Total Annual Burden Cost

The Department assumes that the majority of individuals who will complete this instrument are Site Security Officers (SSOs), although a smaller number of other individuals may also complete this instrument (*e.g.,* Federal, State, and local government employees and contractors). For the purpose of this notice, the Department maintains this assumption. Therefore, to estimate the total annual burden, the Department multiplied the annual burden of 10,000 hours by the average hourly wage rate of SSOs of $67.72 per hour. Therefore, the total annual burden cost for the CVI Authorization instrument is $677,200 [10,000 total annual burden hours × $67.72 per hour].

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division.

Title: CFATS Chemical-terrorism Vulnerability Information.

OMB Number: 1670–0015.

Instrument: Chemical-terrorism Vulnerability Information Authorization.

Frequency: ''On occasion'' and ''Other''.

Affected Public: Business or other for-profit.

Number of Respondents: 20,000 respondents (rounded estimate).

Estimated Time per Respondent: 0.50 hours.

Total Burden Hours: 10,000 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost: $677,200.

David Epperson,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2017–07927 Filed 4–18–17; 8:45 am]

BILLING CODE 9110–9P–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1002]

Certain Carbon and Alloy Steel Products; Commission Determination To Reset the Time for the Beginning of the April 20, 2017, Oral Argument

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to reset the time for the beginning of the oral argument, *see* 82 FR 16417–8 (Apr. 4, 2017), to 10 a.m. on April 20, 2017.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Investigation No. 337–TA–1002 on June 2, 2016, based on a complaint filed by Complainant United States Steel Corporation of Pittsburgh, Pennsylvania (''U.S. Steel''), alleging a violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337. *See* 81 FR 35381–2 (June 2, 2016). The complaint alleges violations of Section 337 based upon the importation, the sale for importation, or the sale after importation into the United States of certain carbon and alloy steel products by reason of: (1) A conspiracy to fix prices and control output and export volumes, the threat or effect of which is to restrain or monopolize trade and commerce in the United States; (2) misappropriation and use of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States; and (3) false designation of origin or manufacturer, the threat or effect of which is to destroy or substantially injure an industry in the United States. *Id.* The notice of investigation identified forty (40) respondents that are Chinese steel manufacturers or distributors, as well as some of their Hong Kong and United States affiliates. *Id.* In addition to the private parties, the Commission assigned an Investigative Attorney from the Commission's Office of Unfair Import Investigations (OUII), who functions as an independent litigant or party in the investigation. *Id.*

On August 26, 2016, Respondents filed a motion to terminate U.S. Steel's antitrust claim under 19 CFR 210.21. On November 14, 2016, the administrative law judge (''ALJ'') issued an initial determination (''ID'') (Order No. 38), granting Respondents' motion to terminate Complainant's antitrust claim under 19 CFR 210.21 and, in the alternative, under 19 CFR 210.18.

On December 19, 2016, the Commission issued a Notice determining to review the ID (Order No. 38). *See* 81 FR 94416–7 (Dec. 23, 2016). In the December 19, 2016, Notice, the Commission requested written submissions from ''[t]he parties to the investigation, including the Office of Unfair Import Investigations, and interested government agencies,'' and set a date of March 14, 2017, for possible oral argument. *Id.*

On March 3, 2017, the Commission issued another notice seeking further written submissions from the public and rescheduling the date and time for the oral argument to April 20, 2017 at 9:30 a.m. *See* 82 FR 13133–4 (Mar. 9, 2017).

On March 30, 2017, the Commission issued another notice setting the procedure for the oral argument. *See* 82 FR 16417–8 (Apr. 4, 2017).

The Commission has determined to reset the time for the beginning of the oral argument to 10 a.m. on April 20, 2017.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 12, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–07758 Filed 4–18–17; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States V. Danone S.A. and the Whitewave Foods Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v.

Danone S.A. and The WhiteWave Foods Company, Civil Action No. 00592. On April 3, 2017, the United States filed a Complaint alleging that Danone S.A.'s proposed acquisition of The WhiteWave Foods Company would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Danone S.A. to divest its Stonyfield Farms, Inc. subsidiary, including manufacturing, administrative, storage, and distribution facilities in Londonderry, New Hampshire; trademarks to Stonyfield Farms brands, including Stonyfield and Brown Cow; and certain other tangible and intangible assets.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection on the Antitrust Division's Web site at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's Web site, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 8700, Washington, DC 20530 (telephone: 202–307–0924).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 5th Street NW., Suite 8700, Washington, D.C. 20530, Plaintiff, v. *Danone S.A., 17, Boulevard Haussmann, Paris, France, 75009,* and *The Whitewave Foods Company, 1225 Seventeenth Street, Suite 1000, Denver, Colorado 80202,* Defendants.

Case No.: 17–cv–00592 (KBJ)
Judge: Ketanji Brown Jackson

COMPLAINT

The United States of America (''United States''), acting under the direction of the Attorney General of the United States, brings this civil antitrust action for equitable relief against defendants Danone S.A. (''Danone'') and The WhiteWave Foods Company (''WhiteWave''), for violating Section 7 of the Clayton Act, 15 U.S.C. 18. The United States alleges as follows:

I. NATURE OF THE ACTION

1. On July 6, 2016, Danone, the leading U.S. manufacturer of organic yogurt, agreed to acquire WhiteWave, the leading U.S. manufacturer of fluid organic milk, for approximately $12.5 billion. Danone has participated in the raw organic milk and fluid organic milk markets for the past two decades through a strategic partnership with WhiteWave's closest competitor, CROPP Cooperative (''CROPP''). As a result, Danone's acquisition of WhiteWave effectively brings together WhiteWave and CROPP, the top purchasers of raw organic milk in the northeast United States and the producers of the three leading brands of fluid organic milk in the United States.

2. Danone is invested in CROPP's success through two agreements, pursuant to which CROPP supplies almost all organic milk requirements for Danone's market-leading Stonyfield organic yogurt brand (''Supply Agreement'') and licenses from Danone the exclusive right to produce Stonyfield-branded fluid organic milk (''License Agreement''). The two companies have cooperated with each other to bring Stonyfield products to market and to compete against WhiteWave. WhiteWave is CROPP's closest competitor, and competes to contract with farmers for the purchase of raw organic milk in the northeast United States, and to manufacture and sell fluid organic milk to retail customers nationwide.

3. Post merger, the entanglements between the merged entity (''Danone-WhiteWave'') and CROPP would provide incentives and opportunities for the two companies to interact, strategize, coordinate marketing, and exchange confidential information. As the only two major purchasers of raw organic milk in the northeast United States, and the two primary sellers of fluid organic milk nationwide, post-merger Danone-WhiteWave and CROPP would have the incentive to compete less aggressively to recruit and retain organic farmers and customer accounts. This would likely result in less favorable contract terms for northeast farmers for raw organic milk, and higher prices for fluid organic milk consumers. Given the entanglements between Danone and CROPP, the merger between Danone and WhiteWave likely would substantially lessen competition in the purchase of raw organic milk in the northeast and the manufacture and sale of fluid organic milk in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. DEFENDANTS

4. Danone S.A., a *société anonyme* organized under the laws of France, is the ultimate parent company of Stonyfield Farms, Inc. (''Stonyfield''), the leading U.S. manufacturer of organic yogurt, and one of the largest consumers of raw and processed organic milk in the nation. Danone's 2015 annual sales were approximately $24.3 billion. Stonyfield is Danone's U.S. organic dairy subsidiary. It is a Delaware corporation that manufactures yogurt at a facility in Londonderry, New Hampshire.

5. The WhiteWave Foods Company is a Delaware corporation headquartered in Denver, Colorado. WhiteWave's premium dairy division is one of the largest purchasers of raw organic milk in the northeast United States, and sells fluid organic milk, organic yogurt, and other organic dairy products nationwide through its Horizon dairy and Wallaby organic yogurt food businesses. WhiteWave's 2015 annual sales were $3.86 billion.

III. JURISDICTION AND VENUE

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

7. Defendants purchase raw organic milk in the northeast United States and sell organic dairy products nationwide. They are engaged in the regular and continuous flow of interstate commerce, and their activities in organic dairy procurement and manufacturing have had a substantial effect upon interstate commerce. The Court has subject matter jurisdiction over this action under Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

8. Venue for Danone and WhiteWave is proper in this district under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c). Defendants have consented to venue and personal jurisdiction in the District of Columbia.

IV. BACKGROUND

A. Industry Overview

9. Milk collected from a cow that has not been pasteurized and processed is called raw milk. Conventional raw milk comes from non-organic cows. Raw organic milk is milk collected from organic cows on organic farms that must meet rigorous USDA regulations governing grazing practices, hauling, handling, and processing.

10. Individual farmers typically sell their raw organic milk either in affiliation with a cooperative, which negotiates a sales price for its farmers, or through a contract, at a specified price. Farmers choose to affiliate with purchasers on the basis of service, price, and other financial incentives. Purchasers strive to form networks of farmers that meet their needs for raw organic milk and that permit efficient hauling routes. Raw organic milk purchasers compete to attract farmers to their networks.

11. Purchasers arrange for raw organic milk to be picked up from farms and transported to milk processing plants. Raw organic milk will spoil if not processed within 72 hours of collection from a cow. At the processing plant, raw organic milk is separated into fat and skim milk, pasteurized to kill bacteria, and homogenized to reduce the size of the remaining milk fat particles. The final result of this process is fluid organic milk. Most raw organic milk becomes fluid organic milk, and most fluid organic milk is packaged for retail sale as branded or private-label products that can be shipped to retail customers nationally. Some fluid organic milk is transported by bulk tanker to a manufacturer for conversion into another product, such as organic yogurt.

12. Fluid organic milk is packaged and sold directly to consumers in a variety of retail outlets. Most retailers prefer to carry at least one brand of packaged fluid organic milk in addition to their own private-label fluid organic milk. By monitoring retail shelves, fluid organic milk competitors can track which rival brands are carried by particular retail customers.

B. Pre-Acquisition Relationships Between WhiteWave, Danone, and CROPP

1. Danone/CROPP Agreements

13. For more than twenty years, Danone's Stonyfield subsidiary has cultivated a strategic partnership with CROPP. Stonyfield, the leading manufacturer of organic yogurt in the United States, relies on CROPP for the supply of almost all of its organic milk requirements. CROPP, in turn, relies on the revenue stream from Stonyfield's organic milk purchases to retain and compensate its farmer members, as Stonyfield has been CROPP's largest customer for the same period of time. Presently, CROPP supplies Danone with at least 90 percent of Stonyfield's requirements for raw organic milk, fluid organic milk, and milk equivalents (*e.g.,* cream, condensed, or powdered organic milk) in the United States.

14. This longstanding Supply Agreement is critical to the viability of each of Danone and CROPP's businesses, and this dependence over the years has forged a strong relationship. This relationship includes the sharing of competitively sensitive information regarding, for example, costs, sales, products, and customers.

15. Danone's strategic partnership with CROPP deepened in 2009, when it granted CROPP an exclusive license allowing CROPP to produce and sell Stonyfield branded fluid organic milk, in exchange for a royalty payment. This License Agreement has allowed CROPP to expand its sales in the northeast, and to add the well-known Stonyfield trademark to a portfolio that already included the cooperative's own Organic Valley fluid organic milk brand.

16. As a result of the License Agreement, Danone and CROPP share the Stonyfield brand, which competes with WhiteWave's market-leading Horizon brand. The Stonyfield brand-sharing allowed under the License Agreement necessitates frequent meetings between Danone and CROPP to discuss marketing and to collaborate on promotions, which have required the sharing of confidential and competitively sensitive business information. CROPP's Stonyfield fluid organic milk benefits from Danone's investments in the Stonyfield organic yogurt brand. Danone, in turn, receives a royalty payment while also benefitting from the perception of a broader Stonyfield portfolio, without requiring an investment in the production of Stonyfield fluid organic milk.

2. WhiteWave and CROPP

17. WhiteWave and CROPP are the first- and second-largest purchasers of raw organic milk in the northeast United States, respectively. To supply its needs, WhiteWave contracts with approximately 600 farms in the northeast and 800 farms in total nationwide. To supply Danone and its own needs, CROPP contracts with 500 northeast farms and 1,500 farms in total nationwide.

18. WhiteWave and CROPP compete to offer farmers the best price for their raw organic milk, the highest quality service, and the most attractive incentives to convert from conventional to organic dairy farming. Farmers, in turn, request concessions from WhiteWave based on CROPP's offers, and vice versa.

19. WhiteWave's Horizon brand is the only nationwide competitor to CROPP's Organic Valley brand and Danone-CROPP's Stonyfield brand for the sale of fluid organic milk to retailers.

V. RELEVANT MARKETS

A. The Purchase of Raw Organic Milk in the Northeast

20. The purchase of raw organic milk is a relevant product market and line of commerce under Section 7 of the Clayton Act. Although raw organic milk could be sold by farmers as conventional milk, the milk would typically be sold at a loss because conventional milk prices do not cover the organic farmer's production costs. Therefore, farmers who sell raw organic milk cannot economically switch to supplying purchasers of conventional milk.

21. Transporting raw organic milk produced by northeast farmers beyond the northeast United States is expensive, risks spoilage of the raw organic milk, and stretches the outer bounds of regulatory requirements that raw organic milk be processed within 72 hours of its collection. Most raw organic milk is processed within several hundred miles of the location where it is produced. Indeed, the relevant geographic market for the purchase of raw organic milk is referred to in the dairy industry as ''the northeast,'' because the farmers who sell raw organic milk to WhiteWave and to Danone (through CROPP) are located in the northeast United States. For these purposes, the northeast includes Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Maryland. A hypothetical monopsonist purchaser of raw organic milk from farmers in the northeast would profitably impose a reduction in the price of raw organic milk paid to farmers by at least a small but significant and non-transitory amount (*e.g.,* five percent).

B. The Sale of Fluid Organic Milk in the United States

22. Fluid organic milk is a relevant product market and line of commerce under Section 7 of the Clayton Act. Consumers do not significantly switch away from fluid organic milk, for example to conventional milk, when the price increases by a significant non-transitory amount. The relevant geographic market for the sale of fluid organic milk is no larger than the United States. Fluid organic milk is pasteurized using methods that allow for a longer shelf life than most conventional milk, allowing it to be shipped long distances when necessary. A hypothetical monopolist seller of fluid organic milk in the United States would profitably impose at least a small but significant and non-transitory price increase.

VI. ANTICOMPETITIVE EFFECTS

23. Given the strategic partnership between Danone and CROPP, this transaction gives Danone the incentive and ability to limit the existing competition between WhiteWave and CROPP for both farmer contracts and retail customer accounts. Danone and CROPP are linked together by the Supply Agreement, the License Agreement, and years of operational cooperation. They are dependent on each other for supply and revenue, respectively, and they share the Stonyfield brand. Their aligned interests and mutual dependence make it unlikely, therefore, that CROPP would continue to compete fiercely with Danone-WhiteWave post merger.

24. Concentrated markets, coupled with the entanglements created by these agreements, increase the likelihood of anticompetitive effects. WhiteWave and CROPP collectively purchase approximately 70 percent of the available northeast raw organic milk supply. The small, regional dairies that make up the remaining 30 percent cannot expand their farmer networks (thereby increasing their own purchases) without access to the fluid organic milk customers currently supplied by WhiteWave and CROPP.

25. In retail fluid organic milk sales, Horizon, Organic Valley, and Stonyfield account for 41 percent, 10 percent, and 5 percent of shares, respectively. For branded fluid organic milk, specifically, Horizon, Organic Valley, and Stonyfield represent 67 percent, 16 percent, and 8 percent of national retail sales, respectively. The merger links these three firms, which together control almost 56 percent of all fluid organic milk sales, and 91 percent of all branded fluid organic milk sales.

26. CROPP and WhiteWave generally can identify when and where they are competing against each other for farmers or retail customers. Affiliations between farmers and purchasers are well known because there are relatively few purchasers and one can readily observe which farmers are in a given purchaser's network. Relationships between fluid organic milk sellers and their retail customers are also well known because it is easy to observe which brands are available in each retail store. These highly transparent supply and customer relationships allow market participants to identify their particular rival in most competitive interactions. Given the transparency of these markets, the merger would curtail competition between the Danone-CROPP partnership and WhiteWave.

27. The merger reduces the incentives for the combined Danone-WhiteWave to compete aggressively against CROPP, and the supply and license relationships linking the merged entity to CROPP will provide opportunities for WhiteWave and CROPP to interact, strategize, coordinate marketing, and exchange confidential and competitively sensitive information.

28. The only way for CROPP to continue to compete aggressively against WhiteWave post merger is by severing its Supply Agreement and License Agreement with Danone. This would have significant costs and risks. In light of these costs and risks, and as CROPP's ability to compete with WhiteWave is undermined by the merger, it will likely find it more profitable to remain in the partnership than to abandon it. The result is a likely lessening of competition in the purchase of raw organic milk from farmers and in the sale of fluid organic milk to retailers.

VII. ABSENCE OF COUNTERVAILING FACTORS

29. New entry and expansion by existing competitors are unlikely to prevent or remedy the acquisition's likely anticompetitive effects. Barriers to entry and expansion in the raw organic and fluid organic milk markets include: (1) the substantial time and expense required to build a brand reputation sufficient to provide an outlet for raw organic milk purchases and fluid organic milk sales; (2) substantial sunk costs to be able to sell fluid organic milk in wholesale and retail outlets; (3) the expense of capital investments necessary to manufacture fluid organic milk; and (4) the investments necessary to develop raw organic milk hauling, fluid organic milk distributor relationships, and fluid organic milk delivery routes.

VIII. VIOLATIONS ALLEGED

30. The acquisition of WhiteWave by Danone likely would substantially lessen competition in each of the relevant markets in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

31. Unless enjoined, the transaction will have the following anticompetitive effects, among others:

a. Competition generally in the relevant markets would be substantially reduced; and

b. Prices and commercial terms for the relevant products would be less favorable.

IX. REQUEST FOR RELIEF

32. The United States requests that this Court:

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

b. preliminarily and permanently enjoin and restrain defendants and all persons acting on their behalf from consummating Danone's proposed acquisition of WhiteWave or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Danone and WhiteWave;

c. award the United States its costs of this action; and

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

Dated: April 3, 2017.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

/s/ _____

Brent C. Snyder,
Acting Assistant Attorney General, Antitrust Division.

/s/ _____

Patricia A. Brink,
Director of Civil Enforcement, Antitrust Division.

/s/ _____

Maribeth Petrizzi (D.C. Bar #435204),
Chief, Litigation II Section, Antitrust Division.

/s/ _____

Stephanie A. Fleming,
Assistant Chief, Litigation II Section, Antitrust Division.

/s/ _____

Suzanne Morris* (D.C. Bar #450208)
Rebecca Valentine (D.C. Bar #989607)
Jeremy Cline (D.C. Bar #1011073),
United States Department of Justice, Antitrust Division Litigation II Section, 450 Fifth Street NW., Suite 8700, Washington, DC 20530, Telephone: (202) 307–1188, Facsimile: (202) 514–9033, suzanne.morris@usdoj.gov.

*LEAD ATTORNEY TO BE NOTICED

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Danone S.A.* and *The WhiteWave Foods Company, Defendants.*
Case No.: 17–cv–00592 (KBJ)
Judge: Ketanji Brown Jackson

COMPETITIVE IMPACT STATEMENT

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

I. NATURE AND PURPOSE OF THE PROCEEDING

Pursuant to an Agreement and Plan of Merger dated July 6, 2016, Danone S.A. (''Danone'') has agreed to purchase The WhiteWave Foods Company (''WhiteWave'') for approximately $12.5 billion. Danone has participated in the raw organic milk and fluid organic milk markets for the past two decades through a strategic partnership with WhiteWave's closest competitor, CROPP Cooperative (''CROPP''). As a result, Danone's acquisition of WhiteWave effectively brings together WhiteWave and CROPP, the top purchasers of raw organic milk in the northeast United States and the producers of the three leading brands of fluid organic milk in the United States.

The United States filed a civil antitrust Complaint on April 3, 2017, seeking to enjoin the proposed acquisition. The Complaint alleges that the acquisition likely would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, in the purchase of raw organic milk in the northeast United States and in the manufacture and sale of fluid organic milk in the United States. That loss of competition likely would result in less favorable contract terms for northeast farmers for raw organic milk and higher prices for fluid organic milk consumers in the United States.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of Danone's acquisition of WhiteWave. Under the proposed Final Judgment, which is explained more fully below, the defendants are required to divest Stonyfield Farm, Inc. (''Stonyfield''), including its headquarters, facility and warehouse in Londonderry, New Hampshire; certain classes of tangible property used exclusively by Stonyfield; all other tangible property relating to Stonyfield; and all of the intangible assets (*i.e.,* intellectual property and know-how) owned, licensed, controlled, maintained or used primarily by the business. Under the terms of the Hold Separate Stipulation and Order, defendants will take certain steps to ensure that Stonyfield is operated as a competitively independent, economically viable and ongoing business concern; that it will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture.

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

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. Defendants

Danone S.A., a société anonyme organized under the laws of France, is the ultimate parent company of Stonyfield Farms, Inc., the leading U.S. manufacturer of organic yogurt, and one of the largest consumers of raw and processed organic milk in the nation. Danone's 2015 annual sales were approximately $24.3 billion. Stonyfield is Danone's U.S. organic dairy subsidiary. It is a Delaware corporation that manufactures yogurt at a facility in Londonderry, New Hampshire.

The WhiteWave Foods Company is a Delaware corporation headquartered in Denver, Colorado. WhiteWave's premium dairy division is one of the largest purchasers of raw organic milk in the northeast, and sells fluid organic milk, organic yogurt, and other organic dairy products nationwide through its Horizon dairy and Wallaby organic yogurt food businesses. WhiteWave's 2015 annual sales were $3.86 billion.

B. The Markets

1. Industry Background

Milk that has been collected from a cow but not pasteurized and processed is called raw milk. Conventional raw milk comes from non-organic cows. Raw organic milk is collected from organic cows on organic farms that must meet rigorous USDA regulations governing grazing practices, hauling, handling, and processing.

Individual farmers typically sell their raw organic milk either in affiliation with a cooperative, which negotiates a sales price for its farmers, or through a contract, at a specified price. Farmers choose to affiliate with purchasers on the basis of service, price, and other financial incentives. Purchasers strive to form networks of farmers that meet their needs for raw organic milk and that permit efficient hauling routes. Raw organic milk purchasers compete to attract farmers to their networks.

Purchasers arrange for raw organic milk to be picked up from farms and transported to milk processing plants. Raw organic milk will spoil if not processed within 72 hours of collection from a cow. At the processing plant, raw organic milk is separated into fat and skim milk, pasteurized to kill bacteria, and homogenized to reduce the size of the remaining milk fat particles. The final result of this process is fluid organic milk. Most raw organic milk becomes fluid organic milk, and most fluid organic milk is packaged for retail sale as branded or private-label products that can be shipped to retail customers nationally. Some fluid organic milk is transported by bulk tanker to a manufacturer for conversion into another product, such as organic yogurt.

Fluid organic milk is packaged and sold directly to consumers in a variety of retail outlets. Most retailers prefer to carry at least one brand of packaged fluid organic milk in addition to their own private-label fluid organic milk. By monitoring retail shelves, fluid organic milk competitors can track which rival brands are carried by particular retail customers.

2. Pre-Acquisition Relationships Between WhiteWave, Danone, and CROPP

a. Danone and CROPP

For more than twenty years, Danone's Stonyfield subsidiary has cultivated a strategic partnership with CROPP. Stonyfield, the leading manufacturer of organic yogurt in the United States, relies on CROPP for the supply of almost all of its organic milk requirements. CROPP, in turn, relies on the revenue stream from Stonyfield's organic milk purchases to retain and compensate its farmer members, as Stonyfield has been CROPP's largest customer for the same period of time. Presently, CROPP supplies Danone with at least 90 percent of Stonyfield's requirements for raw organic milk, fluid organic milk, and milk equivalents (*e.g.,* cream, condensed, or powdered organic milk) in the United States.

This supply relationship, memorialized in a longstanding ''Supply Agreement'' is critical to the viability of both Danone and CROPP's businesses, and this dependence over the years has forged a strong relationship. This relationship includes the sharing of competitively sensitive information regarding, for example, costs, sales, products, and customers.

Danone's strategic partnership with CROPP deepened in 2009, when it granted CROPP an exclusive license allowing CROPP to produce and sell Stonyfield branded fluid organic milk, in exchange for a royalty payment (''License Agreement''). This License

Agreement has allowed CROPP to expand its sales in the northeast, and to add the well-known Stonyfield trademark to a portfolio that already included the cooperative's own Organic Valley fluid organic milk brand.

As a result of the License Agreement, Danone and CROPP share the Stonyfield brand, which competes with WhiteWave's market-leading Horizon brand. The Stonyfield brand-sharing allowed under the License Agreement necessitates frequent meetings between Danone and CROPP to discuss marketing and to collaborate on promotions, which have required the sharing of confidential and competitively sensitive business information. CROPP's Stonyfield fluid organic milk benefits from Danone's investments in the Stonyfield organic yogurt brand. Danone, in turn, receives a royalty payment while also benefitting from the perception of a broader Stonyfield portfolio, without requiring an investment in the production of Stonyfield fluid organic milk.

b. WhiteWave and CROPP

WhiteWave and CROPP are the first- and second-largest purchasers of raw organic milk in the northeast, respectively. To supply its needs, WhiteWave contracts with approximately 600 farms in the northeast and 800 farms in total nationwide. To supply Danone and its own needs, CROPP contracts with 500 northeast farms and 1,500 farms in total nationwide.

WhiteWave and CROPP compete to offer farmers the best price for their raw organic milk, the highest quality service, and the most attractive incentives to convert from conventional to organic dairy farming. Farmers, in turn, request concessions from WhiteWave based on CROPP's offers, and vice versa.

WhiteWave's Horizon brand is the only nationwide competitor to CROPP's Organic Valley brand and Danone-CROPP's Stonyfield brand for the sale of fluid organic milk to retailers.

3. The Purchase of Raw Organic Milk in the Northeast

The purchase of raw organic milk is a relevant product market and line of commerce under Section 7 of the Clayton Act. Although raw organic milk could be sold by farmers as conventional milk, the milk would typically be sold at a loss because conventional milk prices do not cover the organic farmer's production costs. Therefore, farmers who sell raw organic milk cannot economically switch to supplying purchasers of conventional milk.

Transporting raw organic milk produced by northeast farmers beyond the northeast is expensive, risks spoilage of the raw organic milk, and stretches the outer bounds of regulatory requirements that raw organic milk be processed within 72 hours of its collection. Most raw organic milk is processed within several hundred miles of the location where it is produced. Indeed, the relevant geographic market for the purchase of raw organic milk is referred to in the dairy industry as ''the northeast,'' because the farmers who sell raw organic milk to WhiteWave and to Danone (through CROPP) are located in the northeast. For these purposes, the northeast includes Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Maryland. A hypothetical monopsonist purchaser of raw organic milk from farmers in the northeast would profitably impose a reduction in the price of raw organic milk paid to farmers by at least a small but significant and non-transitory amount (*e.g.,* five percent).

4. The Sale of Fluid Organic Milk in the United States

Fluid organic milk is a relevant product market and line of commerce under Section 7 of the Clayton Act. Consumers do not significantly switch away from fluid organic milk, for example to conventional milk, when the price increases by a significant non-transitory amount. The relevant geographic market for the sale of fluid organic milk is no larger than the United States. Fluid organic milk is pasteurized using methods that allow for a longer shelf life than most conventional milk, allowing it to be shipped long distances when necessary. A hypothetical monopolist seller of fluid organic milk in the United States would profitably impose at least a small but significant and non-transitory price increase.

5. Anticompetitive Effects

Given the strategic partnership between Danone and CROPP, this transaction gives Danone the incentive and ability to limit the existing competition between WhiteWave and CROPP for both farmer contracts and retail customer accounts. Danone and CROPP are linked together by the Supply Agreement, the License Agreement, and years of operational cooperation. They are dependent on each other for supply and revenue, respectively, and they share the Stonyfield brand. Their aligned interests and mutual dependence make it unlikely, therefore, that CROPP would continue to compete fiercely with Danone-WhiteWave post merger.

Concentrated markets, coupled with the entanglements created by these agreements, increase the likelihood of anticompetitive effects. WhiteWave and CROPP collectively purchase approximately 70 percent of the available northeast raw organic milk supply. The small, regional dairies that make up the remaining 30 percent cannot expand their farmer networks (thereby increasing their own purchases) without access to the fluid organic milk customers currently supplied by WhiteWave and CROPP.

In retail fluid organic milk sales, Horizon, Organic Valley, and Stonyfield account for 41 percent, 10 percent, and 5 percent of shares, respectively. For branded fluid organic milk, specifically, Horizon, Organic Valley, and Stonyfield represent 67 percent, 16 percent, and 8 percent of national retail sales, respectively. The merger links these three firms, which together control almost 56 percent of all fluid organic milk sales, and 91 percent of all branded fluid organic milk sales.

CROPP and WhiteWave generally can identify when and where they are competing against each other for farmers or retail customers. Affiliations between farmers and purchasers are well known because there are relatively few purchasers and one can readily observe which farmers are in a given purchaser's network. Relationships between fluid organic milk sellers and their retail customers are also well known because it is easy to observe which brands are available in each retail store. These highly transparent supply and customer relationships allow market participants to identify their particular rival in most competitive interactions. Given the transparency of these markets, the merger would curtail competition between the Danone-CROPP partnership and WhiteWave.

The merger would have reduced the incentives for the combined Danone-WhiteWave to compete aggressively against CROPP, and the supply and license relationships linking the merged entity to CROPP would have provided opportunities for WhiteWave and CROPP to interact, strategize, coordinate marketing, and exchange confidential and competitively sensitive information.

The only way for CROPP to continue to compete aggressively against WhiteWave post merger would have been to sever its Supply Agreement and License Agreement with Danone. This would have had significant costs and risks. In light of these costs and risks, and as CROPP's ability to compete with WhiteWave is undermined by the

merger, it likely would have found it more profitable to remain in the partnership than to abandon it. The result would have been a likely lessening of competition in the purchase of raw organic milk from farmers and in the sale of fluid organic milk to retailers.

6. Difficulty of Entry or Expansion

New entry and expansion by existing competitors are unlikely to prevent or remedy the acquisition's likely anticompetitive effects. Barriers to entry and expansion in the raw organic and fluid organic milk markets include: (1) the substantial time and expense required to build a brand reputation sufficient to provide an outlet for raw organic milk purchases and fluid organic milk sales; (2) substantial sunk costs to be able to sell fluid organic milk in wholesale and retail outlets; (3) the expense of capital investments necessary to manufacture fluid organic milk; and (4) the investments necessary to develop raw organic milk hauling, fluid organic milk distributor relationships, and fluid organic milk delivery routes.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the markets for the purchase of raw organic milk in the northeast and the manufacture and sale of fluid organic milk nationwide by establishing a new, independent, and economically viable competitor. The divestiture of Stonyfield effectively eliminates both the entanglements between Danone and CROPP and the increased incentive to reduce competition between the major brands of fluid organic milk, which otherwise would have resulted from the transaction. Pursuant to Paragraph IV(A) of the proposed Final Judgment, the defendants are required to divest Stonyfield within ninety (90) days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later. The assets must be divested in such a way as to satisfy the United States in its sole discretion that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the production and sale of Stonyfield products. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

Post merger, Danone's long-term Supply and License Agreements with CROPP would have connected CROPP with WhiteWave, its primary pre-merger competitor. These entanglements between the merged entity and CROPP would have provided incentives and opportunities for the two companies to interact, strategize, coordinate marketing and exchange confidential information. As a result of these incentives and opportunities, the companies would likely have competed less aggressively to recruit and retain organic farmers and customer accounts post merger. Consequently, organic farmers in the northeast would likely have received less favorable contract terms, and fluid organic milk customers nationwide would likely have paid higher prices. The Final Judgment requires the divestiture of the entire Stonyfield business, which will sever Danone's contractual relationships with CROPP and reduce the likelihood of anticompetitive effects in the markets for the purchase of raw organic milk in the northeast and the manufacture and sale of fluid organic milk in the United States.

A. Divestiture Assets

The Divestiture Assets, as defined in Paragraph II(M), encompass the entire Stonyfield business, including its headquarters, facility and warehouse in Londonderry, New Hampshire. Stonyfield manufactures and sells organic yogurt to customers throughout the United States and raw and fluid organic milk are its key ingredients. Stonyfield's facility in Londonderry has an established record as a high-quality, efficient production facility with sufficient capacity to meet current and future demand for its products.

Pursuant to Paragraph II(M)(2), the proposed Final Judgment requires the divestiture of certain tangible assets used exclusively by Stonyfield and other tangible assets relating to Stonyfield. For the tangible assets shared by Danone and Stonyfield, Danone and Stonyfield will each be entitled to retain that portion of the asset that relates to its respective business.

The proposed Final Judgment also requires the divestiture of all intangible assets owned, licensed, controlled, maintained or used primarily by Stonyfield. For all other intangible assets that Stonyfield uses in connection with the development, production, manufacture or sale of any Stonyfield product, but does not own or have specific rights to (including intangible assets related to the design and manufacture of certain plastic bottles), the Divestiture Assets include non-exclusive, perpetual, royalty-free licenses in accordance with Paragraphs II(M)(3)(c) and II(M)(3)(d). If Danone's consent or waiver of exclusive rights is required for the Acquirer to access or utilize these licenses, Danone will take all steps necessary to remove any impediments that could prevent the Acquirer from utilizing these licenses. The Divestiture Assets do not include the intellectual property rights to the Oikos and Activia brands. Stonyfield does not currently manufacture any products under these brands, but Danone manufactures two successful product lines under these trademarks. Accordingly, in an effort to minimize future entanglements between Danone and the Acquirer, the Acquirer will not receive the rights to use the Oikos and Activia trademarks.

Paragraph II(M)(3)(b) of the proposed Final Judgment includes a conditional non-exclusive, perpetual, royalty-free license for the Acquirer to use Danone's intellectual property relating to the formula, recipe, and specifications for the production of Stonyfield's conventional Greek yogurt products manufactured under the Brown Cow trademark (or ''Brown Cow Greek Formula,'' as defined in Paragraph II(H) of the proposed Final Judgment). This license is conditioned on Stonyfield's continued use of the Brown Cow Greek Formula. If prior to the divestiture Stonyfield elects to produce its Brown Cow conventional Greek yogurts at its Londonderry facility, and no longer uses the Brown Cow Greek Formula, the condition will not have been met.

These tangible and intangible assets that comprise the Divestiture Assets will provide the Acquirer with the physical tools, knowledge and rights needed to develop, produce, manufacture and sell any product produced by Stonyfield.

B. Transition Services and Co-Packing Agreements

The Acquirer may require a transition services agreement for back office and information technology services to ensure the continuity of the operations of the Stonyfield business. The proposed Final Judgment, Paragraph IV(G), provides the Acquirer with the option of a transition services agreement for one (1) year, with one or more possible extensions of the term for not more than an additional twelve (12) months.

Additionally, Danone currently provides to Stonyfield certain raw materials and services related to operations, quality control and design to assist with its production and regulatory compliance. The Acquirer initially may require a ready supply of raw materials and the ability to access these

specialized services. Therefore, Paragraph IV(H) of the proposed Final Judgment provides that, at the option of the Acquirer, Danone shall enter into one or more transition services agreements with the Acquirer to meet all or part of the Acquirer's needs for a period of up to six (6) months. Those agreements may relate to raw material purchases; the operation of Stonyfield's facilities; and/or quality control and design services for production and regulatory compliance. The United States, in its sole discretion, may approve extensions of these agreements for a period totaling not more than twelve (12) months.

Stonyfield currently manufactures certain yogurt products at Danone's manufacturing facilities in Fort Worth, Texas and Minster, Ohio, facilities that are not being divested. The Acquirer may need some time to contract with a third-party co-packer for the manufacture of these products or to move them to Londonderry. Accordingly, Paragraph IV(I) of the proposed Final Judgment provides that, at the option of the Acquirer, Danone shall enter into one or more co-packing contracts with the Acquirer for a period of up to (1) one year for the continued production of Stonyfield products at the Fort Worth Facility and/or the Minster Facility. The United States, in its sole discretion, may approve one or more extensions of these agreements for a period totaling not more than six (6) months. The proposed Final Judgement also sets weekly volume and notice requirements to facilitate the smooth operation of any such co-packing agreements.

C. Appointment of a Monitoring Trustee

By providing for the possibility of transition services, co-packing agreements and other obligations, the proposed Final Judgment contemplates an ongoing relationship between defendants and the Acquirer for a period of time. Should the United States conclude that it would benefit from the assistance of a Monitoring Trustee, Section X of the proposed Final Judgment provides for the appointment of a Monitoring Trustee with the power and authority to investigate and report on the parties' compliance with the terms of the Final Judgment and the Hold Separate during the pendency of the divestiture, including but not limited to the terms and implementation of the transition services and co-packing agreements with Danone. The Monitoring Trustee would not have any responsibility or obligation for the operation of the parties' businesses. The Monitoring Trustee will serve at defendants' expense, on such terms and conditions as the United States approves, and defendants must assist the trustee in fulfilling its obligations. The Monitoring Trustee will file monthly reports and will serve until the divestitures are complete. The Monitoring Trustee shall serve until the divestiture of all the Divestiture Assets is finalized pursuant to either Section IV or Section V of the Final Judgment.

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

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects that likely would result if Danone acquired WhiteWave, because they will establish a new, independent, and economically viable competitor in the markets for the purchase of raw organic milk in the northeast, and the sale of fluid organic milk nationwide.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

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

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

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

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's Internet Web site and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 8700, Washington, DC 20530.

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

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Danone's acquisition of WhiteWave. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the purchase of raw

organic milk in the northeast and the manufacture and sale of fluid organic milk in the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, 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); *United States v. U.S. Airways Group, Inc.,* No. 13–cv–1236 (CKK), 2014–1 Trade Cas. (CCH) ¶ 78, 748, 2014 U.S. Dist. LEXIS 57801, at *7 (D.D.C. Apr. 25, 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

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

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, 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 U.S. Airways,* 2014 U.S. Dist. LEXIS 57801, at *16 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also U.S. Airways,* 2014 U.S. Dist. LEXIS 57801, at *8 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft,* 56 F.3d at 1461); *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 2014 U.S. Dist. LEXIS 57801, at *9 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable; *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is

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

[2] *Cf. BNS,* 858 F.2d at 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' '').

not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 2014 U.S. Dist. LEXIS 57801, at *9 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). 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 Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 2014 U.S. Dist. LEXIS 57801, at *9.

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: April 13, 2017.
Respectfully submitted,

Suzanne Morris,

United States Department of Justice, Antitrust Division, Litigation II Section, Liberty Square Building, 450 Fifth Street NW., Suite 8700, Washington, DC 20530, Telephone: (202) 307–1188, Facsimile: (202) 514–9033, suzanne.morris@usdoj.gov.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Danone S.A.* and *The WhiteWave Foods Company, Defendants.*

Case No.: 17–cv–00592 (KBJ)
JUDGE: Ketanji Brown Jackson

PROPOSED FINAL JUDGMENT

Whereas, Plaintiff United States of America, filed its Complaint on April 3, 2017, the United States and defendants, Danone S.A. (''Danone'') and The WhiteWave Foods Company (''WhiteWave''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

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

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

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

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

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

I. JURISDICTION

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

II. DEFINITIONS

As used in this Final Judgment:

A. ''Acquirer'' means the entity to whom defendants divest the Divestiture Assets.

B. ''Danone'' means defendant Danone S.A., a *société anonyme* organized under the laws of France, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''WhiteWave'' means defendant The WhiteWave Foods Company, a Delaware corporation with its headquarters in Denver, Colorado, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Stonyfield'' means Stonyfield Farm, Inc., a Delaware corporation with its headquarters in Londonderry, New Hampshire, its successors and assigns, and its subsidiaries and divisions, and their respective directors, officers, managers, agents and employees, but does not include Stonyfield's minority interest in Stonyfield Europe Ltd.

E. ''Oikos Brands'' means all Oikos trademarks, service marks, trade names, trade dress, logos and domain names, corporate names, and goodwill.

F. ''Oikos Schreiber'' means Danone's conventional Greek yogurt products manufactured under the Oikos trademark at the Schreiber Foods, Inc. facility in Shippensburg, Pennsylvania as of the date of the Complaint filed in this matter.

G. ''Brown Cow Schreiber'' means Stonyfield's conventional Greek yogurt products manufactured under the Brown Cow trademark at the Schreiber Foods, Inc. facility in Shippensburg, Pennsylvania as of the date of the Complaint filed in this matter.

H. ''Brown Cow Greek Formula'' means the intellectual property relating to the formula, recipe, and

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (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, 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.'').

specifications used as of the date of the Complaint filed in this matter for the production of the Oikos Schreiber and Brown Cow Schreiber conventional Greek yogurt products.

I. ''Centralized Business Services'' means Danone's internal provider of back office functions.

J. ''DanTrade'' means DanTrade B.V., Danone's global purchasing entity.

K. ''Fort Worth Facility'' means Danone's manufacturing facility in Fort Worth, Texas.

L. ''Minster Facility'' means Danone's manufacturing facility in Minster, Ohio.

M. ''Divestiture Assets'' means Stonyfield, including:

1. Stonyfield's headquarters, facility, and warehouse located at 10 Burton Drive, Londonderry, New Hampshire 03053;

2. The following tangible assets that comprise the Stonyfield business including but not limited to:

(a) all manufacturing equipment, tooling and fixed assets, personal property, warehouses (leased and owned), trucks and other vehicles, inventory, office furniture, materials, supplies, and other tangible property and all assets used exclusively in connection with Stonyfield; and

(b) all licenses, permits and authorizations issued by any governmental organization relating to Stonyfield; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to Stonyfield, including supply agreements; all customer lists, routes, contracts, accounts, and credit records relating to Stonyfield; all repair and performance records relating to Stonyfield; and all other records relating to Stonyfield. Notwithstanding the above, for any tangible asset in this subsection that is shared between Danone and Stonyfield, Danone and Stonyfield shall each be entitled to retain that portion of the asset that relates to their respective business. To the extent Danone's consent or waiver of exclusive rights is required for Stonyfield to renegotiate or modify the terms of any shared asset in this subsection, Danone shall take all steps necessary to remove any impediments that would prevent Stonyfield from renegotiating or modifying the terms of the shared asset.

3. The following intangible assets:

(a) all intangible assets owned, licensed, controlled, or used primarily by Stonyfield (except the Oikos Brands), including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, formulas, recipes, proprietary cultures, technical information, computer software and related documentation, know-how, trade secrets, drawings, artwork, blueprints, designs, design protocols, specifications for materials, specifications for production and packaging, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to Stonyfield, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments;

(b) a non-exclusive, perpetual, royalty-free license, transferable among Stonyfield and its subsidiaries, to use the Brown Cow Greek Formula to produce all Stonyfield products that use the Brown Cow Greek Formula as of the date of the Complaint; provided that if prior to the divestiture ordered by this Final Judgment, Stonyfield ceases the use of the Brown Cow Greek Formula, this license will not be included as a Divestiture Asset;

(c) a non-exclusive, perpetual, royalty-free license, transferable among Stonyfield and its subsidiaries, to use any intangible assets (except the Brown Cow Greek Formula and Activia trademarks) that are not included in paragraph II(M)(3)(a) above, and were used in connection with the development, production, manufacture, or sale of any Stonyfield product. To the extent Danone's consent or waiver of exclusive rights is required for Stonyfield to access or utilize a license, Danone will take all steps necessary to provide Stonyfield with the license and remove any impediments that would prevent Stonyfield from utilizing the license. Any improvements or modifications to these intangible assets developed by the Acquirer of Stonyfield shall be owned solely by that Acquirer; and

(d) a non-exclusive, perpetual, royalty-free license, transferable among Stonyfield and its subsidiaries, to use Danone's intangible assets related to the design and manufacture of the 3.1 oz plastic bottles used to package Stonyfield products at the Minster Facility as of the date of the Complaint.

N. ''Competitively Sensitive Information'' means information that is not public and could be used by a competitor or supplier to make development, production, pricing, or marketing decisions including, but not limited to, information relating to costs, capacity, distribution, marketing, supply, market territories, customer relationships, the terms of dealing with any particular customer (including the identity of individual customers and the quantity sold to any particular customer), and current and future prices, including discounts, slotting allowances, bids, or price lists. ''Competitively Sensitive Information'' does not include information that must be disclosed in the ordinary course of business in order to implement a transition services or co-packing arrangement.

III. APPLICABILITY

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

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

IV. DIVESTITURE

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

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to

customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the development, production, marketing and sale of any product produced or sold by Stonyfield to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the development, production, marketing and sale of any product produced or sold by Stonyfield.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to Stonyfield 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.

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

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

G. At the option of the Acquirer, Danone's Centralized BusinessServices division will provide back office and information technology services and support for Stonyfield for a period of up to one (1) year. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional twelve (12) months. If the Acquirer seeks an extension of the term of this transition services agreement, it shall so notify the United States in writing at least three (3) months prior to the date the transition services contract expires. If the United States approves such an extension, it shall so notify the Acquirer in writing at least two (2) months prior to the date the transition services contract expires. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to the market value of the expertise of the personnel providing any needed assistance. The Danone employee(s) tasked with providing these transitional services may not share Stonyfield's Competitively Sensitive Information with any other Danone or WhiteWave employee.

H. At the option of the Acquirer, Danone shall enter into one or more transition services agreements with the Acquirer for raw material purchases through DanTrade at Danone's internal transfer pricing rate; services relating to the operation of Stonyfield's facilities; and quality control and design services for production and regulatory compliance; to meet all or part of the Acquirer's needs for a period of up to six (6) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional twelve (12) months. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to the market value of the expertise of the personnel providing any needed assistance.

I. At the option of the Acquirer, Danone shall enter into one or more co-packing contracts with the Acquirer for a period of up to one (1) year for the continued production of Stonyfield products produced at the Fort Worth Facility and/or the Minster Facility as of the date of the Complaint. Danone will produce up to 100 percent of the average 2016 weekly volume of these Stonyfield products for the Acquirer each week upon receipt of seven (7) days' notice. The Acquirer may increase the weekly volume by 20 percent by providing Danone notice no later than three (3) days prior to production. The Acquirer may increase the weekly production volume by 100 percent with four (4) weeks' notice. The terms and conditions of any contractual arrangement to satisfy this provision must be reasonably related to market conditions for co-packing yogurt products. The United States, in its sole discretion, may approve one or more extensions of these agreements for a total of up to an additional six (6) months. If the Acquirer seeks an extension of the term of these co-packing agreements, it shall so notify the United States in writing at least three (3) months prior to the date the co-packing agreement(s) expires. If the United States approves such an extension, it shall so notify the Acquirer in writing at least two (2) months prior to the date the co-packing agreement(s) expires. Danone employees at the Fort Worth and Minster Facilities may not share Stonyfield's Competitively Sensitive Information with other Danone or WhiteWave employees.

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

K. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business in the production and sale of Stonyfield products. Specifically, the United States must be satisfied, in its sole discretion, that the Divestiture Assets can and will remain viable, and that the divestiture will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment,

1. shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the markets for products produced or sold by Stonyfield; and

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

V. APPOINTMENT OF DIVESTITURE TRUSTEE

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture 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 Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture 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 Divestiture 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 Divestiture Trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications.

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

D. The Divestiture Trustee shall serve at the cost and expense of defendants pursuant to a written agreement, on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture 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. If the Divestiture Trustee and defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to defendants and the United States.

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

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture 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 Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such report contains information that the Divestiture Trustee deems confidential, such report shall not be filed in the public docket of the Court. The Divestiture 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 Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VI. NOTICE OF PROPOSED DIVESTITURE

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the Divestiture 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 Divestiture Trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

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

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right

to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. FINANCING

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

VIII. HOLD SEPARATE

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

IX. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

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

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one (1) year after such divestiture has been completed.

X. APPOINTMENT OF MONITORING TRUSTEE

A. Upon application of the United States, the Court shall appoint a Monitoring Trustee selected by the United States and approved by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor defendants' compliance with the terms of this Final Judgment and the Hold Separate Stipulation and Order entered by this Court, and shall have such other powers as this Court deems appropriate. The Monitoring Trustee shall be required to investigate and report on the Defendants' compliance with this Final Judgment and the Hold Separate Stipulation and Order and the defendants' progress toward effectuating the purposes of this Final Judgment, including but not limited to the terms and implementation of the transition services and co-packing agreements with Danone contemplated by Paragraphs IV(G), (H), and (I).

C. Subject to Paragraph X(E) of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of defendants any consultants, accountants, attorneys, or other agents, who shall be solely accountable to the Monitoring Trustee, reasonably necessary in the Monitoring Trustee's judgment. Any such consultants, accountants, attorneys, or other agents shall serve on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications.

D. Defendants shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under any Order of this Court on any ground other than the Monitoring Trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the Monitoring Trustee within ten (10) calendar days after the action taken by the Monitoring Trustee giving rise to the defendants' objection.

E. The Monitoring Trustee shall serve at the cost and expense of defendants pursuant to a written agreement with defendants and on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications. The compensation of the Monitoring Trustee and any consultants, accountants, attorneys, and other agents retained by the Monitoring Trustee shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. If the Monitoring Trustee and defendants are unable to reach agreement on the Monitoring Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Monitoring Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Monitoring Trustee shall, within three (3) business days of hiring any consultants, accountants, attorneys, or other agents, provide written notice of such hiring and the rate of compensation to defendants and the United States.

F. The Monitoring Trustee shall have no responsibility or obligation for the operation of defendants' businesses.

G. Defendants shall use their best efforts to assist the Monitoring Trustee in monitoring defendants' compliance with their individual obligations under this Final Judgment and under the Hold Separate Stipulation and Order. The Monitoring Trustee and any consultants, accountants, attorneys, and other agents retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to compliance with this Final Judgment, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Monitoring Trustee's accomplishment of its responsibilities.

H. After its appointment, the Monitoring Trustee shall file reports monthly, or more frequently as needed, with the United States, and, as appropriate, the Court setting forth defendants' efforts to comply with its obligations under this Final Judgment and under the Hold Separate Stipulation and Order. To the extent such reports contain information that the Monitoring Trustee deems confidential, such reports shall not be filed in the public docket of the Court.

I. The Monitoring Trustee shall serve until the divestiture of all the Divestiture Assets is finalized pursuant to either Section IV or Section V of this Final Judgment and the transition services and co-packing agreements with Danone contemplated by Paragraphs IV(G), (H), and (I) have expired or been terminated.

J. If the United States determines that the Monitoring Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Monitoring Trustee.

XI. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as the Hold Separate Stipulation and Order, 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, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

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

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

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

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

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

XII. NO REACQUISITION

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

XIII. RETENTION OF JURISDICTION

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

XIV. EXPIRATION OF FINAL JUDGMENT

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

XV. PUBLIC INTEREST DETERMINATION

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

Date:

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

United States District Judge

[FR Doc. 2017–07924 Filed 4–18–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act and Chapter 11 of the United States Bankruptcy Code

On April 13, 2017, the Department of Justice lodged a proposed Settlement Agreement with the United States Bankruptcy Court for the District of Maine in *In re: Lincoln Paper and Tissue, LLC,* No. 15–10715 PGC. The agreement was entered into by the United States, on behalf of the United States Environmental Protection Agency (''EPA''), the debtor Lincoln Paper and Tissue, LLC (''Debtor''), and the Maine Department of Environmental Protection (''MDEP'').

The agreement relates to liabilities of the Debtor under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.* (''CERCLA''), in connection with the 275-acre paper mill owned by the Debtor in Lincoln, Maine (''Facility''). Pursuant to the agreement's terms, the Debtor has agreed to implement certain removal actions at the Facility, including the removal of drums and containers of hazardous substances and hazardous wastes, the removal of radioactive signs, and the removal of friable asbestos. The Debtor has also agreed to pay EPA the difference between the cost of these removal actions (expected to be about $250,000) and $400,000. The Debtor has also agreed that if the estate's net recoveries in the bankruptcy proceeding (other than insurance recoveries related to environmental claims) exceed $500,000, the Debtor will pay EPA 25% of the excess, with an overall cap of $225,000. With respect to insurance proceeds for environmental claims, the Debtor has agreed to pay EPA 50% of any net proceeds over $400,000, with no cap on the amount. MDEP has agreed that an escrow account of $50,000, which was set aside by the Debtor earlier in the bankruptcy case for the benefit of any remediation sought by MDEP at the Facility, will be paid to EPA to help defray EPA's removal costs at the Facility. MDEP has signed the Settlement Agreement due to this aspect of the settlement. The Debtor has also agreed that EPA will have an allowed general unsecured claim in the amount of the removal costs that will be incurred by EPA at the Facility, minus certain cash payments to be made by the Debtor to EPA, with a cap of $1.5 million.