Clay County

South Dakota Department of Transportation Bridge No. 14–088–170 (Historic Bridges in South Dakota MPS), Local Rd. over Clay Cr. Ditch, Vermillion vicinity, 99001689

South Dakota Department of Transportation Bridge No. 14–105–209 (Historic Bridges in South Dakota MPS), Local Rd. over Chicago, Milwaukee, St. Paul and Pacific Railroad tracks, Vermillion vicinity, 99001690

South Dakota Department of Transportation Bridge No. 14–090–042 (Historic Bridges in South Dakota MPS), Local Rd. over Vermillion R., Wakonda vicinity, 99001700

Lincoln County

South Dakota Department of Transportation Bridge No. 42–103–207 (Historic Bridges in South Dakota MPS), Local Rd. over Local Cr., Beresford vicinity, 99001688

Minnehaha County

South Dakota Department of Transportation Bridge No. 50–192–132 (Historic Bridges in South Dakota MPS), Local Rd. over Big Sioux R. (Mapleton Township), Renner vicinity, 99001694

South Dakota Department of Transportation Bridge No. 50–193–086 (Historic Bridges in South Dakota MPS), Local Rd. over Big Sioux R. (Sverdrup Township), Midway vicinity, 99001695

Moody County

Sioux River Bridge (Historic Bridges in South Dakota MPS), 3rd St. over Big Sioux R., Trent, 99001696

South Dakota Department of Transportation Bridge No. 51–102–010 (Historic Bridges in South Dakota MPS), Local Rd. over Local Cr., Riverview Township vicinity, 99001693

South Dakota Department of Transportation Bridge No. 51–140–078 (Historic Bridges in South Dakota MPS), Local Rd. over Big Sioux R., Flandreau vicinity, 99001698

South Dakota Department of Transportation Bridge No. 51–051–000 (Historic Bridges in South Dakota MPS), Local Rd. over Big Sioux R., Lake Campbell Resort vicinity, 99001699

Yankton County

Pine Street Bridge (Historic Bridges in South Dakota MPS), Pine Street over Marne Cr., Yankton, 99001697

Walnut Street Bridge (Historic Bridges in South Dakota MPS), Walnut St. over Marne Cr., Yankton, 99001692

TEXAS

Gray County

White Deer Land Company Building, 116 S. Cuyler, Pampa, 99001701

A Removal has been requested for:

ARKANSAS

Hempstead County

McRae, K.G., House, 3rd and Edgewood Sts. Hope, 76000413

A request for a Move has been made for:

FLORIDA

Broward County

Sample Estate, 3161 N. Dixie Hwy., Pompano Beach, 84000834

[FR Doc. 99–33742 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Alcoa Inc., ACX Technologies, Inc., and Golden Aluminum Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Sections 16(b) through (h), that a Complaint, Hold Separate Stipulation and Order, and a proposed Final Judgment were filed with the United States District Court for the District of Columbia in *United States of America* v. *Alcoa Inc., ACX Technologies, Inc., and Golden Aluminum Company,* Civil No. 99–2943 on November 5, 1999. On December 6, 1999, the United States filed a Competitive Impact Statement. The Complaint alleged that the proposed acquisition by Alcoa Inc. (''Alcoa'') of ACX Technologies, Inc.'s (''ACX'') interest in Golden Aluminum Company (''Golden'') would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, in the market for aluminum food and beverage can lid stock (''lid stock''). The proposed Final Judgment, filed at the same time as the Complaint, requires Alcoa to sell Golden's Fort Lupton, Colorado aluminum business. The proposed Final Judgment requires that the purchaser of the divested assets continue to operate them in the manufacture and sale of lid stock. The Competitive Impact Statement describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC, and at the office of the Clerk of the United States District Court for the District of Columbia, Washington, DC. Copies of any of these materials may be obtained upon request and payment of a copying fee. These materials are also located on the Antitrust Division's web site (www.usdoj.gov/atr/cases.html).

Public comment is invited within 60 days of the date of this notice. Such comments, and response thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530 (telephone: 202–307–6351).

Constance K. Robinson,

Director of Operations and Merger Enforcement.

Stipulation and Order

It is hereby Stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event that plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event that the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court

has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that the defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein..

7. Defendants agree not to consummate their transaction before the Court has signed this Stipulation and Order.

Dated: November 5, 1999.
Respectfully submitted,
For Plaintiff
United States of America: Nina B. Hale, *Washington Bar #18776;* Laura M. Scott, Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh St., N.W., Suite 500, Washington, DC 20004, (202) 307–6351.
For Defendant:
Alcoa, Inc., W. Randolph Smith, *DC Bar #*_____, Crowell & Moring, 1001 Pennsylvania Avenue, N.W., Washington, DC 20004–2595, (202) 624–2700.
For Defendants:
ACX Technologies, Inc., and Golden Aluminum Company: W. Todd Miller, *DC Bar #414930,* Baker & Miller, 915 15th Street, Suite 1000, Washington, DC 20005–2302.

Order

It is so ordered, this ____ day of _____, 1999.

_____
United States District Court Judge

Hold Separate Stipulation and Order

It is hereby *Stipulated by and between the undersigned parties, subject to approval and entry by the Court, that:*

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. ''Alcoa'' means defendant Alcoa Inc., a Pennsylvania corporation with its headquarters in Pittsburgh, Pennsylvania, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

B. ''ACX'' means ACX Technologies, Inc., a Colorado corporation with its headquarters in Golden, Colorado, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. ''Golden'' means Golden Aluminum Company, a wholly owned subsidiary of ACX, with two principal aluminum sheet manufacturing facilities located in Fort Lupton, Colorado, and San Antonio, Texas, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

D. ''Fort Lupton Assets'' means all assets included within Golden's Fort Lupton, Colorado operation including:

1. All tangible assets, including the Fort Lupton manufacturing facility located at 1405 E. 14th Street, Fort Lupton, Colorado 80621–0207 (''the Fort Lupton Facility'') and the real property on which the Fort Lupton Facility is situated; any facilities used for research and development activities, including Golden Engineering, AG, a Swiss company, and GAC Technology, a Colorado corporation, both of which provide engineering support to the Fort Lupton Facility (''the Engineering Facilities''), and any real property associated with those facilities, manufacturing assets relating to the Fort Lupton Facility and to the Engineering Facilities, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations issued by any governmental organization relating to the Fort Lupton Facility and to the Engineering Facilities; all contracts, agreements, leases, commitments and understandings pertaining to the operations of the Fort Lupton Facility and of the Engineering Facilities; supply agreements; all customer lists, accounts, and credit records; and other records maintained by Golden in connection with the operations of the Fort Lupton Facility and of the Engineering Facilities;

2. All intangible assets, including but not limited to all patents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names, technical information, 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, and all manuals and technical information Golden provides to its employees, customers, suppliers, agents or licensees in connection with the operations of the Fort Lupton Facility and of the Engineering Facilities; except that Alcoa may retain a non-exclusive, non-transferable, royalty-free license to use all patents, licenses, and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures necessary to operate the block caster at Golden's San Antonio, Texas manufacturing facility (''the San Antonio block caster''), provided, however, that if Alcoa sells the San Antonio block caster to ACX Technologies, Inc. or an affiliate of ACX Technologies, Inc., it may provide ACX Technologies, Inc. or the ACX Technologies, Inc. affiliate with a non-exclusive, non-transferable, royalty-free license for use solely in connection with the operation of the San Antonio block caster; and

3. All research data concerning historic and current research and development efforts relating to the operation of the Fort Lupton Facility and of the Engineering Facilities, including designs of experiments, and the results of unsuccessful designs and experiments.

E. ''Lid stock'' means an aluminum sheet product from which the ends, tabs and pull-off lids of food and beverage cans are made.

II. Objectives

The Final Judgment filed in this case is meant to ensure Alcoa's prompt divestiture of the Fort Lupton Assets for the purpose of maintaining a viable competitor in the manufacture and sale of lid stock to remedy the effects that the United States alleges would otherwise result from Alcoa's proposed acquisition of Golden.

This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Fort Lupton Assets, which are being divested, be maintained as an independent, economically viable, ongoing business concern, and that competition is maintained during the pendency of the divestiture.

III. Hold Separate Provisions

Until the divestiture required by the Final Judgment has been accomplished:

A. Alcoa shall preserve, maintain, and operate the Fort Lupton Assets as an independent competitor with management, research, development, production, sales and operations held entirely separate, distinct and apart from those of Alcoa. Alcoa shall not coordinate the manufacture, marketing or sale of products from the Fort Lupton

Assets with its existing lid stock business. Within twenty (20) calendar days of the filing of the Complaint in this matter, Alcoa will inform plaintiff of the steps taken to comply with this provision.

B. Alcoa shall take all steps necessary to ensure that the Fort Lupton Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the manufacture and sale of lid stock; that the management of the Fort Lupton Assets will not be influenced by Alcoa, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Fort Lupton Assets will be kept separate and apart from the operations of Alcoa. Alcoa's influence over the Fort Lupton Assets shall be limited to that necessary to carry out Alcoa's obligations under this Order and the Final Judgment. Alcoa may receive historical aggregate financial information (excluding capacity or pricing information) relating to the Fort Lupton Assets to the extent necessary to allow Alcoa to prepare financial reports, tax returns, personnel reports, and other necessary or legally required reports.

C. Alcoa shall use all reasonable efforts to maintain lid stock manufacturing and sales levels at the Fort Lupton Facility, and to maintain research and development activities and engineering support at the Engineering Facilities. Alcoa shall maintain at current or previously approved levels, whichever are higher, internal research and development funding, promotional, advertising, sales, technical assistance, marketing and merchandising support for the Fort Lupton Assets.

D. Alcoa shall provide and maintain sufficient working capital to maintain the Fort Lupton Assets as an economically viable, on going business.

E. Alcoa shall provide and maintain sufficient lines and sources of credit to maintain the Fort Lupton Assets as an economically viable, ongoing business.

F. Alcoa shall take all steps necessary to ensure that the Fort Lupton Facility is fully maintained in operable condition at no lower than its current rated capacity, and shall maintain and adhere to normal repair and maintenance schedules for the Fort Lupton Facility.

G. Alcoa shall not, except as part of a divestiture approved by plaintiff, remove, sell, lease, assign, transfer, pledge or otherwise dispose of or pledge as collateral for loans, any of the Fort Lupton Assets, including the intangible assets that are described in Section II of the Final Judgment.

H. Alcoa shall maintain, in accordance with sound accounting principles, separate, true, accurate and complete financial ledgers, books and records that report, on a periodic basis, such as the last business day of every month, consistent with part practices, the assets, liabilities, expenses, revenues, income, profit and loss of the Fort Lupton Assets.

1. Until such time as the Fort Lupton Assets are divested, except in the ordinary course of business or as is otherwise consistent with this Hold Separate Agreement, Alcoa shall not hire, transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any Golden employees who on the date of the signing of this Agreement work for the Fort Lupton Facility, or for the Engineering Facilities, unless such individual has a written offer of employment from a third party for a like position.

J. Alcoa shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser.

K. The Hold Separate Stipulation and Order shall remain in effect until the divestiture required by the Final Judgment is complete, or until further Order of the Court. Respectfully submitted,

For Plaintiff:
United States of America: Nina B. Hale, *Washington Bar* #18776, Laura M. Scott, *Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh St., N.W., Suite 500, Washington, DC 20004, (202) 307–6351.*
Dated this 5th day of November 1999.
For Defendant:
Alcoa, Inc.: W. Randolph Smith, *Crowell & Moring, 1001 Pennsylvania Avenue, N.W., Washington DC 20004–2595, (202) 624–2700.*
For Defendants:
ACX Technologies, Inc. and Golden Aluminum Company: W. Todd Miller, *Baker & Miller, 915 15th Street, Suite 1000, Washington, DC 20005–2302.*

Order

It is so ordered, this _____ day of _____, 1999.

_____
United States District Court Judge

Dated: November 5, 1999.
Respectfully submitted,
For Plaintiff United States of America Nina B. Hale *Washington Bar* #1877G, Laura M. Scott, *Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh St., NW, Suite 500, Washington, DC 20004, (202) 307–6351.*
For Defendant Alcoa, Inc.
W. Randolph Smith *DC Bar* #356402 Crowell & Moring, 1001 Pennsylvania Avenue, NW, Washington, DC 20004–2595, (202) 624–2700.
For Defendants ACX Technologies, Inc. and Golden Aluminum Company
W. Todd Miller *DC Bar* #_____ Baker & Miller, 915 15th Street, Suite 1000, Washington, DC 20005–2302.

Order

It is so ordered, this _____ day of _____, 1999.

_____
United States District Court Judge

Final Judgment

Whereas, plaintiff, the United States of America (''United States''), filed its complaint in this action on November 5, 1999, and plaintiff and defendants, Alcoa Inc. (''Alcoa''), ACX Technologies, Inc. (''ACX''), and Golden Aluminum Company (''Golden''), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, defendants have agreed 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 the Fort Lupton Assets of ACX's subsidiary, Golden Aluminum Company (''Golden''), to assure that competition is not substantially lessened;

And Whereas, plaintiff requires defendant Alcoa to divest the Fort Lupton Assets for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to plaintiff that the divestiture ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or contract provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged,* and Decreed as follows:

I. Jurisdiction

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

II. Definitions

As used in this Final Judgment:

A. ''Alcoa'' means defendant Alcoa, Inc., a Pennsylvania corporation with its headquarters in Pittsburgh, Pennsylvania, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

B. ''ACX'' means ACX Technologies, Inc., a Colorado corporation with its headquarters in Golden, Colorado, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. ''Golden'' means Golden Aluminum Company, a wholly owned subsidiary of ACX, with two principal aluminum sheet manufacturing facilities located in Fort Lupton, Colorado, and San Antonio, Texas, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

D. ''Fort Lupton Assets'' means all assets included within Golden's Fort Lupton, Colorado operation including:

1. All tangible assets, including the Fort Lupton manufacturing facility located at 1405 E. 14th Street, Fort Lupton, Colorado 80621–0207 (''the Fort Lupton Facility'') and the real property on which the Fort Lupton Facility is situated; any facilities used for research and development activities, including Golden Engineering, AG, a Swiss company, and GAC Technology, a Colorado corporation, both of which provide engineering support to the Fort Lupton Facility (''the Engineering Facilities''), and any real property associated with those facilities; manufacturing assets relating to the Fort Lupton Facility and to the Engineering Facilities, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorization issued by any governmental organization relating to the Fort Lupton Facility and to the Engineering Facilities; all contracts, agreements, leases, commitments and understandings pertaining to the operations of the Fort Lupton Facility and of the Engineering Facilities; supply agreements; all customers lists, accounts, and credit records; and other records maintained by Golden in connection with the operations of the Fort Lupton Facility and of the Engineering Facilities;

2. All intangible assets, including but not limited to all parents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names, technical information, 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, and all manuals and technical information Golden provides to its employees, customers, suppliers, agents or licensees in connection with the operations of the Fort Lupton Facility and of the Engineering Facilities, except that Alcoa may retain a non-exclusive, non-transferable, royalty-free license to use all patents, licenses, and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures necessary to operate the block caster at Golden's San Antonio, Texas manufacturing facility (''the San Antonio block caster''), provided, however, that if Alcoa sells the San Antonio block caster to ACX Technologies, Inc. or an affiliate of ACX Technologies, Inc., it may provide ACX Technologies, Inc., or the ACX Technologies, Inc. affiliate with a non-exclusive, non-transferable, royalty-free license for use solely in connection with the operation of the San Antonio block caster; and

3. All research data concerning historic and current research and development efforts relating to the operations of the Fort Lupton Facility and of the Engineering Facilities, including designs of experiments, and the results of unsuccessful designs and experiments.

E. ''Lid stock'' means an aluminum sheet product from which the ends, tabs and pull-off lids of food and beverage cans are made.

III. Applicability

A. The provisions of this Final Judgment apply to Alcoa and ACX, as defined above, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Alcoa shall require, as a condition of the sale or other disposition of all or substantially all of the Fort Lupton Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV. Divestiture of Assets

A. Alcoa is hereby ordered and directed in accordance with the terms of this Final Judgment, within sixty (60) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Fort Lupton Assets as an ongong business to a purchaser acceptable to the United States in its sole discretion.

B. Alcoa shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible. The United States, in its sole discretion, may extend the time period for any divestiture by an additional period of time not to exceed thirty (30) calendar days.

C. In accomplishing the divestiture ordered by this Final Judgment, Alcoa promptly shall make known, by usual and customary means, the availability of the Fort Lupton Assets described in this Final Judgment. Alcoa shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Alcoa shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Fort Lupton Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Alcoa shall make available such information to the plaintiff at the same time that such information is made available to any other person.

D. Alcoa shall provide to any purchaser of the Fort Lupton Assets information relating to the personnel involved in the manufacture and sale of lid stock in connection with the Fort Lupton Assets to enable the purchaser to make offers of employment. Alcoa shall not interfere with any negotiations by any purchaser to employ any Golden employee who works for the Fort Lupton Facility or for the Engineering Facilities, or whose principal responsibility involves the manufacture and sale of lid stock associated with the Fort Lupton Assets.

E. Alcoa shall permit prospective purchasers of the Fort Lupton Assets to have reasonable access to personnel and to make inspection of the Fort Lupton Assets; access to any and all environmental, zoning, and other permit documents and information customarily provided as part of a due diligence process.

F. Alcoa shall warrant to the purchaser of the Fort Lupton Assets that all necessary environmental, zoning and other permits relating to the Fort Lupton assets are in order in all material respects. Alcoa will not undertake, directly or indirectly, following the divestiture of the Fort Lupton Assets, any challenges to the environmental, zoning, or other permits pertaining to the operation of the Fort Lupton Assets.

G. Alcoa shall warrant to the purchaser of the Fort Lupton Assets that the Fort Lupton Assets will be operational on the date of the sale.

H. Alcoa shall not take any action, direct or indirect, that will impede in any way the operation of the Fort Lupton Assets.

1. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this final Judgment, shall include all of the Fort Lupton Assets, operated pursuant to the Hold Separate Stipulation and Order, and be accomplished by selling or otherwise conveying the Fort Lupton Assets to a purchaser in such a way as to satisfy the United States, in its sole discretion, that the Fort Lupton Assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in the manufacture and sale of lid stock. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser with respect to whom it is demonstrated to the United States' sole satisfaction that: (1) The purchaser has the capability and intent of competing effectively in the manufacture and sale of lid stock; (2) The purchaser has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of lid stock; (3) None of the terms of any agreement between the purchaser and Alcoa gives Alcoa the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively; and (4) The divestiture will remedy the competitive harm alleged in the Complaint.

V. Appointment of Trustee

A. In the event that Alcoa has not divested the Fort Lupton Assets within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the Fort Lupton Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Fort Lupton Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Alcoa any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States in its sole discretion. Alcoa shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Alcoa must be conveyed in writing to plaintiff and the trustee within ten (10) days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Alcoa, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Alcoa and the trust shall then be terminated. The compensation of such trustee and of professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Alcoa shall use its best efforts to assist the trustee in accomplishing the required divestiture, including its best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Alcoa shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Alcoa shall permit *bona fide* prospective acquirers of the Fort Lupton Assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment. Alcoa shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the business to be divested.

F. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations; provided, however, that to the extent such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff and to defendant Alcoa, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any

proposed divestiture pursuant to Sections IV and V of this Final Judgment, Alcoa or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff or the proposed divestiture. If the trustee is responsible, it shall similarly notify Alcoa. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, the United States, in its sole discretion, may request from Alcoa, the trustee, the proposed purchaser, or any other third party additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Alcoa and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the plaintiff has been provided the additional information requested from Alcoa, the trustee, the proposed purchaser, or any third party, whichever is later, the United States shall provide written notice to Alcoa and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to Alcoa and the trustee that it does not object, then the divestiture may be consummated, subject only to Alcoa's limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Alcoa under the provision in Section (V)(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. 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 whether pursuant to Section IV or Section V of this Final Judgment, Alcoa shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include, *inter alia,* the name, address, and telephone number of each person who, at any time after the period covered by the last such report, 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 business to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Alcoa has taken to solicit a buyer for the Fort Lupton Assets and to provide required information to prospective purchasers.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Alcoa shall deliver to plaintiff an affidavit which describes in detail all actions Alcoa has taken and all steps Alcoa has implemented on an on-going basis to preserve the Fort Lupton Assets pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Alcoa's efforts to maintain and operate the Fort Lupton Assets as an active competitor, maintain the management, staffing, research and development activities, sales, marketing, and pricing of the Fort Lupton Assets, and maintain the Fort Lupton Assets in operable condition at current capacity configurations. Alcoa shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in Alcoa's earlier affidavit(s) filed pursuant to Section VII(B) within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Alcoa shall preserve all records of all efforts made to preserve the business to be divested and effect the divestiture.

VIII. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, Alcoa shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court and to preserve the Fort Lupton Assets. Defendants shall take no action that would jeopardize the divestiture of the Fort Lupton Assets.

IX. Financing

Alcoa is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Section IV or V of this Final Judgment.

X. Compliance Inspection

For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment and the hold Separate Stipulation and Order; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to defendants at their principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment and the Hold Separate Stipulation and Order.

C. No information nor any documents obtained by the means provided in Sections VII or X of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) 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)(7) of the Federal Rules of Civil Procedure,'' then plaintiff shall give ten (10) days notice to defendants prior to divulging such material in any legal proceeding (other

than a grand jury proceeding) to which defendants are not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

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

_____

United States District Judge

Competitive Impact Statement

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

I. Nature and Purpose of the Proceeding

On November 5, 1999 the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Alcoa Inc. (''Alcoa'') of ACX Technologies, Inc.'s (''ACX'') interest in Golden Aluminum Company (''Golden'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that the transaction would result in Alcoa increasing its already dominant share of the aluminum food and beverage can lid stock (''lid stock'') production business in North America. Alcoa is the largest producer of lid stock in North America. Golden is a small, but low cost producer of lid stock. They compete to produce and sell the best quality lid stock at the lowest prices, and to provide the best technological, marketing, and customer support services. Alcoa and ACX have proposed a transaction that would eliminate this competition, further increase concentration in the already highly concentrated lid stock business, and further increase the market power of the dominant firm—Alcoa. The proposed transaction would make it more likely that the few remaining lid stock producers will engage in anticompetitive coordination to increase prices, reduce quality, and decrease production of lid stock.

The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) A permanent injunction preventing Alcoa from acquiring Golden from ACX.

When the Complaint was filed, the United States also filed a proposed settlement that would permit Alcoa to complete its acquisition of Golden, but requires a divestiture that will preserve competition in the relevant market. This settlement consists of a Stipulation and Order, Hold Separate Stipulation and Order, and a proposed Final Judgment.

The proposed Final Judgment orders Alcoa to divest, within sixty (60) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, Golden's Fort Lupton Assets (as defined in the Final Judgment) as an ongoing business to an acquirer acceptable to the Antitrust Division of the Department of Justice (''DOJ''). ''Fort Lupton Assets'' means all assets included within Golden's Fort Lupton, Colorado aluminum operation including all tangible and intangible assets, and all facilities which provide engineering support to the Fort Lupton, Colorado facility.

Until such divestiture is completed, the terms of the Hold Separate Stipulation and Order entered into by the parties apply to ensure that the Fort Lupton Assets shall be maintained as an independent competitor from Alcoa.

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

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Alcoa is a Pennsylvania corporation, with its principal offices located in Pittsburgh, Pennsylvania. Alcoa is the world's largest integrated aluminum company, engaging in all phases of the aluminum business—from the mining and processing of bauxite to the production of primary aluminum and fabrication of products. In 1998, Alcoa had revenues of over $15 billion. Alcoa produces lid stock at its rolling mill located in Warrick, Indiana. Alcoa's 1998 sales of lid stock in North America were approximately $700 million.

ACX is a Colorado corporation, headquartered in Golden, Colorado. ACX owns 100% of the stock of Golden, whose primary assets are two continuous cast facilities. At its facility located in Fort Lupton, Colorado, Golden produces lid stock. Golden produces a variety of aluminum sheet products (but not lid stock) at its facility located in San Antonio, Texas. In 1998, ACX reported total sales of about $988.4 million.

On August 17, 1999, Alcoa and ACX entered into an agreement under which Alcoa would acquire all of ACX's interest in Golden. This transaction, which would increase concentration in the already highly concentrated lid stock market, precipitated the government's suit.

B. Lid Stock Market

Lid stock is a flat rolled aluminum product that is typically manufactured in a rolling mill. A typical rolling mill contains a hot mill, which performs the initial reduction of the thickness of the ingot, one or more cold mills, which finish the metal to the desired thickness and width, and a variety of ancillary equipment. Lid stock can also be produced in a continuous cast facility. In a continuous cast facility, a thin sheet of molten metal is poured onto a base and pressed between two blocks or belts to achieve the desired thickness and width.

Lid stock differs from other aluminum sheet products. Lid stock is made from a harder alloy than other aluminum sheet products, such as the sheet product from which the bodies of beverage cans are made (''can body stock''). Consequently, lid stock requires more powerful mills and more mill time to produce than can body stock and other sheet products. Lid stock is therefore more expensive to produce per pound than many other sheet products.

Lid stock is sold to can makers in large coils that are fed into lid making machines, which stamp out rings and scored circles to form the ends, tabs, and pull-off lids of food and beverage cans. Because of the metallurgical characteristics of lid stock, can makers cannot use their equipment to produce lids from can body stock or other materials, such as steel.

Can makers sell lids to food and beverage companies which used them to seal their beer, soft drink, and food cans.

The food and beverage companies cannot use other types of lids to seal their cans.

As a result, a small but significant increase in lid stock prices would not cause a significant number of customers to substitute other products for lid stock.

C. Harm to Competition as a Consequence of the Acquisition

The proposed acquisition would likely lessen competition in the manufacture and sale of lid stock. Alcoa controls over 50 percent of the aluminum can lid stock market in North America. Golden is one of only five other companies that manufactures lid stock in North America. The proposed transaction will make it more likely that the few remaining lid stock producers will engage in anticompetitive coordination to increase prices, reduce quality, and decrease production of lid stock.

The Complaint alleges that the transaction would likely have the following effects, among others: actual and potential competition between Alcoa and Golden in the lid stock market would be eliminated; competition generally in the sale and manufacture of lid stock would be lessened substantially; prices for lid stock would increase; and the quality and amount of lid stock produced would decrease.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition of Golden by Alcoa.

The proposed Final Judgment provides that Alcoa must divest, within sixty (60) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, Golden's Fort Lupton Assets as an ongoing business to an acquirer acceptable to DOJ. If defendants fail to divest the Fort Lupton Assets, a trustee (selected by DOJ) will be appointed.

The Final Judgment provides that Alcoa will pay all costs and expenses of the trustee. After his or her other appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee and the parties will have the opportunity to make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the Final Judgment, including extending the trust or the term of the trustee's appointment.

Divestiture of the Fort Lupton Assets preserves competition because it will restore the lid stock market to a structure that existed prior to the acquisition and will preserve the existence of an independent competitor. Thus, the divestiture will preserve and encourage ongoing competition in the production and sale of lid stock.

IV. Remedies Available to Potential Private Litigants

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

V. Procedures Available for Modification of the Proposed Final Judgment

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

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register. Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC. 20004.

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

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Alcoa, ACX and Golden.

The United States is satisfied that the divestiture of the described assets specified in the proposed Final Judgment will encourage viable competition in the production and sale of lid stock. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in the market, The divestiture of the Fort Lupton Assets will restore the lid stock market to a structure that existed prior to the acquisition and will preserve the existence of an independent competitor.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making the determination, the court *may* consider.

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment 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). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See*

United States v. *Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extending proceedings which with have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather,

absent a showing to corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statements and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court, a court may not ''engage in an unrestricted evaluation of what relief would best serve the Public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988); *quoting United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981); *see also, Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

[t]the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive competitive effect of a particular practice or whether it mandates certainty of the free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved on even if it falls short of the remedy the court impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest' (citations omitted).''[3]

VIII. Determinative Documents

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

Dated: December 6, 1999.

For Plaintiff United States of America:

Respectfully submitted,

Nina B. Hale,

Washington Bar #18776.

Laura M. Scott,

Virginia Bar #*36587.*

Trial Attorneys, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW, Suite 500, Washington, DC 20004, 202–307–0892 202–307–2441 (Facsimile).

[FR Doc. 99–33410 Filed 12–28–99; 8:45 am]

BILLING CODE 4410–11–M

[1] 119 Cong. Rec. 244598 (1973). *See also United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *United States* v. *Bechtel*, 648 F.2d at 666 (internal citations omitted) (emphasis added); *see United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette,* 406 F. Supp. at 716. *See also United States.* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983).

[3] *United States* v. *American Tel & Tel., Co.,* 552 F. Supp. 131, 150 (D.C.C. 1982), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983), *quoting Gillette,* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619 (W.D. Ky. 1985).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated June 8, 1999, and published in the **Federal Register** on July 7, 1999, (64 FR 36718), Roche Diagnostics Corporation, 9115 Hague Road, Indianapolis, Indiana 46250, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine	II

Roche Diagnostics Corporation plans to manufacture small quantities of the above listed controlled substances for incorporation in drug of abuse detection kits.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Roche Diagnostics Corporation to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Roche Diagnostics Corporation to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: December 9, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–33817 Filed 12–28–99; 8:45 am]

BILLING CODE 4410–09–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

December 21, 1999.

TIME AND DATE: 10:00 a.m., Thursday, January 6, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Martin Marietta Aggregates, Docket No. SE 98–156–M (Issues include whether the judge erred in finding that a miner's negligence was not imputable to the operator for penalty assessment and unwarrantable failure purposes because the miner was not an agent of the operator.)

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance