

DEPARTMENT OF JUSTICE**Notice of Lodging Proposed Consent Decree**

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Gillette*, Civ. No. 3: CV-96-1200 (M.D. Pa.), was lodged with the United States District Court for the Middle District of Pennsylvania on February 9, 2001. This proposed Consent Decree concerns a complaint filed by the United States of America against Robert Gillette, pursuant to section 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319 (b) and (d), to obtain injunctive relief from and impose civil penalties against the Defendant for unlawfully discharging and/or filling approximately 1.6 acres of wetlands adjacent to an unnamed tributary of Van Auken Creek, in Waymart Borough, Wayne County, Pennsylvania.

The proposed Consent Decree requires the Defendant to pay a civil penalty for his unauthorized discharges. Under the proposed Consent Decree, the Defendant shall also undertake a supplemental environmental project ("SEP") consisting of the conservation and management of wetlands in Tobyhanna Township, Monroe County, Pennsylvania. The proposed Consent Decree permanently enjoins the Defendant, or any successor of the Defendant, from discharging pollutants into any water of the United States at the Site, except in compliance any permits required to be obtained by federal, state and local laws, rules or regulations.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Attention: Joshua M. Levin, P.O. Box 23986, Washington, DC 20026-3986 and should refer to *United States v. Gillette*, DJ Reference No. 90-5-1-6-596.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Middle District of Pennsylvania, 228 Walnut Street, Harrisburg, PA 17108. In addition, the proposed Consent Decree may be viewed on the World Wide Web

at <http://www.usdoj.gov/enrd/enrd-home.html>.

Scott A. Schachter,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

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DEPARTMENT OF JUSTICE**Antitrust Division**

[Civil No. 00-3006]

United States of America v. Aktiebolaget Volvo, Trucks North America, Inc., Renault S.A., Renault V.I. S.A., and Mack Trucks, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Sections 16(b) through (h), that a Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement were filed with the United States District Court for the District of Columbia in *United States of America v. Aktiebolaget Volvo, Volvo Trucks North America, Inc., Renault S.A., Renault V.I. S.A. and Mack Trucks, Inc.*, Civil No. 1:00CV03006. On December 18, 2000, the United States filed a Complaint in the United States District Court for the District of Columbia alleging the proposed acquisition by Aktiebolaget Volvo of Renault V.I. S.A., which includes Mack Trucks, Inc., from Renault S.A. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Aktiebolaget Volvo, among other things, to divest the Volvo Trucks North America, Inc., Low Cab Over Engine Truck Business along with certain other tangible and intangible assets. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 200 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Washington, DC., and at the office of the Clerk of the United States District Court for the District of Columbia, Washington, DC.

Public comment is invited within the statutory 60-day comment period. Such comments and response thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice,

1401 H Street, NW., Suite 3000, Washington, DC 20530 (Telephone: 202-307-0924).

Constance K. Robinson,

Director of Operations.

Hold Separate Stipulation and Order

It is hereby stipulated and agreed 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. "Purchaser" means the entity to whom defendants divest either the VTNA LCOE Truck Business or the Mack LCOE Truck Business.

B. "AB Volvo" means defendant Aktiebolaget Volvo, a Swedish corporation with its headquarters in Gotenborg, Sweden, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "VTNA" means defendant Volvo Trucks North America, Inc., a Delaware corporation and a wholly owned subsidiary of AB Volvo with its headquarters in Greensboro, North Carolina, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Renault" means defendant Renault S.A., a French corporation with its headquarters in Boulogne-Billancourt, France, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. "Renault V.I." means defendant Renault V.I.S.A., a French corporation and a wholly owned subsidiary of Renault with its headquarters in Lyon, France, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. "Mack" means defendant Mack Trucks, Inc., a Pennsylvania corporation and a wholly owned subsidiary of Renault V.I. with its headquarters in Allentown, Pennsylvania, and includes its successors and assigns, and its subsidiaries, division, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

G. "LCOE Truck" means a class 8 low cab over entire straight truck with a cab

placed over or in front of the engine and the capability to accept an attached vocational body.

H. "VTNA LCOE Truck Business" means VTNA's line of LCOE Trucks (which consists of the WX and WXLL) including:

(1) All tangible assets that comprise the VTNA LCOE Truck Business, including research and development activities, all manufacturing equipment, tooling and fixed assets, personal property, inventory, materials, supplies, and other tangible property and all other assets used exclusively in connection with the VTNA LCOE Truck Business; all components, parts, and designs used in LCOE Trucks comprising the VTNA LCOE Truck Business; all licenses, permits and authorizations issued by any governmental organization relating to the VTNA LCOE Truck Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the VTNA LCOE Truck Business, including supply agreements; all lists, contracts, accounts, and credit record of customers; all repair, performance, and VTNA LCOE Truck Business records and all other records relating to the VTNA LCOE Truck Business. The VTNA Truck Business does not include the sale of the VTNA New River Valley, Virginia, plant; and

(2) any and all intangible assets used in the development, production, servicing and sale of the VTNA LCOE Truck Business, including, but not limited to: (a) the Xpeditor, WX, and WXLL brand names and all other intellectual property rights used exclusively in connection with the VTNA LCOE Truck Business; (b) with respect to all other intellectual property rights used in connection with both the VTNA LCOE Truck Business and other nondivested AB Volvo assets (other than intellectual property regarding use of the word "Volvo"), a transferable, license, exclusive in the VTNA LCOE Truck Business field of use; (c) all existing licenses and sublicenses relating exclusively to the VTNA LCOE Truck Business; (d) a transferable, sublicense, exclusive in the VTNA LCOE Truck Business field of use, to all other existing licenses and sublicenses relating to the VTNA LCOE Truck Business; and (e) all research, market evaluations or information relating to plans for improvements or updates to, or product line extensions of the WX or WXLL. Intellectual property rights comprise, but are not limited to, patents, licenses and sublicenses, copyrights, technical information, trademarks, trade names, service marks, service names, computer software and related

documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, 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 manuals and technical information provided to employees, customers, suppliers, agents, or licensees, and all research data concerning historic and current research and development efforts relating to the VTNA LCOE Truck Business including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments.

I. "Mack LCOE Truck Business" means Mack's line of LCOE Trucks (which includes the MR and LE) including:

(1) All tangible assets that comprise the Mack LCOE Truck Business, including research and development activities, all manufacturing equipment, tooling and fixed assets, personal property, inventory, materials, supplies, and other tangible property and all other assets used exclusively in connection with the Mack LCOE Truck Business; all components, parts, and designs used in LCOE Trucks comprising the Mack LCOE Truck Business; all licenses, permits and authorizations issued by any governmental organization relating to the Mack LCOE Truck Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the Mack LCOE Truck Business, including supply agreements; all lists, contracts, accounts, and credit records of customers; all repair, performance, and Mack LCOE Truck Business records and all other records relating to the Mack LCOE Truck Business. The Mack LCOE Truck Business does not include the sale of the Mack Macungie, Pennsylvania, plant; and

(2) any and all intangible assets used in the development, production, servicing and sale of the Mack LCOE Truck Business, including, but not limited to: (a) The MR and LE brand names and all other intellectual property rights used exclusively in connection with the Mack LCOE Truck Business; (b) with respect to all other intellectual property rights used in connection with both the Mack LCOE Truck Business and other nondivested Renault assets (other than intellectual property regarding use of the word "Mack" or the word "Renault"), a transferable, license, exclusive in the Mack LCOE Truck Business field of use; (c) all existing licenses and sublicenses

relating exclusively to the Mack LCOE Truck Business; (d) a transferable, sublicense, exclusive in the Mack LCOE Truck Business field of use, to all other existing licenses and sublicenses relating to the Mack LCOE Truck Business; and (e) all research, market evaluations or information relating to plans for, improvements or updates to, or product line extensions of the MR or LE. Intellectual property rights comprise, but are not limited to patents, licenses and sublicenses, technical information, copyrights, trademarks, trade names, service marks, service names, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, 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 manuals and technical information provided to employees, customers, suppliers, agents, or licensees, and all research data concerning historic and current research and development efforts relating to the Mack LCOE Truck Business including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments.

II. Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of the VTNA LCOE Truck Business or, pursuant to the decision of a trustee, the Mack LCOE Truck Business, for the purpose of assuring the establishment of one or more viable competitors in the LCOE Truck industry capable of competing effectively to supply LCOE Trucks in North America and to remedy the anticompetitive effects that the United States alleges would otherwise result from AB Volvo's acquisition of Renault V.I. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the VTNA and Mack LCOE Truck Businesses operate as competitively independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by the consummation of AB Volvo's acquisition of Renault V.I., and that competition is maintained during the pendency of the ordered divestitures.

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 as Exhibit A may be filed with an 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 the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. 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.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) 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.

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

V. Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the VTNA and Mack LCOE Truck Businesses as competitively independent, economically viable parts of ongoing competitive businesses, with management, research, design, development, promotions, marketing, sales and operations of such assets held entirely separate, distinct and apart from those of the defendants' other operations. Except as provided in this paragraph, AB Volvo shall not coordinate the research and development, promotions, production, marketing or terms of sale of any products produced by or sold by or through the VTNA LCOE Truck Business with those produced or sold by or through the Mack LCOE Truck Business. Notwithstanding the foregoing provisions, AB Volvo is not prohibited from continuing the historical, regular course of business, system-wide production and sales of VTNA and Mack LCOE Trucks, provided that defendants continue to support and maintain the VTNA and Mack LCOE Truck Businesses as independent, ongoing, economically viable and active competitors in the LCOE Truck industry as required by this Hold Separate Stipulation and Order (including efforts to maintain and increase the sales revenue of the VTNA and Mack LCOE Truck Businesses required under Section V.(C)). Within twenty (20) days after the entry of this Hold Separate Stipulation and Order, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the VTNA and Mack LCOE Truck Businesses will be maintained and operated as an independent, ongoing, economically viable and active competitors in the LCOE Truck industry; (2) management of the VTNA and Mack LCOE Truck Businesses (designated in Section V.(J)) will not be influenced by defendants; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning research, development, marketing, production, distribution or sales of products by or under any of the VTNA and Mack LCOE Truck Businesses will be kept separate and apart from defendants' other operations.

C. Defendants shall use all reasonable efforts to maintain and increase the research, development, sales, and revenues of the products produced by or sold under the VTNA and Mack LCOE Truck Businesses, and shall maintain at 2000 levels or previously approved levels for 2001, whichever are higher, all research, development, product improvement, promotional, advertising, sales, technical assistance, marketing and merchandising support for the VTNA and Mack LCOE Truck Businesses.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the VTNA and Mack LCOE Businesses as economically viable and competitive, ongoing businesses, consistent with the requirements of Sections V(A) and V(B).

E. Defendants shall take all steps necessary to ensure that all the assets of the VTNA and Mack LCOE Truck Businesses are fully maintained in operable condition at no less than current capacity and sales, and shall maintain and adhere to normal product improvement and upgrade and repair and maintenance schedules for those assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the VTNA and Mack LCOE Truck Businesses.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, 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 and income of the VTNA and Mack LCOE Truck Businesses.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the VTNA and Mack LCOE Truck Businesses.

I. Defendants' employees with primary responsibility for the research, design, development, promotion, distribution, sale, and operation of the VTNA and Mack LCOE Truck Businesses shall not be transferred or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policy. Defendants shall provide the United States with ten (10) calendar days notice of such transfer.

J. Prior to consummation of their transaction, defendants shall appoint Stanley C. Ellspermann to oversee the VTNA LCOE Truck Business and Denis

Leblond to oversee the Mack LCOE Truck Business, and to be responsible for defendants' compliance with this section. Stanley C. Ellspermann shall have complete managerial responsibility for the VTNA LCOE Truck Business, and Denis Leblond shall have complete managerial responsibility for the Mack LCOE Truck Business, subject to the provisions of this Final Judgment. In the event either person is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to monitor and complete the divestiture pursuant to the Final Judgment to a purchaser acceptable to the United States.

L. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestiture required by the proposed Final Judgment or until further order of the Court.

Dated: December 18, 2000.

For Plaintiff, United States of America:
Frederick H. Parmenter,
Virginia Bar No.: 18184, United States
Department of Justice, Antitrust Division,
Litigation II Section, 1401 H Street, NW.,
Suite 3000, Washington, DC 20530, (202)
307-0620.

Respectfully submitted,
For Defendants Aktiebolaget Volvo and
Volvo Trucks North America, Inc.:
Kevin Arquit,
Clifford Chance Rogers & Wells LLP, 200 Park
Avenue, New York, New York 10166-0153,
(202) 878-8375.

For Defendants Renault S.A., Renault S.A.
V.I. and Mack Trucks, Inc.:
Richard J. Urowsky,
Sullivan & Cromwell, 125 Broad Street, New
York, New York 10004, (202) 558-4812.

Order

It Is So Ordered by the Court, this
_____ day of December, 2000.

United States District Judge

Final Judgment

Whereas, plaintiff, the United States of America ("United States"), filed its Complaint on December 18, 2000, and defendants Aktiebolaget Volvo ("AB Volvo"), Volvo Trucks North America, Inc. ("VTNA"), Renault S.A. ("Renault"), Renault V.I.S.A. ("Renault V.I."), and Mack trucks, Inc. ("Mack"), 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 any admission by any party with respect to any issue of law or fact herein;

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

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

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

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

Now, therefore, before taking 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 over 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. "AB Volvo" means defendant Aktiebolaget Volvo, a Swedish corporation with its headquarters in Gotenborg, Sweden, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "VTNA" means defendant Volvo Trucks North America, Inc., a Delaware corporation and a wholly owned subsidiary of AB Volvo with its headquarters in Greensboro, North Carolina, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Renault" means defendant Renault S.A., a French corporation with

its headquarters in Boulogne-Billancourt, France, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Renault V.I." means defendant Renault V.I. S.A., a French corporation and a wholly owned subsidiary of Renault with its headquarters in Lyon, France, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. "Mack" means defendant Mack Trucks, Inc., a Pennsylvania corporation and a wholly owned subsidiary of Renault V.I. with its headquarters in Allentown, Pennsylvania, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. "LCOE Truck" means a class 8 low cab over engine straight truck with a cab placed over or in front of the engine and the capability to accept an attached vocational body.

G. "VTNA LCOE Truck Business" means VTNA's line of LCOE Trucks (which consists of the WX and WXL) including:

(1) All tangible assets that comprise the VTNA LCOE Truck Business, including research and development activities, all manufacturing equipment, tooling and fixed assets, personal property, inventory, materials, supplies, and other tangible property and all other assets used exclusively in connection with the VTNA LCOE Truck Business; all components, parts, and designs used in LCOE Trucks comprising the VTNA LCOE Truck Business; all licenses, permits and authorizations issued by any governmental organization relating to the VTNA LCOE Truck Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the VTNA LCOE Truck Business, including supply agreements; all lists, contracts, accounts, and credit records of customers; all repair, performance, and VTNA LCOE Truck Business records and all other records relating to the VTNA LCOE Truck Business. The VTNA Truck Business does not include the sale of the VTNA New River Valley, Virginia, plant; and

(2) any and all intangible assets used in the development, production, servicing and sale of the VTNA LCOE Truck Business, including, but not limited to: (a) The Xpeditor, WX, and WXL brand names and all other

intellectual property rights used exclusively in connection with the VTNA LCOE Truck Business; (b) with respect to all other intellectual property rights used in connection with both the VTNA LCOE Truck Business and other nondivested AB Volvo assets (other than intellectual property regarding use of the word "Volvo"), a transferable license, exclusive in the VTNA LCOE Truck Business field of use; (c) all existing licenses and sublicenses relating exclusively to the VTNA LCOE Truck Business; (d) a transferable sublicense, exclusive in the VTNA LCOE Truck Business field of use, to all other existing licenses and sublicenses relating to the VTNA LCOE Truck Business; and (e) all research, market evaluations or information relating to plans for, improvements or updates to, or product line extensions of the WX or WXL. Intellectual property rights comprise, but are not limited to, patents, licenses and sublicenses, technical information, copyrights, trademarks, trade names, service marks, service names, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, 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 manuals and technical information provided to employees, customers, suppliers, agents, or licensees, and all research data concerning historic and current research and development efforts relating to the VTNA LCOE Truck Business including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments.

H. "Mack LCOE Truck Business" means Mack's line of LCOE Trucks (which includes the MR and LE) including:

(1) All tangible assets that comprise the Mack LCOE Truck Business, including research and development activities, all manufacturing equipment, tooling and fixed assets, personal property, inventory, materials, supplies, and other tangible property and all other assets used exclusively in connection with the Mack LCOE Truck Business; all components, parts, and designs used in LCOE Trucks comprising the Mack LCOE Truck Business; all licenses, permits and authorizations issued by any governmental organization relating to the Mack LCOE Truck Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the Mack LCOE Truck

Business, including supply agreements; all lists, contracts, accounts, and credit records of customers; all repair, performance, and Mack LCOE Truck Business records and all other records relating to the Mack LCOE Truck Business. The Mack LCOE Truck Business does not include the sale of the Mack Macungie, Pennsylvania, plant; and

(2) any and all intangible assets used in the development, production, servicing and sale of the Mack LCOE Truck Business, including, but not limited to: (a) The MR and LE brand names and all other intellectual property rights used exclusively in connection with the Mack LCOE Truck Business; (b) with respect to all other intellectual property rights used in connection with both the Mack LCOE Truck Business and other nondivested Renault assets (other than intellectual property regarding use of the word "Mack" or the word "Renault"), a transferable license, exclusive in the Mack LCOE Truck Business field of use; (c) all existing licenses and sublicenses relating exclusively to the Mack LCOE Truck Business; (d) a transferable sublicense, exclusive in the Mack LCOE Truck Business field of use, to all other existing licenses and sublicenses relating to the Mack LCOE Truck Business; and (e) all research, market evaluations or information relating to plans for, improvements or updates to, or product line extensions of the MR or LE. Intellectual property rights comprise, but are not limited to, patents, licenses and sublicenses, technical information, copyrights, trademarks, trade names, service marks, service names, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, 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 manuals and technical information provided to employees, customers, suppliers, agents, or licensees, and all research data concerning historic and current research and development efforts relating to the Mack LCOE Truck Business including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments.

III. Applicability

A. This Final Judgment applies to AB Volvo, VTNA, Renault, Renault V.I., and Mack, as defined above, and all other persons in active concert or participation with any of them who

receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets, or of lesser business units that include the VTNA LCOE Truck Business, that the purchaser agrees to be bound by the provisions of this Final Judgment, provided, however, that defendants need not obtain such an agreement from the purchaser of the VTNA LCOE Truck Business or Mack LCOE Truck Business pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by this Court, whichever is later, to

(1) Divest the VTNA LCOE Truck Business in a manner consistent with this Final Judgment as a viable ongoing business to a purchaser acceptable to the United States in its sole discretion;

(2) enter into an agreement with the purchaser of the VTNA LCOE Truck Business whereby defendants guarantee that the VTNA LCOE Truck Business will be able to use engines which meet United States Environmental Protection Agency 2002 emissions requirements; and

(3) at the option of the purchaser of the VTNA LCOE Truck Business, enter into an agreement to supply reasonable levels of transitional and manufacturing start-up support for a maximum period of 2 years that will enable the purchaser or purchasers to produce VTNA LCOE Trucks.

B. Defendants agree to use their best efforts to divest the VTNA LCOE Truck Business as expeditiously as possible. The United States, in its sole discretion, may extend the time period for the divestiture two additional periods of time, not to exceed thirty (30) calendar days each, and shall notify this Court in such circumstances.

C. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the VTNA LCOE Truck Business. Defendants shall inform any person making inquiry regarding a possible purchase of the VTNA LCOE Truck Business that it is being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective purchasers, subject to customary assurances, all information and documents relating to

the VTNA LCOE Truck Business customarily provided in a due diligence process, except such information or documents subject to the attorney-client or attorney work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall provide the purchaser and the United States information relating to any AB Volvo or VTNA personnel involved in the research, design, production, operation, development, marketing and sale of the VTNA LCOE Truck Business to enable the purchaser to make offers of employment. Defendants will not interfere with any negotiations by the purchaser to employ any person whose primary responsibility is the research, design, production, operation, development, marketing or sale of the VTNA LCOE Truck Business.

E. Defendants shall permit prospective purchasers of the VTNA LCOE Truck Business to have reasonable access to personnel and to make inspections of the physical facilities of the VTNA business to be divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, sales, marketing, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to the purchaser of the VTNA LCOE Truck Business that each asset of the VTNA LCOE Truck Business will be operational on the date of sale.

G. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the VTNA LCOE Truck Business.

H. Defendants shall not take any action that will in any impede or exclude their dealers from distributing, selling, or servicing LCOE Trucks produced by the purchaser of the VTNA LCOE Truck Business.

I. Defendants shall warrant to the purchaser of the VTNA LCOE Truck Business that there are no material defects in the environment, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the VTNA LCOE Business, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the VTNA LCOE Truck Business.

J. Unless the United States consents in writing, the divestiture pursuant to Section IV of this Final Judgment,

whether by defendants or by a trustee appointed pursuant to Section VI of this Final Judgment, shall include the entire VTNA LCOE Truck Business as defined in Section II. The divestiture of the VTNA LCOE Truck Business shall be accomplished by selling or otherwise conveying the VTNA LCOE Truck Business to a purchaser in such a way as to satisfy the United States, in its sole discretion, that business to be divested can and will be used by the purchaser as part of a viable, ongoing LCOE Truck business. The divestiture of the VTNA LCOE Truck Business, whether pursuant to Section IV or Section VI of this Final Judgment, shall be made to a purchaser in a manner so as to satisfy the United States, in its sole discretion, that it: (1) Has the capability and intent of competing effectively in the development, production and sale of LCOE Trucks; (2) has the managerial, operational, technical and financial capability to compete effectively in the development, production and sale of LCOE Trucks; and (3) is not hindered by the terms of any agreement between the purchaser and defendants that gives either defendant the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere with the ability of the purchaser to compete effectively.

V. Notice of Proposed Divestitures

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 or VI of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the VTNA LCOE Business, together with full details of same. Within fifteen (15) calendar days of receipt by the United States of such divestiture notice, the United States may request from defendants, the proposed purchaser, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed purchaser, 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 United States has been provided the additional information requested from the defendants, the proposed purchaser, any third party, or the trustee, whichever is later, the United States shall each provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to defendants (and the trustee if applicable) that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section VI(B) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV or Section VI may not be consummated. Upon objection by defendants under the provision in Section VI(C), a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

VI. Appointment of Trustee

A. If defendants have not divested the VTNA LCOE Truck Business within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the VTNA or Mack LCOE Truck Business. The trustee shall have the right, in its sole discretion, to sell either the VTNA LCOE Truck Business or the Mack LCOE Truck Business. The trustee shall also have the right, in its sole discretion, and upon notice to the defendants and upon consultation with the United States, to add such other assets and agreements concerning necessary parts and components, in order to ensure the viability, competitiveness, and marketability of the Mack LCOE Truck Business.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the VTNA or Mack LCOE Truck Business. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States at such price and on such terms as are then obtainable for the VTNA or Mack LCOE Truck Business, 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 VI(D) of this Final Judgment, the trustee may hire at the cost and expense of the defendants, any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section V of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as approved by the United States. The trustee shall account for all monies derived from the sale of the VTNA or Mack LCOE Truck Business, and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the VTNA or Mack LCOE Truck Business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

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

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports

contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the VTNA or Mack LCOE Truck Business, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the VTNA or Mack LCOE Truck Business.

G. If the trustee has not accomplished the divestiture of the VTNA or Mack LCOE Truck Business 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. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, who shall have the right 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 this 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.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or Section VI of this Final Judgment, defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Sections IV or VI 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 contracted or made an inquiry about acquiring, any interest in the VTNA LCOE Truck Business, or after appointment of a trustee under Section VI of this Final Judgment, the Mack LCOE Truck Business, and shall

describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit potential purchasers for the VTNA LCOE Truck Business and to provide required information to potential purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit which describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment 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 VTNA LCOE Truck Business as an active competitor, maintain its management, staffing, research and development activities, sales, marketing and pricing, and maintain the business in operable condition at current capacity configurations. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

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

VIII. Hold Separate Order

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

IX. Financing

Defendants are ordered and directed not to finance all or any part of any purchase made pursuant to Sections IV or VI of this Final Judgment.

X. No Reacquisition

Defendants may not reacquire any part of the divested assets during the term of this Final Judgment.

XI. Compliance Inspection

For the purposes of determining or securing compliance with this Final Judgment, or of determining whether this 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, including consultants and other persons retained by the United States, 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 made to their principal offices, shall be permitted:

1. Access during office hours of defendants to inspect and copy, or at plaintiff's option, to require defendants to provide copies of, all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the custody or possession or under the control of defendants 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, defendants' officers, employees, and agents, who may have their individual counsel present, regarding any such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, made to defendants' principal offices, defendants shall submit written reports, under oath if requested, relating to any matter contained in this Final Judgment or the Hold Separate Stipulation and Order as may be requested.

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

D. if at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the

material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given to defendants by the United States prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XII. 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.

XIII. Termination

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

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____, 2001.

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

United States District Judge

Competitive Impact Statement

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

I. Nature and Purpose of This Proceeding

The United States filed a civil antitrust Complaint under Section 15 of the Clayton Act, 15 U.S.C. 25 on December 18, 2000, alleging Aktiebolaget Volvo's ("AB Volvo") acquisition of Renault V.I.S.A. ("Renault V.I."), which includes Mack Trucks, Inc. ("Mack"), from Renault S.A. ("Renault") would substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

The Complaint alleges the defendants are the two largest producers of heavy

duty (class 8), low cab over engine straight trucks ("LCOE Trucks" in the United States. The proposed acquisition would result in AB Volvo accounting for approximately 96 percent of heavy duty LCOE Truck sales in the United States. The Complaint alleges the transaction will substantially lessen competition in the development, production, and sale of heavy duty LCOE Trucks sold in the United States, thereby harming consumers. Accordingly, 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 the defendants from carrying out the acquisition or otherwise combining their businesses or assets; (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 permitting AB Volvo to acquire Renault V.I., provided AB Volvo divested its Volvo Trucks North America, Inc. ("VTNA") LCOE Truck Business (a term defined in the proposed Final Judgment) to preserve competition. The settlement consists of a proposed Final Judgment and a Hold Separate Stipulation and Order.

The proposed Final Judgment orders the defendants to divest the VTNA LCOE Truck Business to an acquirer approved by the United States. The defendants must complete the divestiture within ninety (90) calendar days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment, whichever is later. The United States may extend the time period for divestiture two additional periods, each not to exceed 30 days. If the defendants do not complete the divestiture within the prescribed time, then, under the terms of the proposed Final Judgment, the Court will appoint a trustee to achieve the divestiture. If a trustee is appointed, the trustee shall have the option of divesting either the VTNA LCOE Truck Business or the Mack LCOE Truck Business (a term defined in 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 of the Antitrust Laws

A. The Defendants and the Proposed Acquisition

1. Aktiebolaget Volvo

AB Volvo is a foreign corporation organized and existing under the laws of Sweden with its corporate headquarters and principal place of business in Gotenburg, Sweden. AB Volvo is an international manufacturer of trucks, construction equipment, and engines. AB Volvo, through its subsidiary, VTNA, is the second largest U.S. manufacturer of heavy duty LCOE Trucks. AB Volvo reported revenue of approximately \$14.7 billion in 1999.

2. Volvo Trucks North America, Inc.

VTNA is a corporation organized and existing under the laws of the state of Delaware with its corporate headquarters and principal place of business in Greensboro, North Carolina. VTNA produces trucks in Dublin, Virginia. VTNA's 1999 revenues were approximately \$2.39 billion.

3. Renault S.A.

Renault is a foreign corporation organized and existing under the laws of France that has its corporate headquarters and principal place of business in Boulogne-Billancourt, France. Renault is an international manufacturer of automobiles, trucks, buses, and engines. Renault reported revenue of approximately \$39 billion in 1999.

4. Renault V.I.S.A.

Renault V.I. is a foreign corporation organized and existing under the laws of France with its corporate headquarters and principal place of business in Lyon, France. Renault V.I. is a subsidiary of Renault and produces trucks and truck engines.

5. Mack Trucks, Inc.

Mack is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its corporate headquarters and principal place of business in Allentown, Pennsylvania. Mack, which is a subsidiary of Renault V.I., produces trucks and engines. Mack is the largest United States manufacturer of heavy duty LCOE Trucks. Mack reported revenues of approximately \$2.2 billion in 1999.

B. The Proposed Acquisition

On or about July 18, 2000, AB Volvo entered into an agreement with Renault to acquire Renault V.I. from Renault in

exchange for 15% of AB Volvo's outstanding voting security which has an approximate value of \$1.8 billion. The proposed acquisition would substantially lessen competition in the heavy duty LCOE Truck segment of the heavy duty truck industry and precipitated the United States' antitrust suit.

C. The Heavy Duty LCOE Truck Business and the Competitive Effects of the Acquisition

1. The Heavy Duty LCOE Truck Market

The Complaint alleges the development, production, and sale of heavy duty LCOE Trucks is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act. Heavy duty trucks (or "class 8" trucks) are those trucks capable of carrying the heaviest payload capacities or gross vehicle weights, exceeding 33,000 pounds. In addition to payload capacity, heavy duty trucks are distinguished from lighter duty trucks by large powerful diesel engines and other heavy duty components. Heavy duty LCOE Trucks are configured with the cab located over or in front of the engine, and a windshield which is even with the front bumper. The design gives heavy duty LCOE Trucks superior visibility and maneuverability compared to conventional cab, heavy duty, straight trucks which are designed with their engines in front of the cab. Heavy duty LCOE Trucks have a lower entry point to the cab (18 inches), compared to conventional straight trucks (almost four feet).

The design of heavy duty LCOE Trucks makes them uniquely suited to specific applications. Most heavy duty LCOE Trucks are sold to the refuse industry, which requires heavy duty trucks to handle the weight of the waste material being hauled. Refuse companies often attach a mechanical fork lift to heavy duty LCOE Trucks to lift commercial dumpsters over the cab, emptying them into the body of the truck. Such a mechanical fork lift cannot be used with trucks designed with engines in front of the cab because that design has an extended hood which would block the lift's operation. Similarly, the LCOE design provides superior maneuverability and visibility needed in urban and residential streets and alleys. Finally, the low height for entry into the cab makes the LCOE design significantly preferable for refuse use because drivers need to exit and enter the truck often. The ease of cab entry and the superior maneuverability and visibility of heavy duty LCOE Trucks also makes them the truck of

choice for various other applications such as home heating oil delivery in the Northeastern United States, concrete pumping, and aircraft refueling.

There are no good substitutes for heavy duty LCOE Trucks. A sufficient number of purchasers of heavy duty LCOE Trucks would not turn to substitutes in response to a small but significant increase in the price of heavy duty LCOE Trucks to make such price increase unprofitable. Accordingly, the development, production, and sale of heavy duty LCOE Trucks is a relevant product market in which to assess the competitive effects of the proposed acquisition.

The Complaint alleges the United States constitutes the relevant geographic market for the purposes of analyzing the transaction. Virtually all heavy duty LCOE Trucks sold in the United States are manufactured in the United States and almost none are imported. The foreign-headquartered truck manufacturers that sell heavy duty LCOE Trucks in the United States manufacture the trucks at facilities located in the United States. Classifications, standards, and customer preferences for heavy duty LCOE Trucks produced for Asia and Europe differ from those produced for the United States. A small but significant increase in the price of heavy duty LCOE Trucks would not cause a sufficient number of purchasers to switch to trucks manufactured outside the United States to make the price increase unprofitable.

2. Anticompetitive Consequences of the Acquisition

The Complaint alleges that AB Volvo's acquisition of Renault will likely have the following anticompetitive effects: (a) Competition generally in the development, production and sale of heavy duty LCOE Trucks would be substantially lessened; (b) the actual and potential competition between Volvo and Renault would be eliminated; and (c) prices for heavy duty LCOE Trucks would likely increase and the quality, level of service, and product improvement of heavy duty LCOE Trucks would likely decline.

VTNA and Mack are the only significant suppliers of heavy duty LCOE Trucks in the United States. In this highly concentrated market, Mack has approximately a 53 percent market share, and VTNA has approximately a 33 percent market share. VTNA and Mack compete directly and aggressively against one another on the development, production, and sale of heavy duty LCOE Trucks which has benefited consumers through lower prices, higher

quality, better service, and improved products.

The proposed acquisition would substantially increase concentration in an already highly concentrated market. After the acquisition, the combined firm would account for approximately 86 percent of heavy duty LCOE Truck sales in the United States. Using the Herfindahl-Hirschman Index ("HHI," which is defined and explained in Appendix A of the Complaint), the proposed transaction will increase the HHI by more than 4000 points to a post-merger level of about 7508, far in excess of the level which ordinarily raise antitrust concerns.

The proposed acquisition will raise the combined firms' share of industry sales to the level where it will have the ability and incentive to raise prices unilaterally. The heavy duty LCOE Trucks of VTNA and Mack are significantly differentiated from their other competitors' heavy duty LCOE Trucks in terms of their actual and proven track record for reliability, maintenance requirements, and significant components. Mack's and VTNA's heavy duty LCOE Trucks are the closest substitutes for each other and their customers would not divert a sufficient number of their purchases to competing heavy duty LCOE Trucks to defeat a significant price increase by the defendants following a merger.

The Complaint alleges that entry into the production and sale of heavy duty LCOE Trucks in the United States is difficult, time consuming, and expensive, and would not be timely, likely or sufficient to deter the exercise of market power by the combined firm in the readily foreseeable future. Entry, even by an established producer of other types of heavy duty trucks, would require a high sunk capital investment in research and development and equipment and facilities. A new entrant would also need to develop an effective dealer network for selling and servicing heavy duty LCOE Trucks and would need to develop a track record for reliability and maintenance before it would attract significant sales from Mack and VTNA. Even an established producer of other types of heavy duty trucks with a dealer network for those trucks would need in excess of two years to design, produce, and gain customer acceptance of a new heavy duty LCOE Truck.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment is designed to ensure competition otherwise eliminated as a result of the proposed acquisition is preserved, and

to prevent AB Volvo from exercising market power in the heavy duty LCOE Truck market after the acquisition. To maintain competition in the heavy duty LCOE Truck market. Section IV of the proposed Final Judgment orders the defendants to sell the VTNA LCOE Truck Business. The proposed Final Judgment also requires the defendants to negotiate agreements with the purchaser guaranteeing the divested business will meet EPA 2002 emissions standards and, at the purchaser's option, to provide start-up support for the divested LCOE Truck Business for a period of up to two years. The defendants are prohibited by the proposed Final Judgment from taking any action that will impede their dealers from distributing, selling or servicing the divested heavy duty LCOE Trucks.

Under the terms of the proposed Final Judgment, defendants must accomplish the divestiture within ninety (90) calendar days after the date the Complaint is filed, or five days after notice of entry of the Final Judgment, whichever is later, to an acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the development, production, and sale of heavy duty LCOE Trucks. The United States may extend the time period for divestiture two additional periods, each not to exceed 30 days. Defendants must use their best efforts to divest the VTNA LCOE Truck Business as expeditiously as possible and, until the ordered divestitures take place, the defendants must cooperate with any prospective purchasers.

If defendants do not accomplish the ordered divestitures within the prescribed time period, Section VI(A) of the proposed Final Judgment provides that the Court will appoint a trustee, selected by the United States, to complete the divestiture. The trustee may divest either the VTNA or Mack LCOE Truck Business. The trustee has the right, upon notice to the defendants and upon consultation with the United States, to add such other assets and agreements concerning necessary parts and components, in order to ensure the viability, competitiveness, and marketability of the Mack LCOE Truck Business.

If a trustee is appointed, the proposed Final Judgment provides the defendants must cooperate fully with the trustee and pay all the trustee's costs and expenses. The trustee's compensation will be structured to provide an incentive for the trustee based on the price and terms of the divestiture and

the speed with which it is accomplished. After the trustee's appointment becomes effective, the trustee will file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the required divestiture. If the divestiture is not accomplished within six months after the trustee's appointment, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate to carry out the purpose of the Final Judgment.

Until the divestiture is accomplished, the terms of the Hold Separate Stipulation and Order require the defendants to preserve, maintain, and continue to operate the VTNA and Mack LCOE Truck Businesses as independent, economically viable parts of ongoing competitive businesses, with the management, sales, and operations held separate from the post-merger company's other operations. The defendants will appoint two designated persons to monitor and ensure their compliance with these requirements.

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 district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit 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 effect as prima facie evidence in any subsequent private lawsuit that may be brought against the defendants.

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 of the decree 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 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 comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530.

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

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the defendants. The United States is satisfied, however, that the divestiture of either the VTNA or Mack LCOE Truck Business and other relief contained in the proposed Final Judgment will establish, preserve and ensure a viable competitor in the development, production, and sale of heavy duty LCOE Trucks in the United States. Thus, the United States is convinced that the proposed Final Judgment, once implemented by the Court, will prevent AB Volvo's acquisition of Renault V.I. from having adverse competitive effects.

VII. Standard of Review Under the APPA for the 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 trail.

15 U.S.C. 16(e). As the Court of Appeals for the District of Columbia has 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 Corp.*, 56 F. 3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trail 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."¹ 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.²

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in 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 1458. 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

¹ 119 Cong. Rec. 24,598 (1973). See *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. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538.

² *United States v. Mid-America Dairymen, Inc.*, 1977–1 Trade Cas (CCH) 61,508, at 71, 980 (W.D. Mo. 1977); see also *United States v. Loew's Inc.*, 783 Supp. 211, 214 (S.D.N.Y. 1992); *United States v. Columbia Artists Mgmt., Inc.*, 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

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.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

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Since the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. Id.

VIII. Determinative Documents

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

Dated: February 6, 2001.

Respectfully submitted,
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³ *United States v. Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States v. BNS, Inc.*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716. See also *United States v. American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984).

⁴ *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (quoting *Gillette*, 406 F. Supp. at 716), aff'd sub nom. *Maryland v. United States*, 460 U.S. 1001 (1983); *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985); *United States v. Carrols Dev. Corp.*, 454 F. Supp. 1215, 1222 (N.D.N.Y. 1978).

Certificate of Service

I hereby certify under penalty of perjury that a copy of the COMPETITIVE IMPACT STATEMENT has been served upon Aktiebolaget Volvo; Volvo Trucks North America, Inc.; Renault S.A.; Renault V.I.S.A.; and Mack Trucks, Inc., by placing a copy of the aforementioned document in the U.S. Mail, directed to each of the above-named parties at the addresses given below, this 6th day of February, 2001.

Aktiebolaget Volvo and Volvo, Trucks North America, Inc., c/o Kevin Arquit, Esq., Clifford Chance Rogers & Wells LLP, 200 Park Avenue, New York, NY 10166-0153.
Renault S.A., Renault V.I.S.A. and Mack Trucks, Inc., c/o Richard J. Urowsky, Esq., Sullivan & Cromwell, 125 Broad Street, New York, NY 10004-2498.

Federick H. Parmenter,
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DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 00-CV-954 (RMU)]

Public Comments and Response on Proposed Final Judgment United States v. Alcoa Inc. and Reynolds Metals Company

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States of America hereby publishes below the comments received on the proposed Final Judgment in *United States v. Alcoa Inc., et al.*, Civil Action No. 00-CV-954 (RMU), filed in the United States District Court for the District of Columbia, together with the United States' response to the comments.

Copies of the comments and response are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530, telephone: (202) 514-2481, and at the office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Third Street and 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' Response to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)-(h), the United States hereby responds to the two public comments received regarding the proposed Final Judgment in this case.

I. Background

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 alleged that the proposed merger would 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 benefited consumers through lower prices and higher output. The proposed merger of Alcoa and Reynolds would substantially increase the concentration of the SGA and CGA markets, and the loss of competition would substantially enhance Alcoa's control over the prices of SGA and CGA, while also increasing the likelihood of anticompetitive coordination among the few remaining competitors in the SGA and CGA markets.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment and Hold Separate Stipulation and Order that would permit Alcoa to complete its acquisition of Reynolds, but would require divestitures to preserve competition in the relevant markets.¹ The proposed Final Judgment requires Alcoa and Reynolds to divest all of Reynolds' interest in the Worsley Joint Venture, established by agreement dated February 7, 1980, and subsequently amended (the "Worsley Interest") and 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 (the "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" or "Department"). The Worsley Interest must be divested within two hundred seventy (270) days after the filing of the Complaint, or five (5) days after notice of entry of the Final Judgment by the Court, whichever is later. The Corpus Christi Assets must be divested within one hundred eighty (180) days after the filing of the Complaint, or five (5) days after notice of entry of the Final Judgment by the Court, whichever is later.

Until the required divestitures are completed, the terms of a 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.

On December 14, 2000, the United States notified Alcoa, pursuant to Part VI of the proposed Final Judgment, that it had no objection to Alcoa's proposed sale of the Corpus Christi Assets to BPU Reynolds, Inc., and no objection to Alcoa's proposed sale of the Worsley Interest to Billiton plc.

The United States, Alcoa and Reynolds have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. In compliance with the APPA, the United States filed the Competitive Impact Statement ("CIS") in this docket on June 6, 2000. The Complaint, proposed Final Judgment and CIS were published in the **Federal Register** on June 21, 2000. The 60-day comment period required by the APPA has now expired with the United States having received two comments: one from the American Antitrust Institute and one from Mr. Charles A. Stille.

II. Response to the Public Comments

A. Legal Standard Governing the Court's Public Interest Determination

The Tunney Act directs the Court to determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e). In making that determination, the "court's function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest." *United States v. Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir.), cert. denied, 510 U.S. 984 (1993). The Court should evaluate the relief set forth in the proposed Final Judgment and should enter the Judgment if it falls within the government's "rather broad discretion to settle with the defendant

¹ The Court entered the Hold Separate Stipulation and Order on May 12, 2000.