UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, and STATE OF CALIFORNIA, *Plaintiffs*, v. TAIHEIYO CEMENT CORPORATION, CALPORTLAND COMPANY, and VULCAN MATERIALS COMPANY, *Defendants*.	Case No. 1:26-cv-01783 Hon. Colleen Kollar-Kotelly

COMPETITIVE IMPACT STATEMENT

In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (the "APPA" or "Tunney Act"), the United States of America files this Competitive Impact Statement related to the proposed Final Judgment filed in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On October 27, 2025, Taiheyo Cement Corporation ("Taiheyo") and CalPortland Company ("CalPortland") entered into a binding commitment to acquire the California ready-mix concrete assets of Vulcan Materials Company ("Vulcan") for approximately $712 million. The United States and the State of California filed a civil antitrust Complaint on May 21, 2026, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition may be to substantially lessen competition for the production, distribution, and sale of ready-mix concrete in San Diego, County California in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the United States and the State of California filed a proposed Final Judgment and an Asset Preservation and Hold Separate Stipulation and Order ("Stipulation and Order"), which are designed to address the loss of competition alleged in the Complaint.

Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest three ready-mix concrete production facilities in San Diego County to Holliday Rock Co., Inc. ("Holliday Rock"). The three production facilities are CalPortland's facilities in Escondido and Oceanside, California and Vulcan's facility in Lakeside, California. CalPortland will also sell fifteen ready-mix concrete trucks to Holliday Rock and other associated assets.

Under the terms of the Stipulation and Order, Defendants must take certain steps to operate, preserve, and maintain the full economic viability, marketability, and competitiveness of the assets that must be divested. In addition, management, sales, and operations of the assets that must be divested must be held entirely separate, distinct and apart from Defendants' other operations. The purpose of these terms in the Stipulation and Order is to ensure that competition is maintained during the pendency of the required divestiture. On May 27, 2026, the Court entered the Stipulation and Order.

The United States, the State of California, and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. 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 proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

Defendant Taiheiyo is a Japanese corporation with headquarters in Tokyo, Japan. Taiheiyo produces and sells construction materials and mineral resources, such as cement, ready-mix concrete, and aggregates, in several countries, including the United States. Taiheiyo operates in the United States through its subsidiary CalPortland. Taiheiyo reported total revenues of more than $5.5 billion for fiscal year 2025.

Defendant CalPortland is a privately held, wholly-owned indirect subsidiary of Taiheiyo. It is incorporated in California with headquarters in Las Vegas, Nevada. CalPortland is one of the largest suppliers of construction materials, including cement, ready-mix concrete, aggregate, asphalt, and construction materials, in the western United States and Canada. In the United States, CalPortland has operations in California, Washington, Oregon, Nevada, Arizona, and Alaska. In California, CalPortland owns cement, ready-mix concrete, asphalt, and aggregate operations.

Defendant Vulcan is incorporated in New Jersey with headquarters in Birmingham, Alabama. Vulcan is one of the largest producers of construction materials in the United States, with operations in 22 states and the District of Columbia. Vulcan is also the largest producer of aggregate in the United States. Vulcan has ready-mix concrete operations in five states and the District of Columbia and asphalt operations in six states. In California, Vulcan owns aggregate, ready-mix concrete, and asphalt operations. In 2025, Vulcan reported total revenues of approximately $7.9 billion.

On October 27, 2025, CalPortland agreed to acquire Vulcan's competing ready-mix concrete assets in California, including in San Diego County, for approximately $712 million under the terms of an asset purchase agreement.

B. The Competitive Effects of the Transaction

The Complaint alleges that the transaction would result in anticompetitive effects in the market for the production, distribution, and sale of ready-mix concrete in San Diego County, California. Ready-mix concrete is a building material made up of a combination of cement, fine and coarse aggregate (i.e., crushed stone, gravel, and sand), small amounts of chemical additives, and water. The amount of cement added to a concrete mixture determines its strength, which is measured in pounds per square inch ("psi"). To ensure structural integrity, durability, and workability for each particular project, ready-mix concrete suppliers custom produce the concrete for each project according to the specifications supplied by the customer. Ready-mix concrete with higher psi ratings is typically used for large infrastructure projects, such as highways and bridges, and large buildings, while ready-mix concrete with lower psi ratings is often used for residential and curb-and-gutter construction projects.

Because customer needs can vary significantly from project to project, ready-mix concrete is typically sold pursuant to bids, for which customers provide extensive specifications regarding, among other things, the amount of concrete, the various strengths of concrete, and the size and timing of the concrete pours.

A supplier who wins a bid makes the ready-mix concrete at production facilities called batch plants and delivers the concrete to the customer. A batch plant measures the precise amount of dry input products needed to manufacture a given type of concrete. The mixture is then dumped into a rotating drum mounted on a heavy-duty truck. Immediately before the truck departs the plant, a measured amount of water is added. Once the water hits the dry mixture, an irreversible chemical reaction is triggered causing the product to begin to set into a rigid building substance. The concrete components are mixed by the rotating drum while the truck is being driven to the job site. At the job site, the concrete is poured directly from the truck onto the project. The rotating drums prevent the concrete from hardening during the travel from the plant to the project site.

Because concrete begins to set while being driven to the job site, it is highly perishable. Contractors and state departments of transportation typically limit the time concrete can spend in a truck to 90 minutes or less. This time may be even shorter depending on weather conditions. This time is measured from the moment the water hits the dry concrete inputs in the truck until the concrete is poured out of the truck. If the concrete is not poured within this 90-minute window, the wet mix hardens and is rendered unusable. Because of this 90-minute window, contractors and state departments of transportation typically allow only a portion—often only 30 minutes—to be consumed by driving time. If the concrete is driven for a longer period of time, there may be insufficient time for the concrete to be completely poured onto the project within the 90-minute window.

As ready-mix concrete is hauled greater distances, the increased transportation costs diminish the profitability of a load of concrete. For these reasons, ready-mix concrete suppliers attempt to stay close to their batch plants and ready-mix concrete customers require local suppliers.

Depending on the project, ready-mix concrete customers may have varying needs, including the mix and psi specifications, the volume needed, the delivery conditions, and the quality of the product and service. Not all suppliers of ready-mix concrete can satisfy customers’ needs for every kind of project. For example, servicing certain types of large projects, such as bigger infrastructure projects and commercial buildings, requires ready-mix concrete suppliers to be able to provide: (a) a large number of cubic yards of concrete; (b) large daily pours of concrete, which require the concrete supplier to schedule trucks to arrive continuously at a project; (c) concrete having multiple psi specifications; (d) proven concrete mix designs; and (e) testing and quality control procedures to ensure the concrete meets project engineering specifications.

Contractors building large projects carefully select suppliers to minimize the chances of problems with concrete. If concrete is defective because it does not meet the project specifications or the concrete is not poured continuously, the customer may suffer substantial direct and consequential losses. Customers can also suffer substantial financial and reputational harm from delivery delays due to worker downtime and equipment and project delays.

Purchasers of ready-mix concrete for large projects require that their suppliers have: (a) multiple ready-mix concrete plants in a geographic area; (b) the ability to produce large amounts of concrete with multiple specifications; (c) proven concrete mix designs; (d) a large number of concrete trucks; (e) a sizeable and well-trained workforce; (f) the demonstrated ability to service such a large project; and (g) considerable financial backing to remedy any problems relating to defective concrete.

Each large project is bid separately and ready-mix concrete suppliers can identify the specific market conditions that apply to each large project, including the number of competitors that potentially could service the project’s requirements. Ready-mix concrete suppliers can and do charge different prices, net of costs, to customers based on the particular project’s requirements and the market conditions.

1. Relevant Markets

a. Relevant Product Market

As alleged in the Complaint, the production, distribution, and sale of ready-mix concrete is a relevant product market. Ready-mix concrete is unique because it is pliable when freshly mixed, can be molded into a variety of forms, and is strong and permanent when hardened. For many building applications, customers will not substitute other building materials, such as steel, wood, or asphalt, for ready-mix concrete. Steel is often not a substitute for ready-mix concrete because it cannot be poured and formed into smooth, regular planes. Wood is often not a substitute because it does not have the structural strength to support heavy loads. Asphalt is often not a substitute because it cannot be used for the structural portions of bridges, cannot be used for buildings, and, for certain applications, cannot be used for highways.

A small but significant and non-transitory increase in the price of ready-mix concrete would not cause customers to substitute another building material in sufficient quantities with sufficient frequency to make such a price increase unprofitable. Accordingly, the production, distribution, and sale of ready-mix concrete is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

b. Relevant Geographic Market

As alleged in the Complaint, ready-mix concrete is most often bid on a project-by-project basis. For these projects, ready-mix concrete suppliers can identify the specific market conditions that apply to each customer's project, including the number of competitors that potentially could service the location of the project. Ready-mix concrete suppliers can target specific customers for a price increase based on the particular location of a project and the number and capabilities of rivals that can service that customer.

The ready-mix concrete purchasers that are potentially affected by this acquisition are located in San Diego County. Due to the location and transportation constraints described above, these customers typically cannot turn to suppliers outside this area for their ready-mix concrete needs. The purchasers in San Diego County are similarly situated with respect to the competitive impact of this acquisition and can therefore be aggregated for analytical convenience.

Ready-mix concrete is perishable and the cost of transporting it is high compared to the value of the product. Thus, depending on the size of a metropolitan area and typical traffic conditions within that area, the distance concrete can reasonably be transported is generally limited to a metropolitan area or, in many cases, only a portion of that area. This is particularly true for large projects, such as highways, bridges, and high-rise buildings.

As the Complaint alleges, in San Diego County, the suppliers with the ability to bid on ready-mix concrete projects, and particularly ready-mix concrete for large projects, are most often those with plants located within 30 minutes, and to a lesser extent 60 minutes, of driving time to the project site. This timeframe accounts for unpredictable traffic and other unforeseen delays that may arise on a project site. Accordingly, the production, distribution, and sale of ready-mix concrete to customers in San Diego County is a relevant market within the meaning of Section 7 of the Clayton Act. The producers that participate in this market are those that are also located in San Diego County.

2. Anticompetitive Effects

As alleged in the Complaint, the proposed acquisition is likely to substantially lessen head-to-head competition in the production, distribution, and sale of ready-mix concrete in San Diego County. In San Diego County, CalPortland and Vulcan are two of the largest suppliers of ready-mix concrete and two of only a small number of suppliers that can supply ready-mix concrete to customers with large projects.

Combined, Cal Portland and Vulcan have a share of over 50 percent in the market for ready-mix concrete in San Diego County. The market for ready-mix concrete is already highly concentrated and, as evidenced by the parties' combined share, would be significantly more concentrated after the proposed acquisition.

CalPortland and Vulcan compete directly against one another in San Diego County to provide ready-mix concrete to customers. Price competition between CalPortland and Vulcan in the production, distribution, and sale of ready-mix concrete has benefitted customers. CalPortland and Vulcan also vie to win customers' business by offering quality products, reliable delivery, and superior customer support.

As alleged in the Complaint, CalPortland's proposed acquisition of Vulcan's ready-mix concrete assets in San Diego County would eliminate the competition between them and its benefits to customers. The proposed acquisition would substantially increase the likelihood that CalPortland would unilaterally increase the price of ready-mix concrete to a significant number of customers. The proposed acquisition would also substantially increase the likelihood that CalPortland would reduce the quality of its products or its service. The presence of other ready-mix concrete suppliers would not be sufficient to constrain a unilateral exercise of market power by CalPortland after the proposed acquisition.

In addition, as the Complaint alleges, customers that require ready-mix concrete for use in large projects may be more severely affected by the proposed acquisition. The number of competitors that could constrain CalPortland post-acquisition from raising prices for those customers is smaller than the total number of ready-mix concrete suppliers because it is limited to companies that meet the requirements imposed by customers for large ready-mix concrete projects.

Further, as alleged in the Complaint, the elimination of CalPortland and Vulcan as independent competitors in the production, distribution, and sale of ready-mix concrete is likely to facilitate anticompetitive coordination among the remaining producers in bidding to customers in the relevant geographic market. Suppliers in this industry have access to information about competitors' output, capacity, and costs. Given these market conditions, eliminating an important ready-mix concrete supplier is likely to further increase the ability of the remaining competitors to successfully coordinate, reducing the benefits of competition to consumers.

In sum, as alleged in the Complaint, after the proposed acquisition, CalPortland would likely have the incentive and ability to profitably raise prices and reduce the product and service quality of ready-mix concrete in San Diego County. The proposed acquisition would likely also facilitate anticompetitive coordination among ready-mix concrete suppliers in San Diego County, which also likely would result in higher prices and other anticompetitive effects. The proposed acquisition, therefore, may substantially lessen competition in the markets for ready-mix concrete in San Diego County in violation of Section 7 of the Clayton Act.

3. Absence of Countervailing Factors

As alleged in the Complaint, entry of new competitors into the market for the production, distribution, and sale of ready-mix concrete to customers in San Diego County will not be timely, likely, or sufficient to prevent the loss of competition that would result from CalPortland's acquisition of Vulcan's California ready-mix concrete operations.

Opening a ready-mix concrete batch plant in a metropolitan area is difficult and time-consuming due to the need to acquire the land on which to build a batch plant. The location of a batch plant is very important because of the perishability of the ready-mix concrete. Finding the appropriate site for such a plant close enough to projects is difficult, because in metropolitan areas such land is frequently already utilized or does not have the appropriate zoning. Further, obtaining the land-use permits or zoning variances and necessary environmental permits is difficult, costly, and time consuming. In addition to building the new batch plant, an entrant would also have to secure sources of cement and aggregate, which are inputs into ready-mix concrete.

Successful entry or expansion into the production, distribution, and sale of ready-mix concrete for customers with large projects is even more difficult, time-consuming, and costly. To be able to bid on large projects, it is not enough simply to be able to produce ready-mix concrete. To bid on these large projects, a new entrant or an existing producer must have multiple ready-mix concrete plants in a geographic area, the ability to produce large amounts of concrete with multiple specifications, backup plants, a large number of concrete trucks, proven mix designs, a sizeable and well-trained workforce, the demonstrated ability and reputation to be able to service such a large project, and considerable financial backing to remedy any problems relating to defective concrete.

As alleged in the Complaint, as a result of these high barriers, entry into the market for the production, distribution, and sale of ready-mix concrete to purchasers in San Diego County would not be timely, likely, or sufficient to defeat the substantial lessening of competition that would likely result from CalPortland's acquisition of Vulcan's ready-mix concrete operations in California.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The relief required by the proposed Final Judgment will remedy a substantial portion of the competition that would be lost as a result of CalPortland's proposed acquisition of Vulcan's California ready-mix concrete operations. The relief required will establish an independent and economically viable competitor in the market for the production, distribution, and sale of ready-mix concrete in San Diego County, California. Section IV of the proposed Final Judgment requires Defendants, within 15 calendar days after the entry of the Stipulation and Order by the Court, to divest the divestiture assets described below to Holliday Rock or an alternative acquirer acceptable to the United States, in its sole discretion, after consultation with the State of California. The assets must be divested in such a way as to satisfy the United States, in its sole discretion, after consultation with the State of California, that the assets can and will be operated by the acquirer as a viable, ongoing business that can compete effectively in the production, distribution, and sale of ready-mix concrete. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with the acquirer.

A. Divestiture Assets

The assets Defendants are required to divest to Holliday Rock pursuant to the proposed Final Judgement are: (1) the real property and CalPortland's ready-mix concrete plant in Escondido, California; (2) CalPortland's ready-mix concrete plant in Oceanside, California; (3) a leasehold interest, that will be in effect during the entire period of the Final Judgment, in Vulcan's ready-mix concrete plant in Lakeside, California; (4) leasehold interests, that will be in effect during the entire period of the Final Judgment, in the real property on which the Oceanside Plant and Lakeside Plant are located; (5) fifteen CalPortland ready-mix concrete trucks servicing the Escondido Plant and the Oceanside Plant as of date of the entry of the Asset Preservation and

Hold Separate Stipulation and Order in this matter; and (6) certain licenses, permits, and records relating to the divested plants. If the acquirer of the divestiture assets is not Holliday Rock, then additional assets are required to be divested at the acquirer's option. Those additional assets include additional real property and leasehold interests relating to the divested plants and tangible personal property, contracts, customer relationships, records, intellectual property, and other intangible property that is utilized by or related to the divested ready-mix concrete plants. The definition of the divestiture assets was structured in this way to ensure that any acquirer of the divestiture assets would have all it needs to be a strong competitor in the market for the production, distribution, and sale of ready-mix concrete. Holliday Rock already has some of the necessary assets and expertise in the production, distribution, and sale of ready-mix concrete in California and therefore does not need any assets beyond those enumerated in (1) through (6) above.

B. Supply and Transition Services Agreements

Paragraph IV(M) of the proposed Final Judgment requires Vulcan, at the acquirer's option, and subject to approval by the United States in its sole discretion, to enter into a supply contract or contracts for aggregate sufficient to meet the acquirer's needs for a period of up to 12 months. The acquirer may terminate the supply contract, or any portion of it, without cost or penalty at any time upon 30 calendar days' written notice to Vulcan. At the option of the acquirer, subject to approval by the United States in its sole discretion, Vulcan must enter into one or more extensions of any such contracts for a total of up to an additional 180 calendar days. Any amendments to or modifications of any provisions of a supply contract are subject to approval by the United States in its sole discretion. This provision will help to ensure that the acquirer will not face disruption to its supply of aggregate during an important transitional period.

The proposed Final Judgment requires Defendants to provide certain transition services to maintain the viability and competitiveness of the divestiture assets during the transition to the acquirer if the divestiture is made to an acquirer other than Holliday Rock. Paragraph IV(N) of the proposed Final Judgment requires Defendants, at the acquirer's option, to enter into a transition services agreement for back office, human resources, accounting, employee health and safety, and information technology services and support for a period of up to six months. The acquirer may terminate the transition services agreement, or any portion of it, without cost or penalty at any time upon commercially reasonable notice. This paragraph further provides that at the option of the acquirer, subject to approval by the United States in its sole discretion, Defendants must enter into one or more extensions of any such contracts for a total of up to an additional 90 calendar days. Any amendments to or modifications of any provisions of a transition services agreement are subject to approval by the United States in its sole discretion. Paragraph IV(N) also provides that employees of Defendants tasked with supporting this agreement must not share any competitively sensitive information of the acquirer with any other employee of Defendants, unless such sharing is for the sole purpose of providing transition services to the acquirer.

C. Other Provisions

Paragraph IV(B) of the proposed Final Judgment will facilitate the transfer to the acquirer of those customers and other contractual relationships that are included within the divestiture assets. For those contracts and customers divested, Defendants must transfer all contracts, agreements, and relationships to the acquirer and must make best efforts to assign, subcontract, or otherwise transfer contracts or agreements that require the consent of another party before assignment, subcontracting, or other transfer.

The proposed Final Judgment contains provisions intended to facilitate the acquirer's efforts to hire certain employees. Specifically, Paragraph IV(I) of the proposed Final Judgment requires Defendants to provide the acquirer and the United States and the State of California with organization charts and information relating to these employees and to make them available for interviews. It also provides that Defendants must not interfere with any negotiations by the acquirer to hire these employees. In addition, for employees who elect employment with the acquirer, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, provide any pay pro rata, provide all compensation and benefits that those employees have fully or partially accrued, and provide all other benefits that the employees would generally be provided had those employees continued employment with Defendants, including but not limited to any retention bonuses or payments. This provision further provides that for a period of six months from the date of the divestiture, Defendants may not solicit to re-hire any of those employees who were hired by the acquirer within three months of the date of the divestiture unless an employee is terminated or laid off by the acquirer or the acquirer agrees in writing that Defendants may solicit to hire that individual. In addition, Paragraph IV(J) requires Defendants to use their best efforts to assist the acquirer in interviewing and hiring at least one salesperson with existing responsibility relating to the sale of ready-mix concrete in San Diego County.

Section XI of the proposed Final Judgment requires CalPortland and Taiheiyo to notify the United States and the State of California in advance of acquiring, directly or indirectly, in a transaction that would not otherwise be reportable under the Hart-Scott-Rodino Antitrust

Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), any financial or management interest in any plant or facility that produces ready-mix concrete during the term of this Final Judgment in the following California counties: Alameda, Contra Costa, El Dorado, Imperial, Marin, Napa, Riverside, Sacramento, San Diego, San Francisco, San Mateo, Santa Clara, Solano, Sonoma, and Yolo. Pursuant to the proposed Final Judgment, CalPortland and Taiheiyo must notify the United States and the State of California of such acquisitions as it would for a required HSR Act filing, as specified in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations. The proposed Final Judgment further provides for waiting periods and opportunities for the United States and the State of California to obtain additional information analogous to the provisions of the HSR Act before such acquisitions can be consummated.

If Defendants do not accomplish the divestiture within the period prescribed in Paragraph IV(A) of the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that Defendants must pay all costs and expenses of the trustee. The divestiture trustee's commission must be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After the divestiture trustee's appointment becomes effective, the trustee must provide monthly reports to the United States and the State of California setting forth his or her efforts to accomplish the divestiture. If the divestiture has not been accomplished within 180 calendar days of the divestiture trustee's appointment, the United States may make recommendations to the Court, which may enter such orders as appropriate, in order to carry out the purpose of the Final Judgment, including by extending the trust or the term of the divestiture trustee's appointment.

The proposed Final Judgment also contains provisions designed to promote compliance with and make enforcement of the Final Judgment as effective as possible. Section XII prohibits Taiheiyo and CalPortland, during the term of the Final Judgment, from reacquiring any part of, any interest in, or any form of control over the divestiture assets.

Paragraph XV(A) provides that if, at any time during the five-year period following entry of the Final Judgment, the United States determines in its sole discretion that the Final Judgment has failed to fully redress the violations alleged in the Complaint, then the United States may re-open this proceeding to seek additional relief, including the divestiture of additional assets. The Court may order such additional relief if it finds by a preponderance of the evidence that there is a reasonable probability that the proposed Final Judgment did not fully redress the violations alleged in the Complaint.

Paragraph XV(B) provides that the United States retains and reserves all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Paragraph XV(C) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment is intended to address much of the competition that the United States and the State of California allege would be lost as a result of the transaction. Defendants agree that they will abide by the proposed Final Judgment and that they may be held in contempt of Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XV(D) provides that if the Court finds in an enforcement proceeding that a Defendant has violated the Final Judgment, the United States may apply to the Court for an extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XV(D) provides that, in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, the Defendant must reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with that effort to enforce the Final Judgment, including the investigation of the potential violation.

Paragraph XV(E) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XVI of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon motion by the United States to the Court and notice by the United States to Defendants and the State of California that the divestiture has been completed and continuation of the Final Judgment is no longer necessary or in the public interest.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

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 neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

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

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register, or within 60 days of the first date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the Federal Register unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to:

Soyoung Choe
Acting Chief, Defense Industrials, and Aerospace Section
Antitrust Division
United States Department of Justice
450 Fifth St. NW, Suite 8700
Washington, DC 20530
ATR.Public-Comments-Tunney-Act-MB@usdoj.gov

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against CalPortland's proposed acquisition of Vulcan's ready-mix concrete assets in California. The United States is satisfied, however, that the relief required by the proposed Final Judgment will substantially address the anticompetitive effects alleged in the Complaint, preserving competition for San Diego County. Thus, the proposed Final Judgment achieves substantially all of the relief the United States would have obtained through litigation but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

Under the Clayton Act and APPA, proposed Final Judgments, or "consent decrees," in antitrust cases brought by the United States are subject to a 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, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a proposed Final Judgment is limited and only

inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable").

As the U.S. 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 in the government's Complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not "make de novo determination of facts and issues." *United States v. W. Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead, "[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General." *W. Elec. Co.*, 993 F.2d at 1577 (quotation marks omitted). "The court should also bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is the one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest." *Microsoft*, 56 F.3d at 1460 (quotation marks omitted); *see also United States v. Deutsche Telekom AG*, No. 19-2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would "have enormous practical consequences for the government's ability to negotiate future settlements," contrary to congressional intent. *Microsoft*, 56 F.3d at 1456. "The Tunney Act was not intended to create a disincentive to the use of the consent decree." *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g.*, *id.* at 1461 (recognizing courts should give "due respect to the Justice Department's . . . view of the nature of its case"); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) ("In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." (internal citations omitted)); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting "the deferential review to which the government's proposed remedy is accorded"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) ("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 view of the nature of the case."). The ultimate question is whether "the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft*, 56 F.3d at 1461 (*quoting W. Elec. Co.*, 900 F.2d at 309).

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." *Id.* at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist.

LEXIS 84787, at *20 ("[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Pub. L. 108-237 § 221, and added the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). "A court can make its public interest determination based on the competitive impact statement and response to public comments alone." *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *Enova Corp.*, 107 F. Supp. 2d at 17).

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.

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Respectfully submitted,

/s/ Christine A. Hill

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