United States v. *Cotter Corporation,* C.A. No. 00–WM–1076 (D. Col.), was lodged on May 25, 2000, with the United States District Court for the District of Colorado. The consent decree resolves the United States' claims against the Cotter Corporation with respect to past response costs incurred, pursuant to section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607, in connection with the clean-up of the Lincoln Park Site. The Site is located near Canon City, Fremont, Colorado. Under the consent decree, defendant Cotter Corporation will pay the United States $52,500 in reimbursement of past response costs incurred in connection with the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed 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. *Cotter Corporation,* DOJ Reference No. 90–11–3–305–A.

The proposed consent decree may be examined at the Office of the United States Attorney, 1961 Stout Street, Suite 1200, Denver, Colorado; and the Region VIII Office of the Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado. A copy of the proposed decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.25 (.25 cents per page production costs), payable to the Consent Decree Library.

Joel M. Gross,

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

[FR Doc. 00–15592 Filed 6–20–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Sections 309(b) and 311(b) of the Clean Water Act

Notice is hereby given that on June 8, 2000 a proposed Consent Decree (''Decree'') in *United States* v. *Southern Pacific Transportation Co. et al.,* Civil Action No. 97–WM–469 (D. Colo.), was lodged with the United States District Court for the District of Colorado. The United States filed this action pursuant to sections 309(b) and 311(b) of the Clean Water Act (the ''Act''), 33 U.S.C. 1319(b) and 1321(b), for civil penalties and injunctive relief for violations of Sections 301(a)/402(a) and 311(b) of the Act, 33 U.S.C. 1311(a)/1342(a) & 1321(b), arising from eight separate incidents in Colorado and Utah. All but one of the incidents were associated with freight train wrecks. The violations concern spills of diesel fuel from ruptured or leaking locomotive fuel tanks. Two of the eight incidents also involved a spill of an additional pollutant (taconite) or hazardous substance (sulfuric acid) from hoppers/tank cars.

As part of the settlement UP will pay a civil penalty in the amount of $800,000. In addition, UP will undertake injunctive relief which includes: (a) A requirement that all freight locomotives UP purchases during the next five years be equipped with fuel tanks meeting a new industry standard for crash-worthiness; (b) implementation of a comprehensive rock fall equipped with fuel tanks meeting a new industry standard for crash-worthiness; (c) implementation of a comprehensive rock fall hazard mitigation project; (d) installation of locomotive fuel tank patch kits on hi-rail vehicles and training the operators of such vehicles; (e) preparation of emergency response contingency plans for the Colorado River in Colorado and Utah, the Gunnison River in Colorado, and the Spanish For River in Utah along which UP's track is aligned; and (e) other relief.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to, *United States* v. *Southern Pacific Transportation Company et al.,* Civil Action No. 97–WM–469 (D. Colo.) and D.J. Ref. #90–5–1–1–4381.

The Decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, North Tower Suite 945, Denver, Colorado, 80202. A copy of the Decree may also be obtained by mail from the Department of Justice Consent Decree Library, 13th Floor, 1425 New York Avenue, NW, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $15.50 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

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

[FR Doc. 00–15589 Filed 6–20–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

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

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the U.S. District Court for the District of Columbia in *United States* v. *Alcoa Inc., et al.,* Civil No. 00–CV–954 (RMU). On May 3, 2000, the United States filed a Complaint alleging that the proposed acquisition of Reynolds Metals Company by Alcoa Inc. would substantially lessen competition in the manufacture and sale of smelter grade alumina (''SGA'') worldwide and chemical grade alumina (''CGA'') in North America in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

The proposed Final Judgment orders Alcoa and Reynolds to sell Reynolds' controlling interest in an alumina refinery in Worsley, Western Australia, and Reynolds' alumina refinery located near Corpus Christi, Texas. Public comment is invited within the statutory sixty-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, 325 Seventh Street, NW, Suite 500, Washington, DC 20530 (telephone: (202) 307–6351).

Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW, Washington, DC 20530 (telephone: (202) 514–2481) and at the office of the Clerk of the U.S. District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001. Copies of any of these materials may be obtained

upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Hold Separate Stipulation and Order

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

I. Definitions

As used in this Hold Separate Stipulation and Order:

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

B. ''Reynolds'' means defendant Reynolds Metals Company, a Delaware corporation with its headquarters in Richmond, Virginia, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

C. ''Hold Separate Assets'' means the Corpus Christi Assets and the Worsley Interest required to be divested under the proposed Final Judgment, as defined in Sections II.C and II.G of the proposed Final Judgment, collectively.

D. The terms ''Chemical Grade Alumina'' or ''CGA'' have the meaning defined in Section II.B of proposed Final Judgment.

E. The terms ''Smelter Grade Alumina'' or ''SGA'' have the meaning defined in Section II.F of proposed Final Judgment.

II. Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of certain assets for the purpose of maintaining a viable competitor in the manufacture and sale of Smelter Grade Alumina (''SGA'') and Chemical Grade Alumina (''CGA'') to remedy the effects that the United States alleges would otherwise result from Alcoa's proposed acquisition of Reynolds. This Hold Separate Stipulation and Order ensures that, prior to such divestitures, the Hold Separate Assets be maintained and operated as independent, economically viable, ongoing business concerns, and that competition is maintained during the pendency of the divestiture.

III. Jurisdiction and Venue

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

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto may be filed with 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 United States 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.

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

C. This Hold Separate Stipulation and Order 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.

D. In the event the United States has withdrawn its consent, as provided in paragraph IV.A above, or if the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, or if 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 continuing compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Hold Separate Stipulation and Order, and the making of this Hold Separate Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

E. Defendants represent that the divestitures ordered in the proposed Final Judgment 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 therein.

V. Hold Separate Provisions

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

A. Alcoa shall preserve, maintain, and operate the Hold Separate Assets as independent competitors, with management, research, development, production, sales, and operations held entirely separate, distinct, and apart from those of Alcoa. Alcoa shall not coordinate the manufacture, marketing, or sale of any products with that of any of the Hold Separate Assets that Alcoa will own as a result of the acquisition of Reynolds. To the extent that the Hold Separate Assets are supplying or have current plans to supply Reynolds' smelters with SGA, Alcoa may continue to receive such supply in comparable volumes. Within twenty calendar days of the filing of the Complaint in this matter, Alcoa will inform the United States of the steps taken to comply with this provision.

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

C. Alcoa shall use all reasonable efforts to maintain manufacturing at the Hold Separate Assets, and shall maintain at current or previously approved levels, whichever are higher, internal research and development funding, promotional, advertising, sales, technical assistance, marketing, and merchandising support for the Hold Separate Assets.

D. Alcoa shall provide and maintain sufficient working capital to maintain the Hold Separate Assets as economically viable, ongoing businesses.

E. Alcoa shall provide and maintain sufficient lines and sources of credit to maintain the Hold Separate Assets as economically viable, ongoing businesses.

F. Alcoa shall take all steps necessary to ensure that the Hold Separate Assets are fully maintained in operable condition at no lower than their current rated capacity plus, at the time such expansions are scheduled to be completed, all future expansions in rated capacity, and shall maintain and adhere to normal repair and maintenance schedules for the Hold Separate Assets.

G. Alcoa shall not, except as part of a divestiture approved by plaintiff, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of or pledge as collateral for loans, any assets of the Hold Separate Assets.

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

I. Until such times as the Hold Separate Assets are divested, except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, Alcoa shall not hire, and defendants shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employee who, on the date of the signing of this Hold Separate Stipulation and Order by the parties, works for Reynolds and whose primary responsibilities relates to the Hold Separate Assets.

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

K. This Hold Separate Stipulation and Order remain in effect until the divestitures required by the Final Judgment are compete, or until further Order of the Court.

Respectfully submitted,

Dated: May 3, 2000.

For Plaintiff United States: Allee A. Ramadhan, D.C. Bar #162131. Bruce Pearson, Connecticut Bar #372598. Janet R. Urban, Mark S. Hegedus, D.C. Bar #435525. Andrew K. Rosa, Hawaii Bar #6366. Michelle J. Livingston, D.C. Bar #461268. Attorneys, U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W. Suite 500, Washington, D.C. 20530 (202) 307–6470.

For Defendant Alcoa Inc.: Mark Leddy, D.C. Bar #404833. David I. Gelfand, D.C. Bar #416596. Steven J. Kaiser, D.C. Bar #454251. Patricia M. McDermott, D.C. Bar #429776. Cleary, Gottlieb, Steen & Hamilton, 2000 Pennsylvania Avenue, N.W., Washington, DC 20006–1801, (202) 974–1570.

For Defendant Reynolds Metals Company: Michael H. Byowitz, D.C. Bar #214703. Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, NY 10019–6150, (212) 403–1268.

Order

It is so ordered, this _____ day of _____, 2000.

United States District Judge

Final Judgment

Whereas, Plaintiff, the United States of America (''United States''), filed its complaint in this action on May 3, 2000, and Plaintiff and Defendants Alcoa Inc. (''Alcoa'') and Reynolds Metals Company (''Reynolds''), 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 of fact herein;

And whereas, Defendants have agreed to be bound by the provisions of this Final Judgment and the provisions of the Hold Separate Stipulation and Order pending their approval by the Court;

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

And whereas, Plaintiff 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 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 provisions contained below;

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

I. Jurisdiction

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

II. Definitions

As used in this Final Judgment:

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

B. ''Chemical Grade Alumina'' or ''CGA'' means the alumina product resulting from the refining of bauxite ore in alumina refineries, except that the alumina is removed from the production stream prior to calcining in kilns used to produce SGA. This uncalcined alumina is known as Chemical Grade Alumina or CGA, and is sold as ''wetcake'' or is dried and sold as ''dry hydrate.'' CGA is used in numerous downstream products.

C. ''Corpus Christi Assets'' means all assets, interests and rights owned by Reynolds at Reynolds' alumina refinery located near Corpus Christi, Texas, which are used or held for use for alumina refining (the ''Corpus Christi Refinery'', a/k/a the ''Sherwin Refinery''), including:

1. All tangible assets, including the alumina refining facility located at the Corpus Christi Refinery and the real property on which the Corpus Christi Refinery is situated; the real property to which the Corpus Christi Refinery is adjacent and that is reasonably necessary to the refining and sale of SGA or CGA from the Corpus Christi Refinery; refining assets relating to the Corpus Christi Refinery, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on-site warehouses or storage facilities, railcars, port facilities, ships, boats, barges and other tangible property or improvements; all licenses, permits and authorizations issued by an governmental organization relating to the Corpus Christi Refinery; all contracts, agreements, leases, commitments and understandings pertaining to the operations of the Corpus Christi Refinery; all supply agreements relating to the Corpus Christi Refinery, including, at the purchaser's option, all agreements,

commitments and understandings for the supply of bauxite to the Corpus Christi Refinery; all customer lists, accounts, and credit records; and other records maintained by Reynolds in connection with the operations of the Corpus Christi Refinery.

2. All intangible assets, including but not limited to all patents, licenses and sublicenses, trademarks, trade names, service marks, service names (except to the extent such trademarks, trade names, service marks and service names contain the trademark Reynolds and Knight, Horse and Dragon Design; or the names ''Reynolds,'' ''Reynolds Metals Company,'' ''Reynolds, Rey, Reyno, or a Knight, Horse and Dragon Design); intellectual property, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols; specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all research data concerning historic and current research and development efforts relating to the operations of the Corpus Christi Refinery, including design of experiments and the results of unsuccessful designs and experiments; all plans pertaining to output and production of the Corpus Christi Refinery; and all manuals and technical information Reynolds provides to its employees, customers, suppliers, agents or licensees in connection with the operations of the Corpus Christi Refinery.

D. ''Divestiture Assets'' means the Worsley Interest and the Corpus Christi Assets.

E. ''Reynolds'' means defendant Reynolds Metals Company, a Delaware corporation with its headquarters in Richmond, Virginia, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

F. ''Smelter Grade Alumina'' or ''SGA'' means the alumina product resulting from the refining and calcining of bauxite ore in alumina refineries that is smelted to make aluminum metal.

G. ''Worsley Interest'' means all Reynolds' interest in the Worsley Joint Venture, established by agreement dated February 7, 1980, and subsequently amended; provided, however, that the Worsley Interest does not include the trademarks Reynolds and Knight, Horse and Dragon Design; or the names ''Reynolds,'' ''Reynolds Metals Company,'' ''Reynolds Aluminum'' or any variation thereof, or any trademark containing Reynolds, Rey, Reyno, or a Knight, Horse, and Dragon Design.

III. Applicability

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

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

IV. Divestiture of Assets

A. Defendants are hereby ordered and directed in accordance with the terms of this Final Judgment, within two hundred seventy (270) days from either the filing of the Complaint in this matter or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Worsley Interest as an interest in a viable, ongoing business. Defendants are further ordered and directed in accordance with the terms of this Final Judgment, within one hundred eighty (180) days from either the filing of the Complaint in this matter or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Corpus Christi Assets as a viable, ongoing business, to a purchaser or purchasers acceptable to the United States in its sole discretion.

B. Defendants shall use their best efforts to accomplish the divestitures as expeditiously and timely as possible. The United States, in its sole discretion, may extend the time period for any divestiture by an additional period of time not to exceed sixty (60) calendar days.

C. 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 described in this Final Judgment. Defendants 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. Defendants shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Divestiture Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the Plaintiff at the same time that such information is made available to any other person.

D. Defendants shall permit prospective purchasers of the Divestiture Assets to have reasonable access to personnel and to make inspection of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information relating to the Divestiture Assets; and access to any and all financial, operational, or other documents and information relating to the Divestiture Assets customarily provided as part of a due diligence process, subject to customary confidentiality assurances.

E. Defendants shall provide to any purchaser or purchasers of the Divestiture Assets information relating to the Reynolds personnel involved in the refining and sale of SGA and/or CGA in connection with the Worsley Interest and the Corpus Christi Assets to enable the purchaser or purchasers to make offers of employment. Defendants shall not interfere with any negotiations by any purchaser or purchasers to employ and Reynolds employee who works at the Worsley refinery or the Corpus Christi Refinery, or whose principal responsibility involves the refining and sale of alumina at the Worsley refinery or the Corpus Christi Refinery.

F. Defendants shall warrant to the purchaser or purchasers of the Divestiture Assets that the Divestiture Assets will be operational on the date of the divestiture.

G. Defendants shall warrant to the purchaser of the Divestiture Assets that all necessary environmental, zoning, export and other permits relating to the Divestiture Assets are in order in all material respects. Defendants will not undertake, directly or indirectly, following the divestiture of the Divestiture Assets, any challenges to the environmental, zoning, export or other permits pertaining to the operation of the Divestiture Assets.

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

I. Unless the United States otherwise consents in writing, the divestiture undertaken pursuant to Section IV or undertaken by a trustee appointed pursuant to Section V of this Final Judgment shall include all of the Divestiture Assets. Prior to divestiture, the Divestiture Assets that are the subject of the Hold Separate Stipulation and Order shall be operated pursuant to such Hold Separate Stipulation and

Order entered by the Court. The divestitures shall be accomplished by selling or otherwise conveying the Divestiture Assets to a purchaser or purchasers 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 purchaser or purchasers as part of a viable, ongoing business or businesses engaged in the refining and sale of SGA or CGA. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser or purchasers with respect to whom it is demonstrated to the United States' sole satisfaction that (a) the purchasers have the intent to compete effectively in the refining and sale of SGA or CGA; and (b) the purchaser or purchasers have the managerial, operational, and financial capability to compete effectively in the refining and sale of SGA or CGA. In addition, none of the terms of any agreement between the purchaser or purchasers and Defendants, including any joint venture, governance, operation or shareholder agreements, shall give Defendants the ability to limit the purchaser's capacity or output, to raise a purchaser's costs, to lower a purchaser's efficiency, or otherwise to interfere in the ability of the purchaser or purchasers to compete effectively.

J. In connection with the divestiture of the Corpus Christi Assets and the Worsley Interest, whether pursuant to Section IV of the Final Judgment or by a trustee appointed pursuant to Section V, Defendants may negotiate a transitional supply agreement or agreements with the purchaser or purchasers of these divested assets for the supply of SGA to Reynolds' smelters previously supplied by these refineries. Any such agreement shall be on commercially reasonable terms and may have a term of up to three (3) years. Volume requirements during the first year of any such agreement may be up to 100% of the annual volumes supplied by these refineries to such smelters during the year prior to the closing of the merger transaction, up to 75% during the second year and you to 50% during the third year.

K. In connection with the divestiture of the Worsley Interest, whether pursuant to Section IV of this Final Judgment or by a trustee pursuant to Section V, Defendants shall assign to the purchaser or purchasers of the Worsley Interest Reynolds' existing contractual obligations to supply SGA to Billiton. If Alcoa is unable to obtain any necessary consent of Billiton or is otherwise unable to effect such an assignment, Alcoa shall enter into an agreement with the purchaser or purchasers of the Worsley Interest for the supply of such amount of SGA and on such terms as are called for by the Reynolds/Billiton SGA contract, to be resold by Alcoa to Billiton in fulfillment of that contract.

L. In connection with the divestiture of the Corpus Christi Assets, whether pursuant to Section V, Defendants shall offer the purchaser a contract for a term of at least two (2) years for the supply of bauxite from Reynolds' interest in ABC (Aroaima) Guyana. Such agreement shall be on commercially reasonable terms and for annual volumes substantially similar to the annual volumes supplied by ABC (Aroaima) Guyana to the Corpus Christi Refinery during the year prior to the closing of the transaction.

V. Appointment of Trustee

A. In the event that Defendants have not divested any of the Divestiture Assets within the time period specified for that asset in Section IV.A of this Final Judgment and for which the time period has not been extended pursuant to Section IV.B, the Court shall appoint, on application of the United States, a trustee selected by the United States and approved by the Court to effect the divestiture of that Divestiture Asset.

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

C. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the Plaintiff 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 such trustee and of professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished, but timeliness is paramount.

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

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 divestitures ordered under this Final Judgment; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The

trustee shall maintain full records of all efforts made to divest the businesses to be divested.

F. If the trustee has not accomplished such divestitures 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 divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (3) the trustee's recommendations; provided, however, that to the extent such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the Plaintiff, the Court and to Defendants. Plaintiff and Defendants shall each have the right to be heard and to make additional recommendations consistent with the purpose of this Final Judgment. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notification

A. Within two (2) business days following execution of a definitive agreement Defendants or the trustee, whichever is then responsible for effecting the divestitures, shall notify Plaintiff of the proposed divestitures. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same.

B. Within fifteen (15) calendar days of receipt by Plaintiff of such notice, the United States, in its sole discretion, may request from Defendants, the trustee, the proposed purchaser or purchasers, or any other third party additional information concerning the proposed divestitures, the proposed purchasers, and any other potential purchaser. Defendants and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the Plaintiff has been provided the additional information requested from Defendants, the trustee, proposed purchaser or purchasers, or any third party, whichever is later, the United States shall provide written notice to Defendants and the trustees, if there is one, stating whether or not it objects to the proposed divestures. If the United States provides written notice to Defendants and the trustee that it does not object, then the divestitures may be consummated, subject only to Defendants' limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or purchasers 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 the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed, whether pursuant to Section IV or Section V of this Final Judgment, Defendants shall deliver to Plaintiff an affidavit as to the fact and manner of compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include, *inter alia,* the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiation to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that the Defendants have taken to solicit a purchaser for the Divesture Assets and to provide required information to prospective purchasers.

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

C. Until one year after such divestitures have been completed, Defendants shall preserve all records of all efforts made to preserve the businesses to be divested and effect the divestitures.

III. 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 and to preserve in all material respects the Divestiture Assets. Defendants shall take no action that would jeopardize the divestiture of the Divestiture Assets.

IX. Financing

Defendants are 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.

X. Compliance Inspection

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

A. Duly authorized representatives of the United States Department of Justice, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, shall be permitted:

1. Access during office hours of Defendants to inspect and copy, or at Plaintiff's option demand Defendants provide copies of, all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendants, who may have counsel present, relating to any matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

2. To interview, either informally or on the record, their officers, employees, and agents, who may have their

individual counsel present, regarding any such matters. The interviews shall be subject to the interviewee's reasonable convenience and without restraint or interference from the Defendants.

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

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

D. If at the time information or documents are furnished by Defendants to Plaintiff, Defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then Plaintiff shall give ten (10) days notice to Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendants are not a party.

XI. Retention of Jurisdiction

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

XII. Termination

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

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated _____

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

_____

United States District Judge

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Hold Separate Stipulation and Order and attached proposed Final Judgment to be served on counsel for defendants in this matter in the manner set forth below:

By first class mail, postage prepaid, and by hand:

Mark Leddy, Cleary, Gottlieb, Steen & Hamilton, 2000 Pennsylvania Avenue, N.W., Washington, DC 20006–1801

Michael H. Byowitz, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, NY 10019–6150

Dated: May 3, 2000.

Andrew K. Rosa,

Hawaii Bar #6366, Trial Attorney, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530, (202) 307–0886, (202) 616–2441(Fax).

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 3, 2000, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Alcoa Inc. (''Alcoa'') of Reynolds Metals Company (''Reynolds'') would, if consummated, violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the proposed merger will substantially lessen competition in the refining and sale of both smelter grade alumina (''SGA''), which is used to produce aluminum ingots, and chemical grade alumina (''CGA'' or ''hydrate''), an ingredient used in numerous industrial and consumer products. This competition has benefitted consumers through lower prices and higher output. The proposed merger of Alcoa and Reynolds would substantially increase the concentration of SGA and CGA markets. Unless the merger is blocked, the loss of competition will substantially enhance Alcoa's control over the prices of SGA and CGA, while also increasing the likelihood of anticompetitive coordination in the SGA and CGA markets.

The prayer for relief in the Complaint seeks: (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act; (2) a permanent injunction preventing Alcoa from acquiring Reynolds; (3) an award to the United States of its costs in bringing the lawsuit; and (4) such other relief as the Court deems proper.

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

The proposed Final Judgment orders Defendants to divest, (1) within two hundred seventy (270) days after the filing of the complaint in this matter, or five (5) days after notice of entry of the Final Judgment by the Court, whichever is later, all of Reynolds' interest in the Worsley Joint Venture, established by agreement dated February 7, 1980, and subsequently amended (''Worsley Interest''), and (2) within one hundred eighty (180) days after the filing of the complaint in this matter, or five (5) days after notice of entry of the final Judgment by the Court, whichever is later, all assets, interests, and rights owned by Reynolds at Reynolds' alumina refinery located near Corpus Christi, Texas, that are used or held for use for alumina refining (''Corpus Christi Assets'') (collectively referred to as ''the Divestiture Assets'') to an acquirer or acquirers acceptable to the Antitrust Division of the Department of Justice (''DOJ'').

Until the required divestitures are completed, the terms of the Hold Separate Stipulation and Order entered into by the parties apply to ensure that the Divestiture Assets shall be maintained and operated as independent, ongoing, economically viable, and active competitors in the manufacture and sale of SGA and CGA.

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

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

A. The Defendants and the Proposed Transaction

Alcoa is a Pennsylvania corporation, with its principal offices located in Pittsburgh, Pennsylvania. Alcoa is the largest integrated aluminum company in the United States and the world with 1999 revenues of over $16 billion. Alcoa engages in all stages of aluminum production, including mining raw aluminum ore (''bauxite''), refining bauxite into alumina powder, smelting alumina into metal ingots, and utlimately fabricating the metal ingots into end products.

Alcoa produces SGA at several facilities around the world. Alcoa owns alumina refineries in Kwinana, Pinjarra, and Wagerup, Western Australia; Pocos de Caldas, Brazil; San Ciprian, Spain; St. Croix, U.S. Virgin Islands; and Pt. Comfort, Texas. Alcoa also manages the operations of three alumina refinery joint ventures in which it has an ownership interest: Paranam, Suriname (55 percent Alcoa ownership); Sao Luis, Brazil (54 percent Alcoa ownership); and Clarendon, Jamaica (50 percent Alcoa ownership). Alcoa produces CGA for North America at its Pt. Comfort refinery.

Reynolds is a Virginia corporation with its principal offices in Richmond, Virginia. Reynolds is the second largest integrated aluminum company in the United States and the third largest in the world with 1999 revenues of over $4.6 billion. Reynolds engages in all stages of aluminum production, including mining bauxite, refining bauxite into alumina powder, smelting alumina into metal ingots, and ultimately fabricating the metal ingots into end products.

Reynolds produces SGA at several facilities around the world. Reynolds owns the Corpus Christi Refinery and owns a 56 percent interest along with operating control of the management of the Worsley refinery. Reynolds also owns a 50 percent interest in a refinery in Stade, Germany, and manages and is entitled to 10 percent of the production of the Friguia, Guinea alumina refinery. Reynolds produces CGA for North America at its Corpus Christi refinery.

On August 18, 1999, Alcoa and Reynolds entered into an agreement under which Alcoa would acquire Reynolds in a stock exchange. This transaction, which would substantially increase concentration in the markets for SGA and CGA, precipitated the government's suit.

B. Affected Markets

1. *The World SGA Market.* The fabrication of aluminum products begins with the mining of bauxite. Bauxite is processed at refineries to extract alumina. SGA is alumina that is used by aluminum smelters to make aluminum metal. About two-thirds of total SGA production is internally consumed by smelters owned by SGA producers. Surplus SGA refined by vertically integrated firms is sold to third-party purchasers. Some of the third-party purchasers are themselves vertically integrated firms that have a deficit of internal SGA production; other purchasers of SGA are independent smelters with no alumina operations.

There is no product that can be substituted for SGA to make aluminum metal. If aluminum smelters were confronted with a small but significant SGA price increase, smelter owners would have to pay the higher price or close their smelters.

Aluminum smelters purchase alumina from refineries located throughout the world. Alcoa, Reynolds, and other alumina refiners refine and sell SGA throughout the United States and the world.

It is extremely costly and inefficient to shut down a smelting operation; smelters therefore require a stable and steady supply of SGA to maintain production. A small decrease in the supply of SGA will cause a significant increase in the price of SGA (*i.e.,* demand for SGA is highly inelastic). When the July 1999 explosion at Kaiser Aluminum Corporation's Gramercy, Louisiana, refinery removed 2 percent of world alumina capacity, SGA ''spot'' prices nearly tripled, and long-term SGA contract prices increased 20 percent to 30 percent.

2. *The North American CGA Market.* Alumina refineries produce two different products—SGA and CGA. Until the last stage of the refining process, SGA and CGA undergo the identical refining process. At that stage, SGA is calcined in kilns. CGA is removed prior to calcining and sold as ''wetcake'' or dried and sold as dry hydrate.

CGA is an important ingredient in numerous products such as zeolites (used in detergents), solid surface counter tops, catalysts for oil refineries and bus exhaust systems, white pigments in the paper industry, flame retardants, and water treatment chemicals. Other products are not reasonable substitutes for CGA. If the price of CGA were to increase by a small but significant amount, a significant number of current purchasers are unlikely to switch to alternative products in sufficient numbers to undermine the price increase. In order to substitute another less suitable product, the product in which CGA was used would have to reformulated, a lengthy and expensive process.

Prices of CGA vary in different regions throughout the world. CGA is sold in North America, and North American producers of CGA compete for sales to customers located throughout North America. Imports of CGA into North America account for less than 5 percent of the CGA sold in North America.

Importation of CGA into North America is unlikely to increase significantly in response to a small but significant anticompetitive increase in the price of CGA in North America. The additional handling of the product that occurs in importing CGA increases the likelihood that it will become contaminated. Also, the costs of freight, handling, and storage are too high to import the product economically in the quantities required by customers in North America.

C. *Harm to Competition as a Consequence of the Acquisition.* By merging with Reynolds, Alcoa's market share will increase approximately from 29 to 38 percent of world SGA capacity and from 39 to 59 percent of North American CGA production. These increases in market shares will significantly enhance Alcoa's incentive and ability to exercise market power unilaterally by reducing its output in the world SGA and North American CGA markets. Alcoa's increased market shares resulting from the acquisition would give it larger sales bases on which is can profit from the higher prices.

The proposed transaction will also increase the likelihood of anticompetitive coordination among the remaining firms in the world SGA and North American CGA markets. The SGA market has certain characteristics conducive to anticompetitive coordination, including product homogeneity; stable, predictable, and inelastic demand and supply; and transparency of actions by suppliers and customers. The CGA market also has certain characteristics conducive to coordinated interaction, including product homogeneity and high concentration (there are only five producers of CGA in North America and post-merger the top three CGA producers will account for 90 percent of the market).

An increase in output of SGA or CGA in response to anticompetitive price

increases is unlikely to be timely or sufficient to undermine the price increases. Firms are currently operating at or near capacity and are expected to continue to do so during at least the next two years. Successful entry through the construction of a new ''greenfield'' alumina refinery or through the expansion of an existing ''brownfield'' refinery is slow, costly, and difficult. A minimum efficient scale greenfield refinery could cost $1 billion and take four years or longer from planning to operation. Reynolds' expansion of its Worsley refinery is costing $700 million and was scheduled to take thirty-two months. No company attempted entry or expansion in response to the Gramercy closure despite the significant increase in SGA prices after the closure.

In the world market for SGA and the North American market for CGA, the proposed merger threatens substantial and serious harm to consumers. By substantially increasing Alcoa's market shares of SGA and CGA capacity in the relevant markets, the proposed merger will provide Alcoa with substantially enhanced control over the prices of SGA and CGA, while also increasing the likelihood of anticompetitive coordination in these markets.

The Complaint alleges that the effect of Alcoa's proposed acquisition of Reynolds would be to eliminate actual and potential competition between Alcoa and Reynolds; to lessen substantially competition in the production and sale of SGA and CGA; to increase prices for SGA and CGA; and to decrease the amount of SGA and CGA produced.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition of Reynolds by Alcoa. The divestitures required by the Final Judgment will ensure that competition will continue and be preserved in the SGA and CGA markets. Divestiture of the Divestiture Assets preserves competition because it will restore the world SGA and North American CGA markets to the structures that existed prior to the acquisition and will preserve the existence of independent competitors in these markets.

Divestiture of the Worsley Interest and the Corpus Christi Assets preserves competition in the SGA market by requiring Alcoa to sell virtually all of the world-wide SGA refining capacity owned by Reynolds.[1] Divesting the Corpus Christi Assets also preserves competition in the North American CGA market by requiring Alcoa to sell all of Reynolds' refining capacity used to supply the North American CGA market. Without the divestitures, consumers of SGA and CGA would suffer from higher prices for these products.

The proposed Final Judgment provides that Alcoa must divest, (1) the Worsley Interest within two hundred seventy (270) days after the filing of the complaint in this matter, or five (5) days after notice of entry of the Final Judgment by the Court, whichever is later; and, (2) the Corpus Christi Assets within one hundred eighty (180) days after the filing of the Complaint in this matter, or five days (5) after notice of entry of the Final Judgment by the Court, whichever is later, to an acquirer or acquirers acceptable to the DOJ. The time period for the divestiture of the Worsley Interest is longer than that for the Corpus Christi Assets in order to allow for the exercise of certain rights of Reynolds' co-venturers in the Worsley Joint Venture. The assets to be divested are defined in detail in Section II of the Final Judgment.

The divestitures shall be accomplished by selling or otherwise conveying the Divestiture Assets to a purchaser or purchasers 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 purchaser or purchasers as part of a viable, ongoing business or businesses engaged in the refining and sale of SGA or CGA. The divestitures shall be made to a purchaser or purchasers with respect to whom it is demonstrated to the United States' sole satisfaction that (a) the purchaser or purchasers have the intent to compete effectively in the refining and sale of SGA or CGA and (b) the purchaser or purchasers have the managerial, operational, and financial capability to compete effectively in the refining and sale of SGA or CGA. In addition, none of the terms of any agreement between the purchaser or purchasers and Defendants, including any joint venture, governance, operation, or shareholder agreements, shall give Defendants, including any joint venture, governance, operation, or shareholder agreements, shall give Defendants the ability to limit the purchaser's capacity or output, to raise a purchaser's costs, to lower a purchaser's efficiency, or otherwise to interfere in the ability of the purchaser or purchasers to compete effectively.

If Defendants fail to divest the Divestiture Assets within the prescribed time, a trustee selected by DOJ will be appointed. The Final Judgment provides that Defendants will pay all costs and expenses of the trustee. At the end of six (6) months, if the divestiture has not been accomplished, the trustee and the parties will have the opportunity to make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the proposed Final Judgment, including extending the trust or the term of the trustee's appointment.

In connection with the sale of the Divestiture Assets, the Final Judgment permits Defendants to enter certain agreements with the new owner(s) to purchase SGA under two specified circumstances. Neither of the permitted arrangements would give Alcoa any mechanism for limiting SGA output by any new owner of Divestiture Assets. First, the Final Judgment allows, but does not require, Alcoa to negotiate agreements to purchase SGA from the new owner(s) to supply, on a transitional basis, the smelters that Reynolds had previously supplied internally from the divestiture Assets. Because of the importance of assuring a large, reliable supply of SGA, smelter operators that depend on SGA supplies from an independent source enter long-term contracts for that supply, and often begin negotiations a year or more in advance of the expiration of current contracts. In addition, the chemical characteristics of SGA vary by source, and a smelter must be recalibrated to the specifications of its new SGA supply, a time consuming process. Because the sale of the Divestiture Assets would remove the historical source of captive SGA supply for a number of former Reynolds smelters, the Final Judgment permits Alcoa a transition period to locate new SGA supplies. Any agreement entered pursuant to this provision may have a term of no more than three (3) years, which is significantly shorter than the industry average for SGA supply contracts, and may cover only partial requirements for that period. Volume requirements during the fist year may be up to 100 percent of the annual volumes supplied by the divested refineries to such smelters during the year prior to the closing of the merger transaction, up to 75 percent of that volume during the second year, and up to 50 percent during the third year.

Second, the Final Judgment requires Alcoa to divest, as one of the assets included in the Worsley Interest,

[1] Reynolds' relatively small SGA output at its Stade, Germany, refinery will be divested pursuant to an undertaking with the European Commission. After the divestitures required by the European Commission and the proposed Final Judgment, all of the alumina refining capacity owned by Reynolds will have been divested.

Reynolds' long-term contractual right to sell SGA to Billiton Plc (''Billiton''). Because Billiton retains a veto over assignment of its contract to the new owner, however, Alcoa may remain the party legally obligated to supply SGA to Billiton. If and only if Billiton exercises its veto, Alcoa may enter an agreement with the new owner of the Worsley Interest to purchase the amount of SGA needed to satisfy Reynolds' existing contractual obligation to Billiton. The Final Judgment requires Alcoa to resell, as an intermediary, any SGA so obtained to Billiton in fulfillment of the existing Reynolds-Billiton contract. By requiring Alcoa to simply pass through this volume of SGA to Billiton, the Final Judgment prevents Alcoa from gaining additional control over SGA output by entering into such an arrangement.

In addition, the Final Judgment requires Defendants to offer the purchaser of the Corpus Christi Assets, at that purchaser's option, a contract for a term of at least two (2) years to supply bauxite to the Corpus Christi Refinery. This requirement may make the Corpus Christi Assets more attractive to purchasers by enabling the purchaser to negotiate supply arrangements for the Corpus Christi Refinery that are substantially similar to existing supply arrangements.

IV. Remedies Available to Potential Private Litigants

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

V. Procedures Available for Modification of the Proposed Final Judgment

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

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20004.

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

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the Defendants.

The United States is satisfied that the divestitures specified in the proposed Final Judgment will preserve viable competition in the manufacture and sale of SGA worldwide and of CGA in North America. Thus, the proposed Final Judgment will achieve all the relief that the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Compliant.

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-day (60) 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 modifications, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the Court of Appeals for the District of Columbia Circuit 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, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court 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.'' [2] Rather,

(a)bsent 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. ¶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 at 1460–62. Precedent requires 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

[2] 119 Cong. Rec. 24598 (1973). *See also United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

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''' [4]

VIII. Determinative Documents

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

For Plaintiff United States of America:
Dated: June 6, 2000.
Respectfully submitted,

Allee A. Ramadhan,
D.C. Bar # 162131.
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Certificate of Service

I hereby certify that I have caused a copy of the foregoing Competitive Impact Statement to be served on counsel for Defendants in this matter in the manner set forth below:

By first class mail, postage, and by facsimile:

Mark Leddy, Cleary, Gottlieb, Steen & Hamilton, 2000 Pennsylvania Avenue, N.W., Washington, DC 20006–1801
Michael H. Byowitz, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, NY 10019–6150.

Dated: June 6, 2000.

Andrew K. Rossa,

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[3] *Bechtel,* 648 F.2d at 666 (internal citations omitted) (emphasis added); *see BNS,* 858 F.2d at 463; *United States* v. *National Broad. Co.,* 449 F. Supp. 1127, 1143 (C.D.Cal. 1978); *Gillette,* 406 F. Supp. at 716. *See also Microsoft,* 56 F.3d at 1461 (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'''') (citations omitted).

[4] *United States* v. *American Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (citations omitted) (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983), *quoting Gillette,* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States v. AT&T Corp. and MediaOne Group, Inc.

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 U.S. District Court for the District of Columbia in *United States* v. *AT&T Corp. and MediaOne Group, Inc.,* Civil No. 00CV01176 (RCL). The United States filed a civil antitrust Complaint on May 25, 2000 alleging that the proposed acquisition of MediaGroup, Inc. (''MediaOne'') by AT&T Corp. (''AT&T'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment requires AT&T to divest the 34% equity interest and significant management interest in ServiceCo., LLC (''ServiceCo''), the nation's second-largest provider of residential broadband services, which operates under the trade name ''Road Runner'' that it would acquire through its merger with MediaOne no later than December 31, 2001.

Public comment is invited within the statutory sixty-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the court. Written comments should be directed to Donald J. Russell, Chief, Telecommunications Task Force, 1401 H Street, NW, Washington, DC 20530 (telephone: (202) 514–5621).

Copies of the Complaint, proposed Final Judgment, Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW, Washington, DC 20530 (telephone: (202) 514–2481) and at the office of the Clerk of the U.S. District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *AT&T Corp. and MediaOne Group, Inc., Defendants;* Civil No.: 00 1176.

Stipulated Order

The Court hereby enters this Stipulated Order, ordering and adjudging 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 this Court.

(2) A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court and provided that Defendants have not abandoned their proposed merger and withdrawn their filing under the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. 18a.

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

(4) This Stipulated Order 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 plaintiff withdraws its consent or Defendants abandon their proposed merger and withdraw their filing under the Antitrust Procedures and Penalties Act, as provided in paragraph (2) above, or in the event that the Court declines to enter the proposed Final Judgment pursuant to this