

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

UNITED STATES OF AMERICA

and

STATE OF MARYLAND,

Plaintiffs,

v.

MARTIN MARIETTA MATERIALS, INC.,

LG PANADERO, L.P.,

PANADERO CORP.,

PANADERO AGGREGATES HOLDINGS, LLC,

and

BLUEGRASS MATERIALS COMPANY, LLC,

Defendants.

CASE NO: 1:18-cv-00973-RDM

JUDGE: Randolph D. Moss

MOTION AND MEMORANDUM OF THE UNITED STATES
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” or “Tunney Act”), Plaintiff United States of America (“United States”) moves for entry of the proposed Final Judgment filed in this civil antitrust proceeding on April 25, 2018, a copy of which is attached hereto as Exhibit A. The 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 April 25, 2018

(ECF Docket No. 3) explains why entry of the 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.

I. BACKGROUND

On April 25, 2018, the United States filed a civil antitrust Complaint alleging that the acquisition by Martin Marietta Materials, Inc. ("Martin Marietta") of Panadero Corp. and Panadero Aggregates Holdings, LLC, including Bluegrass Materials Company, LLC ("Bluegrass"), from LG Panadero, L.P., likely would lessen competition substantially in the production and sale of aggregate qualified by the respective states' Departments of Transportation (hereinafter "DOT-Qualified Aggregate") in and immediately around Forsyth and north Fulton County, Georgia, and in and immediately around Washington County, Maryland, 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 also filed a proposed Final Judgment; a Hold Separate Stipulation and Order ("Hold Separate Order"); and a CIS that describes how the proposed Final Judgment is designed to remedy the likely anticompetitive effects of the acquisition. The Hold Separate Order, which was signed by the Court on April 26, 2018, provides that the proposed Final Judgment may be entered by the Court after the completion of the procedures of 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 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 April 25, 2018; published the proposed Final Judgment and CIS in the *Federal Register* on May 4, 2018 (*see* 83 Fed. Reg. 198,222); 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 May 1, 2018 and ending on May 7, 2018. The sixty-day public comment period terminated on July 6, 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 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 the 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 PROPOSED FINAL JUDGMENT IS IN THE PUBLIC INTEREST

As described above, the United States alleged in its Complaint that the acquisition of Bluegrass by Martin Marietta likely would lessen competition substantially in the production and sale of DOT-Qualified Aggregate in and immediately around Forsyth and north Fulton County, Georgia, and in and immediately around Washington County, Maryland. As explained in the CIS, the proposed Final Judgment is designed to eliminate the likely anticompetitive effects of this acquisition by requiring the divestiture of the lease to Martin Marietta's Forsyth quarry and all of the assets related to the quarry (the "Georgia Divestiture Assets") to Midsouth Paving, Inc. ("Midsouth"), or an alternative acquirer acceptable to the United States, and the divestiture of Bluegrass's Beaver Creek Quarry and all of the assets related to the quarry (the "Maryland Divestiture Assets") to an acquirer acceptable to the United States, after consultation with the State of Maryland. Martin Marietta divested the Georgia Divestiture Assets to Midsouth on April 27, 2018. After consultation with the State of Maryland, the United States approved Laurel Sand & Gravel, LLC as the buyer of the Maryland Divestiture Assets, and on June 5, 2018, Martin Marietta divested the Maryland Divestiture Assets to Laurel Sand & Gravel.

The public, including affected competitors and customers, has had the opportunity to comment on the 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 proposed Final Judgment is in the public interest and should enter the Final Judgment without further hearings. Accordingly, the United States respectfully requests that the Final Judgment, attached as Exhibit A, be entered as soon as possible.

Dated: July 16, 2018

Respectfully submitted,

/s/
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