stating that the proposed project is likely to jeopardize the continued existence of UR cutthroat trout and result in adverse modification of proposed critical habitat. A reasonable and prudent alternative was identified by NMFS to minimize the take of UR cutthroat trout.

Because of the listing of the UR cutthroat trout Reclamation determined that a supplement to the EIS was necessary. A Notice of Intent to prepare a supplement to the EIS was published in the **Federal Register** (62 FR 67890, December 30, 1997). A subsequent notice cancelled the Supplement (63 FR 52286, September 30, 1998) when the County suspended its plans to develop the project because, at that time, there was no process for obtaining a fish passage waiver from the State of Oregon.

Following a scientific review of the coastal cutthroat populations in California, Washington and Oregon, the U.S. Fish and Wildlife Service published a final rule in the **Federal Register** (65 FR 24420, April 26, 2000) delisting the UR cutthroat trout. The Umpqua River Ecologically Significant Unit (ESU) of the coastal cutthroat trout was removed from the List of Endangered and Threatened Wildlife because of a determination that the population, formerly identified as an ESU of the species, is part of a larger population segment that previously was determined to be neither endangered nor threatened as defined by the Endangered Species Act. Critical Habitat designations for this population were also removed.

A scoping letter to request assistance in identifying any new information or effects that should be considered in he supplemental EIS will be prepared early this summer and sent to a list of previously interested parties. Please contact Robert Hamilton at the address given in the **ADDRESSES** section of this notice, or via e-mail at *Milltownhill@pn.usbr.gov* if you wish to receive a copy of the scoping letter. No scoping meetings are planned at this time.

Reclamation welcomes written comments related to the environmental effects of the proposed project. Reclamation's practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There may be other circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: July 14, 2006.

J. William McDonald,

Regional Director, Pacific Northwest Region.

[FR Doc. 06–6368 Filed 7–19–06; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Inco Limited and Falconbridge Limited—Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Inco Limited and Falconbridge Limited,* Civil Action No. 1:06CV01151. On June 23, 2006, the United States filed a Complaint which sought to enjoin Inco Limited (''Inco'') from acquiring Falconbridge Limited (''Falconbridge''). The Complaint alleged that Inco's acquisition of Falconbridge would substantially lessen competition in the development, manufacture, and sale of High-Purity Nickel in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, throughout the United States. The proposed Final Judgment, filed June 26, 2006, requires defendants to divest Falconbridge's Nikkelverk Refinery located in Kristiansand, Norway, and certain marketing offices and related assets, to preserve competition in the sale of High-Purity Nickel. A Hold Separate Stipulation and Order, entered by the Court on June 28, 2006, requires defendants to maintain, prior to divestiture, the competitive independence and economic viability of the assets subject to divestiture under the proposed Final Judgment. A Competitive Impact Statement filed by the United States describes the Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and the remedies available to private litigants who may have been injured by the alleged violations.

Copies of the Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement are available for inspection at the United States Department of Justice, Antitrust Division, 325 Seventh Street, NW., Room 215, Washington, DC 20530, (telephone: 202–514–2481), and at the Clerk's Office of the United States District Court for the District of Columbia, Washington, DC. Copies of these materials may be obtained upon request and payment of a copying fee.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530, (telephone: 202–307–0924).

J. Robert Kramer II,

Director of Operations.

United States District Court for the District of Columbia

United States of America Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Plaintiff v. INCO Limited, 145 King Street West, Suite 1500, Toronto, ON, Canada M5H 4B7, and Falconbridge Limited, 207 Queens Quay West Suite 800 Toronto, ON, Canada M5J lA7, Defendants.

Case Number: 1:06CV01151, *Judge:* Rosemary M. Collyer, *Deck Type:* Antitrust, *Date Stamp:* 06/23/2006.

Complaint

Plaintiff United States of America (''United States''), acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable relief against defendants, Inco Limited (''Inco'') and Falconbridge Limited (''Falconbridge''). Plaintiff complains and alleges as follows:

I. Introduction

1. The United States brings this action for injunctive relief under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Inco and Falconbridge from violating Section 7 of the Clayton Act, 15 U.S.C. 18. The United States seeks to prevent the proposed acquisition of Falconbridge by Inco because that acquisition would substantially lessen competition in the development, manufacture, and sale of refined nickel of sufficient purity and chemical composition that it can be utilized in super alloys used for safety-critical applications (hereinafter ''High-Purity Nickel''). The use of High-Purity Nickel is particularly important in making such

products as the rotating parts of jet engines, which are often called ''safety-critial parts.''

2. Inco and Falconbridge are two of the world's leading producers of refined nickel, a metallic element that is valued for its resistance to corrosion, stress, and high temperatures. Inco and Falconbridge are also by far the world's two largest producers of High-Purity Nickel.

3. High-Purity Nickel is primarily distinguished from other refined nickel because it contains lower amounts of certain impurities commonly referred to as trace elements. In safety-critical parts, for example, the presence of trace elements can make the parts less resistant to the extreme stresses and temperatures under which they operate and may eventually lead to engine failure.

4. Inco's proposed acquisition of Falconbridge would reduce the number of significant worldwide High-Purity Nickel suppliers from three to two and create a company with over 80 percent of the world's sales of High-Purity Nickel.

5. Unless the proposed acquisition is enjoined, competition in High-Purity Nickel that has benefitted customers will be substantially reduced. The proposed acquisition would likely result in higher prices, lower quality, less innovation, and less favorable delivery terms in the High-Purity Nickel market.

II. The Defendants

6. Defendant Inco is a Canadian corporation with its principal place of business in Toronto, Ontario, Canada. Inco's High-Purity Nickel sales in the United States are made through its wholly-owned subsidiary, International Nickel, Inc. (''INI''). INI is a Delaware corporation with its principal place of business in Saddlebrook, New Jersey.

7. Inco is one of the largest mining companies in the world. Inco mines, processes, and refines various minerals, including nickel. Inco also produces cobalt and platinum group metals (''PGMs'') as by-products of its nickel production. In 2005, Inco reported total sales of approximately $4.7 billion.

8. Inco's main nickel mining, processing, and refining operations are located in Canada, although it owns mines and processing facilities worldwide. Inco's High-Purity Nickel refining operations are located in Ontario, Canada, and Wales, United Kingdom. Inco's High-Purity Nickel is shipped to customers worldwide, including the United States.

9. Defendant Falconbridge is a Canadian corporation with its principal place of business in Toronto, Ontario, Canada. Falconbridge's High-Purity Nickel sales in the United States are made through its wholly-owned subsidiary, Falconbridge U.S., Inc. (''FUS''). FUS is a Pennsylvania corporation with its principal place of business in Pittsburgh, Pennsylvania.

10. Like Inco, Falconbridge is one of the world's largest mining companies. Falconbridge mines, processes, and refines various minerals, including nickel and copper. Falconbridge also produces cobalt and PGMs as by-products of both its nickel and copper production. In 2005, Falconbridge reported total sales of approximately $7.7 billion.

11. Falconbridge's primary nickel mining and processing facilities are located in Ontario, Canada, although it also has such facilities worldwide. Falconbridge's only High-Purity Nickel refining operation is located in Kristiansand, Norway. Falconbridge's High-Purity Nickel is shipped to customers worldwide, including the United States.

III. Jurisdiction and Venue

12. Plaintiff United States brings this action against defendants Inco and Falconbridge under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain the violation by defendants of Section 7 of the Clayton Act, 15 U.S.C. 18.

13. Defendants produce and sell High-Purity Nickel in the flow of interstate commerce. Their activities in developing, producing, and selling High-Purity Nickel substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22; and 28 U.S.C. 1331, 1337(a), and 1345.

14. Venue is proper in this District pursuant to 28 U.S.C. 1391(d). Inco and Falconbridge have consented to venue and personal jurisdiction in this judicial district.

IV. The Proposed Transaction

15. Pursuant to a Support Agreement dated October 10, 2005, Inco stated that it intended to offer to purchase all of the common shares of Falconbridge not currently owned by it. Also pursuant to that Support Agreement, Falconbridge's Board of Directors stated that it had determined that it is in the best interests of Falconbridge to support the offer, recommend acceptance of Inco's offer to holders of the common shares of Falconbridge, and use its reasonable best efforts to permit Inco's offer to be successful, on the terms and conditions contained in the Support Agreement.

16. On October 24, 2005, Inco made a forinal offer to purchase all of the outstanding common shares of Falconbridge, a transaction now valued at over $15 billion dollars. Inco's offer to purchase, originally open for acceptance until December 23, 2005, has been extended until June 30, 2006.

V. Reduced Competition in the High-Purity Nickel Market

A. The Relevant Product Market

17. Nickel is a metallic element that is particularly resistant to high temperatures, high stresses, and corrosion. Nickel is often combined with other materials to form alloys with particular performance characteristics. These performance characteristics depend on the amount of nickel and other elements contained in the particular alloy.

18. As a general proposition, as the amount of nickel in the alloy increases, the more resistant the alloy is to heat and stress. The most common alloy using nickel is stainless steel, which contains, on average, approximately 10 percent nickel and is used in applications demanding the least amount of the resistence to heat and stress that nickel provides.

19. At the other end of the spectrum are so-called super alloys. Super alloys generally contain between 50 and 70 percent nickel, as well as specific amounts of other elements, including iron, cobalt, and chromium, that combine to give the alloy specific performance characteristics. Super alloys are primarily used in chemical processing plants, medical applications, industrial power generation, and various aerospace applications.

20. Certain products made from super alloys, such as the rotating parts of jet engines, are considered safety-critical parts. For these parts, it is vital that, in addition to containing the proper amount of nickel, the super alloy be as free as possible from certain trace elements that could compromise the performance of the product and result in serious problems, like engine failure. For example, designers of jet engines severely restrict the maximum amounts of trace elements that can be contained in superalloys used to produce moving parts for jet engines.

21. The nickel that meets demanding safety-critical requirements is High-Purity Nickel. High-Purity Nickel is refined nickel of sufficient purity and chemical composition that it can be utilized in super alloys used for safety-critical applications. Only a small portion of the refined nickel produced in the world has sufficient metal content and purity to qualify as High-Purity Nickel.

22. Super alloy makers must use High-Purity Nickel to meet the specifications for safety-critical parts. Super alloy makers do not have the in-house capability to remove sufficient quantities of undesirable trace elements from non-High-Purity Nickel to permit them to produce alloys that meet the specifications for safety-critical parts.

23. A small but significant post-acquisition increase in the price of High-Purity Nickel would not cause the purchasers of safety-critical parts to substitute non-High-Purity Nickel or elements other than nickel so as to make such a price increase unprofitable.

24. Accordingly, the development, manufacture, and sale of High-Purity Nickel is a line of commerce and a relevant product market for purposes of analyzing this acquisition under Section 7 of the Clayton Act.

B. The Relevant Geographic Market

25. All of the High-Purity Nickel sold in the world is mined, processed, and refined outside of the United States. Both Inco and Falconbridge sell High-Purity Nickel throughout the world. Both companies import High-Purity Nickel into the United States and sell that nickel to customers located throughout the United States.

26. Accordingly, the world is the relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Concentration

27. The market for High-Purity Nickel is highly concentrated. Inco and Falconbridge are by far the two largest producers of High-Purity Nickel sold worldwide and in the United States.

28. Aside from Inco and Falconbridge, only three companies have demonstrated any

ability to produce High-Purity Nickel. One of these companies consistently produces High-Purity Nickel, but its available capacity is substantially less than that of either Inco or Falconbridge and it cannot economically increase its capacity. The other two companies are not substantial competitors in the High-Purity Nickel market. While both have substantial capacity to make non-High-Purity Nickel and both have produced small amounts of High-Purity Nickel, their ability to make High-Purity Nickel, and to make it on a consistent basis, is very limited.

29. Inco accounts for at least 40 percent of the worldwide sales of High-Purity Nickel. Similarly, Falconbridge accounts for at least 40 percent of the worldwide sales of High-Purity Nickel.

30. The market for High-Purity Nickel would become substantially more concentrated if Inco acquires Falconbridge. Combined, Inco and Falconbridge would account for over 80 percent of worldwide High-Purity Nickel sales. Using a measure of market concentration called the Herfindahl-Hirschman Index (''HHI'') (defined and explained in Appendix A), the proposed transaction will increase the HHI in the market for High-Purity Nickel by approximately 3,200 points to a post-acquisition level of approximately 6,800, well in excess of levels that raise significant antitrust concerns.

D. Anticompetitive Effects

1. The Proposed Transaction Will Harm Competition in the Market for High-Purity Nickel.

31. High-Purity Nickel customers generally view Inco's and Falconbridge's High-Purity Nickel as their only available options and do not view the products of other producers as viable alternatives for High-Purity Nickel due to concerns relating to the other producers' quality, capacity, and reliability.

32. The vigorous and aggressive competition between Inco and Falconbridge in the production and sale of High-Purity Nickel has benefitted customers. Inco and Falconbridge have competed directly in terms of price, quality, innovation, and delivery terms.

33. The proposed acquisition will eliminate the competition between Inco and Falconbridge, reduce the number of significant suppliers of High-Purity Nickel from three to two, and substantially increase the likelihood that Inco will unilaterally increase the price of High-Purity Nickel to a significant number of customers.

34. Inco and Falconbridge have the ability to increase prices to certain customers of High-Purity Nickel. Some customers must purchase High-Purity Nickel because they use it in super alloys used for safety-critical applications. These customers do not have the ability to substitute any other product for High-Purity Nickel. Inco and Falconbridge are able to determine their High-Purity Nickel customers' end-uses and identify which customers are purchasing High-Purity Nickel specifically for super alloys used for safety-critical applications.

35. Inco and Falconbridge can, therefore, charge customers that are purchasing High-Purity Nickel for super alloys used for safety-critical applications a higher price than customers that are purchasing High-Purity Nickel for other uses. Without the competitive constraint of head-to-head competition between Inco and Falconbridge, Inco post-merger will have a greater ability to exercise market-power by raising prices to companies that purchase High-Purity Nickel for super alloys used for safety-critical applications.

36. The other High-Purity Nickel producers do not have the incentive or the ability, individually or collectively, to effectively constrain a unilateral exercise of market power by Inco after the acquisition.

37. The transaction will therefore substantially lessen competition in the market for High-Purity Nickel, which is likely to lead to higher prices, lower quality, less innovation, and less favorable delivery terms for the ultimate consumers of such products, in violation of Section 7 of the Clayton Act.

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

38. Successful entry or expansion into the development, manufacture, and sale of High-Purity Nickel is difficult, time-consuming, and costly. Companies not currently producing nickel of any kind would require roughly three to five years and the expenditure of at least $100 million to build a refinery to produce a finished nickel product. In addition to building the refinery, the new entrant, if not vertically integrated, would also have to secure nickel feedstock to refine.

39. The cost of entering the High-Purity Nickel market is even greater than the cost of entering the refined nickel market generally. A new entrant into the High-Purity Nickel market would have to invest in additional equipment and processes to enable it to extract sufficient undesirable trace elements to produce the nickel required by makers of super alloys used for safety-critical applications. Further, if not vertically integrated, a new entrant would have to secure nickel feedstock of sufficient quality to be able to refine High-Purity Nickel.

40. Even companies that currently produce non-High-Purity Nickel would require an investment of millions of dollars and several years to modify their facilities and processes to be capable of producing High-Purity Nickel. These companies would not invest the substantial time and money necessary to modify their facilities and processes to produce High-Purity Nickel in response to a small but significant increase in the price of High-Purity Nickel.

41. Moreover, it is not sufficient simply to be able to produce High-Purity Nickel. A new entrant in the High-Purity Nickel market would have to be able to produce High-Purity Nickel in sufficient quantities with sufficiently consistent purity levels that customers could depend on it to provide the amounts of High-Purity Nickel needed at the appropriate time. Achieving such capability could require a substantial investment in time and money by a company seeking to enter the High-Purity Nickel market.

42. Therefore, entry or expansion by any other firm into the High-Purity Nickel market would not be timely, likely, or sufficient to defeat an anticompetitive price increase in the event that Inco acquires Falconbridge.

VI. The Proposed Acquisition Violates Section 7 of the Clayton Act

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

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

a. Actual and potential competition in the world market, including the United States, between Inco and Falconbridge in the development, manufacture, and sale of High-Purity Nickel will be eliminated;

b. Competition generally in the development, manufacture, and sale of High-Purity Nickel will be substantially lessened; and

c. Prices for High-Purity Nickel will likely increase, the quality of High-Purity Nickel will likely decline, innovation relating to High-Purity Nickel will likely decline, and the delivery terms currently offered in the High-Purity Nickel market will likely become less favorable to the customer.

VII. Request for Relief

45. Plaintiff requests that:

a. Inco's proposed acquisition of Falconbridge be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

b. Defendants and all persons acting on their behalf be permanently enjoined and restrained from consummating the proposed acquisition or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Inco with the operations of Falconbridge;

c. Plaintiff be awarded its costs for this action; and

d. Plaintiff receive such other and further relief as the Court deems just and proper.

Dated: June 23, 2006.

Respectfully submitted.

For Plaintiff United States of America:

Thomas O. Barnett,
Assistant Attorney General, D.C. Bar #426840.

David L. Meyer,
Deputy Assistant Attorney General, for Civil Enforcement, D.C. Bar #414420.

J. Robert Kramer II,
Director of Operations and Civil Enforcement.

Maribeth Petrizzi,
Chief, Litigation II Section, D.C. Bar #435204.

Karen Y. Phillips-Savoy,
Dando B. Cellini,
Jillian E. Charles (D.C. Bar #459052),
James K. Foster, Jr.,
Christine A. Hill (D.C. Bar #461048/inactive),
Tara M. Shinnick,
Robert W. Wilder,
Attorneys, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street. NW., Suite 3000, Washington, DC 20530, Tel: (202) 307–0924.

Appendix A—Herfindahl-Hirschman Index Calculations

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into a ccount the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See Horizontal Merger Guidelines § 1.51.

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on June 23, 2006, and plaintiff and defendants, Inco Limited and Falconbridge Limited, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

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

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

And Whereas, plaintiff requires defendants to make certain divestitures and enter into the Supply Agreement and provide any Alternative Acquirer the Third-Party Feedstock Option 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, the Supply Agreement, and the Third-Party Feedstock Option required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed:*

I. Jurisdiction

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

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means LionOre, the entity to whom defendants shall divest the Divested Business.

B. ''Acquirer Shares'' means the issuance to Falconbridge of no more than 19.99 percent or 49,118,057 of the outstanding common shares of the Acquirer at the completion of the purchase and sale of the Divested Business to the Acquirer.

C. ''Acquisition of Falconbridge'' means: (a) the condition that Inco has taken up and paid for such number of Falconbridge common shares, validly deposited and not withdrawn at the expiry time of Inco's Offer to Purchase all of the Outstanding Shares of Falconbridge, dated October 24,2005, as amended, that, together with any Falconbridge common shares directly or indirectly owned by Inco, constitutes at least 50.01% of the Falconbridge common shares on a fully-diluted basis at the expiry time or (b) Inco's acquisition of control of Falconbridge by any other means.

D. ''Alternative Acquirer'' means an Acquirer other than LionOre that is in the metals mining or processing business and is able to supply, on a long-term basis, sufficient Feedstock to assure the United States, in its sole discretion, that the Nikkelverk Refinery will remain an economically viable competitive business.

E. ''Alternative Divested Business'' means Falconbridge Nikkelverk AlS, Falconbridge, U.S., Inc. (''FUS''), Falconbridge Europe S.A. (''FESA''), and Falconbridge (Japan) Limited (''FJKK''), including:

1. All tangible assets used in the development, production, servicing, and sale of the Nikkelverk Refinery Products, including but not limited to the Nikkelverk Refinery; all real property; any facilities used for research, development, and engineering support, and any real property associated with those facilities; manufacturing and sales assets, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on- or off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations issued by any governmental organization; all contracts, agreements, leases, commitments, and understandings; all customer contracts, lists, accounts, and credit records; and other records relating to the Alternative Divested Business;

2. All intangible assets that have been used exclusively or primarily in the development, production, servicing, and sale of the Nikkelverk Refinery Products, including but not limited to all patents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names (including the product or trade name ''SuperElectro'' or any variation thereof), technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information provided to the employees, customers, suppliers, agents or licensees of the Alternative Divested Business, provided that with respect to any such intangible assets relating to metal separation or purification processes, at the option of the Alternative Acquirer defendants may retain a non-exclusive, non-transferable, fully paid-up license(s) to or copy of such intangible assets;

3. A non-exclusive, non-transferable, fully paid-up license(s) for the use of the name ''Falconbridge,'' the duration and terms of which shall be negotiated by the defendants and the Alternative Acquirer and limited to the field of use of the Nikkelverk Refinery Products, provided that any such license(s) may be transferable to any future purchaser of the Nikkelverk Refinery;

4. A non-exclusive, non-transferable, fully paid-up license(s) for use of any intangible asset that has been used by both the Alternative Divested Business and any of Falconbridge's non-divested businesses, provided that such license(s) may be transferable to any future purchaser of Nikkelverk Refinery; and

5. All research data concerning historic and current research and development efforts conducted at or for the Alternative Divested Business, including designs of experiments, and the results of unsuccessful designs and experiments.

The term ''Alternative Divested Business'' shall not include tangible or intangible assets exclusively used in, or personnel exclusively responsible for, the production or sale of products other than the Nikkelverk Refinery Products.

F. ''Alternative Supply Agreement'' means an agreement between Inco and the Alternative Acquirer on the terms described in Section V(B) by which Inco commits to supply to the Alternative Acquirer, other than through a New Third-Party Supply Agreement, Feedstock to be used in operating the Nikkelverk Refinery.

G. ''Divested Business'' means Falconbridge Nikkelverk A/S, Falconbridge, U.S., Inc. (''FUS''), Falconbridge Europe S.A. (''FESA''), Falconbridge (Japan) Limited (''FJKK''), and Falconbridge International Limited (''FIL''), including:

1. All tangible assets used in the development, production, servicing, and sale of the Nikkelverk Refinery Products, including but not limited to the Nikkelverk Refinery; all real property; any facilities used for research development, and engineering support, and any real property associated with those facilities; manufacturing and sales assets, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on- or off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations issued by any governmental organization; all contracts, agreements, leases, commitments, and understandings; all customers contracts, lists, accounts, and credit records; and other records relating to the Divested Business;

2. All intangible assets that have been used exclusively or primarily in the development, production, servicing, and sale of the Nikkelverk Refinery Products, including but not limited to all patents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names (including the product or trade name ''SuperElectro'' or any variation thereof), technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information provided to the employees, customers, suppliers, agents or licensees of the Divested Business, provided that with respect to any such intangible assets relating to metal separation or purification processes, at the option of the Acquirer defendants may retain a non-exclusive, non-transferable, fully paid-up license(s) to or copy of such intangible assets;

3. A non-exclusive, non-transferable, fully paid-up license(s) for the use of the name ''Falconbridge,'' the duration and terms of which shall be negotiated by the defendants and the Acquirer and limited to the field of use of the Nikkelverk Refinery Products, provided that any such license(s) may be transferable to any future purchaser of the Nikkelverk Refinery;

4. A non-exclusive, non-transferable, fully paid-up license(s) for use of any intangible asset that has been used by both the Divested Business and any of Falconbridge's non-divested businesses, provided that such license(s) may be transferable to any future purchaser of Nikkelverk Refinery; and

5. All research data concerning historic and current research and development efforts conducted at or for the Divested Business, including designs of experiments, and the results of unsuccessful designs and experiments.

The term ''Divested Business'' shall not include tangible or intangible assets exclusively used in, or personnel exclusively responsible for, the production or sale of products other than the Nikkelverk Refinery Products.

H. ''Existing Third-Party Supply Agreements'' means existing agreements between Falconbridge and third parties for the supply of Feedstock for the Nikkelverk Refinery that is produced by persons other than the defendants.

I. ''Falconbridge'' means defendant Falconbridge Limited, a Canadian corporation with its headquarters in Toronto, Canada, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

J. ''Falconbridge International Limited'' means a corporation organized under the laws of Barbados and a subsidiary of Falconbridge responsible, in part, for the acquisition of Feedstock from third parties.

K. ''Feedstock'' means nickel-in-matte and other products and intermediate compounds constituting refinery feed sources suitable for refining at Nikkelverk Refinery.

L. ''Foreign Competition Clearance'' means an action or inaction by the European Commission that results in the termination of any relevant waiting period, or grant of approval, clearance or consent, that is applicable to the acquisition of Falconbridge by Inco.

M. ''High-Purity Nickel'' means refined nickel of sufficient purity and chemical composition that it can be utilized in super alloys used for safety-critical applications.

N. ''Inco'' means defendant Inco Limited, a Canadian corporation with its headquarters in Toronto, Canada, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

O. ''LionOre'' means LionOre Mining International Limited, a Canadian corporation with its headquarters in London, England, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

P. ''New Third-Party Supply Agreement'' means one or more agreements between the defendants and the Alternative Acquirer on the terms described in Section V for the supply to the Nikkelverk Refinery of Feedstock that is produced by persons other than the defendants.

Q. ''Nikkelverk Refinery'' means the nickel, copper, cobalt, and precious metals refinery owned by Falconbridge's subsidiary Falconbridge Nikkelverk A/S and located In Kristiansand, Norway.

R. ''Nikkelverk Refinery Products'' means the finished nickel, copper, cobalt, precious metals, and other products produced at the Nikkelverk Refinery.

S. ''Supply Agreement'' means an agreement between Inco and the Acquirer on the terms described in Section IV by which Inco commits to supply to the Acquirer, other than through a New Third-Party Supply Agreement, Feedstock to be used in operating the Nikkelverk Refinery.

T. ''Third-Party Feedstock Option'' means one or more of the options available to the Alternative Acquirer in Section V(A)(3) to obtain the quantities and quality of Feedstock supplied pursuant to the Existing Third-Party Supply Agreements.

III. Applicability

A. This Final Judgment applies to Inco and Falconbridge, 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 Divested Business, that the purchaser agrees to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. In the event that Inco acquires any shares pursuant to Inco Limited Offer to Purchase All of the Outstanding Shares of Falconbridge Limited dated October 24, 2005, as amended, defendants are ordered and directed concurrently with Inco's Acquisition of Falconbridge, (1) to divest the Divested Business to the Acquirer in a manner consistent with this Final Judgment, and (2) to enter into the Supply Agreement with the Acquirer. Defendants shall, as soon as possible, but within one business day after the Acquisition of Falconbridge, notify the United States of (1) the effective date of the Acquisition of Falconbridge and (2) the effective date that the Divested Business was divested to the Acquirer.

B. Defendants shall provide the United States and the Acquirer information relating to the personnel employed by the Divested Business or involved exclusively or primarily in research, development, production, operation, and sale of the Nikkelverk Refinery Products or procurement of Feedstock from third parties for the Divested Business, to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any of the defendants' employees whose responsibilities exclusively or primarily involve the research, development, production, operation, or sale of the products of the Divested Business or procurement of Feedstock from third parties for the Divested Business.

C. Defendants shall permit the Acquirer to have reasonable access to personnel and to make inspections of the physical facilities of the Divested Business; access to any and all environmental, zoning, and other permit documents and information; access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process; and any documents and information the Acquirer shall consider relevant to any issues relating to the Supply Agreement.

D. Defendants shall warrant to the Acquirer that each asset that was operational as of the date of filing of the Complaint in this matter will be operational on the date of divestiture.

E. Defendants shall enter into the Supply Agreement with the Acquirer to provide Feedstock of the same or substantially the same quality and volume provided by Falconbridge to be used in operating the Nikkelverk Refinery. At the option of the Acquirer, such Supply Agreement may have a term of up to ten (10) years. The terms and conditions of the Supply Agreement must be commercially reasonable and designed to enable the Acquirer to compete effectively in the sale of High-Purity Nickel. The terms and conditions of the Supply Agreement must be approved by the United States in its sole discretion. Inco shall give the United States 30 calendar days notice before exercising any contract right to cancel or terminate the Supply Agreement and before implementing any material change to any term related to the length of the Supply Agreement, the volume and quality of the Feedstock, or the price. In the performance of the Supply Agreement, defendants shall take no action the effect of which is to interfere with or impede the ability of the Acquirer to compete effectively in the sale of High-Purity Nickel.

F. Defendants shall not take any action that will impede in any way the permitting,

operation. or divestiture of the Divested Business.

G. Defendants shall warrant to the Acquirer that there are no material defects in the . environmental, zoning, or other permits pertaining to the operation of the Divested Business, and that following the sale of the Divested Business, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divested Business.

H. Nothing in this Final Judgment shall be construed to require the Acquirer as a condition of any license granted by or to defendants pursuant to Sections II (G)(2)–(4) to extend to defendants the right to use the Acquirer's improvements to processes used in the production of Nikkelverk Refinery Products.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV of this Final Judgment shall include the entire Divested Business and the Supply Agreement, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divested Business can and will be used by the Acquirer as part of a viable, ongoing business, engaged in producing High-Purity Nickel for sale worldwide, including the United States. The divestiture shall be accomplished so as to satisfy the United States, in its sole discretion, that:

1. the Divested Business will remain viable and the divestiture of the Divested business will remedy the competitive harm alleged in the Complaint; and

2. none of the terms of any agreement between the Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or to otherwise interfere in the ability of the Acquirer to compete effectively in the production and sale of High-Purity Nickel.

V. Appointment of Trustee to Effect Divestiture

A. If defendants have not divested the Divested Business as 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 (1) to divest the Alternative Divested Business in a manner consistent with this Final Judgment to an Alternative Acquirer acceptable to the United States in its sole discretion, (2) at the option of the Alternative Acquirer, to effectuate the Alternative Supply Agreement between the defendants and the Alternative Acquirer, and (3) except for those Existing Third-Party Supply Agreements under which Feedstocks are contractually obligated to be processed at the Nikkelverk Refinery, to (a) effectuate, at the option of the Alternative Acquirer, the New Third-Party Supply Agreement between the defendants and the Alternative Acquirer, (b) oversee the defendants' best efforts to procure the assignment of the Existing Third-Party Supply Agreements, (c) order the divestiture of Falconbridge International Limited, or (d) some combination of these options, to ensure that the Alternative Acquirer obtains the quantities and quality of Feedstock to be supplied pursuant to the Existing Third-Party Supply Agreements consistent with the remaining term of each of the Existing Third-Party Supply Agreements. In the event the European Commission also requires the divestiture of the same assets, the United States shall consult in good faith with the European Commission to ensure selection of a trustee acceptable to both the United States and the European Commission.

B. At the option of the Alternative Acquirer, defendants shall enter into the Alternative Supply Agreement with the Alternative Acquirer to provide Feedstock of the same or substantially the same quality and volume provided by Falconbridge to be used in operating the Nikkelverk Refinery. At the option of the Alternative Acquirer, such Alternative Supply Agreement may have a term of up to ten (10) years. The terms and conditions of the Alternative Supply Agreement must be commercially reasonable and designed to enable the Alternative Acquirer to compete effectively in the sale of High-Purity Nickel. The terms and conditions of the Alternative Supply Agreement must be approved by the United States in its sole discretion. Inco shall give the United States 30 calendar days notice before exercising any contract right to cancel or terminate the Alternative Supply Agreement and before implementing any material change to any term related to the length of the Alternative Supply Agreement, the volume and quality of the Feedstock, or the price. In the performance of the Alternative Supply Agreement, defendants shall take no action the effect of which is to interfere with or impede the ability of the Alternative Acquirer to compete effectively in the sale of High-Purity Nickel.

C. Unless the United States otherwise consents in writing, the divestiture pursuant to Section V of this Final Judgment shall include the entire Alternative Divested Business, Alternative Supply Agreement, and Third-Party Feedstock Option, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Alternative Divested Business can and will be used by the Alternative Acquirer as part of a viable, ongoing business, engaged in producing High-Purity Nickel for sale worldwide, including the United States. A divestiture pursuant to Section V of this Final Judgment, shall be accomplished so as to satisfy the United States, in its sole discretion, that:

1. The Alternative Acquirer has the intent and capability (including the necessary managerial, operational, technical and financial capability) to compete effectively in the production and sale of High-Purity Nickel; and

2. That none of the terms of any agreement between the Alternative Acquirer and defendants give defendants the ability unreasonably to raise the Alternative Acquirer's costs, to lower the Alternative Acquirer's efficiency, or otherwise to interfere in the ability of the Alternative Acquirer to compete effectively in the production and sale of High-Purity Nickel; and

3. The Alternative Divested Business will remain viable and the divestiture of the Alternative Divested Business will remedy the competitive harm alleged in the Complaint.

D. Nothing in this Final Judgment shall be construed to require the Alternative Acquirer as a condition of any license granted by or to defendants pursuant to Sections II (E)(2)–(4) to extend to defendants the right to use the Alternative Acquirer's improvements to processes used in the production of Nikkelverk Refinery Products.

E. With respect to any divestiture to an Alternative Acquirer under Section V of this Final Judgment, defendants shall have the same obligations to the Alternative Acquirer with respect to the Alternative Divested Business as they do to the Acquirer with respect to the Divested Business as set forth in Sections IV(B), (C), (D), (F), and (G) of the Final Judgment.

F. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Alternative Divested Business. The trustee shall have the power and authority to accomplish the divestiture to an Alternative Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections V and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(H) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

G. Defendants shall not object to a sale by the trustee, or to the Alternative Supply Agreement or the Third-Party Feedstock Option ordered 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 VI.

H. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as plaintiff approves, and shall account for all monies derived from the sale of the Alternative Divested 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 any professionals and agents retained by the trustee shall be reasonable in light of the value of the Alternative Divested 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.

I. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the

personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to customary confidentiality protection for trade secret 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.

J. 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 Alternative Divested 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 Alternative Divested Business.

K. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) The trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such 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 plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, the trustee shall notify the United States and the defendants of any proposed divestiture required by Section V of this Final Judgment. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Alternative Divested Business, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Alternative Acquirer, any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed Alternative Acquirer, and any other potential Alternative Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within (a) thirty (30) calendar days after receipt of the notice or (b) twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Alternative Acquirer, any third party, or the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written. notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(G) of this Final Judgment. Absent written notice that the United States does not object to the proposed Alternative Acquirer or upon objection by the United States, a divestiture proposed under Section V shall not be consummated. Upon objection by defendants under Section V(G), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

To the extent that defendants are issued Acquirer Shares pursuant to the Agreement to Acquire the Divested Business Through Purchase of FNA Group Shares dated June 6, 2006 between Falconbridge and LionOre, or otherwise, in exchange for financing part of the Acquirer's acquisition of the Divested Business, defendants:

1. Shall, within 150 days after the earlier of (a) the Acquisition of Falconbridge, or (b) the issuance of the Acquirer Shares, divest in a manner consistent with this Final Judgment all of the Acquirer Shares;

2. Shall divest the Acquirer Shares by open market sale, public offering, private sale, repurchase by LionOre, or a combination thereof. The divestiture of the Acquirer Shares shall not be made: (i) To any person other than LionOre who provides High-Purity Nickel unless the United States shall otherwise agree in writing; or (ii) in a manner that, in the sole judgment of the United States, could significantly impair LionOre as an effective competitor in the production and sale of High-Purity Nickel;

3. Shall not be issued more than the Acquirer Shares;

4. Shall not exercise any rights relating to the Acquirer Shares, including but not limited to (i) exercising or permitting the exercise of any voting rights, (ii) electing, nominating, appointing, or otherwise designating or participating as officer or directors; (iii) participating. as a member of the Board of Directors or otherwise, in any meeting of the Board of Directors, (iv) participating in any committees or other governing body of LionOre; (v) exercising any veto rights with respect to the business of LionOre, including veto power over changes in control of LionOre, over significant asset purchases or sales, over change in majority of board membership, or over changes in majority ownership of LionOre; (vi) obtaining any financial or business information with respect to LionOre that is not otherwise publicly available. In no event shall defendant influence or attempt to influence the decision-making, management, or policies of LionOre; and

5. Shall not acquire, directly or indirectly, any shares of, or other ownership interest in, LionOre, within two years of divesting the Acquirer Shares.

VIII. Hold Separate

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. 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 under Section IV or Section V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or Section V of this Final Judgment. Every twelve (12) months following completion of the divestiture required by Section IV or Section V, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section IV(E) or Section V(B) of this Final Judgment, including compliance with the Supply Agreement. Defendants shall, in addition, deliver to the United States an affidavit describing any changes to the Supply Agreement outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

B. Defendants shall keep all records of all efforts made to preserve the Divested Business and to divest the Divested Business until one year after such divestiture has been completed.

C. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture of the Acquirer Shares has been completed under Section VII of the Final Judgment, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VII of this Final Judgment.

X. Compliance Inspection

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, 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, be permitted:

1. Access during defendants' office hours to inspect and copy, or at plaintiffs option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

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

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the Divested Business during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

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

_____

United States District Judge

Competitive Impact Statement

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

Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on June 23, 2006, seeking to enjoin the proposed acquisition by defendant Inco Limited (''Inco'') of defendant Falconbridge Limited (''Falconbridge''). The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially in the development, production and sale of high-purity nickel (''High-Purity Nickel''), i.e., a purer form of nickel used for certain alloys such as those used in safety-critical parts for jet engines, in violation of Section 7 of the Clayton Act. This loss of competition would likely result in higher prices, lower quality, less innovation, and less favorable delivery terms to customers in the High-Purity Nickel market.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order and a proposed Final Judgment. These are designed to eliminate the anticompetitive effects of the acquisition while permitting Inco to complete its acquisition of Falconbridge. Under the proposed Final Judgment, which is explained more fully below, Inco is required to divest assets that include Falconbridge's Nikkelverk refinery in Kristiansand, Norway (''Nikkelverk Refinery''), and Falconbridge's nickel marketing businesses. The proposed Final Judgment requires that the divestiture of these assets be made to LionOre Mining International Ltd. (''LionOre''), a company headquartered in London, United Kingdom. LionOre is not currently involved in the refining of nickel, but owns nickel mining and processing resources in Africa and Australia, and has had plans to enter the business of refining nickel and thus become a fully-integrated nickel producer. Its acquisition of the Nikkelverk refinery and the other assets included in the proposed divestiture will accelerate LionOre's becoming a fully integrated nickel producer, and make it a viable and active competitor in the High-Purity Nickel market.

The proposed Final Judgment requires that the divestiture to LionOre take place concurrently with the acquisition of Falconbridge by Inco. Under the terms of the Hold Separate Stipulation and Order, Falconbridge must maintain and preserve, until the acquisition is consummated, the Nikkelverk Refinery and other divestiture assets (hereafter ''Divested Business'') as an ongoing, economically viable competitive business. The Hold Separate Stipulation and Order further requires that, upon Inco's acquisition of the first share of Falconbridge common stock, the defendants will ensure that the Divested Business operates as an independent, economically viable ongoing competitive business, held separate and apart from Inco, and that it will remain independent and uninfluenced by Inco.

The proposed Final Judgment also provides that, if for any reason the divestiture to LionOre does not occur as required by the proposed Final Judgment, a trustee will be appointed to divest the assets to an Alternative Acquirer, which is defined as a company that is in the metals mining or processing business and is able to supply, on a long-term basis, sufficient Feedstock to assure the United States, in its sole discretion, that the Nikkelverk Refinery will remain an economically viable competitive business.

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

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

A. The Defendants and the Proposed Transaction

Inco, a Canadian corporation, has its corporate headquarters and principal place of business in Toronto, Ontario, Canada. As one of the largest mining companies in the world, Inco is primarily engaged in mining, processing, and refining nickel, and also produces other elements, such as cobalt and platinum group metals (''PGMs''), as by-products of its nickel production. In 2005, Inco reported total sales of approximately $4.7 billion. The company's main nickel mining, processing, and refining operations are located in Canada, although it also owns mines and processing facilities in many other parts of the world. Inco's High-Purity Nickel refining operations are located in Ontario, Canada, and Wales, United Kingdom. Inco operates in the United States through its wholly-owned subsidiary International Nickel, Inc., located at Saddlebrook, New Jersey, which markets and sells in the United States nickel and other products manufactured by Inco. Inco's High-Purity Nickel is shipped to customers all over the world, including the United States.

Falconbridge, a Canadian corporation, also has its corporate headquarters and principal place of business in Toronto, Ontario, Canada. Like Inco, Falconbridge is one of the world's largest mining companies and engages in all phases of the production of nickel and other refined elements. The main products that Falconbridge produces are nickel and copper, but the company also produces cobalt, PGMs, and other elemental metals as by-products of both its nickel and

copper refining operations. In 2005, Falconbridge reported total sales of approximately $7.7 billion. Falconbridge's primary nickel mining and processing facilities are located in Ontario, Canada, although it also has such facilities worldwide. Falconbridge's only High-Purity Nickel refining operation is the Nikkelverk Refinery located in Kristiansand, Norway. The company operates in the United States through its wholly-owned subsidiary, Falconbridge U.S., Inc., located at Pittsburgh, Pennsylvania, which markets and sells in the United States nickel and other products manufactured by Falconbridge. The High-Purity Nickel produced by the Nikkelverk Refinery is shipped to customers all over the world, including the United States.

Inco and Falconbridge entered into an agreement dated October 10, 2005, in which Inco stated that it intended to offer to purchase all of the common shares of Falconbridge that it did not already own. Also pursuant to that agreement, Falconbridge's Board of Directors stated that it had determined that it is in the best interests of Falconbridge to support the offer, recommend acceptance of Inco's offer to holders of the common shares of Falconbridge, and use its reasonable best efforts to permit Inco's offer to be successful, on the terms and conditions contained in the agreement. On October 24, 2005, Inco made a formal offer to purchase all of the outstanding common shares of Falconbridge in a transaction valued at over $15 billion. Inco's offer originally was open for acceptance until December 23,2005, but this date has been extended several times, most recently to June 30, 2006. The acquisition, among other things, would combine the operations of the two leading providers of High-Purity Nickel worldwide. The United States alleges in its Complaint that this proposed transaction, as initially agreed to by the defendants, would lessen competition substantially in the market for High-Purity Nickel in violation of section 7 of the Clayton Act.

B. The Competitive Effects of the Transaction on the High-Purity Nickel Market

Nickel is a metallic element that is particularly resistant to high temperatures, high stresses, and corrosion. Nickel is often combined with other materials to form alloys with particular performance characteristics. These performance characteristics depend on the amount of nickel and other elements contained in the particular alloy. As a general proposition, as the amount of nickel in the alloy increases, the more resistant the alloy is to heat and stress. One sub-set of nickel-based alloys is called super alloys, which generally contain between 50 and 70 percent nickel, as well as specific amounts of other elements, including iron, cobalt, and chromium, that combine to give the alloy very specific performance characteristics. Super alloys are used primarily in chemical processing plants, medical applications, industrial power generation, and various aerospace applications. Many products made from super alloys, such as the rotating parts of jet engines, are considered safety-critical parts. For these parts, it is vital that, in addition to containing the proper amount of nickel, the super alloy be as free as possible from certain trace elements that could compromise the performance of the product and result in serious problems, including engine failure. The nickel that meets these demanding requirements is High-Purity Nickel. High-Purity Nickel is refined nickel of sufficient purity and chemical composition that it can be utilized for safety-critical applications. Only a small portion of the refined nickel produced in the world meets the specifications for High-Purity Nickel.

High-Purity Nickel constitutes an essential ingredient in the production of super alloys used for safety-critical applications. The Complaint alleges that a small but significant post-acquisition increase in the price of High-Purity Nickel would not cause purchasers of super alloys used for safety-critical applications to substitute non-High-Purity Nickel or elements other than nickel so as to make such a price increase unprofitable.

The Complaint also alleges that the relevant geographic market is the world, because all of the High-Purity Nickel sold in the world is mined, processed, and refined outside of the United States, and both Inco and Falconbridge sell High-Purity Nickel throughout the world. Both companies import High-Purity Nickel into the United States and sell that nickel to customers located throughout the United States.

The market for High-Purity Nickel is already highly concentrated. Inco and Falconbridge are by far the two largest producers of High-Purity Nickel sold in the United States and throughout the world. Inco and Falconbridge each account for at least 40 percent of the worldwide sales of High-Purity Nickel. Combined, Inco and Falconbridge would account for over 80 percent of worldwide High-Purity Nickel sales.

Only three other companies have demonstrated any ability to produce High-Purity Nickel. While one other finn consistently produces High-Purity Nickel, its available capacity is substantially less than that of either Inco or Falconbridge, and it cannot economically increase its capacity. Two other companies have produced small amounts of High-Purity Nickel, but are not substantial competitors in the High-Purity Nickel market. While both have substantial capacity to make non-High-Purity Nickel, their current ability to make High-Purity Nickel, and to make it on a consistent basis, is very limited. The other current producers of High-Purity Nickel do not have the ability, individually or collectively, to constrain effectively a unilateral exercise of market power in High-Purity nickel by a combined Inco and Falconbridge.

As alleged in the Complaint, High-Purity Nickel customers generally view Inco's and Falconbridge's High-Purity Nickel as their only available options and do not view the products of other producers as viable alternatives due to concerns relating to the other producers' quality, capacity, and reliability. The vigorous and aggressive competition between Inco and Falconbridge in the production and sale of High-Purity Nickel has benefitted these customers, as Inco and Falconbridge have competed directly in terms of price, quality, innovation and delivery terms. The acquisition as originally proposed would eliminate all competition between Inco and Falconbridge, reduce the number of significant worldwide suppliers of High-Purity Nickel from three to two, and substantially increase the likelihood that Inco would unilaterally raise the price of High-Purity Nickel to a significant number of customers.

The Complaint also alleges that the merged firm would have the ability to increase prices to certain customers of High-Purity Nickel that must purchase High-Purity Nickel because they use it in super alloys used for safety-critical. applications, even though other customers purchase High-Purity Nickel for different uses and can often substitute non-High-Purity Nickel. The combined Inco and Falconbridge would be able to determine their High-Purity Nickel customers' end-uses and identify which customers are purchasing High-Purity Nickel specifically for super alloys used for safety-critical applications. They could, therefore, charge customers that are purchasing High-Purity Nickel for super alloys used for safety-critical applications a higher price than customers that are purchasing High-Purity Nickel for other uses.

Successful entry or expansion by another firm into the development, manufacture, and sale of High-Purity Nickel would be difficult, time-consuming, and costly. As alleged in the Complaint, companies not currently producing nickel of any kind would require roughly three to five years and the expenditure of at least $100 million to build a refinery to produce finished nickel product, and it would require even greater expenditures to enter the High-Purity Nickel market. A new entrant in the High-Purity Nickel market must invest in additional equipment and processes to extract sufficient undesirable trace elements to produce the High-Purity Nickel required by makers of super alloys used for safety-critical applications. Further, if not vertically integrated, the new entrant also must secure nickel feed sources of sufficient quality needed to make High-Purity Nickel. The United States investigated whether nickel producers not currently capable of producing High-Purity Nickel could easily enter the High-Purity Nickel market. The investigation concluded, however, that such producers would require an incremental investment of millions of dollars over several years to modify facilities and processes to become capable of producing High-Purity Nickel. A small but significant price increase in High-Purity Nickel would not be sufficient to induce these companies to invest the substantial time and money necessary to enter the High-Purity Nickel market. A new entrant in the High-Purity Nickel market also must be able to produce High-Purity Nickel in sufficient quantities, and with sufficiently consistent purity levels that customers could depend on it reliably to provide the High-Purity Nickel. Therefore, entry or expansion by any other firm into the High-Purity Nickel market will not be timely, likely, or sufficient to defeat an anticompetitive price increase that would result from Inco's acquisition of Falconbridge as originally proposed.

III. Explanation of the Proposed Final Judgment

The divestiture required by the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the market for High-Purity Nickel by establishing a new, independent, and economically viable competitor, which will include essentially all of the current nickel refining and marketing business of Falconbridge. This divestiture is designed to remedy the anticompetitive effects of the proposed transaction while preserving beneficial efficiencies that the parties anticipate achieving through the combination of the other businesses of Inco and Falconbridge. As discussed below, the proposed Final Judgment provides that LionOre shall be the Acquirer of the Divested Business. It also provides that the divestiture to LionOre must be accomplished in such a way as to demonstrate to the sole satisfaction of the United States that the Divested Business will remain viable and will remedy the competitive harm alleged in the Complaint. The divestiture must also be accomplished in a manner that satisfies the United States, in its sole discretion, that none of the terms of any agreement between LionOre and the defendants gives the defendants the ability unreasonably to raise LionOre's costs, lower LionOre's efficiency, or otherwise interfere in the ability of LionOre to compete effectively in the production and sale of High-Purity Nickel. The proposed Final Judgment also provides for continued, contractually guaranteed suitable refinery feeds (''Feedstock'') to Nikkelverk through the establishment and continuation of a Feedstock supply agreement between LionOre and the defendants, to supplement LionOre's own feedstock supplies.

A. Identification of LionOre as the Purchaser of the Divested Business

A number of considerations led the United States to specifically approve and designate LionOre as the entity to whom the Divested Business should be sold. In the course of its investigation, the United States determined that competition in the High-Purity Nickel market would be most effectively preserved if the divestiture of the Nikkelverk assets were made to a purchaser that possessed its own nickel feedstock sources, thus helping to ensure that Nikkelverk would have a secure and long-term source of supply. LionOre satisfies that criterion. The defendants identified LionOre as a potential purchaser of the Divested Business that satisfies this criterion, and the United States undertook an evaluation of LionOre and determined that its ownership of Nikkelverk would preserve vigorous competition in the High-Purity Nickel market. Additionally, the defendants and LionOre had agreed on the terms of the divestiture, and entered into a number of subordinate agreements that will help ensure that LionOre will be able to operate Nikkelverk successfully.

Given the parties' agreement with LionOre and the United States' determination that the divestiture to LionOre would resolve the competitive concerns, the United States drafted the proposed Final Judgment to order the sale. Under such circumstances, the United States' competitive concerns are often resolved by a ''fix-it-first'' remedy.[1] A fix-it-first remedy is a structural remedy that the parties implement and the United States accepts before a merger is consummated. In such a case, there is no need for the United States to file a Complaint to preserve competition. In this case, however, two aspects of the remedy led the United States to seek entry of a Final Judgment to ensure Court oversight of the defendants' fulfillment of their commitments. (Antitrust Division Policy Guide to Merger Remedies, Section IV.A; p. 28.) First, preservation of competition required not only that the Nikkelverk assets be divested, but that the defendants continue to supply feedstock to Nikkelverk for a number of years. (This part of the remedy is described in more detail in Section III.C. below.) Second, in order to expedite its purchase, LionOre will be issuing stock to Falconbridge, subject to the requirement that defendants sell within 150 days any shares of LionOre that it receives as partial payment for the sale of the Divested Business. To ensure compliance with these ongoing commitments, the United States determined that a traditional ''fix-it-first'' remedy would not be appropriate, and that it would be necessary to seek entry of the proposed Final Judgment.

Because this is not a traditional fix-it-first remedy, the United States also determined that the proposed Final Judgment should anticipate the possibility, however remote, that for some reason the sale to LionOre does not take place. Section V of the proposed Final Judgment therefore requires that, if the divestiture to LionOre does not occur in the manner called for in Section IV, a trustee will be appointed to sell the assets to an Alternative Acquirer. For the most part, the assets to be divested, and the Defendants' obligations regarding the divestiture, are the same whether the sale is made to LionOre under Section IV or an Alternative Acquirer under Section V. However, since, unlike LionOre, an Alternative Acquirer has not already entered into agreements with the defendants, the proposed Final Judgment gives the Alternative Acquirer the option to enter into such agreements, including the ability to choose among several options, as discussed below, regarding the manner in which third-party feedstocks will be secured.

B. Assets

The Divested Business as defined in the proposed Final Judgment means Falconbridge Nikkelverk A/S (the Nikkelverk Refinery in Norway), Falconbridge's three current-nickel marketing arms (Falconbridge, U.S., Inc.; Falconbridge Europe S.A.; and Falconbridge (Japan) Limited), Falconbridge International Limited (''FIL''), the Falconbridge subsidiary responsible for the current acquisition of feedstock from third parties, and related assets. The proposed Final Judgment includes a complete descriptive list of related divestiture assets designed to enable the Divested Business to compete vigorously.[2] In summary, the list of divested assets includes all tangible assets used in the development, production, servicing, and sale of the products currently made at the Nikkelverk Refinery (''Nikkelverk Refinery Products''); and all intangible assets that have been used exclusively or primarily in the development, production, servicing, and sale of products, including but not limited to all intellectual property, and trade names (including the product or trade name ''SuperElectro''). With respect to any other intangible assets that are used by the Divested Business and also have been used by Falconbridge's other businesses (i.e., the non-Divested Business), LionOre may obtain a non-exclusive, non-transferable, fully paid-up license for such intangible assets (including the use of the name ''Falconbridge''). In addition, the proposed Final Judgment requires Inco to provide information to LionOre about current employees to enable LionOre to make offers of employment. The defendants will not interfere with any negotiations by LionOre to employ any of Falconbridge's employees whose responsibilities include the research, development, production, operation, or sale of the products of the Divested Business, or procurement of Feedstock from third parties. As noted above, the defendants bear these obligations whether the sale is made to LionOre under Section IV, or to an Alternative Acquirer under Section V.

The United States is satisfied that LionOre possesses the incentive and capability to use the Divested Business to compete successfully in the High-Purity Nickel market. The proposed Final Judgment provides that the United States must also be satisfied that the manner in which the divestiture to LionOre is accomplished, and any agreements between the defendants and LionOre, do not interfere with the ability of LionOre to compete successfully in that market.

C. Feedstock Supply

As part of the divestiture. the proposed Final Judgment also addresses the potential need for LionOre to have reliable and sufficient Feedstock supply for the Divested Business. This is accomplished in three ways. First, Inco has entered into a supply agreement (''Supply Agreement'') with LionOre by which Inco commits to supply Feedstock, produced by Inco, to be used in operating the Nikkelverk Refinery. Second, Inco has agreed to divest to LionOre the Falconbridge group that is responsible, in part, for procuring feedstock for Nikkelverk from third parties along with existing third-party supply agreements. Third, as a miner and processor of nickel, including feedstock currently refined at Nikkelverk, LionOre has

[1] A fix-it-first remedy has several benefits, including quick and certain divestiture, removing the need for litigation, allowing the Antitrust Division to use its resources more efficiently, and saving society from incurring real costs. (Antitrust Division Policy Guide to Merger Remedies, Section IV.A, p. 27)

[2] The assets to be divested to an Alternative Acquirer, defined as the Alternative Divested Business, are the same as those to be divested to LionOre, except that FIL is not included. The proposed Final Judgment gives the Alternative Acquirer the option of acquiring FlL, but does not require the acquisition; LionOre has already chosen to acquire FIL.

current and long-term access to feedstock of its own.

Under the Supply Agreement provision, it is the option of LionOre to procure from Inco the same or substantially the same quality and volume of Feedstock provided by Falconbridge to the Nikkelverk Refinery. Currently, Falconbridge provides about 70% of the Feedstock for the Nikkelverk Refinery from its own operations. At the option of LionOre, such Supply Agreement may have a term of up to ten years. The terms and conditions of the Supply Agreement must be commercially reasonable and designed to enable LionOre to compete effectively in the sale of High-Purity Nickel, and must be approved by the United States in its sole discretion. The proposed Final Judgment also provides that Inco give the United States thirty days notice before implementing any material change to the Supply Agreement related to the length of the Supply Agreement, to the volume and quality of the Feedstock, or price, and further provides that Inco in the performance of the Supply Agreement will take no action to interfere with LionOre's ability to compete.

Although the Antitrust Division generally disfavors long-term supply agreements, the Division has agreed to a long-term supply agreement here for three reasons. First, long-term supply agreements are common in this industry and may be necessary to ensure LionOre's ability to compete effectively. Second, the agreement is structured in a way that minimizes the potential risks normally associated with supply agreements. Third, the use of a supply agreement preserves substantial efficiencies the parties anticipate from the Inco/Falconbridge acquisition.

Providing LionOre the option of obtaining nickel feedstock from Inco through the Supply Agreement may be critical to its ability to compete effectively. Supply agreements of up to fifteen or twenty years are not uncommon in this industry because refineries are configured to process feedstock from specific sources, and a long-term relationship encourages and ensures long-term profitability as capital expenditures are made to the refinery to suit the feedstock. In this instance, moreover, a long-term supply agreement provides LionOre time to develop and adapt the Nikkelverk Refinery to new feedstock sources. LionOre will have incentives to make this transition, but the ten-year Supply Agreement ensures that sufficient time is available for LionOre to compete effectively while developing its own sources and establishing relationships with new third-party sources of feedstock. It is contemplated that LionOre will over time supply increasing portions of the Nikkelverk feedstock from its own mines and processing facilities, and will eventually be able to operate Nikkelverk without the need for any Inco feedstock. Until that occurs, however, it is important to ensure that Nikkelverk will have the same quality and quantity of feedstock that it currently obtains from Falconbridge.

The Supply Agreement between Inco and LionOre ensures that Inco will not be able to disadvantage the Nikkelverk Refinery through Feedstock pricing or quality, or by supply disruptions, and should not facilitate anticompetitive collusion between Inco and the Nikkelverk refinery. Moreover, key provisions of the agreement are expected to check the ability of Inco to abuse the supply relationship with LionOre. The price LionOre will pay Inco for Feedstock has been set through negotiations between Inco and LionOre, and any price changes will be linked directly to changes in the price for finished nickel as published independently by the London Metal Exchange. This wi1l further ensure that Inco, as required under the proposed Final Judgment, can take no pricing action under the Supply Agreement to interfere with or impede the ability of LionOre to compete effectively in the sale of High-Purity Nickel. Regarding the quality of Feedstock or other performance under the Supply Agreement, contract specifications for Feedstock are well-defined and chemically measurable, and inferior quality or performance will be easily detected and remedied.

The fact that High-Purity Nickel is a relatively small part of total Nikkelverk Refinery sales would make it difficult for Inco to harm competition in the High-Purity Nickel market by disrupting supply to Nikkelverk. If Inco cut a portion of feedstock supply, the Nikkelverk Refinery easily could maintain its output of High-Purity Nickel using its feedstock used for other nickel.

Nor will the Supply Agreement facilitate anticompetitive collusion between Inco and LionOre. There appear to be no structural reasons to anticipate that, in an industry where feedstock is generally destined for many end-uses of nickel, Inco could use the supply contract to coordinate with LionOre to unlawfully restrain trade in the High-Purity Nickel market. Although Inco will supply up to 70% of the Nikkelverk Refinery's feedstock, it will have incomplete information about the Nikkelverk Refinery's other sources of feedstock, and no information about its total production, product mix, and prices.[3]

The other sources of suitable feedstock for the new firm will be LionOre itself and third parties. Currently, third parties, including a company partly owned by LionOre, provide about 30% of the Nikkelverk Refinery's Feedstock pursuant to long term contracts with Falconbridge. Under the proposed Final Judgment, LionOre will acquire Falconbridge International Limited (''FIL''). FIL is a Barbados corporation and is the subsidiary of Falconbridge responsible, in part, for the current acquisition of Feedstock from third parties. By acquiring FIL, LionOre will also be acquiring the Third-Party Supply Agreements that have been made with FIL, which currently represent thirty percent of Nikkelverk' s total feedstock supply.

The Supply Agreement with Inco, the acquisition of FIL and its existing third-party feedstock, and LionOre's own substantial feedstock resources will ensure that LionOre has sufficient Feedstock at commercial terms to operate the Divested Business as a viable, ongoing business that can stand in the position of today's Falconbridge, and thereby compete effectively in the High-Purity Nickel market.

An Alternative Acquirer who purchases the Alternative Divested Business from the trustee will also have the option of entering into a Supply Agreement of up to ten years. The Alternative Acquirer will be a company that is in the metals mining or processing business and able to supply on a long-term basis, sufficient Feedstock to assure the United States, in its sole discretion, that the Nikkelverk Refinery will be a viable competitive business. An Alternative Acquirer will also have the option to obtain the right to third-party feedstock comparable to that provided by Falconbridge's interest in existing third-party supply agreements, although it would not be required to do so by acquiring FIL as part of the divested assets. It may instead choose to provide for third-party feedstock supply through the defendants' assigning existing third-party agreements to the Alternative Acquirer, or by the defendants entering into new agreements with the Alternative Acquirer to procure third-party feedstock.

Securing access to feedstock in the manner provided by the proposed Final Judgment is more advantageous than the divestiture of one or more mines that are currently used to supply Nikkelverk. The combination of the Inco and Falconbridge mines in Ontario is the source of a substantial portion of the efficiencies that the parties anticipate they will realize via the proposed acquisition. Therefore, it is appropriate to craft a remedy that preserves competition without unnecessarily disrupting potential efficiencies.

D. Timing of the Divestiture

In antitrust cases involving mergers in which the United States seeks a divestiture remedy, it requires completion of the divestiture within the shortest time period reasonable under the circumstances. In this case, because Inco and Falconbridge have significant sales and operations in Europe as well as the United States, the European Commission must also review Inco's proposed acquisition of Falconbridge. The proposed Final Judgment requires that, if Inco assumes control of Falconbridge, it must concurrently divest the Divested Business to LionOre as required by the proposed Final Judgment. During the period before Inco consummates the transaction with Falconbridge, a Hold Separate Stipulation and Order will preserve the assets to be divested, and require that Inco and Falconbridge continue to operate them as an independent competitor in the High-Purity Nickel market. During this time, Inco and Falconbridge are required to take the necessary steps to ensure that the assets remain an economically viable and ongoing business concern that is not influenced by the consummation of the acquisition, and otherwise maintain all competition during the pendency of the ordered divestiture.

The United States and the defendants fully expect that the divestiture to LionOre will take place. In the event that it does not, however, the proposed Final Judgment provides that a trustee will be appointed to

[3] It is also important to note that in this industry supply agreements are common and appear to work well. Indeed, Nikkelverk currently relies on such contracts for much of the feedstock that it uses.

sell the Alternative Divested Business. If the trustee has not effected a divestiture within six months of the trustee's appointment, the trustee shall file a report with the Court, and the Court shall thereafter enter whatever orders may be necessary to carry out the purposes of the proposed Final Judgment.

E. Financing

The Division has never favored seller financing of divestitures, because such arrangements create an avenue for the seller to influence the business decisions of the company to whom the assets have been sold. In some cases, it may also signal that the proposed purchaser has insufficient resources to be a viable competition.

In this case, although LionOre will finance the majority of its acquisition of the divested business on its own, the purchase agreement between Falconbridge and LionOre contemplates a partial payment to Falconbridge in the form of LionOre stock. The proposed Final Judgment provides, however, that any issuance of LionOre stock to Falconbridge must be strictly limited to no more than 19.99% or 49,118,057 shares, defendants are not permitted to exercise any voting or control rights associated with those shares, and, perhaps most importantly, defendants must divest themselves completely of those shares within 150 days of the divestiture of Nikkelverk to LionOre. Under these circumstances, the Division determined that there was no possibility that the dangers associated with seller financing could materialize, and that the short-term issuance of these shares to Falconbridge created no risk to competition. In addition, the Division determined that the short-term issuance of LionOre stock was necessitated by the proposed speed of the divestiture, to take place immediately upon the success of Inco's tender offer. The Division determined that with a longer divestiture period, LionOre was fully able to finance the transaction without resorting to the issuance of stock to Falconbridge.

V. Remedies Available to Potential Private Litigants

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

VI. Procedures Available for Modification of the Proposed Final Judgment

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

The APPA provides a period of at least sixty 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 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, 1401 H St., NW., Suite 3000, Antitrust Division, United States Department of Justice, Washington, DC 20530.

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

VII. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Inco's acquisition of Falconbridge. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of High-Purity Nickel as it existed prior to the proposed acquisition, and that such a remedy would achieve all or substantially all the relief the government would have obtained through litigation, but avoids the time and expense of a trial.

VIII. 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-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court shall consider:

(A) 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, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial. 15 U.S.C. 16(e)(1)(A) & (B). As the United States Court of Appeals for the District of Columbia Circuit 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).

''Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). Thus, in conducting this inquiry, ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).[4] Rather:

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

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

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); see also Microsoft, 56 F.3d at 1460–62. Courts have held that:

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

[4] See *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved [was] within the reaches of the public interest''). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed by the Department of Justice 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.

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

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[5]

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.'' *United States* v. *AT&T,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette*, 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60.

IX. 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: June 23, 2006.

Respectfully submitted,
Karen Phillips-Savoy,
Dando Cellini,
Jillian Charles,
James Foster,
Christine Hill,
Tara Shinnick,
Robert Wilder,
U.S. Department of Justice, Antitrust Division, Litigation II Section, Washington, DC 20530.

[5] Cf. BNS, 858 F.2d at 463 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); Gillette, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). See generally Microsoft, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the ''reaches of the public interest'').

[FR Doc. 06–6361 Filed 7–19–06; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. The McClatchy Company and Knight-Ridder Incorporated; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *The Clatchy Company and Knight-Ridder, Incorporated*, Case No. 1:06CV01175. On June 27, 2006, the United States filed a Complaint alleging that the proposed merger of The McClatchy Company and Knight-Ridder, Incorporated would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires defendant The McClatchy Company to divest the *Pioneer Press*, a daily newspaper distributed in the Minneapolis/St. Paul metropolitan area, along with certain tangible and intangible assets. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 215, 325 Seventh Street, NW., 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 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John R. Read, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530 (telephone: 202–307–0468).

J. Robert Kramer II,

Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 325 7th Street, NW.; Suite 300, Washington, DC 20530, Plaintiff, v. The McClatchy Company, 2100 Q Street, Sacramento, CA 95816, and Knight-Ridder, Incorporated, 50 West San Fernando Street, San Jose, CA 95113, Defendants

Case Number 1:06CV01175, *Judge:* Richard W. Roberts, *Deck Type:* Antitrust, *Date Stamp:* 06/27/2006.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to prevent the proposed merger of The McClatchy Company and Knight-Ridder, Incorporated. These two newspaper publishing companies are each other's primary competitor in the sale of local daily newspapers to readers in the Minneapolis/St. Paul metropolitan area in the state of Minnesota, and in the sale of advertising in such newspapers. The merger would substantially lessen competition and tend to create a monopoly in the publishing and distribution of newspapers in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

I. Jurisdiction and Venue

1. This action is filed by the United States pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to obtain equitable relief to prevent a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

2. Both defendants sell newspapers and sell advertising in such newspapers, a commercial activity that substantially affects and is in the flow of interstate commerce. The Court has jurisdiction over the subject matter of this action and jurisdiction over the parties pursuant to 15 U.S.C. 22, 25, and 26, and 28 U.S.C. 1331 and 1337.

3. Both defendants conduct business in the District of Columbia and have consented to the plaintiff's assertion that venue in this District is proper under 15 U.S.C. 22 and 28 U.S.C. 1391(c).

II. Defendants and the Proposed Merger

4. Defendant The McClatchy Company (''McClatchy'') is a Delaware corporation with its headquarters in Sacramento, California. McClatchy publishes twelve (12) daily newspapers throughout the United States. In the Minneapolis/St. Paul metropolitan area, McClatchy owns and operates the Star Tribune.

5. Defendant Knight-Ridder, Incorporated (''Knight-Ridder'') is a Florida corporation With its headquarters in San Jose, California. Knight-Ridder publishes thirty-two (32) daily newspapers throughout the United States. In the Minneapolis/St. Paul metropolitan area, Knight-Ridder owns and operates the St. Paul Pioneer Press.

6. On March 12, 2006, McClatchy and Knight-Ridder entered into an ''Agreement