Course Questionnaire for Supervisors of Graduates.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Training Division's Office of Technology, Research, and Curriculum Development (OTRCD) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for 60 days until October 19, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments (especially on the estimated public burden or associated response time), suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Candace Matthews, Evaluation Program Manager, Federal Bureau of Investigation, Training Division, Curriculum Development and Evaluation Unit, FBI Academy, Quantico, Virginia 22135 or facsimile at (703) 632–3111.

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 three points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) 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 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

1. *Type of Information Collection:* Approval of a reinstated collection.

2. *Title of the Forms:*

FBI National Academy Post-Course Questionnaire for Graduates;

FBI National Academy Post-Course Questionnaire for Supervisors of Graduates.

3. *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:*

Form Number: 1110–0021.

Sponsor: Training Division of the Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

4. *Affected Public who will be asked or required to respond, as well as a brief abstract:*

Primary: FBI National Academy graduates and their identified supervisors that represent state and local police and sheriffs' departments, military police organizations, and federal law enforcement agencies from the United States and over 150 foreign nations.

Brief Abstract: This collection is requested by FBI National Academy. These surveys have been developed that will measure the effectiveness of services that the FBI National Academy provides and will utilize the graduates and their supervisors' comments to improve upon the current process.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 2,000 FBI National Academy graduates that will respond to the FBI National Academy Post-Course Questionnaire for Graduates. It is predicted that we will receive a 75% respond rate. The average response time for reading the directions for the FBI National Academy Post-Course Questionnaire for Graduates for the FBI National Academy graduates is estimated to be 2 minutes; time to complete the survey is estimated to be 30 minutes.

There are approximately 2,000 FBI National Academy graduates who have identified their supervisors that will respond to the FBI National Academy Post-Course Questionnaire for Supervisors of Graduates. It is predicted that we will receive a 75% respond rate. The average response time for reading the directions for the FBI National Academy Post-Course Questionnaire for Supervisors of Graduates for the supervisors is estimated to be 2 minutes; time to complete the survey is estimated to be 30 minutes. The total hour burden for both surveys is 3,088 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:*

The average hour burden for completing all the surveys combined is 3,088 hours.

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

Dated: August 14, 2009

Lynn Bryant,

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

[FR Doc. E9–20040 Filed 8–19–09; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Sapa Holding AB and Indalex Holdings Finance, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Sapa Holding AB and Indalex Holdings Finance, Inc.,* Civil Action No. 09–CV–01424. On July 30, 2009, the United States filed a Complaint alleging that the proposed acquisition by Sapa Holding AB (''Sapa'') of Indalex Holdings Finance, Inc. (''Indalex'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Sapa to divest either Sapa's or Indalex's assets, including certain tangible and intangible assets, used for the manufacture and sale of coiled extruded aluminum tubing used in the formation of high frequency communications cables in the United States. If it has not divested one of these facilities within the period prescribed in the proposed Final Judgment, then a trustee will be appointed to sell Indalex's entire Burlington, North Carolina extruded aluminum fabrication facility.

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, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, (telephone: 202–307–0924).

Patricia A. Brink,

Deputy Director of Operations and Civil Enforcement.

United States of America, Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, Plaintiff v. Sapa Holding AB, Humlegardsgatan 17, Box 5505, SE–114 85 Stockholm, Sweden, Indalex Holdings Finance, Inc., 75 Tri-State International, Suite 450, Lincolnshire, Illinois 60069, Defendants.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to enjoin the proposed acquisition of Indalex Holdings Finance, Inc. (''Indalex'') by Sapa Holding AB (''Sapa'') and to obtain other equitable relief. The United States alleges as follows:

I. Nature of Action

1. Pursuant to an asset purchase agreement dated June 16, 2009, Sapa intends to acquire directly or indirectly substantially all of the assets of Indalex and its affiliated companies in a transaction valued at about $150 million. Defendants Sapa and Indalex currently compete in the manufacture and sale of fabricated aluminum extruded products in the United States. The proposed transaction would substantially lessen competition for the manufacture and sale of coiled extruded aluminum tubing used in the formation of high frequency communications cables in the United States.

2. Defendants Sapa and Indalex are the only two providers of coiled extruded aluminum tubing used in the formation of high frequency communications cables in the United States. Unless the acquisition is enjoined, consumers of coiled extruded aluminum tubing used in the formation of high frequency communications cables likely will pay higher prices as a consequence of the elimination of the existing competition between Sapa and Indalex. Accordingly, Sapa's acquisition of Indalex would violate Section 7 of the Clayton Act, 15 U.S.C. 18.

II. Jurisdiction and Venue

3. This action is filed by the United States under Section 15 of the Clayton Act, 15 U.S.C. 25, to prevent and restrain the violation by defendants of Section 7 of the Clayton Act, 15 U.S.C. 18.

4. Defendants manufacture and sell coiled aluminum tubing and other products in the flow of interstate commerce. Defendants' activities in the manufacture and sale of these products substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1331, 1337(a), and 1345.

5. Defendants Sapa and Indalex transact business, and have consented to venue and personal jurisdiction, in the District of Columbia. Venue is therefore proper in this judicial district under 15 U.S.C. 22 and 28 U.S.C. 1391(c). Venue is also proper in the District of Columbia for Defendant Sapa, a Swedish corporation, under 28 U.S.C. 1391(d).

III. The Parties and the Transaction

6. Sapa is a Swedish corporation with its principal place of business in Stockholm, Sweden. Sapa sells fabricated aluminum products throughout the world, including in the United States, where it is the largest aluminum extruder. Among the fabricated aluminum products that Sapa sells in the United States is coiled extruded aluminum tubing used in the formation of high frequency communications cables, which Sapa manufactures at its plant in Catawba, North Carolina. In 2007, Sapa had about $38.7 million in sales of coiled extruded aluminum tubing used in the formation of high frequency communications cables. In 2008, its sales of the product were about $30.7 million. Sapa is owned by Orkla ASA, a Norwegian public limited company whose offices are located in Skøyen, Oslo in Norway. Orkla is a large, diversified international company with operations throughout the world.

7. Indalex is a Delaware corporation with its principal place of business in Lincolnshire, Illinois. Indalex sells fabricated aluminum products in Canada and the United States. Indalex is the second largest aluminum extruder in the United States. Among the fabricated aluminum products that Indalex sells in the United States is coiled extruded aluminum tubing used in the formation of high frequency communications cables, which Indalex sells from its plant in Burlington, North Carolina. In 2007, Indalex had about $18.3 million in sales of coiled extruded aluminum tubing used in the formation of high frequency communications cables. In 2008, its sales of the product were about $12 million.

8. Pursuant to a bankruptcy court-supervised bidding process, Sapa and Indalex entered into an Asset Purchase Agreement on June 16, 2009, under which Sapa agreed to acquire substantially all the assets of Indalex and its affiliates in the United States and Canada.

IV. Trade and Commerce

A. The Relevant Product Market

9. Cable television companies in the United States and abroad purchase coaxial cables to transmit high frequency broadband signals to their subscribers. One of the major inputs to these cables is specially manufactured extruded aluminum tubing, or ''aluminum sheathing.'' Aluminum sheathing provides protection for the components of the cables to prevent the loss of the transmission signal to subscribers. To fulfill this function, it must be continuous, and it must not have any imperfections such as disruptions, pin-holes, or deformations along the entire length of the product. Aluminum sheathing also must be hermetic, forming an air-tight barrier around the circumference of the tubing to protect the cable against failure due to contamination from foreign substances. In addition, the aluminum sheathing must have a minimum length of 1,900 continuous feet to accommodate the needs of finished coaxial cable manufacturers.

10. Aluminum sheathing also must be thin-walled, typically with a wall thickness in the range of 0.013 to 0.057 inches, with a tolerance as low as +/− 0.002 inches across the entire aluminum sheathing products line. Tight tolerance is required by customers to maintain consistent electrical performance of the cable and assures consistent interface of the cable with standard connectors at its termination points. The ratio of the sheathing outer diameter to the wall thickness commonly falls into the 30:1 range. These thin walls make it difficult to maintain material consistency during the extrusion process and increase the risk of manufacturing defects and damage incurred during shipping.

11. Aluminum sheathing must be made from high-purity aluminum alloy with particular mechanical and electrical properties. It must be manufactured to achieve transmission of radio frequency signals up to a frequency of 3 Ghz at a signal loss level

no worse than −30 decibels. Typically, it will be made from either aluminum alloy 1060, with a minimum aluminum content of 99.6 percent, or 1100, with a minimum aluminum content of 99.0 percent. These alloys are flexible and pliable, which make them particularly suitable for cable applications but also susceptible to denting or damage during processing, particularly for sheathing with thin walls. Any such imperfections increase the electrical impedance of the finished cable and reduce its performance. Repeated, periodic imperfections in the sheathing, such as those that can result from irregularities in the coiling process, can reduce the cable performance and interfere with or block signals within a particular frequency band.

12. Aluminum sheathing is coiled and sold to coaxial cable manufacturers that stretch the aluminum tubing and insert electrical wiring and insulation. There is no other product that customers can use as a reasonably cost-effective substitute for aluminum sheathing. While copper exhibits superior electrical properties, it is five times more expensive than aluminum and, as a result, is not used. Also, most customers do not use welded aluminum tubing as a substitute because of its much lower reliability in cable applications and lack of conformity with their installed base.

13. A small but significant increase in the price of aluminum sheathing would not cause purchasers to substitute any other type of tubing to protect coaxial cables used to transmit high frequency broadband signals. Accordingly, the manufacture and sale of aluminum sheathing is a separate and distinct line of commerce and a relevant product market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

B. The Relevant Geographic Market

14. All aluminum sheathing sold in the United States is manufactured in the United States, and Indalex and Sapa sell aluminum sheathing for uses throughout the country. No aluminum sheathing is imported into the United States from abroad.

15. The United States is a relevant geographic market for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

C. Anticompetitive Effects

16. If Sapa is allowed to acquire the aluminum sheathing business of Indalex, the number of manufacturers of aluminum sheathing will decrease from two to one. Thus, the transaction will result in a monopoly.

17. Currently, Sapa and Indalex directly constrain each other's prices, limiting overall price increases for aluminum sheathing.

18. Purchasers of aluminum sheathing in the United States have benefited from the competition between Sapa and Indalex through lower prices, higher quality, more innovation, and better service. Without the competitive constraint of head-to-head competition from Indalex, Sapa will have the ability to exercise market power by raising prices, lowering product quality, decreasing services, and lessening product innovation.

19. The acquisition of Indalex by Sapa will remove a significant competitor in the market for aluminum sheathing in the United States. The resulting loss of competition will deny customers the benefits of competition, in violation of Section 7 of the Clayton Act.

D. Entry Into the Manufacture and Sale of Aluminum Sheathing

20. A new entrant would require significant time to obtain necessary equipment and to qualify its product to meet the demanding standards described in paragraphs 9 to 11, above.

21. A new entrant into the manufacture and sale of aluminum sheathing must obtain significant technical know-how in order to manufacture it. Extrusions of structural aluminum products are made from different aluminum alloys than those used to produce aluminum sheathing and are not typically formed into lengths of 2000 feet or more. Also, other types of aluminum extrusions typically are not coiled and require different post-extrusion processing. A new entrant would require significant time to develop the necessary expertise to perfect these processes in a high-volume production environment. Moreover, customers of aluminum sheathing must carefully qualify any new supplier, which can cost the customer over $1 million and one year of time. Aluminum sheathing customers—i.e., cable manufacturers—incur significant liability in the form of repair and replacement costs and diminished reputation if their products do not perform as predicted.

22. A new entrant also must invest in significant equipment and tooling to successfully manufacture the product. Appropriate dies, coiling systems, and presses of the size commonly used to produce aluminum sheathing could require substantial investment, much of which represents sunk costs.

23. A new entrant, to be successful, must produce aluminum sheathing in quantities that permit it to realize economies of scale. Current and projected demand for the product are not likely to be sufficient to attract new investment, particularly because customers are parties to long-term contracts, the expiration dates for which differ significantly. Thus, entry at sufficient scale to justify the cost of the required investment is unlikely.

24. Therefore, entry into the manufacture and sale of aluminum sheathing would not be timely, likely, or sufficient to counter anticompetitive price increases that Sapa could impose after its acquisition of Indalex.

V. Violation Alleged

25. The United States incorporates the allegations of paragraphs 1 through 24 above.

26. On or about July 31, 2009, Sapa plans to acquire Indalex and its assets used in the manufacture of coiled extruded aluminum tubing used in the formation of high frequency communications cables. The effect of this acquisition will be substantially to lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act.

27. The transaction will likely have the following effects, among others:

a. Competition in the manufacture and sale of coiled extruded aluminum tubing used in the formation of high frequency communications cables in the United States will be lessened substantially;

b. Actual and potential competition between Sapa and Indalex in the manufacture and sale of coiled extruded aluminum tubing used in the formation of high frequency communications cables in the United States will be eliminated; and

c. Prices for coiled extruded aluminum tubing used in the formation of high frequency communications cables likely will increase and the levels of quality, services and innovation likely will decrease.

VI. Requested Relief

28. The United States requests that this Court:

a. Adjudge and decree that Sapa's proposed acquisition of Indalex and its assets violates Section 7 of the Clayton Act, 15 U.S.C. 18;

b. Permanently enjoin and restrain Sapa and all persons acting on its behalf from consummating the proposed acquisition or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine the aluminum sheathing assets of Indalex and Sapa;

c. Award the United States its cost for this action; and

d. Grant the United States such other and further relief as the case requires and the Court deems just and proper.

Respectfully submitted.
July 30, 2009.
For Plaintiff United States.

Christine A. Varney,
Assistant Attorney General.
William F. Cavanaugh, Jr.,
Deputy Assistant Attorney General.
J. Robert Kramer II,
Director of Operations.
Maribeth Petrizzi,
Bar No. 435204, Chief, Litigation II Section.
Dorothy B. Fountain,
Bar No. 439469, Assistant Chief, Litigation II Section.
John F. Greaney,
Suzanne Morris,
Bar No. 450208.
Dando B. Cellini,
Warren A. Rosborough IV,
Bar No. 495063.
Attorneys, U.S. Department of Justice, Antitrust Division, Litigation II Section, Fifth Street, NW., Suite 8700, Washington, DC 20530.

Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on July 30, 2009, the United States and defendants, Sapa Holding AB and Indalex Holdings Finance, Inc., 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 and assets by the defendants to assure that competition is not substantially lessened;

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

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

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, *It is ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, 15 U.S.C. 8, as amended.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the entity to whom defendants divest the Divestiture Assets or to whom the trustee divests the Alternative Divestiture Assets.

B. ''Sapa'' means defendant Sapa Holding AB, a subsidiary of Orkla ASA, headquartered in Stockholm, Sweden, its successors and assigns, and its parents, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Indalex'' means defendant Indalex Holdings Finance, Inc., headquartered in Lincolnshire, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Divestiture Assets'' means:

(1) Sapa's Catawba, North Carolina facility (''Catawba facility''), located at 6555 CommScope Road, Catawba, North Carolina, including: (a) All tangible assets comprising the Catawba facility, including, but not limited to, all research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used in connection with the Catawba facility; all licenses, permits and authorizations issued by any governmental organization relating to the Catawba facility; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the Catawba facility, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the Catawba facility;

(b) All intangible assets used in the development, production and sale of coiled extruded aluminum tubing used in the formation of high frequency communications cables, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability; all manuals and technical information provided by Sapa to its own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts at the Catawba facility, including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments; or

(2) The portion of Indalex's assets located at any time during the past two years on the north side of Industry Drive (''Burlington aluminum sheathing facility''), at its Burlington, North Carolina facility, 1507 Industry Drive, Burlington, North Carolina (''Burlington facility''), including:

(a) All tangible assets comprising the Burlington aluminum sheathing facility, including, but not limited to, all assets that have been used in connection with the manufacture and sale of coiled extruded aluminum tubing used in the formation of high frequency communications cables (''aluminum sheathing''); a total of two presses, including the 14-inch press used by Indalex primarily to produce aluminum sheathing along with all assets necessary to the operation of those two presses, including assets involved in the processing and handling of billets and coiling or other post-extrusion processing operations; all research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used in connection with the Burlington aluminum sheathing facility; all licenses, permits and authorizations issued by any governmental organization relating to the Burlington aluminum sheathing facility; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the Burlington aluminum tubing facility, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the Burlington aluminum sheathing facility; and

(b) All intangible assets used in the development, production and sale of aluminum sheathing or any other product manufactured at the Burlington

aluminum sheathing facility during the past two years, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability; all manuals and technical information provided by Indalex to its own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts at the Burlington aluminum sheathing facility, including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments.

(c) Notwithstanding the foregoing, the non-press assets (including but not limited to repair/performance documentation, customer contracts, technical information and conduit and distribution tooling) that primarily relate to, and the employees primarily assigned to, the two presses and operations south of Industry Road at the Burlington plant are not part of the ''Burlington aluminum sheathing facility.''

E. ''Alternative Divestiture Assets'' means Indalex's Burlington facility including:

(1) All tangible assets comprising the Burlington facility, including, but not limited to, all research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used in connection with the Burlington facility; all licenses, permits and authorizations issued by any governmental organization relating to the Burlington facility; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the Burlington facility, including, supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the Burlington facility;

(2) All intangible assets used in the development, production and sale of extruded aluminum products, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability; all manuals and technical information provided by Indalex to its own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts relating to the Burlington facility, including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments.

III. Applicability

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

B. If, prior to complying with Sections 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 or the Alternative 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 of the assets divested pursuant to this Final Judgment.

IV. Divestitures

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

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

C. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the production, operation, development and/or sale of the Divestiture Assets, or the Alternative Divestiture Assets if the divestiture is made pursuant to Section V of this Final Judgment, to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the production, operation, development and/or sale of the Divestiture Assets, or the Alternative Divestiture Assets if the divestiture is made pursuant to Section V of this Final Judgment. For a period of twelve (12) months from the date of the divestiture of the Divestiture Assets, defendants shall not solicit to hire, or hire, any such defendant employee that receives a substantially equivalent offer of employment from the approved Acquirer, unless such employee is terminated or laid off by the Acquirer, or the Acquirer agrees that defendants may solicit and hire that employee.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets, or the Alternative Divestiture Assets if the divestiture is made pursuant to Section V of this Final Judgment, to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets, or the Alternative Divestiture Assets if the divestiture is made pursuant to Section V of this Final Judgment; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

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

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets, or the Alternative Divestiture Assets if the divestiture is made pursuant to Section V of this Final Judgment.

G. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets or the Alternative 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 or the Alternative Divestiture Assets.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets or the Alternative Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets or the Alternative Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business in the production and sale of coiled extruded aluminum tubing used in the formation of high frequency communications cables. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) Shall be made to an Acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of coiled extruded aluminum tubing used in the formation of high frequency communications cables; 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 an Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

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

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

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

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

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

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

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each

person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets or the Alternative 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, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, 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, 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 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 divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets or the Alternative Divestiture Assets if the divestiture is made pursuant to Section V of this Final Judgment, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets or the Alternative Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation 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, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets or the Alternative 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 response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

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

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

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

XII. Retention of Jurisdiction

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

XIII. Expiration of Final Judgment

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

XIV. Public Interest Determination

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

Date: _____

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

_____/s/_____

United States District Judge.

United States District Court for The District of Columbia

United States of America, Plaintiff, v. *Sapa Holding Ab, And Indalex Holdings Finance, Inc.*, Defendants.

Case No.:
Judge:
Deck Type: Antitrust.
Date Stamp: July 30, 2009.

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

Defendant Sapa Holding AB (''Sapa'') and Indalex Holdings Finance, Inc. (''Indalex'') entered into an Asset Purchase Agreement dated June 16, 2009, pursuant to which Sapa would acquire Indalex in a sale under Chapter 11 of the Bankruptcy Code. The United States filed a civil antitrust Complaint on July 30, 2009, seeking to enjoin the proposed acquisition, alleging that it would substantially lessen competition for the manufacture and sale of coiled extruded aluminum tubing used in the formation of high frequency communications cables in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition would likely result in consumers paying higher prices, lowering product quality, decreasing services, and reducing product innovation for coiled extruded aluminum tubing used in the formation of high frequency communications cables.

With the filing of the Complaint in this case, the United States also filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the proposed acquisition. Under the proposed Final Judgment, explained more fully below, defendants are required promptly to divest either Sapa's or Indalex's assets used for the manufacture and sale of coiled extruded aluminum tubing used in the formation of high frequency communications cables in the United States. If they have not divested one of these facilities within the period prescribed in the proposed Final Judgment, then a trustee will be appointed to sell Indalex's entire Burlington, North Carolina extruded aluminum fabrication facility. Under the terms of the Hold Separate Stipulation and Order, Sapa is required to take certain steps to ensure that the assets eligible to be divested will be operated as a competitively independent, economically viable and ongoing business concern, that will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture.

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

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

A. The Parties to the Proposed Transaction

Sapa is a Swedish corporation with its principal place of business in Stockholm, Sweden. Sapa sells fabricated aluminum products throughout the world, including in the United States, where it is the largest aluminum extruder. Among the fabricated aluminum products that Sapa sells in the United States is coiled extruded aluminum tubing used in the formation of high frequency communications cables, which Sapa manufactures at its plant in Catawba, North Carolina. Sapa is owned by Orkla ASA, a Norwegian public limited company whose offices are located in Skϕyen, Oslo in Norway. Orkla is a large, diversified international company with operations throughout the world.

Indalex is a Delaware corporation with its principal place of business in Lincolnshire, Illinois. Indalex sells fabricated aluminum products in Canada and the United States. Indalex is the second largest aluminum extruder in the United States. Among the fabricated aluminum products that Indalex sells in the United States is coiled extruded aluminum tubing used in the formation of high frequency communications cables, which Indalex sells from its plant in Burlington, North Carolina.

Pursuant to a bankruptcy court-supervised bidding process, Sapa and Indalex entered into an Asset Purchase Agreement on June 16, 2009, under which Sapa agreed to acquire substantially all the assets of Indalex and its affiliates in the United States and Canada. Sapa and Indalex are the only two manufacturers of coiled extruded aluminum tubing used in the formation of high frequency communications cables in the United States. Sapa's acquisition of Indalex thus would result in a monopoly. Without the head-to-head competition from Indalex, Sapa will be able to exercise power in the market for coiled extruded aluminum tubing used in the formation of high frequency communications cables sold in the United States by raising prices, lowering product quality, decreasing services, and reducing product innovation. This transaction is the subject of the Complaint and proposed Final Judgment filed by the United States on July 30, 2009.

The United States has agreed to entry of the proposed Final Judgment and Hold Separate Stipulation and Order, which will prevent injury to competition that otherwise likely would arise from the proposed acquisition of Indalex by Sapa.

B. The Relevant Product Market

Coiled extruded aluminum tubing, or ''aluminum sheathing,'' is used in the fabrication of coaxial cables, which are used in large quantities by cable

television companies in the United States and abroad to transmit high frequency broadband signals to their subscribers. Manufacturers of coaxial cables use aluminum sheathing sold by Sapa and Indalex to protect the cable wiring and insulation and to prevent the loss of the transmission signal to subscribers. To fulfill this function, aluminum sheathing must be continuous, and it must not have any imperfections such as disruptions, pin-holes, or deformations along the entire length of the product. Aluminum sheathing also must be hermetic, forming an air-tight barrier around the circumference of the tubing. In addition, the aluminum sheathing must have a minimum length of about 1,900 continuous feet to accommodate the needs of finished coaxial cable manufacturers.

Aluminum sheathing also must be thin-walled, typically with a wall thickness in the range of 0.019 to 0.057 inches, with a tolerance as low as +/− 0.002 inches across the entire aluminum sheathing product line. The ratio of the sheathing outer diameter to the wall thickness commonly falls into the 30:1 range. These thin walls make it difficult to maintain material consistency during the extrusion process and increase the risk of manufacturing defects and damage incurred during shipping.

Aluminum sheathing used for coaxial cables must be made from high-purity aluminum alloy with particular mechanical and electrical properties. Typically, it will be made from either aluminum alloy 1060, with a minimum aluminum content of 99.6 percent, or 1100, with a minimum aluminum content of 99.0 percent. These alloys are flexible and pliable making them particularly suitable for cable applications but also susceptible to denting or damage during processing. Any imperfection could increase the electrical impedance of the finished cable and reduce its performance. Moreover, the tubing must be designed and manufactured so that transmission of radio frequency signals up to a frequency of 3 Ghz at a signal loss level no worse than −30 decibels is achieved.

Aluminum sheathing is coiled and sold to coaxial cable manufacturers that stretch the aluminum tubing and insert electrical wiring and insulation. There is no other product that coaxial cable manufacturers can use as a reasonably cost effective substitute for aluminum sheathing. A small but significant increase in the price of aluminum sheathing would not cause purchasers to substitute any other type of tubing to protect coaxial cables used to transmit high frequency broadband signals. Accordingly, the manufacture and sale of aluminum sheathing is a separate and distinct line of commerce and a relevant product market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

C. The Relevant Geographic Market

All aluminum sheathing sold in the United States is manufactured in the United States and Indalex and Sapa sell aluminum sheathing for uses throughout the country. No aluminum sheathing is imported into the United States from abroad. The United States is a relevant geographic market for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

D. The Competitive Effects of the Transaction

If Sapa is allowed to acquire the aluminum sheathing business of Indalex, the number of manufacturers of aluminum sheathing will decrease from two to one. Thus, the transaction will result in a monopoly. Currently, Sapa and Indalex directly constrain each other's prices, limiting overall price increases for aluminum sheathing. Purchasers of aluminum sheathing in the United States have benefited from the competition between Sapa and Indalex through lower prices, higher quality, more innovation, and better service. Without the competitive constraint of head-to-head competition from Indalex, Sapa will have the ability to exercise market power by raising prices, lowering product quality, decreasing services, and lessening product innovation. The acquisition of Indalex by Sapa would remove a significant competitor in the market for aluminum sheathing in the United States. The resulting loss of competition would deny customers the benefits of competition, in violation of Section 7 of the Clayton Act. Entry into the manufacture and sale of aluminum sheathing would not be timely, likely, or sufficient to counter the anticompetitive effects of the transaction. A new entrant into the manufacture and sale of aluminum sheathing must obtain significant technical know-how in order to manufacture it. Extrusions of structural aluminum products are made from different aluminum alloys and are not typically formed into lengths of 2000 feet or more. Also, other types of aluminum extrusions typically are not coiled and require different post-extrusion processing. A new entrant would require significant time to develop the necessary expertise to perfect these processes in a high-volume production environment. Moreover, customers of aluminum sheathing must carefully qualify any new supplier, which can cost the customer over $1 million and one year of time. Aluminum sheathing customers—i.e., cable manufacturers—incur significant liability in the form of repair and replacement costs and diminished reputation if their products do not perform as predicted.

A new entrant also must invest in significant equipment and tooling to successfully manufacture the product. Appropriate dies, coiling systems, and presses of the size commonly used to produce aluminum sheathing require substantial investment, much of which represents sunk costs.

A new entrant, to be successful, must produce aluminum sheathing in quantities that permit it to realize economies of scale. Current and projected demand for the product are not likely to be sufficient to attract new investment, particularly because customers are parties to long-term contracts, the expiration dates for which differ significantly. Thus, entry at sufficient scale to justify the cost of the required investment is unlikely.

Accordingly, entry into the manufacture and sale of aluminum sheathing would not be timely, likely, or sufficient to counter anticompetitive price increases that Sapa would likely impose after its acquisition of Indalex.

III. Explanation of the Proposed Final Judgment

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in aluminum sheathing by establishing a new, independent, and economically viable competitor. The proposed Final Judgment requires the defendants to divest either Sapa's Catawba, North Carolina aluminum sheathing facility (''Catawba facility'') or the Indalex aluminum sheathing assets located at its Burlington, North Carolina extruded aluminum fabrication facility (''Burlington aluminum sheathing facility''). As the Burlington aluminum sheathing facility has not previously operated as a profitable stand-alone business, the proposed Final Judgment also requires that defendants divest a second press, which currently produces other extruded aluminum products, to ensure that a stand-alone aluminum sheathing facility at Burlington would be attractive to a viable purchaser. This will allow a purchaser to spread the fixed costs of operating the facility over a larger output, thereby reducing unit costs of production. Each facility profitably produces aluminum sheathing currently and likely would

continue to do so if acquired by a purchaser who can and will operate the facility as part of a viable, ongoing business in the production and sale of aluminum sheathing.

Under the proposed Final Judgment, defendants will have ninety (90) calendar days from the filing of the Complaint or five (5) calendar days from notice of the entry of the Final Judgment by the Court, whichever is later, to divest either the Catawba facility or the Burlington aluminum sheathing facility to a purchaser 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. The assets must be divested in such a way as to satisfy the United States in its sole discretion that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants agree to use their best efforts to accomplish the divestiture as expeditiously as possible and shall cooperate with prospective purchasers.

Due to the exigencies of the bankruptcy process, the United States has expedited its investigation of the proposed transaction. The United States, however, has obtained sufficient information to conclude with reasonable certainty that divestiture of either the Catawba facility or the Burlington aluminum sheathing facility to a viable purchaser will solve the competitive concerns implicated by the proposed acquisition. Further, it is probable that defendants can accomplish the divestiture of one of these facilities to a viable purchaser.

In the event, however, that defendants have not divested the Catawba facility or the Burlington aluminum sheathing facility within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to sell the entire Indalex extruded aluminum fabrication facility, located at 1507 Industry Drive, Burlington, North Carolina (''Burlington facility''). If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price 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 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.

Although defendants have the option of divesting either the Catawba facility or the Burlington aluminum sheathing facility, should defendants' efforts to divest either property fail, to ensure a successful divestiture, the proposed Final Judgment provides that the entire Burlington facility be made available for sale by the trustee. The United States is confident that the entire Burlington facility could be sold to a viable purchaser that would continue to compete in the manufacture and sale of aluminum sheathing in the United States.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the manufacture and sale of coiled extruded aluminum tubing used in the formation of high frequency communications cables in the United States.

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 the defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

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

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**, 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 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 the defendants. The United States could have commenced litigation and sought a judicial order enjoining the acquisition of Indalex by Sapa. The United States is satisfied that the divestiture and other relief described in the proposed Final Judgment will remedy the competitive concern alleged in its Complaint without causing unnecessary harm to the creditors and employees of Indalex. The relief contained in the proposed Final Judgment would achieve substantially all of the relief that the United States would have obtained through litigation, but allow the overall transaction to close promptly to the benefit of Indalex's creditors and employees, while avoiding 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, the Court shall consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). 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).[1]

As the United States Court of Appeals for the District of Columbia Circuit 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. 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 making its public interest determination, a district 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' prediction as to the effect of the proposed remedies, its perception of the market structure, and its views of the nature of the case).

Court approval of a final judgment requires a standard that is more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *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). To meet this standard, 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. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this Court recently confirmed in *SBC Commc'ns,* 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.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15. In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained:''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors fo the court to consider and amended the list of factors to focus on competitive considerations and to 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).

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

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunny 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.'').

APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 30, 2009.

Respectfully submitted.

John F. Greaney, Suzanne Morris,
Bar No. 450208,
Dando B. Cellini,
Warren A. Rosborough IV,
Bar No. 495063.
Attorneys, U.S. Department of Justice, Antitrust Division, Lit II Section, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, 202–305–9965.

[FR Doc. E9–19987 Filed 8–19–09; 8:45 am]
BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review: Comment Request

August 14, 2009.

The Department of Labor has submitted the following information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13. OMB approval has been requested by August 24, 2009. A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.* Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov.* To ensure appropriate consideration, please submit comments by no later than August 21, 2009. Please note, interested parties will be provided with an additional opportunity to comment when this collection of information is resubmitted to OMB under standard clearance procedures.

The OMB is particularly interested in comments which:

- 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 clarify 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 submissions of responses.

Agency: Employment and Training Administration.

Type of Review: Revision of a current approved collection.

Title of Collection: Financial and Program Reporting and Performance Standards System for Indian and Native American Programs Under Title I, Section 166 of the Workforce Investment Act (WIA).

OMB Control Number: 1205–0422.

Frequency of Collection: Monthly and quarterly collection.

Affected Public: WIA, Section 166, Indian and Native American grant recipients.

Total Estimated Number of Respondents: 127.

Total Estimated Annual Burden Hours: 90,262.

Total Estimated Annual Costs Burden (does not include hourly costs): $0.

Description: The American Recovery and Reinvestment Act of 2009 (The Recovery Act) was signed into law by President Obama on February 17, 2009. To record the impact of the Recovery Act resources, more current information on participants and the services received is essential. Therefore, to obtain a more robust look at participants and services provided with the additional Recovery Act resources, the Employment and Training Administration (ETA) proposes to revise the current youth report to add additional reporting elements. This new report adds 9 additional data elements pertaining to Recovery Act participants and 5 additional data elements unrelated to the Recovery Act. In addition, the frequency of reporting for Recovery Act Participants will be monthly and the frequency of reporting for ''regular'' WIA, youth participants will increase to quarterly.

Why Are We Requesting Emergency Processing?

This collection comprises a participant and performance reporting strategy that will provide a more robust, ''real time'' view of the impact of the Recovery Act funds, providing greater information on levels of program participation, and provide more information about the characteristics of the participants served, and the types of services provided. The approval of this request is necessary to allow ETA to report performance accountability information immediately on the effective use of Recovery Act funds already received by Native American grantees. With these monthly reports more current information will be available on the number of Native American youth served with Recovery Act funds and the outcomes they achieved.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–19965 Filed 8–19–09; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Comment Request for Information Collection for the INAP and SCSEP Grant Planning Guidance Training and Employment Guidance Letters (TEGLs), OMB Control No. 1205–0472, Extension Without Changes

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data about the Senior Community Service Employment Program (SCSEP) and Indian and Native American Program (INAP), expiring October 31, 2009. The