purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: December 30, 2021.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2021–28545 Filed 1–4–22; 8:45 am]

BILLING CODE 7020–02–P

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1575–1577 (Preliminary)]

Emulsion Styrene-Butadiene Rubber From Czechia, Italy, and Russia

Determinations

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of emulsion styrene-butadiene rubber from Czechia, Italy, and Russia, provided for in subheading 4002.19.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'').[2] [3]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under § 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under § 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

Effective November 15, 2021, Lion Elastomers LLC, Port Neches, Texas filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of emulsion styrene-butadiene rubber from Czechia, Italy, and Russia. Accordingly, effective November 15, 2021, the Commission instituted antidumping duty investigation Nos. 731–TA–1575–1577 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 22, 2021 (86 FR 66335). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its conference through written testimony and video conference. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to § 733(a) of the Act (19 U.S.C. 1673b(a)). It completed and filed its determinations in these investigations on December 30, 2021. The views of the Commission are contained in USITC Publication 5274 (January 2022), entitled *Emulsion Styrene-Butadiene Rubber from Czechia, Italy, and Russia: Investigation Nos. 731 TA 1575–1577 (Preliminary).*

Issued: December 30, 2021.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2021–28568 Filed 1–4–22; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 86 FR 70447 (December 10, 2021).

[3] Vice Chair Randolph J. Stayin not participating.

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Clarence L. Werner; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Clarence L. Werner,* Civil Action 1:21–cv–03332. On December 22, 2021, the United States filed a Complaint alleging that Clarence L. Werner violated the premerger notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, in connection with the acquisition of voting securities of Werner Enterprises Inc. The proposed Final Judgment, filed at the same time as the Complaint, requires Clarence L. Werner to pay a civil penalty of $486,900.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments in English should be directed to Maribeth Petrizzi, Special Attorney, United States, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW, CC–8416, Washington, DC 20580 or by email to *bccompliance@ftc.gov.*

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

United States District Court for the District of Columbia

United States of America, c/o Department of Justice, Washington, DC 20530, Plaintiff, v. *Clarence L. Werner, c/o Werner Enterprises, Inc., 14507 Frontier Road, Omaha, NE 68138,* Defendant.

Civil Action No. 1:21–cv–03332

Judge: James E. Boasberg

Complaint for Civil Penalties for Failure To Comply With the Premerger Reporting and Waiting Requirements of the Hart-Scott Rodino Act

The United States of America, acting under the direction of the Attorney General of the United States and at the request of the United States Federal Trade Commission, brings this civil antitrust action to obtain monetary relief in the form of civil penalties against Defendant Clarence L. Werner (''Werner''). The United States alleges as follows:

I. Nature of the Action

1. Werner violated the notice and waiting period requirements of Section 7A of the Clayton Act, (15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ''HSR Act'' or ''Act''), with respect to the acquisition of voting securities of Werner Enterprises, Inc. (''Werner Inc.'') from May 2007 through February 2020.

II. Jurisdiction and Venue

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. 18a(g), and 28 U.S.C. 1331, 1337(a), 1345, and 1355, and over Defendant by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

3. Venue is proper in this District by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

III. The Defendant

4. Defendant Werner is a natural person with his principal office and place of business at 14507 Frontier Road, Omaha, NE 68138. Werner is the founder of Werner Inc. and during the relevant period alternatively served as the Chairman, Chairman Emeritus, and Executive Chairman of its Board of Directors. Werner is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1). At all times relevant to this complaint, Werner had sales or assets that met the operative threshold.

IV. Other Entity

5. Werner Inc. is a corporation organized under the laws of Nebraska with its principal place of business at 14507 Frontier Road, Omaha, NE 63138. Werner Inc. is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1). At all times relevant to this complaint, Werner Inc. had sales or assets that met the operative threshold.

V. The Hart-Scott-Rodino Act and Rules

6. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notifications with the Department of Justice and the Federal Trade Commission (collectively, the ''federal antitrust agencies'') and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. 18a(a) and (b). These notification and waiting period requirements apply to acquisitions that meet the HSR Act's size of transaction and size of person thresholds, which have been adjusted annually since 2004. The size of transaction threshold is met for transactions valued over $50 million, as adjusted ($94 million in 2020). In addition, there is a separate filing requirement for transactions in which the acquirer will hold voting securities in excess of $100 million, as adjusted ($188 million in 2020), and for transactions in which the acquirer will hold voting securities in excess of $500 million, as adjusted ($940.1 million in 2020). With respect to the size of person thresholds, the HSR Act requires one person involved in the transaction to have sales or assets in excess of $10 million, as adjusted ($18.8 million in 2020), and the other person to have sales or assets in excess of $100 million, as adjusted ($188 million in 2020).

7. The HSR Act's notification and waiting period requirements are intended to give the federal antitrust agencies prior notice of, and information about, proposed transactions. The waiting period is also intended to provide the federal antitrust agencies with the opportunity to investigate a proposed transaction and to determine whether to seek an injunction to prevent the consummation of a transaction that may violate the antitrust laws.

8. Pursuant to Section (d)(2) of the HSR Act, 15 U.S.C. 18a(d)(2), rules were promulgated to carry out the purposes of the HSR Act. 16 CFR 801–03 (''HSR Rules''). The HSR Rules, among other things, define terms contained in the HSR Act.

9. Pursuant to Section 801.13(a)(1) of the HSR Rules, 16 CFR 801.13(a)(1), ''all voting securities of [an] issuer which will be held by the acquiring person after the consummation of an acquisition''—including any held before the acquisition—are deemed held ''as a result of'' the acquisition at issue.

10. Pursuant to Sections 801.13(a)(2) and 801.10(c)(1) of the HSR Rules, 16 CFR 801.13(a)(2) and § 801.10(c)(1), the value of voting securities already held is the market price, defined to be the lowest closing price within 45 days prior to the subsequent acquisition.

11. Section 802.21 of the HSR Rules, 16 CFR 802.21, provides that, once a person has filed under the HSR Act and the waiting period has expired, that person can acquire additional voting securities of the same issuer without filing a new notification for five years from the expiration of the waiting period, so long as the value of the person's holdings do not exceed a threshold higher than was indicated in the filing (''802.21 exemption'').

12. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), provides that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which such person is in violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), the dollar amounts of civil penalties listed in Federal Trade Commission Rule 1.98, 16 CFR 1.98, are adjusted annually for inflation; the maximum amount of civil penalty in effect at the time of Werner's corrective filing was $43,280 per day. 85 FR 2014 (January 14, 2020).

VI. Defendant's Violation of the HSR Act

13. On May 14, 2007, Werner exercised options to acquire 475,000 Werner Inc. voting securities, which resulted in his aggregated holdings of Werner Inc. voting securities exceeding the $100 million threshold, as adjusted, which in May 2007, was $119.6 million. Although required to do so, Werner did not file under the HSR Act or observe the HSR Act's waiting period prior to completing the May 14, 2007, transaction.

14. Werner continued to acquire Werner Inc. voting securities through open market purchases, the exercise of options, and otherwise.

15. Werner acquired 320,100 voting securities on November 18, 2009, 8,500 voting securities on November 24, 2009, 59,406 voting securities on November 27, 2009, and 32,094 voting securities on November 30, 2009. All of these acquisitions were made on the open market. Open market acquisitions require an acquirer to affirmatively and

actively decide to acquire voting securities; in particular for very large open market acquisitions, it is not excusable negligence to be unaware of HSR Act legal requirements.

16. On November 20, 2012, Werner exercised options to acquire 100,000 Werner Inc. voting securities, which resulted in his aggregated holdings of Werner Inc. voting securities again exceeding the $100 million threshold, as adjusted, which in November 2012, was $136.4 million. Although required to do so, Werner did not file under the HSR Act or observe the HSR Act's waiting period prior to completing the November 20, 2012 transaction. Thereafter, Werner continued to acquire Werner Inc. voting securities.

17. On February 7, 2019, Werner received 3,738 Werner Inc. voting securities with the vesting of a tranche of restricted stock, which resulted in his aggregated holdings of Werner Inc. voting securities again exceeding the $100 million threshold, as adjusted, which in February 2019, was $168.8 million. Although required to do so, Werner did not file under the HSR Act or observe the HSR Act's waiting period prior to completing the February 7, 2019 transaction.

18. On January 17, 2020, Werner's counsel contacted the Premerger Notification Office (''PNO'') of the Federal Trade Commission to inform PNO staff that counsel was analyzing a situation that counsel anticipated would likely entail multiple post-consummation filings. As of that date, Werner, through his counsel, was aware that he had violated the HSR Act.

19. Thereafter, Werner made additional acquisitions of Werner Inc. voting securities on February 7 and 11, 2020, through the vesting of restricted stock awards. Werner did not file an HSR notification prior to either of these acquisitions.

20. On March 4, 2020, Werner made corrective filings under the HSR Act for the acquisitions he made on May 14, 2007, November 20, 2012, and February 7, 2019. Each of these transactions resulted in Werner's aggregated holdings of Werner Inc. voting securities exceeding the $100 million threshold, as adjusted. Had Werner filed under the HSR Act for these three acquisitions on a timely basis, all his other acquisitions of Werner Inc. voting securities during the relevant period would have been exempt pursuant to the 802.21 exemption.

21. Werner was in continuous violation of the HSR Act from May 14, 2007, when he acquired the Werner Inc. voting securities valued in excess of the HSR Act's $100 million filing threshold, as adjusted, through April 3, 2020, when the waiting period expired on his corrective filings.

VIII. Requested Relief

Wherefore, the United States requests:

a. That the Court adjudge and decree that Defendant's acquisitions of Werner Inc. voting securities from May 14, 2007, through February 11, 2020, were violations of the HSR Act, 15 U.S.C. 18a; and that Defendant was in violation of the HSR Act each day from May 14, 2007, through April 3, 2020;

b. that the Court order Defendant to pay to the United States an appropriate civil penalty as provided by the Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), the Debt Collection Improvement Act of 1996, Public Law 104 134 § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461), and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 85 FR 2014 (January 14, 2020);

c. that the Court order such other and further relief as the Court may deem just and proper; and

d. that the Court award the United States its costs of this suit.

Dated:

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

Jonathan S. Kanter,

Assistant Attorney General, Department of Justice, Antitrust Division, Washington, DC 20530.

Maribeth Petrizzi,

D.C. Bar No. 435204, Special Attorney.

Kenneth A. Libby,

Special Attorney.

Kelly Horne,

Special Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326–2694.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Clarence L. Werner,* Defendant.

Civil Action No. 1:21–cv–03332

Judge: James E. Boasberg

[Proposed] Final Judgment

Whereas, the United States of America filed its Complaint on December 22, 2021, alleging that Defendant Clarence L. Werner violated Section 7A of the Clayton Act (15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the ''HSR Act''));

and whereas the United States and Defendant, have consented to the entry of this Final Judgment without the taking of testimony, without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

Now, therefore, it is ordered, adjudged, and decreed:

I. Jurisdiction

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief can be granted against Defendant under Section 7A of the Clayton Act, 15 U.S.C. 18a.

II. Civil Penalty

Judgment is hereby entered in this matter in favor of the United States and against Defendant, and, pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), the Debt Collection Improvement Act of 1996, Public Law 104–134 § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461), the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74 § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 86 FR 2541 (January 13, 2021), Defendant is hereby ordered to pay a civil penalty in the amount of four hundred eighty-six thousand nine hundred dollars ($486,900). Payment of the civil penalty ordered hereby must be made by wire transfer of funds or cashier's check. If the payment is to be made by wire transfer, prior to making the transfer, Defendant will contact the Budget and Fiscal Section of the Antitrust Division's Executive Office at *ATR.EXO-Fiscal-Inquiries@usdoj.gov* for instructions. If the payment is made by cashier's check, the check must be made payable to the United States Department of Justice and delivered to: Chief, Budget & Fiscal Section, Executive Office, Antitrust Division, United States Department of Justice, Liberty Square Building, 450 5th Street NW, Room 3016, Washington, DC 20530.

Defendant must pay the full amount of the civil penalty within thirty (30) days of entry of this Final Judgment. In the event of a default or delay in payment, interest at the rate of eighteen percent (18%) per annum will accrue thereon from the date of the default or delay to the date of payment.

III. Costs

Each party will bear its own costs of this action, except as otherwise provided in Paragraph IV.C.

IV. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendant agrees that in a civil contempt action, a motion to show cause, or a similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendant waives any argument that a different standard of proof should apply.

B. Defendant agrees that he may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. The terms of this Final Judgment should not be construed against either party as the drafter.

C. In connection with a successful effort by the United States to enforce this Final Judgment against Defendant, whether litigated or resolved before litigation, Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

V. Expiration of Final Judgment

This Final Judgment will expire upon payment in full by the Defendant of the civil penalty required by Section II of this Final Judgment.

VI. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: ________________________

[Court approval subject to the procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16]

____

United States District Judge

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Clarence L. Werner,* Defendant.

Civil Action No. 1:21–cv–03332

Judge: James E. Boasberg

Competitive Impact Statement

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

I. Nature and Purpose of the Proceeding

On December 22, 2022, the United States filed a Complaint against Defendant Clarence L. Werner (''Werner'' or ''Defendant''), relating to Werner's acquisitions of voting securities of Werner Enterprises, Inc. (''Werner Inc.'') from May 2007 through February 2020. The Complaint alleges that Werner violated Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the ''HSR Act''). The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notifications with the Department of Justice and the Federal Trade Commission (collectively, the ''federal antitrust agencies'') and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. 18a (a) and (b).

These notification and waiting period requirements apply to acquisitions that meet the HSR Act's size of transaction and size of person thresholds, which have been adjusted annually since 2004. The size of transaction threshold is met for transactions valued over $50 million, as adjusted ($94 million in 2020). In addition, there is a separate filing requirement for transactions in which the acquirer will hold voting securities in excess of $100 million, as adjusted ($188 million in 2020), and for transactions in which the acquirer will hold voting securities in excess of $500 million, as adjusted ($940.1 million in 2020).

With respect to the size of person thresholds, the HSR Act requires one person involved in the transaction to have sales or assets in excess of $10 million, as adjusted ($18.8 million in 2020), and the other person to have sales or assets in excess of $100 million, as adjusted ($188 million in 2020). A key purpose of the notification and waiting period requirements is to protect consumers and competition from potentially anticompetitive transactions by providing the federal antitrust agencies an opportunity to conduct an antitrust review of proposed transactions before they are consummated.

An exemption from HSR Act filings may apply under certain circumstances. Section 802.21 of the HSR Rules, 16 CFR 802.21, provides that, once a person has filed under the HSR Act and the waiting period has expired, that person can acquire additional voting securities of the same issuer without filing a new notification for five years from the expiration of the waiting period, so long as the value of the person's holdings do not exceed a threshold higher than was indicated in the filing (''802.21 exemption'').

The Complaint alleges that Werner acquired voting securities of Werner Inc. without filing the required pre-acquisition HSR Act notifications with the federal antitrust agencies and without observing the waiting period. Werner's acquisitions of Werner Inc. voting securities exceeded the $100-million statutory threshold, as adjusted, and Werner and Werner Inc. met the then-applicable adjusted statutory size of person thresholds. Moreover, none of Werner's acquisitions were exempt from HSR Act notification and waiting period requirements under the 802.21 exemption because he had not previously filed the requisite pre-acquisition HSR Act notifications.

At the same time the Complaint was filed in the present action, the United States also filed a Stipulation and Order and proposed Final Judgment that resolve the allegations made in the Complaint. The proposed Final Judgment is designed to address the violation alleged in the Complaint and penalize Werner's HSR Act violations. Under the proposed Final Judgment, Werner must pay a civil penalty to the United States in the amount of $486,900.

The United States and Werner have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States first withdraws its consent. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and punish violations thereof.

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

The crux of Werner's violation is that he failed to submit HSR Act notifications even though his acquisitions of Werner Inc. voting securities satisfied the HSR Act filing requirements and he was not eligible to take advantage of the 802.21 exemption. At all times relevant to the Complaint, Werner had sales or assets in excess of $10 million, as adjusted. At all times relevant to the Complaint, Werner Inc. had sales or assets in excess of $100 million, as adjusted.

Werner is the founder of Werner Inc. and during the relevant period alternatively served as the Chairman, Chairman Emeritus, and Executive Chairman of its Board of Directors. On May 14, 2007, Werner exercised options to acquire 475,000 shares of Werner Inc. voting securities, which resulted in his aggregated holdings of Werner Inc. voting securities exceeding the $100 million threshold, as adjusted, which in May 2007 was $119.6 million. Although required to do so, Werner did not file under the HSR Act or observe the HSR Act's waiting period prior to completing the May 14, 2007, transaction.

Werner continued to acquire Werner Inc. voting securities, through open market purchases, the exercise of options, and otherwise. Werner acquired 320,100 voting securities on November 18, 2009, 8,500 voting securities on November 24, 2009, 59,406 voting securities on November 27, 2009, and 32,094 voting securities on November 30, 2009. All of these acquisitions were made on the open market. Open market acquisitions require an acquirer to affirmatively and actively decide to acquire voting securities; in particular for very large open market acquisitions, it is not excusable negligence to be unaware of HSR Act legal requirements.

On November 20, 2012, Werner exercised options to acquire 100,000 Werner Inc. voting securities, which resulted in his aggregated holdings of Werner Inc. voting securities again exceeding the $100 million threshold, as adjusted, which in November 2012 was $136.4 million. Although required to do so, Werner did not file under the HSR Act or observe the HSR Act's waiting period prior to completing the November 20, 2012 transaction. Thereafter, Werner continued to acquire Werner Inc. voting securities.

On February 7, 2019, Werner received 3,738 Werner Inc. voting securities with the vesting of a tranche of restricted stock, which resulted in his aggregated holdings of Werner Inc. voting securities again exceeding the $100 million threshold, as adjusted, which in February 2019 was $168.8 million. Although required to do so, Werner did not file under the HSR Act or observe the HSR Act's waiting period prior to completing the February 7, 2019 transaction.

On January 17, 2020, Werner's counsel contacted the Premerger Notification Office (''PNO'') of the Federal Trade Commission to inform PNO staff that counsel was analyzing a situation that counsel anticipated would likely entail multiple post-consummation filings. As of that date, Werner, through his counsel, was aware that he had violated the HSR Act. Thereafter, Werner made additional acquisitions of Werner Inc. voting securities on February 7 and 11, 2020, through the vesting of restricted stock awards. Werner did not file an HSR notification prior to either of these acquisitions.

On March 4, 2020, Werner made corrective filings under the HSR Act for the acquisitions he made on May 14, 2007, November 20, 2012, and February 7, 2019. Each of these transactions resulted in Werner's aggregated holdings of Werner Inc. stock exceeding the $100 million threshold, as adjusted. Had Werner filed under the HSR Act for these three acquisitions on a timely basis, all his other acquisitions of Werner Inc. voting securities during the relevant period would have been exempt pursuant to the 802.21 exemption.

Werner was in continuous violation of the HSR Act from May 14, 2007, when he acquired the Werner Inc. voting securities valued in excess of the HSR Act's $100 million filing threshold, as adjusted, through April 3, 2020, when the waiting period expired on his corrective filings.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment imposes a $486,900 civil penalty designed to address the violation alleged in the Complaint, penalize the Defendant, and deter others from violating the HSR Act. The United States adjusted the penalty downward from the maximum permitted under the HSR Act because the violation was inadvertent and the Defendant is willing to resolve the matter by proposed final judgment and thereby avoid prolonged investigation and litigation. However, the penalty amount reflects that Defendant was serving in a director capacity throughout the period he was in violation of the HSR Act. In addition, many of these acquisitions were open market acquisitions, such that he should have been aware of his obligations under the HSR Act. Open market acquisitions require an acquirer to affirmatively and actively decide to acquire voting securities; in particular for very large open market acquisitions, it is not excusable negligence to be unaware of HSR Act legal requirements. Further, Defendant made reportable acquisitions even after Defendant, through his counsel, was aware that he had violated the HSR Act. The penalty will not have any adverse effect on competition; instead, the relief should have a beneficial effect on competition because it will deter the Defendant and others from failing to properly notify the federal antitrust agencies of future acquisitions, in accordance with the law.

IV. Remedies Available to Potential Private Litigants

There is no private antitrust action for HSR Act violations; therefore, entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust action.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the Defendant 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** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the **Federal Register** unless the Court agrees that the United States instead may publish them on the U.S. Department of

Justice, Antitrust Division's internet website. Written comments should be submitted in English to: Maribeth Petrizzi, Special Attorney, United States, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW, CC–8416, Washington, DC 20580, *Email: bccompliance@ftc.gov.*

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the Defendant. The United States is satisfied, however, that the proposed relief is an appropriate remedy in this matter. Given the facts of this case, including the Defendant's self-reporting of the violations and willingness to promptly settle this matter, the United States is satisfied that the proposed civil penalty is sufficient to address the violations alleged in the Complaint and to deter violations by similarly situated entities in the future, without the time, expense, and uncertainty of a full trial on the merits.

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

Under the Clayton Act and APPA, proposed Final Judgments or ''consent decrees'' in antitrust cases brought by the United States are subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a proposed Final Judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[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.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the *flexibility* of the public interest inquiry: The court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted); *see also United States* v. *Deutsche Telekom AG,* No. 19–2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Microsoft,* 56 F.3d at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' (internal citations omitted)); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the APPA 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; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''). Because the ''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 did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

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.

Date: December 22, 2021.

Respectfully submitted,

Kenneth A. Libby,

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Biglari Holdings Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Biglari Holdings Inc.,* Civil Action 1:21–cv–03331. On December 22, 2021, the United States filed a Complaint alleging that Biglari Holdings Inc. violated the premerger notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, in connection with the acquisition of voting securities of Cracker Barrel Old Country Store Inc. The proposed Final Judgment, filed at the same time as the Complaint, requires Biglari Holdings Inc. to pay a civil penalty of $1,374,190.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments in English should be directed to Maribeth Petrizzi, Special Attorney, United States, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW, CC–8416, Washington, DC 20580 or by email to *bccompliance@ftc.gov.*

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

United States District Court for the District of Columbia

United States of America, c/o Department of Justice, Washington, DC 20530, Plaintiff, v. *Biglari Holdings Inc., 17802 IH 10 West, Suite 400, San Antonio, TX 78257,* Defendant.

Civil Action No. 1:21–cv–03331

Judge: Tanya S. Chutkan

Complaint for Civil Penalties for Failure To Comply With the Premerger Reporting and Waiting Requirements of the Hart-Scott Rodino Act

The United States of America, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil antitrust action to obtain monetary relief in the form of civil penalties against Defendant Biglari Holdings Inc. (''Biglari''). The United States alleges as follows:

Nature of the Action

1. Biglari violated the notice and waiting period requirements of Section 7A of the Clayton Act, (15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ''HSR Act'' or ''Act''), with respect to the acquisition of voting securities of Cracker Barrel Old Country Store, Inc. (''Cracker Barrel'') in 2020.

Jurisdiction and Venue

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. 18a(g), and 28 U.S.C. 1331, 1337(a), 1345, and 1355 and over Defendant by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

3. Venue is proper in this District by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

The Defendant

4. Biglari is a corporation organized under the laws of Indiana with its principal office and place of business at 17802 IH 10 West, Suite 400, San Antonio, TX 78257. Biglari is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1). At all times relevant to this complaint, Biglari had sales or assets in excess of $18.8 million.

Other Entity

5. Cracker Barrel is a corporation organized under the laws of Tennessee with its principal place of business at 305 Hartmann Drive, Lebanon, TN 37087. Cracker Barrel is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1). At all times relevant to this complaint, Cracker