

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

WIENERBERGER AG,

GENERAL SHALE BRICK, INC.,

BORAL LIMITED,

LSF9 STARDUST SUPER HOLDINGS,
L.P.,

and,

MERIDIAN BRICK LLC,

Defendants.

Case No. 1-21-cv-02555-CRC

**UNITED STATES' UNOPPOSED MOTION AND MEMORANDUM
IN SUPPORT OF ENTRY OF FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), the United States of America (“United States”) moves the Court to enter the Amended Proposed Final Judgment filed in this civil antitrust proceeding on November 12, 2021 (Dkt. No. 11-1) (attached as Exhibit A).

The Amended 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 in this matter on October 19, 2021 (Dkt. No. 9), explains why entry of the proposed Final Judgment is in the public interest. The United States is

also filing a Certificate of Compliance (attached as Exhibit B) 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 October 1, 2021, the United States filed a civil antitrust Complaint seeking to enjoin the proposed acquisition of Meridian Brick LLC (“Meridian”) by General Shale Brick, Inc. (“General Shale”). The Complaint alleges that the likely effect of this transaction would be to substantially lessen competition in the market for the design, manufacture, and sale of residential bricks 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, lower quality, less favorable contractual terms for customers, and reduced research and development efforts that would otherwise lead to innovative and high-quality products.

At the same time the Complaint was filed, the United States also filed a proposed Final Judgment and an Asset Preservation Stipulation and Order (“Stipulation and Order”). The United States filed a CIS on October 19, 2021, describing the events giving rise to the alleged violation and the proposed Final Judgment. The Stipulation and Order, which was agreed to by the parties and which was entered by the Court on October 5, 2021 (Dkt. No. 7), provides that the proposed Final Judgment may be entered by the Court once the requirements of the APPA have been met. The proposed Final Judgment requires Defendants to divest certain assets to RemSom, LLC.

On November 12, 2021, The United States filed a Joint Notice of Amended Proposed Final Judgment (the “Joint Notice”) (Dkt. No. 11), attaching an Amended Proposed Final Judgment as Exhibit 1 (Dkt. No. 11-1). The Amended Proposed Final Judgment addresses a

clarification to the original proposed Final Judgment relating to the list of required divested assets. The Amended Proposed Final Judgment is identical in all respects to the original proposed Final Judgment except for the deletion from Appendix A of the Wingo Mine Lease from the list of real property assets required to be divested, which has been made for the purpose of furthering the competitive position and financial viability of the Divestiture Assets.

Entry of the 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 Certificate of Compliance filed with this Motion and Memorandum states that all the requirements of the APPA have been satisfied. In particular, 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 October 1, 2021 and October 19, 2021, respectively; published the proposed Final Judgment and CIS in the *Federal Register* on October 25, 2021 (*see* 86 Fed. Reg. 58925 (2021)); and caused a summary of the terms of the proposed Final Judgment and the CIS, along with directions for the submission of written comments, to be published in *The Washington Post*, *The Birmingham News*, *The Indy Star*, and *The Tennessean* for seven days during the period October 24, 2021 to November 7, 2021. The public comment period concluded on January 6, 2022, and the United States did not receive any comments.

III. STANDARD OF JUDICIAL REVIEW

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, in accordance with the statute as amended in 2004, “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). 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.” 15 U.S.C. § 16(e)(2). In its CIS, the United States explained the meaning and the proper application of the public interest standard under the APPA to this case and now incorporates those statements by reference.

IV. ENTRY OF THE AMENDED PROPOSED FINAL JUDGEMENT IS IN THE PUBLIC INTEREST

The United States alleged in its Complaint that the acquisition of Meridian by General Shale would substantially lessen competition in the United States for the design, manufacture, and sale of residential bricks in violation of Section 7 of the Clayton Act. As explained in the CIS, the Amended Proposed Final Judgment is designed to eliminate the likely anticompetitive effects of the acquisition alleged by the United States by requiring General Shale to divest

certain assets to RemSom, LLC. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment, and no comments were submitted. As explained in the CIS, entry of the Amended Proposed Final Judgment is in the public interest.

V. CONCLUSION

For the reasons set forth in this Motion and Memorandum and in the CIS, the United States respectfully requests that the Court find that the Amended Proposed Final Judgment is in the public interest and enter the proposed Final Judgment.

Dated: January 31, 2022

Respectfully submitted,

/s/

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