DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), 42 U.S.C. 9601 Et Seq

Notice is hereby given that a proposed First Amendment to Consent Decree in *United States* v. *Westinghouse Electric Corporation,* Civil Action Nos. IP 83–9–C and IP 81–448–C, was lodged on June 3, 1997, with the United States District Court for the Southern District of Indiana.

The proposed amendment to consent decree provides for the performance of a removal action with respect to the sludge drying beds and sludge digesters at the Winston-Thomas Wastewater Treatment Facility, located in Bloomington, Indiana. The proposed amendment leaves all other portions of the consent decree, originally lodged with the Court on August 22, 1985, unchanged.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Westinghouse Electric Corporation,* DOJ Ref. #90–7–212A. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed amendment to consent decree may be examined at the office of the United States Attorney, Southern District of Indiana, U.S. Courthouse, 46 East Ohio St., 5th Floor, Indianapolis, Indiana 46204–1986; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; the Monroe County Library, 303 East Kirkwood Ave., Bloomington, Indiana 47408; and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed amendment to consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy please refer to the reference case and enclose a check in the amount of $2.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

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

[FR Doc. 97–14948 Filed 6–6–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Martin Marietta Materials, Inc. et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court in the Southern District of Indiana, in *United States* versus *Martin Marietta Materials, Inc., et al,* Civil No. IP97–854C–T/G.

On May 27, 1997, the United States filed a Complaint alleging that the proposed acquisition by Martin Marietta of the stock of American Aggregates would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment, filed the same time as the Complaint, requires Martin Marietta to divest the Harding Street, Indianapolis, Indiana aggregate quarry and related assets that it will obtain in connection with the acquisition of American Aggregates.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530 (telephone: 202/307–0924).

Constance K. Robinson,

Director of Operations.

United States District Court for the Southern District of Indiana

Stipulation and Order

United States of America, Plaintiff, v. Martin Marietta Materials, Inc.; CSR Limited; CSR America, Inc.; and American Aggregates Corporation, Defendants. Civil No.: IP97–854C–T/G; Filed: 5/27/97; Judge John Daniel Tinder.

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

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

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

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

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

5. In the event (a) the plaintiff has withdrawn its consent, as provided in paragraph 2 above, or (b) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

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

Dated: May 23, 1997.

For Plaintiff United States

Frederick H. Parmenter,

U.S. Department of Justice, Antitrust Division, Litigation II Section, Suite 3000, Washington, D.C. 20005, (202) 307–0620.

Judith A. Stewart,

United State Attorney.

Harold R. Bickham,

Assistant United States Attorney, Southern District of Indiana.

For Defendant Martin Marietta Materials, Inc.

Raymond A. Jacobsen, Jr.,

McDermott, Will & Emery, 1850 K Street, N.W., Washington, D.C. 20006–2296, (202) 778–8028.

Scott Megregian,

McDermott, Will & Emery, 1850 K Street, N.W., Washington, D.C. 20006–2296, (202) 778–8096.

For Defendants CSR Limited, CSR America, Inc. and American Aggregates Corporation

C. Benjamin Crisman, Jr.,

Skadden, Arps, Slate, Meagher & Flom, 1440 New York Avenue, N.W., Washington, D.C. 20005–2111, (202) 371–7330.

Alec Y. Chang,

Skadden, Arps, Slate, Meagher & Flom, 1440 New York Avenue, N.W., Washington, D.C. 20005–2111.

Order

It is so ordered, this 27th day of May, 1997.

Sarah Evans Baker,

United States District Judge.

Final Judgment

Whereas, plaintiff, the United States of America, having filed its Complaint herein on May 22, 1997, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is prompt and certain divestiture of assets to assure that competition is not substantially lessened;

And Whereas, plaintiff requires defendants to make certain divestitures for the purpose of establishing a viable competitor in the production and sale of aggregate in Marion County, Indiana;

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

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

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of 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. ''*Martin*'' means defendant Martin Marietta Materials, Inc., a North Carolina corporation headquartered in Raleigh, North Carolina, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employee acting for or on behalf of any of them.

B. ''*American Aggregates*'' means defendant American Aggregates Corporation, a Delaware corporation headquartered in Dayton, Ohio, and includes it successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any them.

C. ''*CSR America*'' means defendant CSR America, Inc., a Georgia corporation headquarters in Atlanta, Georgia (of which American Aggregates is a subsidiary), and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

D. ''*CSR*'' means defendant CSR Limited, a company formed under the laws of Australia and headquarters in Sydney, New South Wales (of which CSR America is a subsidiary), and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

E. ''*Aggregate*'' means crushed stone and gravel produced at quarries, mines, or gravel pits used to manufacture asphalt concrete and ready mix concrete. ''Stone products'' refer to any products produced at a quarry.

F. ''*Asphalt concrete*'' means material that is used principally for paving and is produced by combining and heating asphalt cement (also referred to in the industry as ''liquid asphalt'' or ''asphalt oil'') with aggregate.

G. ''*Ready mix concrete*'' means a material used in the construction of buildings, highways, bridges, tunnels, and other products and is produced by mixing a cementing material (commonly portland cement) and aggregate with sufficient water to cause the cement to set and bind.

H. ''*Marion County*'' refers to Marion County, Indiana. Indianapolis, Indiana is located in Marion County.

I. Unless otherwise agreed to by the Department of Justice, in its sole discretion. ''Assets to be Divested'' means:

(1) All rights, titles, and interests, including all fee and all leasehold and rights, in American Aggregates' Harding Street, Indianapolis, Indiana quarry located at 4200 South Harding Street, Indianapolis, Indiana 46217, and the related maintenance facilities and administration buildings (the ''Harding Street Quarry'') including, but not limited to, all real property, capital equipment, fixtures, inventories, trucks, and other vehicles, stone crushing equipment, power supply equipment, scales, interests, permits, assets or improvement related to the production, distribution, and safe of aggregate and stone products at the Harding Street Quarry; and

(2) All intangible assets, including customer lists, contracts to supply third parties aggregate and stone products, and contracts permitting third parties to operate hot-mix plants and concrete plants at the Harding Street Quarry, associated with the Harding Street Quarry.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by person service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all Assets to be Divested, that the purchaser agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. Martin is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of this Final Judgment, or five (5) days after its entry by the Court, whichever is later, to divest the Assets to be Divested to a purchaser acceptable to the plaintiff, in its sole discretion.

B. Martin shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible. The United States in its sole determination may extend the time period for any divestiture an additional

period of time not to exceed sixty (60) calendar days.

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

D. Martin shall not interfere with any negotiations by any purchaser to employ any Martin (or former CSR, CSR America, or American Aggregates) employee who works at, or whose principal responsibility is the manufacture, sale or marketing of aggregate or stone products produced by the Assets to be Divested.

E. Martin shall permit prospective purchasers of the Assets to be Divested to have access to personnel and to make such inspection of the Assets to be Divested, access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operations, or other documents and information customarily provided as part of a due diligence process.

F. Martin shall warrant to the purchaser of the Assets to be Divested that the Assets to be Divested will be operational on the date of sale.

G. Martin shall not take any action, direct or indirect (not including otherwise lawful competitive price action, expansion of capacity or similar competitive conduct), that will impede in any way the operation of the Harding Street Quarry.

H. Martin shall warrant to the purchaser of the Assets to be Divested that there are no known defects in the environmental, zoning, or other permits pertaining to the operation of the Assets to be Divested and that Martin will not undertake, directly or indirectly, following the divestiture of the Assets to be Divested any challenges to the environmental, zoning, or other permits pertaining to the operation of the Assets to be Divested.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the Assets to be Divested and be accomplished by selling or otherwise conveying the Assets to be Divested to a purchaser in such a way as to satisfy plaintiff, in its sole discretion, that the Assets to be Divested can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in the manufacture and sale of aggregate, and stone products. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to the plaintiff's sole satisfaction: (1) has the capability and intent of competing effectively in the production and sale of aggregate and stone products in Marion County; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the manufacture and sale of aggregate and stone products in Marion County; and (3) none of the terms of any agreement between the purchaser and Martin give Martin the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively in Marion County.

V. Appointment of Trustee

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

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

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

D. Martin shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best effort to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of Martin, and Martin shall develop financial or other information relevant to the Assets to be Divested as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Martin shall permit prospective acquirers of the assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the court. Such reports shall include the name,

address and telephone number of each person who, during the preceding month, made an offer to acquire, expresses an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Assets to be Divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Assets to be Divested.

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

VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV of V of this Final Judgment, Martin or the trustee, whichever is then responsible for effecting the divestiture, shall notify the plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify Martin. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets to be Divested that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by the plaintiff of such notice, the plaintiff may request from Martin, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Martin 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. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the plaintiff has been provided the additional information requested from Martin, the proposed purchaser, and any third party, whichever is later, the plaintiff shall provide written notice to Martin and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the plaintiff provides written notice to Martin and the trustee that it does not object, then the divestiture may be consummated, subject only to Martin's limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that the plaintiff does not object to the proposed purchaser or upon objection by the plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by the plaintiff, or by Martin under the proviso in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, Martin shall deliver to the plaintiff an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Assets to be Divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Martin has taken to solicit a buyer for the relevant assets.

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

C. Martin shall preserve all records of all efforts made to preserve and divest the Assets to be Divested.

VIII. Hold Separate Order

Until the divestitures required by the 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 divesture of the Assets to be Divested.

IX. Financing

Martin is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment without prior written consent of the plaintiff.

X. Compliance Inspection

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time.

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

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

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

B. Upon the written request of the Attorney General of the Assistant Attorney General in charge of the

Antitrust Division, made to Martin's principal offices, Martin shall submit such written reports, under oath if requested, with respect any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

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

D. If at the time information or documents are furnished by Martin to the plaintiff, Martin represents and identifies 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 Martin marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by the plaintiff to Martin prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Martin is not a party.

XI. Retention of Jurisdiction

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

XII. Termination

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

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____
United States District Judge

Competitive Impact Statement

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

I. Nature and Purpose of the Proceeding

On May 27, 1997, the United States filed a civil antitrust complaint, which alleges that the proposed acquisition by Martin Marietta Materials, Inc. (''Martin'') of American Aggregates Corporation (''American Aggregates'') from CSR America, Inc. (''CSR America'') which is a subsidiary of CSR Limited (''CSR'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that a combination of the two most significant competitors in the aggregate market in Marion County, Indiana would lessen competition in the production and sale of aggregate in Marion County. The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing Martin from acquiring control of American Aggregates' aggregate business, or otherwise combining such business with Martin's own business in the United States.

When the Complaint was filed, the United States, also filed a proposed settlement that would permit Martin to complete its acquisition of American Aggregates' aggregate business, but require a certain divestiture that will preserve competition in Marion County. This settlement consists of a Stipulation and Order, a proposed Final Judgment and a Hold Separate Stipulation and Order.

The proposed final Judgment orders Martin to divest certain Marion County assets—American Aggregates, Harding Street, Indianapolis, Indiana quarry and certain related tangible and intangible assets. Martin must complete the divestiture of this quarry and related assets within one hundred and eighty (180) calendar days after the date on which the proposed Final Judgment was filed (i.e., May 27, 1997) in accordance with the procedure specified therein.

The Stipulation and Order, proposed Final Judgment and Hold Separate Stipulation and Order require Martin to ensure that, until the divestiture mandated by the proposed Final Judgment has been accomplished, the Harding Street Quarry and related assets to be divested will be maintained and operated as an independent, ongoing, economically viable and active competitor. Martin must preserve and maintain the quarry to be divested as a saleable and economically viable, ongoing concern, with competitively sensitive business information and decision-making divorced from that of Martin's aggregate business. Martin will appoint a person to monitor and ensure its compliance with these requirements of the proposed Final Judgment.

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

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

A. Martin, American Aggregates and the Proposed Transaction

Martin is engaged in the business of producing and selling aggregate in Marion County. In Marion County, Martin operates the Kentucky Avenue Quarry which produces aggregate. In 1995, Martin had sales of $660 million.

Through its wholly owned subsidiary, American Aggregates, CSR is engaged in the business of producing and selling aggregate in Marion County. CSR operates two aggregate quarries in or near Marion County that produce aggregate which is used to manufacture asphalt concrete and ready-mix concrete. In 1996, American Aggregates had sales of $120 million.

On February 21, 1997, Martin agreed to acquire all of the outstanding voting securities of American Aggregates, excluding its Michigan operations, from CSR America which is wholly owned by CSR. The purchase price is approximately $234.5 million. This transaction, which would take place in the highly concentrated Marion County aggregate industry, precipitated the government's suit.

B. The Transaction's Effects in Marion County

The Complaint alleges that, the production and sale of aggregate constitutes a line of commerce, or relevant product market, for antitrust purposes, and that Marion County constitutes a section of the country, or relevant geographic market. The complaint alleges that the effect of Martin's acquisition may be to lessen competition substantially in the production and sale of aggregate in Marion County.

Aggregate is material that is used to manufacture asphalt concrete and ready-mix concrete. A considerable amount of the asphalt concrete and ready-mix concrete manufactured for use in Marion County is used on

highways and roads built for the Indiana Department of Transportation and local jurisdictions located within Marion County. No good economic functional substitutes exist for aggregate. Manufacturers and buyers of aggregate recognize aggregate as a distinct product.

Producers of aggregate located in or near Marion County sell and compete with each other for sales of aggregate in Marion County. Due to high transportation costs and long delivery time, producers of aggregate not located in Marion County or in close proximity to Marion County do not sell a significant amount of aggregate for use within Marion County.

The Complaint alleges that Martin's acquisition of American Aggregates would substantially lessen competition for the production and sale of aggregate in Marion County. Actual and potential competition between Martin and American Aggregates for the production and sale of aggregate in Marion County will be eliminated.

Martin and American Aggregates are the only producers of aggregate in Marion County and are two of only three significant producers in close proximity to Marion County. American Aggregates and Martin sell the vast majority of all the aggregate used to manufacture asphalt concrete and ready mix concrete for road and highway construction projects in Marion County contracted for by the Indiana Department of Transportation and local jurisdictions within Marion County. The Indiana Department of Transportation, through its contracts for highway construction, is indirectly the largest purchaser of aggregate in Marion County.

The acquisition of American Aggregates by Martin would create a dominant aggregate company in Marion County. It would reduce the number of significant competitors operating aggregate facilities in Marion County or in close proximity to Marion County from three to two, and significantly reduce the number of competitors located in Marion County supplying aggregate used to manufacture asphalt concrete and ready mix concrete manufactured for highways in Marion County.

As a result of the acquisition, Martin would have significant control over the aggregate market in Marion County, giving it market power to increase the price of aggregate in Marion County. Prices for aggregate are likely therefore to increase. In response to such a price increase, purchasers could not switch to another producer of aggregate.

New entry in Marion County is unlikely to restore the competition lost through Martin's removal of American Aggregates from the marketplace. De novo entry into the production and sale of aggregate requires a significant capital investment and likely would take over two years before any new aggregate production facility could begin production. State and local zoning provisions make it very difficult to open an aggregate production facility in or near Marion County.

C. Harm to Competition as a Consequence of the Acquisition

The Complaint alleges that the transaction would have the following effects, among others: competition for the production and sale of aggregate in Marion County will be substantially lessened; actual and potential competition between Martin and American Aggregates in the production and sale of aggregate in Marion County will be eliminated; and prices for aggregate in Marion County are likely to increase above competitive levels.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the production and sale of aggregate in Marion County by placing in independent hands American Aggregates' Harding Street, Indianapolis, Indiana aggregate quarry used by American Aggregates to serve Marion County, thus maintaining the existing level of suppliers in the market place. In response to a price increase from Martin, purchasers would be able to turn to another producer with significant capacity to produce aggregate in Marion County.

Within one hundred and eighty (180) calendar days after filing the proposed Final Judgment, Martin must divest American Aggregates' Harding Street aggregate quarry and related assets which are located in Marion County. The Harding Street quarry and related assets will be sold to a purchaser who demonstrates to the sole satisfaction of the United States that they will be an economically viable and effective competitor, capable of competing effectively in the production and sale of aggregate in Marion County.

Until the ordered divestiture takes place, Martin must take all reasonable steps necessary to accomplish the divestiture and cooperate with any prospective purchaser. If Martin does not accomplish the ordered divestiture within the specified one hundred and eighty (180) calendar days which may be extended by up to sixty (60) calendar days by the United States in its sole discretion, the proposed Final Judgment provides for procedures by which the Court shall appoint a trustee to complete the divestiture. Martin must cooperate fully with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that Martin will pay all costs and expenses of the trustee. The trustee's compensation will be structured so as to provide an incentive for the trustee to obtain the highest price then available for the assets to be divested, and to accomplish the divestiture as quickly as possible. After the effective date of his or her appointment, the trustee shall serve under such other conditions as the Court may prescribe. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six (6) months, if the mandated divestiture has not been accomplished, the trustee shall file promptly with the Court a report that sets forth the trustee's efforts to accomplish the divestiture, explain why the divestiture has not been accomplished, and make any recommendations. The trustee's report will be furnished to the parties and shall be filed in the public docket, except to the extent the report contains information the trustee deems confidential. The parties each will have the right to make additional recommendations to the Court. The Court shall enter such orders as it deems appropriate to carry out the purpose of the trust.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment neither will 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 Martin, CSR, CSR America or American Aggregates.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court

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

The APPA provides a period of at least 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 should comment within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

Written commetns should be submitted to: J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, 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 of its Complaint against the defendants. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the production and sale of aggregate in Marion County that otherwise would be affected adversely by the acquisition. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the government's Complaint.

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

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court *may* consider—

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448 (DC Cir. 1995).

In conducting this inquiry, ''the 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. 24598 (1973). Rather,

> 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.

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

Accordingly, 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), quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); *see also Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that:

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

United States v. *Bechtel,* 648 F.2d 660, 666 (9th Cir. 1981) (emphasis added).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved 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.' '' (citations omitted). *United States* v. *American Tel. and Tel. Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982), aff'd sub nom., *Maryland* v, *United States,* 460 U.S. 1001 (1983).

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.

Executed on: May 23, 1997.

Respectfully submitted.

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DEPARTMENT OF JUSTICE

Federal Bureau of Identification

Criminal Justice Information Services; Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: Notice of Information Collection Under Review: Law Enforcement Officers Killed and Assaulted (LEOKA).

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until August 8, 1997.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your