

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRH PLC,

CRH AMERICAS MATERIALS, INC.,

and

POUNDING MILL QUARRY CORPORATION,

Defendants.

CASE NO. 18-cv-1473-DLF

JUDGE: Dabney L. Friedrich

**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, originally filed in this civil antitrust proceeding on June 22, 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. *See* 15 U.S.C. § 16(e). The Competitive Impact Statement (“CIS”) filed on June 22, 2018, and the Response of Plaintiff United States to Public Comment on the Proposed Final Judgment (“Response to Comment”) filed on November 16, 2018, explain why entry of the proposed Final Judgment is in the public interest. The United States also 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 June 22, 2018, the United States filed a civil antitrust Complaint alleging that the acquisition of Pounding Mill Quarry Corporation ("Pounding Mill") by CRH plc and CRH Americas Materials, Inc. (collectively, "CRH") likely would lessen competition substantially in the markets for aggregate and asphalt concrete used for West Virginia Department of Transportation projects in southern West Virginia, 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 June 27, 2018, provides that the proposed Final Judgment may be entered by the Court after the completion of the procedures required by 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 United States has now complied with all of the requirements of the APPA. On June 22, 2018, the United States filed a CIS; the proposed Final Judgment and CIS were published in the *Federal Register* on July 2, 2018 (*see* 83 Fed. Reg. 30956); and 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* and the *Bluefield Daily Herald* for seven days beginning on July 2, 2018, and ending on July 10, 2018. 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). The sixty-day public comment period terminated on September 10, 2018, and the United States received one comment. Pursuant to 15 U.S.C. § 16(d), the United States filed the Response to Comment on November 16, 2018, and published the Response to Comment and the public comment in the *Federal Register* on November 26, 2018. (*See* 83 Fed. Reg. 60446)

Simultaneously with this Motion and Memorandum, the United States is filing a Certificate of Compliance that states that 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).

The Court can make the public interest determination based on the CIS and the Response to Comment 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 the 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. The public has had the opportunity to comment on the proposed Final Judgment as required by law. As explained in the CIS and the Response to Comment, entry of the proposed Final Judgment is in the public interest.

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 Pounding Mill by CRH likely would lessen competition substantially in the markets for aggregate and asphalt concrete used for West Virginia Department of Transportation projects in southern West Virginia. As explained in the CIS and the Response to Comment, the proposed Final Judgment is designed to eliminate the likely anticompetitive effects of this acquisition by requiring the divestiture of Pounding Mill’s Rocky Gap Quarry. The United States approved Salem Stone Corporation as the buyer of that quarry, and on July 2, 2018, CRH completed the divestiture. There has been no showing that the proposed settlement constitutes an abuse of the

United States' discretion or that the settlement is not within the zone of settlements consistent with the public interest.

V. CONCLUSION

For the reasons set forth in this Motion and Memorandum, the CIS, and the Response to Comment, 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 hereto as Exhibit A, be entered as soon as possible.

Dated: November 27, 2018

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

_____/s/_____
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