UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, 1401 H Street, N.W. Suite 3000 Washington, D.C. 20530 Plaintiff, v. PREMDOR INC., 1600 Britannia Road East Mississauga, Ontario Canada L4W 1J2 PREMDOR U.S. HOLDINGS, INC., One North Dale Mabry Highway Suite 950 Tampa, Florida 33609 INTERNATIONAL PAPER COMPANY, 400 Atlantic Street Stamford, Connecticut 06921 and MASONITE CORPORATION, 1 South Wacker Drive Chicago, Illinois 60606 Defendants.	Civil No.: 1:01CV01696 Filed August 3, 2001 Judge: Gladys Kessler

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to 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 THIS PROCEEDING

On August 3, 2001, the United States filed a Complaint alleging that the proposed acquisition of the Masonite business of International Paper Company ("IP") by Premdor Inc. ("Premdor") would substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Complaint alleges that Premdor and IP, through its subsidiary Masonite Corporation ("Masonite"), are two of the three largest firms involved in the production of interior molded doors. As alleged in the Complaint, the transaction will substantially lessen competition in the development, manufacture and sale of interior molded doorskins and interior molded doors in the United States, thereby harming consumers. Accordingly, the Complaint seeks among other things: (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) permanent injunctive relief that would prevent defendants from carrying out the acquisition or otherwise combining their businesses or assets.

At the same time the Complaint was filed, the United States also filed a proposed settlement that would permit Premdor to acquire the Masonite business, provided that Premdor divests its Towanda, Pennsylvania doorskin manufacturing facility, along with intellectual property, research capabilities and other assets needed to be a viable doorskin manufacturer. The settlement consists of a proposed Final Judgment and a Hold Separate Stipulation and Order.

The proposed Final Judgment orders defendants to divest the Towanda facility to an acquirer approved by the United States. Defendants must complete the divestiture within 150 calendar days after the filing of the Complaint in this matter, or within 120 calendar days after the closing of Premdor's acquisition of the Masonite business, whichever is earlier. If defendants do not complete the divestiture within the prescribed time, then, under the terms of the proposed Final Judgment, this Court will appoint a trustee to sell the Towanda facility.

The Hold Separate Stipulation and Order and the proposed Final Judgment require defendants to preserve, maintain and continue to operate the North American operations of the Masonite business as an independent, ongoing, economically viable competitive business, with the management, sales and operations held separate from Premdor's other operations. The Hold Separate Stipulation and Order allows the defendants to submit to the United States a plan for partitioning the Towanda facility from the remainder of Masonite's North American operations. If the defendants submit a partition plan that is acceptable to the United States, then, after the transaction closes, Premdor can take control of all of Masonite's North American operations other than the Towanda facility and any other partitioned assets. The partitioned assets must continue to be held separate until they are divested to a suitable acquirer.

The United States 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 this action, except that this 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 OF THE ANTITRUST LAWS

A. The Defendants

1. *Premdor*

Premdor is a Canadian corporation with its corporate headquarters and principal place of business in Mississauga, Ontario, Canada. Premdor produces interior and exterior doors. Its line of wood doors includes molded, louvered and custom-made commercial and architectural doors. Premdor is the largest manufacturer and merchandiser of interior molded doors in the world. It manufactures, merchandises and sells interior molded doors to distributors, wholesalers, home

centers and building-supply dealers across Canada, the United States, Mexico, Europe, Asia and the Middle East. Sales of interior molded doors in the United States accounted for about 23 percent of Premdor's total 2000 sales of approximately $1.29 billion. Premdor also holds a 48.5 percent equity stake in Fibramold, S.A. ("Fibramold"), a Chilean manufacturer of interior molded doorskins. Fibramold is a Chilean closed corporation owned by Premdor, Forestal Terranova S.A., and Citifor (Chile) Holdings Limitada. Premdor is Fibramold's only significant interior molded doorskin customer in the United States.

2. *Premdor U.S. Holdings, Inc. ("Premdor U.S.")*

Premdor U.S., a wholly owned subsidiary of Premdor, is a Florida corporation with its corporate headquarters and principal place of business in Tampa, Florida. Premdor U.S. owns Premdor's U.S. facilities involved in the manufacture and sale of doors.

3. *IP*

IP is a New York corporation with its corporate headquarters and principal place of business in Stamford, Connecticut. Its businesses include printing paper, packaging, distribution, chemical and petroleum products and building materials. IP operates in nearly fifty countries and exports its products to more than 130 nations. In 2000, IP reported net sales of approximately $28.2 billion.

4. *Masonite*

Masonite, a wholly owned subsidiary of IP, is a Delaware corporation with its corporate headquarters and principal place of business in Chicago, Illinois. Masonite is one of the world's largest manufacturers of fiberboard, which is processed into a variety of products, including molded doorskins. Masonite manufactures interior molded doorskins in the United States at plants in Laurel, Mississippi and Towanda, Pennsylvania. Masonite sells interior molded

doorskins to all of the non-vertically integrated door manufacturers in the United States. In 2000, Masonite reported total sales of approximately $465 million, approximately half of which was generated through sales of interior molded doorskins.

B. The Proposed Acquisition

On or about September 30, 2000, IP, Premdor and Premdor U.S. entered into a purchase agreement whereby Premdor, through Premdor U.S., agreed to purchase IP's Masonite business. Premdor U.S. agreed to purchase 100 percent of the shares of Masonite, International Paper Masonite Holding Company Ltd. and Pintu Acquisition Company, Inc., as well as certain other assets and intellectual property rights. The purchase price for the transaction is approximately $500 million, subject to post-closing adjustments.

C. The Competitive Effects of the Acquisition

1. *The Interior Molded Doorskin and Interior Molded Door Market*s

As alleged in the Complaint, a doorskin is the component which makes up the front and back of a flush door; two doorskins are required for each flush door. There are several varieties of doorskins--a molded doorskin is formed from a fibrous mat that is molded into a raised panel design in a press under extreme pressure and at high temperatures. Molded doorskins are designed to provide the appearance of solid wood doors at a much lower price. A molded doorskin is the largest input cost of a molded door, comprising up to 70 percent of the cost of manufacturing a molded door. The Complaint alleges that the sale of interior molded doorskins in the United States for use in manufacturing interior molded doors is a relevant product market within the meaning of Section 7 of the Clayton Act.

The Complaint also alleges that the sale of interior molded doors in the United States is a relevant product market within the meaning of Section 7 of the Clayton Act. Interior molded

doors are a type of flush door used primarily in residential construction and remodeling for closets, rooms, and hallways. Other types of flush doors include those made with hardboard and veneered doorskins. Both hardboard and veneered doorskins are flat, unlike a molded doorskin which has a raised panel design. The Complaint alleges that hardboard and veneered doors are not substitutes for molded doors, as they are used in different applications than molded doors. Moreover, changes in the price of molded doors have, in the past, had no impact on the demand for hardboard or veneered doors.

2. *Anticompetitive Consequences of the Acquisition*

The markets for interior molded doorskins (the "upstream market") and for interior molded doors (the "downstream market") are closely connected--interior molded doorskins are the primary input in the manufacture of interior molded doors. There are only two major competitors in each market, one of which is a vertically integrated firm, not a party to this action (hereinafter the "non-party firm"), that therefore competes in both markets. Masonite presently is the largest competitor in the interior molded doorskin market and is not vertically integrated into the interior molded door market. Premdor is one of two major players in the interior molded door market and is a small, but significant, participant in the interior molded doorskin market. The proposed transaction, therefore, would combine two competitors in the interior molded doorskin market and result in the combined Premdor/Masonite firm being vertically integrated into both the interior molded doorskin and interior molded door markets. In 2000, Masonite and the non-party firm manufactured the vast majority of all doorskins used to manufacture interior molded doors in the United States. Masonite sell its doorskins to non-vertically integrated door manufacturers, and Premdor is Masonite's largest purchaser of interior molded doorskins. Premdor also participates in the interior molded doorskin market through its joint venture,

Fibramold. The non-party firm uses the vast majority of its interior molded doorskin production in the production of its own interior molded doors; the rest of its interior molded doorskin production is sold to non-vertically integrated door manufacturers. There are also a number of small doorskin manufacturers that sell interior molded doorskins in the United States; however, none of these sells even one percent of the interior molded doorskins sold in the United States.

Premdor is the world's largest producer of interior molded doors. In 2000, Premdor sold over 40 percent of all interior molded doors sold in the United States. Premdor's principal competitor in the downstream interior molded door market is the non-party firm. The approximately nine smaller, non-vertically integrated door manufacturers each sells five percent or less of the interior molded doors sold in the United States. The non-integrated door manufacturers in the United States purchase almost all of their interior molded doorskins from either Masonite or the non-party firm.

But for several impediments to coordination that result from the current structure of the upstream and downstream markets, the markets for interior molded doorskins and interior molded doors sold to U.S. consumers would be more conducive to anticompetitive coordination of output and price by the market participants. Despite the high concentration and homogeneous products of these markets--characteristics that tend to make coordination possible--the evidence developed in the investigation of the proposed transaction revealed at least four significant factors in the current structure of these markets that make coordination less likely. Based upon the evidence specific to this case, including documents obtained from the defendants, each of these factors would be lessened or eliminated if the proposed transaction were consummated.

The most significant impediment to coordination is Premdor's potential expansion in the interior molded doorskin market. Due to the substantial volume of interior molded doorskins that

it uses, Premdor could become a more significant producer by expanding further into the production of doorskins. If Masonite and the non-party firm were to coordinate, their increased doorskin prices would harm Premdor, giving it an incentive to expand significantly its output of doorskins, which would disrupt the coordination between Masonite and the non-party firm.

As the Complaint alleges, In 1998, Premdor purchased a 48.5 percent equity interest in Fibramold. Following that investment, Premdor began using some of its internally produced molded doorskins in the manufacture of interior molded doors sold in the United States. Recognizing Premdor's potential to expand significantly its participation in the U.S. market for doorskin production, Masonite began negotiating lower interior molded doorskin prices for Premdor. In March 1999, Premdor, Masonite and IP signed a Strategic Alliance agreement in which Masonite agreed to lower the price of interior molded doorskins sold to Premdor in exchange for Premdor's agreement, *inter alia*, to certain volume commitments. The Strategic Alliance, which has a stated term of five years, gives Premdor an incentive in the form of lower prices to refrain from further vertical integration--if either party decides to further vertically integrate, the other party may terminate the agreement on ninety days notice.

After Masonite began lowering its interior molded doorskin prices to Premdor pursuant to the Strategic Alliance, Masonite also began lowering its prices to the other interior molded door manufacturers. Under the current market structure, Masonite has an incentive to keep the other door manufacturers competitive with Premdor to maintain a broader customer base. If Premdor were to acquire Masonite, the price-constraining effect of Premdor's potential expansion in the interior molded doorskin market would be eliminated.

In addition, Masonite acts as a significant competitive constraint in the interior molded door market. Premdor and the non-party firm have an incentive to attempt to coordinate pricing

by reducing output. Coordination would reduce the output of interior molded doors, and lead to higher door prices. However, such an output reduction would also reduce the output of interior molded doorskins sold in the United States, harming Masonite. Thus, Masonite would have an incentive to disrupt such coordination through increased sales to the other non-vertically integrated door manufacturers. After the proposed transaction, a vertically integrated Premdor/Masonite combination will not have the same incentive to defeat coordination in the interior molded door market by increasing sales to the non-integrated door manufacturers since the combined company would be competing against those door manufacturers, and would benefit from an increase in the prices of interior molded doors.

The non-party firm acts as a significant competitive constraint in both the upstream and downstream markets. Documentary evidence obtained from the defendants suggests that the non-party firm, as a fully vertically integrated manufacturer, has certain cost advantages over Masonite and Premdor that it has used to lower prices to build market share. This differing cost structure among the dominant firms is an impediment to coordination. The evidence from the defendants suggests that post-acquisition, the cost structures of the two vertically integrated firms would be more closely aligned, decreasing the opportunity for the non-party firm to increase its market share profitably through lower prices, and thus increasing the non-party firm's incentive to coordinate with the combined Premdor/Masonite. In fact, Masonite recognized that the non-party firm's incentive to gain market share by lowering price would diminish if it faced a strong, integrated competitor.

Finally, the asymmetries of information available to the firms about the upstream and downstream markets impede coordination. Masonite specializes in interior molded doorskin production, whereas its most significant competitor, the non-party firm, competes in both the

interior molded doorskin and interior molded door markets. The differences in vertical integration between the two firms create information asymmetries that would make it difficult for the firms to monitor and punish deviations from attempted coordination on the terms of sale of interior molded doorskins. For example, since the non-party firm uses internally most of the doorskins it produces, Masonite lacks an ability to observe a market price for the non-party firm's doorskins and the number of doorskins that it produces. Similarly, since Masonite does not sell in the downstream market, it lacks information about the non-party firm's production and pricing in the interior molded door market. Moreover, despite the Strategic Alliance between Premdor and Masonite, there are significant gaps in the information each party has about the market in which the other party participates. The proposed acquisition would eliminate much of the information uncertainty by adding Premdor's downstream market information to Masonite's upstream market information, enhancing the combined firm's ability to detect deviations by the non-party firm on any coordinated price increase.

It is unlikely that the non-vertically integrated molded door manufacturers would be able to expand their output to defeat any anticompetitive coordination between the two vertically integrated firms post-acquisition. Each of these manufacturers is dependent on Masonite or the non-party firm for the majority of its molded doorskins. Since molded doorskins represent up to 70 percent of the cost of producing a molded door, post-acquisition the two vertically integrated firms could weaken their downstream rivals by raising their molded doorskin prices.

Entry into the U.S. interior molded doorskin market is unlikely to be timely, likely or sufficient to prevent the exercise of market power that the two dominant, vertically-integrated firms would be able to collectively exercise following the merger. While several foreign interior molded doorskin producers have limited sales in North America, they collectively lack the

capacity, quality and reliability to disrupt a coordinated effort to restrict output of interior molded doorskins, and ultimately, doors.

Finally, any merger-specific efficiencies that may be generated by the transaction are outweighed by the likely anticompetitive effects. While vertical integration may allow the combined Premdor/Masonite to lower the cost of producing interior molded doors, Premdor and Masonite can obtain the benefits of vertical integration without also enhancing the likelihood of coordination in the relevant markets by allowing Premdor to acquire a portion of Masonite. The proposed Final Judgment allows Premdor to acquire Masonite's interior molded doorskin production facilities in Laurel, Mississippi and Carrick-on-Shannon Ireland, giving Premdor sufficient capacity to supply all of its current requirements. However, the proposed Final Judgment also requires the divestiture of Masonite's Towanda Facility, which will create an independent manufacturer of interior molded doorskins that will impede the combined Premdor/Masonite's ability to coordinate with the non-party firm.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment requires Premdor to divest the Towanda Facility to a purchaser, approved by the United States, that can compete effectively in the interior molded doorskin market, and thereby remedy the anticompetitive effects alleged in the Complaint. Specifically, the proposed Final Judgment requires Premdor to divest the assets related to the production of molded doorskins at the Towanda Facility including: the Towanda plant; the exclusive right world-wide to the "CraftMaster" name; the exclusive right world-wide to the molded doorskin design names (i.e. Colonist, Classique, etc.); a license to all of the research and development, and other intellectual property related to the manufacture and sale of molded doorskins; the Towanda customer list; and the right to hire Masonite's sales, marketing and

distribution employees, as well as the employees of the Towanda Facility and certain other employees. This will allow the purchaser of the Towanda Facility to manufacture and sell all of the designs and sizes of interior molded doorskins that Masonite currently sells in the United States. The proposed Final Judgment also gives the acquirer of the Towanda Facility the option to enter into transitional agreements for up to twelve months for the supply of dies need to manufacture interior molded doorskins, as well as for services required to run the Towanda Facility.

Defendants must use their best efforts to divest the Towanda Facility as expeditiously as possible. The proposed Final Judgment provides that the Towanda Facility be divested in such a way as to satisfy the United States, in its sole discretion, that the acquirer can and will use the assets as part of a viable, ongoing business.

The proposed Final Judgment allows for the appointment of a trustee to monitor defendants' compliance with the terms of the proposed Final Judgment and the Hold Separate Stipulation and Order. If the defendants are unable to divest the Towanda Facility in the time allowed, the Final Judgment also allows for the appointment of a trustee to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that defendants must cooperate fully with the trustee and defendant Premdor must pay all of the trustee's costs and expenses. Any trustee appointed to effect the divestiture will have his or her compensation structured to provide an incentive for the trustee based on the price and terms of the divestiture and the speed with which it is accomplished. After any trustee appointment becomes effective, the trustee will file monthly reports with the United States and this Court setting forth either the defendants' or the trustee's efforts, whichever is applicable, to accomplish the required divestiture.

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 district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit 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 effect as *prima facie* evidence in any subsequent private lawsuit that may be brought against defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

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

The APPA provides a period of at least sixty (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 sixty (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 this 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, D.C. 20530

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this 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, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. The United States is satisfied, however, that the divestiture of the Towanda Facility, and other relief contained in the proposed Final Judgment will establish, preserve and ensure a viable competitor in the relevant markets identified by the United States. Thus, the United States is convinced that the proposed Final Judgment, once implemented by the Court, will prevent Premdor's acquisition of the Masonite business of IP from having adverse competitive effects.

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 trial.

15 U.S.C. § 16(e) (emphasis added). As the Court of Appeals for the District of Columbia has 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 Corp.*, 56 F.3d 1448, 1458-62 (D.C. Cir. 1995).

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,

> absent 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.[2]

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, 462-63 (9th Cir. 1988), *quoting United States v. Bechtel*

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[1] 119 CONG. REC. 24,598 (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, those procedures are discretionary (15 U.S.C. § 16(f)). 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. No. 93-1463, 93rd Cong. 2d Sess. 8-9 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6535, 6538.

[2] *United States v. Mid-America Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977); *see also United States v. Loew's Inc.*, 783 F. Supp. 211, 214 (S.D.N.Y. 1992); *United States v. Columbia Artists Mgmt., Inc.*, 662 F. Supp. 865, 870 (S.D.N.Y. 1987).

Corp., 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1458. Precedent requires that

> [t]he 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.[3]

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 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.'"[4]

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States alleges in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Since the "court's authority to review the decree depends

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[3] *United States v. Bechtel Corp.*, 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 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984).

[4] *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (*quoting Gillette*, 406 F. Supp. at 716), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985); *United States v. Carrols Dev. Corp.*, 454 F. Supp. 1215, 1222 (N.D.N.Y. 1978).

entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id.*

VIII. DETERMINATIVE DOCUMENTS

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

Dated: August 3, 2001
Washington, D.C.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Competitive Impact Statement via First Class United States Mail and facsimile transmission, this 3rd day of August, 2001, on:

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