The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the consent decree between the United States and Bowater, DOJ Ref. No. 90–5–2–1–08852.

The proposed consent decree may be examined at EPA's office, 61 Forsyth Street, Atlanta, GA 30303. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–20950 Filed 8–31–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on August 20, 2009, a proposed Consent Decree in *United States and Louisville Metro Air Pollution Control District* v. *D.D. Williamson & Company, Inc.* Civil Action No. 3:09 cv 633 was lodged with the United States District Court for the Western District of Kentucky (Louisville Division).

In this action both the United States and Louisville Metro Air Pollution Control District (''District'') sought civil penalties and injunctive relief from D.D. Williamson & Company, Inc. (''D.D. Williamson'') for its violations of the Clean Air Act (the ''Act'') and its implementing regulations. The consent decree obligates D.D. Williamson to pay $600,000 in civil penalties which will be divided equaling between the United States and the District. Additionally, D.D. Williamson is obligated pursuant to the consent decree to: (1) Hire an independent engineering consultant to conduct a full hazard operability study of its manufacturing operations; (2) implement the study's recommendations; and (3) train its managers in process-hazard assessment techniques.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to this proposed settlement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States et al.* v. *D.D. Williamson & Company, Inc.* Civil Action No. 3:09 cv 633, D.J. Ref. 90–5–2–1–08538.

The consent decree may be examined at the United States Attorney's Office, Western District of Kentucky, 510 W. Broadway, Louisville, KY 40202, ATTN: Jay Gilbert, and at U.S. EPA Region 4, at 61 Forsyth Street, Atlanta, GA 30303, ATTN: Ellen Rouch. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $9.25 payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–20989 Filed 8–31–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Microsemi 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 and Competitive Impact Statement have been filed with the United States District Court for the Central District of California in *United States* v. *Microsemi Corporation,* Civil Action No. 8:09–CV–00275–AG–AN. On December 18, 2008, the United States filed a Complaint alleging Microsemi Corporation's July 14, 2008 acquisition of the assets of Semicoa violated Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 2 of the Sherman Act, 15 U.S.C. 2. The United States alleged that this acquisition enabled Microsemi to eliminate or reduce competition in the development, manufacture, and sale of certain small signal transistors and ultrafast recovery rectifier diodes used in military and space programs. The proposed Final Judgment, filed on August 20, 2009, requires that Microsemi divest all of the assets it acquired from Semicoa. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation.

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 Central District of California, Southern Division. 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 sixty (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. In order to comply with publication criteria for the **Federal Register**, please provide comments in an electronic word processing format (preferably Word Perfect or Microsoft Word). Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust

Division, U.S. Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530 (telephone: 202–307–0924).

J. Robert Kramer, II,

Director of Operations and Civil Enforcement.

In the United States District Court for the Eastern District of Virginia Alexandria Division

United States of America, Plaintiff, V. Microsemi Corporation, Defendant. Civil Action No.: 1:08cv1311, Judge: Trenga, Anthony J., Date: December 18, 2008

Verified Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain a temporary restraining order, preliminary injunction, and equitable and other relief against defendant Microsemi Corporation (''Microsemi'') to remedy the harm to competition caused by Microsemi's acquisition of assets of Semicoa, Inc. (''Semicoa''). The United States alleges as follows:

I. Nature of Action

1. This lawsuit challenges Microsemi's July 14, 2008 acquisition of substantially all of the assets of Semicoa, which has significantly harmed competition in the development, manufacture and sale of certain specialized high reliability electronic components used in aerospace and military applications. The transaction eliminated all competition for several types of transistors used in such applications—known as JANS and JANTXV small signal transistors—and substantially lessened competition for one type of diode used in such applications—known as JANS and JANTXV 5811 diodes. The high reliability transistors and diodes affected by the transaction are manufactured to exacting standards to ensure high performance under the most demanding conditions, subject to a U.S. government system of qualification and certification that is relied upon to assure the required degree of reliability. These components are used by customers that include the military services and the national security agencies of the United States in a wide range of critical applications in space, in the air, on land, and on and under the sea. The largest and most complex military applications ever designed, ranging from satellites to submarines, depend on these components. Civilian space projects ranging from communications satellites to the spacecraft under development to return astronauts to the moon also require these components. Because failure of even a single one of these components could result in the failure of a vital, multibillion dollar mission—and potentially cost the lives of American servicemen and women and astronauts—components with lesser degrees of reliability cannot be substituted for the products at issue in this case.

2. The JANTXV and JANS small signal transistors and the JANTXV and JANS 5811 diodes at issue in this case are hereinafter referred to collectively as the ''relevant products.'' Through its acquisition of the Semicoa assets, Microsemi reduced the number of suppliers of JANTXV and JANS small signal transistors from two to one, and thereby acquired monopolies in the development, manufacture and sale of those products. The acquisition also substantially reduced competition for JANTXV and JANS 5811 diodes by terminating Semicoa's attempt to enter into the manufacture and sale of these diodes. The acquisition has thus created monopolies in the development, manufacture and sale of JANTXV and JANS small signal transistors, and has substantially lessened competition in the development, manufacture and sale of all relevant products.

3. As a result of the transaction, prices for the relevant products have increased and likely will continue to increase, delivery times have become less reliable, and terms of service likely will become less favorable. Accordingly Microsemi's acquisition of the Semicoa assets violated Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 2 of the Sherman Act, 15 U.S.C. 2.

II. Jurisdiction and Venue

4. The United States brings this action against defendant Microsemi under Section 4 of the Sherman Act and Section 15 of the Clayton Act, 15 U.S.C. 4 and 25, as amended, to prevent and restrain Microsemi from continuing to violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 2 of the Sherman Act, 15 U.S.C. 2.

5. Microsemi develops, manufactures and sells the relevant products in the flow of interstate commerce. Microsemi's activities in developing, manufacturing and selling the relevant products substantially affect interstate commerce. This Court has subject matter jurisdiction over this action and over the defendant pursuant to Section 4 of the Sherman Act and Section 15 of the Clayton Act, 15 U.S.C. 4 and 25, and 28 U.S.C. 1331, 1337(a), and 1345.

6. Venue is proper in this district pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22 and 28 U.S.C. 1391(c), and venue is proper in this Division pursuant to Local Rule 3(C). Defendant is a corporation that transacts business within this judicial district and Division, including by making sales to customers located within this judicial district and Division.

III. Parties to the Transaction

7. Microsemi is a Delaware corporation with its principal place of business in Irvine, California. Microsemi's sales were approximately $514 million in fiscal year 2008. Microsemi manufactures a range of high reliability semiconductors, including JANTXV and JANS small signal transistors and JANTXV and JANS 5811 diodes. Microsemi's facilities for the manufacture of the relevant products are located in Massachusetts, California and Arizona. Microsemi's relevant products are shipped to customers throughout the United States, represent a regular, continuous and substantial flow of interstate commerce, and have a substantial effect upon interstate commerce.

8. Semicoa was a California corporation with its principal place of business in Costa Mesa, California. Semicoa's sales in the United States were approximately $14.7 million in 2007. Prior to the acquisition, Semicoa's products included a range of high reliability semiconductors. Semicoa's facilities for the manufacture of the relevant products were located in Costa Mesa, California. Its relevant products were shipped to customers throughout the United States and represented a regular, continuous and substantial flow of interstate commerce and had a substantial effect upon interstate commerce. After the sale of the high reliability semiconductor assets to Microsemi, the remainder of the Semicoa business was renamed Array Optronics, Inc..

IV. The Transaction

9. On July 14, 2008, Microsemi and Semicoa completed an asset sale by which Microsemi acquired from Semicoa all of its business engaged in the development, manufacture and sale of the relevant products. Microsemi announced plans to release most of Semicoa's employees and to relocate its operations within a year to Microsemi facilities.

V. Trade and Commerce

The Relevant Product Markets

10. Transistors and diodes are semiconductor devices used to control the flow of electric current. In their simplest forms, transistors can be viewed as switches and diodes can be viewed as one-way valves. Both products begin as silicon wafers produced in a furnace, typically referred to as a foundry. They are then cut into small sections known as dies. These dies are packaged in various ways into transistors and diodes.

11. Small signal transistors are a class of transistors commonly used in communications and other signal processing applications. Small signal transistors operate at low power levels and are used to amplify electrical signals in a wide range of products, including critical military and civilian applications ranging from satellites to nuclear missile systems. Small signal transistors are produced using equipment, processes and skill sets specific to this type of transistor. Other types of transistors have different characteristics and cannot perform the tasks required of small signal transistors. A small but significant increase in the price of small signal transistors would not cause customers to switch to other types of transistors.

12. Rectifier diodes are a class of diodes also commonly used in communications and other signal processing applications. Rectifier diodes operate at low power levels and are used to convert alternating current to direct current in a wide range of products, including critical military and civilian applications ranging from satellites to nuclear missile systems. Ultrafast recovery rectifier diodes, of which the 5811 type (''5811 diode'') is among the most common, are distinguished from other rectifier diodes by their extremely high alternating speeds, which minimize power loss and waste heat generation. Their ability to perform efficiently and without generating excess heat is especially important in applications

such as satellites and missiles, where power availability is strictly limited and heat dissipation is challenging. The 5811 diode performs a specific set of functions not performed by other ultrafast recovery rectifier diodes; while there are other types of ultrafast recovery rectifier diodes, those diodes have different characteristics and cannot perform the functions required of 5811 diodes. A small but significant increase in the price of 5811 diodes would not cause customers to switch to other types of diodes.

13. Highly reliable performance under demanding conditions is absolutely essential in military and space systems, where failure of a single component could result in failure of the mission. To ensure reliability and proper performance, production of these components for use in United States military and space applications is supervised by the Defense Supply Center Columbus (''DSCC''), a component of the Department of Defense. DSCC maintains a list of qualified components and their suppliers generally known as the Qualified Manufacturers List, or QML. While the QML is specifically intended for reference by military contractors, civilian space system manufacturers also require highly reliable components for use in a demanding environment, and therefore make use of the QML system and specify QML qualified components.

14. Products listed on the QML are organized into ''slash sheets,'' which denote groups of components with similar characteristics. Microsemi and Semicoa were the only manufacturers on the QML slash sheets for small signal transistors. This Complaint hereinafter uses the term ''small signal transistors'' to describe the products on these slash sheets.

15. DSCC grants certifications and qualifications for different grades of QML components, known as Joint Army-Navy categories. These grades in general represent different levels of reliability. The highest reliability grade is Joint Army-Navy Space (''JANS''); one level below JANS is Joint Army-Navy Technical Exchange-Visual Inspection (''JANTXV''). There are two grades below JANTXV, but the distinction between those grades and JANTXV is not as stark as between JANTXV and JANS. Therefore, the term JANTXV will be used to refer to all QML grades other than JANS.

16. Manufacturers pursuing JANTXV qualification for their components must be audited by DSCC. DSCC audits the manufacturer's facility, including fabrication, assembly and testing processes. If satisfied that the manufacturer is able to produce consistently reliable components at the highest levels of quality and performance, DSCC will issue a certification for those processes and authorize production of a particular component for qualification testing. The manufacturer produces a sample lot and submits test results to DSCC. Once satisfied with the manufacturer's test results—which may take several rounds of submissions and required corrections—DSCC will place the particular component from that manufacturer on the QML with a JANTXV qualification.

17. JANS grade products are required by customers for systems that demand the utmost reliability, such as satellites and nuclear missile systems. Components used in space must be of the highest quality and performance, because the space environment exposes components to extremes of temperature, pressure, radiation, and vibration during launch. Moreover, because failures in space are generally beyond reach of repair, these components must be extremely reliable.

18. Thus, while JANS components may perform functions similar to JANTXV components, obtaining JANS certification requires extensive additional qualification and testing beyond that required to obtain JANTXV certification. Each step in the manufacture of each JANS product must be thoroughly documented to ensure traceability in the event of a manufacturing defect. In addition, suppliers of JANS products must undergo far more demanding ongoing manufacturing and testing requirements than suppliers of other QML components. As a result, JANS components are regarded by buyers as being substantially more reliable than JANTXV components and are much more expensive than JANTXV components.

19. Components for use in commercial applications differ substantially from their JANTXV or JANS counterparts. JANTXV and JANS components are produced to very narrow tolerances. Commercial components, in contrast, are produced to much wider tolerances and lack the extensive production control, testing and documentation of JANTXV and JANS components. Moreover, commercial components are often encased in plastic, whereas JANTXV and JANS components are hermetically sealed in glass or metal cases, a far more expensive and demanding process that ensures greater reliability. Because of these significant differences in production and quality control, JANTXV and JANS components are much more reliable and substantially more expensive than commercial components.

20. Customers determine whether their projects require commercial grade, JANTXV, or JANS components. Those customers that choose JANTXV or JANS components need their reliability and assured performance characteristics, as evidenced by their willingness to pay the much higher cost of these components compared to commercial grade components.

21. Commercial grade components lack the reliability and assured performance of JANTXV components because they have not been produced following the thorough and reliable procedures mandated by DSCC for JANTXV components. While extensive testing of commercial grade components might reduce the risk of failure posed by the use of such components, such testing would be costly and time consuming. It would delay the project, some degree of risk would still remain, and the cost associated with such extensive testing in practice would make use of the commercial grade far more costly than use of a JANTXV component. Customers therefore do not consider the cost or availability of commercial grade components when designing systems requiring JANTXV components.

22. Because JANS components are much more expensive than JANTXV components, customers whose needs can be met with JANTXV components have no economic incentive to substitute JANS components.

23. A small but significant increase in the price of JANTXV small signal transistors would not cause customers to substitute commercial grade small signal transistors or JANS small signal transistors to an extent that would make such a price increase unprofitable. Accordingly, the development, manufacture and sale of JANTXV small signal transistors 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 and Section 2 of the Sherman Act.

24. A small but significant increase in the price of JANTXV 5811 diodes would not cause customers to substitute commercial grade 5811 diodes or JANS 5811 diodes to an extent that would make such a price increase unprofitable. Accordingly, the development, manufacture and sale of JANTXV 5811 diodes 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 and Section 2 of the Sherman Act.

25. Customers specifying JANS small signal transistors and JANS 5811 diodes for their projects will not substitute JANTXV components for JANS components because they do not have the extra reliability of JANS components, which results from the much more demanding and extensive testing and process control required of JANS components. While extensive testing of JANTXV components might reduce the risk of failure posed by the use of such components, such testing would be costly and time consuming. It would delay the project, some degree of risk would still remain, and the cost associated with such extensive testing in practice would make use of the JANTXV component far more costly than use of a JANS component. Thus, when JANS parts are available, customers do not consider JANTXV components substitutes when designing systems requiring JANS components or purchasing components to build such systems. Because commercial grade components are of even lower quality, customers specifying JANS components also will not substitute commercial components.

26. A small but significant increase in the price of JANS small signal transistors would not cause customers to substitute commercial grade or JANTXV small signal transistors to an extent that would make such a price increase unprofitable. Accordingly, the development, manufacture and sale of JANS small signal transistors 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 and Section 2 of the Sherman Act.

27. A small but significant increase in the price of JANS 5811 diodes would not cause customers to substitute commercial grade or JANTXV 5811 diodes to an extent that would make such a price increase unprofitable. Accordingly, the development, manufacture and sale of JANS 5811 diodes 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 and Section 2 of the Sherman Act.

28. To the extent there were some customers that could substitute JANTXV components in response to a small but significant and nontransitory price increase on JANS small signal transistors or JANS 5811 diodes, Microsemi would be able to identify those customers and charge them a lower price in order to avoid losing sales to them, while still raising the price to those customers who would not switch. Microsemi would not need to charge the lower price to all customers in order to avoid losing contested sales.

The Relevant Geographic Market

29. Customers that require JANTXV or JANS small signal transistors are located throughout the United States. Microsemi would be able to identify these customers and increase prices to them for JANTXV and JANS small signal transistors. Thus, under Section 7 of the Clayton Act and Section 2 of the Sherman Act, the relevant geographic market for JANTXV and JANS small signal transistors is the United States.

30. Customers that require JANTXV and JANS 5811 diodes are located throughout the United States. Microsemi would be able to identify these customers and increase prices to them for JANTXV and JANS 5811 diodes. Thus, under Section 7 of the Clayton Act and Section 2 of the Sherman Act, the relevant geographic market for JANTXV and JANS 5811 diodes is the United States.

Market Concentration

JANTXV and JANS Small Signal Transistors

31. Prior to the acquisition, Microsemi and Semicoa were the only suppliers of JANTXV small signal transistors in the world. Microsemi and Semicoa combined sold approximately $15 million of JANTXV small signal transistors annually. The transaction was a merger to monopoly, and Microsemi faces no current competition.

32. Prior to the acquisition, Microsemi and Semicoa were the only suppliers of JANS small signal transistors in the world. Microsemi had approximately $3.5 million in annual sales and Semicoa had approximately $3 million in annual sales. The transaction was a merger to monopoly, and Microsemi faces no current competition.

JANTXV and JANS 5811 Diodes

33. Microsemi manufactured JANTXV and JANS 5811 diodes until 2004, when it attempted to shift production from a plant in California to a plant in Arizona. Difficulties associated with that shift caused Microsemi to lose its JANTXV and JANS QML qualifications for that diode. As a result, there was no other firm qualified to make JANS 5811 diodes for several years. However, prior to 2004, Microsemi had built up its inventory of JANS 5811 diodes and continued to sell these products after its disqualification, making it the dominant supplier of these products since 2004.

34. After 2004, Microsemi's delivery times became very long. Customers who were unable to delay their programs further were forced to use less reliable commercial grade 5811 diodes at increased cost due to the need for additional testing. Microsemi produced almost all of the commercial grade products used by those customers.

35. In the meantime, Semicoa took significant steps to enter the production of JANTXV and JANS 5811 diodes in competition with Microsemi. The shortage led Semicoa to begin developing its own 5811 diodes to compete with Microsemi, with the assistance of a major customer that was dissatisfied with Microsemi as its sole source of supply. By July 2008, Semicoa was testing its 5811 diode and, had Microsemi not acquired Semicoa's assets later that month, Semicoa likely would have obtained JANTXV and JANS qualification and competed with Microsemi for JANTXV and JANS 5811 diodes. Semicoa already had received $3 million in orders. One other manufacturer, with manufacturing operations based in Mexico, is JANTXV qualified for 5811 diodes and may obtain JANS qualification, but would not be capable of satisfying those customers that require products manufactured in the United States, as discussed in Paragraph 41 below.

36. Microsemi regained JANTXV and JANS qualifications for its 5811 diodes in October 2008 after more than three years of effort. Had Microsemi not acquired the Semicoa assets in July 2008, Microsemi and Semicoa would have competed for the sale of these products.

Anticompetitive Effects of the Acquisition

JANTXV and JANS Small Signal Transistors

37. Prior to the acquisition, Semicoa was the only alternative source to Microsemi for JANTXV and JANS small signal transistors, and customers benefitted from robust competition between the firms. In the two years preceding the acquisition, Semicoa made significant investments in capacity expansion, purchasing new equipment and increasing its workforce to increase production and improve delivery times. Semicoa's shipments of JANTXV and JANS small signal transistors rose by more than 40 percent between 2005 and 2007. Semicoa aggressively priced its small signal transistors to take business from Microsemi, constraining Microsemi's prices.

38. Post-acquisition, Microsemi has raised prices significantly on JANTXV and JANS small signal transistors. Without Semicoa as a competitive constraint, Microsemi has the power to selectively raise prices to customers that Microsemi is aware cannot substitute lower grade components for JANTXV and JANS small signal transistors. In addition, Microsemi has announced that it intends to impose on these JANTXV and JANS customers less favorable terms of service than were provided before the acquisition. Customers will not be able to avoid these terms because they no longer possess an alternative to Microsemi to ensure timely delivery of their small signal transistors. The acquisition is likely to lead to lengthened delivery times and less certain delivery, imposing huge risks and delays on critical military and space-related programs.

39. Through its acquisition of the Semicoa assets, Microsemi has substantially lessened competition in the markets for JANTXV and JANS small signal transistors, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and willfully acquired a monopoly in violation of Section 2 of the Sherman Act, 15 U.S.C. 2.

JANTXV and JANS 5811 Diodes

40. 5811 diodes are produced using processes, skill sets and equipment unique to this kind of diode. Microsemi is the sole supplier of JANS 5811 diodes, and one of only two suppliers of JANTXV 5811 diodes. Before the acquisition, Semicoa had the capability to enter the markets for JANTXV and JANS 5811 diodes, and was well along the way toward completing that entry. Microsemi's purchase of the Semicoa assets eliminated Semicoa's likely entry to these markets, thereby leaving Microsemi alone in the market, and facing the potential entry of only one other firm, which would manufacture these products in Mexico. As a result, the transaction reduced from three to two the number of competitors that were likely to compete in these markets.

41. Competition from the firm with manufacturing facilities in Mexico will not be sufficient to constrain Microsemi's ability to raise the prices of JANTXV and JANS 5811 diodes. As the only other domestic supplier of JANTXV and JANS 5811 diodes, Semicoa would have been the best alternative source to Microsemi for these customers. Because of concerns relating to classified data, sensitive end uses, and lack of the ability of the United States government to prioritize delivery of product, many customers will hesitate to purchase these products from the firm with manufacturing facilities in Mexico.

42. Semicoa's entry into the market for JANTXV and JANS 5811 diodes likely would have benefited customers with lower prices, shorter delivery times, and more favorable terms of service, just as Semicoa's competition for sales of JANTXV and JANS small signal transistors benefited customers for those products. Microsemi's acquisition of the Semicoa assets prevented this entry and therefore substantially lessened competition in the markets for JANTXV and JANS 5811 diodes, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

Entry into the Development, Manufacture and Sale of the Relevant Products

43. Entry into the development, manufacture and sale of JANTXV small signal transistors and JANTXV 5811 diodes will not be timely, likely, and sufficient to counter the anticompetitive effects of the acquisition. The process required to obtain QML certification and DSCC qualification for JANTXV small signal transistors and JANTXV 5811 diodes is lengthy. Entry resulting in significant market impact likely would take more than two years.

44. Entry into the development, manufacture and sale of JANS small signal transistors and JANS 5811 diodes sold to United States is even less likely to be timely, likely, and sufficient to counter the anticompetitive effects of the acquisition. The additional process required to obtain DSCC certification and qualification at the JANS level would require at least another year following JANTXV certification and

qualification. Moreover, because JANS parts are used for the most demanding and critical applications, customers are unlikely to shift significant amounts of JANS purchases to an entrant until that entrant has established a record of quality, consistency, and reliability at the JANS level. Entry resulting in significant market impact likely would take more than three years for firms that, unlike Semicoa as to 5811 diodes, did not already have JANS qualification for other products and significant backing from important customers.

45. The uncertainties and risks associated with any entry, and the likelihood that such entry would not be timely in any event, is demonstrated by Microsemi's own inability to transfer production of JANTXV and JANS 5811 diodes without losing QML qualification. Although Microsemi is a large and diversified manufacturer of QML products, and attempted to transfer production to a facility in Arizona from a facility that it had used to manufacture QML components for many years, Microsemi lost its qualification and needed three to four years to requalify to produce these components.

46. Further, to provide the degree of price competition that would have existed absent the acquisition, entrants would have to reach a scale sufficient to achieve production costs comparable to those of Semicoa. This would require significant investment, particularly in equipment dedicated to automated production, and is unlikely to occur given the small size of the potential markets.

VI. First Cause of Action

(Violation of Section 7 of the Clayton Act)

47. The United States incorporates the allegations of paragraphs 1 through 46 above.

48. Microsemi's acquisition of the assets of Semicoa used in the development, manufacture and sale of JANTXV and JANS small signal transistors and JANTXV and JANS 5811 diodes has substantially lessened competition in interstate trade and commerce in violation of Section 7 of the Clayton Act.

49. The transaction has had the following effects, among others:

a. Competition between Microsemi and Semicoa in the development, manufacture and sale of JANTXV and JANS small signal transistors and JANTXV and JANS 5811 diodes has been eliminated;

b. prices for JANTXV and JANS small signal transistors and JANTXV and JANS 5811 diodes have increased and likely will continue to increase, delivery times likely will lengthen, and terms of service likely will become less favorable.

VII. Second Cause of Action

(Violation of Section 2 of the Sherman Act)

50. The United States incorporates the allegations of paragraphs 1 through 46 above.

51. On or about July 14, 2008, Microsemi willfully obtained monopoly power by acquiring the assets of Semicoa used in the development, manufacture and sale of JANTXV and JANS small signal transistors. Semicoa was Microsemi's only competitor, and the effect of this acquisition has been to create a monopoly in violation of Section 2 of the Sherman Act.

52. The transaction has had the following effects, among others:

a. The combination created a monopoly for the development, manufacture and sale of JANTXV and JANS small signal transistors;

b. Competition between Microsemi and Semicoa in the development, manufacture and sale of JANTXV and JANS small signal transistors has been eliminated; and

c. Prices for JANTXV and JANS small signal transistors have increased and likely will continue to increase, delivery times likely will lengthen, and terms of service likely will become less favorable.

XII. Requested Relief

53. The United States requests that this Court:

a. Adjudge and decree the acquisition of the assets of Semicoa by defendant Microsemi to violate Section 7 of the Clayton Act, 15 U.S.C. 18 and Section 2 of the Sherman Act, 15 U.S.C. 2;

b. Compel Microsemi to divest all of Semicoa's tangible and intangible assets related to the development, manufacture and sale of the relevant products, and to take any further actions necessary to restore the markets to the competitive position that existed prior to the acquisition;

c. Award such temporary and preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of the dissipation of Semicoa's tangible and intangible assets during the pendency of this action and to preserve the possibility of effective final relief;

d. Award the United States the cost of this action; and

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

Respectfully submitted,

Date: December 18, 2008.

For Plaintiff United States:

/s/ _____

Deborah A. Garza,
Acting Assistant Attorney General.

_____/s/_____

David L. Meyer,
Principal Deputy Assistant Attorney General.

/s/ _____

J. Robert Kramer II,
Director of Operations.

/s/ _____

Maribeth Petrizzi,
Chief, Litigation II Section.

/s/ _____

Dorothy B. Fountain,
Assistant Chief, Litigation II Section.

/s/ _____

Lowell R. Stern (VA Bar #33460),
Trial Attorney,
Antitrust Division, Litigation II Section,
1401 H Street, NW., Suite 3000, Washington, DC 20530,
(202) 514–3676, (202) 307–6283 (fax),
Lowell.Stern@usdoj.gov.

_____/s/_____

Kevin C. Quin,
Robert W. Wilder (VA Bar #14479),
Janet A. Nash,
Stephanie A. Fleming,
Christine A. Hill,
Helena M. Gardner,
Jay D. Owen,
Rachel J. Adcox,
Attorneys,
U.S. Department of Justice,
Antitrust Division,
Litigation II Section,
1401 H Street NW., Suite 3000,
Washington, DC 20530.

United States District Court Central District of California

United States of America, Plaintiff, v. Microsemi Corporation, Defendant. Case No.: 8:09–cv–00275–AG–AN.

FINAL JUDGMENT

Hon. Andrew J. Guilford.

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on December 18, 2008, and the United States and Microsemi Corporation (''Microsemi''), 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, Microsemi agrees 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 Microsemi to assure that competition is substantially restored;

And whereas, Microsemi has represented to the United States that the divestiture required below can and will be made and that Microsemi will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the 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 Microsemi under Section 7 of the Clayton Act, 15 U.S.C. 18, as amended, and Section 2 of the Sherman Act, 15 U.S.C. 2.

II. Definitions

As used in this Final Judgment:

A. ''Microsemi'' means defendant Microsemi Corporation, a Delaware corporation with its headquarters in Irvine, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Semicoa'' means Semicoa, a California corporation with its headquarters in Costa Mesa, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Acquirer'' means the entity to whom defendant divests the Divestiture Assets.

D. ''Divestiture Assets'' means all assets acquired by Microsemi from Semicoa on July 14, 2008, including but not limited to:

(1) All specifications, manufacturing plans, assembly instructions, standard operating procedures, and work instructions related to the manufacturing process, including all right, title and interest in or to all other assets of every kind and nature used or intended to be used in the operation of Semicoa's business, including, but not limited to, any finished or unfinished devices, any materials, data or know-how wherever found or of whatever kind reasonably required to manufacture and sell the goods and services previously produced by Semicoa, as well as all books and records, and all files, documents, papers and agreements that are material to the continuing operation of Semicoa's business;

(2) All finished goods, works in progress, piece parts and materials inventory, packaging, and labels, supplies and other related personal property, except that which has been sold since the closing of the July 14, 2008 transaction between Microsemi and Semicoa;

(3) All equipment, machinery or software used in the development, design, manufacturing and testing of goods previously manufactured by Semicoa;

(4) All right, title and interest in, and all information related to, any tooling, molds, equipment and proprietary specifications Semicoa previously had with any and all vendors from which Semicoa purchased goods or services, whether or not there are any ''open'' purchase orders issued to such vendors, as well as names and other information concerning any vendor that provides goods or services that were material to the operation of Semicoa's business;

(5) any list of customers to which Semicoa previously sold products or provided services over the three years prior to July 14, 2008, whether or not there are any ''open'' sales orders from such customers;

(6) all sales, marketing and promotional literature, cost and pricing data, promotion list, marketing data and other compilations of names and requirements, customer lists and other sales-related materials;

(7) all intellectual property (''IP'') assets or rights that have been used in the development, production, servicing, and sale of QML Small Signal Transistors and QML Ultrafast Recovery Rectifier Diodes, including but not limited to: All licenses, rights, and sublicenses, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, approvals, certifications, advertising literature, and all manuals and technical information provided to the employees, customers, suppliers, agents, or licensees of Semicoa and used in connection with the development, design, manufacture, testing, markets, sale, or distribution of QML Small Signal Transistors or QML Ultrafast Recovery Rectifier Diodes;

(8) all rights under all contracts, licenses, sublicenses, agreements, leases, building leases, commitments, purchase orders, bids and offers; and

(9) all rights acquired pursuant to municipal, state and federal franchises, permits, licenses, agreements, waivers and authorizations.

E. ''QML Ultrafast Recovery Rectifier Diode'' means each JAN, JANS, JANTX, and JANTXV part listed on slash sheets 477 and 590 in the Qualified Products Database maintained by the Defense Supply Center Columbus.

F. ''QML Small Signal Transistor'' means each JAN, JANS, JANTX, and JANTXV part listed on slash sheets 182, 251, 253, 255, 270, 290, 291, 301, 317, 336, 349, 354, 366, 374, 376, 382, 391, 392, 394, 395, 423, 455, 512, 534, 535, 544, 545, 558, 559, 560, and 561 in the Qualified Products Database maintained by the Defense Supply Center Columbus.

III. Applicability

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

IV. Divestiture

A. Microsemi is hereby ordered and directed, within thirty (30) calendar days after the filing of the proposed Final Judgment 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 to an Acquirer in a manner consistent with this Final Judgment. The United States, in its sole discretion, may agree to one extension of this time period, not to exceed thirty (30) calendar days, and shall notify the Court of such extension. Microsemi agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

B. Microsemi shall provide the Acquirer and the United States information relating to the personnel involved in the development, production, operation, testing, management, or sales at the Divestiture Assets to enable the Acquirer to make offers of employment. Microsemi will not interfere with any negotiations by the Acquirer to employ any Microsemi employee whose primary responsibility was the development, production, operation, testing, management, or sales at the Divestiture Assets.

C. Microsemi shall permit the Acquirer to have reasonable access to personnel and to make inspections of the physical facilities included in 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.

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

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

F. Microsemi shall warrant to the Acquirer that there are no material defects in the environmental, zoning, permitting, qualification, or other permits pertaining to the operation of the Divestiture Assets, and that following the sale of the Divestiture Assets, Microsemi will not undertake directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

G. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV 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 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 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 developing, producing, and selling QML Small Signal Transistors and QML Ultrafast Recovery Rectifier Diodes; 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 Microsemi give Microsemi 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 in the business of developing, producing and selling QML Small Signal Transistors or QML Ultrafast Recovery Rectifier Diodes.

V. Appointment of Trustee to Effect Divestiture

A. If Microsemi has not divested the Divestiture Assets within the time period specified in Section IV(A), Microsemi 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 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 Microsemi 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. Microsemi shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Microsemi 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 Microsemi, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the Divestiture Assets 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 Microsemi 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. Microsemi shall use its 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 Microsemi 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. Microsemi shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

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

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

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Microsemi 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 Microsemi. 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 Microsemi, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture and the proposed Acquirer. Microsemi 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 Microsemi, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to Microsemi 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 Microsemi's 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 Microsemi under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

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

VIII. Preserving and Maintaining Divestiture Assets

Until the divestiture required by this Final Judgment has been accomplished, Microsemi shall take all steps necessary to comply with the Order Approving Stipulation Modifying Order to Preserve and Maintain Assets and Stipulation Modifying Order to Preserve and Maintain Assets. Microsemi 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 proposed Final Judgment in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Microsemi 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 Microsemi 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 Microsemi, 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 proposed Final Judgment in this matter, Microsemi shall deliver to the United States an affidavit that describes in reasonable detail all actions Microsemi has taken and all steps Microsemi has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Microsemi shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Microsemi's earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Microsemi 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 Microsemi, be permitted:

(1) Access during Microsemi's office hours to inspect and copy, or at the option of the United States, to require Microsemi to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Microsemi, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, Microsemi's 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 Microsemi.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Microsemi 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 Microsemi to the United States, Microsemi represents and identifies 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 Microsemi marks 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 Microsemi 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''), Microsemi, without providing advance notification to the Antitrust Division, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any entity engaged in the development, production, or sale of QML Small Signal Transistors or QML Ultrafast Recovery Rectifier Diodes 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 QML Small Signal Transistors or QML Ultrafast Recovery Rectifier Diodes. 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. 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

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

XIII. Retention of Jurisdiction

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

XIV. Expiration of Final Judgment

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

XV. Public Interest Determination

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

Date: ____, 2009

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

Honorable Andrew J. Guilford,
United States District Judge.
LOWELL R. STERN,
lowell.stern@usdoj.gov,
United States Department of Justice,
Antitrust Division, 450 5th Street, NW., Suite 8700, Washington, DC 20530,
Telephone: (202) 307–0922,
Facsimile: (202) 307–6283, Attorney for Plaintiff.

United States District Court Central District of California

United States of America, Plaintiff, v. Microsemi Corporation, Defendant.

Case No.: 8:09–cv–00275–AG–AN
Competitive Impact Statement

Hon. Andrew J. Guilford

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

On July 14, 2008, defendant Microsemi Corporation (''Microsemi'') acquired most of the assets of Semicoa. After investigating the competitive impact of that acquisition, the United States filed a civil antitrust Complaint on December 18, 2008, seeking an order compelling Microsemi to divest the Semicoa assets and other relief to restore competition. The Complaint alleges that the acquisition significantly lessened competition in the development, manufacture and sale of certain high reliability small signal transistors and ultrafast recovery rectifier diodes used in aerospace and military applications, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 2 of the Sherman Act, 15 U.S.C. 2. As a result of the acquisition, prices for these products did or would have increased, delivery times would have lengthened, and terms of service would have become less favorable. Pursuant to an Order to Preserve and Maintain Assets, which was entered on December 24, 2008 and modified on August 6, 2009, Microsemi may not, without written consent of the United States, dispose of the acquired assets prior to resolution of this proceeding.

Concurrent with the filing of this Competitive Impact Statement, the United States and Microsemi have filed a Stipulation Regarding Proposed Final Judgment and a proposed Final Judgment. These filings are designed to restore competition through a divestiture of the acquired assets. The proposed Final Judgment, which is explained more fully below, requires Microsemi to divest the Semicoa assets, thus restoring the competition that was lost as a result of the acquisition.

The United States and Microsemi have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the 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 Violation

A. Microsemi and the Semicoa Acquisition

Microsemi is a Delaware corporation with its principal place of business in Irvine, California. Microsemi's sales were approximately $514 million in fiscal year 2008. Microsemi's products include a range of electronic components, including high reliability small signal transistors and ultrafast recovery rectifier diodes.

Semicoa was a California corporation that operated from a manufacturing facility in Costa Mesa, California. Semicoa's sales were approximately $14.7 million in 2007. Semicoa manufactured a range of high reliability electronic devices for the military, aerospace, and satellite markets, including high reliability small signal transistors and ultrafast recovery rectifier diodes.

On July 14, 2008, Microsemi acquired substantially all of the assets of Semicoa. The transaction was not subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which requires companies to notify and provide information to the Department of

Justice and the Federal Trade Commission before consummating certain acquisitions. As a result, the Department of Justice did not learn of the transaction until after it had been consummated.

B. The Competitive Impact of the Acquisition on the Markets for QML Small Signal Transistors and QML Ultrafast Recovery Rectifier Diodes

Transistors and diodes are semiconductor devices used to control the flow of electric current. In their simplest forms, transistors can be viewed as switches and diodes can be viewed as one-way valves. Both products begin as silicon wafers produced in a furnace, typically referred to as a foundry. They are then cut into small sections known as dies. These dies are packaged in various ways into transistors and diodes.

Small signal transistors are a class of transistors commonly used in communications and other signal processing applications. Small signal transistors operate at low power levels and typically are used to amplify electrical signals in a wide range of products, including critical military and civilian applications ranging from satellites to nuclear missile systems.

Rectifier diodes are a class of diodes also commonly used in communications and other signal processing applications. Rectifier diodes operate at low power levels and are used to convert alternating current to direct current in a wide range of products, including critical military and civilian applications ranging from satellites to nuclear missile systems. Ultrafast recovery rectifier diodes are distinguished from other rectifier diodes by their extremely high alternating speeds, which minimize power loss and waste heat generation. Their ability to perform efficiently and without generating excess heat is especially important in applications such as satellites and missiles, where power availability is strictly limited and heat dissipation is challenging.

Highly reliable performance under demanding conditions is absolutely essential in military and space systems, where failure of a single component could result in failure of the mission. To ensure reliability and proper performance, production of these components for use in United States military and space applications is supervised by the Defense Supply Center Columbus (''DSCC''), a component of the Department of Defense. DSCC maintains a list of qualified components and their suppliers generally known as the Qualified Manufacturers List, or QML. Manufacturers seeking placement on the QML must pass rigorous audits of their facilities, production processes, assembly and test procedures, equipment, documentation, and personnel.

Prior to the acquisition, Microsemi and Semicoa were the only QML-listed manufacturers of small signal transistors. In addition, Semicoa and Microsemi were both poised to obtain QML listing for ultrafast recovery rectifier diodes, which at the time were in critically short supply.[1] While a firm with production facilities in Mexico did produce some QML Ultrafast Recovery Rectifier Diodes, concerns related to classified data, sensitive end uses, and the inability of the United States government to prioritize product deliveries beyond the nation's borders make many customers reluctant to purchase such products from non-domestic sources.

As discussed in the Complaint, customers benefitted from robust competition between the two firms. In the two years before the acquisition, Semicoa expanded its capacity, improved delivery times, and priced aggressively to take business from Microsemi. As a result, it increased its shipments by more than 40 percent between 2005 and 2007. Without the constraining effect of Semicoa, Microsemi has the power to raise prices and lengthen delivery times on QML Small Signal Transistors and QML Ultrafast Recovery Rectifier Diodes.[2]

There are no practical substitutes for QML Small Signal Transistors or QML Ultrafast Recovery Rectifier Diodes. While commercial grade analogues of these components exist, such components are produced to much wider tolerances than QML components, and lack the extensive production control, testing and documentation—and thus the reliability and guaranteed performance—of QML components. While extensive testing of commercial grade components might somewhat reduce the risk of failure posed by the use of such components, such testing would be costly and time consuming, and some risk would still remain. Military and aerospace customers therefore do not regard commercial grade components as viable substitutes for QML components.

Entry of new firms into the production of QML Small Signal Transistors or QML Ultrafast Recovery Rectifier Diodes is highly unlikely to alleviate the harm to competition resulting from Microsemi's acquisition of Semicoa. Obtaining QML listing is a lengthy and uncertain process. Even at the lowest QML reliability grades, entry resulting in sufficient market impact likely would take more than two years. Moreover, entry on a scale sufficient to match the competitive impact of Semicoa prior to the acquisition would require significant investment, particularly in equipment dedicated to automated production, and is unlikely to occur given the small size of the potential markets.

III. Explanation of the Proposed Final Judgment

The divestiture required by the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the markets for QML Small Signal Transistors and QML Ultrafast Recovery Rectifier Diodes by reestablishing Semicoa as an independent and economically viable competitor. The assets to be divested include essentially all of the assets[3] acquired by Microsemi in the July 14, 2008 transaction. The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the provision of QML Small Signal Transistors and QML Ultrafast Recovery Rectifier Diodes.

The proposed Final Judgment requires Microsemi, within thirty (30) days after the filing of the proposed Final Judgment, or five (5) calendar days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the Semicoa assets as a viable ongoing business. The United States may, in its discretion, extend this period by an additional period of up to thirty (30) days. The assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant markets. Microsemi must use its best efforts to accomplish the divestiture as expeditiously as possible and shall cooperate with prospective purchasers.

In the event that Microsemi does not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the proposed 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 Final Judgment provides that Microsemi 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 (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.

In addition to the divestiture provisions, the proposed Final Judgment, in Section XI, provides that Microsemi will provide the United States at least thirty (30) days' advance notice of any acquisition of the assets of, or any interest in, any entity

[1] Products listed on the QML are organized into ''slash sheets,'' which generally denote groups of components produced by similar processes and having somewhat similar characteristics. Small signal transistors are denoted on slash sheets 182, 251, 253, 255, 270, 290, 291, 301, 317, 336, 349, 354, 366, 374, 376, 382, 391, 392, 394, 395, 423, 455, 512, 534, 535, 544, 545, 558, 559, 560, and 561. Ultrafast recovery rectifier diodes are denoted on slash sheets 477 and 590. This Competitive Impact Statement will hereinafter refer to the products on these slash sheets as ''QML Small Signal Transistors'' and ''QML Ultrafast Recovery Rectifier Diodes.''

[2] The Complaint describes the various reliability grades of QML products. In particular, it distinguishes products qualified for use in space (''JANS'') from lower reliability grades (collectively referred to in the Complaint as ''JANTXV''). The terms of the proposed Final Judgment, however, do not vary among the different QML reliability grades. Therefore, this Competitive Impact Statement uses the terms ''QML Small Signal Transistors'' and ''QML Ultrafast Recovery Rectifier Diodes'' to include products of all QML reliability grades.

[3] Inventory and/or work-in-progress that Microsemi sold in the ordinary course of business after the July 14, 2008 acquisition of the Semicoa assets are excluded from the divestiture. The Acquirer will acquire all of the assets necessary to restore competition in the relevant markets.

engaged in the development, production or sale of QML Small Signal Transistors or QML Ultrafast Recovery Rectifier Diodes. The notification shall be provided 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 need be provided only for QML Small Signal Transistors and QML Ultrafast Recovery Rectifier Diodes.

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 defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Microsemi 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 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, Liberty Square Building, 450 5th 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 Microsemi. The United States could have continued the litigation and sought divestiture of the Semicoa assets. The United States is satisfied, however, that the divestiture of the assets in the manner prescribed in the proposed Final Judgment will restore competition in the markets for QML Small Signal Transistors and QML Ultrafast Recovery Rectifier Diodes. The proposed Final Judgment would achieve all of the relief the government 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, the court, in accordance with the statute as amended in 2004, 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).[4]

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). 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).[5] In determining whether a proposed settlement is in the public interest, 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'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, 103 S. Ct. 1240, 75 L.Ed.2d 472 (1983); *see also United States*

[4] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for 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).

[5] *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' '').

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 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, 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.[6]

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: August 20, 2009.

Respectfully submitted,
By: _____/s/_____
Lowell R. Stern, Attorney for Plaintiff.

Certificate of Service

I hereby certify that on the 20th day of August, 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Brett J. Williamson,
Darin J. Glasser,
O'Melveny & Myers LLP, 610 Newport Center Drive, 17th Floor, Newport Beach, CA 92660–6429.
Michael E. Antalics,
Benjamin G. Bradshaw,
O'Melveny & Myers LLP, 1625 Eye Street, NW., Washington, DC 20006.

_____/s/_____
Lowell R. Stern,
Attorney for Plaintiff.

[FR Doc. E9–21051 Filed 8–31–09; 8:45 am]

BILLING CODE 4410–11–P

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

DEPARTMENT OF LABOR

Office of the Secretary

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for the Solar Photovoltaic (PV) Project located at Westover Job Corp Center, 103 Johnson Drive, Chicopee, MA

AGENCY: Office of the Secretary, Department of Labor.

Recovery: This project will be wholly funded under the American Recovery and Reconstruction Act of 2009.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for Solar PV Panel Installation to be located at the Westover Job Corp Center, 103 Johnson Drive, Chicopee, Massachusetts.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Office of the Secretary (OSEC) in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared for a proposed Solar PV Project to be located at the Westover Job Corp Center, 103 Johnson Drive, Chicopee, Massachusetts, and that the proposed plan for the construction of solar PV panels at the Westover Job Corps Center will have no significant environmental impact. This Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by October 1, 2009.

ADDRESSES: Any comment(s) are to be submitted to William A. Dakshaw, P.E., Division of Facilities and Asset Management, Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–2867 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA are available to interested parties by contacting William A. Dakshaw, P.E., Division of Facilities and Asset Management, Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–2867 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This EA summary addresses the proposed construction of approximately 1.5 acres of stationary solar photovoltaic (PV) panels to create a 150 to 200 kilowatt system connected to the closest electrical terminal at the Westover Job Corps Center. The solar panels will produce clean energy for the Westover Job Corps Center, demonstrate renewable energy capabilities to Job Corps Students and help the program meet Federal requirements in Executive Order 13423 for renewable energy production. This project is not expected to have a negative impact on population demographics, the surrounding area, environmental quality, or natural systems and heritage.

Based on the information gathered during the preparation of the EA, the construction of the Solar PV Project at Westover Job Corp Center, 103 Johnson Drive, Chicopee, Massachusetts will not create any significant adverse impacts on the environment.

Dated: August 25, 2009.

Lynn Intrepidi,

Interim National Director of Job Corps.

[FR Doc. E9–20969 Filed 8–31–09; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for the Edison Job Corps Center Solar PV Project located at the Edison Job Corps Center

AGENCY: Office of the Secretary, Department of Labor.