Public Safety Officers' Disability Benefits.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until May 3, 2010. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact M. Berry at 202–616–6500/1–866–268–0079, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531 via facsimile at 202–305–1367 or by e-mail at *M.A.Berry@ojp.usdoj.gov*.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

— Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Extension of currently approved collection.

(2) *The title of the form/collection: OJP FORM 3650/7 Public Safety Officers Disability Benefits.*

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: None. Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief* abstract:

Primary: Dependents of public safety officers who were killed or permanently and totally disabled in the line of duty.

Abstract: BJA's Public Safety Officers' Benefits (PSOB) division will use the PSOEA Application information to confirm the eligibility of applicants to receive PSOEA benefits. Eligibility is dependent on several factors, including the applicant having received or being eligible to receive a portion of the PSOB Death Benefit, or having a family member who received the PSOB Disability Benefit. Also considered are the applicant's age and the schools being attended. In addition, information to help BJA identify an individual is collected, such as Social Security number and contact numbers and e-mail addresses. The changes to the application form have been made in an effort to streamline the application process and eliminate requests for information that is either irrelevant or already being collected by other means.

Others: None.

(5) *An estimate of the total number of respondents and the amount of time needed for an average respondent to respond is as follows:* It is estimated that no more than 75 respondents will apply a year. Each application takes approximately 120 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Total Annual Reporting Burden: 75 × 120 minutes per application = 9,000 minutes/by 60 minutes per hour = 150 hours.

If additional information is required, please contact Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC., 20530.

March 1, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–4536 Filed 3–3–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Bemis Company, Inc., 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, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Bemis Co. et al.,* Civil Action No. 1:10–cv–00295. On February 24, 2010, the United States filed a Complaint alleging that the proposed acquisition by Bemis Company, Inc. ("Bemis") of the Alcan Packaging Food Americas business of Rio Tinto plc would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the markets for flexible-packaging rollstock for chunk and sliced natural cheese packaged for retail sale, flexible-packaging rollstock for shredded natural cheese packaged for retail sale, and flexible-packaging shrink bags for fresh meat. The proposed Final Judgment, filed the same time as the Complaint, requires Bemis to divest the assets of Alcan Packaging Food Americas related to those markets, including production plants and assets located in Menasha, Wisconsin and Catoosa, Oklahoma, as well as certain other tangible and intangible assets. The proposed Final Judgment also permits Bemis temporarily to occupy certain portions of the Menasha facility while unrelated operations are relocated and allows for short-term supply agreements between Bemis and the entity that acquires the divested assets in order to ensure that customers continue to receive a reliable supply of the affected products.

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, Department of Justice,

Washington, DC 20530, (telephone: 202–307–0924).

J. Robert Kramer II,

Director of Operations and Civil Enforcement.

United States of America, Department of Justice, Antitrust Division, 450 5th Street, NW, Suite 8700, Washington, D.C. 20530, Plaintiff, v. *Bemis Company, Inc., One Neenah Center, Neenah, WI 54957* and *Rio Tinto plc, 2 Eastbourne Terrace, London, W2 6LG, United Kingdom* and *Alcan Corporation, 8770 West Bryn Mawr Avenue, Chicago, IL 60631,* Defendants.

Case No.: Case: 1:10–cv–00295, Assigned To: Kollar-Kotelly, Colleen, Assign. Date: February 24, 2010, Description: Antitrust, Judge:

Complaint

The United States of America ("United States"), acting under the direction of the Attorney General, brings this civil antitrust action against defendants Bemis Company, Inc. ("Bemis"), Rio Tinto plc ("Rio Tinto"), and Alcan Corporation ("Alcan") to enjoin Bemis's proposed acquisition from Rio Tinto of the Alcan Packaging Food Americas business and to obtain other equitable relief. The United States complains and alleges as follows:

I. Nature of This Action

1. Bemis announced that it has agreed to purchase the Alcan Packaging Food Americas business from Rio Tinto for $1.2 billion.

2. Bemis and Alcan are the two leading suppliers in the United States and Canada of flexible packaging products suitable for a variety of natural cheese products packaged for retail sale. Bemis and Alcan are also two of the three primary suppliers of shrink bags for fresh-meat packaging in the United States and Canada.

3. The proposed acquisition would eliminate competition between Bemis and Alcan, which for some customers are the two best sources of flexible packaging for certain natural cheese products. The proposed acquisition likely also would reduce competition substantially in the highly concentrated market for shrink bags for fresh-meat packaging. As a result, the proposed acquisition likely would substantially lessen competition in the development, production, and sale of flexible packaging and associated services for chunk, sliced, and shredded natural cheese packaged for retail sale and for fresh meat in the United States and Canada in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. The Defendants

4. Bemis is a Missouri corporation headquartered in Neenah, Wisconsin. In 2008, Bemis and its subsidiaries had total sales of approximately $3.8 billion, including approximately $2.1 billion of flexible packaging in the United States. Bemis's flexible packaging for cheese and meat is produced by its wholly owned, but separately incorporated, Curwood, Inc. division.

5. Rio Tinto is organized under the laws of and headquartered in the United Kingdom. Its 2008 sales totaled approximately $58 billion. Rio Tinto acquired Alcan in 2007.

6. Alcan is a wholly owned subsidiary of Rio Tinto. Alcan is a Delaware corporation headquartered in Chicago, Illinois. The Alcan Packaging Food Americas business produces and sells flexible packaging in the United States, Canada, and Latin America. In 2008, the Alcan Packaging Food Americas business sold approximately $1.5 billion of flexible packaging.

III. Jurisdiction and Venue

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

8. Defendants themselves, or through wholly owned subsidiaries, produce and sell flexible packaging and associated services for natural cheese and fresh meat, among other products, in the flow of interstate commerce. Defendants' activities in the development, production, and sale of flexible packaging for natural cheese and fresh meat, among other 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.

9. Defendants have consented to venue and personal jurisdiction in the District of Columbia. Venue is therefore proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c). Venue is also proper in the District of Columbia for defendant Rio Tinto under 28 U.S.C. 1391(d).

IV. Background

A. The Flexible-Packaging Industry

10. Flexible packaging is any package the shape of which can be readily changed. Flexible packaging for food encompasses a wide range of products, including bags and wrappings for cheeses and meats, snack bags, and cereal-box liners. Flexible packaging is distinguishable from rigid packaging, such as jars, cans, cups, trays, and hard plastic bottles.

11. Varying degrees of design and manufacturing sophistication are required to produce flexible packaging for different end uses. Some flexible packaging, such as single-layer packaging, is relatively simple to manufacture, and customers can choose from a number of producers for these types of flexible packaging. Flexible packaging for other end uses, such as natural cheese and fresh meat, however, has multiple layers, is subject to more rigorous performance standards, requires greater scientific knowledge and technical know-how to engineer, and requires that technical support be readily available, and, therefore, is more difficult to produce and commercialize successfully.

B. Procurement of Flexible Packaging for Natural Cheese and Fresh Meat

12. Producers of flexible packaging sell their packaging to producers of food that package their products for wholesale or retail sale. Customers typically have particular and unique specifications for their packaging. For example, customers use flexible packaging to differentiate their products from those of their rivals. Moreover, customers have different packaging equipment, and the flexible packaging must be specifically qualified to run on the particular customer's equipment.

13. Producers of flexible packaging must work closely with customers to ensure that their packaging material runs efficiently on their customers' machines, that they meet the promised lead times, and that they continuously find ways to cut the customer's costs. Producers must also engage in research and development to deliver better packaging products in order to compete effectively.

14. Customers of flexible packaging for certain forms of natural cheese and fresh meat can incur substantial costs to switch between different flexible-packaging producers. These costs result, in part, from having to modify existing packaging equipment to make it compatible with the new producer's films and the downtime associated with that modification. Customers also incur costs from testing and qualifying a new supplier.

15. Prices for flexible packaging for natural cheese and fresh meat are customer-specific and based on, among other things, an individual customer's unique requirements. The price charged to one customer likely will be different from the price charged to another customer.

16. Price competition in the relevant markets occurs in two ways. First, customers may issue a request for proposal, through which they invite potential suppliers to bid on supplying

packaging that meets the customers' specifications. Customers evaluate the competing bids on the basis of, among other things, compliance with their specifications, price, delivery times, and the services provided by each producer. Second, price competition may also occur less formally if a customer seeks or receives an offer from an alternative supplier and the incumbent is given a chance to respond.

V. Relevant Product Markets

A. Product Markets for Natural-Cheese Packaging

17. Natural cheese is sold in several different forms, including chunk cheese, sliced cheese, and shredded cheese.

18. The films used in flexible packaging for some natural-cheese products are sold in the form of rollstock, which is a continuous sheet of film that is cut for each package. Most natural cheese sold at retail is packaged using rollstock films. The particular flexible-packaging rollstock and the services associated with providing it to customers ("flexible-packaging rollstock") used for: (a) Chunk and sliced natural cheese packaged for retail sale; and (b) shredded natural cheese packaged for retail sale are distinct product markets.

19. Cheese-packaging customers demand a long shelf-life for natural cheese. The flexible-packaging rollstock for natural cheese must include a barrier layer that keeps out oxygen to prevent the cheese from spoiling. The packaging also must prevent moisture from leaking into or out of the package. Some cheeses emit gasses as they age; such cheeses require packaging that allows gasses to escape. In addition, the packaging film must be sufficiently transparent to present the cheese well to the consumer, but also avoid discoloration from fluorescent lights. The packaging also must resist abrasion and cracking during distribution and run smoothly and efficiently on the customer's filling machines. Finally, the packaging must be inert, so that the flavor of the cheese is not compromised by the plastic.

1. Flexible-Packaging Rollstock for Chunk and Sliced Natural Cheese Packaged for Retail Sale Is a Relevant Product Market

20. Chunk natural cheese is sold in bricks of specific sizes, typically eight, but ranging to thirty-two, ounces. Sliced natural cheese is typically sold in packages with roughly ten or more slices. Producers of chunk and sliced natural cheese generally use the same films for packaging.

21. Specialized rollstock films are designed specifically for packaging chunk and sliced natural cheese for retail sale. While some chunk and sliced natural cheeses for retail sale are packaged in other forms of packaging (e.g., shrink bags or rigid trays), these are more expensive to purchase than rollstock packaging and cannot be used on the same packaging equipment as rollstock. A small but significant increase in the price of flexible-packaging rollstock for chunk and sliced natural cheese packaged for retail sale likely would not cause customers faced with such an increase to substitute to other forms of packaging, or otherwise purchase sufficiently less of that product, so as to render the price increase unprofitable.

22. Therefore, flexible-packaging rollstock for chunk and sliced natural cheese packaged for retail sale is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act. In 2008, approximately $100 million in sales of this product were made in the United States and Canada.

2. Flexible-Packaging Rollstock for Shredded Natural Cheese Packaged for Retail Sale Is a Relevant Product Market

23. Shredded natural cheese packaged for retail sale typically is packaged in bags, which often come with an easy-open mechanism and an easy-close attachment. The easy-open mechanism is either laser-scored or mechanically scored, such that some of the package's layers are perforated (making the package easy to tear), while leaving the oxygen and moisture barriers intact (preventing contamination of the product). The scoring process presents significant challenges to flexible-packaging producers. The sealing process also is difficult because the bags typically are filled with cheese while in a vertical position and the release of cheese into the bags is continuous and fast.

24. Specialized films are designed specifically for shredded natural cheese packaged for retail sale. A small but significant increase in the price of flexible-packaging rollstock for shredded natural cheese packaged for retail sale likely would not cause customers faced with such an increase to substitute to other forms of packaging, or otherwise purchase sufficiently less of that product, so as to render the price increase unprofitable.

25. Therefore, flexible-packaging rollstock for shredded natural cheese packaged for retail sale is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act. In 2008, approximately $100 million in sales of this product were made in the United States.

B. Flexible-Packaging Shrink Bags for Fresh Meat Are a Relevant Product Market

26. Certain characteristics are common to most flexible-packaging films for fresh meat (i.e., beef, veal, pork, and lamb). First, most films for fresh meat contain a layer that prevents oxygen from coming into contact with the meat. Second, fresh meat films must prevent moisture from leaking out and contaminants from entering the packaging. Third, fresh meat films must run effectively on the customer's packaging equipment. Finally, the sealant must bond through fatty and oily substances.

27. The most common type of flexible-packaging film for fresh meat is a shrink bag, which is designed to shrink to the contours of the contents when heated, forming a tight seal. Shrink bags are particularly suitable for use with fresh meat, in particular for wholesale distribution of meat to be cut for retail sale in grocery stores. Shrink bags and the services associated with providing them to customers ("flexible-packaging shrink bags") used for fresh meat constitute a distinct product market. The shrink bag must be durable to survive distribution while maintaining its oxygen and moisture barriers and allowing the meat to retain its flavor. The bag also must meet shelf-life requirements of 30 days or more and, when used for retail packaging, have a high degree of transparency for optimal presentation.

28. A small but significant increase in the price of flexible-packaging shrink bags for fresh meat likely would not cause customers faced with such an increase to substitute to other forms of packaging, or otherwise purchase sufficiently less of that product, so as to render the price increase unprofitable.

29. Therefore, flexible-packaging shrink bags for fresh meat constitute a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act. In 2008, approximately $800 million in sales of this product were made in the United States.

C. The United States and Canada Is a Relevant Geographic Market

30. Producers of flexible-packaging rollstock for chunk, sliced, and shredded natural cheese packaged for retail sale and flexible-packaging shrink bags for fresh meat ship the packaging to customers throughout the United

States and Canada. Producers outside the United States and Canada are not good alternatives for customers in the United States and Canada. Customers using producers outside the United States and Canada would face longer lead times and an increased potential for supply-chain complications. Moreover, major customers demand that producers of flexible packaging provide frequent technical and operational service and support at the customer's premises and do not believe that foreign suppliers can provide the level of service and support they demand. A small but significant increase in the price of flexible-packaging rollstock for chunk, sliced, and shredded natural cheese packaged for retail sale and flexible-packaging shrink bags for fresh meat in the United States and Canada likely would not cause customers in the United States and Canada to turn to producers outside the United States and Canada in sufficient numbers so as to render such a price increase unprofitable.

31. Accordingly, the United States and Canada is a relevant geographic market for flexible-packaging rollstock for chunk, sliced, and shredded natural cheese packaged for retail sale and flexible-packaging shrink bags for fresh meat within the meaning of Section 7 of the Clayton Act.

VI. The Proposed Acquisition's Likely Anticompetitive Effects

A. Likely Anticompetitive Effects in the United States and Canada for Flexible-Packaging Rollstock for Chunk and Sliced Natural Cheese Packaged for Retail Sale

32. Based on their capabilities and sales history, Bemis and Alcan are two of only a few competitors that might successfully bid to supply a customer with flexible-packaging rollstock for chunk and sliced natural cheese packaged for retail sale. Currently, Bemis and Alcan account for approximately 37 and 54 percent, respectively, of sales in the United States and Canada for this product. If the proposed acquisition is not enjoined, Bemis and Alcan combined would account for approximately 91 percent of sales in the United States and Canada for this product. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI") (explained in Appendix A), the HHI would increase by more than 3,900 points, resulting in a post-acquisition HHI of more than 8,000 points.

33. Market shares are best measured using revenues in the markets for the Relevant Products because suppliers with the capacity to produce similar goods outside of those markets cannot quickly and easily shift that capacity to supply customers with the Relevant Products. Thus, the mere possession of similar capacity does not make a supplier an "uncommitted entrant"; meeting the requirements of customers in a cost-efficient manner also requires specialized know-how, experience, qualification, and the ability to innovate.

34. Due to Bemis's and Alcan's collective overall expertise in meeting the needs of customers and other technical and commercial factors for flexible-packaging rollstock for chunk and sliced natural cheese packaged for retail sale, including, among other things, price, delivery times, service, and technical support, Bemis and Alcan frequently are perceived by each other, by other bidders, and by customers as being the two strongest competitors in that market.

35. Bemis's bidding behavior often has been constrained by the possibility of losing business to Alcan. By eliminating Alcan, Bemis would gain the incentive and likely ability to profitably increase its bid prices higher than it otherwise would without the acquisition. Customers have also benefitted from competition between Bemis and Alcan through higher quality, better supply-chain options (including delivery times and volume-purchase requirements), technical support, and numerous innovations. The combination of Bemis and Alcan would eliminate this other competition and future benefits to the customers.

36. The proposed acquisition, therefore, likely would substantially lessen competition in the United States and Canada for flexible-packaging rollstock for chunk and sliced natural cheese packaged for retail sale, which likely would lead to higher prices, lower quality, less favorable supply-chain options, reduced technical support, and less innovation, in violation of Section 7 of the Clayton Act.

B. Likely Anticompetitive Effects in the United States and Canada for Flexible-Packaging Rollstock for Shredded Natural Cheese Packaged for Retail Sale

37. Based on their capabilities and sales history, Bemis and Alcan are two of only a few credible competitors that might successfully bid to supply a customer with flexible packaging rollstock for shredded natural cheese packaged for retail sale. Currently, Bemis and Alcan account for approximately 27 and 49 percent, respectively, of sales in the United States and Canada for this product. If the proposed acquisition is not enjoined, Bemis and Alcan combined would account for approximately 76 percent of sales in the United States and Canada for this product. The HHI would increase by approximately 2,500 points, resulting in a post-acquisition HHI of more than 5,600 points.

38. Market shares are best measured using revenues in the markets for the Relevant Products because suppliers with the capacity to produce similar goods outside of those markets cannot quickly and easily shift that capacity to supply customers with the Relevant Products. Thus, the mere possession of similar capacity does not make a supplier an "uncommitted entrant"; meeting the requirements of customers in a cost-efficient manner also requires specialized know-how, experience, qualification, and the ability to innovate.

39. Due to Bemis's and Alcan's collective overall expertise in meeting the needs of customers and other technical and commercial factors for flexible-packaging rollstock for shredded natural cheese packaged for retail sale, including, among other things, price, delivery times, service, and technical support, Bemis and Alcan frequently are perceived by each other, by other bidders, and by customers as being the two strongest competitors in that market.

40. Bemis's bidding behavior often has been constrained by the possibility of losing business to Alcan. By eliminating Alcan, Bemis would gain the incentive and ability to profitably increase its bid prices higher than it otherwise would without the acquisition. Customers have also benefitted from competition between Bemis and Alcan through higher quality, better supply-chain options, better technical support, and numerous innovations. The combination of Bemis and Alcan would eliminate this other competition and future benefits to the customers.

41. The proposed acquisition, therefore, likely would substantially lessen competition in the United States and Canada for flexible-packaging rollstock for shredded natural cheese packaged for retail sale, which likely would lead to higher prices, lower quality, less favorable supply-chain options, reduced technical support, and less innovation, in violation of Section 7 of the Clayton Act.

C. Likely Anticompetitive Effects in the United States and Canada for Flexible-Packaging Shrink Bags for Fresh Meat

42. Currently, Bemis and Alcan account for approximately 20 and 8

percent, respectively, of the sales in the United States and Canada for flexible-packaging shrink bags for fresh meat. If the proposed acquisition is not enjoined, Bemis and Alcan combined would account for approximately 28 percent of sales of flexible-packaging shrink bags for fresh meat in the United States and Canada, and leave Bemis and one other firm with approximately 93 percent of sales. The HHI would increase by more than 300 points, resulting in a post-acquisition HHI of more than 5,000 points.

43. Market shares are best measured using revenues in the markets for the Relevant Products because suppliers with the capacity to produce similar goods outside of those markets cannot quickly and easily shift that capacity to supply customers with the Relevant Products. Thus, the mere possession of similar capacity does not make a supplier an "uncommitted entrant"; meeting the requirements of customers in a cost-efficient manner also requires specialized know-how, experience, qualification, and the ability to innovate.

44. Although the third supplier of flexible-packaging shrink bags for fresh meat is the dominant supplier, some customers desire two or more suppliers. As a result, Bemis and Alcan often find themselves competing to be the second supplier, and their price competition exerts pricing pressure also on the dominant firm. Unless the proposed acquisition is enjoined, that bidding dynamic would be eliminated because Bemis and Alcan no longer would bid against one another. In addition, Bemis's elimination of Alcan as an independent competitor would result in only two suppliers accounting for nearly all of the market. Such an increase in concentration likely would make coordination easier.

45. The proposed acquisition, therefore, likely would substantially lessen competition in the United States and Canada for flexible-packaging shrink bags for fresh meat, which likely would lead to higher prices, lower quality, less favorable supply-chain options, reduced technical support, and less innovation, in violation of Section 7 of the Clayton Act.

D. Entry Is Unlikely To Prevent Anticompetitive Harm

46. Some customers in the United States and Canada have attempted to procure suitable flexible-packaging rollstock for chunk, sliced, and shredded natural cheese packaged for retail sale from producers that do not currently produce packaging for these uses. Similarly, some customers in the United States and Canada have attempted to procure suitable flexible-packaging shrink bags for fresh meat from producers beyond Bemis and Alcan and the dominant producer. Most of those flexible-packaging producers have not been able cost-effectively to achieve the required specifications or quality requirements. These suppliers likely would not be able to meet customers' required specifications or quality requirements cost-effectively within a commercially reasonable period of time, nor would they likely be able to produce products that would run efficiently on their customers' packaging equipment.

47. New entry into the markets for flexible-packaging rollstock for chunk and sliced natural cheese packaged for retail sale, flexible-packaging rollstock for shredded natural cheese packaged for retail sale, and flexible-packaging shrink bags for fresh meat in the United States and Canada would be costly, difficult, and time consuming. A new supplier would need to construct production lines capable of producing films that meet the rigorous standards set forth by major buyers of such films. Construction of manufacturing facilities would require millions of dollars of capital investment and the entrant would have to be committed to research and development. In addition, the technical know-how necessary to design and successfully manufacture packaging that is able to run efficiently on customers' equipment cost-effectively is difficult to obtain.

48. Even after a new entrant has developed the capability to supply flexible-packaging rollstock for chunk, sliced, and shredded natural cheese packaged for retail sale and flexible-packaging shrink bags for fresh meat, the entrant must be qualified by potential customers, demonstrating that it is capable of manufacturing products that meet rigorous quality and performance standards. For example, because the qualifying process for natural cheese typically requires a shelf-life test, where sample products are wrapped in the candidate packaging and stored in retail-like conditions for extended periods of time, the process can take many months. Further, there is no guarantee that the attempted qualification will be successful, and the entrant may have to repeat the process multiple times. In such cases, the qualification process can take multiple years with no guarantee of success. Moreover, because customer specifications are unique, qualification with one customer does not guarantee qualification with another.

49. Entry of existing packaging firms is unlikely because the technical know how necessary to create the packaging for the relevant products is difficult to obtain. Also, a company would have to pass each customer's rigorous qualification tests. Entry of existing packaging firms into the markets for flexible-packaging rollstock for chunk and sliced natural cheese packaged for retail sale, flexible-packaging rollstock for shredded natural cheese packaged for retail sale, and flexible-packaging shrink bags for fresh meat, therefore, likely would not be timely, likely, and sufficient to defeat a small but significant increase in price in the relevant markets.

50. As a result of these barriers, entry by new firms or by existing packaging firms likely would not be timely, likely, and sufficient to prevent a likely exercise of market power by Bemis after the acquisition.

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

51. Bemis's proposed acquisition of the Alcan Packaging Food Americas business would be likely to substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, in the United States and Canada for: (1) Flexible-packaging rollstock for chunk and sliced natural cheese packaged for retail sale; (2) flexible-packaging rollstock for shredded natural cheese packaged for retail sale; and (3) flexible-packaging shrink bags for fresh meat.

52. Unless enjoined, the proposed acquisition likely would have the following anticompetitive effects, among others:

(a) Actual and potential competition between Bemis and Alcan in the relevant markets would be eliminated;

(b) Competition in the relevant markets likely would be substantially lessened; and

(c) For the relevant products, prices would likely increase, quality would likely decrease, supply-chain options would likely be less favorable, technical support would likely be reduced, and innovation would likely decline.

VIII. Requested Relief

53. The United States requests that this Court:

(a) Adjudge and decree Bemis's proposed acquisition of the Alcan Packaging Food Americas business to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) Enjoin defendants and all persons acting on their behalf from consummating the proposed acquisition of the Alcan Packaging Food Americas

business by Bemis, or from entering into or carrying out any other agreement, plan, or understanding the effect of which would be to combine Bemis with the Alcan Packaging Food Americas business;

(c) Award the United States its costs for this action; and

(d) Award the United States such other and further relief as the Court deems just and proper.

For Plaintiff United States of America:

Christine A. Varney,
Assistant Attorney General, D.C. Bar # 411654.

William F. Cavanaugh, Jr.,
Deputy Assistant Attorney General.

J. Robert Kramer II,
Director of Operations.

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

Dorothy B. Fountain,
Assistant Chief, Litigation II Section, D.C. Bar # 439469.

Rachel Adcox,
Attorney, United States Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 8700, Washington, DC, 20530 (202) 307–0924.

Dated: February 24, 2010.

Appendix A—Definition of HHI

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20%, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1,000 and 1,800 points are considered to be moderately concentrated, and markets in which the HHI is in excess of 1,800 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* ¶ 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission. *See id.*

United States of America, Plaintiff, v. *Bemis Company, Inc.*, and *Rio Tinto PLC*, and *Alcan Corporation*, Defendants.

Case No.: 1:10-cv-00295
Judge: Kollar-Kotelly, Colleen
Deck Type: Antitrust
Date Stamp: February 24, 2010

Final Judgment

Whereas, Plaintiff United States of America ("United States") filed its Complaint on February 24, 2010, the United States and defendants Bemis Company, Inc., Rio Tinto plc, and Alcan Corporation, 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 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, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

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

B. "Bemis" means defendant Bemis Company, Inc., a Missouri corporation headquartered in Neenah, Wisconsin, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Rio Tinto" means defendant Rio Tinto plc, organized under the laws of and headquartered in the United Kingdom, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Alcan" means defendant Alcan Corporation, a Delaware corporation that is a wholly owned subsidiary of Rio Tinto headquartered in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

E. "Divestiture Assets" means:

(1) Alcan's facility located at 905 W. Verdigris Parkway, Catoosa, Oklahoma 74015 ("Catoosa facility");

(2) Alcan's facility located at 271 River Street, Menasha, Wisconsin 54952 ("Menasha facility"); provided, however, that the tangible assets used exclusively or primarily for the wax-coating operation located at the Menasha facility shall not be divested pursuant to this Final Judgment;

(3) The following tangible assets:

(a) All tangible assets (leased or owned) necessary to operate or used in or for the Catoosa facility and the Menasha facility, including, but not limited to, all real property and improvements, manufacturing equipment, product inventory, tooling and fixed assets, personal property, titles, interests, leases, input inventory, office furniture, materials, supplies, and other tangible property;

(b) All tangible assets (leased or owned) used exclusively or primarily for the research and development of any Alcan Relevant Product in the United States and/or Canada, including, but not limited to, materials, supplies, and other property; and

(c) All records and documents relating to any Alcan Relevant Product in the United States and/or Canada, including, but not limited to, licenses, permits, and authorizations issued by any governmental organization; contracts, teaming agreements, leases, commitments, certifications, and understandings, including, but not limited to, supply agreements; customer lists, contracts, accounts, and credit records; and repair and performance records.

(4) The following intangible assets:

(a) All intangible assets used exclusively or primarily in the design, development, production, marketing, servicing, distribution, and/or sale of

any Alcan Relevant Product in the United States and/or Canada, including, but not limited to, all patents, licenses and sub-licenses, intellectual property, copyrights, trade names or trademarks, including, but not limited to, "Halo," "Maraflex," "Clearshield," or any derivation thereof, service marks, service names, technical information, designs, trade dress, and trade secrets; computer software, databases, and related documentation; know-how, including, but not limited to, recipes, formulas, and machine settings; information relating to plans for, improvements to, or line extensions of, Alcan's Relevant Products; drawings, blueprints, designs, design protocols, specifications for materials, and specifications for parts and devices; marketing and sales data; quality assurance and control procedures; design tools and simulation capability; contractual rights; manuals and technical information provided by Alcan to its own employees, customers, suppliers, agents, or licensees; safety procedures for the handling of materials and substances; research information and data concerning historic and current research and development efforts, including, but not limited to, designs and experiments and the results of successful and unsuccessful designs and experiments; and

(b) With respect to any intangible assets that are not included in paragraph II(E)(4)(a), above, and that prior to the filing of the Complaint in this matter were used in connection with the design, development, production, marketing, servicing, distribution, and/or sale of both any Alcan Relevant Product and any other Alcan product, a non-exclusive, non-transferable license for such intangible assets to be used for the design, development, production, marketing, servicing, distribution, and/or sale of any of the Relevant Products or the operation or use of the Catoosa facility and/or the Menasha facility for the period of time that defendants have rights to such assets; provided, however, that any such license is transferable to any future purchaser of all or any relevant portion of the Divestiture Assets.

F. "Relevant Products" means any flexible-packaging rollstock used for chunk, sliced, and/or shredded natural cheeses packaged for retail sale and any flexible-packaging shrink bags used for fresh meat.

G. "Transaction" means Bemis's proposed acquisition of the Alcan Packaging Food Americas business.

III. Applicability

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

B. 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 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. Bemis is 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. Bemis agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestitures ordered by this Final Judgment, Bemis promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Bemis shall inform any person making 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. Bemis 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. Bemis shall make available such information to the United States at the same time that such information is made available to any other person.

C. Bemis shall provide the Acquirer or Acquirers and the United States information relating to the personnel employed at the Catoosa facility and the Menasha facility and the personnel otherwise involved in the design, development, production, marketing, servicing, distribution, and/or sale of Alcan's Relevant Products to enable the Acquirer or Acquirers to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer or Acquirers to employ any person who is employed at the Catoosa facility or the Menasha facility or is otherwise involved in the design, development, production, marketing, servicing, distribution, and/or sale of Alcan's Relevant Products. Interference with respect to this paragraph includes, but is not limited to, offering to increase an employee's salary or benefits other than as a part of a company-wide increase in salary or benefits. In addition, for each employee who elects employment by the Acquirer or Acquirers, Bemis shall vest all unvested pension and other equity rights of that employee and provide all benefits to which the employee would have been entitled if terminated without cause.

D. Defendants shall waive all noncompete agreements for any current or former Alcan employee employed at the Catoosa facility, the Menasha facility, or otherwise employed in the design, development, production, marketing, servicing, distribution, and/or sale of any Alcan Relevant Product.

E. Bemis shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities associated with 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.

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

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

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. Bemis shall take all steps necessary to accomplish the transfer of the leasehold and other rights of possession of the Catoosa facility to the Acquirer,

including, but not limited to, invoking and exercising all applicable early termination, early purchase, or other provisions contained in the agreements related to the Catoosa facility, and paying all necessary sums specified in such agreements.

J. Bemis shall warrant that it is divesting Alcan's entire business relating to each of the Relevant Products and will not manufacture any Alcan Relevant Product after the date the Divestiture Assets are divested until the expiration of this Final Judgment. Defendants shall not solicit business for any Relevant Product that is subject to an unexpired Alcan customer contract transferred to the Acquirer for a period of one (1) year from the date of the divestiture of such contract or the remaining term of the contract, whichever is shorter.

K. The Acquirer of the Menasha facility shall enter into an agreement with Bemis permitting Bemis to occupy the portions of the Menasha facility utilized for Alcan's wax-coating operations for a period of no longer than three (3) years after the date the Transaction is closed. By no later than three (3) months after the date the Transaction is closed, Bemis shall create physical barriers that segregate the wax-coating operations from the portions of the Menasha facility to be occupied by the Acquirer. Bemis's areas and operations at the Menasha facility shall be secured separately from those of the Acquirer so that the Acquirer's areas and operations cannot be accessed by Bemis and Bemis's areas and operations cannot be accessed by the Acquirer, other than for facility repair, support, and maintenance pursuant to a lease or other agreement. At the option of the Acquirer, the lease agreement may include a provision requiring Bemis to remove any or all physical barriers erected to segregate its areas and operations from the Acquirer's areas and operations pursuant to this paragraph.

L. At the option of the Acquirer of the Divestiture Assets relating to the "Maraflex" products, Bemis shall enter into a supply contract with that Acquirer for the "Maraflex" products sufficient to satisfy that Acquirer 's obligations under any customer contract for a period of up to one (1) year. The amount of "Maraflex" products produced by Bemis for the Acquirer pursuant to such a supply contract shall be limited to the total volume of "Maraflex" products produced by Alcan in 2009 plus one percent, unless otherwise mutually agreed by Bemis and the Acquirer. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for these products. The United States, in its sole discretion, may approve an extension of the term of this supply contract for a period of up to two (2) years. If the Acquirer seeks an extension of the term of this supply contract, it shall so notify the United States in writing at least four (4) months prior to the date the supply contract expires. If the United States approves such an extension, it shall so notify Bemis in writing at least three (3) months prior to the date the supply contract expires.

M. At the option of the Acquirer of the Divestiture Assets relating to the "Maraflex" products, Bemis shall enter into a transition services agreement with that Acquirer sufficient to meet all or part of that Acquirer's needs for assistance in matters relating to the development, production, and/or service of the "Maraflex" products or technology for a period of at least six (6) months but no longer than three (3) years. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to the market value of the expertise of the personnel providing any needed assistance.

N. At the option of the Acquirer of the Menasha facility, Bemis shall enter into a supply contract with that Acquirer for any Relevant Product produced at Alcan's facility located at 901 Morrison Drive, Boscobel, Wisconsin 53805 (the "Boscobel facility"), sufficient to satisfy that Acquirer's obligations under any customer contract for a period of up to one (1) year. The amount of Relevant Products produced by Bemis for the Acquirer pursuant to such a supply contract shall be limited to the total volume of Relevant Products produced by Alcan at the Boscobel facility in 2009 plus one percent, unless otherwise mutually agreed by Bemis and the Acquirer. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for these products. The United States, in its sole discretion, may approve an extension of the term of this supply contract for a period of up to one (1) year. If the Acquirer seeks an extension of the term of this supply contract, it shall so notify the United States in writing at least four (4) months prior to the date the supply contract expires. If the United States approves such an extension, it shall so notify Bemis in writing at least three (3) months prior to the date the supply contract expires.

O. At the option of Bemis, the Acquirer of the Catoosa facility shall enter into a supply contract for the "Clearshield" products sufficient to satisfy Alcan's or Bemis's obligations to Alcan affiliates Danaflex, Maua, and Envaril for a period of up to one (1) year. The amount of "Clearshield" products produced by the Acquirer for Bemis pursuant to such a supply contract shall be limited to the total volume of "Clearshield" products produced by Alcan for Danaflex, Maua, and Envaril in 2009 plus one percent, unless otherwise mutually agreed by Bemis and the Acquirer. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for these products. The United States, in its sole discretion, may approve an extension of the term of this supply contract for a period of up to two (2) years. If Bemis seeks an extension of the term of this supply contract, it shall so notify the United States in writing at least four (4) months prior to the date the supply contract expires. If the United States approves such an extension, it shall so notify the Acquirer in writing at least three (3) months prior to the date the supply contract expires.

P. At the option of Bemis, the Acquirer or Acquirers shall enter into an agreement to provide Bemis with a non-exclusive, non-transferable license for the intangible assets described in paragraph II(E)(4)(a), above, that prior to the filing of the Complaint in this matter were used in connection with the design, development, production, marketing, servicing, distribution, and/or sale of both any Alcan Relevant Product and any other Alcan product; provided, however, that any such license is solely for use in connection with the design, development, production, marketing, servicing, distribution, and/or sale of products other than the Alcan Relevant Products. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for such licenses.

Q. At the option of Bemis, the Acquirer of the Divestiture Assets relating to the "Clearshield" products shall enter into an agreement to provide Bemis with a non-exclusive, non-transferable license to enable Bemis to produce "Clearshield" products for sale outside the United States and Canada. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for such licenses.

R. At the option of Bemis, the Acquirer of the Menasha facility shall enter into an agreement with Bemis to

provide Bemis with rotogravure printing services to be used in connection with Alcan's wax-coating operation located at the Menasha facility for a period of up to twelve (12) months. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions for these services.

S. In any instance where a third party has a right to a divested intangible asset pursuant to an agreement with any defendant, and where the agreement was entered into prior to the date of the filing of the Complaint in this matter, the Acquirer of that divested asset shall enter into an agreement with that third party to provide it with a right to that asset under terms and conditions sufficient to satisfy defendants' obligations under the original agreement.

T. Unless the United States otherwise consents in writing, the divestitures 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 a viable, ongoing business engaged in the design, development, production, marketing, servicing, distribution, and sale of the Relevant Products. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

(1) Shall be made to an Acquirer or Acquirers that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively as a supplier of the Relevant Products; and

(2) 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 give defendants the ability unreasonably to raise the Acquirer's or Acquirers' costs, to lower the Acquirer's or Acquirers' efficiency, or otherwise to interfere in the ability of the Acquirer or Acquirers to compete effectively.

V. Appointment of Trustee

A. If Bemis has not divested the Divestiture Assets within the time period specified in Section IV(A), Bemis shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the 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 an Acquirer or 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 Bemis 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 Bemis, 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 divestitures. 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 divestitures.

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 divestitures 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 divestitures ordered under this Final Judgment within six (6) months after his or her appointment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (3) the trustee's recommendations. 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, Bemis shall notify the United States of any proposed divestiture required by Section IV of

this Final Judgment. Within two (2) business days following execution of a definitive divestiture agreement, the trustee shall notify the United States and defendants of any proposed divestiture required by Section V of this Final Judgment. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the 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 proposed Acquirer or Acquirers, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or Acquirers or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under 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

Until the divestitures required by this Final Judgment have 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 divestitures 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 divestitures have been completed under Section IV or V, Bemis 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 Bemis has 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 Bemis, including limitations on 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, Bemis 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. Bemis 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, 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), 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

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"), Bemis, without providing advance notification to the Antitrust Division, shall not directly or indirectly acquire any assets of or any interest (including, but not limited to, any financial, security, loan, equity, or management interest) in any company in the business of designing, developing, producing, marketing, servicing, distributing, and/or selling any of the Relevant Products in the United States and/or Canada 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 the Relevant Products. 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 responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

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. *Bemis Company, Inc.,* and *Rio Tinto PLC,* and *Alcan Corporation,* Defendants.

Case: 1:10–cv–00295
Assigned To: Kollar-Kotelly, Colleen
Assign. Date: 02/24/2010
Description: Antitrust
Judge:
Deck Type: Antitrust
Date Stamp:

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 Bemis Company, Inc. and Rio Tinto plc entered into a Sale and Purchase Agreement, dated July 5, 2009, pursuant to which Bemis agreed to acquire the Alcan Packaging Food Americas business from Rio Tinto for $1.2 billion.

The United States filed a civil antitrust Complaint against Bemis, Rio Tinto, and Alcan Corporation on February 24, 2010, seeking to enjoin Bemis's acquisition of the Alcan Packaging Food Americas business. The Complaint alleged that the acquisition likely would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, in the United States and Canada, for the design, development, production, marketing, servicing, distribution, and sale of: (1) Flexible-packaging rollstock for chunk and sliced natural cheese packaged for retail sale; (2) flexible-packaging rollstock for shredded natural cheese packaged for retail sale; and (3) flexible-packaging shrink bags for fresh meat (hereinafter, collectively, the "Relevant Products"). That loss of competition likely would result in higher prices, decreased quality, less favorable supply-chain options, reduced technical support, and lesser innovation in the markets for the Relevant Products.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order ("Hold Separate") and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of Bemis's acquisition of the Alcan Packaging Food Americas business. Under the proposed Final Judgment, which is explained more fully below, Bemis is required to divest all of the intangible assets (i.e., intellectual property and know-how) related to the production of Alcan Relevant Products [1] in the United States and Canada and two of the plants involved in the production of the Alcan Relevant Products. Bemis is also required to divest all of the tangible assets necessary to operate the divested plants and all tangible assets used exclusively or primarily in the production of any Alcan Relevant Product in the United States or Canada.

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

Bemis is a worldwide provider of packaging materials, including flexible packaging for natural cheese and fresh meat. In 2008, Bemis and its subsidiaries had total sales of approximately $3.8 billion, including approximately $2.1 billion in sales of flexible packaging in the United States.

Rio Tinto is an international mining company headquartered in the United

[1] The term "Alcan Relevant Products" refers specifically to those Relevant Products produced by Alcan, rather than to Relevant Products produced by Bemis or others.

Kingdom, with approximately $58 billion in sales in 2008. Alcan is a wholly owned subsidiary of Rio Tinto. The Alcan Packaging Food Americas business produces and sells flexible packaging in the United States, Canada, and Latin America. In 2008, the Alcan Packaging Food Americas business sold approximately $1.5 billion of flexible packaging.

B. The Competitive Effects of the Acquisition in the Markets for Flexible Packaging for Natural Cheese and Fresh Meat

Flexible packaging is any package the shape of which can be readily changed. Flexible packaging for food encompasses a wide range of products, including bags and wrappings for cheeses and meats, snack bags, and cereal-box liners. Flexible packaging is distinguishable from rigid packaging, such as jars, cans, cups, trays, and hard plastic bottles.

Varying degrees of design and manufacturing sophistication are required to produce flexible packaging for different end uses. Some flexible packaging, such as single-layer packaging, is relatively simple to manufacture, and customers can choose from a number of producers for these types of flexible packaging. Flexible packaging for other end uses, such as natural cheese and fresh meat, however, has multiple layers, is subject to more rigorous performance standards, requires greater scientific knowledge and technical know-how to engineer, and requires that technical support be readily available, and, therefore, is more difficult to produce and commercialize successfully.

Bemis and Alcan are the two leading suppliers in the United States and Canada of flexible packaging products suitable for a variety of natural cheese products packaged for retail sale. Bemis and Alcan are also two of the three primary suppliers of shrink bags for fresh-meat packaging in the United States and Canada.

1. Relevant Product Markets

a. Natural-Cheese Packaging

Natural cheese is sold in several forms, including chunk cheese, sliced cheese, and shredded cheese. The films used in flexible packaging for some natural cheese products are sold in the form of rollstock, which is a continuous sheet of film that is cut for each package. Most natural cheese sold at retail is packaged using rollstock films.

Cheese packaging customers demand a long shelf-life for natural cheese. The flexible-packaging rollstock for natural cheese must include a barrier layer that keeps out oxygen to prevent the cheese from spoiling. The packaging must also prevent moisture from leaking into or out of the package. Some cheeses emit gasses as they age; such cheeses require packaging that allows gasses to escape. In addition, the packaging film must be sufficiently transparent to present the cheese well to the consumer, but also avoid discoloration from fluorescent lights. The packaging must also resist abrasion and cracking during distribution and run smoothly and efficiently on the customer's filling machines. Finally, the packaging must be inert, so that the flavor of the cheese is not compromised by the plastic.

(i) Flexible-Packaging Rollstock for Chunk and Sliced Natural Cheese

Chunk natural cheese is sold in bricks of specific sizes, typically eight, but ranging to thirty-two, ounces. Sliced natural cheese is typically sold in packages with roughly ten or more slices. Producers of chunk and sliced natural cheese generally use the same films for packaging. Specialized rollstock films are designed specifically for packaging chunk and sliced natural cheese for retail sale. While some chunk and sliced natural cheeses for retail sale are packaged in other forms of packaging (e.g., shrink bags or rigid trays), these are more expensive to purchase than rollstock packaging and cannot be used on the same packaging equipment as rollstock. A small but significant increase in the price of flexible-packaging rollstock for chunk and sliced natural cheese packaged for retail sale likely would not cause customers faced with such an increase to substitute other forms of packaging, or otherwise purchase sufficiently less of the product, so as to render the price increase unprofitable. Accordingly, the United States has alleged that flexible-packaging rollstock for chunk and sliced natural cheese packaged for retail sale is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

(ii) Flexible-Packaging Rollstock for Shredded Natural Cheese Packaged for Retail Sale

Shredded natural cheese packaged for retail sale typically is packaged in bags, which often come with an easy-open mechanism and an easy-close attachment. The easy-open mechanism is either laser scored or mechanically scored, such that some of the package's layers are perforated (making the package easy to tear), while leaving the oxygen and moisture barriers intact (preventing contamination of the product). The scoring process presents significant challenges to flexible-packaging producers. The sealing process also is difficult because the bags typically are filled with cheese while in a vertical position and the release of cheese into the bags is continuous and fast.

Specialized films are designed specifically for shredded natural cheese packaged for retail sale. A small but significant increase in the price of flexible-packaging rollstock for shredded natural cheese packaged for retail sale likely would not cause customers faced with such an increase to switch to other forms of packaging, or otherwise purchase sufficiently less of the product, so as to render the price increase unprofitable. Accordingly, the United States has alleged that flexible-packaging rollstock for shredded natural cheese packaged for retail sale is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

b. Flexible-Packaging Shrink Bags for Fresh Meat

Several characteristics are common to most flexible packaging films for fresh meat (i.e., beef, veal, pork, and lamb). First, most films for fresh meat contain a layer that prevents oxygen from coming into contact with the meat. Second, fresh meat films must prevent moisture from leaking out and contaminants from entering the packaging. Third, fresh meat films must run effectively on the customer's packaging equipment. Finally, the sealant must bond through fatty and oily substances.

The most common type of flexible packaging film for fresh meat is a shrink bag, which is designed to shrink to the contours of the contents when heated, forming a tight seal. Shrink bags are particularly suitable for use with fresh meat, in particular for wholesale distribution of meat to be cut for retail sale in grocery stores. Shrink bags used for fresh meat must be durable enough to survive the rigors of distribution while maintaining its oxygen and moisture barriers and allowing the meat to retain its flavor. The bag must also meet shelf-life requirements of 30 days or more and, when used for retail packaging, have a high degree of transparency for optimal presentation.

A small but significant increase in the price of flexible-packaging shrink bags for fresh meat likely would not cause customers faced with such an increase to substitute to other forms of packaging, or otherwise purchase sufficiently less of the product, so as to render the price increase unprofitable.

Accordingly, the United States has alleged that flexible-packaging shrink bags for fresh meat constitute a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

i. Relevant Geographic Market

Producers of the Relevant Products ship the products to customers throughout the United States and Canada. Producers outside the United States and Canada are not good alternatives for customers in the United States and Canada, and producers outside the United States and Canada have not been able to obtain significant business from customers in the United States and Canada. Customers using producers outside the United States and Canada would face longer lead times and an increased potential for supply-chain complications. Moreover, major customers demand that producers of flexible packaging provide frequent technical and operational service and support at the customer's premises and do not believe that foreign suppliers can provide the level of service and support they demand. A small but significant increase in the price of the Relevant Products in the United States and Canada would not cause a sufficient number of customers in the United States and Canada to turn to manufacturers of the Relevant Products outside the United States and Canada so as to make such a price increase unprofitable. Accordingly, the United States has alleged that the United States and Canada comprise a relevant geographic market within the meaning of Section 7 of the Clayton Act.

3. Anticompetitive Effects

a. Flexible-Packaging Rollstock for Chunk and Sliced Natural Cheese Packaged for Retail Sale

Bemis and Alcan dominate sales of flexible-packaging rollstock for chunk and sliced natural cheese packaged for retail sale. Due to Bemis's and Alcan's collective overall expertise in meeting the needs of customers and other technical and commercial factors for flexible-packaging rollstock for chunk and sliced natural cheese packaged for retail sale, including, among other things, price, delivery times, service, and technical support, Bemis and Alcan frequently are perceived by each other, by other bidders, and by customers as being the two strongest competitors in that market. Currently, Bemis and Alcan account for approximately 37 and 54 percent, respectively, of sales in the United States and Canada for this product. Absent the divestitures, Bemis and Alcan combined would account for approximately 91 percent of sales in the United States and Canada for this product.

Market shares are best measured using revenues in the markets for the Relevant Products because suppliers with the capacity to produce similar goods outside of those markets cannot quickly and easily shift that capacity to supply customers with the Relevant Products. Thus, the mere possession of similar capacity does not make a supplier an "uncommitted entrant" as that term is used in the *Horizontal Merger Guidelines;* meeting the requirements of customers in a cost-efficient manner also requires specialized know-how, experience, qualification, and the ability to innovate.

Bemis's bidding behavior often has been constrained by the threat of losing business to Alcan. By eliminating Alcan, Bemis would gain the incentive and likely ability to profitably increase its bid prices higher than it otherwise would without the acquisition. Customers have also benefitted from competition between Bemis and Alcan through higher quality, better supply-chain options (including delivery times and volume-purchase requirements), technical support, and numerous innovations. The combination of Bemis and Alcan would eliminate this other competition and future benefits to the customers.

The proposed acquisition, therefore, likely would substantially lessen competition in the United States and Canada for flexible-packaging rollstock for chunk and sliced natural cheese packaged for retail sale, which likely would lead to higher prices, lower quality, less favorable supply-chain options, reduced technical support, and less innovation, in violation of Section 7 of the Clayton Act.

b. Flexible-Packaging Rollstock for Shredded Natural Cheese Packaged for Retail Sale

Bemis and Alcan are two of only a few credible competitors that might successfully bid to supply a customer with flexible packaging rollstock for shredded natural cheese packaged for retail sale. Although other flexible packaging suppliers market competing products, customers have stated that Bemis's and Alcan's products are technologically superior to other available packaging and have uniquely effective features (e.g., easy-open and reclose mechanisms). Bemis and Alcan have also massed a collective expertise in meeting the needs of customers with respect to price, delivery times, service, technical support, scale, breadth of product offering, and new product development that other competitors have not been able to match. Therefore, Bemis and Alcan frequently are perceived by each other, by other bidders, and by customers as being the two strongest competitors in that market. Currently, Bemis and Alcan account for approximately 27 and 49 percent, respectively, of sales in the United States and Canada for this product. Absent the divestitures, Bemis and Alcan combined would account for approximately 76 percent of sales in the United States and Canada for this product.

Market shares are best measured using revenues in the markets for the Relevant Products because suppliers with the capacity to produce similar goods outside of those markets cannot quickly and easily shift that capacity to supply customers with the Relevant Products. Thus, the mere possession of similar capacity does not make a supplier an "uncommitted entrant" as that term is used in the *Horizontal Merger Guidelines;* meeting the requirements of customers in a cost-efficient manner also requires specialized know-how, experience, qualification, and the ability to innovate.

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The proposed acquisition, therefore, likely would substantially lessen competition in the United States and Canada for flexible-packaging rollstock for shredded natural cheese packaged for retail sale, which likely would lead to higher prices, lower quality, less favorable supply-chain options, reduced technical support, and less innovation, in violation of Section 7 of the Clayton Act.

c. Flexible-Packaging Shrink Bags for Fresh Meat

Currently, Bemis and Alcan account for approximately 20 and 8 percent, respectively, of the sales in the United States and Canada for flexible-packaging shrink bags for fresh meat. If the proposed acquisition is not enjoined, Bemis and Alcan combined would account for approximately 28 percent of

sales of flexible-packaging shrink bags for fresh meat in the United States and Canada, and leave Bemis and one other firm with over 90 percent of sales.

Market shares are best measured using revenues in the markets for the Relevant Products because suppliers with the capacity to produce similar goods outside of those markets cannot quickly and easily shift that capacity to supply customers with the Relevant Products. Thus, the mere possession of similar capacity does not make a supplier an "uncommitted entrant" as that term is used in the *Horizontal Merger Guidelines;* meeting the requirements of customers in a cost-efficient manner also requires specialized know-how, experience, qualification, and the ability to innovate.

Although the third supplier of flexible-packaging shrink bags for fresh meat is the dominant supplier, some customers desire two or more suppliers. As a result, Bemis and Alcan often find themselves competing to be the second supplier, and their price competition exerts pricing pressure also on the dominant firm. Unless the proposed acquisition is enjoined, that bidding dynamic would be eliminated because Bemis and Alcan no longer would bid against one another. In addition, Bemis's elimination of Alcan as an independent competitor would result in only two suppliers accounting for nearly all of the market. Such an increase in concentration likely would make coordination more likely.

The proposed acquisition, therefore, likely would substantially lessen competition in the United States and Canada for flexible-packaging shrink bags for fresh meat, which likely would lead to higher prices, lower quality, less favorable supply-chain options, reduced technical support, and less innovation, in violation of Section 7 of the Clayton Act.

d. Entry

Some customers in the United States and Canada have attempted to procure suitable flexible-packaging rollstock for chunk, sliced, and shredded natural cheese packaged for retail sale from producers that do not currently produce packaging for these uses. Similarly, some customers in the United States and Canada have attempted to procure suitable flexible-packaging shrink bags for fresh meat from producers beyond Bemis and Alcan and the dominant producer. Most of those flexible-packaging producers have not been able cost-effectively to achieve the required specifications or quality requirements. These suppliers likely would not be able to meet customers' required specifications or quality requirements cost-effectively within a commercially reasonable period of time, nor would they likely be able to produce Relevant Products that would run efficiently on their customers' packaging equipment. Indeed, many customers who have looked for alternative suppliers have not been able to find credible competitors other than Bemis, Alcan, and, in the case of flexible-packaging shrink bags for fresh meat, the aforementioned dominant producer.

New entry into the markets for Relevant Products in the United States and Canada would be costly, difficult, and time consuming. A new supplier would need to construct production lines capable of producing films that meet the rigorous standards set forth by major buyers of such films. Construction of manufacturing facilities would require millions of dollars of capital investment, and the entrant would have to be committed to research and development. In addition, the technical know-how necessary to design and successfully manufacture packaging that is able to run efficiently on customers' equipment cost-effectively is difficult to obtain.

Even after a new entrant has developed the capability to supply the Relevant Products, the entrant must be qualified by potential customers, demonstrating that it is capable of manufacturing products that meet rigorous quality and performance standards. For example, because the qualifying process for natural cheese typically requires a shelf-life test, where sample products are wrapped in the candidate packaging and stored in retail-like conditions for extended periods of time, the process can take many months. Further, there is no guarantee that the attempted qualification will be successful, and the potential entrants may have to repeat the process multiple times. In some cases, the qualification process has taken multiple years and in other cases has failed repeatedly. Moreover, because customer specifications are unique, qualification with one customer does not guarantee qualification with another.

Entry of existing packaging firms that do not currently produce Relevant Products is also unlikely because the technical know-how necessary to create the Relevant Products is difficult to obtain. Also, a company would have to pass each customer's rigorous qualification tests. Entry by new firms or by existing packaging firms into the markets for Relevant Products, therefore, likely would not be timely, likely, and sufficient to defeat a small but significant post-acquisition increase in price in the relevant markets.

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 Bemis's acquisition of the Alcan Packaging Food Americas business. These divestitures will preserve competition in the markets for the Relevant Products by creating an additional independent, economically viable competitor to Bemis in the United States and Canada for each of the Relevant Products.

The Final Judgment requires the divestiture of the entire business that currently produces the Alcan Relevant Products, which includes all of the intangible and non-plant tangible assets associated with those products, as well as two of the four plants currently producing those products. The divestiture of the intangible assets associated with the Alcan Relevant Products is critically important, as it is difficult to obtain the know-how necessary to design and successfully manufacture packaging that is able to run efficiently on customers' equipment. The divestiture package must also include plants that are already successful in producing the Relevant Products, as the know-how required to create competitive packaging includes specialized knowledge of the equipment used in producers' and customers' plants. The collective knowledge and experience of the plant management and employees will enable an Acquirer to compete successfully with Bemis for the manufacture and sale of the Relevant Products. Divestiture of all the plants currently producing the Alcan Relevant Products is not necessary to remedy the competitive issues presented by the Transaction, however; once a critical base of knowledge and experience regarding the production of the Relevant Products is attained, an Acquirer will be able to create or expand its own physical facilities to accommodate its business.

To this end, the divestiture assets include: (1) All tangible assets used exclusively or primarily for the research and development of any Alcan Relevant Product in the United States or Canada; (2) all records and documents relating to any Alcan Relevant Product in the United States or Canada; (3) all intangible assets used exclusively or primarily in the design, development, production, marketing, servicing, distribution, or sale of any Alcan Relevant Product in the United States or Canada; and (4) with respect to any

intangible assets not included in (3), above, and that prior to the filing of the Complaint in this matter were used in connection with the design, development, production, marketing, servicing, distribution, or sale of both any Alcan Relevant Product and any other Alcan product, a non-exclusive, non-transferable license for such intangible assets to be used for the design, development, marketing, servicing, distribution, or sale of any of the Relevant Products or the operation or use of the plants to be divested. These assets are to be divested regardless of whether they are currently used at the plants to be divested.

The proposed Final Judgment also requires the divestiture of two of the four plants currently manufacturing the Alcan Relevant Products. The first of these plants is the Alcan facility located at 905 W. Verdigris Parkway, Catoosa, Oklahoma (the "Catoosa facility"), which exclusively produces flexible-packaging shrink bags for fresh meat. The second plant is the Alcan facility located at 271 River Street, Menasha, Wisconsin (the "Menasha facility"), which produces both flexible-packaging rollstock for chunk and sliced natural cheese packaged for retail sale and flexible-packaging rollstock for shredded natural cheese packaged for retail sale. The Menasha facility also contains a wax-coating operation that is not associated with the Relevant Products and will be moved by Bemis to another of its plants.

The other two plants currently producing Alcan Relevant Products are the Alcan facility located at 901 Morrison Drive, Boscobel, Wisconsin (the "Boscobel facility") and the Alcan facility located at 1500 East Aurora Avenue, Des Moines, Iowa (the "Des Moines facility"). The Boscobel facility produces flexible-packaging rollstock for shredded natural cheese packaged for retail sale and packaging for processed meat (which is not a Relevant Product), while the Des Moines facility produces flexible packaging shrink bags for fresh meat and packaging for processed meat (which is not a Relevant Product). The Boscobel and Des Moines facilities produce such a substantial quantity of non-Relevant Products that a divestiture of those plants likely would require either that the plant be split, with both Bemis and the Acquirer occupying the plant for a significant period of time, or that a significant amount of business involving non-Relevant Products be transferred to the Acquirer.

By contrast, the Catoosa facility exclusively produces Relevant Products, and the Menasha facility, while also containing a non-relevant wax-coating operation, is uniquely situated because the wax-coating operation is largely confined to a discrete area of the plant and can be moved by Bemis to another facility with minimal disturbance to the Acquirer. The proposed Final Judgment requires, therefore, divestiture of the Catoosa facility and all related assets, and of the Menasha facility and all related assets, with the exception of the wax-coating operation.

The only near-term issue created by the fact that Bemis will be divesting only two of the plants currently producing the Relevant Products is that the Acquirer(s) may not immediately have the capacity to produce the quantities of Relevant Products currently demanded by customers. Thus, supply and transition services agreements are contemplated in the proposed Final Judgment to allow the Acquirer(s) time to build or adapt its own facilities to accommodate the new production.

First, because the Alcan shrink bag product known as "Maraflex" is not produced at either the Menasha facility or the Catoosa facility, supply and transition services agreements may be necessary to ensure that the Acquirer will be able immediately to provide Maraflex products to customers. Therefore, the proposed Final Judgment provides that, at the option of the Acquirer of the assets relating to the Maraflex products, Bemis shall enter into a supply contract with that Acquirer for Maraflex products sufficient to satisfy that Acquirer's obligations under any customer contract for a period of up to one (1) year. The United States, in its sole discretion, may approve an extension of the term for a period of up to two (2) additional years. In addition, at the option of the Acquirer of the assets relating to Maraflex products, Bemis shall enter into a transition services agreement with that Acquirer sufficient to meet all or part of that Acquirer's needs for assistance in matters relating to the development, production, and service of the Maraflex products or technology for a period of at least six (6) months, but no longer than three (3) years.

Second, the proposed Final Judgment provides for a supply agreement relating to the provision of flexible-packaging rollstock for shredded natural cheese packaged for retail sale. Currently, flexible-packaging rollstock for shredded natural cheese is produced in the Menasha facility and the Boscobel facility. While the Menasha facility will be divested to an Acquirer, the Boscobel facility will be retained by Bemis. As a consequence, an Acquirer's ability immediately to produce flexible-packaging rollstock for shredded natural cheese may not be sufficient to satisfy the Acquirer's existing supply obligations or to allow the Acquirer to expand the business in competition with Bemis. Therefore, the proposed Final Judgment provides that, at the option of the Acquirer of the Menasha facility, Bemis shall enter into a supply contract with that Acquirer for any Relevant Product produced at the Boscobel facility, sufficient to satisfy that Acquirer's obligations under any customer contract for a period of up to one (1) year. The United States, in its sole discretion, may approve an extension of the term of this supply contract for a period of up to one (1) additional year.

Third, because Bemis will retain the wax-coating operation currently housed in the Menasha facility and move it to another of its plants after the Transaction is closed, the proposed Final Judgment requires that the Acquirer of the Menasha facility enter into an agreement with Bemis permitting Bemis to occupy the portions of the Menasha facility utilized for the wax-coating operation for a period of no longer than three (3) years after the date the Transaction is closed. Also, at the option of Bemis, the Acquirer of the Menasha facility will be required to enter into an agreement with Bemis to provide Bemis with rotogravure printing services for the wax-coating operation at the Menasha facility for a period of up to twelve (12) months.

Finally, the proposed Final Judgment provides for a supply agreement relating to "Clearshield," which is another Alcan shrink bag product. Clearshield is produced exclusively at the Catoosa facility, which is to be divested. However, as a part of the Transaction, Bemis will be acquiring an obligation to supply Clearshield to certain of Alcan's South American and New Zealand affiliates. In order to allow Bemis to meet those obligations, the proposed Final Judgment provides that, at the option of Bemis, the Acquirer of the Catoosa facility shall enter into a supply contract for the Clearshield products sufficient to satisfy Alcan's or Bemis's obligations to Alcan's South American and New Zealand affiliates for a period of up to one (1) year. The United States, in its sole discretion, may approve an extension of the term of this supply contract for a period of up to two (2) years. In addition, to allow Bemis to continue to supply the Clearshield products to those affiliates in the future, the proposed Final Judgment provides that, at the option of Bemis, the Acquirer of the assets relating to the

Clearshield products shall enter into an agreement to provide Bemis with a non-exclusive, non-transferable license to enable Bemis to produce the Clearshield products for sale outside the United States and Canada. These agreements, along with the divestiture of the assets described previously, will ensure that the Acquirer(s) will be able to immediately and fully compete with Bemis for the production and sale of Relevant Products.

The proposed Final Judgment also provides that, at the option of Bemis, the Acquirer(s) must enter into an agreement to provide Bemis with a non-exclusive, non-transferable license for the intangible assets used primarily in the design, development, production, marketing, servicing, distribution, or sale of any Alcan Relevant Product in the United States or Canada that, prior to the filing of the Complaint in this matter, were also used in connection with any other Alcan product. Any such license, however, is to be granted for use solely in connection with products other than the Alcan Relevant Products. Bemis will have no rights to the intangible assets used exclusively in the design, development, production, marketing, servicing, distribution, or sale of any Alcan Relevant Product in the United States or Canada.

In addition, because certain of the intangible assets to be divested currently are encumbered by existing third-party rights, the proposed Final Judgment provides that the Acquirer of any asset thus encumbered must enter into an agreement with the affected third party to provide it with a right to that asset under terms and conditions sufficient to satisfy defendants' obligations to that third party.

Bemis is also required to provide the Acquirer(s) of the divestiture assets information relating to personnel involved in the design, development, production, marketing, servicing, distribution, or sale of the Alcan Relevant Products to enable them to make offers of employment, and prevents Bemis, Rio Tinto or Alcan from interfering with any negotiations by the Acquirer(s) to employ any employee whose primary responsibility is the design, development, production, marketing, servicing, distribution, or sale of the Alcan Relevant Products. The proposed Final Judgment further requires Bemis, Rio Tinto, and Alcan to waive all noncompete agreements for any current or former Alcan employee involved in the design, development, production, marketing, servicing, distribution, or sale of any Alcan Relevant Product.

In addition, Bemis may not solicit business for any Relevant Product that is subject to an unexpired Alcan customer contract transferred to an Acquirer for a period of one (1) year from the date of the divestiture or the remaining term of the contract, whichever is shorter. This provision is necessary to ensure that the Acquirer has the full benefit of the transferred contracts and the time to demonstrate its ability to independently produce the Relevant Products. This provision does not prevent a customer from seeking alternative suppliers at any time that it chooses, subject to the terms and conditions of its own contract.

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(s) as viable, ongoing businesses that can compete effectively in the design, development, production, marketing, servicing, distribution, or sale of the Alcan Relevant Products in the United States and Canada. These assets may be divested to one or more Acquirers, provided that the asset listed in paragraphs II(E)(2) of the proposed Final Judgment (the Menasha facility) is divested to the same purchaser as any tangible or intangible assets related to the design, development, production, marketing, servicing, distribution, or sale of the Alcan Relevant Products produced at the Boscobel facility. 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 ninety (90) days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment of the Court, whichever is later, 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 Bemis 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 Bemis acquired the Alcan Packaging Food Americas business because the Acquirer(s) will have the ability to design, develop, produce, market, service, distribute, and sell the Alcan Relevant Products in the United States and Canada, in competition with Bemis.

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 Bemis's acquisition of the Alcan Packaging Food Americas business. The United States is satisfied, however, that the divestiture of the assets described in the proposed Final Judgment will preserve competition for the design, development, production, marketing, servicing, distribution, and sale of the Relevant Products in the United States and Canada. 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 (D.C. 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).[2] 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.

[2] 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' ").

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,[3] 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.[4]

[3] 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).

[4] *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.").

VIII. Determinative Documents

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

Dated: February 24, 2010.

Respectfully submitted.

Rachel J. Adcox,
U.S. Department of Justice, Antitrust Division, Litigation II Section, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, (202) 305–2738.

Certificate of Service

I, Rachel J. Adcox, hereby certify that on February 24, 2010, I caused a copy of the foregoing Competitive Impact Statement to be served upon defendants Bemis Company, Inc., Rio Tinto plc, and Alcan Corporation by mailing the documents electronically to the duly authorized legal representatives of defendants as follows:

Counsel for Defendant Bemis Company, Inc.:
Stephen M. Axinn, Esq., John D. Harkrider, Esq., Axinn, Veltrop & Harkrider LLP, 114 West 47th Street, New York, NY 10036, (212) 728–2200, *sma@avhlaw.com, jdh@avhlaw.com.*

Counsel for Defendants Rio Tinto plc and Alcan Corporation:
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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Keyspan Corporation; 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 Southern District of New York in *United States of America* v. *KeySpan Corp.,* Civil Case No. 10–CIV–1415. On February 22, 2010, the United States filed a Complaint alleging that KeySpan Corporation ("KeySpan") entered into an agreement with a financial services company, the likely effect of which was to increase prices in the New York City (NYISO Zone J) Capacity Market, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed the same time as the Complaint, requires KeySpan to pay the government $12 million dollars.

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.justice.gov/atr,* and at the Office of the Clerk of the United States District Court for the Southern District of New York. 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 Donna N. Kooperstein, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW., Suite 8000, Washington, DC 20530 (telephone: 202–307–6349).

Patricia A. Brink,
Deputy Director of Operations and Civil Enforcement.

United States District Court for the Southern District of New York

Civil Action No.: 10–cv–1415 (WHP)

ECF CASE

United States of America, U.S. Department of Justice, Antitrust Division, 450 5th Street, NW., Suite 8000, Washington, DC 20530, Plaintiff, v. *Keyspan Corporation, 1 Metrotech Center, Brooklyn, NY 11201,* Defendant.

Received: February 22, 2010

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action under Section 4 of the Sherman Act, as amended, 15 U.S.C.