human health and the environment. Remediation will also be conducted at streams and creeks, and groundwater will be monitored to ensure protection of public health and the environment. In addition, the Consent Decree requires the City to reimburse the United States for costs incurred in connection with the Sites.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of Jacksonville, Florida*, D.J. Ref. 90–11–3–08080.

The Consent Decree may be examined at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $12.25 (for the Consent Decree only and $175.50 for the Consent Decree and all exhibits thereto) (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

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

[FR Doc. E8–5380 Filed 3–17–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on February 22, 2008, a proposed Settlement Agreement was filed with the United States Bankruptcy Court for the Southern District of Texas in *In re ASARCO LLC, et al.*, No. 05–21207 (Bankr. S.D. Tex.). The Settlement Agreement addresses the Barker Hughesville (Block P) Site in Cascade and Judith Basin Counties, Montana. Under the proposed settlement, the United States will have an allowed general unsecured claim of $1 million and the State of Montana will have an allowed general unsecured claim of $7.1 million.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to Environmental Enforcement Section, U.S. Department of Justice, P.O. Box. 7611, Washington, DC 20044–7611. In either case, comments should refer to *In re Asarco LLC*, No. 05–21207 (Bankr. S.D. Tex.), D.J. Ref. No. 90–11–3–08633. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Settlement Agreement may be examined at the office of the United States Attorney for the Southern District of Texas, 800 North Shoreline Blvd, #500, Corpus Christi, TX 78476–2001, and at the Region 7 office of the United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, KS 66101. During the comment period, the proposed Settlement Agreement may also be examined on the following Department of Justice website: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the proposed Settlement Agreement may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Settlement Agreement from the Consent Decree Library, please enclose a check in the amount of $3.25 (25 cents per page reproduction costs) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

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

[FR Doc. E8–5350 Filed 3–17–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Cookson Group PLC, 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 and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Cookson Group* plc, *et. al.,* Civil Action No. 1:08–cv–00389. On March 4, 2008, the United States filed a Complaint to obtain equitable and other relief against defendants Cookson Group plc and Cookson America Inc. (''Cookson''), and Foseco plc and Foseco Metallurgical Inc. (''Foseco'') to prevent Cookson's proposed acquisition of Foseco. The Complaint alleges that Cookson's acquisition of Foseco's United States carbon-bonded ceramic refractory (''CBC'') business would substantially lessen competition in the United States in the development, manufacture, and sale of certain CBCs, in violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The proposed Final Judgment, filed on March 4, 2008, requires defendants to divest Foseco's entire United States CBC business, including its plant in Saybrook, Ohio and related assets.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 325 7th Street, NW., Room 215, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of Columbia, Washington, DC. Copies of these materials may be obtained from the Antitrust Division upon request and payment of a copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and Responses thereto, will be published in the **Federal Register**

and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: 202–307–0924).

J. Robert Kramer II,

Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Plaintiff, v. Cookson Group, PLC, 165 Fleet Street, London EC4A 2AE, England; Cookson America, Inc., I Cookson Place, Providence, RI 02903–3248; FOSECO PLC, Coleshill Road, Fazeley, Tamworth, Staffordshire B78 3TL, England; and FOSECO Metallurgical Inc., 20200 Sheldon Road, Cleveland, OH 44142, Defendants; Civil Action No. 1:08–cv–00389; Judge: Urbina, Ricardo M.; Deck Type: Antitrust; Date Stamp: March 4, 2008

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to enjoin the proposed acquisition by Cookson Group plc of Foseco plc and to obtain equitable and other relief. The United States complains and alleges as follows:

I. Nature of the Action

1. On October 11, 2007, Cookson and Foseco announced that they had reached agreement on the terms of a recommended cash offer by Cookson for the entire issued and to-be-issued share capital of Foseco in a transaction valued at approximately $1 billion.

2. Cookson and Foseco both manufacture and sell isostatically pressed carbon bonded ceramics products (''CBCs''), which are used to control the flow and enhance the quality of steel produced in the continuous casting steelmaking process. Cookson's proposed acquisition of Foseco would combine two of only three North American manufacturers of certain CBCs.

3. The United States brings this action to enjoin Cookson's proposed acquisition of Foseco because it would substantially lessen competition in the markets for certain CBCs in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

II. Parties to the Proposed Acquisition

4. Cookson Group plc (''Cookson''), a United Kingdom corporation with its headquarters in London, England, is a manufacturer and processor of ceramics, electronics, and precious metals. Cookson's total 2006 worldwide revenues were approximately $3.3 billion, and its total 2006 U.S. revenues were about $356 million. Cookson America Inc., a wholly-owned subsidiary of Cookson Group plc, is a Delaware corporation with its headquarters in Providence, Rhode Island. Cookson, through its subsidiaries, manufactures CBCs in the United States and Mexico and distributes them throughout the United States. In 2006, Cookson's U.S. CBC revenues were about $75 million.

5. Foseco plc, a United Kingdom corporation with its headquarters in Staffordshire, England, manufactures refractories and related products for sale, and offers services worldwide to the steel and foundry industries. Its total 2006 worldwide revenues were approximately $817 million, and its total 2006 U.S. revenues were about $110 million. Foseco Metallurgical Inc., a wholly-owned subsidiary of Foseco plc, is a Delaware corporation with its headquarters in Cleveland, Ohio (together with Foseco plc, ''Foseco''). Foseco manufactures CBCs in the United States and distributes them throughout the United States. In 2006, Foseco's U.S. CBC revenues were about $4 million.

III. Jurisdiction and Venue

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

7. Defendants manufacture and sell CBCs in the flow of interstate commerce. Defendants' activities in manufacturing and selling these products substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1331, 1337(a), and 1345.

8. Defendants have consented to venue and personal jurisdiction in this judicial district and venue is proper under 28 U.S.C. 1391(d).

IV. Trade and Commerce

A. CBCs Generally

9. Refractories are non-metallic ceramics that serve as a heat buffer or lining in industrial devices because they withstand extremely high temperatures. In the steelmaking process, refractory products serve as barriers between hot molten steel and the non-consumable equipment such as the furnaces, ladles, and tundishes. A ladle is a large container that receives molten steel from a furnace; a tundish is a receptacle that receives steel from the ladle and to controls the flow of steel into molds during the continuous casting process.

10. CBCs are consumable, isostatically pressed refractory products that control the flow of molten steel from the ladle to the tundish and onto the continuous casting mold during the continuous casting process. CBCs are consumed through exposure to molten steel and must be replaced frequently.

11. Isostatic pressing is a process used in the manufacture of CBCs to increase the refractory materials' density and homogeneity, resulting in a CBC with increased thermal shock resistance and resistivity to chemical attack. Carbon-bonded alumina graphite is the main refractory material used to make CBCs.

12. The ''design'' of a CBC refers to both its shape and the alumina graphite recipe. Each customer uses different designs tailored to the equipment it uses in the casting process. Customers with multiple plants require custom-designed CBCs for each plant and may require multiple custom-designed CBCs within each plant. Designs depend on variables such as the customer's cast strand size and shape, casting speed, and the steel grades produced. Customers change CBC recipes and/or shapes in order to improve steel quality, meet new steel specifications, or save on CBC costs.

13. CBCs undergo rigorous testing by the manufacturer and the customer to ensure reliable performance and value under actual casting conditions. Because CBCs are critical to the steelmaking process, most customers have a policy of splitting sales between at least two suppliers to ensure supply.

B. The Relevant Product Markets

1. Ladle Shrouds

14. Ladle shrouds are CBCs that prevent molten steel from re-oxidizing and ensure the steel transfers safely from the ladle to the tundish.

15. There are no good substitutes for ladle shrouds. A small but significant post-acquisition increase in the price of ladle shrouds would not cause customers to substitute another product or otherwise reduce their usage of ladle shrouds in sufficient quantities so as to make such a price increase unprofitable.

16. The manufacture and sale of ladle shrouds is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act.

2. Stopper Rods

17. Stopper rods are CBCs used to control the flow of steel out of the

tundish and are one of two types of devices, the other being slide gate systems, that can perform this function. Customers use only one device or the other in a given tundish. The choice of device depends on the design of the tundish. Once the choice of tundish design has been made, a customer cannot switch from a stopper rod to a slide gate system without also replacing or substantially reconfiguring the tundish-significantly disrupting their operations.

18. Because of high switching costs, a small but significant post-acquisition increase in the price of stopper rods would not cause customers to switch to slide gate systems or otherwise reduce their usage of stopper rods in sufficient quantities so as to make such a price increase unprofitable.

19. The manufacture and sale of stopper rods is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act.

C. The Relevant Geographic Markets

20. Cookson and Foseco manufacture ladle shrouds and stopper rods at facilities in North America for sale in the United States.

21. Virtually all ladle shrouds and stopper rods purchased by customers in the United States are produced in plants located in North America. Although a few manufacturers outside of North America make ladle shrouds and stopper rods, firms with production facilities in North America have a significant advantage over these foreign manufacturers in delivered cost and/or in competing for customers that value shorter lead times in their supply chain.

22. A small but significant post-acquisition increase in the price of ladle shrouds and stopper rods would not cause customers in North America to switch to purchases from manufacturers outside of North America in sufficient numbers so as to make such a price increase unprofitable.

23. Accordingly, within the meaning of section 7 of the Clayton Act, the relevant geographic market for ladle shrouds and stopper rods is North America.

D. Anticompetitive Effects: The Proposed Transaction Will Harm Competition in the Markets for Ladle Shrouds and Stopper Rods

24. The production of ladle shrouds and stopper rods involves similar materials and manufacturing processes. In general, manufacturers that are successful in selling ladle shrouds to U.S. customers are also successful in selling stopper rods to U.S. customers, and vice versa.

25. Cookson and Foseco are two of only three firms that manufacture and sell the vast majority of ladle shrouds and stopper rods to U.S. customers. Cookson and Foseco have competed with one another on price, service, and innovation in the markets for stopper rods and ladle shrouds. The markets for ladle shrouds and stopper rods would become substantially more concentrated if Cookson acquires Foseco. Cookson and Foseco would have a combined share of approximately 75 percent. Using a measure of market concentration called the Herfindahl-Hirschman Index (''HHI'') (defined and explained in Appendix A), the proposed transaction would increase the HHI in both markets by approximately 700 points to a post-transaction level in excess of 6000.

26. Customers request bids from ladle shroud and stopper rod suppliers and consider price, quality, service, and innovation in selecting the winning bidder. The proposed acquisition will eliminate Foseco as an independent bidder.

27. This reduction in the number of active bidders from three to two will reduce competition and likely will result in higher prices and/or reductions in service and innovation for a significant number of customers in the markets for ladle shrouds and stopper rods. The likely anticompetitive effect is heightened due to customers' preferences to maintain supply relationships with two independent suppliers simultaneously. In light of such preferences, the proposed acquisition will eliminate competition to be a customer's second supplier.

28. Foreign manufacturers likely will not have the incentive or ability to defeat an anticompetitive increase in price or reduction in service or innovation because of their high delivered costs, customers' preferences for North American suppliers, and/or the poor quality and reputation of their products.

29. The proposed acquisition will substantially lessen competition in the manufacture and sale of ladle shrouds and stopper rods in the United States in violation of section 7 of the Clayton Act.

E. Entry: New Entrants Will Not Defeat an Exercise of Market Power

30. Successful entry into the ladle shroud and stopper rod markets would not be timely, likely, or sufficient to deter the anticompetitive effects resulting from this transaction. Timely entry sufficient to replace the market impact of Foseco would be difficult for several reasons. A new entrant would need to acquire manufacturing facilities in North America and capital equipment; assemble or develop manufacturing, technical expertise, and personnel; conduct extensive customer trials; and establish a reputation for quality and reliability among U.S. customers. An entrant undertaking these steps would be unable to enter in less than two years.

31. There are foreign firms with a share of the U.S. market for more complex CBCs, known as subentry nozzles and subentry shrouds. Because of the expertise and reputation they have developed in these markets, theoretically they would be capable of entering the domestic market for ladle shrouds and stopper rods. None of these firms, however, are likely to open U.S. manufacturing facilities within the next several years.

V. Violation Alleged

32. The proposed acquisition of Foseco by Cookson would substantially lessen competition in interstate trade and commerce in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

33. Unless restrained, the acquisition will have the following anticompetitive effects, among others:

a. Competition in the markets for the manufacture and sale of ladle shroud and stopper rods in the United States will be lessened substantially;

b. Actual and potential competition between Cookson and Foseco in the manufacture and sale of ladle shrouds and stopper rods in the United States will be eliminated; and

c. Prices for ladle shrouds and stopper rods in the United States likely will increase, and/or service and innovation likely will decline.

VI. Request for Relief

34. Plaintiff requests that:

a. Cookson's proposed acquisition of Foseco be adjudged and decreed to be unlawful and in violation of section 7 of the Clayton Act, 15 U.S.C. 18;

b. Defendants and all persons acting on their behalf be permanently enjoined and restrained from consummating the proposed acquisition or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Cookson with the operations of Foseco;

c. Plaintiff be awarded its costs for this action; and

d. Plaintiff receive such other and further relief as the Court deems just and proper.

Respectfully submitted,

For Plaintiff United States of America:

/s/

Thomas O. Barnett,

Assistant Attorney General
DC Bar #426840.
/s/
Maribeth Petrizzi,
Chief, Litigation II Section
D.C. Bar #435204.
/s/
David L. Meyer,
Deputy Assistant Attorney General
DC Bar #414420.
/s/
J. Robert Kramer II,
Director of Operations and
Civil Enforcement
/s/
Dorothy B. Fountain,
Assistant Chief, Litigation II Section
DC Bar #439469
/s/
Leslie Peritz,
Helena Gardner,
Attorneys, United States Department of Justice, Antitrust Division, Litigation II Section 1401 H Street, NW., Suite 3000, Washington, DC 20530 (202) 307–0924.
Dated: March 4, 2008.

Appendix A—Definition of ''HHI''

The term ''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2+30^2+20^2+20^2=2{,}600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Cookson Group PLC, Cookson America Inc., FOSECO PLC, and FOSECO Metallurgical Inc., Defendants; Case No.: 1:08–cv–00389, Judge: Urbina, Ricardo M. Deck Type: Antitrust; Date Stamp: March 4, 2008

Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on March 4, 2008, the United States and defendants, Cookson Group plc and Cookson America Inc. and Foseco plc and Foseco Metallurgical Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, And without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

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

And whereas, the United States requires defendants to make a certain divestiture 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 later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

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

II. Definitions

As used in this Final Judgment:

A. ''Cookson'' means defendant Cookson Group plc, a United Kingdom corporation with its headquarters in London, England, and Cookson America Inc., a Delaware Corporation with its headquarters in Providence, Rhode Island and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Foseco'' means defendant Foseco plc, a United Kingdom corporation with its headquarters in Tamworth, Staffordshire, England, and Foseco Metallurgical Inc., a Delaware corporation with its headquarters in Cleveland, Ohio and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''CBCs'' means consumable, isostatically pressed refractory products made of carbon-bonded alumina graphite that control the flow of molten steel from the steel ladle to the continuous casting mold during the continuous casting of steel.

D. ''Divestiture Business'' means Foseco's entire business engaged in the development, design, production, servicing, distribution, and sale of CBCs in the United States, including:

1. Foseco's Saybrook, Ohio facility, and the related leasehold;

2. all tangible assets used in the development, design, production, servicing, distribution, and sale of CBCs in the United States, including but not limited to all research data and activities and development activities; all manufacturing equipment, including but not limited to batch mix equipment, presses, drying and oven/kilning, finishing, packaging, and tooling; all fixed assets, real property (leased or owned), personal property, inventory, office furniture, materials, supplies, on- or off-site warehouses or storage facilities relating to the factory and property, and all other tangible property; all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases (including renewal rights), commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records or similar records of all sales and potential sales; all sales support and promotional materials, advertising materials, and production, sales and marketing files; all repair and performance records; all other records; and, at the option of the Acquirer, Foseco's U.S. water-modeling assets;

3. all intangible assets used in the development, design, production, servicing, distribution, and sale of CBCs in the United States, including, but not limited to, all patents, all pending patent applications, licenses and sublicenses, intellectual property, copyrights, trademarks (registered and unregistered), trade names, service marks, and service names relating to the Divestiture Business, but excluding the corporate-level name and device and trademark of Foseco; all technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts

and devices, safety procedures for the handling of materials and substances, all research data concerning historic and current research and development; quality assurance and control procedures, design tools, and simulation capability; all manuals and technical information provided to employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to the Divestiture Business, including, but not limited to, designs of CBCs, and the results of successful and unsuccessful designs and trials; and

4. notwithstanding anything to the contrary in this Final Judgment, if requested by an Acquirer, and subject to the approval of the United States in its sole discretion, defendants shall offer to enter into a transition services agreement for a limited period with respect to certain support services (e.g., HR, IT, and/or health and safety).

E. ''Bonnybridge Business'' means Foseco's European CBC business and its facilities in Bonnybridge, Stirlingshire, Scotland, which the European Commission has required to be divested along with the Divestiture Business.

F. ''Acquirer'' means the entity to which defendants divest the Divestiture Business.

III. Applicability

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

IV. Divestiture

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Business in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion after consultation with the European Commission. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed 60 calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Business as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Business. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Business that it is being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Business customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the production, operation, research and development, design, and sale of CBCs to enable the Acquirer to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer to employ or contract with any defendant employee responsible for any such activity related to the Divestiture Business.

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

E. Defendants shall warrant to the Acquirer that the Divestiture Business will be operational on the date of sale.

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

G. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning or other permits pertaining to the operation of the Divestiture Business, and that following the sale of the Divestiture Business, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Business.

H. 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 the entire Divestiture Business, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Business can and will be used by the Acquirer as part of a viable, ongoing business for the manufacture and sale of CBCs in the United States. The divestiture, whether pursuant to section IV or section V of this Final Judgment,

1. shall be made to the acquirer of the Bonnybridge Business;

2. shall be made to an Acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the manufacture and sale of CBCs in the United States; and

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

V. Appointment of Trustee

A. If defendants have not divested the Divestiture Business within the time period specified in section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States, in consultation with the European Commission to ensure selection of a trustee acceptable to both the United States and the European Commission, and approved by the Court to effect the divestiture of the Divestiture Business.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Business. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon 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 this Court deems appropriate. Subject to section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance or that the Acquirer has not been approved by the European Commission. Any objection by defendants on the ground of trustee malfeasance must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under section VI; any objection by defendants based on lack of approval from the European Commission must be conveyed in writing to the United States and the trustee within the later of (i) five (5) days after the United States provides defendants with written notice, pursuant to section VI(C), stating that it does not object to the proposed divestiture of the Divestiture Business or (ii) two (2) business days after the European Commission notifies defendants that it does not approve of the proposed Acquirer. D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, 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 defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture 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, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. 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 defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. 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 Divestiture Business, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Business.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the trustee shall promptly file 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. 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. The trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Business, 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(s), any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to 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 section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under section IV or section V shall not be consummated. Upon objection by defendants under section V(C), a divestiture proposed under section V shall not be consummated unless approved by the Court.

VII. Financing

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

VIII. Hold Separate

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

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has

been completed under section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Business, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Business, 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 limitations on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Business until one year after such divestiture has been completed.

X. Compliance Inspection

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

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

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

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

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

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(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 the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

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

XII. Retention of Jurisdiction

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

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

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

Date:

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

United States District Judge.

The United States District Court for the District of Columbia

United States of America, Plaintiff, v. Cookson Group PLC, Cookson America Inc., FOSECO PLC, and FOSECO Metallurgical Inc., Defendants; Case No.: 1:08–cv–00389; Judge: Urbina, Ricardo M.; Deck Type: Antitrust; Date Stamp: March 4, 2008.

Competitive Impact Statement

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

I. Nature and Purpose of the Proceeding

Defendant Cookson Group plc and Defendant Foseco plc have entered into an agreement whereby Cookson will acquire Foseco. The United States filed a civil antitrust Complaint on March, 2008 seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially in the markets for certain isostatically pressed carbon bonded ceramics products (''CBCs''), in violation of section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition likely would result in increased prices and/or a reduction in service and

innovation in the manufacture and sale of such CBCs in the United States.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, defendants are required to divest Foseco's business engaged in the development, design, production, servicing, distribution, and sale of CBCs in the United States, including the CBC plant in Saybrook, Ohio and related assets (hereafter the ''Divestiture Business''). Under the terms of the Hold Separate, defendants will take certain steps to ensure that the Divestiture Business is operated as a competitively independent, economically viable, and ongoing business concern; that it will remain independent and uninfluenced by the consummation of the acquisition; and that competition in the market for CBCs is maintained during the pendency of the ordered divestiture.

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

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

A. The Defendants and the Proposed Transaction

Cookson, a United Kingdom corporation with its headquarters in London, England, is a manufacturer and processor of ceramics, electronics, and precious metals. Cookson, through its subsidiary, Cookson America Inc., manufactures CBCs in the United States and Mexico and sells them throughout the United States. In 2006, Cookson's U.S. CBC revenues were about $75 million.

Foseco, a United Kingdom corporation with its headquarters in Staffordshire, England, manufactures refractories and related products for sale and offers services worldwide to the steel and foundry industries. Foseco, through its subsidiary, Foseco Metallurgical Inc., manufactures CBCs in the United States and sells them throughout the United States. In 2006, Foseco's U.S. CBC revenues were about $4 million.

On October 11, 2007, Cookson and Foseco announced that they had reached an agreement on the terms of a recommended cash offer by Cookson for the entire issued and to-be-issued share capital of Foseco in a transaction valued at approximately $1 billion.

B. The Competitive Effects of the Transaction

1. CBCs Generally

Refractories are non-metallic ceramics that serve as a heat buffer or lining in industrial devices because they withstand extremely high temperatures. In the steelmaking process, refractory products serve as barriers between hot molten steel and the non-consumable equipment such as the furnaces, ladles (large containers that receive molten steel from a furnace), and tundishes (receptacles that receive steel from the ladle).

CBCs are consumable, isostatically pressed refractory products that control the flow of molten steel from the ladle to the tundish and onto the continuous casting mold during the continuous casting process. Isostatic pressing is a process used in the manufacture of CBCs to increase the refractory materials' density and homogeneity, resulting in a CBC with increased thermal shock resistance and resistivity to chemical attack. Carbon-bonded alumina graphite is the main refractory material used to make CBCs. CBCs are consumed through exposure to molten steel and must be replaced frequently.

The ''design'' of a CBC refers to both its shape and the alumina graphite recipe. Each customer uses different designs tailored to the equipment it uses in the casting process. Customers with multiple plants require custom-designed CBCs for each plant and may require multiple custom-designed CBCs within each plant. Designs depend on variables such as the customer's cast strand size and shape, casting speed, and the steel grades produced. Customers change CBC recipes and/or shapes in order to improve steel quality, meet new steel specifications, or save on CBC costs.

CBCs undergo rigorous testing by the manufacturer and the customer to ensure reliable performance and value under actual casting conditions. Because CBCs are critical to the steelmaking process, most customers have a policy of splitting sales between at least two suppliers to ensure supply.

2. Relevant Product Markets

Ladle Shrouds

The Complaint alleges that the manufacture and sale of ladle shrouds is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act. Ladle shrouds are CBCs that prevent molten steel from re-oxidizing and ensure the steel transfers safely from the ladle to the tundish.

There are no good substitutes for ladle shrouds. The Complaint alleges that a small but significant post-acquisition increase in the price of ladle shrouds would not cause customers to substitute another product or otherwise reduce their usage of ladle shrouds in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the manufacture and sale of ladle shrouds is a relevant product market.

Stopper Rods

The Complaint alleges that the manufacture and sale of stopper rods is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act. Stopper rods are CBCs used to control the flow of steel out of the tundish and are one of two types of devices, the other being slide gate systems, that can perform this function. The choice of device depends on the design of the tundish. Once the choice of tundish design has been made, a customer cannot switch from a stopper rod to a slide gate system without also replacing or substantially reconfiguring the tundish-significantly disrupting their operations.

The Complaint alleges that, because of high switching costs, a small but significant post-acquisition increase in the price of stopper rods would not cause customers to switch to slide gate systems or otherwise reduce their usage of stopper rods in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the manufacture and sales of stopper rods is a relevant product market.

3. Relevant Geographic Market

Cookson and Foseco manufacture ladle shrouds and stopper rods at facilities in North America for sale in the United States. The Complaint alleges that virtually all ladle shrouds and stopper rods purchased by customers in the United States are produced in plants located in North America. Although a few manufacturers outside of North America make ladle shrouds and stopper rods, firms with production facilities in North America have a significant advantage over these foreign manufacturers in delivered cost and/or in competing for customers that value shorter lead times in their supply chain.

The Complaint alleges that a small but significant post-acquisition increase in the price of ladle shrouds and stopper

rods would not cause customers in North America to switch to purchases from manufacturers outside of North America in sufficient numbers so as to make such a price increase unprofitable. Accordingly, the relevant geographic market for ladle shrouds and stopper rods is North America.

4. Anticompetitive Effects

Cookson and Foseco are two of only three firms that manufacture and sell the vast majority of ladle shrouds and stopper rods to U.S. customers. Cookson and Foseco have competed with one another on price, service, and innovation in the markets for stopper rods and ladle shrouds. The markets for ladle shrouds and stopper rods would become substantially more concentrated if Cookson acquires Foseco. For example, Cookson and Foseco would have a combined share of approximately 75 percent. Using a measure of market concentration called the Herfindahl-Hirschman Index (''HHI'') (defined and explained in Appendix A), the proposed transaction will increase the HHI in both markets by approximately 700 points to a post-transaction level in excess of 6000.

Customers request bids from ladle shroud and stopper rod suppliers and consider price, quality, service, and innovation when selecting the winning bidder. The proposed acquisition will eliminate Foseco as an independent bidder. This reduction in the number of active bidders from three to two will reduce competition and likely will result in higher prices and/or reductions in service and innovation for a significant number of customers in the markets for ladle shrouds and stopper rods. The likely anticompetitive effects are heightened due to customers' preferences to maintain supply relationships with two independent suppliers simultaneously. In light of such preferences, the proposed acquisition will eliminate competition to be a customer's second supplier.

Moreover, manufacturers outside of North America likely will not have the incentive or ability to defeat an anticompetitive increase in price or reduction in service or innovation because of their high delivered costs, customers' preferences for North American suppliers, and/or the poor quality and reputation of their products.

Further, successful entry into the ladle shroud and stopper rod markets would not be timely, likely, or sufficient to deter the anticompetitive effects resulting from this transaction. Timely entry sufficient to replace the market impact of Foseco would be difficult for several reasons. A new entrant would need to acquire capital equipment and manufacturing facilities in North America; assemble or develop manufacturing, technical, and personnel expertise; conduct extensive customer trials; and establish a reputation for quality and reliability among U.S. customers. An entrant undertaking these steps would need to undertake these steps would be unable to enter in less than two years.

There are foreign firms with a share of the U.S. market for more complex CBCs. Because of the expertise and reputation they have developed in these markets, theoretically they are capable of entering the domestic market for ladle shrouds and stopper rods. None of these firms, however, is likely to open North American manufacturing facilities within the next several years.

As a result of these barriers to entry into the North American market for ladle shrouds and stopper rods, entry by any other firm into the manufacture and sale of ladle shrouds and stopper rods will not be timely, likely, or sufficient to deter the anticompetitive effects resulting from this transaction.

III. Explanation of the Proposed Final Judgment

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the markets for ladle shrouds and stopper rods by establishing a new, independent, and economically viable competitor. The proposed Final Judgment requires defendants, within 90 days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as a viable ongoing business, the Divestiture Business, which includes Foseco's CBC plant in Saybrook, Ohio and related tangible and intangible assets.[1] The assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Business can and will be operated by the purchaser as a viable, ongoing business capable of competing effectively in the relevant markets. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

In the event that defendants do not accomplish the divestiture within the period prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

Selected Provisions of the Proposed Final Judgment

Section IV(H) of the proposed Final Judgment requires defendants to sell the Divestiture Business—Foseco's CBC business in the United States—to the acquirer of Foseco's European CBC business, which includes assets in Bonnybridge, Stirlingshire, Scotland (the ''Bonnybridge Business''). This requirement is warranted because the European Commission is requiring defendants to divest the Bonnybridge Business, and because of the practical difficulties of splitting between two acquirers rights to certain intellectual property and know-how used by both businesses.

Because the United States and the European Commission both must approve the same acquirer, section IV(A) of the proposed Final Judgment provides that the United States will consult with the European Commission in exercising its review of defendants' sale of the Divestiture Business in a manner consistent with the proposed Final Judgment, to an acquirer acceptable to the United States in its sole discretion. As noted above, if the defendants do not divest the Divestiture Business within the required time period, the Court, upon application of the United States, is to appoint a trustee to complete the divestiture. Because the European Commission also requires selection of a trustee if the divestiture is not completed within a certain time,

[1] The parties agreed to remedy the adverse effects in the markets for ladle shrouds and stopper rods by divesting the entire U.S. CBC business, including the Saybrook facility where Foseco manufactures all of the CBCs it sells in the United States. The proposed remedy would enable the purchaser to offer the ''full line'' of CBCs currently being sold by Foseco—including, for instance, subentry nozzles and subentry shrouds—which would ensure that the purchaser would have the incentive and all the assets necessary to be an effective, long-term competitor in these products.

section V(A) of the proposed Final Judgment provides that the United States shall select a trustee after consultation with the European Commission to ensure selection of a trustee acceptable to both the United States and the European Commission.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the manufacture and sale of ladle shrouds and stopper rods in the United States.

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

Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H St. NW., Suite 3000, 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

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Cookson's acquisition of Foseco. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of ladle shrouds and stopper rods in the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

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

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(l). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1) (A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); see generally United States v. SBC Commc'ns, Inc., 489 F. Supp. 2d I (D.D.C. 2007) (assessing public interest standard under the Tunney Act).[2]

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

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

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[3] In

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006); see also SBC Commc'ns, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[3] Cf. BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). See generally Microsoft, 56 F.3d at 1461 (discussing whether ''the

determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' SBC Commc'ns, 489 F. Supp. 2d at 17; see also Microsoft, 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), aff'd sub nom. *Maryland* v. *United States*, 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' SBC Commc'ns, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. 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. Id. at 1459–60. As this Court recently confirmed in SBC Communications, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' SBC Commc'ns, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' SBC Commc'ns, 489 F. Supp. 2d at 11.[4]

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: March 4, 2008.

Respectfully submitted,

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[FR Doc. E8–5129 Filed 3–17–08; 8:45 am]

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remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

[4] See *United States* v. *Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.''); *United States* v. *Mid-Am. Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.'').

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 13, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number) / e-mail: *king.darrin@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Departmental Management (DM), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316 / Fax: 202–395–6974 (these are not a toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Office of Small Business Programs.