

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

UNITED STATES OF AMERICA

*Plaintiff,*

v.

AMCOR, LTD

and

BEMIS COMPANY, INC.

*Defendants.*

Civil Action No.: 1:19-CV-01592-TNM

**PLAINTIFF UNITED STATES' UNOPPOSED MOTION AND MEMORANDUM IN  
SUPPORT OF ENTERING THE PROPOSED FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C.

§§ 16(b)-(h) ("APPA"), Plaintiff United States of America ("United States") moves for entry of the proposed Final Judgment filed in this civil antitrust proceeding on May 30, 2019 (attached as Exhibit 1).

The proposed Final Judgment may be entered at this time without further proceedings if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement ("CIS") filed by the United States on June 14, 2019 (Dkt. # 15) explains why entry of the proposed Final Judgment is in the public interest. With this motion, the United States is also filing a Certificate of Compliance (attached as Exhibit 2) showing that the parties have complied with all applicable provisions of the APPA and certifying that the 60-day statutory public comment period has expired.

## **I. Background**

On May 30, 2019, the United States filed a civil antitrust Complaint seeking to enjoin the proposed acquisition of Bemis Company, Inc. (“Bemis”) by Amcor Limited (“Amcor”). The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition in the development, production, and sale of heat-seal coated medical-grade Tyvek (“coated Tyvek”), heat-seal coated medical-grade paper (“coated paper”), and heat-seal coated Tyvek die-cut lids (“die-cut lids”), in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition likely would result in higher prices and lower-quality medical flexible packaging products.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order (“Hold Separate”) and a proposed Final Judgment; on June 14, 2019, the United States also filed a CIS that describes how the Final Judgment is designed to remedy the likely anticompetitive effects of the proposed acquisition. The Hold Separate, which was signed by the Court on June 4, 2019, provides that the proposed Final Judgment may be entered by the Court once the requirements of the APPA have been met. 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 Final Judgment and to punish violations thereof.

## **II. The United States Respectfully Requests the Court to Enter the Final Judgment**

### **A. The requirements of the APPA have been satisfied**

The APPA requires a 60-day period for the submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the proposed Final Judgment and the CIS with the Court on May 30, 2019 and June 14, 2019, respectively; published the proposed Final Judgment and CIS in the *Federal Register* on

June 26, 2019, *see* 84 Fed. Reg. 30223; and had summaries 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, published in *The Washington Post* for seven consecutive days on June 2-8, 2019. The 60-day period for public comments ended on August 26, 2019. The United States received no comments relating to the proposed Final Judgment. Thus, all publication requirements necessary under the APPA have been satisfied. The Certification of Compliance filed with this Motion and Memorandum states that all the requirements of the APPA have been satisfied. It is now appropriate for the Court to enter the proposed Final Judgment if it finds that it is in the public interest pursuant to 15 U.S.C. § 16(e).

**B. Standard of judicial review under the APPA**

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether 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), (B). The Court can make the public-interest determination based on the CIS alone. Section 16(e)(2) of the APPA states that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit

anyone to intervene.” 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.

**C. Entry of the proposed Final Judgment is in the public interest**

As described above, the United States alleged in its Complaint that the acquisition of Bemis by Amcor likely would substantially lessen competition in the development, production, and sale of the specified medical flexible packaging products in the United States. As explained in the CIS, the proposed Final Judgment is designed to eliminate the likely anticompetitive effects of this acquisition by requiring Amcor to divest its Ashland, Massachusetts, Milwaukee, Wisconsin, and Madison, Wisconsin facilities, along with certain tangible and intangible assets, to Tekni-Plex, Inc., or an alternative acquirer acceptable to the United States. Amcor met this obligation by completing the divestiture to Tekni-Plex, Inc., on June 17, 2019.

The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment, 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.

**III. Conclusion**

For the reasons set forth in this Motion and Memorandum and the CIS, the United States respectfully requests that the Court find that the proposed Final Judgment is in the public interest and be entered at this time.

Dated: September 11, 2019

Respectfully Submitted,

/s/ Rebecca Valentine  
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**CERTIFICATE OF SERVICE**

I, Rebecca Valentine, hereby certify that on September 11, 2019, I caused a copy of the foregoing to be served upon Defendants Amcor Ltd. and Bemis Company, Inc. by filing the document with the court's electronic-filing system, which will send electronic notice to the following registered users:

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