Rules of Appellate Procedure has been canceled: Appellate Rules Hearing, January 9, 2015, in Phoenix, Arizona. Announcements for this meeting were previously published in 79 FR 48250 and 79 FR 72702.

FOR FURTHER INFORMATION CONTACT: Jonathan C. Rose, Secretary and Chief Rules Officer, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 16, 2014.

Jonathan C. Rose,

Secretary and Chief Rules Officer.

[FR Doc. 2014–29793 Filed 12–19–14; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Continental AG and Veyance Technologies, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Continental AG, and Veyance Technologies, Inc.,* Civil No. 1:14–cv–02087. On December 11, 2014, the United States filed a Complaint alleging that Continental's proposed acquisition of Veyance would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Continental to divest Veyance's North American commercial vehicle air springs business, including manufacturing and assembly facilities in San Luis Potosi, Mexico; research, development, engineering, and administrative assets in Fairlawn, Ohio; and certain tangible and intangible assets.

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

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Department of Justice, Antitrust Division's internet 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, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW, Suite 8700, Washington, DC 20530, Plaintiff, v. *Continental AG, Vanrenwalder Strasse 9, D-30165, Hanover, Germany,* and *Veyance Technologies, Inc., 703 S. Cleveland Massillon Road, Fairlawn, Ohio 44333,* Defendants.

Case: 1:14–cv-–2087

Filed: 12/11/2014

Judge: Hon. Reggie B. Walton

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 to enjoin the proposed acquisition by Defendant Continental AG (''Continental'') of Defendant Veyance Technologies, Inc. (''Veyance''). The United States alleges as follows:

I. INTRODUCTION

1. Pursuant to an Agreement and Plan of Merger dated February 10, 2014, Continental has agreed to purchase Veyance from Carlyle Partners IV, L.P. for $1.8 billion. The merger would combine two of the three leading suppliers of air springs used in commercial vehicles in North America.

2. Continental has competed aggressively with Veyance for sales in North America, which has resulted in lower prices for commercial vehicle air springs. Elimination of the competition between Continental and Veyance likely would result in higher prices and decreased quality of service for customers, and would increase the likelihood that the two remaining suppliers would substantially reduce competition through successful coordination. As a result, the proposed acquisition likely would substantially lessen competition in the development, manufacture, and sale of commercial vehicle air springs in North America in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. THE PARTIES TO THE PROPOSED TRANSACTION

3. Defendant Continental AG, a corporation organized under the laws of the Federal Republic of Germany, is based in Hanover, Germany. Continental is a leading German automotive manufacturing company, specializing in tires, brake systems, and components, and it is one of the world's largest producers of rubber products. Its annual sales for 2013 were approximately $40 billion. ContiTech North America, Inc., of Montvale, New Jersey, is a part of ContiTech AG, a division of Continental. ContiTech North America produces and sells parts, components and systems, including commercial vehicle air springs, for the automotive engineering industry in North America.

4. Defendant Veyance Technologies, Inc. is incorporated in Delaware with its headquarters in Fairlawn, Ohio. Veyance manufactures engineered rubber products for heavy-duty industrial, automotive and military applications. Veyance produces and sells automotive and commercial vehicle parts, including commercial vehicle air springs, in North America. In 2013, Veyance had $2.1 billion in sales.

III. JURISDICTION AND VENUE

5. The United States brings this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

6. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345. Defendants produce and sell commercial vehicle air springs in a regular, continuous, and substantial flow of interstate commerce. Defendants' activities in the development, manufacture, and sale of commercial vehicle air springs have had a substantial effect upon interstate commerce.

7. Defendants have consented to venue and personal jurisdiction in this District.

8. Venue is proper in this Court under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b) and (c).

IV. THE RELEVANT MARKET

A. Product Description

9. Air springs are load-carrying rubber components constructed of a hollow rubber bellow sealed to metal plates attached at the top and bottom. Through the use of air compression, air springs dampen road shock and vibration. Air springs keep commercial vehicles—such as trucks, trailers and buses—at the same distance from the road irrespective of the weight being carried and also can be used as actuators to raise and lower objects. For example, air springs are used in buses to automatically maintain the same vehicle level and ride comfort, no matter how many passengers get on or off.

10. As commercial vehicle components, air springs are used in multiple locations in a vehicle: under the driver's seat, between the cab and underlying frame, and in suspensions between axle and frame for truck and trailer. Air springs in suspension systems of trucks, trailers and buses help commercial vehicles save fuel, reduce tire wear, and provide greater reliability. Air springs between the floor of the cabin and the seat provide for driver comfort and reduce driver fatigue. Air springs in the commercial vehicle cabin suspension system, between the frame and the cabin, regulate cabin movement.

11. The three types of air springs are (1) rolling lobe, which are used for truck, bus and trailer axles; (2) convoluted, or bellows, which serve the same function as rolling lobe but also are used as actuators to lift axles; and (3) sleeves, which are smaller springs generally used in cabs and seats for driver comfort. The vast majority of air springs for commercial vehicle applications sold in North America are rolling lobe air springs purchased by original equipment manufacturers (''OEMs'') for truck, trailer and bus suspension systems.

12. Commercial vehicle OEMs in North America determine the type of air spring to be used in a particular platform. They can source the air springs directly from the air spring manufacturer or purchase a completed, fully integrated suspension system that includes air springs from a suspension system OEM. Suspension system OEMs source commercial vehicle air springs directly from the air spring manufacturer.

13. All air springs used by commercial vehicle OEMs must be of high quality and durability. Commercial vehicle OEMs require that commercial vehicle air springs meet rigid qualifications to ensure performance, quality, and engineering design fit. The qualification process includes not only qualification of the specific air spring to be used, via laboratory and road tests, but also inspection of the particular production facility where the air spring is to be produced. The rigorous process of qualifying an air spring for commercial vehicle OEMs can take more than two years. Once the air spring is qualified, commercial vehicle OEMs work closely with the air spring manufacturer to ensure that the air spring is integrated into the overall design of the platform.

14. Air springs also are sold in the aftermarket, or the market for replacement air springs for commercial vehicles. Commercial vehicle air springs for the aftermarket are purchased by the end user to replace, after time and wear, the air springs originally installed in commercial vehicles. Commercial vehicle air springs for the aftermarket do not have to meet the rigid qualifications that commercial vehicle OEMs require, as replacement commercial vehicle air springs are not designed for a specific commercial vehicle platform.

B. Relevant Product Markets

15. Rolling lobe, convoluted and sleeve commercial vehicle air springs perform distinct functions and, in general, cannot be substituted for each other. For instance, an air spring used in a trailer suspension is not the same as an air spring used for a truck seat. Accordingly, the three types of commercial vehicle air springs are not interchangeable or substitutable for one another, and demand for each is separate. In the event of a small but significant increase in price for a given type of commercial vehicle air spring, customers would not stop using that air spring in sufficient numbers so as to defeat the price increase. Thus, the development, manufacture, and sale of each type of commercial vehicle air spring is a separate line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

16. Although narrower product markets of rolling lobe, convoluted and sleeve air springs for commercial vehicles exist, the competitive dynamic for each type is nearly identical. The same firms manufacture and sell each of these products and each type of commercial vehicle air spring is sold in similar competitive conditions. Therefore, the products may be aggregated for analytical convenience into a single relevant product market for the purpose of assigning market shares and evaluating the competitive impact of the acquisition.

(1) Commercial Vehicle Air Springs for Original Equipment Manufacturers

17. Commercial vehicle OEMs require each air spring to meet rigid qualification standards to ensure performance, quality, and engineering design fit. Commercial vehicle air springs sold into the aftermarket for replacement purposes are not of sufficient quality or reliability to be used by commercial vehicle OEMs. Accordingly, commercial vehicle air springs for OEMs are not interchangeable with or substitutable for commercial vehicle air springs for the aftermarket, and demand for each is separate.

18. A small but significant increase in the price of commercial vehicle air springs for OEMs would not cause a sufficient number of OEMs to substitute commercial vehicle air springs manufactured for the aftermarket so as to make such a price increase unprofitable. Thus, the development, manufacture, and sale of commercial vehicle air springs for OEMs is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

(2) Commercial Vehicle Air Springs for the Aftermarket

19. Commercial vehicle air springs for the aftermarket are sold for replacement purposes. The targeted customer is the commercial vehicle owner. Because commercial vehicle air springs for the aftermarket are not designed for a specific commercial vehicle platform, they do not have to meet the rigid qualifications that commercial vehicle OEMs require. Commercial vehicle air springs for the aftermarket are of lower quality and lesser durability than commercial vehicle air springs made for OEMs. Accordingly, commercial vehicle air springs for the aftermarket are not interchangeable or substitutable for commercial vehicle air springs sold to OEMs. Demand for commercial vehicle air springs used by OEMs is separate from demand for commercial vehicle air springs for the aftermarket.

20. A small but significant increase in the price of commercial vehicle air springs for the aftermarket would not cause customers to substitute commercial vehicle air springs for OEMs in sufficient numbers so as to make such a price increase unprofitable. Thus, the development, manufacture, and sale of commercial vehicle air springs for the aftermarket is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

C. Relevant Geographic Market

(1) Commercial Vehicle Air Springs for OEMs

21. Commercial vehicle air springs are bulky but relatively lightweight. Despite the light weight, the cost of transporting commercial vehicle air springs is high compared to the value of the product, because the manufacturers essentially have to pay to ship air. Therefore, while shipping commercial vehicle air springs from overseas is feasible, it adds significant cost—approximately 10 to 15 percent—to the price of the product. Import taxes also add additional costs to commercial vehicle air springs that are shipped from outside North America.

22. In addition, commercial vehicle OEMs require that the air springs production facility be qualified. The qualification process includes inspection of the production facility by the customer. Having to inspect and qualify a facility outside of North America adds both time and expense to the process.

23. Further, commercial vehicle OEMs require timely delivery of air springs, as they are an essential input into the final vehicle platform. Procuring commercial vehicle air springs from overseas adds significant lead time to delivery, increases the risk of shipment delays, and makes more difficult the rapid correction of quality shortcomings in delivered product. Thus, for commercial vehicle OEMs, purchasing air springs from outside North America involves the assumption of an unacceptable level of risk.

24. Therefore, to successfully sell commercial vehicle air springs for OEM use in North America, an air spring manufacturer must have an air spring production facility in North America.

25. OEM customers for commercial vehicle air springs in North America would be unwilling to switch to commercial vehicle air springs manufactured outside of North America to defeat a small but significant price increase. Accordingly, North America is a relevant geographic market for the development, manufacture, and sale of commercial vehicle air springs for OEMs within the meaning of Section 7 of the Clayton Act.

(2) Commercial Vehicle Air Springs for the Aftermarket

26. For commercial vehicle air springs sold in the aftermarket, purchases are based on price, brand or reputation, and availability. As with commercial vehicle air springs for OEMs, the cost of shipping commercial vehicle air springs for the aftermarket, individually or in small quantities, from outside North America would make them more expensive than those sold in North America. Further, the additional lead time to ship commercial vehicle air springs for individual demand makes direct purchase from overseas unattractive to potential purchasers, who want their vehicles repaired in a timely manner. Therefore, a customer typically would not directly purchase commercial vehicle air springs for the aftermarket from outside of North America.

27. Customers would be unwilling to switch to commercial vehicle air springs manufactured outside of North America to defeat a small but significant price increase. Accordingly, North America is a relevant geographic market for the development, manufacture, and sale of commercial vehicle air springs for the aftermarket within the meaning of Section 7 of the Clayton Act.

D. Anticompetitive Effects

(1) Commercial Vehicle Air Springs for OEMs

28. In North America, the market for the development, manufacture, and sale of commercial vehicle air springs for OEMs is highly concentrated and would become substantially more concentrated as a result of the proposed transaction. Continental and Veyance each have approximately 30 percent of the North American market for commercial vehicle air springs sold for OEMs. The only other competitor has approximately 40 percent of the North American market, so the acquisition would result in two firms holding 100 percent of the market.

29. As articulated in the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission, the Herfindahl-Hirschman Index (''HHI''), discussed in Appendix A, is a measure of market concentration. Market concentration is often one useful indicator of the level of competitive vigor in a market and the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition, harming consumers. Markets in which the HHI is between 1,500 and 2,500 points are considered to be moderately concentrated and markets in which the HHI is in excess of 2,500 points are considered to be highly concentrated. Transactions that increase the HHI by more than 200 points in highly concentrated markets are presumed likely to enhance market power.

30. In the North American market for the development, manufacture, and sale of commercial vehicle air springs for OEMs, the pre-merger HHI is 3,388; the post-merger HHI is 5,224, with an increase in the HHI of 1,836. Consistent with the Horizontal Merger Guidelines, this market is highly concentrated and would become substantially more concentrated as a result of the proposed acquisition.

31. A combined Continental and Veyance would have the ability to increase prices of commercial vehicle air springs sold to OEMs and to reduce the quality of service for these customers by limiting availability or delivery options.

32. In addition, Continental's elimination of Veyance as a strong, independent competitor in the development, manufacture, and sale of commercial vehicle air springs for OEMs likely would facilitate anticompetitive coordination between the remaining two suppliers. The two suppliers would be able to estimate each other's output, capacity, reserves, and costs, making coordinated interaction easier.

33. The transaction would substantially lessen competition in the development, manufacture, and sale of commercial vehicle air springs for OEMs in North America and lead to higher prices and decreased quality of service in violation of Section 7 of the Clayton Act.

(2) Commercial Vehicle Air Springs for the Aftermarket

34. In North America, the market for the development, manufacture, and sale of commercial vehicle air springs sold in the aftermarket is highly concentrated and would become substantially more concentrated as a result of the proposed transaction. Veyance has approximately 33 percent of the market, Continental has approximately 17 percent of the market, and one other competitor has approximately 45 percent. Were the acquisition to proceed, two firms each would have close to a 50 percent share of the market.

35. For the North American market for the development, manufacture, and sale of commercial vehicle air springs sold in the aftermarket, the premerger HHI is 3,403, the post-acquisition HHI is 4,525, and the acquisition would produce an increase of 1,122 in the HHI. Consistent with the Horizontal Merger Guidelines, this market is highly concentrated and would become substantially more concentrated as a result of the proposed acquisition.

36. The proposed transaction likely would substantially lessen competition

in the North American market for the development, manufacture, and sale of commercial vehicle air springs for the aftermarket and lead to higher prices and decreased quality of service in violation of Section 7 of the Clayton Act.

E. Difficulty of Entry

(1) Commercial Vehicle Air Springs for OEMs

37. Timely and sufficient entry by additional competitors into the market for the development, manufacture, and sale of commercial vehicle air springs for OEMs is unlikely, given the substantial time and cost required to establish a qualified production facility and to establish a recognized brand and reputation in North America.

38. Choosing an appropriate factory location, ordering the necessary equipment and setting up the factory for production of commercial vehicle air springs likely would take two or more years and would require a substantial investment. Once a location is chosen and the factory is producing, the OEM qualification process can take two or more additional years. Qualification requires a number of steps, and both the factory and the particular air springs to be used by the commercial vehicle OEM must be qualified.

39. Because of the cost and difficulty of establishing a production facility in North America and gaining requisite OEM qualification, entry into the North American market for the development, manufacture, and sale of commercial vehicle air springs for OEMs would not be timely, likely or sufficient to mitigate the anticompetitive effects of Continental's proposed acquisition of Veyance.

(2) Commercial Vehicle Air Springs for the Aftermarket

40. The impact of the acquisition in the North American market for the development, manufacture, and sale of commercial vehicle air springs for the aftermarket would not be remedied quickly by the response of foreign suppliers. These suppliers lack a recognized brand and reputation in North America, and most lack the broad product portfolio, to supply commercial vehicle air springs that would be accepted by most OEMs. Foreign firms are not present in the North American market for the development, manufacture, and sale of commercial vehicle air springs for OEMs, so they do not have established reputations that would contribute to their acceptance in the aftermarket. Therefore, entry would not be timely, likely, or sufficient to mitigate the anticompetitive effects of Continental's proposed acquisition of Veyance.

V. VIOLATIONS ALLEGED

41. Continental's proposed acquisition of Veyance likely would substantially lessen competition in North America for (1) the development, manufacture, and sale of commercial vehicle air springs for OEMs, and (2) the development, manufacture, and sale of commercial vehicle air springs for the aftermarket, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

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

(a) actual and potential competition between Veyance and Continental in the relevant markets would be eliminated;

(b) competition generally in the relevant markets would be substantially lessened; and

(c) for the relevant products, prices would increase and the quality of service would decrease.

VI. REQUESTED RELIEF

43. The United States requests that the Court:

(a) adjudge and decree that Continental's proposed acquisition of Veyance is 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 the proposed acquisition of Veyance by Continental, or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine Continental with Veyance;

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

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

Respectfully submitted,

DATED: December 11, 2014

FOR PLAINTIFF UNITED STATES OF AMERICA:

/s/ _____

William J. Baer

Assistant Attorney General

/s/ _____

David I. Gelfand

Deputy Assistant Attorney General

/s/ _____

Patricia A. Brink

Director of Civil Enforcement

/s/ _____

Maribeth Petrizzi (DC Bar #435204)

Chief, Litigation II Section

/s/ _____

Dorothy B. Fountain (DC Bar #439469)

Assistant Chief, Litigation II Section

/s/ _____

Suzanne Morris (DC Bar #450208)
Dando Cellini
Tara Shinnick (DC Bar #501462)
Angela Ting (DC Bar #449576)
Soyoung Choe
James Tucker

United States Department of Justice, Antitrust Division, Litigation II Section, 450 Fifth Street NW., Suite 8700, Washington, DC 20530, (202) 307–0924, (202) 514–9033 (fax), Suzanne.Morris@usdoj.gov.

APPENDIX A

The U.S. Dep't of Justice and Federal Trade Commission, Horizontal Merger Guidelines § 5.3 (2010), available at *http://www.justice.gov/atr/public/guidelines/hmg-2010.html,* provide the method for calculating the HHI. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Continental AG* and *Veyance Technologies, Inc.* Defendants.

Case No.: 1:14-cv-02087

Judge: Hon. Reggie B. Walton

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.

NATURE AND PURPOSE OF THE PROCEEDING

Pursuant to an Agreement and Plan of Merger dated February 10, 2014, Continental AG (''Continental'') has agreed to purchase Veyance Technologies, Inc. (''Veyance'') from

Carlyle Partners IV, L.P. for $1.8 billion. The merger would combine two of the three leading suppliers of air springs used in commercial vehicles in North America.

The United States filed a civil antitrust Complaint on December 11, 2014, seeking to enjoin the proposed acquisition. The Complaint alleges that the acquisition likely would substantially lessen competition in North America in the development, manufacture and sale of commercial vehicle air springs, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. That loss of competition likely would result in higher prices and decreased quality of service for customers in the North American market for commercial vehicle air springs.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, the defendants are required to divest the Veyance North America Air Springs Business, which includes Veyance's manufacturing and assembly facilities in San Luis Potosi, Mexico, research and development, engineering and testing operations, and administration assets in Fairlawn, Ohio, and all of the tangible and intangible assets primarily used in or for the business. Under the terms of the Hold Separate Stipulation and Order, defendants will take certain steps to ensure that the Veyance North America Air Springs Business 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. The Defendants

Defendant Continental AG, a corporation organized under the laws of the Federal Republic of Germany, is based in Hanover, Germany. Continental is a leading German automotive manufacturing company, specializing in tires, brake systems, and components, and it is one of the world's largest producers of rubber products. Its annual sales for 2013 were approximately $40 billion. ContiTech North America, Inc., of Montvale, New Jersey, is a part of ContiTech AG, a division of Continental. ContiTech North America produces and sells parts, components and systems, including commercial vehicle air springs, for the automotive engineering industry in North America.

Defendant Veyance Technologies, Inc. is incorporated in Delaware with its headquarters in Fairlawn, Ohio. Veyance manufactures engineered rubber products for heavy-duty industrial, automotive and military applications. Veyance produces and sells automotive and commercial vehicle parts, including commercial vehicle air springs, in North America. In 2013, Veyance had $2.1 billion in sales.

B. The Markets

1. Commercial Vehicle Air Springs

Air springs are load-carrying rubber components constructed of a hollow rubber bellow sealed to metal plates attached at the top and bottom. Through the use of air compression, air springs dampen road shock and vibration. Air springs keep commercial vehicles–such as trucks, trailers and buses–at the same distance from the road irrespective of the weight being carried and also can be used as actuators to raise and lower objects. As commercial vehicle components, air springs are used in multiple locations in a vehicle: under the driver's seat, between the cab and underlying frame, and in suspensions between axle and frame for truck and trailer. Air springs in suspension systems of trucks, trailers and buses help commercial vehicles save fuel, reduce tire wear, and provide greater reliability. Air springs between the floor of the cabin and the seat provide for driver comfort and reduce driver fatigue. Air springs in the commercial vehicle cabin suspension system, between the frame and the cabin, regulate cabin movement.

The three types of air springs are (1) rolling lobe, which are used for truck, bus and trailer axles; (2) convoluted, or bellows, which serve the same function as rolling lobe, but also are used as actuators to lift axles; and (3) sleeves, which are smaller springs generally used in cabs and seats for driver comfort. The vast majority of air springs for commercial vehicle applications sold in North America are rolling lobe air springs purchased by original equipment manufacturers (''OEMs'') for truck, trailer and bus suspension systems.

Commercial vehicle OEMs in North America determine the type of air spring to be used in a particular platform. They can source the air springs directly from the air spring manufacturer or purchase a completed, fully integrated suspension system that includes air springs from a suspension system OEM. Suspension system OEMs source commercial vehicle air springs directly from the air spring manufacturer. All air springs used by commercial vehicle OEMs must be of high quality and durability. Commercial vehicle OEMs require that commercial vehicle air springs meet rigid qualifications to ensure performance, quality, and engineering design fit. The qualification process includes not only qualification of the specific air spring to be used, via laboratory and road tests, but also inspection of the particular production facility where the air spring is to be produced. The rigorous process of qualifying an air spring for commercial vehicle OEMs can take more than two years. Once the air spring is qualified, commercial vehicle OEMs work closely with the air spring manufacturer to ensure that the air spring is integrated into the overall design of the platform.

Air springs also are sold in the aftermarket, or the market for replacement air springs for commercial vehicles. Commercial vehicle air springs for the aftermarket are purchased by the end user to replace, after time and wear, the air springs originally installed in commercial vehicles. Commercial vehicle air springs for the aftermarket do not have to meet the rigid qualifications that commercial vehicle OEMs require, as replacement commercial vehicle air springs are not designed for a specific commercial vehicle platform.

2. The North American Market for Commercial Vehicle Air Springs for Original Equipment Manufacturers

Rolling lobe, convoluted and sleeve commercial vehicle air springs perform distinct functions and, in general, cannot be substituted for each other. For instance, an air spring used in a trailer suspension is not the same as an air spring used for a truck seat. Accordingly, the three types of commercial vehicle air springs are not

interchangeable or substitutable for one another, and demand for each is separate. In the event of a small but significant increase in price for a given type of commercial vehicle air spring, customers would not stop using that air spring in sufficient numbers to defeat the price increase. Thus, the development, manufacture, and sale of each type of commercial vehicle air spring is a separate line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

Although narrower product markets of rolling lobe, convoluted and sleeve air springs for commercial vehicles exist, the competitive dynamic for each type is nearly identical. The same firms manufacture and sell each of these products and each type of commercial vehicle air spring is sold in similar competitive conditions. Therefore, the products may be aggregated for analytical convenience into a single relevant product market for the purpose of assigning market shares and evaluating the competitive impact of the acquisition.

Commercial vehicle OEMs require each air spring to meet rigid qualification standards to ensure performance, quality and engineering design fit. Commercial vehicle air springs sold into the aftermarket for replacement purposes are not of sufficient quality or reliability to be used by commercial vehicle OEMs. Accordingly, commercial vehicle air springs for OEMs are not interchangeable with or substitutable for aftermarket commercial vehicle air springs, and demand for each is separate.

A small but significant increase in the price of commercial vehicle air springs for commercial vehicle OEMs would not cause a sufficient number of OEMs to substitute commercial vehicle air springs manufactured for the aftermarket so as to make such a price increase unprofitable. Thus, the development, manufacture, and sale of commercial vehicle air springs for OEMs is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

Commercial vehicle air springs are bulky but relatively lightweight. Despite the light weight, the cost of transporting commercial vehicle air springs is high compared to the value of the product, because the manufacturers essentially have to pay to ship air. Therefore, while shipping commercial vehicle air springs from overseas is feasible, it adds significant cost—approximately 10 to 15 percent—to the price of the product. Import taxes also add additional costs to commercial vehicle air springs that are shipped from outside North America.

In addition, commercial vehicle OEMs require that the air springs production facility be qualified. The qualification process includes inspection of the production facility by the customer. Having to inspect and qualify a facility outside of North America adds both time and expense to the process.

Further, commercial vehicle OEMs require timely delivery of air springs, as they are an essential input into the final vehicle platform. Procuring commercial vehicle air springs from overseas adds significant lead time to delivery, increases the risk of shipment delays, and makes more difficult the rapid correction of quality shortcomings in delivered product. Thus, for commercial vehicle OEMs, purchasing air springs from outside North America involves the assumption of an unacceptable level of risk.

Therefore, to successfully sell commercial vehicle air springs for OEM use in North America, an air spring manufacturer must have an air spring production facility in North America. OEM customers for commercial vehicle air springs in North America would be unwilling to switch to commercial vehicle air springs manufactured outside of North America to defeat a small but significant price increase. Accordingly, North America is a relevant geographic market for the development, manufacture, and sale of commercial vehicle air springs for OEMs within the meaning of Section 7 of the Clayton Act.

3. The North American Market for Commercial Vehicle Air Springs for the Aftermarket

Commercial vehicle air springs for the aftermarket are sold for replacement purposes. The targeted customer is the commercial vehicle owner. Because commercial vehicle air springs for the aftermarket are not designed for a specific commercial vehicle platform, they do not have to meet the rigid qualifications that commercial vehicle OEMs require. Commercial vehicle air springs for the aftermarket are of lower quality and lesser durability than commercial vehicle air springs made for OEMs. Accordingly, commercial vehicle air springs for the aftermarket are not interchangeable or substitutable for commercial vehicle air springs sold to OEMs. Demand for commercial vehicle air springs used by OEMs is separate from demand for commercial vehicle air springs for the aftermarket.

A small but significant increase in the price of commercial vehicle air springs for the aftermarket would not cause customers to substitute commercial vehicle air springs for OEMs in sufficient numbers so as to make such a price increase unprofitable. Thus, the development, manufacture, and sale of commercial vehicle air springs for the aftermarket is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

For commercial vehicle air springs sold in the aftermarket, purchases are based on price, brand or reputation, and availability. As with commercial vehicle air springs for OEMs, the cost of shipping commercial vehicle air springs for the aftermarket, individually or in small quantities, from outside North America would make them more expensive than those sold in North America. Further, the additional lead time to ship commercial vehicle air springs for individual demand makes direct purchase from overseas unattractive to potential purchasers, who want their vehicles repaired in a timely manner. Therefore, a customer typically would not directly purchase commercial vehicle air springs for the aftermarket from outside of North America.

Customers would be unwilling to switch to commercial vehicle air springs manufactured outside of North America to defeat a small but significant price increase. Accordingly, North America is a relevant geographic market for the development, manufacture, and sale of commercial vehicle air springs for the aftermarket within the meaning of Section 7 of the Clayton Act.

4. Anticompetitive Effects

a. Commercial Vehicle Air Springs for OEMs

In North America, the market for the development, manufacture, and sale of commercial vehicle air springs for OEMs is highly concentrated and would become substantially more concentrated as a result of the proposed transaction. Continental and Veyance each have approximately 30 percent of the North American market for commercial vehicle air springs sold for OEMs. The only other competitor has approximately 40 percent of the North American market, so the acquisition would result in two firms holding 100 percent of the market.

As articulated in the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission, and discussed in Appendix A of the Complaint, the Herfindahl-Hirschman Index (''HHI'') is a measure of market concentration. Market concentration is often one useful

indicator of the level of competitive vigor in a market and the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition, harming consumers. Markets in which the HHI is between 1,500 and 2,500 points are considered to be moderately concentrated and markets in which the HHI is in excess of 2,500 points are considered to be highly concentrated. Transactions that increase the HHI by more than 200 points in highly concentrated markets are presumed likely to enhance market power.

In the North American market for the development, manufacture, and sale of commercial vehicle air springs for OEMs, the pre-merger HHI is 3,388; the post-merger HHI is 5,224, with an increase in the HHI of 1,836. Consistent with the Horizontal Merger Guidelines, this market is highly concentrated and would become substantially more concentrated as a result of the proposed acquisition.

A combined Continental and Veyance would have the ability to increase prices of commercial vehicle air springs sold to OEMs and to reduce the quality of service for these customers by limiting availability or delivery options. In addition, Continental's elimination of Veyance as a strong, independent competitor in the development, manufacture, and sale of commercial vehicle air springs for OEMs likely would facilitate anticompetitive coordination between the remaining two suppliers. The two suppliers would be able to estimate each other's output, capacity, reserves, and costs, making coordinated interaction easier. The transaction would substantially lessen competition in the development, manufacture, and sale of commercial vehicle air springs for OEMs in North America and lead to higher prices and decreased quality of service in violation of Section 7 of the Clayton Act.

b. Commercial Vehicle Air Springs for the Aftermarket

In North America, the market for the development, manufacture, and sale of commercial vehicle air springs sold in the aftermarket is highly concentrated and would become substantially more concentrated as a result of the proposed transaction. Veyance has approximately 33 percent of the market, Continental has approximately 17 percent of the market, and one other competitor has approximately 45 percent. Were the acquisition to proceed, the two firms each would have close to a 50 percent share of the market.

For the North American market for the development, manufacture, and sale of commercial vehicle air springs sold in the aftermarket, the premerger HHI is 3,403, the post-acquisition HHI is 4,525, and the acquisition would produce an increase of 1,122 in the HHI. Consistent with the Horizontal Merger Guidelines, this market is highly concentrated and would become substantially more concentrated as a result of the proposed acquisition. The proposed transaction likely would substantially lessen competition in the North American market for the development, manufacture, and sale of commercial vehicle air springs for the aftermarket and lead to higher prices and decreased quality of service in violation of Section 7 of the Clayton Act.

5. Difficulty of Entry

a. Commercial Vehicle Air Springs for OEMs

Choosing an appropriate factory location, ordering the necessary equipment and setting up the factory for production of commercial vehicle air springs likely would take two or more years and would require a substantial investment. Once a location is chosen and the factory is producing, the OEM qualification process can take two or more additional years. Qualification requires a number of steps, and both the factory and the particular air springs to be used by the commercial vehicle OEM must be qualified.

Because of the cost and difficulty of establishing a production facility in North America and gaining requisite OEM qualification, entry into the North American market for the development, manufacture, and sale of commercial vehicle air springs for OEMs would not be timely, likely or sufficient to mitigate the anticompetitive effects of Continental's proposed acquisition of Veyance.

b. Commercial Vehicle Air Springs for the Aftermarket

The impact of the acquisition in the North American market for the development, manufacture, and sale of commercial vehicle air springs for the aftermarket would not be remedied quickly by the response of foreign suppliers. These suppliers lack a recognized brand and reputation in North America, and most lack the broad product portfolio, to supply commercial vehicle air springs that would be accepted by most OEMs. Foreign firms are not present in the North American market for the development, manufacture, and sale of commercial vehicle air springs for OEMs, so they do not have established reputations that would contribute to their acceptance in the aftermarket. Therefore, entry would not be timely, likely, or sufficient to mitigate the anticompetitive effects of Continental's proposed acquisition of Veyance.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture required by the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the North American market for commercial vehicle air springs by establishing a new, independent, and economically viable competitor. Paragraph IV.A of the proposed Final Judgment requires defendants, within ninety (90) days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the Veyance North America Air Springs Business. The assets must be divested in such a way as to satisfy the United States in its sole discretion that the Veyance North America Air Springs Business can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the development, manufacture, and sale of commercial vehicle air springs. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

The Divestiture Assets include the Veyance North America Air Springs Business, including its manufacturing facility and its assembly facility, both located in San Luis Potosi, Mexico, and its research and development, engineering and testing operations, and administration assets located in Fairlawn, Ohio (''Fairlawn Facility''). The Veyance North America Air Springs Business produces commercial vehicle air springs sold to customers in North America. It is an established, high-quality manufacturer with product offerings that have been qualified by its customers and sufficient capacity to meet current and future demand for its product.

The proposed Final Judgment requires the divestiture of all tangible and intangible assets primarily used in or for the Veyance North America Air Springs Business. These assets will provide the Acquirer not only with physical assets, but also with intellectual property and rights, specifically including all U.S. patents and other intellectual property used by the Veyance North America Air Springs Business in the development,

manufacture and sale of air springs, and a non-exclusive, perpetual, worldwide, royalty-free license for all non-U.S. patents and pending patent applications for use in the design, development, manufacture, marketing, servicing and/or sale of air springs produced for customers located outside of North America.

Paragraph IV.C of the proposed Final Judgment prohibits defendants from interfering with the Acquirer's ability to hire defendants' employees whose primary responsibility is the development, manufacture and sale of air springs. The proposed Final Judgment explicitly includes in this provision four categories of employees critical to the Veyance North America Air Springs Business: (1) Head of Air Springs Business, (2) Head of Sales and Marketing, (3) a Chief Chemist for Air Springs, and (4) aftermarket sales personnel. The proposed Final Judgment proscribes defendants' interference with negotiations by the Acquirer to hire these employees.

The Veyance North America Air Springs Business currently sources critical inputs—compounds and calendered materials—from a Veyance facility that is not being divested. The Acquirer initially may require a ready supply of such inputs for the manufacture of air springs. Therefore, Paragraph IV.G of the proposed Final Judgment provides that, at the option of the Acquirer, Continental shall enter into a supply contract for compounds and calendered materials sufficient to meet all or part of the Acquirer's needs for a period of up to one (1) year. The United States, in its sole discretion, may approve an extension of the term for a period totaling not more than one (1) additional year. The Acquirer also may require a transition services agreement for back office and technical support to ensure the continuity of the operations of the Veyance North America Air Springs Business. The proposed Final Judgment, in Paragraph IV.H, provides the Acquirer with the option for a transition services agreement for six (6) months, with a possible extension of the term for another six (6) months.

The research and development, engineering and testing operations, and administration assets included in the Divestiture Assets are housed on the first and third floors of the Fairlawn Facility, which is also Veyance's world headquarters. The proposed Final Judgment, in Paragraph IV.J, provides that, at the option of the Acquirer, defendants shall enter into a sublease for the first and third floors of the Fairlawn Facility for a period of six (6) months. The United States, in its sole discretion, may approve one or more extensions for a total of up to an additional six (6) months. Should the Acquirer exercise its option to sublease space in the Fairlawn Facility, the proposed Final Judgment, in Paragraph IV.K, requires defendants to create physical barriers that segregate the air spring operations from the portions of the Fairlawn Facility that will remain occupied by defendants.

Veyance has a lab and testing equipment located on the second floor of the Fairlawn Facility that supports various Veyance businesses, including its air springs business. In Paragraph IV.L, the proposed Final Judgment provides that, at the option of the Acquirer, defendants will provide the Acquirer with complete and sole access to the laboratory and all the equipment located on the second floor of the Fairlawn Facility for a continuous pre-scheduled, 48-hour period each week. To maintain the confidentiality of the Acquirer's operations, Paragraph IV.M of the proposed Final Judgment, requires defendants to program the equipment on the second floor of the Fairlawn Facility to ensure that no results related to air springs testing are stored on the equipment and that such results instead will be routed only to a server designated by the Acquirer.

Veyance utilizes for its various businesses, including its air springs business, three warehouses located, respectively, in San Luis Potosi, Mexico; Moberly, Missouri; and Mississauga, Ontario, Canada. Paragraph IV.N of the proposed Final Judgment provides that, at the option of the Acquirer, defendants shall enter into a sublease with the Acquirer for space at any or all of the warehouses. Should the Acquirer exercise this option, the proposed Final Judgment, in Paragraph IV.O, requires defendants to create physical barriers segregating the air springs areas at each of the warehouses from the portions of each warehouse that will remain occupied by defendants.

By providing for the possibility of a supply contract for compounds and calendered materials, a transition services agreement, and the physical segregation of the Fairlawn Facility and the warehouses, 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 to oversee the negotiation of the agreements and the segregation of the shared facilities, 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 Stipulation and Order during the pendency of the divestiture, including the terms of the supply agreement, the transition services agreement, and the physical segregation of the shared facilities. The Monitoring Trustee would not have any responsibility or obligation for the operation of the parties' businesses. The Monitoring Trustee would 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 would file monthly reports and would serve until the divestiture of the Divestiture Assets is finalized pursuant to either Section IV or Section V of the proposed Final Judgment and the expiration of any transition services agreement between defendants and the Acquirer.

In the event that defendants do not accomplish the divestiture within the prescribed period, 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 Continental acquired Veyance because the Acquirer will have the ability to develop, manufacture and sell commercial vehicle air springs to customers in North America in competition with Continental.

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 Continental's acquisition of Veyance. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the development, manufacture and sale of commercial vehicle air springs in North America. 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.

[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).

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 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: December 11, 2014

Respectfully submitted,

/s/

Suzanne Morris

U.S. Department of Justice, Antitrust Division, Litigation II Section, Liberty Square Building, 450 Fifth Street NW., Suite 8700, Washington, DC 20530, Tel.: (202) 307–1188 Email: suzanne.morris@usdoj.gov

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Continental AG* and *Veyance Technologies, Inc.* Defendants.

CASE NO.: 1:14–cv–02087

JUDGE: Hon. Reggie B. Walton

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on December 11, 2014, the United States and defendants, Continental AG (''Continental'') and Veyance Technologies, Inc. (''Veyance''), 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;

[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'''').

[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.'').

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

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

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

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. Jurisdiction

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

II. Definitions

As used in this Final Judgment:

A. ''Continental'' means defendant Continental AG, a German corporation with its headquarters in Hanover, Germany, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Veyance'' means defendant Veyance Technologies, Inc., a Delaware corporation with its headquarters in Fairlawn, Ohio, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Acquirer'' means the entity to which defendants divest the Divestiture Assets.

D. ''Air Springs'' means rolling lobe, bellow, sleeve and other air springs used as original equipment or replacement parts in commercial vehicle, passenger car, and industrial applications.

E. ''Veyance North America Air Springs Business'' means Veyance's North American operations for the development, manufacture and sale of Air Springs and includes Veyance's subsidiary, Veyance Productos Industriales, S. de R.L. de C.V., a Mexican corporation with its principal place of business in San Luis Potosi, Mexico.

F. ''Divestiture Assets'' means the Veyance North America Air Springs Business, including, but not limited to:

1. The manufacturing facility located at Eje Central Sahop No 215, Manzana 53, Zona Industrial 1A. Seccion Land A, San Luis Potosi, SLP, CP 78395;

2. The assembly facility located at Eje 128 No.140 interior C y D, Zona industrial del Potosi, SLP, CP 78395;

3. The Air Springs research and development, engineering and testing operations, and administration assets used for the Veyance North America Air Springs Business located at 703 South Cleveland Massillon Road, Fairlawn, Ohio 44333 (''Fairlawn Facility'');

4.a. All tangible assets used primarily in or for the Veyance North America Air Springs Business, including, but not limited to, all real property and improvements, manufacturing equipment, product inventory, tooling and fixed assets, personal property, input inventory, office furniture, materials, supplies, and other tangible property and assets;

b. All tangible assets used primarily in or for the research and development, product and material design, and testing of any Air Spring product for the Veyance North America Air Springs Business, including, but not limited to, equipment, records, materials, supplies, and other property (except for the testing machines located on the second floor of the Fairlawn Facility); and

c. All records and documents relating to the Veyance North America Air Springs Business, including, but not limited to, all licenses, permits and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, purchase orders, accounts, and credit records; and all repair and performance records and all other records relating to the Veyance North America Air Springs Business.

5.a. All intangible assets used by the Veyance North America Air Springs Business in the development, manufacture, and sale of Air Springs, including, but not limited to, all U.S. patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how (including, but not limited to, recipes, formulas, and machine settings), trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, all research data concerning historic and current research and development relating to the Veyance North America Air Springs Business, 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 the Veyance North America Air Springs Business (including, but not limited to, product testing, designs of experiments, and the results of successful and unsuccessful designs and experiments);

b. The trade names ''SUPER-CUSHION'' and ''SPRINGRIDE'', or any derivation thereof; and

c. A non-exclusive, perpetual, worldwide, royalty-free license for all non-U.S. patents and pending patent applications for use in the design, development, manufacture, marketing, servicing, and/or sale of Air Springs produced for locations outside of North America, which shall be transferable only to any future purchaser of all or substantially all of the Veyance North America Air Springs Business. Any improvements or modifications to these intangible assets developed by the Acquirer of the Veyance North America Air Springs Business shall be owned solely by that Acquirer.

G. ''Warehouses'' means the Air Springs storage and handling assets used for the Veyance North America Air Springs Business located at:

1. Circuito Exportacion 412, Parque Industrial Tres Naciones, San Luis Potosi, SLP, CP 78395;

2. 1957 Route DD, Moberly, Missouri 65270; and

3. 237 Brunel Road, Mississauga, Ontario L4Z 1T5, Canada.

III. Applicability

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

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

Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestitures

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

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, manufacture and sale of Air Springs to enable the Acquirer to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the development, manufacture and sale of Air Springs, and shall not interfere with negotiations by the Acquirer to employ the following personnel (1) Head of Air Springs Business, (2) Head of Sales and Marketing, (3) a Chief Chemist for Air Springs, and (4) aftermarket sales personnel.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of 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, Continental shall enter into a supply contract for compounds and calendered materials (rubberized fabric used in the production of Air Springs) sufficient to meet all or part of the Acquirer's needs for a period of up to one (1) year. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions for compounds and calendered fabrics. The United States, in its sole discretion, may approve one or more extensions of the term of this supply contract for a period totaling not more than one (1) additional year. If the Acquirer seeks an extension of the term of this supply contract, it shall so notify the United States in writing at least three (3) months prior to the date the supply contract expires. If the United States approves such an extension, it shall so notify the Acquirer in writing at least two (2) months prior to the date the supply contract expires.

H. At the option of the Acquirer, Continental shall enter into a transition services agreement with the Acquirer for back office and technical support sufficient 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 six (6) 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. 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 challenge to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

J. At the option of the Acquirer, defendants shall enter into a sublease for the first and third floors of the Fairlawn Facility for a period of six (6) months. The United States, in its sole discretion, may approve one or more extensions of this sublease for a total of up to an additional six (6) months.

K. Defendants shall create physical barriers that segregate the Air Springs operations at the Fairlawn Facility from the portions of the Fairlawn Facility that will remain occupied by defendants. Defendants' areas and operations at the Fairlawn Facility shall be secured separately from those of the Acquirer so that the Acquirer's areas and operations cannot be accessed by defendants and defendants' areas and operations cannot be accessed by the Acquirer, other than for facility repair, support, and maintenance pursuant to a lease or other lease agreement.

L. At the option of the Acquirer, defendants will provide the Acquirer with complete and sole access to the laboratory and all the equipment located on the second floor of the Fairlawn Facility for a continuous pre-scheduled, 48-hour period each week.

M. Defendants will program the equipment located on the second floor of the Fairlawn Facility to ensure that no results related to Air Springs testing are stored on the equipment and that such results instead will be routed only to a server designated by the Acquirer.

N. At the option of the Acquirer, defendants shall enter into a sublease with the Acquirer for space at any or all of the Warehouses.

O. Defendants shall create physical barriers that segregate the Air Springs areas at each of the Warehouses from the portions of each Warehouse that will remain occupied by defendants. Defendants' areas and operations at the Warehouses shall be secured with access locks separate from those of the Acquirer so that the Acquirer's areas and operations cannot be accessed by defendants and defendants' areas and operations cannot be accessed by the Acquirer.

P. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by a 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(s) as part of a viable, ongoing business in the development, manufacture and sale of commercial vehicle Air Springs to customers in North America. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the development, manufacture, and sale of commercial vehicle Air Springs to customers in North America; 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 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 reports contains information that the Divestiture Trustee deems confidential, such reports 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 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 of a supply contract for compounds and calendered materials, a transition services agreement, and the physical segregation of the Fairlawn Facility and the Warehouses.

C. Subject to Section 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 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 expiration of any continuing transition services agreement.

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 any Hold Separate 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 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. 2014–29862 Filed 12–19–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Office of Federal Contract Compliance Programs Construction Recordkeeping and Reporting Requirements

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Federal Contract Compliance Programs sponsored information collection request (ICR) titled, ''Office of Federal Contract Compliance Programs Construction Recordkeeping and Reporting Requirements,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 21, 2015.