and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of radio advertising time in the Wichita radio advertising markets. Thus, the proposed Final Judgment would achieve the relief the plaintiff would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the Court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment 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 trail.

15 U.S.C. 16(e).

As the United States Court of Appeals for the District of Columbia Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the plaintiff's Complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[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.'' [1] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States v. BNS, Inc*, 858 F.2d 456, 462 (9th Cir. 1988) (*citing United States v. Bechtel Corp.* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62. Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment therefore should not be reviewed under a standard of whether it is certain to eliminate very anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'' [3]

This is strong and effective relief that should fully address the competitive harm posed by the proposed transaction.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.

Dated: May 12, 1999.

Respectfully submitted,

Karl D. Knutsen,

Attorney, Merger Task Force.

U.S. Department of Justice

Antitrust Division, 1401 H Street, N.W., Washington, D.C. 20530, (202) 514–0976.

Certificate of Service

I, Karl D. Knutsen, of the Antitrust Division of the United States Department of Justice, do hereby certify that true copies of the foregoing Competitive Impact Statement were served this 12th day of May, 1999, by United States mail, to the following:

David J. Laing, Baker & McKenzie, 815 Connecticut Ave. N.W., Washington, D.C. 20006, *Counsel for Triathlon Broadcasting Company*.

Neil W. Imus, Vinson & Elkins, 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20006, *Counsel for Capstar Broadcasting Corporation*

Karl D. Knutsen.

[FR Doc. 99–14896 Filed 6–10–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Imetal, DBK Minerals, Inc., English China Clays, plc, and English China Clays, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Sections 16(b) through (h), that a Complaint, Hold Separate Stipulation and Order, and a proposed Final Judgment were filed with the United States District Court for the District of Columbia in *United States* v. *Imetal, DBK Minerals, Inc., English China Clays, plc, and English China Clays, Inc.*, Civil No. 99–1018 on April 26, 1999. A Competitive Impact Statement was filed on May 24, 1999. The Complaint alleged that the proposed acquisition of English China Clays (''ECC'') by Imetal would violate Section 7 of the Clayton Act, 15 U.S.C. Section 18, in the markets for water-washed and calcined kaolin and fused silica in the United States and in the

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[1] 119 Cong. Rec. 24598 (1973). *See United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *reprinted in* U.S.C.C.A.N. 6535, 6538.

[2] *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see BNS*, 858 F.2d at 463; *United States v. National Broad. Co.* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. *See also Microsoft* 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '') (citations omitted).

[3] *United States v. American Tel. and Tel Co*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (*quoting Gillette Co.*, 406 F. Supp. at 716 (citations omitted)); *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

market for paper-grade ground calcium carbonate (''GCC'') in the Southeastern United States. The Southeastern U.S. was defined as the thirteen states of North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, Kentucky, Mississippi, Louisiana, Arkansas, Missouri, Texas, and Virginia. The proposed Final Judgment, filed at the same time as the Complaint, requires Imetal, among other things, to: (1) divest production facilities and associated reserves for water-washed and calcined kaolin; (2) sell its interest in Alabama Carbonates, L.P., a joint venture that makes paper-grade GCC, as well as substantial GCC reserves; and (3) sell the fused silica operations of ECC.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies to be implemented by Imetal. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Washington, DC, and at the office of the Clerk of the United States District Court for the District of Columbia, Washington, DC. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Public comment is invited within the statutory 60-day comment period. Such comments and response thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530 (telephone: 202–307–0924).

Constance K. Robinson,

Director of Operations.

United States District Court, District of Columbia

[Civil No: 99–1018]

United States of America, Plaintiff, v. Imetal, DBK Minerals, Inc., English China Clays, PLC and English China Clays, Inc., Defendants.

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. ''Imetal'' means defendant Imetal, a French corporation with its headquarters in Paris, France, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

B. ''ECC'' means defendant English China Clays, plc, a United Kingdom corporation with its headquarters in Reading, England, and its subsidiary, defendant English China Clays, Inc., A Delaware corporation with its headquarters in Roswell, Georgia, and their successors and assigns, and their subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

C. ''DBK'' means DBK Minerals, Inc., a Delaware subsidiary of Imetal, with its headquarters in Dry Branch, Georgia, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

D. ''DBK Plant'' means the kaolin plant of DBK located in Dry Branch, Georgia.

E. ''Kaolin Assets'' means the Sandersville #1 plant of ECC and Kaolin Reserves inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the Sanderville #1 Plant, including research and development activities, and real property containing the Sandersville #1 Plant and the Kaolin Reserves; all rights, titles, and interests, including all fee and leasehold rights, all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site and off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customers lists and credit records; and all other records maintained by Imetal or ECC in connection with the operation of Sandersville #1 Plant and the Kaolin Reserves;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the Sandersville #1 Plant, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how trade secrets, specifications for materials, and quality assurance and control procedures utilized by ECC at the Sandersville #1 Plant.

F. ''DBK Plant Assets'' means the DBK Plant inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin, including calcined kaolin, from the DBK Plant, including research and development activities, and real property containing the DBK Plant, Kaoline Reserves and Calcined Kaolin Reserves; all rights, titles, and interests, including all fee and leasehold rights, all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customers lists and credit records; and all other records maintained by Imetal in connection with the operation of the DBK Plant;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the DBK Plant, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Imetal or DBK at the DBK Plant.

G. ''GCC'' means ground calcium carbonate.

H. ''GCC Assets'' means DBK's interests in Alabama Carbonates, L.P. (''Alabama Carbonates''), a limited partnership between Carbonate Corporation, a subsidiary of Omya, Inc., and Georgia Marble Stone Corporation (''Georgia Marble''), a subsidiary of DBK, located in Sylacauga, Alabama, which manufactures GCC products in slurry form for use in paper production.

I. ''GCC Reserves'' means economically recoverable calcium carbonate stone reserves located in the Sylacauga, Alabama area of a minimum pureness quality suitable for slurry products produced and sold to the paper industry.

J. ''GCC Reserve Assets'' means GCC Reserves in quantities sufficient to ensure that Alabama Carbonates will have available to it 500,000 tons per year of crushed, washed and reduced to size stone suitable to use as feedstock for a period of thirty (30) years. Determination of the amount of GCC Reserves needed to meet this standard shall take into account the amount of any GCC Reserves that any principal or affiliate of Alabama Carbonates (other than the defendants) owns, leases or has an option on, and are available to Alabama Carbonates. In the event that Alabama Carbonates, the purchaser of the GCC Assets, or Georgia Marble's joint venturer in Alabama Carbonates and the seller cannot agree on the amount of GCC Reserves that must be divested to meet the standard set forth above or the fair market value of such reserves, such issue may be submitted to binding arbitration in accordance with Section IX of the Final Judgment in this case.

K. ''Fused Silica Assets'' means the fused silica plant of Minco, Inc. acquired from Minco Acquisition Corp. in 1998, inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused silica; including research and development activities; all rights, titles, and interest, including all fee and leasehold rights; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreement, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Imetal in connection with the operation of the fused silica plant divested;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused silica, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Minco in the production of fused silica.

L. ''Fused Magnesia Assets'' means the fused magnesia plant acquired from Minco Acquisition Corp. in 1998, inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused magnesia; including research and development activities, all rights, titles, and interests, including all fee and leasehold rights; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Minco in connection with the operation of the fused magnesia plant divested;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused magnesia including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Minco in the production of fused magnesia.

M. ''Kaolin Reserves'' means kaolin clay suitable for producing kaolin of minimum pureness quality suitable for products produced and sold to the paper industry and at a location and in quantities and qualities sufficient to ensure the operation and viability of the Kaolin Assets or, if divested pursuant to the Final Judgment in this case, the DBK Plant Assets, at full capacity for a period of twenty (20) years.

N. ''Calcined Kaolin Reserves'' means kaolin clay suitable for producing calcined kaolin of minimum pureness quality suitable for products produced and sold to the paper industry and at a location and in quantities and qualities sufficient to ensure the operation and viability of the Calcined Assets or, if divested pursuant to the Final Judgment in this case, the calcining assets of the DBK Plant Assets, at full capacity for a period of twenty (20) years.

O. ''Calcining Assets'' means a plant or plants with two (2) calciners suitable for producing calcined kaolin sold to the paper industry, other than the calcining facilities in Sandersvillle, Georgia, with a combined capacity of approximately 85,000 to 100,000 tons of calcined kaolin per year, inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling calcined kaolin, including research and development activities; real property containing Calcining Assets and Calcined Kaolin Reserves; all rights, titles and interests including all fee and leasehold rights, all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customers lists and credit records; and all other records maintained by Imetal or ECC in connection with the operation of the Calcining Assets and the Calcined Kaolin Reserves;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling calcined kaolin from the Calcining Assets and the Calcined Kaolin Reserves, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, quality assurance and control procedures utilized by Imetal or ECC at the Calcining Assets.

P. ''Sandersville #1 Plant'' means the water-washed kaolin plant of ECC with a capacity of 850,000 tons annually located in Sandersville, Georgia.

Q. ''ECC Kaolin Business'' means the entire United States water-washed and calcined kaolin business acquired by Imetal from ECC, including the operation of ECC's Sandersville #1 Plant, Sandersville #2 Plant and the Wrens Plant.

R. ''Hold Separate Assets'' means the ECC Kaolin Business, the Fused Silica Assets and the Fused Magnesia Assets collectively.

II. Objectives

The Final Judgment filed in this case is meant to ensure Imetal's prompt divestiture of the Kaolin Assets, Calcining Assets, GCC Assets, GCC Reserve Assets, and Fused Silica Assets for the purposes of creating viable competitors in the development, production and sale of each of these products and to remedy the effects that the United States alleges would otherwise result from Imetal's proposed acquisition of ECC. This Hold Separate Stipulation and Order ensures the timely and complete transfer of these assets and maintains the separation of the ECC and Imetal water-washed kaolin, calcined kaolin, GCC for papermaking, fused silica and fused magnesia businesses as independent, viable competitors until the required divestitures are complete.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

D. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

E. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

V. Hold Separate Provisions

A. Imetal shall preserve, maintain, and operate the Hold Separate Assets as independent competitive businesses, with management, research, development, production, sales and operations of such assets held entirely separate, distinct and apart from those of Imetal. Imetal shall not coordinate its production, marketing or sale of any products with that of any of Judgment. Imetal may, subject to the use of firewalls acceptable to the United States, plan the post-divestiture integration of its DBK and ECC kaolin busineses.

D. Imetal shall provide and maintain sufficient working capital to maintain the Hold Separate Assets as viable, ongoing businesses, consistent with current business plans.

E. Imetal shall provide and maintain sufficient lines and sources of credit to maintain the Hold Separate Assets as viable, ongoing businesses.

F. Imetal shall maintain, on behalf of the Hold Separate Assets, in accordance with sound accounting practices, separate, true and complete financial ledgers, books and records reporting the profit and loss and liabilities of each of the businesses on a monthly and quarterly basis.

G. Imetal shall use all reasonable efforts to maintain and increase the sales of each of the Hold Separate Assets to be divested, such as maintaining at 1998 or previously approved levels for 1999, whichever are higher, internal research and development funding, sales, marketing, and support for the Hold Separate Assets.

H. Imetal shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans, assets that may be required to be divested pursuant to the Final Judgment.

I. Imetal shall preserve the assets that may be required to be divested pursuant to the Final Judgment in a state of repair equal to their state of repair as of the date of this Order, ordinary wear and tear excepted.

J. Except in the ordinary course of business or as is otherwise consistent with this Order, defendants shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employee who, on the date of entry of this Order, works for any of the Hold Separate Assets. Defendants shall not solicit to hire any individual who, on the date of entry of this Order, was an employee of any of the assets to be divested under the Final Judgment.

K. Within ten (10) days of the filing of this Hold Separate Stipulation and Order, defendants shall appoint one or more persons who shall have complete managerial responsibility for the Hold Separate Assets, subject to the provisions of this Order and the Final Judgment, until such time as this Order is terminated. In the event that such manager(s) is unable to perform his or her duties, Imetal shall appoint from the current management of the Hold Separate Assets, subject to the plaintiff's approval, a replacement within ten (10) working days. Should Imetal fail to initially appoint a manager acceptable to the United States, or fail to appoint any replacement required within ten (10) working days, the United States shall appoint the manager.

L. Imetal shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divesture pursuant to the Final Judgment to a suitable purchaser.

M. This Order shall remain in effect as to the ECC Kaolin Business until the divesture of the Kaolin or DBK Plant Assets required by the Final Judgment is complete, or until further Order of the Court. This Order shall remain in effect as to the Fused Silica Assets and Fused Magnesia Assets until the divestiture of the Fused Silica Assets required by the Final Judgment is complete, or until further Order of the Court.

Dated: April 26, 1999.

For Plaintiff United States of America

Patricia G. Chick,

Esquire, D.C. Bar #266403, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20005, (202) 307–0946.

For Defendants Imetal and DBK Minerals, Inc.:

George M. Chester, Jr.,

Esquire, D.C. Bar #238196, James R. Atwood, Esquire, Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C. 20044–7566, (202) 662–6000.

For Defendant English China Clays, Plc and English China Clays, Inc.

William R. Norfolk,

Esquire, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004–2498, (212) 558–4000.

It is ordered by the Court, this ______ day of April, 1999.

____

United States District Judge.

[Civil No.: 99–1018]

United States of America, Plaintiff, v. Imetal, DBK Minerals, Inc., English China Clays, Plc, and English China Clays, Inc., Defendants.

Final Judgment

Whereas, plaintiff, the United States of America, and defendants Imetal (''Imetal''), DBK Minerals, Inc. (''DBK''), English China Clays, plc and English China Clays, Inc. (together ''ECC''), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein; and having consented that this Final Judgment shall settle all claims made by plaintiff in its Complaint filed April 26, 1999;

And whereas, defendants have agreed to bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is, in the event of the acquisition of ECC by Imetal, the prompt and certain divestiture of the identified assets to assure that competition is not substantially lessened;

And whereas, plaintiff requires defendants to make certain divestitures for the purpose of establishing a viable competitor in the water-washed kaolin, calcined kaolin, ground calcium carbonate (''GCC''), and fused silica businesses specified in the Complaint;

And whereas, defendants have represented to the plaintiff that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Definitions

As used in this Final Judgment:

A. ''Imetal'' means defendant Imetal, a French corporation with its headquarters in Paris, France, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

B. ''ECC'' means defendant English China Clays, plc, a United Kingdom corporation with its headquarters in Reading, England, and its subsidiary, defendant English China Clays, Inc., a Delaware corporation with its headquarters in Roswell, Georgia, and their successors and assigns, and their subsidiaries, divisions, groups, affiliates partnerships, joint ventures, directors, officers, managers, agents, and employees.

C. ''DBK'' means DBK Minerals, Inc., a Delaware subsidiary of Imetal, with its headquarters in Dry Branch, Georgia, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

D. ''DBK Plant'' means the kaolin plant of DBK located in Dry Branch, Georgia.

E. ''Kaolin Assets'' means the Sandersville #1 plant of ECC and the Kaolin Reserves inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the Sandersville #1 Plant, including research and development activities, and real property containing the Sandersville #1 Plant and the Kaolin Reserves; all rights, titles, and interests, including all fee and leasehold rights, all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site and off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts agreements, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Imetal or ECC in connection with the operation of the Sandersville #1 Plant and the Kaolin Reserves;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the Sandersville #1 Plant, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by ECC at the Sandersville #1 Plant.

F. ''DBK Plant Assets'' means the DBK Plant inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin, including calcined kaolin, from the DBK Plant, including research and development activities, and real property containing the DBK Plant, Kaolin Reserves and Calcined Kaolin Reserves; all rights titles, and interests, including all fee and leasehold rights, all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customers lists and credit records; and all other records maintained by Imetal in connection with the operation of the DBK Plant;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling kaolin from the DBK Plant, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Imetal or DBK at the DBK Plant.

G. ''GCC'' means ground calcium carbonate.

H. ''GCC Assets'' means DBK's interests in Alabama Carbonates, L.P. (''Alabama Carbonates''), a limited partnership between Carbonate Corporation, a subsidiary of Omya, Inc., and Georgia Marble Stone Corporation (''Georgia Marble''), a subsidiary of DBK, located in Sylacauga, Alabama, which manufactures GCC products in slurry form for use in paper production.

I. '' GCC Reserve'' means economically recoverable calcium carbonate stone reserves located in the Sylacauga, Alabama area of a minimum pureness quality suitable for slurry products produced and sold to the paper industry.

J. ''GCC Reserve Assets'' means GCC Reserves in quantities sufficient to ensure that Alabama Carbonates will have available to it 500,000 tons per year of crushed, washed and reduced to size stone suitable to use as feedstock for a period of thirty (30) years. Determination of the amount of GCC Reserves needed to meet this standard shall take into account the amount of any GCC Reserves that any principal or affiliate of Alabama Carbonates (other than the defendants) owns, leases or has an option on, and are available to Alabama Carbonates. In the event that Alabama Carbonates, the purchaser of the GCC Assets, or Georgia Marble's joint venturer in Alabama Carbonates and the seller cannot agree on the amount of GCC Reserves that must be divested to meet the standard set forth above or the fair market value of such reserves, such issue may be submitted to binding arbitration in accordance with Section IX of this Final Judgment.

K. ''Fused Silica Assets'' means the fused silica plant of Minco, Inc. acquired from Minco Acquisition Corp. In 1998, inclusive of:

(1) All tangible assets in connection with the business of making, having made, using, packaging, distributing, or selling fused silica, including research and development activities; all rights, titles, and interest, including all fee and leasehold rights; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Minco in connection with the operation of the fused silica plant divested;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused silica, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Minco in the production of fused silica.

L. ''Fused Magnesia Assets'' means the fused magnesia plant acquired from Minco Acquisition Corp. in 1998, inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused magnesia, including research and development activities; all rights, titles, and interests, including all fee and leasehold rights; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customer lists and credit records; and all other records maintained by Minco in connection with the operation of the fused magnesia plant divested;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling fused magnesia, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Minco in the production of fused magnesia.

M. ''Kaolin Reserves'' means kaolin clay suitable for producing kaolin of minimum pureness quality suitable for products produced and sold to the paper industry and at a location and in quantities and qualities sufficient to ensure the operation and viability of the Kaolin Assets or, if divested pursuant to this Final Judgment, the DBK Plant Assets, at full capacity for a period of twenty (20) years.

N. ''Calcined Kaolin Reserves'' means kaolin clay suitable for producing calcined kaolin of minimum pureness quality suitable for products produced and sold to the paper industry and at a location and in quantities and qualities sufficient to ensure the operation and viability of the Calcined Assets or, if divested pursuant to this Final Judgment, the calcining assets of the DBK Plant Assets, at full capacity for a period of twenty (20) years.

O. ''Calcining Assets'' means a plant or plants with two (2) calciners suitable for producing calcined kaolin sold to the paper industry, other than the calcining facilities in Sandersville, Georgia, with a combined capacity of approximately 85,000 to 100,000 tons of calcined kaolin per year, inclusive of:

(1) All tangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling calcined kaolin, including research and development activities; real property containing Calcining Assets and Calcined Kaolin Reserves; all rights, titles and interests including all fee and leasehold rights, all manufacturing, person property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations; all contracts, agreements, leases, commitments and understandings; all customers lists and credit records; and all other records maintained by Imetal or ECC in connection with the operation of the Calcining Assets and the Calcined Kaolin Reserves;

(2) All intangible assets used in connection with the business of making, having made, using, packaging, distributing, or selling calcined kaolin from the Calcining Assets and the Calcined Kaolin Reserves, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures utilized by Imetal or ECC at the Calcining Assets.

P. ''Sandersville #1 Plant'' means the water-washed kaolin plant of ECC with a capacity of 850,000 tons annually located in Sandersville, Georgia.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale of all or substantially all of its assets or of lesser business units that include its water-washed kaolin, calcined kaolin, GCC, or fused silica businesses or assets, that the purchaser or purchasers agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of the Hold Separate Stipulation and Order in this case, or within five (5) days after notice of entry of the Final Judgment, whichever is later, to sell the Kaolin Assets or at their option the DBK Plant Assets, the Calcining Assets, the GCC Assets and the Fused Silica Assets as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States in its sole discretion and to sell the GCC Reserve Assets to the purchaser of the GCC Assets, to Georgia Marble's joint venturer in Alabama Carbonates, or to Alabama Carbonates.

B. Defendants are also ordered to enter into, at the option of Alabama Carbonates, a short-term contract to supply Alabama Carbonates with crushed, washed and reduced to size calcium carbonate stone suitable to use as feedstock for slurry products produced and sold to the paper industry in quantities and quality and at terms and conditions substantially similar to those of the existing supply and services agreements between Georgia Marble and Alabama Carbonates and which is acceptable to the United States in its sole discretion. Such contract shall have a term of either three (3) years from the divestiture of the GCC Assets and GCC Reserve Assets or two (2) years from the conclusion of any arbitration permitted by Section IX of this Final Judgment, whichever is longer, and shall be terminable by Alabama Carbonates on six months' notice. The United States, in its sole discretion, may extend the term of the short-term contract for periods of time not to exceed one year in total.

C. Defendants shall use their best efforts to accomplish said divestitures as expeditiously as possible. The United States, in its sole discretion, may extend the time period for any divestitures for an additional period of time not to exceed sixty (60) calendar days.

D. In accomplishing the divestitures ordered by this Final Judgment, defendants shall make known promptly, by usual and customary means, the availability of the Kaolin Assets or at their option the DBK Plant Assets, the Calcining Assets, the GCC Assets, and the Fused Silica Assets. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding these assets customarily provided in a due diligence process, except such information as is subject to attorney-client privilege or attorney work-product privilege. Defendants shall make such information available to the United States at the same time that such information is made available to any other person. In the event that defendants enter into an agreement to negotiate exclusively with a prospective purchaser for the divestiture of any asset to be divested, defendants' obligations to furnish information to other prospective purchasers may be suspended during such period of exclusive negotiations, provided however, that nay such suspension of this obligation shall not affect the time period within which defendants must sell the asset.

E. As customarily provided as part of a due diligence process, defendants shall permit prospective purchasers of the assets to have access to personnel and to make inspection of such assets; access to any and all zoning, building, and other permit documents and information; and access to any and all financial, operational, or other documents and information.

F. Defendants shall not interfere with any negotiations by any purchaser or purchasers to employ any DBK or ECC employee who works at, or whose principal responsibility concerns, any aspect of the Kaolin Assets (or, if appropriate, the DBK Plant Assets), the Calcining Assets, the GCC Assets, the GCC Reserve Assets or the Fused Silica Assets.

G. Defendants shall not take any action, direct or indirect, that would impede in any way the operation of any business connected with the assets to be divested, or take any action, direct or indirect, that would impede the divestiture of any asset.

H. Defendants shall warrant to any and all purchasers of the Kaolin Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets and the Fused Silica Assets that each existing asset will be operational on the date of sale.

I. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, whether by defendants or by trustee appointed pursuant to Section VI of this Final Judgment, shall include the entire Kaolin Assets (or, of appropriate, the DBK Plant Assets), Calcining Assets, GCC Assets, GCC Reserve Assets and Fused Silica Assets, or such other assets as may be substituted or additionally included by the Trustee under Section VI of the Final Judgment. Such divestitures shall be accomplished by selling or otherwise conveying the assets to a purchaser or purchasers in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be used by the purchaser as viable ongoing businesses, engaged in the water-washed kaolin, calcined kaolin for papermaking, GCC for papermaking or fused silica businesses. The divestitures, whether pursuant to Section IV or Section VI of this Final Judgment, shall be made to a purchaser or purchasers who, as demonstrated to the United States' sole satisfaction: (1) has the capability and intent of competing effectively in the water-washed kaolin, calcined kaolin for papermaking, GCC for papermaking or fused silica businesses; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the water-washed kaolin, calcined kaolin for papermaking, GCC for papermaking or fused silica businesses; and (3) is not hindered by the terms of any agreement between the purchaser and defendants which gives defendants the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise interfere with the ability of the purchaser to compete.

J. Defendants shall warrant to the purchaser of the Kaolin Assets, the Calcining Assets, the GCC Assets, the GCC Reserve Assets, the Fused Silica Assets and the Fused Magnesia Assets that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that with respect to the Kaolin Assets, the Calcining Assets, the GCC Assets, the GCC Reserve Assets, the Fused Silica Assets and the Fused Magnesia Assets, defendants will not undertake, directly or indirectly, following the divestiture of any such asset, any challenges to the environmental, zoning, or other permits pertaining to the operation of the assets.

K. In the event that there is a divestiture by either the defendants or the trustee of the DBK Plant Assets, including at least two calciners with capacity of approximately 85,000 to 100,000 tons of calcined kaolin per year, such divestiture shall satisfy the requirements of this Final Judgment to divest the Kaolin Assets and the Calcining Assets.

V. Notice of Proposed Divestitures

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Section IV or VI of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and shall list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt of the United States of a divestiture notice, the United States, in its sole discretion, may request from defendants, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from the defendants, the proposed purchaser, and any third party, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to defendants (and the trustee, if applicable) that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section VI(B) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section VI may not be consummated. Upon objection by defendants under the provision in Section VI(B), a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

VI. Appointment of Trustee

A. In the event that defendants have not divested any of the Kaolin Assets or DBK Plant Assets, Calcining Assets, GCC Assets, the GCC Reserve Assets, or Fused Silica Assets within the time period specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States, to effect the divestiture of each such asset. The trustee shall have the right, in its sole discretion, to sell either the DBK Plant Assets or the Kaolin Assets. The trustee shall have the right, in its sole discretion, to additionally include in the sale of the Fused Silica Assets the Fused Magnesia Assets. The trustee shall also have the right, in its sole discretion, and upon notice to the defendants and approval of the United States, to require the divestiture of additional related assets reasonably necessary to divest the Kaolin Assets, the Calcining Assets, and the Fused Silica Assets as viable stand-alone businesses including, but not limited to, sales and marketing facilities and organizations, research and development facilities and organizations. In any such event, all of the obligations of the defendants under the Final Judgment shall apply to the added assets as well.

B. After the appointment of a trustee become effective, only the trustee shall have the right to divest any assets. The trustee shall have the power and authority to accomplish any and all divestitures of assets at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section VI(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of the defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, in its sole discretion, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a divestiture by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section V of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of each asset sold by the trustee, and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture, and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures, including their best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of each of the businesses to be divested, and defendants shall develop such financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Defendants shall permit prospective purchasers of each of the Kaolin Assets, the Calcining Assets, the GCC Assets, the GCC Reserve Assets, or the Fused Silica Assets, or other assets being sold by the trustee, to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the assets to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the assets to be divested.

F. If the trustee has not accomplished such divestitures within six(6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment for a period of time requested by the United States.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed pursuant to Section IV or VI of this Final Judgment, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or VI of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the assets to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit a buyer for any and all of the Kaolin Assets or DBK Plant Assets, the Calcining Assets, the GCC Assets, the GCC Reserve Assets, or the Fused Silica Assets and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter, defendants shall deliver to plaintiff an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve the Kaolin Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets, and the Fused Silica Assets pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate each of the Kaolin Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets, and the Fused Silica Assets as an active competitor, maintain the management, staffing, sales, marketing and pricing of each asset, and maintain each asset in operable condition at current capacity configurations. Defendants shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, defendants shall preserve all records of all efforts made to preserve the Kaolin Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets, and the Fused Silica Assets and to effect the ordered divestitures.

VIII. Firewall

A. During the period of any supply contract for dry processed calcium carbonate between Imetal and Alabama Carbonates, Imetal shall construct and maintain in place a firewall that prevents any information about the purchaser's requirements, purchases, or future requirements for dry processed calcium carbonate from flowing to any other Imetal employee involved in the production, sale or marketing of GCC for paper by Imetal or the former ECC. To implement this provision, Imetal is required to identify those employees of Imetal or of the former ECC who are involved in the production, sale or marketing of GCC for paper, and all such identified employees shall be prohibited from receiving any information about Alabama Carbonates' requirements, purchases, or future requirements for dry processed calcium carbonate. All other employees of Imetal or the former ECC who receive any such information shall be prohibited for passing on such information to the identified employees.

B. Imetal shall, within ten (10) business days of the entry of the Hold Separate Stipulation and Order, submit to the Department of Justice a document setting forth in detail its procedure to effect compliance with this provision. The Department of Justice shall have the sole discretion to approve Imetal's compliance plan and shall notify Imetal within three (3) business days whether it approves or rejects Imetal's compliance plan. In the event that Imetal's compliance plan is rejected, the reasons for the rejection shall be provided to Imetal and Imetal shall be given the opportunity to submit, within two (2) business days of receiving the notice of rejection; a revised compliance plan. If the parties cannot agree on a compliance plan within an additional three (3) business days, a plan will be devised by the Department of Justice and implemented by Imetal.

IX. Arbitration

A. In the event that Alabama Carbonates, the purchaser of the GCC Assets, or Georgia Marble's joint venturer in Alabama Carbonates and the seller of the GCC Reserve Assets cannot agree on the amount of GCC Reserves that need to be divested or the fair market value of such reserves, any of those persons may elect to settle the issue through binding arbitration. The seller shall enter into a reasonable arbitration agreement, acceptable to the United States in its sole discretion, to govern such arbitration. The agreement shall provide that:

(1) Any controversy to be settled by arbitration shall be submitted to the American Arbitration Association;

(2) The arbitrator appointed shall be one acceptable to the United States in its sole discretion;

(3) The United States shall provide its assistance to the arbitrator and may submit evidence;

(4) Rules and procedures shall be adopted to ensure that the controversy shall be completed within four months from the appointment of the arbitrator and any ward made pursuant to any arbitration shall be final and binding on the parties to the arbitration.

B. When any such controversy is submitted to arbitration, defendants shall promptly notify the United States in writing and shall promptly serve a copy of the final award on the United States.

C. If any such controversy is submitted to arbitration, the period of time provided by Section IV(A) of this Final Judgment for the defendants to accomplish the divestiture required shall be tolled during the period of the arbitration. Following the conclusion of such arbitration, the United States shall, if necessary, extend the period of time provided in Section IV(A), to provide the defendants up to sixty (60) days in which to complete the divestiture.

X. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the sale of the Kaoline Assets, the DBK Plant Assets, the Calcining Assets, the GCC Assets, the Fused Silica Assets, or the Fused Magnesia Assets.

XI. Financing

Defendants are ordered and directed not to finance all or any part of any acquisition made pursuant to Sections IV or VI of this Final Judgment.

XII. Compliance inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may

(2) Subject to the reasonable convenience of defendants and without

restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections VI or VII of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents as to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days' notice shall be given by the United States to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XIII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated ______, 1999.

____

United States District Judge.

[Civil No: 99 1018]

Judge Gladys Kessler

Filed: April 26, 1999.

United States of America Plaintiff, v. Imetal, DBK Minerals, Inc., English China Clays, plc, and English China Clays, Inc., Defendants.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On April 26, 1999, the United States file a civil antitrust Complaint alleging that the proposed acquisition of English China Clays, plc (''ECC'') by IMETAL (''Imetal'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, with respect to four relevant products. The Complaint alleges that Imetal and ECC are two of five U.S. producers of water-washed kaolin; two of four U.S. producers of calcined kaolin for use in paper-making; the only two producers in the Southeastern United States of ground clacium carbonate (''GCC'') in slurry form for the paper industry (''paper-grade GCC''); and the two leading U.S. producers of fused silica. The request for relief seeks: (1) a judgement that the proposed merger would violate Section 7 of the Clayton Act; (2) inductive relief preventing consummation of the proposed acquisition; (3) an award of costs to the plaintiff; and (4) such other relief as the Court may deem just and proper.

When the Complaint was filed, the United States also filed a proposed Final Judgment and a Hold Separate Stipulation and Order that would settle the lawsuit. The proposed settlement permits Imetal to acquire ECC, but requires divestitures that will preserve competition in the four relevant product markets alleged in the Complaint. The proposed Final Judgment orders defendants to divest production facilities and associated assets, as defined in the proposed Final Judgment, for water-washed kaolin, calcined kaolin, and fused silica, to divest Imetal's interest in Alabama Carbonates, L.P., a joint venture that make paper-grade GCC, and to divest substantial GCC reserves. Defendants must accomplish these divestures within one hundred and eighty (180) calendar days after the filing of the proposed Final Judgment in this matter, or five (5) days after notice of the entry of the proposed Final Judgment by the Court, whichever is later, to purchaser acceptable to the Antitrust Division of the United States Department of Justice (''DOJ''). If the defendants do not do so within the time frame in the proposed Final Judgment, a trustee appointed by the Court would be empowered for an additional six months to sell those assets. If the trustee is unable to do so in that time, the Court could enter such orders as it shall deem appropriate to carry out the purpose of the trust which may, if necessary, include extending the trust and the trustees' appointment by a period requested by the United States.

In addition, under the terms of the Hold Separate Stipulation and Order, defendants must hold specified assets to be divested separate and apart from their other businesses until the required divestitures have been accomplished. Defendants must, until the required divestitures are accomplished, preserve and maintain the specified assets to be divested as saleable and economically viable ongoing concerns.

The plaintiff and defendants have stipulated that the proposed Final judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Event Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Imetal is a French corporation with headquarters in Paris, France. It produces building materials, industrial metals, and industrial minerals worldwide. In the United States, Imetal produces kaolin through its DBK Minerals, Inc. subsidiary (''DBK'') at a plant in Dry Branch, Georgia and at a plant in Jeffersonville, Georgia; dry-processed GCC through The Georgia Marble Company (''Georgia Marble''), a subsidiary of DBK, at a number of locations throughout the United States, including its plant in Sylacauga, Alabama; paper-grade GCC through a joint venture, Alabama Carbonates, L.P., in Sylacauga, Alabama, in which Georgia marble has a 50 percent ownership interest; and fused silica, through its G–E Minerals, Inc. subsidiary at a plant in Greenville, Tennessee. In 1997, Imetal reported total sales in excess of 10 billion French francs.

ECC is a United Kingdom Corporation with headquarters in Reading, England. It produces industrial minerals, pigments and chemicals worldwide. In the United States, ECC produces kaolin through its English China Clays, Inc. subsidiary at two plants in Sandersville, Georgia and at a plant in Wrens, Georgia; and paper-grade GCC at a plant in Sylacauga, Alabama and at plants in Maryland and Wisconsin. In addition, in 1998, ECC purchased Minco Acquisition Corporation, a company that produces fused silica and fused magnesia at plants in Midway, Tennessee. In 1997, ECC reported total sales of about 850 million pounds Sterling.

On January 11, 1999, Imetal announced a cash tender offer for all of the shares of ECC. This transaction, which would increase concentration in the already highly concentrated markets for water-washed kaolin clay, calcined kaolin clay and fused silica in the United States, and would increase concentration in the already highly concentrated market for paper-grade GCC in the Southeastern United States, precipitated the government's suit.[1]

B. The Markets

Water-Washed Kaolin

Kaolin is a clay consisting of a crystalline hydrated aluminum silicate, ususlly found as the mineral kaolinite. The clay is mined in open pit quarries, and processed using crushing and grinding equipment. Water-washed kaolin is treated with water and flotation, which removes impurities and separates the kaolin by particle size. It is sold in a number of different grades, differentiated generally by particle size and brightness.

The vast majority of water-washed kaolin is used in paper-making, both as a pigment in coating formulations and as a filler in the body of paper. In coating formulations, kaolin is typically used in conjunction with other pigments, such as GCC. The kaolin has unique properties, however, and the other pigments are typically used as a complement, rather than a replacement, for water-washed kaolin. Kaolin is used as a filler primarily in paper that is made using an acid process, where calcium carbonate fillers cannot generally be used.

Thus, for many paper companies, no good substitute exists for water-washed kaolin. A small but significant increase in the price of water-washed kaolin would not cause a significant number of paper customers currently purchasing water-washed kaolin to substitute other products.

Much of the world's highest quality kaolin deposits are found in a relatively small area in Georgia. All of the U.S. producers of water-washed kaolin are located in Georgia, and sell products from their plants in Georgia throughout the United States.

Calcined Kaolin

Calcined kaolin is water-washed kaolin that has been further processed by calcining or baking at a temperature of about 1000 degrees Centigrade under controlled conditions. The high temperature alters the structure of the water-washed kaolin, resulting in a whiter and brighter kaolin that has a higher refractive index. Because of its higher brightness, calcined kaolin is used in paper-making applications that require greater opacity than that provided by water-washed kaolin. Calcined kaolin costs more than twice as much as regular water-washed kaolin.

For many paper customers, no good substitute exists for calcined kaolin. A a small but significant increase in the price of calcined kaolin would not cause a significant number of paper customers currently purchasing calcined kaolin to substitute other products.

All of the U.S. producers of calcined kaolin for paper-making are located in Georgia, and sell their products from plants in Georgia to paper companies throughout the United States.

GCC for Paper Coating Applications

Natural calcium carbonate is typically found in the ground in marble or limestone deposits. The stone is quarried and then processed through a series of screening and dry grinding steps into particles of various sizes, ranging down to about two (2) microns. The dry-processed GCC can also be further ground using a wet-grinding process into particle sizes as small as one (1) micron or less. GCC varies in color depending on the reserves from which it is quarried. The purest GCC comes from calcitic marble deposits. These high bright deposits are scarce, and some of the finest high bright deposits are located in the Sylacauga, Alabama area.

Paper-making requires the brightest white GCC. The vast majority of GCC sold for paper-making is wet-processed and sold in slurry form. Most of the GCC consumed in paper-making, but most PCC used in paper-making is used as filler. GCC is preferred over PCC in coating applications because of its runnability, higher printability and gloss.

A small but significant increase in the price of GCC would not cause a significant number of paper customers currently purchasing GCC for coating applications to substitute other products.

Paper-grade GCC, unlike water-washed and calcined kaolin, is produced in a number of locations throughout the United States. Because of high transportation costs, sales of GCC tend to be regional rather than nationwide.

Fused Silica

Fused silica is formed by melting pure non-crystalline silicon dioxide at high temperatures. This process creates a material with a low coefficient of thermal expansion which improves resistance to extreme heat, corrosion, abrasion, and electrical non-conductivity. Fused silica is used in sophisticated applications such as investment castings and epoxy molding compounds used in the electronics industry, as well as in refractory applications.

There are no economical substitutes for fused silica. A small but significant increase in the price of fused silica would not cause a significant number of current fused silica customers to substitute other products. Domestic producers of fused silica generally have a single plant, and sell their products throughout the United States.

C. Harm to Competition as a Result of the Proposed Transaction

Water-washed Kaolin

Imetal and ECC compete with each other in the development, production and sale of water-washed kaolin in the United States—a market which is now highly concentrated and would become substantially more concentrated as a result of the proposed acquisition. There are only five U.S. producers of water-washed kaolin. ECC is the largest, and Imetal is the third largest. The proposed transaction would reduce the number of firms making water-washed kaolin to four and create a single firm with well over 50% of domestic production capacity. The acquisition would consolidate the industry into two large players—the combined Imetal/ECC and Engelhard Corp.—and two relatively small players—Thiele Kaolin Company and J.M. Huber. It would eliminate the direct competition between Imetal and ECC that has benefited consumers, and likely lead to higher prices through increased opportunities for coordination

[1] On April 27, 1999, Imetal consummated its cash tender offer, subject to the terms of the proposed settlement filed in this case.

and from the elimination of a significant competitor in an oligopolistic market.

Moreover, new entry into the development, production and sale of water-washed kaolin is unlikely to occur and unlikely to be timely or sufficient to defeat a post-acquisition price increase. Building a water-washed kaolin plant could cost $100 million or more and take a minimum of two years. In addition, entry into the production of water-washed kaolin would require the location, testing and acquisition of substantial kaolin reserves to justify the investment in the plant.

Calcined Kaolin

The market for calcined kaolin for paper-making is even more concentrated than is the market for water-washed kaolin. There are only four producers, and ECC and Imetal are the second and third largest, respectively. (Engelhard is the industry leader and Thiele is the smallest participant.) The proposed transaction would reduce the number of firms making calcined kaolin for paper-making to only three, eliminating the direct competition between Imetal and ECC that has benefited consumers. The acquisition would likely lead to higher prices for calcined kaolin for paper-making.

New entry is unlikely to occur and would not be timely or sufficient to defeat a post-acquisition price increase. To be an effective competitor, any new entrant would require at least two calciners with substantial capacity (estimated at 85,000 to 100,000 tons annually) in order to be able to supply large paper customers' requirements and to be considered a credible source. Construction of a single calciner (with the necessary attendant infrastructure) could cost a minimum of $30 million and require at least two years, sometimes much longer, for permitting and construction. In addition, any entrant not already in the water-washed kaolin business would also face the barriers to entry into that business.

GCC for Paper Coating

There are only four firms that make paper-grade GCC in the United States: Omya, Inc., ECC, Alabama Carbonates, and Columbia River Carbonates (in Washington State). Only two of these firms are located in the Southeastern United States. One is ECC and the other is Alabama Carbonates, which is a joint venture owned 50% by Omya and 50% by Imetal's Georgia Marble. Both are in Sylacauga, Alabama.

Imetal and ECC compete in the sale of paper-grade GCC in the Southeastern United States. ECC has substantial high bright reserves of GCC in the Sylacauga area, which it quarries and processes at its Sylacauga plant. The plant does both dry processing and wet processing, and sells wet-processed GCC in slurry form for use in paper-making. Georgia Marble has many hundreds of years of GCC reserves in the Sylacauga area, which it quarries and dry processes at its Sylacauga plant, across the street from the ECC plant. Georgia Marble does not have a wet processing plant, but it has a 50% interest in the Alabama Carbonates joint venture, which has a wet processing plant right next to the Georgia Marble facility.

Alabama Carbonates was formed as a joint venture between Georgia Marble and Omya in 1990 for the purpose of selling paper-grate GCC in thirteen states in the southeastern U.S. Under the terms of the joint venture, both Omya and Georgia Marble agreed to sell paper-grade GCC in the designated are only through the joint venture.[2] Georgia Marble supplies the raw material which it quarries, crushes, washes, and dry processes into feedstock suitable for the wet processing plant at an agreed-upon price. Omya operates the wet-processing plant, sells the paper-grade GCC and collects a fee for these services.

Transport costs for GCC are high. As a result, GCC sales, unlike sales of water-washed and calcined kaolin, tend to be regional. ECC and Alabama Carbonates are the only companies that compete directly with each other for sales of paper-grade GCC in the Southeastern United States.

The proposed transaction would likely result in unilateral price increases to customers in the Southeastern United States. Entry is unlikely to occur, and would not be timely or sufficient to defeat a post-acquisition increase in the price of paper-grade GCC. The only other producer of paper-grade GCC is Omya, which would have no incentive to ship into the Southeast for the purpose of defeating its own price increase and, in any event, is barred from doing so by the terms of its joint venture agreement.[3] A *de novo* entrant would have to acquire substantial high bright reserves in the Southeast, establish a quarry and build a processing plant. While the quarry and plant would require considerable expenditures of money and take substantial time, the most significant barrier is obtaining appropriate reserves. Paper-grade GCC requires high bright reserves, which are a scarce resource and are generally believed to be largely unavailable in the Southeast because they are owned primarily by Georgia Marble and ECC.

Fused Silica

Imetal and ECC are the two leading producers of fused silica in the United States. They account for more than 80% of domestic fused silica production, and more than 95% of the fused silica sold in the United States for investment castings. The two companies compete significantly with each other, and are each other's only meaningful competition in sales of fused silica for investment castings. The only other producer, Pemco, accounts for a tiny percentage of sales.

Imetal and ECC face competition from other domestic producers and from imports in sales of fused silica for refractories. Overall, however, according to the defendants' documents, the two firms account for almost two-thirds of the total fused silica sales.

The proposed transaction would eliminate the direct competition between Imetal and ECC that has benefited consumers, and would create a single firm with a virtual monopoly in the sales of fused silica for investment castings and an overwhelming share of total domestic sales of fused silica. This concentration would likely result in unilateral price increases to consumers of fused silica.

Aluchem, Inc., an industrial minerals company, has announced plans to build a new plant in Alabama that will be capable of making fused silica. This planned entry by Aluchem, Inc. is not likely to be sufficient to deter an anticompetitive price increase, however. New entry is very difficult, time consuming and costly, and sufficient new entry is unlikely to occur and would not be timely or sufficient to defeat a post-acquisition fused silica price increase.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment requires substantial divestitures with respect to each of the products that is the subject of the Complaint. These divestitures are designed to ensure that the competition that would be eliminated by the proposed acquisition will be preserved and maintained. Under the terms of the proposed Final Judgment, defendants must accomplish these divestitures within one hundred and eighty (180) calendar days after the filing of that proposed Final Judgment, or five (5) days after notice of the entry of the proposed Final Judgment by the Court, whichever is later, to a purchaser

[2] There is a limited exception in the joint venture agreement for certain pre-existing customers of the venturers.

[3] Columbia River Carbonates, the fourth producer of paper-grade GCC, is another joint venture in which Omya is a participant.

acceptable to United States. If defendants fail to divest the assets within this period, a trustee, selected by the United States, will be appointed by the Court to sell the assets. Section VI of the proposed Final Judgment, which provides for the appointment of a trustee, contains a ''Crown Jewel'' provision that empowers the trustee to sell additional assets if necessary to effect certain of the divestitures.

If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. After the trustee's appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if any divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust and the term of the trustee's appointment.

Kaolin

With respect to water-washed and calcined kaolin, Section IV of the proposed Final Judgment requires defendants to divest the Sandersville No. 1 water-washed kaolin plant of ECC, with an annual capacity of 850,000 tons, and to divest two calciners, with a minimum annual capacity of 85,000–100,000 tons. Alternatively, defendants may at their option sell the DBK plant in Dry Branch, Georgia. This plant includes both a water-washed kaolin plant with capacity of slightly over one million tons, and a calcined kaolin plant.

In all cases, the plant divestiture requires divestiture of all tangible and intangible assets used in connection with those plants, and divestiture of sufficient kaolin reserves to operate the plant at full capacity for 20 years.

Currently, DBK has two plants: the DBK plant, and a 300,000 ton capacity plant in Jeffersonville, Georgia, which it acquired in 1997 when it purchased Nord Kaolin Co. The Jeffersonville plant is largely idled, except for the calcined at that location. The proposed transaction thus would give the combined company about 1 million tons more water-washed kaolin capacity than ECC had before the tender offer. Divestiture of the DBK plant would eliminate any increase in concentration in water-washed kaolin resulting from the acquisition. The Sandersville No. 1 plant is only slightly smaller than the DBK plant. In plaintiff's view, it is sufficiently close to DBK's stand-alone capacity that a purchaser of that plant could be an effective replacement for DBK in the market.

With respect to calcined kaolin, ECC currently has 4 calciners, with a total capacity of about 200,000 tons, making calcined kaolin for paper-making. DBK currently has 3 calciners, with a total capacity of about 105,000 tons, devoted to this product. Even after the required divestiture, the proposed transaction would result in some increased concentration in capacity for calcined kaolin for paper-making. From what plaintiff learned during the course of its investigation, however, the required divestiture should be sufficient for the purchaser to be a viable, effective new entrant into that market. Accordingly, plaintiff concluded that this divestiture is likely to substantially mitigate any anticompetitive effects of the proposed transaction with respect to calcined kaolin for paper-making.

GCC for Paper-Coating

With respect to paper-grade GCC, Section IV of the proposed Final Judgment requires defendants to divest Georgia Marble's interest in the Alabama Carbonates limited partnership.[4] Pending divestiture of Georgia Marble's interest in Alabama Carbonates, the Hold Separate Stipulation and Order requires Imetal to resign its seats on the Alabama Carbonates Management Committee and to assign to its joint venturer its right to name committee members.

Section IV of the proposed Final Judgment also requires defendants to divest sufficient GCC reserves for Alabama Carbonates to operate at its maximum stated contractual capacity of 500,000 tons for 30 years. These reserves must be economically recoverable, located in the Sylacauga, Alabama area, and of minimum pureness quality suitable for paper-grade GCC. Defendants must divest these reserves to the purchaser of Georgia Marble's interest, to Omya, or to Alabama Carbonates.

The divestiture of reserves is designed to ensure that Alabama Carbonates will be able to operate independently of Georgia Marble. Currently, Alabama Carbonates relies on Georgia Marble for its raw material and for all dry processing of its feedstock. Such dependence on the company that, after the proposed transaction, will be its only competitor, raises obvious competitive problems. In order to operate independently the limited partnership must have its own reserves and its own processing facilities. The plaintiff concluded as a result of its investigation that 30 years' reserves was the minimum that the limited partnership would need to consider making the required investments in processing facilities.

The proposed Final Judgment permits defendants, in calculating the quantity of reserves required to be divested, to take into account any economically recoverable reserves Omya already owns, uses or has an option on in the Sylacauga area that are of suitable quality and are available to Alabama Carbonates. The proposed Final Judgment further provides that, if Alabama Carbonates, Omya, or the purchaser of Georgia Marble's interest in Alabama Carbonates cannot agree with the defendants (or with the trustee if the trustee is the seller) on the amount of GCC Reserves to be divested to provide 500,000 tons of feedstock for 30 years, or cannot agree on the fair market value of those reserves, they may submit those issues to binding arbitration. Section IX of the proposed Final Judgment sets forth the procedures to be followed in the event of such arbitration.

This provision for arbitration is designed to address two somewhat different concerns. First, defendants maintain that Omya already has extensive high bright GCC reserve holdings in the Sylacauga area and that Alabama Carbonates therefore does not need substantial additional reserves in order to be a viable independent competitor. As a result of its investigation, the United States disagreed and was unwilling to agree to a proposed settlement without a sufficient divestiture of GCC reserves to enable the joint venture to be a viable independent competitor. The arbitration provision permitted the parties to reach a settlement agreement that satisfies the United States' competitive concerns, while at the same time providing defendants with a mechanism for assuring themselves that they are protected against an unnecessary sale of their reserves.

Second, given the contractual provisions of the Alabama Carbonates limited partnership agreement, there is a high likelihood that defendants will have no choice but to sell the GCC reserves to Omya. In such a situation, where there is a single buyer, the market forces that operate in a typical negotiation on price are absent. Defendants sought the option of

[4] Under the provisions of the proposed Final Judgment, defendants must divest this interest to a purchaser or purchasers acceptable to the United States. Under the terms of the limited partnership agreement, however, Georgia Marble's joint venturer, Omya, has a contractual right to prior notice of any sale of the interest and a right to match any offer for that interest.

arbitration to provide them a modicum of protection in their negotiations. There is precedent for this in other Antitrust Division consent decrees that have ordered divestiture to a particular buyer.

In addition to the divestiture provisions outlined above, Section IV of the proposed Final Judgment requires defendants, at the option of Alabama Carbonates, to supply the joint venture with feedstock for a period up to three years. This provision is designed to provide Alabama Carbonates with a reasonable transition period to make the investment required for it to be self-sufficient in the long term. The proposed Final Judgment further requires defendants to erect a firewall (Section VIII) during the term of any such supply contract, to ensure that no one at the combined Imetal/ECC with responsibility for paper-grade GCC receives any competitively sensitive information about Alabama Carbonates' requirements or purchases.

Fused Silica

Section IV of the proposed Final Judgment requires defendants to divest the fused silica plant of ECC, together with all tangible and intangible assets used in connection with the plant. This divestiture would eliminate any anticompetitive effects of the proposed transaction with respect to fused silica.

ECC acquired this fused silica plant within the last year when it acquired Minco. Minco also operates a fused magnesia plant, at the same location, that defendants wish to retain. The two plants are separate businesses and there is no overlap between ECC and Imetal with respect to fused magnesia, so retention of the fused magnesia businesses should not pose a problem under Section 7 of the Clayton Act. It may be, however, that the two plants together are more readily saleable than is the fused silica plant alone. For this reason, Section VI of the proposed Final Judgment provides that if the fused silica plant goes to a trustee for sale, the trustee may also sell the fused magnesia plant (together with all tangible and intangible assets used in connection with that plant).

IV. Remedies Available to Potential Private Litigants

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 will neither impair nor assist 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 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 sixty 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 sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

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

The United States considered, with respect to kaolin, simply requiring divestiture of the DBK plant. Diverstitute of the DBK plant has two advantages over divestiture of the Sandersville No. 1 water-washed kaolin plant: (1) it would essentially put the purchaser in the same position as Imetal before the tender offer; and (2) unlike Sandersville No. 1, the DBK plant has been operated as a stand-alone business and has a clear track record as such.

The United States ultimately adopted the framework of the proposed Final Judgment, however, because it concluded that a divestiture of the Sandersville No. 1 plant could, under the proper circumstances, effectively redress the likely anticompetitive effects of the proposed transaction. During the course of the investigation, defendant ECC entered into pre-settlement negotiations and signed a preliminary Letter of Intent with Thiele Kaolin Company for the sale of the Sandersville No. 1 plant. A purchase by Thiele would cause higher concentration than would result if the Sandersville No. 1 plant were sold to a firm outside the kaolin industry. However, both defendants and Thiele argued that the additional capacity would permit Thiele to better compete for large paper customers against the two industry leaders. While the United States did not ''pre-approve'' a sale to Thiele—the parties did not have a definitive agreement, and their Letter of Intent did not address at all some issues that would be important to plaintiff's evaluation of any proposed sale—plaintiff concluded that a divestiture of the type contemplated in the Letter of Intent could satisfy the United States' competitive concerns with respect to water-washed kaolin. Plaintiff therefore concluded that defendants should be permitted to try to divest the Sandersville No. 1 plant if they so chose.

The United States also considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Imetal and ECC. The United States is satisfied that the divestitures required by the proposed Final Judgment will facilitate continued viable competition in the four relevant product markets alleged in the Complaint and will effectively prevent the anticompetitive effects that the Complaint alleges would result from the proposed acquisition.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

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.'' In making that determination, the Court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other

considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment 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). As the Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995). The courts have recognized that the term '''public interest' take[s] meaning from the purposes of the regulatory legislation.'' *NAACP* v. *Federal Power Comm'n,* 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to preserve ''free and unfettered competition as the rule of trade,'' *Northern Pacific Railway Co.* v. *United States,* 356 U.S. 1, 4 (1958), the focus of the ''public interest'' inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. *United States* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied,* 465 U.S. 1101 (1984); *United States* v. *Waste Management, Inc.,* 1985–2 Trade Cas. ¶66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, ''the 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.'' [5] Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Betchtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert denied,* 454 U.S. 1083 (1981). *See also Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that:

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[6]

A proposed consent decree in an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. *Armour & Co.,* 402 U.S. 673, 681 (1971).

The proposed Final Judgment therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a proposed final judgment requires a standard more flexible and less strict that the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted).'' [7]

VIII. Determinative Documents

The only determinative document, within the meaning of the APPA, that was considered by the United States in formulating the proposed Final Judgment is the preliminary Letter of Intent between defendant ECC and Thiele Kaolin Company, a copy of which is attached as Exhibit A.

Respectfully submitted.

Dated: May 24, 1999.

For Plaintiff United States of America:

Patricia G. Chick,

D.C. Bar #266403, Trial Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, DC 20530, Telephone: (202) 307–0946, Facsimile: (202) 514–9033.

Exhibit A

Exhibit A cannot be published in the **Federal Register.** A copy can be obtained from the Documents Office of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Room 215, Washington, D.C. 20530, (202) 514–2481.

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DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 98 CV 7168 (FB)(MDG)]

United States, State of New York, Commonwealth of Pennsylvania and State of Florida v. Waste Management, Inc., Ocho Investment Corp., Eastern Environmental Services, Inc.; Response to Public Comments on Antitrust Consent Decree

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that on May 21, 1999, the United States filed its responses to public comments on the proposed Final Judgment in *United States* v. *Waste Management, Inc. and Eastern Environmental Services, Inc.,* Civil No. 98 CV 7168 (FB)(MDG) (E.D.N.Y., filed Dec. 31, 1998), with the United States District Court in Brooklyn, New York.

On November 17, 1998, the United States, New York, Pennsylvania and Florida filed a Complaint, which alleged that Waste Management's proposed acquisition of Eastern Environmental

[5] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.,* 406 F.Supp. 713, 715 (D.Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[6] *United States* v. *Bechtel,* 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1979); *United States* v. *Gillette Co.,* 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.,* 719 F.2d at 565.

[7] *United States* v. *American Tel. and Tel Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Mayland* v. *United States,* 460 U.S. 1001 (1983), Quoting *United States* v. *Gillette Co., supra,* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).