Bureau of Indian Education, 1849 C Street, NW., MS–3609 MIB, Washington, DC 20240; Telephone (202) 208–6123; Fax (202) 208–3312.

**FOR FURTHER INFORMATION CONTACT:** Lynann Barbero, Acting Supervisory Education Specialist—Special Education, Bureau of Indian Education, Division of Compliance, Monitoring and Accountability, P.O. Box 1088, Suite 332, Albuquerque, New Mexico 87103; Telephone (505) 563–5270.

**SUPPLEMENTARY INFORMATION:** The Advisory Board was established to advise the Secretary of the Interior, through the Assistant Secretary—Indian Affairs, on the needs of Indian children with disabilities, as mandated by the Individuals with Disabilities Education Improvement Act of 2004 (Pub. L. 108–446).

The following items will be on the agenda:

- State Performance Plan.
- Special Education Supervisor Report.
- Part B State Administrative set-aside budget.
- Updates on Priority Issues.
- Compliance and Monitoring.
- Procedural Safeguards.
- Institutionalized Handicapped Program.
- Early Childhood Program.
- Coordinated Services Plan.
- Update on final IDEIA regulations.

The meetings are open to the public.

Dated: August 21, 2006.

**Michael D. Olsen,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. E6–14055 Filed 8–23–06; 8:45 am]

BILLING CODE 4310–6W–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–039–1020–PK]**

### Notice of Public Meeting, Dakotas Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Dakotas Resource Advisory Council will meet as indicated below.

**DATES:** A meeting will be held October 26 and 27, 2006, at the Bureau of Land Management and U.S. Forest Service Lands and Minerals Center at 99 23rd Avenue West, Dickinson, ND 58601, beginning at 1 p.m. The public comment period will begin at 8 a.m. on October 27, 2006.

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in North and South Dakota. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below. The Council will hear updates to Recreation Resource Advisory Committee roles, Sage Grouse Conservation, and upcoming resource management planning efforts.

**FOR FURTHER INFORMATION CONTACT:** Marian Atkins, Field Manager, South Dakota Field Office, 310 Roundup St., Belle Fourche, South Dakota, 605.892.7000, or Lonny Bagley, Field Manager, North Dakota Field Office, 2933 3rd Ave. W. Dickinson, North Dakota, 701.227.7700.

Dated: August 17, 2006.

**Lonny R. Bagley,**

*Field Manager.*

[FR Doc. E6–14027 Filed 8–23–06; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on August 8, 2006, a proposed Consent Decree in *United States* v. *University of Miami,* Civil Action Number 06–22000–CIV–JORDAN, was lodged with the United States District Court for the Southern District of Florida.

In this action the United States sought, under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, recovery of response costs incurred by the Army Corps of Engineers in response to releases of hazardous substances at a site located on land that was formerly the Richmond Naval Air Station, in Perrine, Florida. Under the Consent Decree, the Defendant will pay $393,473 for past response costs associated with the site, and the United States gives a covenant not to sue for past response costs associated with the site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *University of Miami,* DOJ Ref. #90–11–3–08486.

The Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Florida, 99 NE 4th Street, Miami, Florida. During the public comment period, the proposed Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/consent__Decrees.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or E-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov,* Fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.25 (25 cents per page reproduction cost) payable to the U.S. Treasury, or, if by E-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Henry Friedman,**

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

[FR Doc. 06–7106 Filed 8–23–06; 8:45am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### *United States* v. *Mittal Steel Company N.V.* 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 Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement were filed with the United States District Court for the District of Columbia in *United States* v.

*Mittal Steel Company N.V.* Civil Action No. 1:06CY01360. On August 1, 2006, the United States filed a Complaint to enjoin Mittal Steel Company N.Y. (''Mittal Steel'') from acquiring Arcelor S.A. (''Arcelor''). The Complaint alleges that Mittal Steel's acquisition of Arcelor would substantially lessen competition in the development, manufacture, and sale of Tin Mill Products in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, throughout the United States east of the Rocky Mountains (the ''Eastern United States''). The proposed Final Judgment, filed August 1, 2006, requires defendant, Mittal Steel, to divest one of their three North American tin mills it will own after the acquisition to preserve competition in the sale of Tin Mill Products. A Hold Separate Stipulation and Order, entered by the Court on August 2, 2006, requires defendant to maintain, prior to divestiture, the competitive independence and economic viability ofthe assets subject to divestiture under the proposed Final Judgment. A Competitive Impact Statement filed by the United States describes the Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and the remedies available to private litigants who may have been injured by the alleged violations.

Copies of the Complaint, proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Room 215, Washington, D.C. 20530 (telephone: 202–514–2481), and at the Clerk's Office of the United States District Court for the District of Columbia, Washington, DC. Copies of these materials may be obtained upon request and payment of a copying fee set by the U.S. Department of Justice regulations.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530 (telephone: 202–307–0924).

**J. Robert Kramer: II,**
*Director of Operations.*

**United States District Court for the District of Columbia**

*United States of America, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530. Plaintiff, v. Mittal Steel Company N.V., Hofplein 20, 15th Floor, Rotterdam, The Netherlands, 3032. Defendant.*

Case No.
JUDGE:
DECK TYPE: Antitrust
DATE STAMP:

**Complaint**

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable and other relief against the defendant, Mittal Steel Company N.V. (''Mittal Steel''), to prevent its proposed acquisition of Arcelor S.A. (''Arcelor''), and alleges as follows:

*I. Nature of the Action*

1. Mittal Steel formally launched a tender offer for Arcelor on May 19, 2006, and on June 25, 2006 the Arcelor board recommended Mittal's offer to Arcelor's shareholders. The acceptance period for Mittal's tender offer cJosed on July 13,2006, and Mittal Steel can take ownership of the shares beginning on August 1, 2006.

2. Mittal Steel is an integrated steelmaker that manufactures, among other products, finely rolled tin or chrome coated steel sheets known as ''Tin Mill Products.'' Tin Mill Products are used in manufacturing steel cans for packaging a wide range of food products such as soup, fruits, and vegetables, and non-food products such as paints, aerosols, and shaving cream. Mittal Steel is the second largest supplier of Tin Mill Products to the portion of the United States east of the Rocky Mountains (the ''Eastern United States''), accounting for about 31 percent of Tin Mill Products tonnage sold in 2005.

3. Arcelor accounted for about two percent of Tin Mill Products tonnage sold in the Eastern United States in 2005. Arcelor acquired its subsidiary Dofasco Inc. (''Dofasco'') in February 2006. In 2005 Dofasco accounted for an additional four percent of the Tin Mill Products tonnage sold in 2005 in the Eastern United States.

4. Mittal Steel's proposed acquisition of Arcelor would eliminate Arcelor, including its subsidiary Dofasco, as an independent competitor in the sale of Tin Mill Products in the Eastern United States, further consolidating an already highly concentrated market. The largest supplier of Tin Mill Products sold in the Eastern United States, another integrated steelmaker, accounted for over 44 percent of the tons sold in 2005. If this merger were not enjoined, the two largest suppliers of Tin Mill Products would account for over 81 percent of 2005 sales in the Eastern United States.

5. The acquisition would remove current constraints on coordination and increase the incentives of the two largest firms to coordinate their behavior. The acquisition would thus substantially increase the likelihood of coordination and would likely lead to higher prices, lower quality, less innovation, and less favorable delivery terms in the Tin Mill Products market in the Eastern United States.

6. Accordingly, the acquisition would substantially lessen competition in Tin Mill Products in the Eastern United States, in violation of Section 7 of the Clayton Act.

*II. Jurisdiction and Venue*

7. Plaintiff United States brings this action against defendant Mittal Steel under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain the violation by defendant of Section 7 of the Clayton Act, 15 U.S.C. 18.

8. Defendant manufactures and sells Tin Mill Products in the flow of interstate commerce. Defendant's activities in developing, manufacturing and selling Tin Mill Products substantially affect interstate commerce. This Court has subject matter jurisdiction over this action and the defendant pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1331, 1337(a), and 1345.

9. Venue is proper in this District pursuant to 28 U.S.C. 1391(d). Furthermore, defendant has consented to venue and personal jurisdiction in this judicial district.

*III. Parties to the Proposed Transaction*

10. Defendant Mittal Steel is a Netherlands corporation with its corporate headquarters and principal place of business in Rotterdam, The Netherlands, and operations in sixteen countries on four continents. Mittal Steel produces both flat and long steel products for all of the major steel consuming sectors, including automotive, appliance, machinery, and construction. Mittal Steel's total worldwide revenues exceeded $28 billion in 2005, and its total annual steel

production exceeded 55 million tons. Mittal Steel produces Tin Mill Products in Sparrows Point, Maryland and Weirton, West Virginia. In 2005, Mittal Steel sold over 800,000 tons of Tin Mill Products in the Eastern United States.

11. Arcelor is a Luxembourg corporation with its corporate headquarters and principal place of business in the City of Luxembourg. Arcelor, with operations primarily in Europe and Brazil, produces flat and long products for the automotive, appliance, packaging, and general industries. In 2005, Arcelor had approximately $41.5 billion in total worldwide revenues and steel production of 46 million tons.

12. In February 2006 Arcelor acquired Dofasco, a wholly-owned Canadian subsidiary with its corporate headquarters and principal place of business in Hamilton, Ontario, Canada. Dofasco shipped 4.8 million tons of steel and had $3.9 billion in revenues in 2005. Arcelor, which shipped Tin Mill Products to the Eastern United States primarily from its European facilities, and Dofasco, which shipped Tin Mill Products to the Eastern United States from its Canadian facility, sold a combined 170,615 tons of Tin Mill Products in the Eastern United States in 2005.

*IV. The Proposed Transaction*

13. On January 27, 2006, Mittal Steel announced its intention to launch a hostile tender offer to acquire Arcelor for approximately $23 billion in cash and securities. Mittal Steel simultaneously announced an agreement to sell Dofasco for approximately $5 billion to a German steelmaker, ThyssenKrupp A.G. (''ThyssenKrupp''), if Mittal Steel acquired Arcelor. Arcelor initially resisted the hostile takeover. One of the steps Arcelor's Board of Directors took to resist the takeover was to transfer legal title to the shares of Dofasco to an independent Dutch foundation known as a ''stichting.''

14. Mittal Steel subsequently increased its tender offer to approximately $33 billion in cash and securities and formally launched its tender offer on May 19, 2006. After Mittal Steel agreed to improve the financial, corporate govemance, and other terms of its offer for Arcelor, the Arcelor Board agreed on June 25, 2006 to recommend Mittal's offer to Arcelor's shareholders. The acceptance period for Mittal's initial tender offer, during which 92.6 percent of Arcelor's shares were tendered, closed on July 13, 2006. Mittal Steel can take ownership of the shares beginning on August 1, 2006.

*V. Trade and Commerce*

A. Relevant Product Market

15. Tin Mill Products are finely rolled steel sheets, usually coated with a thin protective layer of tin or chrome. Tin Mill Products are manufactured using a sequence of processing steps in which steel is rolled into successively thinner sheets, then hardened, and finally coated with either tin or chrome.

16. Tin Mill Products are comprised of three types of steel: Black plate, electrolytic tin plate (''ETP''), and tin free steel (''TFS''). Black plate is a light-gauge cold-rolled bare steel sheet that serves as the substrate for production of both ETP and TFS and can be used bare for some applications, such as pails or larger containers. Black plate is coated with tin to produce ETP and with chrome to produce TFS. ETP and TFS are both used for packaging, although each provides different advantages and disadvantages (including, *inter alia*, organic coating acceptance, strength, surface finish and formability) that are considered by purchasers in making their purchase decisions.

17. The majority of Tin Mill Products shipments are used to produce sanitary cans, often referred to as food cans. Other uses include aerosol cans, general line cans, pails, larger containers, metal buildings, and oil and fuel filter sheets.

18. For most Tin Mill Products purchasers, including downstream food can customers, there are no close substitutes for Tin Mill Products. Packaging alternatives, such as plastic containers, are generally not viewed by can customers as replacements for products normally packaged in cans because of cost differences and the performance advantages associated with cans. Some of the advantages of steel cans compared to alternative packaging include their longer shelf life and greater durability, familiarity, and security. Alternative packaging generally costs at least as much as a steel can and sometimes costs as much as eight times as much as a can, and significant additional capital investments are necessary to incorporate alternative packaging materials into a customer's packaging process.

19. A small but significant increase in the price of Tin Mill Products would not cause can manufacturers or their downstream customers to substitute non-Tin Mill Products containers, or otherwise to reduce their purchases of Tin Mill Products, in sufficient quantities so as to make such a price increase unprofitable. The use of alternative packaging containers is driven primarily by capital equipment investment considerations and by marketing factors such as consumer convenience, rather than by small but significant changes in the prices of Tin Mill Products. For example, can customers often use alternative packaging in order to extend an existing product line, such as using alternative materials for portable microwavable containers for soup, while continuing to package the bulk of soup products in steel cans.

20. Accordingly, the development, manufacture, and sale of Tin Mill Products is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

B. Relevant Geographic Market

21. The Eastern United States is a geographically distinct market for the sale of Tin Mill Products. The only Tin Mill Products manufacturer in the United States west of the Rocky Mountains (the ''Western United States'') is located in California, and it does not have substantial sales in the Eastern United States due to its distance from can manufacturers in that part of the country, which tend to be located in proximity to agricultural regions. That California Tin Mill Products manufacturer, half owned by one of the two largest Tin Mill Products producers in the Eastern United States, accounts for over 84 percent of the Tin Mill Products sold in the Western United States but ships only small quantities to the Eastern United States. Similarly, Tin Mill Products producers in the Eastern United States generally do not sell significant quantities in the Western United States because their treight costs are higher than those of the single manufacturer located in the Western United States.

22. A small but significant increase in the price of Tin Mill Products would not cause Tin Mill Products customers in the Eastern United States to substitute purchases from outside of the Eastern United States in sufficient quantities so as to make such a price increase unprofitable.

23. Accordingly, the Eastern United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects

24. Currently, Mittal Steel and its primary competitor account for over 75 percent of Tin Mill Products sales in the Eastern United States. Were Mittal Steel to acquire ArceJor, the largest two firms would account for over 81 percent of such sales. In 2005, Mittal Steel, Arcelor, Dofasco, and one other firm sold more than 2.1 million tons of Tin

Mill Products in the Eastern United States.

25. The market for Tin Mill Products in the Eastern United States would thus become substantially more concentrated if Mittal Steel were to acquire Arcelor and its Dofasco subsidiary. Using a measure of market concentration called the Herfindahl-Hirschman Index (''HHI'') (defined and explained in Appendix A), the proposed transaction will increase the HHI in the market for Tin Mill Products in the Eastern United States by approximately 412 points to a post-acquisition level of approximately 3,522, well in excess of levels that raise significant antitrust concerns.

26. Purchasers of Tin Mill Products in the Eastern United States have benefitted from competition between Mittal Steel and Arcelor through lower prices, higher quality, more innovation, and better delivery terms for Tin Mill Products. Arcelor and its subsidiary Dofasco are known for high quality and innovation, which forces Mittal Steel and other domestic producers to compete on these aspects as well. By acquiring Arcelor, Mittal Steel would eliminate that competition.

27. Mittal Steel's elimination of Arcelor as an independent competitor in the manufacture and sale of Tin Mill Products within the Eastern United States is likely to facilitate anticompetitive coordination among the two major Tin Mill Products manufacturers by making such coordination more profitable and harder to defeat. If the two largest Tin Mill Products firms in the Eastern United States were to seek to raise prices or reduce output today, purchasers of Tin Mill Products could purchase Tin Mill Products from Arcelor and its subsidiary Dofasco. Arcelor has substantial excess and divertible capacity in Europe, and Arcelor's Dofasco subsidiary has significant divertible capacity in Canada. Were Arcelor and Dofasco no longer available as independent suppliers, the remaining domestic and foreign fringe producers would likely not have sufficient capacity and/or incentives to increase production enough to defeat an anticompetitive price increase or output reduction by the two largest firms. In particular, the only other incumbent producer located in the Eastern United States does not have the ability to manufacture cold-rolled substrate, and its ability to obtain the additional substrate needed to increase its output is constrained.

D. Entry and Expansion

28. De novo entry into the development, manufacture and sale of Tin Mill Products is difficult, time-consuming, and costly, and such entry would not be timely, likely, or sufficient to defeat coordination by the two largest Tin Mill Products firms in the Eastern United States post-merger. To produce Tin Mill Products, a firm needs a reliable source of cold-rolled substrate and a Tin Mill Products finishing facility. A facility to finish cold-rolled substrate into Tin Mill Products would likely cost in the range of $60 to $100 million and take approximately two years to design and build. In addition, entry by a firm that lacks the ability to manufacture cold-rolled substrate or to increase its output of cold-rolled substrate would be more risky as it may not gain access to sufficient substrate to compete effectively. The cost of entry is largely ''sunk,'' *i.e.*, it cannot be recovered or converted to other uses, raising the risk to entry, and there is a very high risk that a new entrant may not receive any profits from its entry.

29. Significant new foreign entry or expansion of shipments to the Eastern United States by existing foreign producers is unlikely due to longer delivery lead times occasioned by the need for oceangoing transportation, additional shipping costs, trade barriers, the possibility of future import restrictions, and the reluctance of foreign Tin Mill Products manufacturers to abandon existing markets elsewhere in order to enter or expand in the Eastern United States. Overseas shipping increases the time between order and delivery by up to four months, which is unacceptable for most customers in the Eastern United States because their demand requirements fluctuate with hard-to-predict fruit and vegetable harvests. Capacity constraints also limit certain foreign producers from expanding their sales into the Eastern United States.

30. Therefore, entry or expansion by any other finn into the Eastern United States Tin Mill Products market would not be timely, likely, or sufficient to deter post-acquisition coordination.

*VI. Violation Alleged*

31. The effect of the proposed acquisition of Arcelor by Mittal Steel would be to substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

32. Unless restrained, the transaction will likely have the following effects, among others:

a. Competition generally in the development, manufacture and sale of Tin Mill Products in the Eastern United States would be substantially lessened;

b. Actual and potential competition between Mittal Steel and Arcelor in the development, manufacture and sale of Tin Mill Products will be eliminated; and

c. The prices for Tin Mill Products will likely increase, the quality of Tin Mill Products will likely decline, innovation relating to Tin Mill Products will likely decline, and the delivery terms currently offered in the Tin Mill Products market will likely become less favorable to customers.

*VII. Requested Relief*

33. Plaintiff requests that:

a. Mittal Steel's proposed acquisition of Arcelor be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

b. Defendant and all persons acting on its behalf be permanently enjoined and restrained from consummating the proposed acquisition or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Mittal Steel with the operations of Arcelor;

c. Plaintiff be awarded its costs for this action; and

d. Plaintiff receive such other and further relief as the case requires and the Court deems just and proper.

Dated: August 1, 2006.

Respectfully submitted,

For Plaintiff United States of America:

Thomas O. Barnett,

*Assistant Attorney General D.C. Bar #426840.*

David L. Meyer,

*Deputy Assistant Attorney General, D.C. Bar #414420.*

J. Robert Kramer II,

*Director of Operations.*

Maribeth Petrizzi,

*Chief, Litigation II Section, D.C. Bar #435204.*

Robert W. Wilder,

*Acting Assistant Chief, Litigation II Section.*

Kerrie J. Freeborn,
John F. Greaney,
Stephen A. Harris,
*Lowell Stern (D.C. Bar #440487), Attorneys, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307–0924.*

**Appendix A—Herfindahl-Hirschman Index Calculations**

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It 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 thirty, thirty, twenty, and twenty percent, the BBI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the *Horizontal Merger Guidelines* issued by the U.S. Department of Justice and the Federal Trade Commission. *See Horizontal Merger Guidelines* 1.51.

**United States District Court for the District of Columbia**

*United States of America, Plaintiff; v. Mittal Steel Company N.V., Defendant*

Case No.
DECK TYPE: Antitrust
DATE STAMP:

**Final Judgment**

*Whereas,* plaintiff, United States of America, filed its Complaint on August 1, 2006 and plaintiff and defendant, Mittal Steel Company N.V., 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,* defendant agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

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

*And Whereas,* plaintiff requires defendant to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

*And Whereas,* defendant has represented to the United States that the divestitures required below can and will be made and that defendant 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 defendant under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

*II. Definitions*

As used in this Final Judgment:

A. ''Acquirer'' means the entity or entities to whom defendant divests either the Dofasco Business or the Selected Business.

B. ''Arcelor'' means Arcelor, S.A., a Luxembourg corporation with its headquarters in Luxembourg City, Luxembourg, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Divested Business'' means either the Dofasco Business or the Sparrows Point Business or the Weirton Business, whichever is being offered for sale by the defendant or by a trustee appointed pursuant to Section V of this Final Judgment.

D. ''Dofasco Business'' means all assets, interests, and rights in Dofasco Inc. (''Dofasco''), including any additions, improvements, or expansions made by Arcelor after Arcelor's acquisition of Dofasco on or about February 20, 2006, and includes but is not limited to:

1. All tangible assets that comprise Dofasco, including research and development activities, all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, on- or off-site warehouses or storage facilities and other tangible property, and all assets used exclusively in connection with the Dofasco business; all licenses, permits and authorizations issued by any governmental organization relating to Dofasco; all supply agreements relating to Dofasco; all contracts, teaming agreements, agreements, leases, certifications, commitments, and understandings; all customer contracts, lists, accounts, and credit records relating to Dofasco; and all other records relating to Dofasco;

2. All intangible assets used in the development, production, servicing, and sale of products by Dofasco, including but not limited to all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information provided to the employees, customers, suppliers, agents or licensees of Dofasco; all research data concerning historic and current research and development efforts relating to products produced or sold by Dofasco, including but not limited to designs of experiments, and the results of successful and unsuccessful designs and experiments, provided, however, that Dofasco does not include Dofasco's interest in Sorevco.

E. ''DoSol Joint Venture'' means DoSol Galva Limited Partnership, the hot dip galvanizing facility located in Hamilton, Ontario, Canada, that is a joint venture between Dofasco and Arcelor.

F. ''Mittal Steel'' means defendant Mittal Steel Company, N.V., a Netherlands public limited liability company with its headquarters in Rotterdam, The Netherlands, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

G. ''QCM'' means Quebec Cartier Mining Company, a producer of iron ore products, headquartered in Montreal, Quebec, Canada.

H. ''Selected Business'' means whichever of the Sparrows Point Business or the Weirton Business is selected by the United States in its sole discretion to be offered for sale by the defendant or by a trustee appointed pursuant to Section V of this Final Judgment.

I. ''Sorevco'' mean Sorevco and Company, Limited, the hot dip galvanizing operation located in Montreal, Quebec, Canada, that is a joint venture between Dofasco and Mittal.

J. ''Sparrows Point Facility'' means the steel making, rolling, and coating facility owned by Mittal Steel and located in or near Sparrows Point, Maryland.

K. ''Sparrows Point Business'' means all assets, interests, and rights in the Sparrows Point Facility, and includes but is not limited to:

1. All tangible assets used in the development, production, servicing, and sale of all products produced at the Sparrows Point Facility, including but not limited to all real property; any facilities used for research, development, and engineering support, and any real property associated with those facilities; manufacturing and sales assets, including all manufacturing equipment, tooling and fixed assets, capital equipment, vehicles, supplies, personal property, inventory, office

furniture, fixed assets and fixtures, materials, on-or off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations issued by any governmental organization relating to the Sparrows Point Business; supply agreements; all contracts, teaming agreements, agreements, leases, certifications, commitments, and understandings relating to the Sparrows Point Business; all customer contracts, lists, accounts, and credit records; and all other records maintained by Mittal Steel in connection with the operation of the Sparrows Point Business; provided, however, that with respect to any assets covered by Section II(K)(1) that relate primarily to Mittal's non-divested businesses, but also relate in part to the Sparrows Point Business, the defendant shall have the option, subject to the written approval of the United States in its sole discretion, to substitute equivalent assets or arrangements (a substituted asset or arrangement will not be deemed equivalent unless it provides the Sparrows Point Business the same benefits, or enables the Sparrows Point Business to perform the same function at the same or less cost); and further provided, that the Sparrows Point Business does not include Mittal Steel's contract to supply hot-rolled steel to the The Ford Motor Company, which contract is supplied in part by the Sparrows Point Facility;

2. All intangible assets currently used exclusively or primarily in the development, production, servicing, and sale of all products produced at the Sparrows Point Facility, including but not limited to all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names (except to the extent such trademarks, trade names, service marks, or service names contain the trademark or name ''Mittal Steel'' or any variation thereof), technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information provided to the employees, customers, suppliers, agents or licensees of the Sparrows Point Business;

3. With respect to any other identified intangible assets that are not subject to Section II(K)(2) and that prior to the filing of the Complaint were used both in connection with the Sparrows Point Business and in connection with Mittal Steel's non-divested businesses, the defendant shall provide to the Acquirer a non-exclusive, non-transferable, fully-paid-up license(s) for such intangible asset(s) to the extent and for the period of time that defendant has rights to such intangible assets, provided, however, that any such license may be transferable to any future purchaser of the Sparrows Point Business; and

4. All research data concerning historic and current research and development efforts related to the Sparrows Point Business, including but not limited to designs of experiments, and the results of successful and unsuccessful designs and experiments. To the extent that any such data also relates to historic and current research and development efforts related to businesses other than the Sparrows Point Business, providing a non-exclusive copy of such data shall fulfill defendant's obligations under this provision.

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

M. ''Tin Mill Products'' means collectively black plate, i.e., light-gauge cold-rolled bare steel sheet; electrolytic tin plate, i.e., black-plate electrolytically coated with tin; and tin free steel, i.e., black plate electrolytically coated with chromium.

N. ''Weirton Facility'' means the steel making, rolling, and coating facility owned by Mittal Steel and located in or near Weirton, West Virginia.

O. ''Weirton Business'' means all assets, interests, and rights in Weirton Facility, and includes but is not limited to:

1. All tangible assets used in the development, production, servicing, and sale of all products produced at the Weirton Facility, including but not limited to all real property; any facilities used for research, development, and engineering support, and any real property associated with those facilities; manufacturing and sales assets, including all manufacturing equipment, tooling and fixed assets, capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on- or off-site warehouses or storage facilities, and other tangible property or improvements, including but not limited to all of defendant's rights and interests in the Half Moon tin warehouse and processing facility near the Weirton Facility; all licenses, permits and authorizations issued by any governmental organization relating to the Weirton Facility; supply agreements; all contracts, teaming agreements, agreements, leases, certifications, commitments, and understandings relating to the Weirton Facility; all customer contracts, lists, accounts, and credit records; and all other records maintained by Mittal Steel in connection with the operation of the Weirton Business; provided, however, that with respect to any assets covered by Section II(O)(I) that relate primarily to Mittal's non-divested businesses, but also relate in part to the Weirton Business, the defendant shall have the option, subject to the written approval of the United States in its sole discretion, to substitute equivalent assets or arrangements (a substituted asset or arrangement will not be deemed equivalent unless it provides the Weirton Business the same benefits, or enables the Weirton Business to perform the same function at the same or less cost);

2. All intangible assets currently used exclusively or primarily in the development, production, servicing, and sale of all products produced at the Weirton Facility, including but not limited to all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names (except to the extent such trademarks, trade names, service marks, or service names contain the trademark or name ''Mittal Steel'' or any variation thereof), technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information provided to the employees, customers, suppliers, agents or licensees of the Weirton Business;

3. With respect to any other identified intangible assets that are not subject to Section II(O)(2) and that prior to the filing of the Complaint were used both in connection with the Weirton Business and in connection with Mittal Steel's non-divested businesses, the defendant shall provide to the Acquirer a non-exclusive, non-transferable, fully paid-up license(s) for such intangible asset(s) to the extent and for the period of the time that defendant has rights to such intangible assets, provided, however, that any such license may be

transferable to any future purchaser of the Weirton Business; and

4. All research data concerning historic and current research and development efforts related to the Weirton Business, including but not limited to designs of experiments, and the results of successful and unsuccessful designs and experiments. To the extent that any such data also relates to historic and current research and development efforts related to businesses other than the Weirton Business, providing a non-exclusive copy of such data shall fulfill defendant's obligations under this provision.

*III. Applicability*

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

B. Defendant shall require, as a condition of the sale or other disposition of all or substantially all of its assets or of lesser business units that includes the Divested Business, that the purchaser agrees to be bound by the provisions of this Final Judgment.

*IV. Divestiture*

A. In the event defendant acquires Arcelor, defendant is ordered and directed to divest the Dofasco Business to ThyssenKrupp within (1) 120 calendar days after the filing of the Complaint in this matter or (2) five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed in total sixty (60) calendar days, and shall notify the Court in each such circumstance. At its option, defendant may elect to sell Dofasco to an alternative Acquirer acceptable to the United States in the sole discretion of the United States. Defendant agrees to use its best efforts to divest the Dofasco Business as expeditiously as possible.

B. In the event defendant acquires Arcelor but is unable to accomplish the divestiture of the Dofasco Business within the time period specified in Section IV(A), then at the option of the United States, defendant shall divest either the Sparrows Point Business or the Weirton Business. The United States shall provide defendant written notice of its selection. Defendant is ordered and directed, within ninety (90) calendar days of the receipt of such notice, to divest the Selected Business 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 in total sixty (60) calendar days, and shall notify the Court in each such circumstance. Defendant agrees to use its best efforts to divest the Selected Business as expeditiously as possible. Once the United States has provided defendant with written notice of its selection under Section IV(B), the defendant will cease to have any obligation under Section IV(A) to divest the Dofasco Business.

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

D. Defendant shall provide the Acquirer and the United States information relating to personnel involved in the research, development, production, operation, and sale of the products of the Divested Business to enable the Acquirer to make offers of employment. Defendant will not interfere with any negotiations by the Acquirer to employ any employee of the Divested Business whose primary responsibility is the production, operation, development, or sale of the products of the Divested Business.

E. Defendant shall permit prospective Acquirers of the Divested Business to have reasonable access to personnel and to make inspections of the physical facilities of the Divested Business; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, and other documents and information customarily provided as part of a due diligence process.

F. Defendant shall warrant to the Acquirer of the Divested Business that each asset of the Divested Business is in a condition and state of repair equal to the condition and state of repair as of, (1) in the case that the Selected Business is divested, the date the defendant publicly announced its intention to acquire Arcelor, *i.e.*, January 27, 2006, or (2) in the case that the Dofasco Business is divested, the date of the filing of the Complaint in this matter.

G. Defendant shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divested Business.

H. The defendant will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divested Business. If the Selected Business is divested, the defendant shall warrant to the Acquirer of the Selected Business that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Selected Business as operated by the defendant.

I. Nothing in this Final Judgment shall be construed to require the Acquirer as a condition of any license granted by defendant pursuant to Sections II(K)(3) or II(O)(3) to extend to defendant the right to use the Acquirer's improvements to processes used in connection with the Selected Business.

J. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire business and assets of the Divested Business, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divested Business can and will be used by the Acquirer as a viable, ongoing business engaged in producing Tin Mill Products. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment,

1. Shall be made to an Acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) to compete effectively in the production and sale of Tin Mill Products; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendant gives defendant the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise interfere in the ability of the Acquirer to compete effectively in the production and sale of Tin Mill Products.

*V. Appointment of Trustee To Effect Divestiture*

A. If the defendant has not divested the Selected Business pursuant to Section IV(B) of this Final Judgment within the time period specified in that Section, defendant shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Selected Business pursuant to Section IV(B).

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

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

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

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

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

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

*VI. Notice of Proposed Divestiture*

A. Within two (2) business days following execution of a definitive divestiture agreement, defendant or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendant. 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 Selected Business.

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

C. Within (a) thirty (30) calendar days after receipt of the notice or (b) twenty (20) calendar days after the United States has been provided the additional information requested from defendant, the proposed Acquirer, any third party, or the trustee, whichever is later, the United States shall provide written notice to defendant and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendant's limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendant under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

*VII. Financing*

Defendant 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 defendant shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendant shall take no action that would jeopardize the divestiture order 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, defendant 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 Judgement. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty 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 Divested Business, 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 defendant has taken to solicit buyers for the Divested Business, and to provide required information to any prospective Acquirer, 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 defendant, including limitations on the 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, defendant shall deliver to the United States an affidavit that describes in reasonable detail all actions defendant has taken and all steps defendant has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendant shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendant's earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendant shall keep all records of all efforts made to preserve and divest the Divested Business until one year after a divestiture has been completed.

*X. Compliance Inspection*

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant, be permitted:

1. Access during defendant's office hours to inspect and copy, or at plaintiff's option, to require defendant to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendant, relating to any matters contained in this Final Judgment; and

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

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit written reports, 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 defendant to the United States, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give defendant ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

*XI. No Reacquisition*

Defendant may not reacquire any part of any assets divested during the term of this Final Judgment, provided, however, that nothing in this decree shall prevent defendant from (1) reacquiring any of the assets of QCM, subject to the written consent of the United States in its sole discretion; or (2) increasing its interest in the DoSol Joint Venture to 50 percent.

*XII. Retention of Jurisdiction*

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

*XIII. Expiration of Final Judgment*

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

*XIV. Public Interest Determination*

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' 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 the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

____________________

United States District Judge

**United States District Court for the District of Columbia**

*United States of America, Plaintiff, v. Mittal Steel Company N.V., Defendant*

Case No.
JUDGE:
DECK TYPE: Antitrust
DATE STAMP:

**Competitive Impact Statement**

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

*I. Nature and Purpose of the Proceeding*

The United States filed a civil antitrust Complaint on August 1, 2006, seeking to obtain equitable and other relief against defendant Mittal Steel Company N.V. (''Mittal Steel'') to prevent its proposed acquisition of

Arcelor S.A. (''Arcelor''). Mittal Steel and Arcelor, including its Canadian subsidiary Dofasco Inc. (''Dofasco'' or the ''Dofasco Business''), are two of only a limited number of suppliers to the portion of the United States east of the Rocky Mountains (the ''Eastern United States'') of finely rolled tin or chrome coated steel sheets (''Tin Mill Products''). Tin Mill Products are used in manufacturing steel cans for packaging a wide range of food products, such as soup, fruits, and vegetables, and non-food products, such as paints, aerosols, and shaving cream. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially in the development, manufacture and sale of Tin Mill Products in the Eastern United States, in violation of Section 7 of the Clayton Act. This loss of competition would likely result in higher prices, lower quality, less innovation, and less favorable delivery terms to customers in the Eastern United States Tin Mill Products market.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order and a proposed Final Judgment. These are designed to remedy the anticompetitive effects of the acquisition while permitting Mittal Steel to complete its acquisition of Arcelor. Under the proposed Final Judgment, which is explained more fully below, the defendants are required to divest certain assets including Arcelor's Dofasco subsidiary to ThyssenKrupp AG (''ThyssenKrupp''), a German corporation with its headquarters in Dusseldorf, Germany, or, if defendant chooses, to another acquirer of the divested business (''Acquirer'') acceptable to the United States in its sole discretion. If the defendant is unable to sell the Dofasco Business to ThyssenKrupp or an alternative acceptable buyer, then the defendant is required to divest, at the United States's option, either Mittal Steel's Sparrows Point, Maryland, facility (''Sparrows Point Business'') or Mittal Steel's Weirton, West Virginia, facility (''Weirton Business'') to an Acquirer acceptable to the United States in its sole discretion (with the business so selected referred to as the ''Selected Business''). The divestiture of either the Dofasco Business or the Selected Business is designed to enable the Acquirer to become a viable and active competitor in the Eastern United States Tin Mill Products market.

The United States and defendant 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 Defendant and the Proposed Transaction

Mittal Steel, a Netherlands corporation, has its corporate headquarters and principal place of business in Rotterdam, The Netherlands, and has operations in sixteen countries, located on four continents. As one of the largest steel producers in the world, Mittal Steel is primarily engaged in making a variety of steel products for all the major steel consuming sectors, including automotive, appliance, machinery, and construction. Among its many steel product lines is Tin Mill Products. In 2005, Mittal Steel reported total worldwide revenues that exceeded $28 billion and total annual steel production that exceeded 55 million tons. Mittal Steel maintains seventeen production facilities within the United States, and produces Tin Mill Products in Sparrows Point and Weirton. Mittal Steel operates in the United States through its wholly-owned subsidiary Mittal Steel USA, located in Chicago, Illinois, which markets and sells in the United States Tin Mill Products and other products manufactured by Mittal Steel. Tin Mill Products manufactured at Mittal Steel's U.S. tin mills are shipped primarily to customers in the United States. In 2005, Mittal Steel sold over 800,000 tons of Tin Mill Products in the Eastern United States.

Arcelor, a Luxembourg corporation, has its corporate headquarters and principal place of business in the City of Luxembourg. Like Mittal Steel, Arcelor is one of the world's largest steel producers and makes a variety of steel products for the automotive, appliance, packaging, and other industries. In 2005, Arcelor reported total worldwide revenues of approximately $41.5 billion and steel production of 46 million tons. In February 2006, Arcelor acquired Dofasco, a wholly-owned Canadian subsidiary with its principal place of business in Hamilton, Ontario, Canada. In 2005, Dofasco shipped 4.8 million tons and had $3.9 billion in revenues. Among Arcelor's many steel product lines is Tin Mill Products, which it makes at mills in Europe and Brazil and at Dofasco's Hamilton mill. In 2005, Arcelor, which shipped Tin Mill Products to the Eastern United States primarily from its European facilities, and Dofasco, which shipped Tin Mill Products to the Eastern United States from its Canadian facility, sold a combined 170,615 tons of Tin Mill Products in the Eastern United States.

On January 27, 2006, Mittal Steel announced its intention to launch a hostile tender offer to acquire Arcelor for approximately $23 billion in cash and securities. Mittal Steel simultaneously announced an agreement to sell Dofasco for approximately $5 billion to ThyssenKrupp if Mittal Steel acquired Arcelor. Arcelor initially resisted the hostile takeover. One of the steps Arcelor's Board of Directors took to resist the takeover was to transfer legal title to the shares of Dofasco to an independent Dutch foundation known as a ''stichting.''

Mittal Steel subsequently increased its tender offer to approximately $33 billion in cash and securities and formally launched its tender offer on May 19, 2006. After Mittal Steel agreed to improve the financial, corporate governance, and other terms of its offer for Arcelor, the Arcelor Board agreed on June 25, 2006 to recommend Mittal Steel's offer to Arcelor's shareholders. The acceptance period for Mittal's initial tender offer, during which 92.6 percent of Arcelor's shares were tendered, closed on July 13, 2006. Mittal Steel can take ownership of the shares beginning on August 1, 2006.

Mittal Steel's acquisition of Arcelor would, among other things, combine the operations of two significant providers of Tin Mill Products in the Eastern United States. The United States alleges in its Complaint that this proposed transaction would lessen competition substantially in the market for Tin Mill Products in the Eastern United States, in violation of Section 7 of the Clayton Act.

B. The Competitive Effects of the Transaction on the Tin Mill Products Market

1. Relevant Product Market: The Development, Manufacture and Sale of Tin Mill Products

The Complaint alleges that the development, manufacture and sale of Tin Mill Products is a relevant product market within the meaning of Section 7 of the Clayton Act. Tin Mill Products are finely rolled steel sheets, usually coated with a thin protective layer of tin or chrome. Tin Mill Products are manufactured using a sequence of processing steps in which steel is rolled into successively thinner sheets, then hardened, and finally coated with either tin or chrome. Tin Mill products are comprised of three types of steel: black plate, electrolytic tin plate (''ETP''), and tin free steel (''TFS''). Black plate is a light-gauge cold-rolled bare steel sheet that serves as the substrate for production of both ETP and TFS and can be used bare for some applications such as pails or larger containers. Black plate is coated with tin to produce ETP and with chrome to produce TFS. ETP and TFS are both used in packaging, although each provides different advantages and disadvantages (including, *inter alia*, organic coating acceptance, strength, surface finish, and formability) that are considered by purchasers in making their purchase decisions. The majority of Tin Mill Products are used to produce sanitary cans, often referred to as food cans. Other uses include aerosol cans, general line cans, pails, larger containers, metal buildings, and oil and fuel filter sheets.

For most Tin Mill Products purchasers, including downstream food can customers, there are no close substitutes for Tin Mill Products. Packaging alternatives, such as plastic containers, are generally not viewed by can customers as replacements for products normally packaged in cans because of cost differences and the performance advantages associated with cans. Some of the advantages of steel cans compared to alternative packaging include their longer shelf life and greater durability, familiarity, and security. Alternative packaging generally costs at least as much as a steel can and sometimes costs as much as eight times as much as a can, and significant additional capital investments are necessary to incorporate alternative packaging materials into a customer's packaging process.

The Complaint alleges that a small but significant increase in the price of Tin Mill Products would not cause can manufacturers or their downstream customers to substitute non-Tin Mill Products containers or otherwise to reduce their purchases of Tin Mill Products in sufficient quantities so as to make such a price increase unprofitable. The use of alternative packaging containers is driven primarily by capital equipment investment considerations and by marketing factors such as consumer convenience, rather than by small but significant changes in the prices of Tin Mill Products. For example, can customers often use alternative packaging in order to extend an existing product line, such as using alternative materials to package soup in portable microwavable containers, while continuing to package the bulk of their soup products in steel cans. Accordingly, the Complaint alleges that the development, manufacture, and sale of Tin Mill Products is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

2. Relevant Geographic Market: Eastern United States

The Complaint also alleges that the Eastern United States is a geographically distinct market for the sale of Tin Mill Products. The only Tin Mill Products manufacturer in the United States west of the Rocky Mountains (the ''Western United States'') is located in California, and it does not have substantial sales in the Eastern United States due to its distance from can manufacturers in that part of the country, which tend to be located in proximity to agricultural regions. The California Tin Mill Products manufacturer, which is half owned by one of the two largest Tin Mill Products producers in the Eastern United States, accounts for more than 84 percent of the Tin Mill Products sold in the Western United States but ships only small quantities to the Eastern United States. Similarly, Tin Mill Products producers in the Eastern United States generally do not sell significant quantities in the Western United States because their freight costs are higher than those of the single manufacturer located in the Western United States.

Customers are reluctant to rely on offshore suppliers of Tin Mill Products for their general production requirements. More than 89 percent of Tin Mill Products sold in the Eastern United States are manufactured by firms located either in the Eastern United States or eastern Canada. Among the factors that tend to limit import penetration are the longer lead times required for offshore orders, higher shipping costs, the inability of some importers to provide the full range of product specifications required by some customers, anti-dumping duties currently in force against several Japanese producers, and voluntary self-restraint by importers who are fearful of prompting additional scrutiny of and tariff protection against imports.

Thus, a small but significant increase in the price of Tin Mill Products would not cause Tin Mill Products customers in the Eastern United States to substitute purchases from outside of the Eastern United States in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the Eastern United States is a relevant geographic market in which to assess the competitive effects of Mittal Steel's proposed acquisition of Arcelor on sales of Tin Mill Products.

3. Anticompetitive Effects of the Acquisition

The complaint alleges that, in this highly concentrated market for Tin Mill Products, a combination of Mittal Steel and Arcelor likely would: (i) Substantially lessen competition generally in the development, manufacture and sale of Tin Mill Products in the Eastern United States; (ii) eliminate actual and potential competition between Mittal Steel and Arcelor in the development, manufacture and sale of Tin Mill Products; and (iii) increase the prices for Tin Mill Products, lessen the quality of Tin Mill Products, lessen the innovation relating to Tin Mill Products, and adversely affect the delivery terms currently offered to the customers in the Tin Mill Products market.

The market for Tin Mill products in the Eastern United States is highly concentrated and is dominated by two firms, Mittal Steel, an integrated steelmaker which accounted for 31 percent of the tons sold in 2005, and another integrated steelmaker, which accounted for more than 44 percent of the tons sold in 2005. Luxembourg-based Arcelor is a significant competitor, which accounted for about two percent of tons sold in the Eastern United States in 2005. Dofasco, which Arcelor acquired in February 2006, accounts for about four percent of the tons sold in 2005 in the Eastern United States. Were Mittal Steel to acquire Arcelor, the largest two remaining firms would account for more than 81 percent of Tin Mill Products sales in the Eastern United States. In 2005, Mittal Steel and one other firm accounted for more than 2.1 million tons of such sales.

The acquisition of Arcelor by Mittal would thus substantially increase the concentration in the Eastern United States Tin Mill Products market. Using a measure of market concentration called the Herfindahl-Hirschman Index (''HHI'') (defined and explained in Appendix A), the proposed transaction will increase the HHI in the market for Tin Mill Products in the Eastern United States by approximately 412 points to a post-acquisition level of approximately 3,522, well in excess of levels that raise significant antitrust concerns.

Mittal Steel's elimination of Arcelor as an independent competitor in the manufacture and sale of Tin Mill Products within the Eastern United States is likely to facilitate anticompetitive coordination among the two major Tin Mill Products manufacturers by making such coordination more profitable and harder to defeat. If The two largest Tin Mill Products firms in the Eastern United States were to seek to raise prices or reduce output today, purchasers of Tin Mill Products could purchase Tin Mill Products from Arcelor and its subsidiary Dofasco. Arcelor has substantial excess and divertible capacity in Europe, and Arcelor's Dofasco subsidiary has significant divertible capacity in Canada. Were Arcelor and Dofasco no longer available as independent suppliers, the remaining domestic and foreign fringe producers would likely not have sufficient capacity and/or incentives to increase sales in the Eastern United States enough to defeat an anti competitive price increase or output reduction by the two largest firms. In particular, the only other incumbent producer located in the Eastern United States lacks the ability to manufacture cold-rolled substrate, and its ability to obtain the additional substrate needed to increase its output is uncertain.

De novo entry into the development, manufacture and sale of Tin Mill Products is difficult, time-consuming, and costly, and such entry would not be timely, likely, or sufficient to defeat coordination by the two largest Tin Mill Products firms in the Eastern United States post-merger. To produce Tin Mill Products, a firm needs a reliable source of cold-rolled substrate and a Tin Mill Products finishing facility. Entry by a firm that lacks the ability to manufacture cold-rolled substrate would be extremely difficult. A facility to finish cold-rolled substrate into Tin Mill Products would likely cost in the range of $60 to $100 million and take approximately two years to design and build. The cost of entry is largely ''sunk,'' *i.e.*, it cannot be recovered or converted to other uses, raising the risk to entry, and there is a very high risk that a new entrant may not receive any profits from its entry.

Significant new foreign entry or expansion of shipments to the Eastern United States by existing foreign producers is unlikely due to longer delivery lead times occasioned by oceangoing transportation, additional shipping costs, trade barriers, the possibility of future import restrictions, and the reluctance of foreign Tin Mill Products manufacturers to abandon existing markets elsewhere in order to enter the Eastern United States market. Overseas shipping increases the time between order and delivery by up to four months, which is unacceptable for many customers because their demand requirements fluctuate with hard-to-predict fruit and vegetable harvests. Capacity constraints also limit the ability of certain foreign producers from expanding their sales into the Eastern United States. Therefore, entry or expansion by any other firm into the Eastern United States Tin Mill Products market would not be timely, likely, or sufficient to deter post-acquisition coordination.

*III. Explanation of the Proposed Final Judgment*

The proposed Final Judgment will preserve competition in the market for Tin Mill Products in the Eastern United States by requiring the divestiture of one of the three North American tin mills that Mittal Steel will own following its acquisition of Arcelor: (1) The Dofasco mill, currently owned by Arcelor; (2) Mittal's Sparrows Point facility; or (3) Mittal's Weirton facility. The proposed Final Judgment provides for the divestiture of the entire steel mill and not simply the finishing lines for Tin Mill Products, and in the case of Dofasco requires divesting the entirety of Dofasco's steel business. The proposed Final Judgment sets forth a procedure under which Mittal Steel is first required to use its best efforts to sell Dofasco to ThyssenKrupp or an alternative purchaser approved by the United States. If Mittal Steel is unable to sell Dofasco because it proves impossible to dissolve the stichting created by Arcelor to hold legal title to its Dofasco shares, then the Department of Justice can select either the Sparrows Point or Weirton facilities for divestiture.

The required divestiture of Dofasco will remedy the anticompetitive effects of the acquisition alleged in the Complaint, and in the event such a divestiture is not possible, the alternate divestiture of either Sparrows Point or Weirton (as selected by the United States) would likewise be sufficient to remedy those effects. The divestiture of the Dofasco Business or a Selected Business would preserve an independent competitor with sufficient Tin Mill Products capacity to replace Arcelor/Dofasco as an impediment to profitable and successful coordination post-merger. In either case, the preserved competitor would have modern and efficient facilities located close enough to customers in the Eastern United States to compete effectively.

The proposed Final Judgment provides that for any divestiture to be approved, it must be demonstrated to the satisfaction of the United States, in its sole discretion, that the Divested Business can and will be used by the Acquirer as a viable ongoing business that will remedy the competitive harm alleged in the Complaint. The divestiture must be made to an Acquirer that in the United States's judgment has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the development, production and sale of Tin Mill Products; the divestiture also must be accomplished in a manner that satisfies the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and the defendant gives the defendant the ability unreasonably to raise the Acquirer's costs, reduce the Acquirer's efficiency, or otherwise interfere in the ability of the Acquirer to compete effectively in the development, production and sale of Tin Mill Products. Mittal Steel must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

The proposed Final Judgment requires Mittal Steel, within one hundred and twenty (120) days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the Dofasco Business to ThyssenKrupp. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed in total sixty (60) calendar days, and shall notify the Court in each such circumstance. At its option, defendant may elect to sell the Dofasco Business to an alternative Acquirer acceptable to the United States in the sole discretion of the United States. Mittal Steel agrees to use its best efforts to divest expeditiously the Dofasco Business.[1]

In the event Mittal Steel is unable by virtue of the stichting to accomplish the divestiture of the Dofasco Business within the period prescribed by the proposed Final Judgment, then defendant shall divest, at the option of the United States, either the Sparrows

[1] Under the terms of the Hold Separate Stipulation and Order, Mittal Steel must maintain and preserve the Dofasco Business, the Sparrows Point Business, and the Weirton Business as ongoing, economically viable competitive businesses from the date of entry of the Hold Separate Stipulation and Order until the divestiture required by the proposed Final Judgment is accomplished. In addition, the Hold Separate Stipulation and Order requires that Mittal Steel ensure that Dofasco operates as an independent, economically viable, and ongoing competitive business concern, held separate and apart from Mittal Steel's other operations, and that it will remain independent and uninfluenced by Mittal Steel while the divestiture of Dofasco is pending or until the United States selects either the Sparrows Point Business or the Weirton Business for divestiture.

Point Business or the Weirton Business. In the event that defendant does not accomplish the divestiture of the Selected Business within 90 days or within an extension to this time period, not to exceed 60 calendar days, which may be granted by the United States in its sole discretion, the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture of the Selected Business.

In the event that a trustee is to be appointed, the proposed Final Judgment provides that the United States shall select a trustee to be approved by the Court. If a trustee is appointed, the proposed Final Judgment provides that defendant will pay all costs and expenses of the trustee. The trustee's fee arrangement will be structured so as to provide an incentive for the trustee based on the price and terms of the divestiture and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months after appointment of the trustee, 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.

*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 defendant.

*V. Procedures Available for Modification of the Proposed Final Judgment*

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

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, U.S. Department of Justice, Antitrust Division, 1401 H St., NW., Suite 3000, 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 proposed 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 defendant. The United States could have continued the litigation and sought preliminary and permanent injunctions against Mittal Steel's acquisition of Arcelor. The United States is satisfied, however, that the divestitures described in the proposed Final Judgment will avoid the transaction's anticompetitive effects in the provision of Tin Mill Products, and, thus, would achieve all or substantially all of the relief the government would have obtained through litigation, but without the time and expense of a trial.

*VII. Standard of Review Under the APPA for the Proposed Final Judgment*

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the Court shall consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration 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) and (B).[2] 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 United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to deterrnine 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

[2] In 2004, Congress amended the APPA to ensure that courts take into account the above-quoted list of relevant factors when making a public interest determination. *Compare 15* U.S.C. 16(e) (2004) *with* 15 U.S.C. 16(e)(l) (2006) (substituting "shall" for "may" in directing relevant factors for court to consider and amending list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms). On the points discussed herein, the 2004 amendments did not alter the substance of the Tunney Act, and the pre-2004 precedents cited below remain applicable.

requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel*, 648 F.2d at 666 (emphasis added) (citations omitted) [3] In making its public interest determination, a district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case. *United States* v. *Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003).

Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60.

In its 2004 amendments to the Tunney Act, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction ''[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). This language codified the intent of the original 1974 statute, expressed by Senator Tunney in the legislative history: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather:

> [a]bsent 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.

*United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

*VIII. Determinative Documents*

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

Dated: August 1, 2006.
Respectfully submitted,
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[3] *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' '').

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

## Peter A. Ahles, M.D.; Revocation of Registration

On August 15, 2005, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and further ordered the immediate suspension of DEA Certificate of Registration, AA0092558, issued to Peter A. Ahles, M.D. (Respondent), of Anaheim, California. The Show Cause Order proposed to revoke Respondent's registration as a practitioner and to deny any pending applications for renewal or modification of the registration, on the ground that Respondent's continued registration would be inconsistent with the public interest. *See* 21 U.S.C. 823(f) and 824(a)(4). The Show Cause Order also immediately suspended Respondent's registration based on my preliminary finding that his continued registration ''would constitute an immediate danger to the public health and safety because of the substantial likelihood that [he would] continue to acquire large amounts of narcotic controlled substances and * * * illegally distribute these narcotic controlled substances to potential abusers and other unauthorized persons in exchange for cash.'' Show Cause Order at 3.

The Show Cause Order specifically alleged that based on a review of transaction reports filed by DEA registrants, Respondent, during the period March 2004 to March 2005, had received ''nearly 570,000 tablets of Schedule III hydrocodone and codeine tablets, most of which were packaged in 500 and 1000 count bottles.'' *Id.* at 1–2. The Show Cause Order alleged that ''[t]hese are excessive amounts of narcotics to be legitimately dispensed or administered from a single practitioner's office in a one-year period.'' *Id.* The Show Cause Order further alleged that in the thirteen month period ending in April 2005, Respondent ''had purchased over one million dosage units of Schedule II through V controlled substances, [which were] predominately narcotic tablets.'' *Id.* at 2.

The Show Cause Order also alleged that on three occasions during May 2005, a DEA Special Agent and a cooperating source (CS) had visited Respondent's office and made undercover buys of hydrocodone, a Schedule III controlled substance. *Id.* The Show Cause Order alleged that on two occasions, the Special Agent observed the CS pay Respondent $500 in cash and receive a plastic bag containing approximately 500 tablets of hydrocodone. *Id.* The Show Cause Order alleged that on the other occasion, the Special Agent observed the CS pay Respondent $600 and receive a plastic bag containing 500 tablets of Norco, another hydrocodone product. *Id.* The Show Cause Order further alleged that Respondent made each of the dispensings without asking the CS for his medical complaint, taking a medical history, or conducting a physical examination. The Show Cause Order thus alleged that the distributions were made ''without any legitimate medical purpose and [were] not in the course of legitimate medical practice'' and violated 21 U.S.C. 841(a)(1). *Id.*

Finally, the Show Cause Order alleged that Respondent had, in submitting his DEA renewal application, answered