Connecticut, 141 Church Street, New Haven, Connecticut, 06510.

Brenda M. Green,

Assistant U.S. Attorney, U.S. Attorney's Office.

[FR Doc. 02–3802 Filed 2–14–02; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 01–01696 GK]

Public Comments and Response on Proposed Final Judgment in United States v. Premdor Inc., et al.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States of America hereby publishes below the comment received on the proposed Final Judgment in *United States* v. *Premdor Inc., et al,* Civil Action No. 01–01696 GK, filed in the United States District Court for the District of Columbia, together with the United States' response to the comment.

Copies of the comment 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, E. Barrett Prettyman United States Courthouse, Room 1225, 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 and Merger Enforcement.

United States of America, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Plaintiff, v. Premdor Inc., 1600 Britannia Road East, Mississauga, Ontario, Canada L4W 1J2, Premdor U.S. Holdings, Inc., One North Dale Mabry Highway, Suite 950, Tampa, Florida 33609, International Paper Company, 400 Atlantic Street, Stamford, Connecticut 06921, and Masonite Corporation, 1 South Wacker Drive, Chicago, Illinois 60606, Defendants.

Plaintiff's Response to Public Comment

The United States, pursuant to the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), hereby responds to the single public comment received, attached hereto as Exhibit A, regarding the proposed Final Judgment in this case.

I. Background

On August 3, 2001, the United States filed a Complaint alleging that the proposed acquisition of the Masonite business of International Paper Company (''IP'') by Premdor Inc. (''Premdor'') would substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The Complaint alleges that Premdor and IP, through its subsidiary Masonite Corporation (''Masonite''), are two of the three largest firms involved in the production of interior molded doors. As alleged in the Complaint, the transaction will substantially lessen competition in the development, manufacture and sale of interior molded doorskins and interior molded doors in the United States, thereby harming consumers. Accordingly, the Complaint seeks among other things: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) permanent injunctive relief that would prevent defendants from carrying out the acquisition or otherwise combining their businesses or assets.

At the same time the Complaint was filed, the United States also filed a proposed, stipulated Final Judgment and Hold Separate Stipulation and Order that would permit Premdor to acquire the Masonite business, provided that Premdor divests its Towanda, Pennsylvania doorskin manufacturing facility, along with intellectual property, research capabilities and other assets needed to be a viable doorskin manufacturer. The proposed Final Judgment orders defendants to divest the Towanda facility to an acquirer approved by the United States. Defendants must complete the divestiture within 150 calendar days after the filing of the Complaint in this matter, or within 120 calendar days after the closing of Premdor's acquisition of the Masonite business, whichever is earlier. If defendants do not complete the divestiture within the prescribed time, then, under the terms of the proposed Final Judgment, this Court will appoint a trustee to sell the Towanda facility.

The Hold Separate Stipulation and Order and the proposed Final Judgment require defendants to preserve, maintain and continue to operate the North American operations of the Masonite business as an independent, ongoing, economically viable competitive business, with the management, sales and operations held separate from Premdor's other operations. The Hold Separate Stipulation and Order allows the defendants to submit to the United States a plan for partitioning the Towanda facility from the remainder of Masonite's North American operations. The United States has approved defendants' partition plan, and in accord with the Hold separate Stipulation and Order, Premdor now controls all of Masonite's North American operations other that the Towanda facility and other partitioned assets. The partitioned assets will continue to be held separate until they are divested to a suitable acquirer.

The United States and defendants 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'') on August 3, 2001. The Complaint, proposed Final Judgment and the CIS were published in the **Federal Register** on August 28, 2001. The 60 day comment period required by the APPA expired with the United States having received only one public comment, from Lifetime Doors, Inc. In light of the recent disruption to mail delivery, the United States published a supplemental notice in the **Federal Register** on Dec. 21, 2001, and in the Washington Post from December 19, 2001 to December 25, 2001. The supplemental notice extended the comment period required by the APPA by fifteen days. The fifteen day supplemental comment period has now expired with the United States having received no additional public comments.

II. Response to the Public Comment

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 within the reaches of the public interest.'' United States v. Microsoft Corp., 56 F.3d 1448, 1461 (D.C. Cir. 1995); accord United States v. Associated Milk Producers, 534 F.2d 113, 117–18 (8th Cir.), cert. denied, 429 U.S. 940 (1976). The Court should review the proposed Final Judgment ''in light of the violations charged in the complaint and * * * withhold approval only (a) if any of the terms appear

ambiguous, (b) if the enforcement mechanism is inadequate, (c) if third parties will be positively injured, or (d) if the decree otherwise makes a 'mockery of judicial power.' '' Massachusetts Sch. of Law at Andover, Inc. v. United States, 118F.3d 776, 783 (D.C. Cir. 1997) (quoting Microsoft, 56 F.3d at 1462). The Tunney Act does not empower the Court to reject the remedies in the proposed Final Judgment based on the belief that ''other remedies were preferable'' Microsoft, 56 F.3d at 1460, nor does it give the Court authority to impose different terms on the parties. *See, e.g.,* United States v. American Tel. & Tel. Co., 552 F. Supp. 131, 153 n.95 (D.D.C. 1982) (''AT&T''), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (mem.); accord H.R. Rep. No. 93–1463, at 8 (1974).

B. Response to Lifetime Doors, Inc.

Lifetime Doors, Inc. (''Lifetime'') urges the United States to rescind the proposed Final Judgment and move to block Premdor's acquisition of Masonite's doorskin business. Lifetime argues that the proposed Final Judgment, in its present form, fails to guarantee a viable buyer for the divested assets, and allows for irreparable damage to the market while Premdor seeks a buyer for the Towanda facility. In the alternative, Lifetime argues that the proposed Final Judgment is inadequate because it does not require the buyer of the Towanda facility to produce the exact line of products that was available before Premdor acquired Masonite.

The United States has considered Lifetime's concerns, but remains convinced that the proposed Final Judgment is in the public interest. Before the divestiture is complete, the Hold Separate Stipulation ensures that the Towanda facility will be operated as an independent and viable economic entity, and in the judgment of the Monitoring Trustee and the United States. Premdor has fulfilled its obligations to date. While there is no guarantee that a viable purchaser will be found for the Towanda facility, Premdor has taken all appropriate steps to locate an acceptable purchaser. See Report to U.S. District Court for the District of Columbia and Department of Justice on Premdor and Masonite Compliance with Court Ordered Consent Decree, submitted by Accenture, filed November 2, 2001. Moreover, there is no evidence that the sale of Masonite to Premdor, and the subsequent partition of the Towanda facility from the remainder of Masonite, has in fact resulted in ''damage to the market,'' as feared by Lifetime.

Lifetime also urges that the purchaser of the Towanda facility be forced to sell ''all product designs and sizes currently produced by Masonite'' to independent door manufacturers. Lifetime acknowledges that Premdor is required to make all current designs and sizes of molded door skins available to the purchaser of the Towanda facility, but still fears that all designs will not be purchased by the ultimate owner of Towanda, and that the lack of a full line will harm independent door manufacturers. The United States disagrees with the comment. The eventual owner of the Towanda facility will have the incentive to determine the most profitable product line to offer door manufacturers, and further, will have every incentive to ensure the profitable continuation of the independent door manufacturers, its likely largest customer base. If the purchaser of Towanda fails to offer a certain design or color of doorskin to its customers, despite having access to the full means of production for that model, the United States presumes that the market mechanism will ensure that consumers' interests are adequately protected.

III. Conclusion

After careful consideration of the comment, the United States concludes that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is in the public interest. The United States will move the Court to enter the proposed Final Judgment after the public comments and this Response have been published in the **Federal Register,** as 15 U.S.C. 16(d) requires.

Dated: January 23, 2002, Washington, DC.

Respectfully submitted,

Karen Y. Douglas, Joseph M. Miller (DC Bar 439965),

Attorneys, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 4000, Washington, DC 20530, 202–305–4762.

Certificate of Service

I hereby certify that I served a copy of the foregoing Response to Public Comment via First Class United States Mail and facsimile transmission, this 23d day of January 2002, on:

Counsel for International Paper, James R. Loftis, III, Esq., Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, NW., Washington, DC 20036.

Counsel for Premdor Inc. and Masonite Corporation, Keith Shugarman, Esq., Goodwin, Procter, LLP, 1717 Pennsylvania Avenue, NW., Washington, DC 20006.

Karen Y. Douglas,

Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530, (202) 305–4762.

August 30, 2001.

Mr. 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.

Re: Premdor Acquisition of Masonite

Dear Mr. Kramer: This letter shall serve as our response to the Complaint in the matter of United States of America v. Premdor, Inc., et. al. filed with the United States District Court for the District of Columbia on August 3, 2001 and the Competitive Impact Statement and proposed Final Judgment.

It has been the position of Lifetime Doors, Inc. that the sale of Masonite Corporation to Premdor, Inc. would pose a serious threat to competition in the wood door industry. We have stressed that the divestiture of a part of the Masonite operation would also result in significant and irreparable damage to the competitive marketplace for molded doors, and seriously affect the wood door industry as a whole. After reviewing the Complaint and proposed Final Judgment, our position remains unchanged.

While we remain doubtful that Premdor will find a viable purchaser for Towanda, we remain more doubtful that should it find a purchaser, that the purchaser will be in a position to compete with the two vertically integrated companies. Given that the stated purpose of the Final Judgment is to ''require defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint'' (page 2), the Consent Decree, Hold Separate Stipulation and Order, and the Final Judgment fail as a remedy, in that:

1. There is not a provision for the possibility that neither Premdor, nor the Department of Justice can guarantee that a viable buyer for the ''Towanda facility'' will be found;

2. In the event no buyer is found, there is not a means to undo the damage already done to lessen competition (as alleged in the Complaint) while attempting to identify a buyer.

For divestiture (including partition) to be an effective remedy to insure that Premdor's acquisition of Masonite does not lessen competition, it must be a pre-closure, not post-closure remedy. Under no circumstance should divestiture (including partition) of Masonite's North American Molded Doorskin Business take place until such time as a viable buyer for the ''Towanda Facility'' is identified and in place.

For these reasons we urge in the strongest possible terms that the Department of Justice rescind this Judgment, and move to block the Premdor acquisition of the Masonite Molded Doorskin business.

Should the Department of Justice not block the acquisition and should the Final Judgement be approved by the court, it is absolutely necessary in order for the non-

integrated companies to compete, that all product designs and sizes currently produced by Masonite be made available. To the extent that given product designs or sizes are not available to the non-vertically integrated companies, the two vertically integrated companies will have a material and significant advantage over the independent non-vertically integrated door manufacturers. The downstream customers of the wood door manufacturers are of a single mind in that all products must be available for purchase from a door manufacturer for that manufacturer to be a viable line of supply. If any product, no matter how insignificant in terms of its numbers or percentage, is unavailable, it will cause the downstream buyer to go to a manufacturer that has all required products available for purchase. No buyer will change its buying pattern by going elsewhere to find 15 doors of a unique design or size for a special order, as opposed to including the special order as part of the normal full truckload (1080 door) order, assuming the entire order can be purchased from a single source.

Unless the Towanda plant is able to provide all designs and all sizes of molded panel doorskins, it is likely that our customers will look to do business with either Premdor, Inc. or Jeld-wen, the only two molded panel doorskin manufacturers with a full line of designs and sizes. These two companies, if Premdor, Inc. acquires Masonite Corporation, will be the only vertically integrated door manufacturers. As such they will certainly have the capability of coordination with regard to doorskins and doors to the detriment of the non-vertically integrated companies and the marketplace in general. Further, for those distributors and users who require the Masonite product, Premdor, Inc. will hold a monopoly in regard to designs and sizes not available to non-vertically integrated manufacturers (Complaint, paragraph 35).

At the present time Masonite's Laurel, Mississippi plant produces eleven (11) product designs, eighty-nine (89) product sizes and the Craftcore profiled core that its Towanda, Pennsylvania facility is not able to produce. While the Competitive Impact Statement leads the reader to believe that Premdor will divest assets, including the Towanda plant, intellectual property, dies necessary to manufacture all designs and sizes of molded door skins, and services to operate the facility, there is no assurance contained in the Final Judgment that the acquirer will purchase the additional dies necessary to produce all products currently available through Masonite Corporation. In fact, the acquirer is not required to make all products nor is Premdor required to provide all product dies at the time of sale of the Towanda facility.

It is also erroneous to assume that price alone is a determining factor (Complaint, paragraph 28). In fact, even if we are able to sell the most commonly used designs and sizes of molded panel doors at a lesser price (even a significantly lesser price) we could not compete with the manufacturer that is able to provide all designs and all product sizes. By the Justice Department's own admission, the lack of all sizes and designs has been a significant deterrent to entry into the U.S. market by off-shore molded panel doorskin manufactures (Complaint, paragraph 26). The lack of a full line (all sizes and designs) would serve as the same deterrent to any entity that may acquire and attempt to operate the Towanda plant, and to any non-integrated manufacturer attempting to compete with a vertically integrated manufacturer.

Since downstream door buyers frequently treat doors as a commodity and often switch purchases from one manufacturer to another, the two year constraint placed on the defendants in the Final Judgment will do no more than postpone the opportunities for coordination by the two vertically integrated companies thereby creating the exact monopolistic marketplace described by the Department of Justice in the Competitive Impact Statement.

Further, the Final Judgment fails to insure continued free competition as it presently exists, and thereby fails as a satisfactory remedy, because: it does not guarantee the non-vertically integrated companies with a source for all items presently produced by Masonite; Premdor, Inc. is not required to make available all items to the non-integrated companies; and the Department of Justice cannot force Premdor to sell those items produced in Laurel to the non-integrated companies.

The Final Judgment in its present form is anti-competitive because it: (1) forces a buyer to go to a different supplier to obtain the full range of products necessary to meet its needs; (2) harms a buyer by positioning a vertically integrated manufacturer in a manner that would allow that manufacturer to charge more for a product because it is not available through a non-vertically integrated manufacturer; (3) harms a buyer by establishing an environment conducive to coordination between the vertically integrated manufacturers based on Premdor's access to designs and/or sizes presently available from Masonite that will not be available to the non-vertically integrated manufacturers (Complaint, paragraph 39).

For these reasons we again urge that the Department of Justice rescind this Judgment, and move to block the Premdor acquisition of the Masonite Molded Doorskin business, including the post acquisition divestiture of the Towanda facility.

Respectfully yours,

James K. Mitchell,

Vice President Administration.

[FR Doc. 02–3804 Filed 2–14–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—The Digital Subscriber Line Forum

Notice is hereby given that, on July 24, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Digital Subscriber Line Forum (''DSL'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BABT, Santa Clara, CA; BATM, Rosh Ha'ayin, ISRAEL; Institute for Information Industry (III), Taipei, TAIWAN; OPASTCO, Washington, DC; Realtek Semiconductors, Hsinchu, TAIWAN; Aspex Technology, Mountain View, CA; DV Tel, Inc., Totowa, NJ; Partner Voxtream, Vojens, DENMARK; Telefonica Investigacion y Desarrollo, Madrid, SPAIN; Maxxio Technologies, Vienna, AUSTRIA; Motive Communications, Austin, TX; Exigen Group, Saint John, New Brunswick, CANADA; Communication Authority, Budapest, HUNGARY; Tioga Technologies, Tel Aviv, ISRAEL; and sentitO Networks, Rockville, MD, have been added as parties to this venture.

Also, CooperCom, Santa Clara, CA; iBeam Broadcasting, Sunnyvale, CA; Pivotech Systems, Piscataway, NJ; CS Telecom, Fontenay-Aux-Roses, FRANCE; Fuzion Wireless Communications, Boca Raton, FL; Accelerated Networks, Moorpark, CA; Tripath Technology, Santa Clara, CA; and Eurobell PLC, Crawley, West Sussex, UNITED KINGDOM, have been dropped as parties to this venture.

In addition, Netcom Systems, Chatsworth, CA, has been acquired by Spirent Communications, Nepean, Ontario, CANADA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DSL intends to file additional written notifications disclosing all changes in membership.

On May 15, 1995, DSL filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 25, 1995 (60 FR 38058).

The last notification was filed with the Department on April 17, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 1, 2001 (66 FR 29834).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–3718 Filed 2–14–02; 8:45 am]

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