settlement through the consent decree process.'' [7] 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.

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

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States* v. *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.[8]

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' (citations omitted).'' [9]

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged 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 ''[t]he court's authority to review the decree depends 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 is a single determinative document within the meaning of the APPA that was considered by the United States in formulating the proposed Final Judgment. That document, a letter dated March 17, 2000 from Kim Murphy, an attorney at Interstate Brands Corporation (''IBC''), to David Groce, General Counsel of Earthgrains, is attached to the Final Judgment as Appendix A. (A copy of this letter is reproduced in the attached Appendix). Although defendants proposed licensing the Taystee label as a step toward alleviating the competitive harm, Metz's license rights to that label were subject to the approval of the original licensee, IBC. Defendants subsequently secured assurances from IBC that it would permit the Taystee label to be licensed to an acquirer acceptable to the United States under the terms of the Final Judgment. Divestiture of the Taystee label became acceptable to the United States only after it had received that written assurance.

Dated: April 7, 2000.

Respectfully submitted,

Anthony E. Harris, Illinois Bar #1133713.

U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–6583.

Certificate of Service

I hereby certify that on April 7, 2000, I caused a copy of the foregoing Competitive Impact Statement to be served by causing the pleading to be mailed first-class, postage prepaid, to a duly authorized legal representative of each of the defendants, as follows:

The Earthgrains Company

Roxann E. Henry, Esquire, Howrey Simon Arnold & White, 1299 Pennsylvania Avenue, NW, Washington, DC 20004

Specialty Foods Corporation and Metz Holdings, Inc.

David E. Schreibman, Esquire, Vice President, Secretary and General Counsel, Specialty Foods Corporation, 520 Lake Cook Road, Deerfield, IL 60015.

Anthony E. Harris, (IL Bar #1133713).

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DEPARTMENT OF JUSTICE

Antitrust Division

Joint Motion To Modify Final Judgment and United States' Memorandum in Support of Motion To Modify; United States v. Baroid Corp., et al.

Notice is hereby given that the United States and Diamond Products International (''DPI'') have filed a joint motion to modify the final judgment filed in a civil antitrust case, *United States* v. *Baroid Corpation., et al.* Civil Action No. 93–2621, in the United States District Court for the District of Columbia. The Department has consented to modification of the Judgment but has reserved the right to withdraw its consent if it determines that, based upon comments filed or other information received, consent to the modification is not in the public interest.

This case was filed on December 23, 1993, and alleged that the merger of Dresser Industries, Inc. (''Dresser'') and Baroid Corporation (''Baroid'') might substantially lessen competition in the United States in the manufacture and sale of two oil field service products, diamond drill bits and drilling fluids, in violation of section 7 of the Clayton Act. The Final Judgment was entered on April 12, 1994.

[7] 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.C.C. A.N. 6535, 6538.

[8] *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).

[9] *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).

Under the Final Judgment, Dresser was required to divest Baroid's diamond bit business, which included all Baroid assets used in the United States to research, develop, test, manufacture, service, or market its diamond drill bits. Pursuant to the judgment, Dresser sold that business to a company then called International Superior Products, Inc., and now known as Diamond Products International (''DPI'').

Paragraph V.F. of the Final Judgment states that the purchaser of the divested diamond drill bit business may not sell that business to, or combine that business with the diamond bit business of, any of four named companies: Dresser (now part of Halliburton Company), Camco, Inc. (Now part of Schlumberger Ltd.), Baker Hughes, Inc., or Smith International, Inc, or any of their subsidiaries or affiliates. The joint motion proposes modifying the Final Judgment to eliminate the absolute prohibition or transactions involving Camco, Baker Hughes, or Smith and instead require DPI to give notice to the Department of any such proposed transactions. The Final Judgment would continue to bar DIP from selling its diamond drill bit business to, or combining that business with the diamond drill bit operations, of Dresser, the firm required by the Final Judgment to divest the diamond bit business in the final instance.

Copies of the Complaint and Judgment, the joint motion, and the United States' supporting memorandum are available for inspection in Room 215, Antitrust Division, U.S. Department of Justice, 325 7th St., NW, Washington, DC 20530 and at the Office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue, NW, Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Comments to the Department of Justice and to the Court regarding the proposed modification of the Final Judgment are invited from members of the public. They should be addressed to Roger W. Fones, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, Suite 500, 325 7th Street, NW, Washington, DC 20530 (202–307–6351). Such comments must be received within 50 days.

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

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BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Training Grant Program '' Internet-Based OSHA Expert Compliance Assistance System

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of availability of funds and request for grant applications.

SUMMARY: The Occupational Safety and Health Administration (OSHA) awards funds to nonprofit organizations to conduct safety and health training and education. This notice announces grant availability for training employers in an internet-based OSHA expert compliance assistance system. The notice describes the scope of the grant program and provides information about how to get detailed grant application instructions. Applications should not be submitted without the applicant first obtaining the detailed grant application instructions mentioned later in the notice.

Section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670) authorizes this program.

DATES: Applications must be received by June 9, 2000.

ADDRESSES: Submit grant applications to the Office of Science and Technology Assessment, Directorate of Technical Support, OSHA, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Roy F. Gurnham, Director, Office of Science and Technology Assessment, Directorate of Technical Support, OSHA, (202) 693–2024, e-mail roy.gurnham@osha.gov.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of the Grant Program?

OSHA's strategic plan contains goals to improve workplace safety and health for all workers, change the workplace culture to increase employer and worker awareness of, commitment to, and involvement in safety and health, and to secure public confidence through excellence in the development and delivery of OSHA's programs and services. OSHA's intent is to reduce the number of worker injuries, illnesses and fatalities by focusing nationwide attention and Agency resources on the most prevalent types of workplace injuries and illnesses, the most hazardous industries and the most hazardous workplaces. This grant is one of the mechanisms OSHA is using to achieve its strategic goals.

This grant provides funds to train employers to recognize, avoid, and prevent safety and health hazards in their workplaces.

The program emphasizes three areas.

- Educating employers in small businesses. A small business has 250 or fewer workers.
- Training employers in new OSHA standards.
- Training employers in high risk activities or hazards identified by OSHA.

Grantees are expected to develop Internet expert software, training and/or educational programs that address compliance assistance and Material Safety Data Sheet assistance as described below, and conduct the training. Grantees will also be expected to follow-up with people who have been trained by their program to find out what, if any, changes were made to reduce hazards in their workplaces as a result of the training.

What Are the Training Topics for This Grant?

The purpose of this notice is to announce that funds are available for a grant to train employers in an Internet-based OSHA expert compliance assistance system. Each grant application must address the following:

- Use of an Internet-based diagnostic (''expert'') software system that, using a down loadable, on-line interview process, will give the user a compliance profile for each facility covered by the interview as well as a comprehensive ''to-do'' list to help the user manage compliance. The information must be customized for each facility and must be kept current over the Internet;
- The system must be capable of automatically downloading, indexing, viewing, and printing Material Safety Data Sheets (MSDS) files. Once tagged, MSDSs would be monitored and user files would be automatically updated via the Internet;
- Use of training materials for the purpose of training employers how to use the system.

Who Is Eligible To Apply for a Grant?

Any non-profit educational foundation is eligible to apply. Applicants will be required to submit evidence of nonprofit status, preferably from the IRS.

What Can Grant Funds Be Spent On?

Grant funds can be spent on the following:

- Conducting training.
- Conducting other activities that reach and inform workers and employers about occupational safety