final Judgment requires the Defendants to provide the acquirer with organization charts and information relating to these employees and to make them available for interviews, and it provides that the Defendants must not interfere with any negotiations by the acquirer to hire them. In addition, Paragraph IV(E) provides that, for employees who elect employment with the acquirer, the Defendants must waive all noncompete and nondisclosure agreements, vest all unvested pension and other equity rights, and provide all benefits that the employees would generally be provided if transferred to a buyer of an ongoing business. This paragraph further provides that, for a period of 12 months from the filing of the Complaint, the Defendants may not solicit to hire or hire any employee engaged in the Rapak Business who was hired by the acquirer, unless that individual is terminated or laid off by the acquirer or the acquirer agrees in writing that the Defendants may solicit or hire that individual.

If the Defendants do not accomplish the divestiture within the period prescribed in the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that the Defendants will pay all costs and expenses of the trustee. The divestiture 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 divestiture is accomplished. After the divestiture trustee's appointment becomes effective, the trustee will provide periodic reports to the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the divestiture trustee and the United States will make recommendations to the Court, which will enter such orders as appropriate, in order to carry out the purpose of the trust, including by extending the trust or the term of the divestiture trustee's appointment.

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 Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, the 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 the 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 competition the United States alleged would otherwise be harmed by the transaction. The Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this

solution or individually'' but ''does not include components used solely for tea or coffee.''

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 if the Court finds in an enforcement proceeding that the 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, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the 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 before litigation, that the Defendants will reimburse the United States for attorneys' fees, experts' fees, and other 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. 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 will 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 the Defendants that the divestiture has 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 neither impairs nor assists 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 the Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the 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 U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final 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: Katrina Rouse, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, U.S. 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

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against the Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Liqui-Box's acquisition of DS Smith Plastics. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for the development, manufacture, and sale of dairy, post-mix, smoothie, and wine BiBs in the United States. Thus, the proposed Final Judgment achieves 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 a 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 U.S. 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 proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *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.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Id.* at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about 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 by 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 W. Elec. Co.,* 900 F.2d at 309).

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 (''[T]he '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, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added 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 *Enova Corp.,* 107 F. Supp. 2d at 17).

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: February 19, 2020.

Respectfully submitted,

For Plaintiff, United States of America

Christine A. Hill
(D.C. Bar #461048) *

Attorney, United States Department of Justice, Antitrust Division, Defense, Industrials, and Aerospace Section, 450 Fifth Street NW, Suite 8700, Washington, DC 20530, (202) 305–2738, *christine.hill@usdoj.gov.*

* Attorney of Record.

[FR Doc. 2020–04119 Filed 2–27–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *George Gradel Co., Inc., et al.,* Civil Action No. 3:20–cv–00373, was lodged with the United States District Court for the Northern District of Ohio, Western Division, on February 19, 2020.

This proposed Consent Decree concerns a complaint filed by the United States against George Gradel Co., Inc., and First Energy Nuclear Operating Co., pursuant to Sections 301(a), 309(b), and 309(d) of the Clean Water Act, 33