

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA

Plaintiff,

v.

PARKER-HANNIFIN CORPORATION

and

CLARCOR INC.,

Defendants.

C.A. No. 17-1354-JEJ

**UNOPPOSED MOTION AND MEMORANDUM OF THE UNITED STATES
IN SUPPORT OF ENTRY OF MODIFIED PROPOSED FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. §16(b)-(h) (“APPA” or “Tunney Act”), Plaintiff United States of America (“United States”) moves for entry of the modified proposed Final Judgment attached hereto as Exhibit A. The modified proposed Final Judgment is identical to the original proposed Final Judgment substantively, but adjusts the timeframe within which one of the Divestiture Assets must be conveyed to account for local regulatory approvals. The modified proposed Final Judgment may be entered at this time without further hearing if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement (“CIS”) filed in this matter on December 18, 2017 (ECF Docket No. 31) explains why entry of the modified proposed Final Judgment would be in the public interest. The United States is filing simultaneously with this motion a Certificate of Compliance, attached hereto as Exhibit B, setting forth the steps taken by the parties to comply

with all applicable provisions of the APPA and certifying that the APPA's waiting period has expired. Defendants consent to be bound by the terms of the modified proposed Final Judgment.

I. BACKGROUND

On September 26, 2017, the United States filed a civil antitrust Complaint alleging that the consummated acquisition by Parker-Hannifin Corporation ("Parker-Hannifin") of CLARCOR Inc. ("CLARCOR") (collectively, "Defendants"), lessened competition for certain aviation fuel filtration systems and filter elements in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. §18. The Complaint alleged that Parker-Hannifin and CLARCOR were the only U.S. suppliers of aviation fuel filtration systems and filter elements that met the rigorous qualification requirements established by the Energy Institute ("EI-qualifications") and thus satisfy the needs of airlines and refueling agents that must meet those industry standards at airports.

On December 18, 2017, the United States filed its proposed Final Judgment in this matter along with a Joint Proposed Order Stipulating to Modification of Order to Preserve and Maintain Assets (ECF Docket No. 29) ("Modified Order to Preserve and Maintain Assets"); an Explanation of Consent Decree Procedures (ECF Docket No. 30); and a Competitive Impact Statement (ECF Docket No. 31) that describes how the proposed Final Judgment is designed to remedy the likely anticompetitive effects of the acquisition. The Modified Order to Preserve and Maintain Assets, which was signed by the Court on December 19, 2017, provides that the proposed Final Judgment may be entered by the Court after the completion of the procedures of the APPA. The proposed Final Judgment required, among other things, that Parker-Hannifin divest the Facet Filtration Business, which includes a number of facilities, among which is a lab

used to test and certify aviation fuel filtration systems to meet EI-qualifications. *See* proposed Final Judgment Paragraph (G)(2).

The United States recently learned that regulatory requirements imposed by authorities in Greensboro, North Carolina and Guilford County, North Carolina could delay the divestiture of the aviation fuel filtration testing lab. Accordingly, the United States (with the consent of Defendants) submits the modified proposed Final Judgment, which contains three changes to account for the possibility of delay. First, the modified proposed Final Judgment adds a definition for “Local Regulatory Approvals” in Paragraph II(H). Second, it contains one additional clause in Paragraph IV(A) that links the timing of the sale of the lab to the receipt of Local Regulatory Approvals. Finally, a new Paragraph IV(K) obligates Parker-Hannifin to enter into a “transition lease agreement” with the Acquirer until Local Regulatory Approvals have been received.

The modifications described above do not materially alter Parker-Hannifin’s obligations under the proposed Final Judgment. The modified proposed Final Judgment does not change the definition of the assets to be divested or the material terms of the divestiture. Instead, the modified document simply makes explicit the need for Parker-Hannifin to seek and receive local regulatory approvals before the transfer of the lab. Because there has been no material modification to Parker-Hannifin’s obligations under the proposed Final Judgment, the APPA, discussed in more detail below, does not require an additional sixty-day period for the submission of written comments. Instead, entry of the modified proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. COMPLIANCE WITH THE APPA

The APPA requires a sixty-day period for the submission of written comments on a proposed Final Judgment. *See* 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed a CIS on December 18, 2017; published the proposed Final Judgment and CIS in the *Federal Register* on January 30, 2018 (*see* 83 Fed. Reg. 4270); and ensured that a summary of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, were published in *The Washington Post* for seven days beginning on December 21, 2017 and ending on December 27, 2017. The sixty-day public comment period terminated on April 2, 2018, and the United States received no public comments.

Simultaneously with this Motion and Memorandum, the United States is filing a Certificate of Compliance that states all the requirements of the APPA have been satisfied. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the modified proposed Final Judgment.

III. STANDARD OF JUDICIAL REVIEW

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of a proposed Final Judgment “is in the public interest.” 15 U.S.C. § 16(e)(1). In making that determination in accordance with the statute, the Court is required to consider:

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

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

15 U.S.C. § 16(e)(1)(A), (B). In its CIS, the United States explained the meaning and proper application of the public interest standard under the APPA and now incorporates those portions of the CIS by reference.

IV. ENTRY OF THE MODIFIED PROPOSED FINAL JUDGMENT IS IN THE PUBLIC INTEREST

As described above, the United States alleged in its Complaint that the acquisition of CLARCOR by Parker-Hannifin lessened competition substantially for EI-qualified aviation fuel filtration systems and filter elements in the United States. As explained in the CIS, the divestiture remedy contained in the modified proposed Final Judgment is designed to eliminate the likely anticompetitive effects of this acquisition by requiring the divestiture of the Facet Filtration Business, as that term is defined in the modified proposed Final Judgment (the “Divestiture Assets”).

The public, including affected competitors and customers, has had the opportunity to comment on the terms of the modified proposed Final Judgment as required by law, and no comments have been submitted. There has been no showing that the proposed settlement constitutes an abuse of the United States’ discretion or that it is not within the zone of settlements consistent with the public interest.

V. CONCLUSION

For the reasons set forth in this Motion and in the CIS, the Court should find that entry of the modified proposed Final Judgment is in the public interest and should enter the modified proposed Final Judgment without further hearings. Accordingly, the United States respectfully

requests that the modified proposed Final Judgment, attached as Exhibit A, be entered as soon as possible.

Dated: April 26, 2018

Respectfully submitted,

/s/
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