from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005.

When requesting a copy, please enclose a check in the amount of $7.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–26977 Filed 10–7–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Machnik Bros., Inc.,* Civil No. 3:98–CV–1828 (D. Conn.), was lodged with the United States District Court for the District of Connecticut on September 15, 1998. The proposed Decree concerns alleged violations of sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. 1311(a) and 1344, resulting from Defendant's unauthorized discharge of approximately 190 cubic yards of dredged material into Niantic Bay, Niantic, Connecticut. The Defendant was hired by the Niantic Bay Yacht Club to perform maintenance dredging the Niantic Bay pursuant to permit issued by the Corps of Engineers, but violated the conditions of the permit by disposing of the dredged material in the Bay instead of at an authorized upland location.

The proposed Consent Decree would require the payment of a civil penalty and would permanently enjoin the Defendant from future violations of the Clean Water Act.

Ther U.S. Department of Justice will receive written comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to Sharon E. Jaffe, Assistant United States Attorney, District of Connecticut, 915 Lafayette Blvd., Room 309, Bridgeport, CT 06604, and should refer to *United States* v. *Machnik Bros., Inc.,* Civil No. 3:98–CV–1828 (D. Conn.).

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Connecticut, 450 Main Street, Hartford, CT 06103.

Letitia J. Grishaw,

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

[FR Doc. 98–26980 Filed 10–7–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of First Amendment to Modify Consent Decree Under Clean Air Act

Notice is hereby given that a proposed First Amendment To Modify Consent Decree in *United States* v. *USS/KOBE Steel Company,* Case No. 1:92CV1928, was lodged on *September 25, 1998* with the United States District Court for the Northern District of Ohio. The proposed First Amendment modifies a consent decree that was entered by the district court on November 23, 1992, in an action brought under the Clean Air Act.

The proposed First Amendment To Modify Consent Decree requires the defendant to pay a stipulated penalty in the amount of $440,000 and modifies some of the injunctive relief provided for in the original consent decree that was entered in 1992 by adding continuous emission monitoring, an interim CO limit, and significantly increased stipulated penalties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating the proposed First Amendment To Modify Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *USS/KOBE Steel Company,* Case No. 1:92CV1928, D.J. Ref. 90–5–2–1–1714A.

The proposed First Amendment To Modify Consent Decree may be examined at any of the following offices: (1) the United States Attorney for the Northern District of Ohio, 1800 Bank One Center, 600 Superior Avenue, East, Cleveland, Ohio 44114–2600 (contact Assistant U.S. Attorney Arthur I. Harris); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Debra Klassman); and (3) at the Consent Decree Library, 1120 G Street, N.W., Third Floor, Washington, D.C. 20005, (202) 624–0892. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., Third Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.75 (25 cents per page reproduction charge) payable to Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–26979 Filed 10–7–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America vs. Aluminum Company of America and Alumax Inc.; Public Comments and Plaintiff's Response

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that the Public Comments and Plaintiff's Response have been filed with the United States District Court of the District of Columbia in United States v. Aluminum Company of America and Alumax, Inc., Civ. Action No. 9801497 (PLF).

On June 15, 1998, the United States filed a civil antitrust Complaint alleging that the proposed acquisition of Alumax Inc. (''Alumax'') by Aluminum Company of America (''Alcoa'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleged that Alumax and Alcoa are the two largest of the three producers of aluminum cast plate (''cast plate'') in the world. Alcoa's proposed acquisition of Alumax would have combined under single ownership almost 90% of the cast plate manufacturing business in the world. As a result, the proposed acquisition would substantially lessen competition in the manufacture and sale of cast plate world wide in violation of Section 7 of the Clayton Act.

Public comment was invited within the statutory 60-day comment period. The one comment received, and the response thereto, is hereby published in the **Federal Register** and filed with the Court. Copies of these materials may be obtained on request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Pursuant to the requirements of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h) (''Tunney Act''), the United States hereby responds to the single public comment received regarding the proposed Final Judgment in this case.

I

Background

On June 15, 1998, the United States Department of Justice (''the Department'') filed the Complaint in this matter. The Compliant alleges that the proposed acquisition of Alumax Inc. (''Alumax'') by Aluminum Company of America (''Alcoa'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Alumax and Alcoa are the two largest of the three producers of aluminum cast plate (''cast plate'') in the world. Alcoa's proposed acquisition of Alumax would have combined under single ownership almost 90% of the cast plate manufacturing business in the world. As a result, the proposed acquisition would substantially lessen competition in the manufacture and sale of cast plate world wide in violation of Section 7 of the Clayton Act. 15 U.S.C. 18.

Simultaneously with the filing of the Complaint, the plaintiff filed the proposed Final Judgment and a Stipulation signed by all the parties that allows for entry of the Final Judgment following compliance with the Tunney Act. A Competitive Impact Statement (''CIS'') was also filed, and subsequently published in the **Federal Register** on July 1, 1998. The CIS explains in detail the provisions of the proposed Final Judgment, the nature and purposes of these proceedings, and the transaction giving rise to the alleged violation.

As the Complaint and the CIS explained, the merger as originally proposed was likely to reduce or eliminate competition between Alcoa and Alumax in the worldwide market for production and sale of aluminum cast plate (''cast plate''). Alcoa and Alumax are the two largest of three firms that compete in this market. The proposed Final Judgment is intended to prevent the expected lessening of competition the merger could cause in that market.

As a remedy to competitive harm in the cast plate market, the Department and Alcoa and Alumax agreed to a divestiture of Alcoa's division that manufactures and sells cast plate. This divestiture is intended to protect consumers by ensuring continued vigorous competition among three firms in the market.

The 60-day comment period for public comments expired on August 30, 1998. As of September 11, 1998, plaintiff had received comments from one person.[1] The comment came from General Motors Corporation (''General Motors''), a self-described worldwide consumer of aluminum products.

II

Response to the Public Comment

General Motors believes that the Department's decision to allow the Alcoa/Alumax transaction to go forward subject only to the divestiture of Alcoa's cast plate division was based on an overly narrow view of competition. General Motors believes that the Department should have challenged the transaction's competitive impact on a product market it calls ''integrated aluminum production,'' *i.e.*, all aspects of Alcoa and Alumax's aluminum businesses, including mining, refining, smelting, hot rolling, cold rolling, extruding, forging, casting and other processes. General Motors claims that Alcoa now owns, as a result of its acquisition of Alumax, a dominant share of the assets used for integrated aluminum production all around the world. General Motors is concerned that consumers will suffer at the hands of Alcoa's dominance, which will not be curbed by the other worldwide aluminum producers.

The Department of Justice Antitrust Division's review of mergers is governed by the Clayton and Sherman Acts, judicial precedent, and the Horizontal Merger Guidelines issued jointly by the Department and the Federal Trade Commission in 1992 (and slightly revised in 1997). The first step is defining a relevant product and geographic market. In its investigation into the many different aspects of the two companies' aluminum businesses, the Department determined that what General Motors calls integrated aluminum production actually consists of numerous separate product markets with varying geographic dimensions—some are local, some are worldwide. The Department then assessed the competitive implications of the loss of an independent Alumax in those markets in which the merging firms actually compete with each other. After a thorough investigation, the Department determined that the only product market adversely affected by the proposed acquisition was the worldwide manufacture and sale of cast plate. Accordingly, the Department brought its case on that basis, and obtained as relief a divestiture designed to remedy the competitive harm posed by the proposed acquisition in that market.

III

The Legal Standard Governing the Court's Public Interest Determination

Once the United States moves for entry of the proposed Final Judgment, the Tunney Act directs the Court to determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e). In making that determination, 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.'' *United States* v. *Western Elec. Co.*, 993 F.2d at 1576.[2] The Court should evaluate the relief set forth in the proposed Final Judgment and should enter the Judgment if it falls within the government's ''rather broad discretion to settle with the defendant within the reaches of the public interest.'' Microsoft, 56 F.3d at 1461; accord *United States* v. *Associated Milk Producers*, 534 F.2d 113, 117–18 (8th Cir. 1976), cert. denied, 429 U.S. 940 (1976).

Because it argues for a different case than the one that the Department brought, and does not address the relief ordered by the proposed Final Judgment, General Motors' comment raises issues not relevant to this Tunney Act proceeding. The Tunney Act does not contemplate a judicial reevaluation of the government's determination of which violations to allege in the Complaint. The government's decision not to bring a particular case based on the facts and law before it at a particular time, like any other decision not to prosecute, ''involves a complicated balancing of a number of factors which are peculiarly within [the government's] expertise.'' *Heckler* v. *Chaney*, 470 U.S. 821, 831 (1985). Thus, the Court may not look beyond the Complaint ''to evaluate claims that the government did not make and to inquire as to why they were not made.'' *United States* v. *Microsoft*, 56 F.3d 1448, 1459 (D.C. Cir. 1995); see also Milk Producers, 534 F.3d at 117–18.

Simarily, the government has wide discretion within the reaches of the public interest to resolve potential litigation. E.G., *Western Elec.*, 993 F.2d at 1577; AT&T, 552 F. Supp. at 1521. The Supreme Court has recognized that a government antitrust consent decree is

[1] The comment is attached. The Department plans to publish promptly the comment and this response in the **Federal Register**. The Department will provide the Court with a certificate of compliance with the requirements of the Tunney Act and file a motion for entry of final judgment once publication takes place.

[2] The Western Electric decision concerned a consensual modification of an existing antitrust decree. The Court of Appeals assumed that the Tunney Act was applicable.

a contract between the parties to settle their disputes and differences, *United States* v. *ITT Continental Baking Co.*, 420 U.S. 223, 235–38 (1975); *United States* v. *ITT Continental Baking Co.*, 420 U.S. 223, 235–38 (1975); *United States* v. *Armour & Co.*, 402 U.S. 673, 681–82 (1971), ''and normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.'' Armour, 402 U.S. at 681. This Judgment has the virtue of bringing the public certain benefits and protection without the uncertainty and expense of protracted litigation. *Id; Microsoft,* 56 F.3d at 1459.

Finally, the entry of a governmental antitrust decree forecloses no private party from seeking and obtaining approriate antitrust remedies. Thus, defendants will remain liable for any illegal acts, and any private party may challenge such conduct if and when appropriate. If the commenting party has a basis for suing the defendants, it may do so. The legal precedent discussed above holds that the scope of a Tunney Act proceeding is limited to whether entry of this particular proposed Final Judgment, agree to by the parties as settlement of this case, is in the public interest.

IV

Conclusion

After careful consideration of the comment, the plaintiff concludes that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is in the public interest. The Plaintiff has moved the Court to enter the proposed Final Judgment after the public comment and this Response has been published in the **Federal Register**, as 15 U.S.C. 16(d) requires.

Dated this 22nd day of September, 1998.

Respectfully submitted,

Nina B. Hale,

Andrew K. Rosa,

U.S. Department of Agriculture, Antitrust Division, 325 7th Street, NW, suite 500, Washington, DC 20530, (202) 307–6351.

Certificate of Service

I, Mary Ethel Kabisch, hereby certify that, on September 22, 1998, I caused the foregoing document to be served on defendants Alumax Inc. and Aluminum Company of America by having a copy mailed, first-class, postage prepaid, to:

David Gelfand,

Cleary, Gottlieb, Steen & Hamilton, 2000 Pennsylvania Avenue, NW., Suite 9000, Washington, DC 20006–1801

D. Stuart Meiklejohn,

Sullivan & Cromwell, 125 Broad Street, 28th floor, New York, New York 10004–2498

Mary Ethel Kabisch

Statement of General Motors Corporation

General Motors Corporation (''GM''), speaking as a major worldwide consumer of aluminum products in many and varied alloys, shapes and forms would like to express its disappointment in the decision by the Antitrust Division of the U.S. Department of Justice to allow the Alcoa/Alumax transaction to proceed with only minimal divestitures as outlined in the **Federal Register** notice published on July 1, 1998 at 63 FR 35946. The investigation and conclusions reached seemed to have focused on the pieces while ignoring the whole. It seems misguided and harmful to the aluminum consumer to simply evaluate the micro picture of certain aluminum industry products without considering the macro picture of aluminum production and how one producer, through asset control, can have undue influence on this overall market.

Integrated aluminum production is an extremely capital intensive process. This process includes mining, refining, smelting, hot rolling, cold rolling, extruding, forging and other processes. Alcoa today clearly dominates the mining of bauxite and refining of aluminum. With the purchase of Alumax, Alcoa adds significant smelting, hot line, cold mill, and extrusion assets to their already very impressive asset portfolio. Conversely, with the downsizing of two major global competitors such as Reynolds most recently and Kaiser several years ago, the Big Four in aluminum is quickly becoming the Big One (Alcoa) and the Smaller One (Alcan). Further, Alcoa's purchase of Alumax on the heels of their acquisition of government controlled facilities in Spain, Italy and Hungary accentuates their position of global dominance in every major aluminum producing area of the world.

Our concern is the same concern that every aluminum consumer should consider: Too many critical assets controlled by one producer, the same producer instrumental in the April, 1994 Memorandum of Understanding. All aluminum consumers must remember the MOU, a systematic global scheme to cut production that resulted in 100% price increases in primary aluminum within nine short months of the agreement.

GM recognizes that industry consolidation and corporate integration are not always bad for the consumer. They can lead to reduced costs and efficiencies that benefit the consumer in the form of lower prices. The consumer realizes those lower prices, however, provided there is still adequate current competition or the probability of new entry. Unfortunately, the cost of entry for integrated aluminum production is staggering. History taught us that lesson many years ago as Alcoa reigned supreme as one of the last and most successful corporate monopolies in North America.

Most importantly, GM sees no long-term benefits from this merger, either for itself or for the future customers of GM cars and trucks. Whether alone or through the joint research effort known as the Partnership for a New Generation of Vehicles, GM would like to continue to work closely with a fully competitive aluminum industry on increased usage of aluminum in our vehicles. This most recent glaring example of competitive base dilution appears deleterious to those efforts and will force GM to re-evaluate aluminum's role as a primary metal of choice in GM's future.

[FR Doc. 98–26976 Filed 10–7–98; 8:45 am]

BILLING CODE 4915–00–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1200]

RIN 1121–ZB36

Announcement of the Availability of the National Institute of Justice Solicitation for ''Juvenile 'Breaking the Cycle' Evaluation''

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice ''SL000308.''

DATES: Due date for receipt of proposals is close of business Thursday, December 17, 1998.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general