intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, stating: "[n]othing 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). The language wrote into the statute is what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[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). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

VIII. Determinative Documents

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

Dated: January __ , 2010.

Respectfully submitted,

Frederick H. Parmenter,
U.S. Department of Justice, Antitrust Division, Lit II Section, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, 202–307–0620.

Certificate of Service

I, Frederick H. Parmenter, hereby certify that on January __ , 2010, caused a copy of the foregoing *Competitive Impact Statement* to be served upon defendants Stericycle, Inc., ATMW Acquisition Corp., MedServe, Inc., and Avista Capital Partners, L.P., and plaintiffs the State of Missouri and State of Nebraska by mailing the document electronically to the duly authorized legal representatives as follows:

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[FR Doc. 2010–1959 Filed 1–29–10; 8:45 am]

BILLING CODE 4410–11–P

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Cameron International Corp., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Cameron Int'l Corp., et al.,* No. 09–cv–02165–RMC. On November 17, 2009, the United States filed a Complaint alleging that the proposed acquisition by Cameron International Corporation ("Cameron") of NATCO Group Inc. ("NATCO") 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 Cameron to divest certain tangible and intangible assets related to the development, production, sale, repair, and service of customized electrostatic desalters used in the downstream oil refining industry, an option to purchase either Cameron's or NATCO's pilot plant, and a license to NATCO's intellectual property and other assets primarily used in or necessary to the development, production, sale, repair, or service of downstream refinery desalters that utilize dual frequency transformers and AC/DC power supplies.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

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 Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530 (telephone: 202–307–0924).

Patricia A. Brink,

Deputy Director of Operations and Civil Enforcement.

United States of America, Antitrust Division, 450 5th Street, NW., Suite 8700, Washington, DC 20530, Plaintiff, v. *Cameron International Corporation, 1333 West Loop South, Suite 1700, Houston, TX 77027,* and *NATCO Group Inc., 11210 Equity Drive, Suite 100, Houston, TX 77041,* Defendants.

Case No.: Case: 1:09–cv–02165.
Assigned To: Bates, John D.
Assign Date: 11/17/2009.
Description: Antitrust.

Complaint

The United States of America ("United States"), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against defendants Cameron International Corporation ("Cameron") and NATCO Group Inc. ("NATCO") to enjoin Cameron's proposed acquisition

of NATCO, to remedy the harm to competition caused by Cameron's acquisition of certain assets from Chicago Bridge & Iron N.V. ("CB&I"), and to obtain other equitable relief. United States complains and alleges as follows:

I. Nature of the Action

1. On June 1, 2009, Cameron and NATCO entered into an Agreement and Plan of Merger pursuant to which Cameron agreed to acquire NATCO in an all-stock transaction. On November 18, 2009, NATCO intends to hold a meeting for shareholders to vote on whether to approve the transaction.

2. Cameron is a worldwide provider of products, systems, and services used at or near oil or gas wells (upstream) and in refineries (downstream); of valves, auxiliary equipment, and flow measurement systems used in oil and gas drilling, production, transportation, and refining markets; and of compression products, systems, and services to the oil, gas, and process industries. Cameron is the leading U.S. supplier of customized electrostatic desalters used in the oil refining industry (hereafter, "refinery desalters").

3. NATCO is a worldwide provider of equipment, systems, and services used to separate oil, gas, and water within a production stream and to remove contaminants. It also sells equipment used in downstream refinery and petrochemical facilities around the world to improve processing and separation. After Cameron, NATCO is the next most significant U.S. supplier of refinery desalters.

4. In the United States, Cameron's proposed acquisition of NATCO would reduce from three to two the number of companies that bid on refinery desalter projects and would give Cameron virtual monopoly power in the U.S. refinery desalter market. Unless the proposed acquisition is enjoined, competition for the supply of refinery desalters will be substantially reduced in the United States. The proposed acquisition likely would result in higher prices, less favorable terms of sale, and less innovation in the U.S. refinery desalter market.

5. On October 7, 2005, Cameron, through Petreco International, Inc., and CB&I, through Howe Baker Engineers Ltd. ("Howe Baker"), entered into an agreement for the sale of assets of the desalting, dehydration, distillate treating, and gas oil separation equipment business of Howe Baker (hereafter, the "Howe Baker assets") for $8.25 million. Cameron acquired the Howe Baker assets in late 2005.

6. In the United States, Cameron's acquisition of the Howe Baker assets reduced from two to one the number of sellers of refinery desalters in the United States and created a monopoly in the U.S. refinery desalter market. After Cameron acquired the Howe Baker assets, NATCO entered the market for refinery desalters.

7. The United States brings this action to prevent the proposed acquisition of NATCO by Cameron because that acquisition would substantially lessen competition in the development, production, and sale of refinery desalters in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18 and to remedy the loss of competition caused by Cameron's acquisition of the Howe Baker assets because that acquisition substantially lessened competition in the development, production, and sale of refinery desalters in the United States also in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. The Parties

8. Cameron is incorporated in Delaware and has its principal place of business in Houston, Texas. In 2008, Cameron reported total sales of approximately $5.85 billion, and its sales of refinery desalters in the United States were approximately $10.2 million in 2008.

9. NATCO also is incorporated in Delaware and has its principal place of business in Houston, Texas. NATCO reported 2008 revenues of $657 million, and its sales of refinery desalters in the United States were approximately $10.55 million.

III. Jurisdiction and Venue

10. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. 4 and 25, as amended, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

11. Defendants develop, produce, and sell refinery desalters and other products in the flow of interstate commerce. Defendants' activities in the development, production, and sale of these products substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

12. Defendants have consented to venue and personal jurisdiction in this judicial district.

IV. Trade and Commerce

A. The Relevant Product Market

13. When oil is produced "upstream" at a production well head, it may be mixed with water, dissolved salt, and other impurities including solids. Upstream, a variety of separation equipment is used to remove such impurities from the oil, and electrostatic separation equipment sometimes is required to meet transportation specifications. If electrostatic separation equipment is required upstream, water typically is specified to be removed to a volume of about one percent. Outside of the United States, producers sometimes also must use electrostatic equipment upstream to remove salt to levels of approximately two to ten pounds per thousand barrels prior to transport, but more often salt is not removed upstream.

14. In the United States, refinery desalters are used to remove salt from crude oil "downstream" at the oil refining stage of production. Prior to introduction of the crude into the refinery desalter, fresh water is mixed into the incoming crude at a volume of about three to ten percent in order to dissolve the salt. Separation of the resulting salt-water mixture from the oil results in removal of salt to levels of no more than two pounds of salt per thousand barrels, and often significantly less, and of water to levels of approximately 0.2 to 0.5 percent by volume. Desalting is a critical initial stage of the refining process.

15. Compared to upstream electrostatic separation equipment, refinery desalters remove water and salt to lower specified levels and must produce cleaner effluent water. Refinery desalters handle higher oil volumes than upstream electrostatic separation equipment because refinery capacity typically is much greater than output at a single production wellhead. Unlike most upstream electrostatic separation equipment, refinery desalters often must remove solids; must handle oil that has been pre-heated to approximately 230 to 300 degrees, which changes the electrical properties of oil; must handle water droplets of a much smaller size and tighter emulsions of oil and water; and must be able to perform effectively with blends of incoming crudes and changing feedstocks. Both upstream electrostatic separation equipment and refinery desalters are used in conjunction with chemicals that enhance their performance, but optimizing chemical usage for refinery desalters is much more difficult than optimizing chemical usage upstream.

16. Refinery desalters consist of a steel pressure vessel with an external transformer and controller as well as a set of "internals" that include electrodes. Inside the desalter pressure vessel, high-voltage electrical charges cause water droplets containing dissolved salt to coalesce into larger and larger droplets. As water droplets reach a critical size, they sink to the bottom of the vessel because water is more dense than oil. Oil is removed from the top of the vessel for further processing in the refinery; waste water is removed from the vessel bottom. Solids that sink to the bottom of the vessel also are removed. When incoming oil has especially high salt content and/or is particularly dense, refineries may have to use two successive refinery desalter units (or, in rare cases, three units) to meet their salt removal requirements.

17. Refineries vary widely in processing capacity. In addition, the characteristics of feedstock oil purchased by refineries vary across refineries and within refineries over time in terms of density, the blends of crudes mixed together, electrical properties, salt content, and the amount of other impurities. Refineries also differ in the levels of salt and entrained water that they specify may remain in the oil. As a result, refinery desalters are custom-designed to be able to remove salt and water from different crude feedstocks to different customer-specified levels, and to handle different customer-specified volumes. Further, some customers demanding refinery desalters require only new internals to replace worn-out internals, to accommodate a capacity expansion, or to handle a new type of crude feedstock, whereas other customers require a complete system including the pressure vessel and internals.

18. Chemicals frequently are added to enhance the separation of oil from the water containing salt in refinery desalters. However, chemicals alone cannot remove salt to desired levels, and the cost of adding chemicals to achieve a given level of salt removal is significantly higher than the cost of purchasing and operating a refinery desalter to achieve a similar level of salt removal.

19. Refinery desalters are sold pursuant to bids, which are based on technical specifications from the customer and include commercial terms. Suppliers of refinery desalters use patented and/or proprietary technology and know-how—including expertise gained through years or decades of trial and error and experience with prior installations—to custom-design refinery desalters that satisfy technical specifications.

20. Refineries (and the firms that they consult) evaluate competing bids based on their compliance with technical specifications and commercial considerations such as price, delivery schedule, and terms of sale. The combined technical and commercial needs of the customer differ for each refinery desalter project.

21. A small but significant post-acquisition increase in refinery desalter prices would not cause customers to substitute upstream electrostatic equipment (or any other type of equipment) or to utilize a chemicals-only solution with sufficient frequency so as to make such price increases unprofitable. Accordingly, refinery desalters are a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act.

B. The Relevant Geographic Market

22. Those competitors that could constrain Cameron from raising prices on bids for refinery desalters in the United States typically are suppliers with a substantial physical United States presence, including sales, technical, and support personnel and parts distribution.

23. Refineries prefer such suppliers because, during the design, bid, execution, and installation phases of a desalter project, customers interact with suppliers to address design recommendations and changes, track construction progress, and ensure successful installation. Further, customers purchasing refinery desalters can avoid costly delays or downtime in refinery operations by selecting a desalter supplier that is able to respond to requests for service or replacement parts during the operating life of the desalter.

24. A small but significant increase in the price of refinery desalters would not cause a sufficient number of customers in the United States to turn to manufacturers of refinery desalters that do not have a substantial physical presence in the United States so as to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Competitive Effects

1. The Proposed Acquisition of NATCO by Cameron

25. The proposed acquisition of NATCO by Cameron would substantially lessen competition in the U.S. refinery desalter market. The competition between Cameron and NATCO in the development, production, and sale of refinery desalters has benefitted customers. Cameron and NATCO compete directly on price, terms of sale, and technology. For many oil refineries, NATCO is the preferred alternative to Cameron. The proposed acquisition would eliminate Cameron's most significant competitor in the sale of refinery desalters in the United States.

26. Only three competitors, including Cameron and NATCO, have sold refinery desalters in the United States since 2007. The third company often does not submit bids on U.S. refinery desalter projects and has sold just one refinery desalter in the United States, which occurred in 2008.

27. Most desalter sales are competitive, with the customer seeking alternative bidders. When sales are competitive, each bidder may be aware of its competitors, but it does not know the technical or commercial terms of its competitors' bids prior to submitting its own bid. That uncertainty restrains each bidder's pricing.

28. Cameron's acquisition of NATCO would eliminate many customers' preferred alternative to Cameron and reduce from three to two—or for some bids, reduce from two to one—the number of bidders. Post-acquisition, Cameron would gain the incentive and ability to profitably raise its bid prices significantly above pre-acquisition levels.

29. The response of the remaining refinery desalter manufacturer would not be sufficient to constrain a unilateral exercise of market power by Cameron after the acquisition. Cameron would be aware that many customers strongly prefer it as a supplier, allowing it to raise prices above pre-acquisition levels. The sole remaining bidder would have an incentive to increase its bid price in response. Thus, the acquisition of NATCO by Cameron creates an incentive for Cameron and the remaining bidder to bid a higher amount than each otherwise would if NATCO were still a competitor. Likewise, elimination of NATCO as a competitor would reduce the remaining bidders' incentives to offer quick delivery or other terms of sale attractive to customers and to invest in certain technology improvements, such as NATCO's dual frequency technology.

30. Therefore, the proposed acquisition would substantially lessen competition in the development, production, and sale of refinery desalters in the United States and lead to higher prices, less favorable terms of sale, and less innovation in the refinery

desalter market, in violation of Section 7 of the Clayton Act.

2. The Acquisition of the Howe Baker Assets

31. When Cameron acquired the Howe Baker assets in 2005, Cameron accounted for approximately 75 percent of refinery desalter sales in the United States, and CB&I accounted for approximately 25 percent of such sales, between 2003 and 2005. Through its purchase of the Howe Baker assets, Cameron willfully acquired a monopoly in refinery desalter sales.

32. The acquisition of the Howe Baker assets by Cameron substantially lessened competition in the U.S. refinery desalter market. Competition between Cameron and CB&I in the development, production, and sale of refinery desalters benefitted customers. Cameron and CB&I competed directly on price, terms of sale, and technology. The acquisition eliminated Cameron's then only competitor in the sale of refinery desalters in the United States and gave Cameron the market power to raise prices, offer less favorable terms of sale, and invest less in technology.

33. Through its purchase of the Howe Baker assets, Cameron substantially lessened competition and willfully acquired a monopoly in the development, production, and sale of refinery desalters in the United States, in violation of Section 7 of the Clayton Act.

V. Entry

34. Substantial, timely entry of additional competitors is unlikely and, therefore, will not prevent the harm to competition caused by elimination of NATCO as a bidder.

35. A small number of companies have sold refinery desalters outside the United States, but these companies have no relevant, substantial U.S. presence. Given the small size of the U.S. refinery desalter market, they are unlikely to invest in establishing the personnel and parts distribution presence required to compete effectively in the United States. When NATCO entered the U.S. refinery desalter market in 2007, it had made numerous sales of refinery desalters outside the United States. However, NATCO was uniquely motivated and well-situated to enter the market because of its status as a worldwide leader in electrostatic technology and because it already had a relevant, substantial U.S. presence in other products.

36. Firms attempting to enter into the development, production, and sale of refinery desalters in the United States face a combination of barriers to entry. The technology and expertise involved in developing and producing refinery desalters capable of handling U.S. crude feedstocks is a significant entry barrier. To develop the technical expertise necessary to produce a reliable refinery desalter, it is not sufficient that a producer be successful in meeting customer specifications for separation equipment sold upstream at the production wellhead. For many years, NATCO has been the leading supplier of electrostatic dehydrators sold upstream. Nonetheless, NATCO technical personnel have spent approximately three years improving their understanding of the nuances of refinery desalters to meet the needs of U.S. customers.

37. The crude feedstock purchased by U.S. refineries has grown heavier and more difficult to process over time as lighter crude sources are being depleted. In recent years, several U.S. refinery customers have needed to upgrade existing refining desalters in order to process heavier feedstocks than the refinery desalters were initially designed to handle. Similar upgrades are likely to be a source of refinery desalter demand in the United States in the years ahead. As a result, NATCO has invested in research to develop and improve technologies specifically aimed at processing heavy crude oils. To compete effectively in the U.S. refinery desalter market, a supplier must offer a product capable of processing heavy crude oils, which contributes to the technical and expertise-related barrier to entry facing potential entrants.

38. Establishing a reputation for successful performance and/or gaining customer confidence is a second significant barrier to entry. If a refinery desalter is not performing up to specification in terms of removing salt and water from oil, removing oil from produced water, or removing solids, refinery equipment can be damaged, a customer may run afoul of environmental waste water regulations, and refinery operations may even need to be shut down to carry out repairs. As a result of these costly consequences of poor refinery desalter performance, U.S. oil refineries are reluctant to purchase a refinery desalter from a supplier that does not have either a reputation and track record of successful performance on crude oil comparable to the crude oil the customer expects to treat or a significant new technology that the customer is satisfied will work on its expected crude.

39. Establishing a reputation for successful performance and/or gaining customer confidence in a significant new technology can take years and the expenditure of substantial sunk costs. Since 2007, NATCO has had several employees and consultants partly or fully devoted to developing relationships with U.S. refineries. It has also invested significant funds in developing and improving its latest electrostatic technology and making other improvements related to refinery desalters.

40. Financial scale is an additional barrier to entry. Customers prefer suppliers able to stand financially behind a multi-million dollar order, and to respond quickly and effectively to a request for service or parts and to meet warrantee obligations years after the initial sale. A supplier of refinery desalters therefore must be able to prove that it is financially sound and has sales far in excess of the price of a refinery desalter.

41. For these reasons, entry or expansion by any other firm into the U.S. refinery desalter market would not be timely, likely, and sufficient to defeat the substantial lessening of competition that would result if Cameron acquires NATCO.

VI. Violations Alleged

First Cause of Action

Violation of Section 7 of the Clayton Act: Proposed Acquisition of NATCO

42. The United States incorporates the allegations of paragraphs 1 through 41 above.

43. The proposed acquisition of NATCO by Cameron 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 between Cameron and NATCO in the development, production, and sale of refinery desalters in the United States will be eliminated;

b. Competition generally in the development, production, and sale of refinery desalters in the United States will be substantially lessened; and

c. Prices for refinery desalters in the United States likely will increase, the terms of sale to customers in the United States likely will be less favorable, and innovation relating to refinery desalters in the United States likely will decline.

Second Cause of Action

Violation of Section 7 of the Clayton Act: Acquisition of Howe Baker Assets

45. The United States incorporates the allegations of paragraphs 1 through 41 above.

46. The acquisition of the Howe Baker assets by Cameron substantially lessened competition and created a monopoly in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

47. The transaction had the following anticompetitive effects, among others:

a. Actual and potential competition between Cameron and CB&I in the development, production, and sale of refinery desalters in the United States was eliminated; and

b. Competition generally in the development, production, and sale of refinery desalters in the United States was substantially lessened, and Cameron acquired a monopoly.

VII. Request for Relief

48. Plaintiff requests that this Court:

a. Adjudge and decree Cameron's proposed acquisition of NATCO to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

b. Adjudge and decree Cameron's acquisition of the Howe Baker assets to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

c. Preliminarily and permanently enjoin and restrain defendants and all persons acting on their behalf from consummating the proposed acquisition of NATCO by Cameron or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Cameron with the operations of NATCO;

d. Compel Cameron to divest the Howe Baker assets and to take any further actions necessary to restore the U.S. refinery desalter market to the competitive position that existed prior to the acquisition of the Howe Baker assets by Cameron;

e. Award the United States its costs for this action; and

f. award the United States such other and further relief as the Court deems just and proper.

Dated: November 17, 2009.

Respectfully submitted for Plaintiff United States of America.

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Assistant Attorney General.

Molly S. Boast,
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Patricia A. Brink,
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United States of America, Plaintiff, v. *Cameron International Corporation,* and *NATCO Group Inc.,* Defendants.

Case No.: 1:09–cv–02165.
Deck Type: Antitrust.
Date Stamp: November 17, 2009.
Judge: Bates, John D.

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on November 17, 2009, the United States and defendants, Cameron International Corporation ("Cameron") and NATCO Group Inc. ("NATCO"), 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, the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that the divestitures 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, 15 U.S.C. 18, as amended.

II. Definitions

As used in this Final Judgment:

A. "Acquirer" or "Acquirers" mean the entity or entities to whom defendants shall divest the Divestiture Assets.

B. "Cameron" means defendant Cameron International Corporation, a Delaware corporation with its headquarters in Houston, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and all of their directors, officers, managers, agents, and employees.

C. "NATCO" means defendant NATCO Group Inc., a Delaware corporation with its headquarters in Houston, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and all of their directors, officers, managers, agents, and employees.

D. "Closing Date" means the date upon which each transfer of the Divestiture Assets from the defendants to the Acquirer or Acquirers takes place.

E. "Dual Frequency Products" means downstream refinery desalters that utilize dual frequency transformers and AC/DC power supplies.

F. "Dual Frequency Technology" means any and all intellectual property, data, drawings, ideas, designs, concepts, know-how, procedures, processes, and any other assets primarily used in or necessary to the development, production, sale, repair, or service of Dual Frequency Products owned or controlled by defendants as of the time of the Closing Date.

G. "EDGE Business" means the desalter and dehydrator assets purchased by Petreco International, Inc. from Howe Baker Engineers Ltd., a wholly owned subsidiary of Chicago Bridge & Iron N.V., pursuant to an Asset Purchase Agreement dated October 7, 2005, and any additions or improvements to such assets made through the Closing Date. The EDGE Business includes all inventory specifically related to the EDGE Business as of the Closing Date.

H. "Pilot plant" means equipment used to evaluate and simulate performance of desalter technologies on oil samples.

I. "Refinery desalter" means customized electrostatic desalters used in the downstream oil refining industry.

J. "Divestiture Assets" means:

1. All tangible assets primarily used in the EDGE Business, including, but not limited to, the inventory of spare parts for the EDGE Business; engineering drawings and documents related to all prior sales; all licenses, permits, and authorizations issued by any governmental organization relating to the EDGE Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating principally to the EDGE Business, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the EDGE Business;

2. All intangible assets primarily used in the EDGE Business, including, but not limited to, the EDGE Desalter Installation Database and any accompanying design information; the unregistered trademarks "Edge" and "EDGE"; all data concerning installations or pilot testing; the EDGE Desalter Sizing Software Program and related documentation; any other intellectual property including patents and patent applications, licenses and sublicenses, copyrights, trademarks, trade names, service marks, service names, slogans, domain names, logos, and trade dress related to the EDGE Business; any other technical information, 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, manuals and technical information used principally for the EDGE Business; all repair, performance, financial, and operational records, and all other records relating to the EDGE Business; and all research data concerning historic and current research and development efforts relating to the EDGE Business, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments;

3. At the Acquirer's option, Cameron's pilot plant located in Houston, Texas or NATCO's pilot plant located in Tulsa, Oklahoma;

4. A fully paid-up, non-exclusive, worldwide, non-sublicensable (except to subcontractors of the Acquirer solely for the purpose of having Dual Frequency Products made for the Acquirer) license to the Dual Frequency Technology for the development, production, sale, repair, and service of refinery desalters. This license shall be transferable two years after divestiture of the Divestiture Assets. Defendants shall retain the right and discretion to file and prosecute patent applications and maintain patents in the United States relating to any Dual Frequency Technology developed by defendants prior to the Closing Date, and any such patent shall be considered part of the Dual Frequency Technology and be licensed to the Acquirer. Any improvements or modifications to the Dual Frequency Technology (whether or not patentable) developed by either the defendants or the Acquirer shall be owned solely by such party.

III. Applicability

A. This Final Judgment applies to Cameron and NATCO, as defined above, and all other persons in active concert or participation with either of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and V of this Final Judgment, defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser or purchasers to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer or Acquirers of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer or Acquirers acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirers or Acquirers and the United States information relating to the personnel involved in the development, production, sale, repair, and service of refinery desalters to enable them to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer or Acquirers to employ any defendant employee whose primary responsibility is development, production, sale, repair, and service of refinery desalters.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities used for the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer or Acquirers that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. At the option of the Acquirer or Acquirers, defendants shall enter into a transition services agreement sufficient to meet all or part of the Acquirers' needs for assistance in matters relating to the utilization of the Divestiture Assets (including, but not limited to, the use of EDGE Desalter Sizing Software Program and the interpretation of test and field data) for a period of at least six (6) months. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to the market value of the expertise of the personnel providing any needed assistance.

H. Defendants shall warrant to the Acquirer or Acquirers that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other

permits relating to the operation of the Divestiture Assets.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer or Acquirers as part of viable, ongoing businesses for the development, production, sale, repair, and service of refinery desalters. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that the Divestiture Assets listed in paragraphs II(J)(1) and (2), above, are divested to the same Acquirer, that all the assets listed in paragraphs II(J)(3) and (4), above, are divested to the same Acquirer, and that in each instance the divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

1. Shall remedy the harm alleged in the Complaint;

2. Shall be made to an Acquirer or Acquirers that, in the United States's sole judgment, have the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively for the development, production, sale, repair, and service of refinery desalters; and

3. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer or Acquirers and defendants gives defendants the ability unreasonably to raise the Acquirers' costs, to lower the Acquirers' efficiency, or otherwise to interfere in the ability of the Acquirers to compete effectively.

V. Appointment of Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the sale of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to one or more Acquirers 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 IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) 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.

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

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

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. 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 reasonable 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.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) 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 United States which 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, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify the defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, 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 Acquirer or Acquirers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer or Acquirers, and any other potential

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 thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the Acquirer or Acquirers or any proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee 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(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate Stipulation and Order

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

IX. 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 V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, 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 Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on the information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division ("United States"), including consultants and other persons retained by the United States, shall, upon written request of an 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 the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, 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 an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or responses to written interrogatories, 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)(1)(G) 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)(1)(G) 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. Notification of Future Transactions

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), defendants, without providing advance notification to the Antitrust Division, shall not directly or indirectly acquire any assets of or interest, including any financial, security, loan, equity or management interest, in any entity that has sold, at any time in the three years prior to the Closing Date, a downstream refinery desalter that was used in or purchased by a customer in the United States during the term of this Final Judgment.

Such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5

through 9 of the instructions must be provided only about refinery desalters. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XII. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIII. 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.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XV. 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's 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.

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

United States District Judge.

United States of America, Plaintiff, v. *Cameron International Corporation,* and *NATCO Group Inc.,* Defendants.

Case No.: 09–cv–02165.
Judge: Hon. Rosemary M. Collyer.
Deck Type: Antitrust.
Date Stamp: Filed 1/20/2010.

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.

I. Nature and Purpose of the Proceeding

Defendants Cameron International Corporation (“Cameron”) and NATCO Group Inc. (“NATCO”) entered into an Agreement and Plan of Merger, dated June 1, 2009, pursuant to which Cameron agreed to acquire NATCO in an all-stock transaction. On November 18, 2009, NATCO shareholders voted to approve the transaction and defendants closed the transaction that same day.

The United States filed a civil antitrust Complaint on November 17, 2009, seeking to enjoin Cameron's acquisition of NATCO. The Complaint alleged that the acquisition likely would substantially lessen competition for customized electrostatic desalters used in the oil refining industry (hereinafter, “refinery desalters”) in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. That loss of competition likely would result in higher prices, less favorable terms of sale, and less innovation in the U.S. refinery desalter market.

The United States's Complaint also sought to remedy the harm resulting from Cameron's acquisition of certain refinery desalter assets from Chicago Bridge & Iron N.V. (“CB&I”) in 2005. In that acquisition, Cameron, through Petreco International, Inc., acquired the desalting, dehydration, distallate treating, and gas oil separation equipment business of Howe Baker Engineers Ltd., which was a wholly owned subsidiary of CB&I (hereinafter, the “Howe Baker assets”). These assets primarily comprise the intellectual property and data necessary to manufacture desalters and dehydrators utilizing Howe Baker's Enhanced Deep-Grid Electrical (“EDGE”) technology, and the trademark to the EDGE name. Cameron's acquisition of the Howe Baker assets reduced from two to one the number of sellers of refinery desalters in the U.S. market at that time. The Complaint alleged that the acquisition substantially lessened competition for refinery desalters in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. That loss of competition gave Cameron the power to raise prices, offer less favorable terms of sale, and invest less in technology in the U.S. refinery desalter market.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order (“Hold Separate”) and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of Cameron's proposed acquisition of NATCO and Cameron's consummated acquisition of the Howe Baker assets. Under the proposed Final Judgment, which is explained more fully below, Cameron is required to divest the Howe Baker desalter and dehydrator assets that it purchased from CB&I, as well as any additions to or improvements of those assets. In addition, Cameron is required to divest a fully paid-up, non-exclusive, worldwide, irrevocable license to NATCO's refinery desalter technology that utilizes dual frequency transformers and AC/DC power supplies (hereinafter, “dual frequency technology”). Finally, Cameron is required to divest an option to purchase either Cameron's or NATCO's pilot plant, which is equipment used to evaluate and simulate performance of desalter technologies on oil samples. Under the terms of the Hold Separate, Cameron and NATCO will take certain steps to ensure that the Howe Baker assets and the pilot plants are fully maintained in operable condition and that Cameron and NATCO maintain and adhere to normal repair and maintenance schedules for these assets.

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 Final Judgment and to punish violations thereof.

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

A. The Defendants

Cameron is a worldwide provider of equipment used at or near oil or gas wells and in refineries. It also manufactures valves and flow measurement systems used in oil and gas drilling, production, transportation,

and refining, as well as compression products, systems, and services to the oil and gas industries. In 2008, Cameron reported total sales of approximately $5.85 billion. Cameron is the leading U.S. supplier of refinery desalters. Its sales of refinery desalters in the United States were approximately $10.2 million in 2008.

NATCO is a worldwide provider of equipment used to separate oil, gas, and water within a production stream and to remove contaminants. It also sells equipment used in refinery and petrochemical facilities around the world to improve processing and separation. NATCO reported revenues of $657 million in 2008. After Cameron, NATCO is the next most significant U.S. supplier of refinery desalters. NATCO's sales of refinery desalters in the United States were approximately $10.55 million in 2008.

B. The Competitive Effects of the Acquisitions on the U.S. Market for Refinery Desalters

1. Relevant Markets

Desalting is a critical initial stage of the refining process. Refinery desalters are used to remove salt from crude oil "downstream," which is the oil refining stage of production.

Refinery desalters consist of a steel pressure vessel with an external transformer and controller and a set of "internals," consisting primarily of electrostatic separation grids. In a refinery desalter, fresh water is mixed into the incoming crude oil to dissolve various salts. Inside the pressure vessel, high-voltage electrical charges cause water droplets containing dissolved salts to coalesce into larger droplets. As the water droplets reach a critical size, they sink to the bottom of the vessel. Oil is removed from the top of the vessel for further processing in the refinery and waste water is removed from the vessel bottom. Solids that sink to the bottom of the vessel also are removed.

Similarly, when oil is removed "upstream" from a production wellhead, it may be mixed with water, dissolved salts, and other impurities, including solids. A variety of separation equipment is used at the wellhead to remove these impurities from the oil. At times, electrostatic separation equipment is required to meet the specifications that are necessary for the oil to be transported away from the wellhead, with water typically removed to a volume of about one percent. Often there are no specifications for salt removal at the wellhead.

Compared to the electrostatic separation equipment used at the wellhead, refinery desalters remove water and salt to lower specified levels. For example, in a refinery desalter, separation of the water from the oil results in the removal of salt to levels of no more than two pounds of salt per thousand barrels, and often significantly less, and of water to levels of approximately 0.2 to 0.5 percent by volume. Refinery desalters must also produce cleaner effluent water than electrostatic separation equipment used at the wellhead.

Further, refinery desalters are more complex than electrostatic separation equipment used at the wellhead. For example, upstream electrostatic separation equipment removes water from only one kind of crude oil and the properties of that crude oil are known when purchasing the equipment. In contrast, refinery desalters are designed to be able to remove salt and water from different blends of crude oils. The different crude oils coming into refineries typically vary in density, the blends of crudes mixed together, electrical properties, salt content, and the amount of other impurities. In addition, refinery desalters handle higher oil volumes than electrostatic separation equipment used at the wellhead because refinery capacity is often much greater than output at a single production wellhead. And, unlike most electrostatic separation equipment used at the wellhead, refinery desalters often must: (1) Remove solids; (2) handle oil that has been pre-heated to approximately 230 to 300 degrees, which changes the electrical properties of oil; (3) handle water droplets of a much smaller size and tighter emulsions of oil and water; and (4) be able to perform effectively with changing feedstock crude oil. Finally, although electrostatic separation equipment used at the wellhead and refinery desalters each use chemicals that enhance their performance, optimizing the use of chemicals in a refinery desalter is far more difficult than optimizing their use at the wellhead.

A small but significant increase in the price of refinery desalters would not cause customers to substitute electrostatic separation equipment used at the wellhead, or any other type of equipment or chemicals, with sufficient frequency so as to make such a price increase unprofitable. Accordingly, the United States alleged that refinery desalters are a relevant product market within the meaning of Section 7 of the Clayton Act.

Refinery desalters are sold pursuant to bids, which are based on technical specifications from the customer and include commercial terms. Suppliers of refinery desalters use patented or proprietary technology and know-how—including expertise gained through years of trial and error and experience with prior installations—to custom-design refinery desalters that satisfy customer specifications. Refineries evaluate the competing bids based on compliance with technical specifications and commercial considerations such as price, delivery schedule, and terms of sale. The exact technical and commercial needs of the customer differ for each refinery desalter project.

Those competitors that could constrain Cameron from raising prices on bids for refinery desalters in the United States typically are suppliers with a substantial U.S. presence, including sales, technical, and support personnel and parts distribution within the United States. Refineries prefer such suppliers because, during the design, bid, execution, and installation phases of a project, customers interact with suppliers to address design recommendations and changes, track construction progress, and ensure successful installation. Further, customers purchasing refinery desalters can avoid costly delays or downtime in refinery operations by selecting a desalter supplier that is able to respond quickly and effectively to requests for service or replacement parts during the operating life of the desalter.

A small but significant increase in the price of refinery desalters in the United States would not cause a sufficient number of customers in the United States to turn to manufacturers of refinery desalters that do not have a substantial physical presence in the United States so as to make such a price increase unprofitable. Accordingly, the United States alleged that the United States is a relevant geographic market with the meaning of Section 7 of the Clayton Act.

2. Anticompetitive Effects

The proposed acquisition of NATCO by Cameron would substantially lessen competition in the U.S. refinery desalter market. Most new desalter sales in the United States result from competitive bids and customers typically seek alternative bidders. When the bidding is competitive, each bidder may be aware of its competitors, but does not know the technical or commercial terms of its competitors' bids prior to submitting its own bid. That uncertainty likely restrains each bidder's pricing.

Currently only three competitors—including Cameron and NATCO—have sold refinery desalters in the United States since 2007. The third competitor

often does not submit bids on U.S. refinery desalter projects and has sold only one refinery desalter in the United States. Cameron's acquisition of NATCO therefore would reduce the current number of bidders on U.S. refinery desalter projects from three to two or, when the third competitor does not or cannot bid, from two to one. It would also eliminate many customers' preferred alternative to Cameron. As a result, after acquiring NATCO, Cameron would gain the incentive and ability to profitably raise its bid prices significantly above the level they would be absent the acquisition. Post-acquisition, Cameron would be aware that many customers strongly prefer it as a supplier to the sole remaining competitor. The remaining refinery desalter manufacturer cannot fully constrain a unilateral exercise of market power by Cameron, and it would have the incentive to increase its bid price in response to such an exercise of market power. The elimination of NATCO as a competitor would also reduce the remaining bidder's incentive to offer quick delivery or other terms of sale attractive to customers and to invest in certain technology improvements, such as NATCO's innovative dual frequency technology.

Entry or expansion by any other firm into the U.S. refinery desalter market likely would not prevent the substantial lessening of competition that would likely result if Cameron acquired NATCO. Firms attempting to enter into the development, production, and sale of refinery desalters in the United States face several barriers to entry. First, the technology and expertise involved in developing and producing refinery desalters capable of handling U.S. crude feedstocks is difficult to obtain. Second, establishing a reputation for successful performance and gaining customer confidence is difficult to do and can take years and the expenditure of substantial sunk costs. And, the small size of the U.S. refinery desalter market may deter firms from investing in establishing the personnel and parts distribution presence required to compete effectively in the United States. Finally, suppliers of refinery desalters must demonstrate that they are financially sound and will be able to respond quickly and effectively to a request for service or parts and to meet warranty obligations years after the sale.

Therefore, the United States alleged that Cameron's acquisition of NATCO would substantially lessen competition in the development, production, and sale of refinery desalters in the United States. The acquisition would likely lead to higher prices, less favorable terms of sale, and less innovation in the U.S. refinery desalter market, in violation of Section 7 of the Clayton Act.

Moreover, Cameron's acquisition of the Howe Baker assets did substantially lessen competition in the U.S. market for refinery desalters. Competition between Cameron and CB&I benefitted customers because Cameron and CB&I competed directly based on price, terms of sale, and technology. In 2005, when Cameron acquired the Howe Baker assets, Cameron and CB&I accounted for approximately 75 and 25 percent, respectively, of refinery desalter sales in the United States. Therefore, Cameron's acquisition of the Howe Baker assets resulted in a reduction in the number of competitors selling refinery desalters in the United States from two to one. As a result, Cameron gained the power to raise prices, offer less favorable terms of sale, and invest less in technology.

III. Explanation of the Proposed Final Judgment

The divestitures required by the proposed Final Judgment will eliminate the anticompetitive effects that would otherwise likely result from Cameron's acquisition of NATCO. The divestitures will also eliminate the anticompetitive effects that resulted from Cameron's acquisition of the Howe Baker assets. These divestitures make available assets that will facilitate the creation of at least one additional independent, economically viable competitor to Cameron in the U.S. refinery desalter market.

The proposed Final Judgment requires Cameron and NATCO to divest the following assets, among other things, within ninety (90) days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later: (1) The Howe Baker desalter and dehydrator assets, including all tangible and intangible property associated with them; (2) a license to NATCO's dual frequency technology; and (3) an option to purchase either Cameron's or NATCO's pilot plant. The proposed Final Judgment also requires Cameron and NATCO to provide the Acquirer or Acquirers of the divestiture assets information relating to personnel involved in the development, production, sale, repair, or service of refinery desalters to enable them to make offers of employment, and prevents Cameron and NATCO from interfering with any negotiations by the Acquirer or Acquirers to employ any employee whose primary responsibility is the development, production, sale, repair, or service of refinery desalters. In addition, at the option of the Acquirer or Acquirers, the proposed Final Judgment requires Cameron and NATCO to provide a transition services agreement. This agreement must be sufficient to meet all or part of the Acquirers' needs for assistance in matters relating to the utilization of the divestiture assets for a period of at least six months.

The assets required to be divested must be divested in such a way as to satisfy the United States in its sole discretion that these assets can and will be operated by the Acquirer or Acquirers as viable, ongoing businesses that can compete effectively in the development, production, sale, repair, and service of refinery desalters in the United States. These assets may be divested to one or more Acquirers, provided that the assets listed in paragraphs II(J)(1) and (2) of the proposed Final Judgment (the Howe Baker assets) are divested to the same purchaser and that all of the assets listed in paragraphs II(J)(3) and (4) of the proposed Final Judgment (the dual frequency license and pilot plant option) are divested to the same purchaser. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

In the event that defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price and terms obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects that likely would result if Cameron acquired NATCO because the Acquirer will have a license to NATCO's innovative dual

frequency technology as well as an option to purchase a pilot plant to test crude oils. Those provisions also will eliminate the anticompetitive effects that resulted from Cameron's acquisition of the Howe Baker assets because the Acquirer will obtain the desalter and dehydrator assets that Cameron purchased from CB&I in 2005.

IV. Remedies Available to Potential Private Litigants

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

V. Procedures Available for Modification of the Proposed Final Judgment

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

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register,** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States 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, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530.

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

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions preventing Cameron's acquisition of NATCO and an order compelling Cameron to divest the Howe Baker assets. The United States is satisfied, however, that the divestiture of the assets described in the proposed Final Judgment will preserve competition for the development, production, and sale of refinery desalters in the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

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

The Clayton Act, as amended by 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 in accordance with the statute, the court is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of 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). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").

As the United States Court of Appeals for the District of Columbia has held, under the APPA a court considers, 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 Microsoft,* 56 F.3d at 1458–62. 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; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. 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 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).[1] In determining whether a proposed settlement is in the public interest, the court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[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. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *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). Therefore, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17.

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; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). 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. *Microsoft,* 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications,* courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." 489 F. Supp. 2d at 15.

In its 2004 amendments to the Tunney Act,[2] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, stating: "[n]othing 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). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[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). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

VIII. Determinative Documents

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

Dated: January 20, 2010.

Respectfully submitted.

Christine A. Hill,

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Certificate of Service

I, Christine A. Hill, hereby certify that on January 20, 2010, I caused a copy of the foregoing Competitive Impact Statement to be served upon defendants Cameron International Corporation and NATCO Group Inc. by mailing the documents electronically to the duly authorized legal representatives of defendants as follows:

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DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

January 26, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for

[1] *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (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' ").

[2] The 2004 amendments substituted the word "shall" for "may" when directing the courts to consider the enumerated factors and amended the list of factors to focus on competitive considerations and address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").