Sherman County

Loup City Township Carnegie Library, (Carnegie Libraries in Nebraska MPS), 652 N St., Loup City, 07001326.

Wayne County

Wayne United States Post Office, 120 Pearl St., Wayne, 07001325.

PENNSYLVANIA

Allegheny County

Try Street Terminal, 600–620 2nd Ave., Pittsburgh, 07001327.

Philadelphia County

Budd, Edward G., Manufacturing Company, 2450 W. Hunting Park Rd., Philadelphia, 07001328.

WISCONSIN

Grant County

Boscobel Grand Army of the Republic Hall, 102 Mary St., Boscobel, 07001329.

Jackson County

Black River Falls Public Library, (Public Library Facilities of Wisconsin MPS), 321 Main St., Black River Falls, 07001330.

Milwaukee County

Spencerian Business College, 2800 W. Wright St., Milwaukee, 07001331.

A request for REMOVAL has been made for the following resource:

COLORADO

Denver County

Beierle Farm, (Denver International Airport MPS), Hudson Rd. just N. of Irondale Rd. Watkins, 92001673.

A request to MOVE has been made for the following resource:

OREGON

Multnomah County

U.S.S. LCI–713 (Landing craft), 1401 N. Hayden Island Dr., Portland, 070003000.

[FR Doc. E7–23423 Filed 12–3–07; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE ANTITRUST DIVISION

United States v. *Vulcan Materials Co., 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. *Vulcan Materials Co., et al.,* Civil Action No. 1:07–cv–2044. On November 13, 2007, the United States filed a Complaint to obtain equitable and other relief against defendants Vulcan Materials Company (''Vulcan'') and Florida Rock Industries, Inc. (''Florida Rock'') to prevent Vulcan's proposed acquisition of Florida Rock. The Complaint alleges that Vulcan's acquisition of Florida Rock would substantially lessen competition in the production, distribution, and sale of coarse aggregate in and around Atlanta, Georgia; Columbus, Georgia; Chattanooga, Tennessee; and South Hampton Roads, Virginia, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The proposed Final Judgment, filed on November 13, 2007, requires defendants to divest Florida Rock aggregate quarries in Northwest, West, and Southwest Atlanta, Georgia; Columbus, Georgia; Chattanooga, Tennessee; and Richmond, Virginia. In addition, defendants must divest a Florida Rock distribution yard located in Chesapeake, Virginia that receives coarse aggregate by barge from Florida Rock's Richmond quarry; a Vulcan aggregate quarry in South Atlanta, Georgia; and a Vulcan quarry under development in Southeast Atlanta, Georgia.

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).

Patricia A. Brink,

Deputy 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. *Vulcan Materials Company, 1200 Urban Center Drive, Birmingham, AL 35242,* and *Florida Rock Industries, Inc., 155 East 21st Street, Jacksonville, FL 32206,* Defendants.

Case: 1:07–cv–02044
Assigned To: Sullivan, Emmet G.
Assign. Date: 11/13/2007
Description: *Antitrust*
Deck Type: Antitrust
Date Stamp:

Complaint

Plaintiff United States of America (''United States''), acting under the direction of the Acting Attorney General of the United States, brings this civil antitrust action to obtain equitable and other relief against defendants Vulcan Materials Company (''Vulcan'') and Florida Rock Industries, Inc. (''Florida Rock'') to prevent Vulcan's proposed acquisition of Florida Rock. Plaintiff complains and alleges as follows:

I. Nature of the Action

1. On February 19, 2007, Vulcan and Florida Rock signed a definitive agreement for Vulcan to acquire Florida Rock in a cash-and-stock transaction valued at approximately $4.6 billion. The total blended cash-and-stock consideration for this transaction is approximately $68 per share.

2. Vulcan and Florida Rock both produce and distribute in the United States building materials, including, among other things, construction aggregates (which includes coarse aggregate) and ready mix concrete. Vulcan is the largest supplier of construction aggregates in the United States. Florida Rock is also a leading supplier of construction aggregates in the United States. Combined, Vulcan and Florida Rock will have construction aggregates reserves totaling approximately 13.9 billion tons.

3. The United States brings this action to prevent the proposed acquisition of Florida Rock by Vulcan because it would substantially lessen competition in the production, distribution, and sale of coarse aggregate in and around Atlanta, Georgia; Columbus, Georgia; Chattanooga, Tennessee; and South Hampton Roads, Virginia, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. Parties to the Proposed Transaction

4. Defendant Vulcan is a New Jersey corporation with its principal place of business in Birmingham, Alabama. Vulcan produces, distributes, and sells, among other products, construction aggregates, ready mix concrete, hot mix asphalt, and asphalt coating to customers in 21 states, the District of Columbia, and Mexico.

5. Vulcan is the largest producer of construction aggregates in the United States. It has over 300 facilities for the

production and distribution of construction aggregates and other products. In 2006, Vulcan shipped approximately 255 million tons of construction aggregates, the majority of which was coarse aggregate. In 2006, Vulcan reported total sales of approximately $3 billion.

6. Defendant Florida Rock is a Florida corporation with its principal place of business in Jacksonville, Florida. Florida Rock produces, distributes, and sells in the Southeastern and mid-Atlantic states, among other products, construction aggregates, ready mix concrete, prestressed concrete, and cement.

7. Florida Rock is one of the largest United States suppliers of construction aggregates. In 2006, Florida Rock shipped approximately 45 million tons of construction aggregates, the majority of which was coarse aggregate. In 2006, Florida Rock reported total sales of approximately $1.4 billion.

III. Jurisdiction and Venue

8. Plaintiff United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

9. Defendants produce, distribute, and sell coarse aggregate and other products in the flow of interstate commerce. Defendants' activities in producing, distributing, 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.

10. Defendants have consented to venue and personal jurisdiction in this judicial district.

IV. Trade and Commerce

A. The Relevant Product Market

11. Construction aggregates consist primarily of crushed stone, gravel, and sand produced from natural deposits of various materials and removed from quarries, mines, or pits.

12. Coarse aggregate is a type of construction aggregate. Coarse aggregate is crushed stone produced at quarries or mines and used for, among other things, road base and the production of ready mix concrete and asphalt. Coarse aggregate typically is mixed with other materials to produce ready mix concrete and asphalt. Different sizes of coarse aggregate are needed to meet different project specifications.

13. There are no reliable substitutes for coarse aggregate because it differs from other products in its physical composition, functional characteristics, customary uses, consistent availability, and pricing. To the extent that any substitutes exist, customers already use these to the full extent possible in light of the limits on their availability and the amounts that can be used in a given product, and could not use more of them in place of coarse aggregate in response to an increase in the price of coarse aggregate.

14. A small but significant post-acquisition increase in the price of coarse aggregate would not cause the purchasers of coarse aggregate to substitute another product or otherwise reduce their usage of coarse aggregate in sufficient quantities so as to make such a price increase unprofitable.

15. Accordingly, the production, distribution, and sale of coarse aggregate is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

B. The Relevant Geographic Markets

16. Coarse aggregate is a bulky, heavy, and relatively low-value product. The cost of transporting coarse aggregate is high compared to the value of the product.

17. Transportation costs limit the distance coarse aggregate can be economically transported from a quarry or mine to a job site or a ready mix concrete or asphalt plant. The geographic area within which a coarse aggregate supplier can compete most vigorously thus is limited by the cost of hauling the coarse aggregate. As a result, the competitiveness of a coarse aggregate supplier in a given area is limited by its distance from customer plants or project sites relative to other suppliers.

18. Florida Rock owns and operates a coarse aggregate quarry located in Cedarton, Georgia, known as the Six Mile quarry. This quarry serves a geographic area that includes, among other areas, all or part of Floyd, Polk, Haralson, and Bartow Counties in Georgia (hereafter referred to as ''Northwest Atlanta''). Customers with plants or jobs within Northwest Atlanta may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan's Adairsville, Bartow, and Rockmart quarries and from another competitor's quarry located in Cartersville, Georgia. Other quarries cannot on a regular basis compete successfully for customers with plants or jobs in Northwest Atlanta because they are too far away and the hauling costs are too great.

19. A small but significant post-acquisition increase in the price of coarse aggregate to customers with plants or jobs in Northwest Atlanta would not cause those customers to procure coarse aggregate from quarries farther away than those identified in paragraph 18 in sufficient quantities so as to make such a price increase unprofitable.

20. Florida Rock owns and operates a coarse aggregate quarry located in Yorkville, Georgia, known as the Paulding quarry. This quarry serves a geographic area that includes, among other areas, all or part of Paulding, Douglas, Carroll, Haralson, Polk, and Cobb Counties in Georgia (hereafter referred to as ''West Atlanta''). Customers with plants or jobs within West Atlanta may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan's Villa Rica, Kennesaw, and Lithia Springs quarries and from the quarries of other competitors located in Dallas, Georgia, and Douglasville, Georgia. Other quarries cannot on a regular basis compete successfully for customers with plants or jobs in West Atlanta because they are too far away and the hauling costs are too great.

21. A small but significant post-acquisition increase in the price of coarse aggregate to customers with plants or jobs in West Atlanta would not cause those customers to procure coarse aggregate from quarries farther away than those identified in paragraph 20 in sufficient quantities so as to make such a price increase unprofitable.

22. Florida Rock owns and operates a coarse aggregate quarry located in Tyrone, Georgia, known as the Tyrone quarry. This quarry serves a geographic area that includes, among other areas, all or part of Fulton, Coweta, Fayette, and Clayton Counties in Georgia (hereafter referred to as ''Southwest Atlanta''). Customers with plants or jobs within Southwest Atlanta may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan's Madras quarry and from another competitor's quarry located in Tyrone, Georgia. Other quarries cannot on a regular basis compete successfully for customers with plants or jobs in Southwest Atlanta because they are too far away and the hauling costs are too great.

23. A small but significant post-acquisition increase in the price of coarse aggregate to customers with plants or jobs in Southwest Atlanta would not cause those customers to procure coarse aggregate from quarries farther away than those identified in paragraph 22 in sufficient quantities so as to make such a price increase unprofitable.

24. Florida Rock owns and operates a coarse aggregate quarry located in Riverdale, Georgia, known as the Forest Park quarry. This quarry serves a geographic area that includes, among other areas, all or part of Fulton, Clayton, Henry, DeKalb, and Fayette Counties in Georgia (hereafter referred to as ''South Atlanta''). Customers with plants or jobs within South Atlanta may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan's Red Oak quarry and from another competitor's quarry located in College Park, Georgia. Other quarries cannot on a regular basis compete successfully for customers with plants or jobs in South Atlanta because they are too far away and the hauling costs are too great.

25. A small but significant post-acquisition increase in the price of coarse aggregate to customers with plants or jobs in South Atlanta would not cause those customers to procure coarse aggregate from quarries farther away than those identified in paragraph 24 in sufficient quantities so as to make such a price increase unprofitable.

26. Florida Rock owns and operates a coarse aggregate quarry located in Zotella, Georgia, known as the Griffin quarry. This quarry serves a geographic area that includes, among other areas, all or part of Spalding and Henry Counties in Georgia (hereafter referred to as ''Southeast Atlanta''). Customers with plants or jobs within Southeast Atlanta may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan's Stockbridge quarry. In addition, Vulcan is in the process of opening a new quarry in Butts County, Georgia, expected to be operational in 2008, from which it plans to serve, among other areas, customers in all or part of Southeast Atlanta. Other quarries cannot on a regular basis compete successfully for customers with plants or jobs in Southeast Atlanta because they are too far away and the hauling costs are too great.

27. A small but significant post-acquisition increase in the price of coarse aggregate to customers with plants or jobs in Southeast Atlanta would not cause those customers to procure coarse aggregate from quarries farther away than those identified in paragraph 26 in sufficient quantities so as to make such a price increase unprofitable.

28. Florida Rock owns a majority interest in a company that owns and operates a coarse aggregate quarry located in Columbus, Georgia, known as the Columbus quarry. This quarry serves a geographic area that includes, among other areas, all or part of Muscogee and Harris Counties in Georgia (hereafter referred to as ''Columbus''). Customers with plants or jobs within Columbus may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan's Barin quarry and from another competitor's quarry located in Midland, Georgia. Other quarries cannot on a regular basis compete successfully for customers with plants or jobs in Columbus because they are too far away and the hauling costs are too great.

29. A small but significant post-acquisition increase in the price of coarse aggregate to customers with plants or jobs in Columbus would not cause those customers to procure coarse aggregate from quarries farther away than those identified in paragraph 28 in sufficient quantities so as to make such a price increase unprofitable.

30. Florida Rock owns and operates a coarse aggregate quarry located in Chattanooga, Tennessee, known as the Jersey Pike quarry. This quarry serves a geographic area that includes, among other areas, all or part of Hamilton County in Tennessee (hereafter referred to as ''Chattanooga''). Customers with plants or jobs within Chattanooga may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan's Chattanooga quarry and from another competitor's quarries located in Chattanooga and Ringgold, Georgia. Other quarries cannot on a regular basis compete successfully for customers with plants or jobs in Chattanooga because they are too far away and the hauling costs are too great.

31. A small but significant post-acquisition increase in the price of coarse aggregate to customers with plants or jobs in Chattanooga would not cause those customers to procure coarse aggregate from quarries farther away than those identified in paragraph 30 in sufficient quantities so as to make such a price increase unprofitable.

32. Florida Rock owns and operates a coarse aggregate quarry located in Richmond, Virginia, known as the Richmond quarry, a coarse aggregate quarry located in Havre de Grace, Maryland, known as the Havre de Grace quarry, and a barge-served distribution yard located in Chesapeake, Virginia, known as the Gilmerton yard. Florida Rock also operates a distribution yard owned by a third party located in Chesapeake, Virginia. Via these distribution yards, Florida Rock serves a geographic area that includes, among other areas, all or part of the cities of Norfolk, Suffolk, Portsmouth, Chesapeake, and Virginia Beach in Virginia (hereafter referred to as ''South Hampton Roads''). Customers with plants or jobs within South Hampton Roads may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan rail and barge terminals supplied by Vulcan's Richmond, Lawrenceville, and Skippers quarries. Other quarries cannot on a regular basis compete successfully for customers with plants or jobs in South Hampton Roads because they do not have appropriate distribution facilities in the area and/or quarries similarly proximate to rail lines or navigable water sources.

33. A small but significant post-acquisition increase in the price of coarse aggregate to customers with plants or jobs in South Hampton Roads would not cause those customers to procure coarse aggregate from quarries farther away than those identified in paragraph 32 in sufficient quantities so as to make such a price increase unprofitable.

34. Accordingly, the relevant geographic markets, within the meaning of Section of the Clayton Act, are locations of coarse aggregate customers in: Northwest Atlanta, West Atlanta, Southwest Atlanta, South Atlanta, Southeast Atlanta, Columbus, Chattanooga, and South Hampton Roads.

C. Anticompetitive Effects

1. The Proposed Transaction Will Harm Competition in the Markets for Coarse Aggregate in the Relevant Geographic Markets

35. Price competition between Vulcan and Florida Rock in the production, distribution, and sale of coarse aggregate has benefited customers.

36. In Southeast Atlanta and South Hampton Roads, the proposed acquisition will eliminate the competition between Vulcan and Florida Rock and reduce the number of suppliers of many specifications of coarse aggregate from two to one. In Southeast Atlanta, the acquisition will also eliminate the competition between Florida Rock and Vulcan that would result from the opening of Vulcan's new quarry in Butts County.

37. In Northwest Atlanta, Southwest Atlanta, South Atlanta, Columbus, and Chattanooga, the proposed acquisition will eliminate the competition between Vulcan and Florida Rock and reduce the number of coarse aggregate suppliers from three to two generally, and for some customers and projects from two to one.

38. In West Atlanta, the proposed acquisition will eliminate the

competition between Vulcan and Florida Rock and reduce the number of coarse aggregate suppliers from four to three generally, and for some customers and projects from three to two.

39. The proposed acquisition will substantially increase the likelihood that Vulcan will unilaterally increase the price of coarse aggregate to a significant number of customers in Northwest Atlanta, West Atlanta, Southwest Atlanta, South Atlanta, Southeast Atlanta, Columbus, Chattanooga, and South Hampton Roads.

40. The response of other coarse aggregate suppliers in the relevant geographic markets would not be sufficient to constrain a unilateral exercise of market power by Vulcan after the acquisition because those suppliers likely would not have sufficient capacity and/or incentives to increase production and sales enough to defeat an anticompetitive price increase by Vulcan. State permits and county zoning restrictions in many cases limit quarries' hours of operation and/or production levels, and many coarse aggregate suppliers face practical limitations on the amount of truck traffic their facilities can handle. Moreover, because coarse aggregate mined from quarries is a depletable natural resource and every quarry has finite reserves, every sale by a supplier today represents a tradeoff against future sales.

41. In addition, and notwithstanding competitor responses, post-merger Vulcan will be able to increase prices to those customers that have plants or job sites for which both a Vulcan quarry and a Florida Rock quarry are closer than any other quarries producing coarse aggregate meeting their specifications. Coarse aggregate suppliers know the locations of their competitors' quarries and the distance from their own quarries and their competitors' quarries to a customer's plant or job site. Generally, because of transportation costs, the farther a supplier's closest competitor is from a job site, the less price competition that supplier faces for that project. Post-acquisition, in instances where Vulcan and Florida Rock quarries would be the closest quarries to a customer's plant or project and the next closest coarse aggregate supplier's plant is farther from the customer's plant or project, the combined firm, using the knowledge of its competitors' quarry locations, would be able to charge such customers higher prices.

42. Without the constraint of competition between Vulcan and Florida Rock, the combined firm will have a greater ability to exercise market power by raising prices to customers for whom Vulcan or Florida Rock were sources of coarse aggregate.

43. In addition, Vulcan's elimination of Florida Rock as an independent competitor in the production, distribution, and sale of coarse aggregate is likely to facilitate anticompetitive coordination among the remaining coarse aggregate suppliers in Northwest Atlanta, West Atlanta, Southwest Atlanta, South Atlanta, Columbus, and Chattanooga. Coarse aggregate is homogeneous and suppliers have access to information about competitors' output, capacity, and costs. Given these market conditions, eliminating one of the few coarse aggregate competitors is likely to further increase the ability of the remaining competitors to coordinate successfully.

44. The transaction therefore will substantially lessen competition in the production, distribution, and sale of coarse aggregate in the relevant geographic markets. This is likely to lead to higher prices for the ultimate consumers of coarse aggregate, in violation of Section 7 of the Clayton Act.

2. Entry Is Not Likely To Deter the Exercise of Market Power

45. Timely and successful entry into the production, distribution, and sale of coarse aggregate is unlikely in the relevant geographic areas.

46. Securing the proper site for a coarse aggregate quarry or mine is difficult, time-consuming, and costly. It requires the investigation and extensive testing of candidate sites, as well as negotiating necessary land transfers, leases, and/or easements. The location of a quarry, mine, or yard is important due to the high cost of transporting coarse aggregate, but there are few sites, especially in metropolitan areas, on which to locate coarse aggregate operations.

47. Due to the geology in South Hampton Roads, coarse aggregate for most applications in South Hampton Roads is produced outside the area. For an entrant to compete effectively in South Hampton Roads with a combined Vulcan and Florida Rock, that entrant must pair a new or existing rail- or water-served quarry with a distribution yard in the South Hampton Roads area that is capable of receiving coarse aggregate from such a quarry. Rail- or water-served quarries situated to compete effectively in South Hampton Roads, and the proper sites for distribution yards to serve those quarries, are scarce.

48. Obtaining necessary zoning variances and governmental permits for a coarse aggregate quarry or mine also can be difficult, time-consuming, and costly. In metropolitan areas, land of the necessary size and geology often is already utilized or does not have the appropriate zoning, and obtaining zoning variances can be extremely difficult. Attempts to open a new coarse aggregate quarry or mine, especially in metropolitan areas (such as West Atlanta, Southwest Atlanta, South Atlanta, Columbus, Chattanooga, and South Hampton Roads) but also frequently in rural areas, often face fierce public opposition. This public opposition can prevent a coarse aggregate quarry or mine from opening or make opening it much more time-consuming and costly. In addition, state and federal water, air quality, and other permitting process requirements must be met.

49. Even after a quarry or mine site is acquired and properly zoned and permitted, the owner must spend significant time and resources to prepare the land and install the equipment necessary to run the operation.

50. Therefore, entry by any other firm into the coarse aggregate market in the relevant geographic areas will not be timely, likely, or sufficient to defeat an anticompetitive price increase.

V. Violations Alleged

51. The proposed acquisition of Florida Rock by Vulcan would substantially lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

52. Unless restrained, the transaction will have the following anticompetitive effects, among others:

a. Actual and potential competition between Vulcan and Florida Rock in the production, distribution, and sale of coarse aggregate in the relevant geographic markets will be eliminated;

b. Competition generally in the production, distribution, and sale of coarse aggregate in the relevant geographic markets will be substantially lessened; and

c. Prices for coarse aggregate in the relevant geographic markets likely will increase.

VI. Request for Relief

53. Plaintiff requests that:

a. Vulcan's proposed acquisition of Florida Rock 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 Vulcan with the operations of Florida Rock;

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:

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Dated: November 13, 2007

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Vulcan Materials Company and Florida Rock Industries, Inc.,* Defendants.

Case No.:
Judge:
Deck Type: Antitrust
Date Stamp:

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on November 13, 2007, and plaintiff and defendants, Vulcan Materials Company (''Vulcan'') and Florida Rock Industries, Inc. (''Florida Rock''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

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

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

And whereas, the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

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

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

I. Jurisdiction

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. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom defendants divest some or all of the Divestiture Assets.

B. ''Coarse aggregate'' means crushed stone produced at quarries or mines and used for, among other things, road base and the production of ready mix concrete and asphalt.

C. ''Divestiture Assets'' means:

1. The following quarries and yard:

a. The Florida Rock Six Mile quarry, located at 3785 Cave Springs Road, Cedarton, Georgia;

b. The Florida Rock Paulding quarry, located at 112 Quarry Road, Yorkville, Georgia;

c. The Florida Rock Tyrone quarry, located at 240 Rockwood Road, Tyrone, Georgia;

d. The Vulcan Red Oak quarry, located at 5414 Buffington Road, Red Oak, Georgia;

e. The Vulcan quarry under development in Butts County, located on Greer Dairy Road, Jackson, Georgia;

f. The Florida Rock interest in Columbus Quarry LLC, which owns the Columbus quarry, located at 3001 Smith Road, Columbus, Georgia;

g. The Florida Rock Jersey Pike quarry, located at 2 Pelican Drive, Chattanooga, Tennessee;

h. The Florida Rock Richmond quarry, located at 2100 Deepwater Terminal Road, Richmond, Virginia (but excluding the Florida Rock ready mix concrete plant, the real property necessary for the operation of the plant (provided the conveyance of such property does not interfere with the operation of the Richmond quarry), and all other tangible and intangible assets exclusively used in the plant's operations) and, at the option of the Acquirer, use of the real property, parking lot, equipment shop, and office building equivalent to that which Florida Rock currently has for its quarry operations; and

i. The Florida Rock Gilmerton yard, located at 4606 Bainbridge Boulevard, Chesapeake, Virginia (but excluding the Florida Rock ready mix concrete plant, the real property necessary for the operation of the plant (provided the conveyance of such property does not interfere with the operation of the Gilmerton yard), and all other tangible and intangible assets exclusively used in the plant's operations) and, at the option of the Acquirer, use of the real property, parking lot, equipment shop, fuel station, and office building equivalent to that which Florida Rock currently has for its operation of the yard;

2. All tangible assets used in or for the quarries and yard listed in Paragraphs II(C)(1)(a) through (i), including but not limited to all research and development activities (except for any such research and development activities that are principally devoted to either defendant's operations as a whole and not specifically to the operations of the quarries and yard listed in Paragraphs II(C)(1)(a) through (i), and that are not necessary to the operation of the quarries and yard listed in Paragraphs II(C)(1)(a) through (i)), equipment, tooling and fixed assets, real property (leased or owned), personal property, inventory, coarse aggregate reserves, office furniture, materials, supplies, on- or off-site warehouses or storage facilities relating to the quarries and yard; all licenses, permits, and authorizations issued by any governmental organization relating to the quarries and yard; all contracts, teaming arrangements, agreements, leases (including renewal rights), commitments, certifications, and understandings relating to the quarries and yard, including sales agreements and supply agreements; all customer lists, contracts, accounts, and credit records relating to the quarries and yard; all repair and performance records and all other records relating to the quarries and yard; at the option of the Acquirer or Acquirers, a number of trucks, rail cars, and other vehicles usable at the

quarries and yard listed in Paragraphs II(C)(1)(a) through (i) equal to, for each separate type of truck, rail car, or other vehicle, the average number of trucks, rail cars, and other vehicles of that type, owned or controlled by defendants, used at each such quarry or yard per month during the months of operation of the quarry or yard between January 1, 2006 and December 31, 2006 (calculated by averaging the number of trucks, rail cars, and other vehicles of each type, owned or controlled by defendants, that were used at each quarry or yard at any time during each month that the quarry or yard was in operation); and at the option of the Acquirer or Acquirers, a number of barges usable at the quarry and yard listed in Paragraphs II(C)(1)(h) and (i) equal to, for each separate type of barge, the average number of barges of that type, owned or controlled by defendants, used at such quarry or yard per month during the months of operation of the quarry or yard between January 1, 2006 and December 31, 2006 (calculated by averaging the number of barges of that type, owned or controlled by defendants, that were used at such quarry or yard at any time during each month that the quarry or yard was in operation); and

3. All intangible assets used in the development, production, servicing, distribution, and sale of products produced by or in the quarries or stored in the yard listed in Paragraphs II(C)(1)(a) through (i), including but not limited to all contractual rights (except for any such contractual rights that are principally devoted to either defendant's operations as a whole and not specifically to the operations of the quarries and yard listed in Paragraphs II(C)(1)(a) through (i), and that are not necessary to the operation of the quarries and yard listed in Paragraphs II(C)(1)(a) through (i)), patents, licenses and sub-licenses, intellectual property rights, copyrights, 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, all manuals and technical information defendants provide to their own employees, customers, suppliers, agents, or licensees, and all research data (including coarse aggregate reserve testing information) concerning historic and current research and development efforts relating to the quarries and yard, including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments. Notwithstanding anything to the contrary in this Final Judgment, if requested by an Acquirer, and subject to approval by the United States in its sole discretion, defendants shall offer to enter into a transition services agreement with respect to computer software (including dispatch software and management information systems) and related documentation, and design tools and simulation capability.

D. ''Florida Rock'' means defendant Florida Rock Industries, Inc., a Florida corporation with its headquarters in Jacksonville, Florida, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''Vulcan'' means defendant Vulcan Materials Company, a New Jersey corporation with its headquarters in Birmingham, Alabama, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

III. Applicability

A. This Final Judgment applies to Vulcan and Florida Rock, as defined above, and all other persons in active concert or participation with Vulcan or Florida Rock who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections 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 Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. Divestitures

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

B. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Unless the United States otherwise consents in writing, defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privileges. 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 not take any action that win impede in any way any person from competing for or obtaining the lease to the Branscome Chesapeake yard, located at 120 Dominion Boulevard, Chesapeake, Virginia.

D. Unless the United States otherwise consents in writing, defendants shall provide the Acquirer or Acquirers and the United States information relating to personnel involved in production, operations, development, and sales at the Divestiture Assets to enable the Acquirer or Acquirers to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer or Acquirers to employ any employee of the Divestiture Assets whose primary responsibility is production, operations, development, or sales at the Divestiture Assets.

E. Unless the United States otherwise consents in writing, defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. With the exception of the Butts County site listed in Paragraph II(C)(1)(e), defendants shall warrant to the Acquirer or Acquirers that each asset will be operational on the date of sale. Vulcan shall further warrant to the Acquirer that it has obtained all environmental, zoning, or other permits required to produce coarse aggregate at

the Vulcan quarry under development in Butts County, identified in Paragraph II(C)(1)(e), and that such permits are transferable to the Acquirer.

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

H. Defendants shall warrant to the Acquirer or Acquirers that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets. Defendants shall not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

I. Unless the United States otherwise consents in writing, any divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer or Acquirers as viable, ongoing businesses engaged in producing and distributing coarse aggregate, that the Divestiture Assets will remain viable, and that the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The sale of the Divestiture Assets may be made to one or more Acquirers, so long as the Florida Rock Richmond quarry, identified in Paragraph II(C)(1)(h) above, and the Florida Rock Gilmerton yard, identified in Paragraph II(C)(1)(i) above, are divested to a single Acquirer. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

1. Shall be made to an Acquirer or Acquirers that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) to compete effectively in the production, distribution, and sale of coarse aggregate; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer or Acquirers and defendants gives defendants the ability to unreasonably 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 production, distribution, and sale of coarse aggregate.

V. Appointment of Trustee To Effect Divestitures

A. If defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. 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 Paragraph 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. Any such objection by defendants 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.

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 Assets 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 secrets 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 Assets, 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 Assets.

G. If the trustee has not accomplished the divestitures 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 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 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 Divestitures

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 Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendant, the proposed Acquirer or Acquirers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer or Acquirers, 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 defendant, the proposed Acquirer or Acquirers, any third party, or 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 defendant's limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

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

VIII. Hold Separate

Until the divestitures required by this Final Judgment have 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 divestitures have been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of their 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 Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to any prospective Acquirer, 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 the information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

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

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have 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 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 defendant.

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 Assets 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 the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Vulcan Materials Company and Florida Rock Industries, Inc.*, Defendants.

Case: 1:07-cv-02044
Assigned To: Sullivan, Emmet G.
Assign. Date: 11/13/2007
Description: Antitrust
Deck Type: Antitrust
Date Stamp:

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

The United States filed a civil antitrust Complaint on November 13, 2007, seeking to enjoin the proposed acquisition by Vulcan Materials Company (''Vulcan'') of Florida Rock Industries, Inc. (''Florida Rock''). The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially in the production, distribution, and sale of coarse aggregate in certain areas of Georgia, Tennessee and Virginia, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition likely would result in higher prices for coarse aggregate in the affected areas.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order and a proposed Final Judgment, which were designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Vulcan and Florida Rock are required to divest single coarse aggregate quarries in Chattanooga, Tennessee, Columbus, Georgia, and Richmond, Virginia; four quarries and one site that is being developed for use as a quarry in the western and southern parts of the Atlanta area; and a distribution yard in Chesapeake, Virginia. Until the divestitures required by the Final Judgment have been accomplished, the Hold Separate Stipulation and Order requires Vulcan and Florida Rock to preserve, maintain, and continue to operate the plants discussed above (hereafter ''Divestiture Assets'') as independent, ongoing, economically viable competitive businesses held entirely separate, distinct, and apart from those of defendants' other operations.

The United States, Vulcan, and Florida Rock 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

Vulcan is a New Jersey corporation with its principal place of business in Birmingham, Alabama. It is the nation's largest producer of construction aggregates, and is also a major provider of other construction materials and related services. In 2006, Vulcan shipped approximately 255 million tons of construction aggregates—the majority of which were coarse aggregate—to customers in 21 states, the District of Columbia, and Mexico. Its 2006 sales were over $3 billion.

Florida Rock is a Florida corporation with its principal place of business in Jacksonville, Florida. It produces, distributes, and sells, among other products, construction aggregates, ready mix concrete, prestressed concrete, and cement. Its sales are concentrated in the southeastern and mid-Atlantic states. In 2006, Florida Rock shipped approximately 45 million tons of construction aggregates, a majority of which were coarse aggregate, and reported total sales of approximately $1.4 billion.

On February 19, 2007, Vulcan and Florida Rock entered into an agreement for Vulcan to acquire Florida Rock in a cash-and-stock transaction valued at approximately $4.6 billion.

B. The Competitive Effects of the Transaction on the Market for Coarse Aggregate.

1. Relevant Product Market

The Complaint alleges that the production, distribution, and sale of coarse aggregate is a relevant product market within the meaning of Section 7 of the Clayton Act. Coarse aggregate is a type of construction aggregate, and includes crushed stone of varying sizes produced at quarries or mines.[1] Among other things, it is used as base material for roads and other construction sites and for the production of ready mix concrete and asphalt. Different sizes of coarse aggregate are needed to meet different project specifications.

There are no reliable substitutes for coarse aggregate because it differs from other products in its physical composition, functional characteristics, customary uses, consistent availability, and pricing. To the extent that any substitutes exist, most customers already use these to the full extent possible in light of the limits on their availability and the amounts that can be used in a given product, and cannot use more of them in place of coarse aggregate in response to an increase in the price of coarse aggregate. The Complaint alleges that a small but significant post-acquisition increase in the price of coarse aggregate would not cause its purchasers to substitute another product in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the production, distribution, and sale of coarse aggregate is a relevant product market.

2. Relevant Geographic Markets

Coarse aggregate is a bulky, heavy, and relatively low-value product. In some markets, coarse aggregate is delivered to customers exclusively by truck. In other markets, the lack of native coarse aggregate sources and the availability of rail and/or navigable waterways makes it economical to rail

[1] Construction aggregates include crushed stone, grave, sand, recycled asphalt, and recycled concrete.

barge, and/or ship coarse aggregate directly to customer plants or job sites, or, much more frequently, to a distribution yard from which it is picked up by truck and delivered to the end customer. The cost of transporting coarse aggregate is high compared to its value, which limits the distance it can be economically transported from a quarry or distribution yard to a ready mix concrete or asphalt plant or job site. Transportation costs, as well as the location of competitors relative to a customer's plant or job site, thus limit the geographic area within which a coarse aggregate supplier can effectively compete.

The Complaint alleges that there are a number of geographic areas that constitute geographic markets in which the proposed acquisition by Vulcan of Florida Rock will harm competition in the production, distribution, and sale of coarse aggregate. As discussed below, in each of these geographic markets, Vulcan and Florida Rock quarries face limited competition from other suppliers in the delivery of coarse aggregate to customers in the market and, because of transportation costs, a small but significant post-acquisition increase in the price of coarse aggregate would not cause customers to procure coarse aggregate from quarries farther away.

a. Northwest Atlanta

Florida Rock owns and operates a coarse aggregate quarry located in Cedarton, Georgia, known as the Six Mile quarry. This quarry serves a geographic area that includes, among other areas, all or part of Floyd, Polk, Haralson, and Bartow Counties in Georgia (hereafter referred to as ''Northwest Atlanta''). Customers with plants or jobs within Northwest Atlanta may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan's Adairsville, Bartow, and Rockmart quarries and from another competitor's quarry located in Cartersville, Georgia.

b. West Atlanta

Florida Rock owns and operates a coarse aggregate quarry located in Yorkville, Georgia, known as the Paulding quarry. This quarry serves a geographic area that includes, among other areas, all or part of Paulding, Douglas, Carroll, Haralson, Polk, and Cobb Counties in Georgia (hereafter referred to as ''West Atlanta''). Customers with plants or jobs within West Atlanta may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan's Villa Rica, Kennesaw, and Lithia Springs quarries and from the quarries of other competitors located in Dallas, Georgia, and Douglasville, Georgia.

c. Southwest Atlanta

Florida Rock owns and operates a coarse aggregate quarry located in Tyrone, Georgia, known as the Tyrone quarry. This quarry serves a geographic area that includes, among other areas, all or part of Fulton, Coweta, Fayette, and Clayton Counties in Georgia (hereafter referred to as ''Southwest Atlanta''). Customers with plants or jobs within Southwest Atlanta may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan's Madras quarry and from another competitor's quarry located in Tyrone, Georgia.

d. South Atlanta

Florida Rock owns and operates a coarse aggregate quarry located in Riverdale, Georgia, known as the Forest Park quarry. This quarry serves a geographic area that includes, among other areas, all or part of Fulton, Clayton, Henry, DeKalb, and Fayette Counties in Georgia (hereafter referred to as ''South Atlanta''). Customers with plants or jobs within South Atlanta may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan's Red Oak quarry and from another competitor's quarry located in College Park, Georgia.

e. Southeast Atlanta

Florida Rock owns and operates a coarse aggregate quarry located in Zotella, Georgia, known as the Griffin quarry. This quarry serves a geographic area that includes, among other areas, all or part of Spalding and Henry Counties in Georgia (hereafter referred to as ''Southeast Atlanta''). Customers with plants or jobs within Southeast Atlanta may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan's Stockbridge quarry. In addition, Vulcan is in the process of opening a new quarry in Butts County, Georgia, expected to be operational in 2008, from which it plans to serve, among other areas, customers in all or part of Southeast Atlanta.

f. Columbus

Florida Rock owns a majority interest in a company that owns and operates a coarse aggregate quarry located in Columbus, Georgia, known as the Columbus quarry. This quarry serves a geographic area that includes, among other areas, all or part of Muscogee and Harris Counties in Georgia (hereafter referred to as ''Columbus''). Customers with plants or jobs within Columbus may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan's Barin quarry and from another competitor's quarry located in Midland, Georgia.

g. Chattanooga

Florida Rock owns and operates a coarse aggregate quarry located in Chattanooga, Tennessee, known as the Jersey Pike quarry. This quarry serves a geographic area that includes, among other areas, all or part of Hamilton County in Tennessee (hereafter referred to as ''Chattanooga''). Customers with plants or jobs within Chattanooga may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan's Chattanooga quarry and from another competitor's quarries located in Chattanooga, Tennessee, and Ringgold, Georgia.

h. South Hampton Roads

Florida Rock owns and operates a coarse aggregate quarry located in Richmond, Virginia, known as the Richmond quarry, a coarse aggregate quarry located in Havre de Grace, Maryland, known as the Havre de Grace quarry, and a barge-served distribution yard located in Chesapeake, Virginia, known as the Gilmerton yard. Florida Rock also operates a distribution yard owned by a third party located in Chesapeake, Virginia. Via these distribution yards, Florida Rock serves a geographic area that includes, among other areas, all or part of the cities of Norfolk, Suffolk, Portsmouth, Chesapeake, and Virginia Beach in Virginia (hereafter referred to as ''South Hampton Roads''). Customers with plants or jobs within South Hampton Roads may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan rail and barge terminals supplied by Vulcan's Richmond, Lawrenceville, and Skippers quarries. Other quarries cannot on a regular basis compete successfully for customers with plants or jobs in South Hampton Roads because they do not have appropriate distribution facilities in the area and/or quarries similarly proximate to rail lines or navigable water sources.

3. Anticompetitive Effects of the Acquisition

In each relevant geographic area, the proposed acquisition will eliminate the competition between Vulcan and Florida Rock and substantially increase market concentration. In Southeast

Atlanta and South Hampton Roads, it will reduce the number of suppliers of most specifications of coarse aggregate from two to one. In Northwest Atlanta, Southwest Atlanta, South Atlanta, Columbus, and Chattanooga, the proposed acquisition will reduce the number of coarse aggregate suppliers from three to two generally, and for some customers and projects, will reduce the number from two to one. In West Atlanta, the proposed acquisition will reduce the number of coarse aggregate suppliers from four to three generally, and for some customers and projects, will reduce the number from three to two.

The proposed acquisition will substantially increase the likelihood that Vulcan will unilaterally increase the price of coarse aggregate to a significant number of customers in all of the relevant geographic areas. The response of other coarse aggregate suppliers in the relevant geographic markets would not be sufficient to constrain a unilateral exercise of market power by Vulcan after the acquisition because those suppliers likely would not have sufficient capacity and/or incentives to increase production and sales enough to defeat an anticompetitive price increase by Vulcan. State permits and county zoning restrictions in many cases limit quarries' hours of operation and/or production levels, and many coarse aggregate suppliers face practical limitations on the amount of truck traffic their facilities can handle. Moreover, because coarse aggregate mined trom quarries is a depletable natural resource and every quarry has finite reserves, every sale by a supplier today represents a tradeoff against future sales.

Likewise, the response of customers would be insufficient to constrain a unilateral exercise of market power by Vulcan. To the extent that cost-effective substitutes exist, these already are being used to the full extent possible, and customers would not increase their use of these substitutes in response to an increase in the price of coarse aggregate. Thus, customers would not be able to prevent Vulcan's exercise of market power.

In addition, and notwithstanding competitor responses, post-acquisition Vulcan will be able to increase prices to those customers that have plants or job sites for which both a Vulcan quarry and a Florida Rock quarry are closer than any other quarries producing coarse aggregate meeting their specifications. Coarse aggregate suppliers know the locations of their competitors' quarries and the distance from their own quarries and their competitors' quarries to a customer's plant or job site. Generally, because of transportation costs, the farther a supplier's closest competitor is from a job site, the less price competition that supplier faces for that project. Post-acquisition, in instances where Vulcan and Florida Rock quarries would be the closest quarries to a customer's plant or project and the next closest coarse aggregate supplier's plant is farther from the customer's plant or project, the combined firm, using the knowledge of its competitors' quarry locations, would be able to charge such customers higher prices.

Further, the proposed acquisition is likely to facilitate anticompetitive coordination among the remaining coarse aggregate suppliers in Northwest Atlanta, West Atlanta, Southwest Atlanta, South Atlanta, Columbus, and Chattanooga. Coarse aggregate is homogeneous and suppliers have access to information about competitors' output, capacity, and costs. Given these market conditions, eliminating Florida Rock as one of the few coarse aggregate competitors is likely to further increase the ability of the remaining competitors to coordinate successfully.

Finally, timely and successful entry into the production, distribution, and sale of coarse aggregate is unlikely in any of the geographic areas and thus will not defeat anticompetitive unilateral or coordinated price increases resulting from the proposed acquisition. Securing the proper site for a coarse aggregate quarry or mine is difficult, time-consuming, and costly; it requires the investigation and extensive testing of candidate sites to find ones with adequate reserves of sufficient quality, and can require negotiations with multiple landowners as well as with government officials. Additional difficulties face a new entrant seeking to provide coarse aggregate to South Hampton Roads. In South Hampton Roads, the area's geology is such that coarse aggregate for most applications must be imported from outside the area. For an entrant to compete effectively in South Hampton Roads with Vulcan post-acquisition, that entrant must pair a new or existing rail-or water-served quarry with a distribution yard in South Hampton Roads that is capable of receiving coarse aggregate from such a quarry. Rail-or water-served quarries situated to compete effectively in South Hampton Roads, and the proper sites for distribution yards to serve such quarries, are scarce. In all of the relevant geographic markets the location of a quarry or yard is important due to the high cost of transporting coarse aggregate, but there are very few sites, especially in metropolitan areas, on which to locate coarse aggregate operations.

Obtaining necessary zoning variances and government permits for a coarse aggregate quarry can also be difficult, time-consuming, and costly. In metropolitan areas, land of the necessary size and geology is often already utilized or does not have the appropriate zoning, and obtaining zoning variances can be extremely difficult. Attempts to open a new coarse aggregate quarry or mine, especially in metropolitan areas (such as West Atlanta, Southwest Atlanta, South Atlanta, Columbus, Chattanooga, and South Hampton Roads) but also frequently in rural areas, often face fierce public opposition, which delays and raises the expense of opening such operations or prevents such projects altogether. In addition, state and federal water, air quality, and other permitting process requirements must be met, which can take from months to years.

Finally, even after a quarry or mine site is selected, acquired, and properly zoned and permitted, the owner must spend significant time and resources to prepare the land and install the equipment necessary to run the operation. As a result of all of these costly and time-consuming barriers to entry, entry by any other firm. into the coarse aggregate market in the relevant geographic areas will not be timely, likely, or sufficient to defeat an anti competitive price mcrease.

III. Explanation of the Proposed Final Judgment

A. The Divestiture Assets

The divestitures provided for in the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the markets for the production, distribution, and sale of coarse aggregate in all of the relevant geographic markets. In each market, the divestitures will establish a new, independent, and economically viable competitor.

The Divestiture Assets include the following quarries and yard:

a. The Florida Rock Six Mile quarry, located at 3785 Cave Springs Road, Cedarton, Georgia, divestiture of which will remedy the competitive concerns in Northwest Atlanta;

b. The Florida Rock Paulding quarry, located at 112 Quarry Road, Yorkville, Georgia, divestiture of which will remedy the competitive concerns in West Atlanta;

c. The Florida Rock Tyrone quarry, located at 240 Rockwood Road, Tyrone,

Georgia, divestiture of which will remedy the competitive concerns in Southwest Atlanta;

d. The Vulcan Red Oak quarry, located at 5414 Buffington Road, Red Oak, Georgia, divestiture of which will remedy the competitive concerns in South Atlanta;

e. The Vulcan quarry under development in Butts County, located on Greer Dairy Road, Jackson, Georgia, divestiture of which will remedy the competitive concerns in Southeast Atlanta;

f. The Florida Rock interest in Columbus Quarry LLC, which owns the Columbus quarry, located at 3001 Smith Road, Columbus, Georgia, divestiture of which will remedy the competitive concerns in Columbus;

g. The Florida Rock Jersey Pike quarry, located at 2 Pelican Drive, Chattanooga, Tennessee, divestiture of which will remedy the competitive concerns in Chattanooga;

h. The Florida Rock Richmond quarry located at 2100 Deepwater Terminal Road, Richmond, Virginia (but excluding the Florida Rock ready mix concrete plant, the real property necessary for the operation of the plant (provided the conveyance of such property does not interfere with the operation of the Richmond quarry), and all other tangible and intangible assets exclusively used in the plant's operations) and, at the option of the Acquirer, use of the real property, parking lot, equipment shop, and office building equivalent to that which Florida Rock currently has for its quarry operations, divestiture of which (in addition to the yard listed in Paragraph (i)) will remedy the competitive concerns in South Hampton Roads; and

i. in South Hampton Roads, the Florida Rock Gilmerton yard, located at 4606 Bainbridge Boulevard, Chesapeake, Virginia (but excluding the Florida Rock ready mix concrete plant, the real property necessary for the operation of the plant (provided the conveyance of such property does not interfere with the operation of the Gilmerton yard), and all other tangible and intangible assets exclusively used in the plant's operations) and, at the option of the Acquirer, use of the real property, parking lot, equipment shop, fuel station, and office building equivalent to that which Florida Rock currently has for its operation of the yard, divestiture of which (in addition to the quarry listed in Paragraph (h)) will remedy the competitive concerns in South Hampton Roads.

The proposed merger does not raise competitive concerns with respect to the sale of ready mix concrete in either Richmond or South Hampton Roads. Thus, parts (h) and (i) of the Divestiture Assets definition above excludes property related to Florida Rock's ready mix concrete operations located at the Richmond quarry and Gilmerton yard properties that is not necessary to the operation of the quarry and coarse aggregate yard, and specifically grant back to the Acquirer the right to use real property and facilities that are currently used by both the coarse aggregate and the ready mix operations.

The Divestiture Assets also include all tangible assets used in or for the above-listed quarries and yard as well as all intangible assets used in the development, production, servicing, distribution, and sale of products produced by or in the quarries or stored in the yard.

The sale of the Divestiture Assets according to the terms of the proposed Final Judgment will ensure that Vulcan's acquisition of Florida Rock does not harm competition in any of the affected geographic areas.

B. Selected Provisions of the Proposed Final Judgment

In antitrust cases involving mergers in which the United States seeks a divestiture remedy, it requires completion of the divestiture within the shortest time period reasonable under the circumstances. A quick divestiture has the benefits of restoring competition lost in the acquisition and reducing the possibility of dissipation of the value of the assets. Paragraph IV(A) of the proposed Final Judgment requires Defendants to divest the Divestiture Assets as viable ongoing businesses within 90 days after the filing of the Complaint in this matter or five days after notice of the entry of the Final Judgment by the Court, whichever is later.[2]

Paragraph IV (D) provides that Defendants shall not impede in any way any person from competing for or obtaining the lease to the Branscome Chesapeake yard. This yard is owned by a contractor who leases it to other companies. Currently, the lessee is Florida Rock, which barges coarse aggregate to the yard to supply the owner's operations. The lease with Florida Rock expires on December 31, 2007. Paragraph IV(D) is designed to ensure that the buyer of the Florida Rock Richmond quarry and Florida Rock Gilmerton yard divestiture assets, or any other interested party, has the opportunity to compete for the lease upon its expiration.

The Vulcan quarry under development in Butts County is not yet operational, but Paragraph IV(F) requires Defendants to warrant to the Acquirer that they have obtained all environmental, zoning, or other permits required to begin production of coarse aggregate at the Butts site.

Paragraph IV(J) of the proposed Final Judgment provides that the sale of the Divestiture Assets may be made to one or more Acquirers, except that the Richmond quarry and Gilmerton yard must be divested to a single acquirer. This provision ensures that the owner of the barge-served quarry also owns a barge-served distribution facility in South Hampton Roads so that it can compete effectively in South Hampton Roads.

Paragraph IV(J) of the proposed Final Judgment also provides that the assets must be divested in such a way as to satisfy the United States in its sole discretion that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant markets. The provisions of Paragraph IV are designed to ensure that Defendants take all reasonable steps necessary to accomplish the divestitures quickly and cooperate with prospective purchasers.

Finally, Paragraph V of the proposed Final Judgment provides that in the event that Defendants do not accomplish the divestitures within the periods prescribed in the proposed Final Judgment, the Court will appoint a trustee selected by the United States to effect the divestitures. 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 divestitures are 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 divestitures. If the divestitures have not been accomplished at the end of six months, 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.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who

[2] The Final Judgment also provides that this 90-day time period may be extended by the United States in its sole discretion for a total period not exceeding 60 calendar days, and that the Court will receive prior notice of any such extension.

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 Vulcan's acquisition of Florida Rock. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition in the production, distribution, and sale of coarse aggregate in the relevant geographic markets identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

Vll. 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)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

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

15 U.S.C. 16(e)(1)(A)–(B); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1, 11 (D.D.C. 2007) (concluding that the 2004 amendments ''effected minimal changes'' to scope of review under Tunney Act, leaving review ''sharply proscribed by precedent and the nature of Tunney Act proceedings'').[3]

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 United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (DC Cir. 1995). 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. 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).[4] In making its public interest determination, 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 because this may only reflect underlying weakness in the government's case or concessions made during negotiation.'' *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

[3] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for the 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).

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

the market structure, and its views of the nature of the case).

Court approval of a consent decree requires a standard more flexible and less strict than that appropriate to court adoption of a litigated decree following a finding of liability. ''[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 ''[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). This instruction explicitly writes into the statute the standard intended by the Congress that enacted the Tunney Act in 1974, as Senator Tunney then 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. [5]

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: November 13, 2007.

Respectfully submitted,

Robert W. Wilder, Esquire,

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[FR Doc. 07–5902 Filed 12–3–07; 8:45 am]

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[5] 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 JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 16, 2007, and published in the **Federal Register** on August 27, 2007 (72 FR 49018), Boehringer Ingelheim Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers for formulation into finished pharmaceuticals.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Boehringer Ingelheim Chemicals, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Boehringer Ingelheim Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: November 26, 2007.

Joseph T. Rannazzisi,

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

[FR Doc. E7–23480 Filed 12–3–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 16, 2007, and published in the **Federal Register** on August 28, 2007, (72 FR 49315–49316), Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78664, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II: