

given that a proposed Partial Consent Decree in *United States of America v. Jack L. Aronowitz, Technical Chemicals & Products, Inc., et al.*, C.A. No. 98-6201-CIV-DIMITROULEAS (S.D. Florida), was lodged on November 10, 1999, with the United States District Court, Southern District of Florida, Fort Lauderdale Division. The Partial Consent Decree resolves a claim filed by the United States on behalf of the United States Environmental Protection Agency, against defendant Theodore Holstein, individually and as trustee of the Holstein Family Trust (the "Settling Defendant"), pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601, *et seq.*

The Partial Consent Decree provides that the Settling Defendant shall pay \$230,000.00, plus interest accruing thereon from November 5, 1999, for reimbursement of past response costs incurred by the United States in connection with the Lauderdale Chemical Warehouse Site, located at 4987 N.W. 23rd Avenue, Fort Lauderdale, Broward County, Florida.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed Partial Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States of America v. Jack L. Aronowitz, Technical Chemicals & Products, Inc., et al.*, DOJ Ref. # 90-11-3-1757.

The proposed Partial Consent Decree may be examined at: (i) The Office of the United States Attorney, 500 E. Broward Blvd., Suite 700, Fort Lauderdale, Florida 33394; and (ii) Region 4 of the U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303-8960. A copy of the proposed Partial Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044, (202) 514-1547. In requesting a copy, refer to the referenced case and enclose a check in the amount of \$3.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Principal Deputy Chief, Environmental Enforcement Section.

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DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Harsco Corporation, Pandrol Jackson Limited, and Pandrol Jackson 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 of America v. Harsco Corporation, Pandrol Jackson Limited, and Pandrol Jackson Inc.*, Civil No. 99-02706 on October 14, 1999. A Competitive Impact Statement was filed on November 8, 1999. The Complaint alleged that the proposed acquisition of certain assets of Pandrol Jackson Limited and Pandrol Jackson Inc. ("Pandrol") by Harsco would violate Section 7 of the Clayton Act, 15 U.S.C. Section 18, in the markets for switch and crossing and transit grinding equipment and switch and crossing grinding services in North America. The proposed Final Judgment, filed at the same time as the Complaint, requires Harsco, among other things, to: (1) divest all assets acquired from Pandrol related to the manufacture and sale of switch and crossing grinding equipment; and (2) divest all assets acquired from Pandrol related to the providing of switch and crossing grinding services.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and remedies to be implemented by Harsco. 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 & Merger Enforcement.

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. "Harsco" means defendant Harsco Corporation, a Delaware corporation with its corporate headquarters in Camp Hill, Pennsylvania, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

B. "Charter" means Charter plc, a United Kingdom corporation, with its corporate headquarters in London, England, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

C. "Pandrol" means defendant Pandrol Jackson Ltd., a United Kingdom corporation, with its corporate headquarters in Surrey, England and defendant Pandrol Jackson Inc. with its corporate headquarters in Ludington, Michigan, both of which are indirectly owned by Charter, and their successors and assigns, and their subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees; Pandrol submit to the jurisdiction of this Court solely for purposes of this action to permit the contemplated sale of assets of Harsco; nothing contained herein shall be deemed an admission of personal jurisdiction or an appointment of any agent for service of process for any other purpose.

D. "Switch and Crossing Grinding Equipment" means rail grinders and any related equipment used to remove surface irregularities and restore the profile of the rail used in transit systems, railroad track switches and railroad track crossings, thereby providing longer rail life and reducing the wear on rolling stock and track components.

E. "Switch and Crossing Grinding Services" means switch and crossing grinding services provided commercially to railroads and transit systems.

F. "Switch and Crossing Grinding Assets" means all of the assets acquired by Harsco from Pandrol related to the Switch and Crossing Grinding Equipment manufactured by Pandrol and to the Switch and Crossing Grinding Services provided by Pandrol inclusive of all tangible and intangible assets used in the manufacture and sale of Switch and Crossing Grinding Equipment and the providing of Switch and Crossing Grinding Services, including all intellectual property rights, technical information, know-how, trade secrets, blueprints, licenses, permits, product trade names (other than the "Jackson" name), product trade dress, tooling, existing inventory and work in progress, accounts receivable, pertinent correspondence, files and databases, books of account, customer lists, supplier lists, advertising materials, contracts with third parties (to the extent assignable), but not including any manufacturing or assembly facility, or any real estate owned or leased by Harsco or Pandrol.

II. Objectives

The proposed Final Judgment filed in this case is meant to ensure Harsco's prompt divestiture of the Switch and Crossing Grinding Assets for purposes of creating a viable competitor in the manufacture and sale of switch and crossing grinding equipment and services. This Hold Separate Stipulation and Order ensures the timely and complete transfer of these assets and maintains the separation of Harsco's and Pandrol's switch and crossing grinding businesses as independent, viable competitors until the required divestiture is 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 proposed 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 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. Harsco represents that the divestitures ordered in the proposed Final Judgment can and will be made, and that it 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. Harsco shall preserve, maintain, and operate the Switch and Crossing Grinding Assets as an independent competitive business, with management, research, development, production, sales and operation of such assets held entirely separate, distinct and apart from those of Harsco. Harsco shall not coordinate its production, marketing or sale of any products with that of any of the Switch and Crossing Grinding Assets, except to the limited extent provided in this Section V below. Within fifteen (15) days of the entering of this Order, Harsco will inform the United States of the steps taken to comply with this provision.

B. Harsco shall take all steps necessary to ensure that the Switch and Crossing Grinding Assets will be maintained and operated as an independent, ongoing, economically

viable and active competitor in the development, production and sale of their respective products and services, that the management of the Switch and Crossing Grinding Assets will not be influenced by Harsco, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Switch and Crossing Grinding Assets, including the performance and decision-making functions regarding internal research and development, sales and pricing, will be kept separate and apart from the business of Harsco. Harsco's influence over the Switch and Crossing Grinding Assets shall be limited to that necessary to carry out Harsco's obligations under this Order and the proposed Final Judgment.

C. Harsco shall provide and maintain sufficient working capital to maintain the Switch and Crossing Grinding Assets as a viable, ongoing business, consistent with current business plans.

D. Harsco shall provide and maintain sufficient lines and sources of credit to maintain the Switch and Crossing Grinding Assets as a viable, ongoing business.

E. Harsco shall maintain, on behalf of the Switch and Crossing Grinding Assets, in accordance with sound accounting practices, separate, true and complete financial ledgers, books and records reporting the profit and loss and liabilities of the business on a monthly and quarterly basis.

F. Harsco shall use all reasonable efforts to maintain and increase the sales of the Switch and Crossing Grinding 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 Switch and Crossing Grinding Assets.

G. Harsco 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.

H. Harsco 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.

I. Except in the ordinary course of business or as is otherwise consistent with this Order, Harsco 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 the Switch and Crossing Assets. Harsco 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 proposed Final Judgment.

J. Within ten (10) days of the filing of this Hold Separate Stipulation and Order, Harsco shall appoint one or more persons who shall have complete managerial responsibility for the Switch and Crossing Grinding Assets, subject to the provisions of this Order and the proposed 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, Harsco shall appoint from the current management of the Switch and Crossing Grinding Assets, subject to the plaintiff's approval, a replacement within ten (10) working days. Should Harsco 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.

K. Harsco shall take no action that would interfere with the ability of any trustee appointed pursuant to the proposed Final Judgment to complete the divestiture pursuant to the proposed Final Judgment to a suitable purchaser.

L. This Order shall remain in effect until the divestiture of the Switch and Crossing Grinding Assets required by the proposed Final Judgment is complete, or until further Order of the Court.

Dated: October 14, 1999.

For Plaintiff United States of America:

John F. Greaney, Esquire

U.S. Department of Justice, Antitrust Division,
Litigation II Section, 1401 H Street, N.W.,
Suite 3000, Washington, D.C. 20005, (202)
305-9965.

For Defendant Harsco Corporation:

Dale Hershey, Esquire

Timi E. Nickerson, Esquire, DC Bar #457231,
Eckert Seamans Cherin & Mellott, LLC, USX
Tower, 600 Grant Street, 44th Floor,
Pittsburgh, PA 15219, (412) 566-6058.

For Defendants Pandrol Jackson Limited,
and Pandrol Jackson Inc.:

Wayne Dale Collins, Esquire

DC Bar #430266, Shearman & Sterling, 599
Lexington Ave., New York, NY 10022-6069,
(212) 848-4127.

IT IS ORDERED by the Court, this ____ day
of October, 1999.

United States District Judge

Final Judgment

Whereas, plaintiff, the United States of America, and defendants Harsco Corporation ("Harsco"), Pandrol Jackson Limited, and Pandrol Jackson Inc. (collectively "Pandrol"), 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 October 14, 1999;

And whereas, defendants have agreed to be 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 certain assets of Pandrol by Harsco, the prompt and certain divestiture of the identified assets to assure that competition is not substantially lessened;

And whereas, plaintiff requires defendant Harsco to make a divestiture for the purpose of establishing a viable competitor in the manufacture and sale of switch and crossing grinding equipment and services specified in the Complaint.

And whereas, defendant Harsco has represented to the plaintiff that the divestiture 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. "Harsco" means defendant Harsco Corporation, a Delaware corporation with its corporate headquarters in Camp Hill, Pennsylvania, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

B. "Charter" means defendant Charter plc, a United Kingdom corporation, with its corporate headquarters in London, England, and includes its successors and assigns, and its

subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents and employees.

C. "Pandrol" means defendant Pandrol Jackson Limited, a United Kingdom corporation, with its corporate headquarters in Surrey, England and defendant Pandrol Jackson Inc., with its corporate headquarters in Lundington, Michigan, both of which are indirectly owned by Charter, and their successors and assigns, and their subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employee: Pandrol submit to the jurisdiction of this Court solely for purposes of this action to permit the contemplated sale of assets of Harsco; nothing contained herein shall be deemed an admission of personal jurisdiction or an appointment of any agent for service of process for any other purpose.

D. "Switch and Crossing Grinding Equipment" means rail grinders and any related equipment used to remove surface irregularities and restore the profile of the rail used in transit systems, railroad track switches and railroad track crossings, thereby providing longer rail life and reducing the wear on rolling stock and track components.

E. "Switch and Crossing Grinding Services" means switch and crossing grinding services provided commercially to railroads and transit systems.

F. "Switch and Crossing Grinding Assets" means all of the assets acquired by Harsco from Pandrol related to the Switch and Crossing Grinding Equipment manufactured by Pandrol and to the Switch and Crossing Grinding Services provided by Pandrol inclusive of all tangible and intangible assets used in the manufacture and sale of Switch and Crossing Grinding Equipment and the providing of Switch and Crossing Grinding Services, including all intellectual property rights, technical information, know-how, trade secrets, blueprints, licenses, permits, product trade names (other than the "Jackson" name), product trade dress, tooling, existing inventory and work in progress, accounts receivable, pertinent correspondence, files and databases, books of account, customer lists, supplier lists, advertising materials, contracts with third parties (to the extent assignable), but not including any manufacturing or assembly facility, or any real estate owned or leased by Harsco or Pandrol.

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. Defendant Harsco shall require, as a condition of the sale of all or substantially all of its assets or of its Switch and Crossing Grinding Equipment and Services business, that the purchaser or purchasers agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. Defendant Harsco is hereby ordered and directed, in accordance with the terms of this Final Judgment, within thirty (30) calendar days after the filing of the Hold Separate Stipulation and Order in this case, to sell the Switch and Crossing Grinding Assets as a viable ongoing business to a purchaser acceptable to the United States in its sole discretion.

B. Defendant Harsco shall use its best efforts to accomplish said divestiture as expeditiously as possible. The United States, in its sole discretion, may extend the time for the divestiture for an additional period not to exceed thirty (30) calendar days.

C. In accomplishing the divestiture ordered by this Final Judgment, defendant Harsco shall make known promptly, by usual and customary means, the availability of the Switch and Crossing Grinding Assets. Defendant Harsco 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. Defendant Harsco 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. Defendant Harsco shall make such information available to the United States at the same time that such information is made available to any other person.

D. As customarily provided as part of a due diligence process, defendant Harsco shall permit prospective purchasers of the Switch and Crossing Grinding Assets to have access to personnel and to make inspection of

such assets and any and all financial, operational, or other documents and information.

E. Defendant Harsco shall not interfere with any negotiations by any purchaser to employ any current or former Pandrol employee who works or has worked at, or whose principal responsibility concerns or has concerned, any aspect of the Switch and Crossing Grinding Assets.

F. Defendant Harsco 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 such asset.

G. Defendant Harsco shall warrant to the purchaser of the Switch and Crossing Grinding Assets that the assets will be operational on the date of sale.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, whether by defendant Harsco or by trustee appointed pursuant to Section VI of this Final Judgment, shall include the entire Switch and Crossing Grinding Assets. Such divestiture 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 a viable ongoing business, engaged in the switch and crossing grinding business. The divestiture, whether pursuant to Section IV or Section VI of this Final Judgment, shall be made to a purchaser who, as demonstrated to the United States' sole satisfaction: (1) Has the capability and intent of competing effectively in the switch and crossing grinding business; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the switch and crossing grinding business; and (3) is not hindered by the terms of any agreement between the purchaser and defendant Harsco which gives defendant Harsco 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.

V. Notice of Proposed Divestiture

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, the proposed divestiture pursuant to Section IV or VI of this Final Judgment, defendant Harsco or the trustee, whichever is then responsible for effecting the divestiture, shall notify the

United States of the proposed divestiture. 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 by the United States of a divestiture notice, the United States, in its sole discretion, may request from defendant Harsco, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Defendant Harsco 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 defendant Harsco, the proposed purchaser, and any third party, whichever is later, the United States shall provide written notice to defendant Harsco 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 defendant Harsco (and the trustee, if applicable) that it does not object, then the divestiture may be consummated, subject only to defendant Harsco's 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 defendant Harsco 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 defendant Harsco has not divested the Switch and Crossing Grinding 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 in its sole discretion, to effect the divestiture of such assets. The trustee shall have the right, in its sole discretion, and upon notice to the defendant Harsco and approval of the United States, to require the divestiture of additional related assets reasonably necessary to divest the Switch and

Crossing Grinding Assets as a viable stand-alone business. In any such event, all of the obligations of the defendant Harsco under the Final Judgment shall apply to the additional assets as well.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to divest the assets. The trustee shall have the power and authority to accomplish the divestiture of the 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 defendant Harsco any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture 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 the Court shall deem appropriate. Defendant Harsco shall not object to a divestiture by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendant Harsco 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 defendant Harsco, on such terms and conditions as the Court may prescribe and shall account for all monies derived from the sale of the assets 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 defendant Harsco 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. Defendant Harsco shall use its best efforts to assist the trustee in accomplishing the required divestiture, including its 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 relating to the assets to be divested, and defendant Harsco shall develop such financial or other information relevant to the assets to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Defendant Harsco shall permit prospective purchasers of the Switch and Crossing Grinding 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 divestiture required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the plaintiff, defendant Harsco, and the Court setting forth the trustee's efforts to accomplish the divestiture 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 divestiture 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 divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has 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 plaintiff and defendant Harsco, 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 divestiture has been completed pursuant to Section IV or VI of this Final Judgment, defendant Harsco 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 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 defendant Harsco has taken to solicit a buyer for any and all of the Switch and Crossing Grinding Assets and to provide required information to prospective purchasers, including the limitations, if any, on such information.

B. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter, defendant Harsco shall deliver to plaintiff an affidavit which describes in detail all actions defendant Harsco has taken and all steps defendant Harsco has implemented on an ongoing basis to preserve the Switch and Crossing Grinding 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, defendant Harsco's efforts to maintain and operate the Switch and Crossing Grinding Assets as an active competitor, maintain the management, staffing, sales, marketing and pricing of such assets, and maintain the assets in operable condition at current capacity configurations. Defendant Harsco shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in defendant Harsco's earlier affidavit(s) filed pursuant to Section VII.B. within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, defendant Harsco shall preserve all records of all efforts made to preserve

the Switch and Crossing Grinding Assets and to effect the ordered divestiture.

VIII. Hold Separate Order

Until the divestiture required by the Final Judgment has been accomplished, defendant Harsco shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendant Harsco shall take no action that would jeopardize the sale of the Switch and Crossing Grinding Assets.

IX. Financing

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

X. Notification of Future Acquisitions

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), defendant Harsco, without providing advance notification to Department of Justice, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in the manufacture or sale of Switch and Crossing Grinding Equipment or the provision of Switch and Crossing Grinding Services. Such notification shall be provided to the Department of Justice in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended. Notification shall be provided at least thirty (30) days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Department of Justice make a written request for additional information, defendant Harsco shall not consummate the proposed transaction or agreement until (20) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the

requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XI. 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 defendant Harsco made to its principal office, shall be permitted:

(1) Access during office hours of defendant Harsco to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant Harsco, who may have counsel present, relating to the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of defendant Harsco and without restraint or interference from it, to interview, either informally or on the record, its 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, defendant Harsco 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, VII, or XI 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 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 defendant Harsco to the United States, defendant Harsco represents and identifies 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 defendant Harsco marks 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 defendant Harsco prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant Harsco is not a party.

XII. 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.

XIII. Termination

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

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated _____, 1999.

United States District Judge

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.

Nature and Purpose for the Proceeding

On October 14, 1999, the United States filed a civil antitrust Complaint alleging that the proposed acquisition of assets of Pandrol Jackson Limited and Pandrol Jackson Inc. (collectively "Pandrol") by Harsco Corporation ("Harsco") would violate Section 7 of the Clayton Act, 15 U.S.C. 18, with respect to the manufacture and sale of switch and crossing and transit grinding equipment and the provision of switch and crossing and transit grinding services to railroads and transit systems throughout North America. The Complaint alleges that Harsco and Pandrol are the only two producers of such equipment and providers of such services in North America. The request for relief seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; (2) injunctive 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 Harsco to acquire the assets of Pandrol, but requires a divestiture that will preserve competition in the relevant product markets alleged in the Complaint. The proposed Final Judgment requires the defendants to divest switch and crossing grinding assets, as defined in the proposed Final Judgment, acquired by Harsco from Pandrol related to the switch and crossing grinding equipment manufactured by Pandrol and to the switch and crossing grinding services provided by Pandrol. Switch and crossing grinding equipment manufactured by Pandrol includes rail grinders and any related equipment used to remove surface irregularities and to restore the profile of the rail used in transit systems, railroad track switches and railroad track crossings. Switch and crossing grinding services includes such services provided by contract to railroads and transit systems. Defendants must accomplish this divestiture within thirty (30) calendar days after the filing of the proposed Final Judgment to a 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 trustee's appointment by a period requested by the United States.

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

The parties 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 Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Harsco is a Delaware corporation, with its corporate headquarters and principal place of business in Camp Hill, Pennsylvania. In 1998, Harsco reported revenues of \$1.7 billion. It manufactures switch and crossing grinding equipment in Fairmont, Minnesota. In 1998, its sales of switch and crossing grinding services were about \$3.7 million in North America, with about \$3.2 million of this amount to customers in the United States.

Charter plc ("Charter") is a corporation organized and existing under the laws of the United Kingdom. In 1998, it had revenues of approximately \$2 billion. Charter controls Pandrol Jackson Limited and Pandrol Jackson Inc. (collectively "Pandrol") through a wholly owned subsidiary. Pandrol Jackson Limited maintains its principal place of business in Surrey, United Kingdom. Pandrol Jackson Inc. is a Delaware corporation, with its corporate headquarters and principal place of business in Ludington, Michigan. Pandrol manufactures rail grinders at its plant in Ludington, Michigan. During 1998, Pandrol had sales of about \$101 million, including \$5.7 million in sales of switch and crossing grinding services and equipment in North America, \$4.3 million of which was from sales to customers in the United States.

On or about January 30, 1998, Harsco entered into an Asset Purchase and Liability Assumption Agreement ("Agreement") with Charter to acquire the switch and crossing and transit grinding equipment and the switch and grinding services of Pandrol for consideration equal to about \$89 million. This transaction, which would give Harsco a monopoly of the manufacture and sale of switch and crossing grinding equipment (including transit grinders) and of switch and crossing grinding services in North America, precipitated the government's suit.

B. The Market

Rail grinders are used because, over time, the rubbing of train wheels on the tracks deforms the profile of the rails. These deformations, if allowed to continue, cause the rail to wear out prematurely. Switch and crossing

grinders are designed to restore the rail used in railroad track switches and railroad track crossings to its original shape, thereby prolonging its useful life. Transit grinders are smaller grinders, like switch and crossing grinders, which are used to perform the same function of restoring rail for transit systems. Although transit systems in North America typically purchase transit grinders, railroads usually contract for grinding services from providers of switch and crossing grinding services. Harsco and Pandrol are the only providers of these services in North America. No imports of switch and crossing and transit grinders are made into North America and switch and crossing grinding services are provided throughout North America only by firms that manufacture such grinders in the United States.

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

Harsco and Pandrol compete with each other in the production and sale of switch and crossing and transit grinders and in providing switch and crossing grinding services in North America—a market which is now highly concentrated and which would become a monopoly as a result of the proposed acquisition. Harsco and Pandrol are the only two producers of this equipment, and the only suppliers of these services. The proposed transaction would eliminate the direct competition between Harsco and Pandrol that has benefited consumers, and likely lead to higher prices.

Moreover, new entry into the production and sale of switch and crossing and transit grinders and in providing switch and crossing grinding services is unlikely to occur and unlikely to be timely or sufficient to defeat a post-acquisition price increase.

III. Explanation of the Proposed Final Judgment

The relief described in the proposed Final Judgment will eliminate the anticompetitive effects of this transaction by establishing a new, independent, and economically viable competitor in each of the affected markets. The proposed Final Judgment requires Harsco to divest the switch and crossing grinding assets of Pandrol as a viable ongoing business to a purchaser acceptable to the United States in its sole discretion. This divestiture must take place within 30 days of the filing of the Hold Separate Stipulation and Order in this case unless the United States in its sole discretion extends the time for the divestiture for an additional period not to exceed 30 days. If the

divestiture has not been accomplished within these time periods, then a trustee selected by the United States, in its sole discretion, shall be appointed to sell the Pandrol switch and crossing grinding assets to a purchaser who will use the assets as a viable ongoing business engaged in the switch and crossing grinding business. Under the proposed Final Judgment, the trustee has the right to require divestiture of additional related assets if reasonably necessary to divest the switch and crossing grinding assets as a viable stand-alone business.

If a trustee is appointed, the proposed Final Judgment provides that the 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 the divestiture. At the end of six months, if no divestiture has 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.

The proposed Final Judgment specifies that the required divestiture shall be made to a purchaser who, as demonstrated to the sole satisfaction of the United States, has the capability and intent, as well as the managerial, operational, and financial capability to compete effectively in the switch and crossing grinding business and who is not hindered by the terms of any agreement between it and Harsco under which Harsco possesses the ability unreasonably to raise the purchaser's costs, lower its efficiency, or otherwise interfere with its ability to compete. Pending the required divestiture, Harsco must maintain and separately operate the switch and crossing grinding assets as an independent competitive business, with management, research, development, production, sales and operation of such assets held entirely separate, distinct and apart from those of Harsco. The divestiture required by the proposed Final Judgment is designed to ensure that the competition that would be eliminated by the proposed acquisition will be preserved and maintained.

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 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. 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, N.W., 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 proposed Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits. The United States is satisfied that the divestiture required by the proposed Final Judgment will maintain viable competition in the relevant product market 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, (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 63,946 (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.”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 Diarmen, Inc., 1977-1 trade Cas. ¶ 61,508, to 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. Bechtel 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.²

A proposed consent decree is 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

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. 93-1463*, 93rd Cong. 2d. Sess. 8-9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

² *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. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716. *See also United States v. American Cyanamid Co.*, 719 F.2d at 565.

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 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.’ (citations omitted).”³

VIII. Determinative Documents

There were no determinative documents, within the meaning of the APPA, that were considered by the United States in formulating the proposed Final Judgment.

Dated: November 8, 1999.

For Plaintiff United States of America.

John F. Greaney,

Trial Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, DC 20530, Telephone: (202) 305-9965, Facsimile: (202) 307-5802.

Certificate of Service

I hereby certify that I caused a copy of the foregoing Competitive Impact Statement to be served by first class mail, postage prepaid, this 8th day of November, 1999, on:

Dale Hershey, Esquire,

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Dated: November 8, 1999.

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³ *United States v. American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland 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)

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 2000 for a cooperative agreement to fund the project “Effective Prison Mental Health Services”. NIC will award a one year cooperative agreement to: develop a handbook or manual that will provide information to state correctional agencies in identifying current practices, policies, and procedures and their impact on offenders with mental health disorders.

A cooperative agreement is a form of assistance relationship where the National Institute of Corrections is substantially involved during the performance of the award. An award is made to an organization that will, in concert with the Institute, identify the “effective practices and intervention” regarding the care and management of offenders with mental health problems.

Background

According to recent estimates, nearly 95,000 (12.5%) of all prison inmates have significant psychiatric problems, problems requiring intermittent care, and 54,000 (7%) have serious mental health problems. Research indicates persons displaying the signs and symptoms of mental disorders are more likely to be arrested than members of the general public, and more likely to be incarcerated for violent offenses compared to the rest of the inmate population. The prevalence of offenders with a mental disorder among correctional populations presents enormous challenges to correctional personnel. Limited availability of in prison treatment programs, coupled with the lack of community resources, enhance the likelihood that their mental disorders may cause them to recidivate, often returning with a worst condition. There is a paucity of information about in-prison mental health programs and services, transition and community mental health services for released offenders, and effective linkages between prison systems and state and local mental health systems/ departments.