DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Parker-Hannifin Corporation and CLARCOR 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 Delaware in United States v. Parker-Hannifin Corporation and CLARCOR Inc., Civil Action No. 1:17-cv-01354. On September 26, 2017, the United States filed a Complaint alleging that Parker-Hannifin Corporation's ("Parker-Hannifin") acquisition of CLARCOR Inc.'s ("CLARCOR") aviation fuel filtration business assets violated Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment requires Parker-Hannifin to divest the Facet filtration business, which includes the aviation fuel filtration assets that it acquired from CLARCOR Inc. on February 28, 2017.

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 Delaware. 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 should be directed to Maribeth Petrizzi, Chief, Defense,

Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530, (telephone: 202-307-0924).

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Patricia A. Brink,
Director of Civil Enforcement.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, *Plaintiff*, v. PARKER–HANNIFIN CORPORATION, and CLARCOR INC., *Defendants*.	Civil Action No.: 1:17-CV-01354 Judge James E. Boasberg

COMPLAINT

On February 28, 2017, Parker-Hannifin Corporation acquired its only U.S. competitor in aviation fuel filtration systems and filter elements, CLARCOR Inc. By doing so, it eliminated all head-to-head competition between the only two domestic manufacturers of these products, effectively creating a monopoly in the United States. If permitted to stand, this unlawful merger will harm competition in the development, manufacture and sale of these critical aviation fuel filtration systems. The results would be higher prices, reduced innovation, less reliable delivery times, and less favorable terms of service for the American businesses and military that depend on these critical products.

Accordingly, the United States of America brings this civil antitrust action to unwind this unlawfully created monopoly by means of an order requiring defendant Parker-Hannifin to divest

either Parker-Hannifin's or CLARCOR's aviation fuel filtration assets. The United States alleges as follows:

I. INTRODUCTION

1. More than 87,000 flights travel through U.S. airspace on any given day. The safety of the passengers and cargo on each of those flights depends on access to uncontaminated fuel. Before aviation fuel is considered clean enough for use by commercial or military aircraft, contaminants and water must be removed using specialized fuel filtration systems. The failure to clean aviation fuel in this manner can cause plane engines to stall, with potentially catastrophic consequences.

2. In light of the importance of these fuel filtration products, the U.S. airline industry and the U.S. military have adopted standards to govern their use. Under these standards, U.S. airlines require their contracted refueling agents to use qualified aviation fuel filtration products to filter aviation fuel in the United States. To qualify, each manufacturer of aviation fuel filtration products must demonstrate that its products meet the Energy Institute's ("EI") specifications by passing a rigorous series of tests typically conducted in the presence of an aviation fuel expert from the EI.[1]

3. Prior to this merger, Parker-Hannifin and CLARCOR were the only suppliers of EI-qualified aviation fuel filtration systems and filter elements to U.S. customers. The only other manufacturer of such EI-qualified aviation fuel filtration products in the world is located in Germany. Because that manufacturer does not have a U.S. manufacturing facility and it lacks a U.S. network for sales, warehousing, distribution, technical support and delivery, U.S. customers do not consider it a viable competitive alternative to the merged firms.

[1] The EI is an independent, international professional organization for the energy sector that publishes performance and testing standards for aviation fuel filtration products.

4. It is also unlikely that a new entrant to the market could remedy the competition lost as a result of this merger. As the former General Manager of Parker-Hannifin's aviation fuel filters business explained in a sworn statement only a few years ago, securing EI-qualification for aviation fuel filtration products is "expensive, time-consuming and difficult."

5. Parker-Hannifin was aware that it was acquiring its only U.S. competitor for these important aviation fuel filtration products. Just weeks before its $4.3 billion merger was announced, the Vice President of Business Development for Parker-Hannifin's Filtration Group wrote to the President of the Filtration Group, identifying "the notable area of overlap" between the merging parties in "ground aviation fuel filtration." He asked whether Parker-Hannifin should be "forthcoming" about this "aviation antitrust potential." Then, later in that same email, he stated that Parker-Hannifin was "preparing for the possibility that we may have to divest [CLARCOR's] aviation ground fuel filtration" business.

6. Because the transaction combines the only two sources of qualified aviation fuel filtration products in the United States, the effect of this merger would be substantially to lessen competition or tend to create a monopoly. Parker-Hannifin's acquisition of CLARCOR's aviation fuel filtration business thus violates the antitrust laws.

II. DEFENDANTS AND THE ILLEGAL TRANSACTION

7. Parker-Hannifin is an Ohio corporation headquartered in Cleveland, Ohio. It is a diversified manufacturer of filtration systems, and motion and control technologies for the mobile, industrial and aerospace markets with operations worldwide. In 2016, the company had sales revenue of $11.4 billion.

8. In 2012, Parker-Hannifin acquired Velcon Filters, LLC ("Velcon"), a manufacturer of EI-qualified aviation fuel filtration equipment. Velcon is a Delaware Limited

Liability Company and an indirectly wholly-owned subsidiary of Parker-Hannifin. Parker-Hannifin continues to manufacture and sell aviation fuel filtration equipment under the Velcon brand. Parker-Hannifin has facilities in the United States to develop and manufacture products, and provide service and technical support for its U.S. aviation fuel filtration customers.

9. Prior to its acquisition by Parker-Hannifin, defendant CLARCOR was a Delaware corporation headquartered in Franklin, Tennessee. CLARCOR was a leading provider of filtration systems for diversified industrial markets with net sales of approximately $1.4 billion in 2016. CLARCOR manufactured and sold aviation fuel filtration products through its PECOFacet subsidiary. PECOFacet has facilities in the United States to develop and manufacture products, and provide service and technical support for its U.S. aviation fuel filtration customers.

10. On December 1, 2016, Parker-Hannifin and CLARCOR entered into an Agreement and Plan of Merger whereby Parker-Hannifin, through a newly formed Delaware corporation and wholly-owned subsidiary of Parker-Hannifin ("Merger Sub"), acquired 100% of the voting stock of CLARCOR for $4.3 billion.

11. On February 28, 2017, Parker-Hannifin completed its acquisition. Pursuant to the terms of the Merger Agreement, the Merger Sub merged with and into CLARCOR, with CLARCOR surviving the merger, and existing today as a Delaware-incorporated, wholly-owned subsidiary of Parker-Hannifin.

III. INDUSTRY OVERVIEW

A. Industry Standards

12. Aviation fuel originates from the refinery processing of crude oil. Following manufacture, batch production and certification, aviation fuel is released into the distribution system or sent directly by pipeline to an airport. The distribution system may use a number of

transportation methods such as pipelines, barges, railcars, ships, and tankers, before it is delivered to airport storage tanks and then pumped into the aircraft.

13. Fuel contaminated by water, particulates or organic material creates unacceptable safety risks to aircraft. Because of the risks of such contaminants being introduced into the fuel at any point in the supply chain, it is critical that fuel be filtered properly at multiple stages in the process before being delivered into the airplane.

14. Due to safety concerns, filtration at airports in particular is subject to specific industry standards. The quality of aviation fuel in the United States is regulated by the Federal Aviation Administration, but airlines and their contracted refueling agents are responsible for the handling and filtration of aviation fuel at airports.

15. For more than 25 years, Airlines for America[2] ("A4A"), a trade association for U.S. passenger and cargo carriers, has published standards for aviation fuel quality control at airports, recognizing the "importance of using quality jet fuel for ensuring the highest degree of flight safety." In particular, ATA Specification 103 ("ATA 103") sets forth specifications, standards, and procedures in the United States for ensuring that planes receive uncontaminated aviation fuel. ATA 103 is the industry standard for aviation fuel handling in the United States and all U.S. commercial airlines have adopted ATA 103 into their operating manuals.

16. A4A and the EI jointly ensure that fuel at airports remains safe and of the highest quality before it is loaded on an aircraft. Accordingly, in its fuel filtration specifications, ATA 103 requires that all aviation fuel be processed by filtration systems that are qualified to meet the latest EI standards.

[2] Airlines for America was formerly known as the Air Transportation Association of America ("ATA").

17. In addition, ATA 103 requires that all aviation fuel be filtered at least three times before it is consumed in an aircraft engine: (1) as it enters an airport storage tank; (2) as it exits the airport storage tank and is pumped into a hydrant system, refueling truck or hydrant cart; and (3) as it is pumped from a hydrant cart or refueling truck into an aircraft.

18. The primary customers of EI-qualified aviation fuel filtration systems and filter elements include commercial airline ground fueling agents, fixed based operators at airports, airport fuel storage operators, and manufacturers of fueling equipment. These customers must follow ATA 103 and are therefore required to purchase and use EI-qualified filtration systems and filter elements. EI-qualified filtration systems and filter elements are also used by customers supplying aviation fuel to U.S. airports.

19. Aviation fuel-related performance standards for U.S. military jets are similar to those followed by commercial airlines. Like commercial airlines, the Department of Defense requires that fuel filtration suppliers meet EI specifications.

B. Aviation Fuel Filtration Systems and Elements

20. An aviation fuel filtration system is comprised of a pressurized vessel that houses consumable filter elements. Customers purchase filtration systems for new fixed installations, such as airport fuel storage facilities, or for mobile fueling equipment, such as refueling trucks or hydrant carts. While vessels can last for decades, the filter elements must be replaced pursuant to a schedule set by ATA 103—or sooner, if contaminants in the fuel affect the filtration system's performance.

Interoperability Standards for Aviation Fuel Filtration Systems

21. Prior to the transaction, Parker-Hannifin and CLARCOR were the only two U.S. manufacturers of EI-qualified filter elements. Their respective filter elements are interoperable

with each other's vessels. In fact, the parties marketed their products to U.S. customers with cross-references to each other's compatible part numbers. Thus, prior to the merger, U.S. customers could choose between Parker-Hannifin and CLARCOR filter elements for their vessels and benefited from competition between the two firms resulting in better pricing, terms, and service.

Types of EI-Qualified Aviation Fuel Filtration Systems

22. There are three types of aviation fuel filtration systems that must be qualified to EI standards pursuant to ATA 103: (i) microfilter systems; (ii) filter water separator systems; and (iii) filter monitor systems (collectively "EI-qualified aviation fuel filtration systems"). Each type of EI-qualified aviation fuel filtration system uses different filter elements.

23. A microfilter system is a filtration system comprised of a single vessel that houses consumable filter elements. Microfilter systems are sometimes referred to as pre-filters because they are designed to remove dirt and other particulate matter from aviation fuel before it reaches the next level of filtration, which is typically the filter water separator ("FWS") system.

24. A FWS system is typically comprised of a single vessel and two types of filter elements—coalescers and separators—that remove dirt and water from the aviation fuel to levels acceptable for use in modern aircraft. FWS are required at U.S. airports to filter aviation fuel before entering and after exiting airport storage facilities. They also may be installed on mobile fueling equipment that ultimately connects to the wing of the aircraft to deliver the aviation fuel.

25. A filter monitor ("FM") system is a filtration system that is comprised of a single vessel that houses one type of consumable filter element, a filter monitor. FM systems are used exclusively on mobile fueling equipment and are often the last point at which aviation fuel is filtered before the fuel is pumped into the plane.

26. U.S. commercial aviation customers use microfilter systems, FWS systems, FM systems, and associated filter elements. Each system and its associated filter elements is qualified to separate EI standards. Filtration products come in dozens of sizes to meet a customer's own specific filtration requirements and design needs, and customers prefer a supplier to have a full line of EI-qualified products. Parker-Hannifin, for example, offers dozens of different FWS vessels—ranging from smaller vessels that weigh 360 pounds and support flow rates of 50 gallons per minute, to larger vessels that weigh 3,800 pounds and support flow rates of 2,500 gallons per minute. CLARCOR has a similarly broad product offering.

27. The U.S. military also uses microfilter systems, FWS systems, and associated filter elements, qualified to EI standards.

C. Importance of Technical Service and Support

28. Aviation fuel filtration is a specialized industry in which customers rely on expeditious service and technical support from the manufacturers of aviation fuel filtration products. Disruptions in the supply or performance of aviation fuel filtration systems and filter elements create significant risk, including grounding flights and potentially catastrophic accidents. And because contaminated fuel can imperil the safe operation of the aircraft, both the fuel service provider and the airline itself could incur significant liability if aviation fuel is improperly filtered.

29. As a result, customers rely on manufacturers to provide a rapid response to technical issues. Customers rely on the manufacturer to provide a reliable supply of replacement filtration elements on an emergency basis when needed to resolve unanticipated fuel contamination issues. Customers also rely on manufacturers' trained scientists and custom laboratories to diagnose and repair problems that arise from malfunctioning filters. Recognizing

this need, the merging parties provided service and technical support to U.S. customers, including on-site testing, lab testing, analysis services, and training classes.

IV. THE RELEVANT MARKETS THREATENED BY THE ACQUISITION

A. Relevant Product Markets

i. EI-Qualified Aviation Fuel Filtration Systems

30. EI-qualified aviation fuel filtration systems is a relevant product market and line of commerce under Section 7 of the Clayton Act. The filtration of aviation fuel at airports in the United States must be performed using aviation fuel filtration systems that are qualified to the latest EI standards. U.S. customers that process aviation fuel typically will accept no substitutes for EI-qualified aviation fuel filtration systems. A company that controls all EI-qualified aviation fuel filtration systems in the United States could profitably raise prices. In the event of a small but significant non-transitory increase in price, customers are unlikely to switch away from EI-qualified aviation fuel filtration systems in sufficient numbers to make that price increase unprofitable.

31. The EI-qualified aviation fuel filtration systems market consists of microfilter systems, FWS systems, and FM systems. Each of these aviation fuel filtration systems comes in a variety of sizes, configurations and technical capabilities to fit the specific needs of the customer, which is unlikely to substitute between them. Each of these systems is offered under essentially the same competitive conditions by the same set of manufacturers, so all EI-certified aviation fuel filtration systems can be grouped together in a single market for purposes of analysis.

ii. EI-Qualified Aviation Fuel Filtration Elements

32. EI-qualified fuel filtration elements is a relevant product market and line of commerce under Section 7 of the Clayton Act. To comply with U.S. industry standards, only EI-

qualified aviation fuel filtration elements may be used for the filtration of aviation fuel used at airports in the United States. U.S. customers that process aviation fuel typically will accept no substitutes for EI-qualified aviation fuel filtration elements. A company that controls all EI-qualified aviation fuel filtration elements in the United States could profitably raise prices. In the event of a small but significant non-transitory increase in price, customers are unlikely to switch away from EI-qualified aviation fuel filtration elements in sufficient numbers to make that price increase unprofitable.

33. EI-qualified aviation fuel filtration elements—microfilters, coalescers, separators, and monitors—consist of those replacement elements for EI-qualified aviation fuel filtration systems. Filter elements come in a variety of types and sizes, and customers typically need a specific type and size to fit a particular application, which makes customers unlikely to substitute among different types and sizes of filter elements. Each such element is offered by the same set of manufacturers and is sold under essentially the same competitive conditions, so all EI-certified aviation fuel filtration elements can be grouped together in a single market for analytical purposes.

B. Relevant Geographic Market

34. The United States is the relevant geographic market in which to assess the competitive harm that is likely to arise out of this transaction.

35. U.S. customers of aviation fuel filtration systems and filter elements rely on domestic sales and technical support, warehousing and distribution. Ready, available supply of filtration systems and elements is critical to ensuring the proper filtration of aviation fuel. Domestic service, including technical support and training, is also essential for many U.S. customers. Parker-Hannifin and CLARCOR recognize the need for local support and have U.S. facilities that provide sales, technical support and distribution to U.S. customers. These

customers are unlikely to rely on a foreign supplier with no U.S. presence even in the event of a significant price increase.

36. In addition, suppliers of aviation fuel filtration products are able to price differently to U.S. customers than to customers located outside of the United States.

V. ANTICOMPETITIVE EFFECTS OF THE ACQUISITION

37. Prior to the acquisition, Parker-Hannifin and CLARCOR were engaged in head-to-head competition in each of the relevant markets. That competition enabled customers of the relevant products to negotiate better pricing, service and terms and to receive innovative product developments from Parker-Hannifin and CLARCOR. The acquisition eliminates this head-to-head competition in each of the relevant markets. This elimination of head-to-head competition will provide Parker-Hannifin with the power to raise prices without fear of losing a significant amount of sales.

38. The merger also reduces non-price competition and innovation. Prior to the acquisition, CLARCOR's PECOFacet brand had distinguished itself as the leading provider of services and non-price benefits, e.g., innovative product improvements, training programs, customer service, and strong on-time delivery, while customers viewed Parker-Hannifin as weaker on customer service and less willing to provide additional non-price benefits. For instance, customers benefited from CLARCOR's free and timely training programs, favorable credit terms, free shipping, and re-stocking programs. Following the merger, Parker-Hannifin's need to compete with these CLARCOR programs and services is eliminated, to the detriment of customers.

39. Timely delivery of filter elements is important to customers. Parker-Hannifin, however, already has plans to shut down the CLARCOR facility used to manufacture the relevant products and consolidate it with Parker-Hannifin's existing facility. Such consolidation

will result in reduced inventory and less timely deliveries during unanticipated future emergencies.

40. The only other firm that manufactures EI-qualified aviation fuel filtration systems and EI-qualified aviation fuel filtration elements is located in Germany. This company lacks a U.S. manufacturing facility and a U.S. network for sales, warehousing, distribution, technical support and delivery. Without that infrastructure, effective near-term expansion by that firm into the United States is unlikely.

41. Even if such expansion were to occur, however, such expansion likely would not be timely or sufficient to restore competition and restrain the anticompetitive effects resulting of the transaction. Customer acceptance is a high barrier to expansion. Parker-Hannifin's Velcon brand and CLARCOR's PECOFacet brand are the only two brands that most U.S. aviation fuel filtration customers have used. Given the critical public safety function that aviation fuel filtration products perform—and the legal liability to the operator should something go wrong—U.S. customers are reluctant to switch to a foreign company with which they are unfamiliar.

VI. ABSENCE OF COUNTERVAILING FACTORS

42. Barriers to entry for the relevant market are significant. They include the high costs and long time frames needed to design, develop, and manufacture the products, as well as the testing needed to obtain EI-qualification. Further, customers are unlikely to accept a new supplier in sufficient numbers to make entry effective if that supplier does not have a network for sales, warehousing, distribution, technical support and delivery. Accordingly, new entry or expansion in the relevant market is unlikely to occur in a manner that would counteract the harm to competition arising from this merger. Indeed, there has been no effective entry in the United States in the manufacture and sale of EI-qualified aviation fuel filtration systems and elements in decades.

43. Parker-Hannifin recognizes and admits to these entry barriers. In 2013, Parker-Hannifin and Velcon initiated litigation against Velcon's former owners for alleged violations of their non-compete agreements and for misappropriation of trade secrets. In this litigation, Parker-Hannifin submitted a sworn affidavit from Velcon's General Manager who attested that the process for obtaining EI-qualifications for aviation fuel filtration products was "expensive, time-consuming and difficult."

44. In addition, Parker-Hannifin averred that the technical information related to its products, including product designs and drawings were protected trade secrets, which "[o]thers would have to expend significant time and money to acquire and duplicate."

VII. JURISDICTION AND VENUE

45. The United States brings this civil antitrust action against defendants Parker-Hannifin and CLARCOR under Section 15 of the Clayton Act, 15 U.S.C. § 25, as amended, to prevent and restrain defendants from continuing to violate Section 7 of the Clayton Act, 15 U.S.C. § 18.

46. Parker-Hannifin develops, manufactures and sells EI-qualified aviation fuel filtration systems and filter elements in the flow of interstate commerce. Parker-Hannifin's activities in developing, manufacturing and selling these products substantially affect interstate commerce.

47. CLARCOR is a Delaware corporation and a wholly-owned subsidiary of Parker-Hannifin. The aviation fuel filtration assets that are the subject of this lawsuit are held by the surviving corporation, CLARCOR. This Court has subject matter jurisdiction over this action and over each defendant pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a) and 1345.

48. Venue is proper in this District pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. §1391(b) and (c).

49. This Court has personal jurisdiction over Parker-Hannifin and CLARCOR. CLARCOR is incorporated in the State of Delaware and resides in this District. Further, under the Merger Agreement, Parker-Hannifin "irrevocably" submitted itself "to the personal jurisdiction of each state or federal court sitting in the State of Delaware…in any suit, action or proceeding arising out of or relating to this [Merger] Agreement…" and agreed that "it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from such court." Parker-Hannifin's acquisition of CLARCOR will have effects throughout the United States, including in this District.

VIII. VIOLATIONS ALLEGED

Violation of Section 7 of the Clayton Act

50. The effect of Parker-Hannifin's acquisition of CLARCOR likely will be to substantially lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

51. The transaction has or will have the following effects, among others:

a. Eliminating the head-to-head competition between Parker-Hannifin and CLARCOR in the development, manufacture and sale of EI-qualified aviation fuel filtration systems and EI-qualified aviation fuel filtration elements; and

b. Raising prices of the relevant products, lengthening delivery times, making terms of service less favorable and reducing innovation.

IX. REQUESTED RELIEF

52. The United States requests that this Court:

a. Adjudge and decree the acquisition of the assets of CLARCOR by defendant Parker-Hannifin to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. Order Parker-Hannifin to divest tangible and intangible assets, whether possessed originally by CLARCOR, Parker-Hannifin, or both, sufficient to create a separate, distinct, and viable competing business that can replace CLARCOR's competitive significance in the marketplace, and to take any further actions necessary to restore the markets to the competitive position that existed prior to the acquisition;

c. Award such temporary and preliminary injunctive and ancillary relief as may be necessary to avert the dissipation of CLARCOR's tangible and intangible assets during the pendency of this action and to preserve the possibility of effective permanent relief;

d. Award the United States the cost of this action; and

e. Grant the United States such other and further relief as the Court deems just and proper.

Respectfully submitted,

September 26, 2017

FOR PLAINTIFF UNITED STATES OF AMERICA

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, *Plaintiff*, v. PARKER–HANNIFIN CORPORATION, and CLARCOR INC., *Defendants*.	Civil Action No.: 1:17-CV-01354 Judge: James E. Boasberg

COMPETITIVE IMPACT STATEMENT

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

I. NATURE AND PURPOSE OF THE PROCEEDING

On February 28, 2017, defendant Parker-Hannifin Corporation ("Parker-Hannifin") acquired 100% of the voting stock of CLARCOR Inc. ("Clarcor") for $4.3 billion (the "Transaction"). Following customer complaints and an investigation into the competitive impact of that acquisition, the United States filed a civil antitrust Complaint on September 26, 2017 seeking an order compelling Parker-Hannifin to divest tangible and intangible assets, whether possessed originally by Clarcor, Parker-Hannifin, or both, sufficient to create a separate, distinct, and viable competing business that could replace Clarcor's competitive

significance in the marketplace that existed prior to the Transaction. The Complaint alleges that the Transaction resulted in an effective monopoly in the United States between the only two domestic manufacturers of industry-qualified aviation fuel filtration systems and filter elements, thereby significantly lessening competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint further alleges that, if permitted to stand, the merger will harm competition in the development, manufacture, and sale of these critical aviation fuel filtration systems. The results would be higher prices, reduced innovation, less reliable delivery times, and less favorable terms of service.

Concurrent with the filing of this Competitive Impact Statement, the United States and Parker-Hannifin have filed a [Proposed] Order Stipulating to Modification of Order to Preserve and Maintain Assets ("Stipulation and [Proposed] Preservation Order") and a proposed Final Judgment.[3] The proposed Final Judgment, which is explained more fully below, requires Parker-Hannifin to divest the Facet Filtration Business, which includes the assets of Parker-Hannifin used in the design, development, manufacturing, testing, marketing, sale, distribution or service of aviation fuel filtration products used in aviation ground fuel filtration and sold under the Facet or PECOFacet brand (the "Divestiture Assets").[4] The Divestiture Assets

[3] The Stipulation and [Proposed] Preservation Order seeks to modify the Stipulation and Order to Preserve and Maintain Assets (D.I. 20) entered on October 16, 2017 to ensure the preservation of the divestiture assets and their economic and competitive viability until entry of the proposed Final Judgment.

[4] As set forth in the proposed Final Judgment, the Facet Filtration Business also includes (1) clay filter systems and elements used in aviation ground fuel filtration; (2) sewage water treatment systems, fuel/water separator and filter component systems and elements, and bilge water separators, that, in each instance are used in commercial marine, offshore drilling and military marine filtration, and sold to customers under the PECOFacet brand; and (3) oil/water filtration and separation systems and sewage treatment systems, that, in each instance are used in environmental water filtration, and sold to customers under the PECOFacet brand.

encompass the systems and elements that include and comprise all microfilters, filter water separators, and filter monitor components used in aviation ground fuel filtration and sold to customers under the Facet or PECOFacet brands. These aviation fuel filtration products were sold by Clarcor prior to the Transaction and the divestiture of these assets thereby restores the competition that was lost as a result of the acquisition.

The United States and defendants Parker-Hannifin and Clarcor have stipulated that the defendants are bound by the terms of the proposed Final Judgment and 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 the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. *Parker-Hannifin and the Clarcor Acquisition*

Parker-Hannifin is an Ohio corporation headquartered in Cleveland, Ohio. It is a diversified manufacturer of filtration systems, and motion and control technologies for the mobile, industrial, and aerospace markets with operations worldwide. In 2016, the company had sales revenues of $11.4 billion, and $12.0 billion in 2017. Parker-Hannifin manufactures and sells aviation fuel filtration products under the Velcon brand.

Prior to its acquisition by Parker-Hannifin, defendant Clarcor was a Delaware corporation headquartered in Franklin, Tennessee. Clarcor was a leading provider of filtration systems for diversified industrial markets with net sales of approximately $1.4 billion in 2016. Clarcor manufactured and sold aviation fuel filtration products through its PECOFacet

subsidiary, which has facilities in the United States to develop and manufacture products, and provide service and technical support for its U.S. aviation fuel filtration customers.

On December 1, 2016, Parker-Hannifin and Clarcor entered into an Agreement and Plan of Merger whereby Parker-Hannifin, through a newly formed Delaware corporation and wholly-owned subsidiary of Parker-Hannifin ("Merger-Sub"), acquired 100% of the voting stock of Clarcor. On February 28, 2017, Parker-Hannifin completed its acquisition. Pursuant to the terms of the Merger Agreement, the Merger Sub merged with and into Clarcor, with Clarcor surviving the merger, and existing today as a Delaware-incorporated, wholly-owned subsidiary of Parker-Hannifin.

B. *The Competitive Effects of the Transaction*

1. Industry Background

Aviation fuel originates from the refinery processing of crude oil. Following manufacture, batch production and certification, aviation fuel is released into the distribution system or sent directly by pipeline to an airport. The distribution system may use a number of transportation methods such as pipelines, barges, railcars, ships, and tankers, before it is delivered to airport storage tanks and then pumped into the aircraft.

Fuel contaminated by water, particulates or organic material creates unacceptable safety risks to aircraft. Because of the risks of such contaminants being introduced into the fuel at any point in the supply chain, it is critical that fuel be filtered properly at multiple stages in the process before being delivered into the airplane. Due to safety concerns, filtration at airports is subject to specific industry standards. The quality of aviation fuel in the United

States is regulated by the Federal Aviation Administration, but airlines and their contracted refueling agents are responsible for the handling and filtration of aviation fuel at airports.

For more than 25 years, Airlines for America (formerly known as the Air Transportation Association), a trade association for U.S. passenger and cargo carriers, has published standards for aviation fuel quality control at airports, recognizing the "importance of using quality jet fuel for ensuring the highest degree of flight safety." In particular, ATA Specification 103 ("ATA 103") sets forth specifications, standards, and procedures in the United States for ensuring that planes receive uncontaminated aviation fuel. ATA 103 is the industry standard for aviation fuel handling in the United States and all U.S. commercial airlines have adopted ATA 103 into their operating manuals. Specifically, ATA 103 requires the use of aviation fuel filtration systems and filter elements that are qualified to meet the latest standards set by the Energy Institute ("EI")—an independent, international professional organization for the energy sector. In addition, ATA 103 requires that all aviation fuel be filtered at least three times before it is consumed in an aircraft engine: (1) as it enters an airport storage tank; (2) as it exits the airport storage tank and is pumped into a hydrant system, refueling truck or hydrant cart; and (3) as it is pumped from a hydrant cart or refueling truck into an aircraft.

The primary customers of EI-qualified aviation fuel filtration systems and filter elements include commercial airline ground fueling agents, fixed based operators at airports, airport fuel storage operators, and manufacturers of fueling equipment. These customers must follow ATA 103 and are therefore required to purchase and use EI-qualified filtration systems and filter elements. EI-qualified filtration systems and filter elements are also used by customers

supplying aviation fuel to U.S. airports. Like commercial airlines, the Department of Defense also requires that aviation fuel filtration suppliers meet EI specifications.

2. Relevant Markets

An aviation fuel filtration system is made up of a pressurized vessel that houses consumable filter elements. While vessels can last for decades, the filter elements must be replaced pursuant to a schedule set by ATA 103—or sooner, if contaminants in the fuel affect the filtration system's performance.

There are three types of aviation fuel filtration systems that must be qualified to EI standards pursuant to ATA 103: (i) microfilter systems; (ii) filter water separator systems; and (iii) filter monitor systems (collectively "EI-qualified aviation fuel filtration systems"). Each type of EI-qualified aviation fuel filtration system uses different filter elements—microfilters, coalescers, separators, and monitors—which must also meet EI standards (collectively "EI-qualified aviation fuel filtration elements"). Each system and its associated filter elements is qualified to separate EI standards.

EI-qualified aviation fuel filtration systems and EI-qualified aviation fuel filtration elements are separate relevant product markets and lines of commerce under Section 7 of the Clayton Act. The filtration of aviation fuel at airports in the United States must be performed using aviation fuel filtration systems that are qualified to the latest EI standards. Similarly, to comply with U.S. industry standards, only EI-qualified aviation fuel filtration elements may be used for the filtration of aviation fuel used at airports in the United States. U.S. customers that process aviation fuel typically will accept no substitutes for (i) EI-qualified aviation fuel filtration systems, or (ii) EI-qualified aviation fuel filtration elements. A company that controls all EI-

qualified aviation fuel filtration systems or all EI-qualified aviation fuel filtration elements in the United States could profitably raise prices. In the event of a small but significant non-transitory increase in price, customers are unlikely to switch away from EI-qualified aviation fuel filtration systems or EI-qualified filtration elements in sufficient numbers to make that price increase unprofitable.

Further, as alleged in the Complaint, the relevant geographic market for the development, manufacture, and sale of EI-qualified aviation fuel filtration systems and filter elements is the United States. U.S. customers of aviation fuel filtration systems and filter elements rely on domestic sales and technical support, warehousing and distribution. Ready, available supply of filtration systems and elements is critical to ensuring the proper filtration of aviation fuel. Domestic service, including technical support and training, is also essential for many U.S. customers. Parker-Hannifin and Clarcor recognize the need for local support and have U.S. facilities that provide sales, technical support and distribution to U.S. customers. These customers are unlikely to switch to a foreign supplier with no U.S. presence in the event of a significant price increase.

3. Competitive Effects

Prior to the acquisition, Parker-Hannifin and Clarcor were the only two U.S. manufacturers of EI-qualified aviation fuel filtration systems and EI-qualified aviation fuel filtration elements and were engaged in head-to-head competition in each of the relevant markets. That competition enabled customers of the relevant products to negotiate better pricing, service and terms and to receive innovative product developments from Parker-Hannifin and Clarcor. The Transaction eliminates this head-to-head competition in each of the

relevant markets. This elimination of head-to-head competition will provide Parker-Hannifin with the power to raise prices without fear of losing a significant amount of sales.

As discussed in the Complaint, the merger also reduces non-price competition. Prior to the acquisition, Clarcor's PECOFacet (or Facet) brand had distinguished itself as the leading provider of services and non-price benefits, e.g., innovative product improvements, training programs, customer service, and strong on-time delivery. Following the merger, Parker-Hannifin's need to compete with these Clarcor programs and services is eliminated, to the detriment of customers.

1. Entry and Expansion

The only other firm that manufactures EI-qualified aviation fuel filtration systems and EI-qualified filter elements is located in Germany. This company lacks a U.S. manufacturing facility and a U.S. network for sales, warehousing, distribution, technical support and delivery. Without that infrastructure, effective near-term expansion by that firm into the United States is unlikely. Even if such expansion were to occur, however, such expansion likely would not be timely or sufficient to restore competition and restrain the anticompetitive effects resulting from the Transaction.

Timely and sufficient *de novo* entry is also unlikely. Barriers to entry for the relevant market are significant. They include the high costs and long time frames needed to design, develop, and manufacture the products, as well as the testing needed to obtain EI-qualification. Indeed, there has been no effective entry in the United States in the development, manufacture, or sale of EI-qualified aviation fuel filtration systems and filter elements in decades.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture required by the proposed Final Judgment will create an independent and economically viable competitor in the markets for EI-qualified aviation fuel filtration systems and EI-qualified aviation fuel filtration elements sold to U.S. customers.

C. *The Divestiture*

The proposed Final Judgment requires Parker-Hannifin and Clarcor to divest the Facet Filtration Business as a viable, ongoing business. The Facet Filtration Business includes and comprises the microfilters, filter water separators, and filter monitor components that are used in aviation ground fuel filtration and sold to customers under the Facet or PECOFacet brands. As defined in Paragraph II(G) of the proposed Final Judgment, the Facet Filtration Business includes facilities located in (i) Stillwell, Oklahoma, (ii) Tulsa, Oklahoma, (iii) La Coruña, Spain, (iv) Paris, France, (v) Torino, Italy, (vi) Cardiff, United Kingdom, and (vii) Almere, The Netherlands. It also includes the aviation fuel filtration testing lab in Greensboro, North Carolina, and the tangible and intangible assets used in connection with the Facet Filtration Business worldwide.

Due to the large number of assets located outside of the United States, the consummated nature of the transaction, and the administrative complexities involved in a divestiture of this nature, Paragraph IV(A) of the proposed Final Judgment provides that the defendants must divest the Divestiture Assets to an Acquirer acceptable to the United States within the later of: (1) one hundred thirty-five (135) days after filing of the Stipulation and [Proposed] Preservation Order; (2) five (5) calendar days after notice of entry of the Final Judgment by the Court; or (3) fifteen (15) calendar days after the Required Regulatory

Approvals have been received. The Divestiture Assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant markets. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

The proposed Final Judgment also contains provisions to prevent against accidental customer confusion by transitioning away from the use of the "PECOFacet" brand on products that are not part of the assets being divested. Under Paragraph II(G)(4), the definition of the Facet Filtration Business excludes from the Divestiture Assets any trademark, trade name, service mark, or service name containing the names "Clarcor," "PECO," or "PECOFacet," except to the extent the Acquirer is required under existing U.S. military contracts with respect to Aviation Fuel Filtration Products qualified to EI standards to use the name "PECOFacet." However, in no event shall such use extend beyond one (1) year following the entry of the Final Judgment. Such a provision ensures that the Acquirer can comply with registration and invoicing requirements for existing U.S. military contracts requiring the use of the "PECOFacet" trade name or brand, while transitioning away from the "PECOFacet" brand. Similarly, under Paragraph IV(I), Parker-Hannifin is required within two (2) years following the notice of entry of the Final Judgment, or as soon as is practicable under existing contracts or laws, to use reasonable best efforts to transition retained (i.e., non-divested) products sold under the "PECOFacet" brand to a brand that does not include the "Facet" name. The longer term for which Parker-Hannifin may continue to use the "PECOFacet" brand reflects the reality that the "PECOFacet" brand is attached to many more PECOFacet contracts globally (in the oil and gas

industry) with private and state-owned companies. Because of the volume of these contracts, Parker-Hannifin is likely to expend more time than the Acquirer to move all of these contracts to a new brand.

D. *Transition Services Agreement*

In order to facilitate the Acquirer's immediate use of the Divestiture Assets, Paragraph IV(J) provides the Acquirer with the option to enter into a transition services agreement with Parker-Hannifin to obtain back office and information technology services and support for the Facet Filtration Business for a period of up to twelve (12) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional twelve (12) months.

E. *Employee Retention Provisions*

The proposed Final Judgment also contains provisions intended to facilitate the Acquirer's efforts to hire the employees involved in the Facet Filtration Business. Paragraph IV(C) of the proposed Final Judgment requires defendants to provide the Acquirer with organization charts and information relating to these employees and make them available for interviews, and provides that defendants will not interfere with any negotiations by the Acquirer to hire them. In addition, Paragraph IV(D) provides that for employees who elect employment with the Acquirer, defendants, subject to limited exceptions, shall waive all non-compete and non-disclosure agreements, vest all unvested pension in accordance with the plan, and provide all benefits to which the employees would generally be provided if transferred to a buyer of an ongoing business. The paragraph further provides, that for a period of 12 months from the filing of the Stipulation and [Proposed] Preservation Order,

defendants may not solicit to hire, or hire, any such person who was hired by the Acquirer, unless (1) such individual is terminated or laid off by the Acquirer or (2) the Acquirer agrees in writing that defendants may solicit or hire that individual.

F. *Divestiture Trustee*

In the event that the defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that the defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust of the term of the trustee's appointment.

G. *Prohibition on Reacquisition*

Section XI of the proposed Final Judgment prohibits Parker-Hannifin or Clarcor from reacquiring any part of the Divestiture Assets that is primarily related to aviation fuel filtration products qualified to EI standards during the term of the Final Judgment.

H. *Stipulation and Preservation Order Provisions*

Defendants have entered into the Stipulation and [Proposed] Preservation Order, which was filed simultaneously with the Court, to ensure that, pending the completion of the divestiture, the Divestiture Assets are maintained as an ongoing, economically viable, and active business. The Stipulation and [Proposed] Preservation Order ensures that the Divestiture Assets are preserved and maintained in a condition that allows the divestiture to be effective.

In addition, the defendants are required to implement and maintain procedures to prevent the sharing by personnel of the Facet Filtration Business of competitively sensitive information with personnel with responsibilities relating to Parker-Hannifin's Velcon Filtration Business. Such procedures must be detailed in a document submitted to the United States within thirty (30) calendar days of the Court's entry of the Stipulation and [Proposed] Preservation Order. The United States and Parker-Hannifin will attempt to resolve objections regarding the procedures as promptly as possible, and in the event that the objections cannot be mutually resolved, either party may request for the Court to rule on the procedures.

As set forth in Section VIII of the proposed Final Judgment, until the divestiture required by the Final Judgment has been accomplished, defendants are required to take all steps necessary to comply with the Stipulation and [Proposed] Preservation Order filed simultaneously with the Court and are prohibited from taking any action that would jeopardize the divestiture.

I. *Enforcement and Expiration of the Final Judgment*

The proposed Final Judgment contains provisions designed to promote compliance and make the enforcement of Division consent decrees as effective as possible. Paragraph XIII(A) provides that the United States retains and reserves all rights to enforce the provisions of the

proposed Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, Parker-Hannifin has agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Parker-Hannifin has waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XIII(B) of the proposed Final Judgment further provides that should the Court find in an enforcement proceeding that Parker-Hannifin has violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of the proposed Final Judgment, Paragraph XIII(B) requires Parker-Hannifin to reimburse the United States for attorneys' fees, experts' fees, or costs incurred in connection with any enforcement effort.

Finally, Section XIV of the proposed Final Judgment provides that the Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Parker-Hannifin that the divestiture has been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

III. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

IV. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

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

The APPA provides a period of at least sixty (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, 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 Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition,

comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

Maribeth Petrizzi
Chief, Defense, Industrials, and Aerospace Section
Antitrust Division
United States Department of Justice
450 5th Street, N.W., Suite 8700
Washington, DC 20530

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

V. 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 Parker-Hannifin and Clarcor. The United States could have continued the litigation and sought divestiture of either Parker-Hannifin's or Clarcor's aviation fuel filtration assets. The United States is satisfied, however, that the divestiture of the assets in the manner prescribed in the proposed Final Judgment will restore competition in the markets for EI-qualified aviation fuel filtration systems and filter elements in the United States. The proposed Final Judgement would achieve all of the relief the United States would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

VI. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after

which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 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); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. U.S. Airways Group, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent 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.").[5]

As the United States 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 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 Microsoft*, 56 F.3d at 1458-62. 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. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held 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.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[6] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the

[5] The 2004 amendments substituted "shall" for "may" in directing relevant factors for the courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004) *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[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." *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also U.S. Airways*, 38 F. Supp. 3d at 74 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft*, 56 F.3d at 1461)); *United States v. Alcan Aluminum*

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[6] *Cf. BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

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 74 (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 ("the '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. As the United States District Court for the District of Columbia recently confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding 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 75 (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). The language wrote into the statute what Congress intended when it 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). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.[7] 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 75.

VII. DETERMINATIVE DOCUMENTS

[7] *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.*, No. 73-CV-681-W-1, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) ("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."); S. Rep. No. 93-298, at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

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: December 18, 2017

Respectfully submitted,

/s/ Samer Musallam

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, *Plaintiff*, v. PARKER-HANNIFIN CORPORATION and CLARCOR INC, *Defendants*.	Civil Action No.: 1:17-CV-01354 Judge: James E. Boasberg

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on September 26, 2017, the United States and defendants, Parker-Hannifin Corporation and CLARCOR Inc., by their respective attorneys, have consented to the entry of this Final Judgment 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;

AND WHEREAS, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires defendants to make a certain divestiture for

the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to the United States that the divestiture required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. Jurisdiction

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

II. Definitions

As used in this Final Judgment:

A. "Acquirer" means the entity to whom defendants divest the Divestiture Assets.

B. "Aviation Fuel Filtration Products" means the systems and elements that include and comprise microfilters, filter water separators and filter monitor components that are used in aviation ground fuel filtration and sold to customers under the Facet or PECOFacet brands.

C. "Parker-Hannifin" means defendant Parker-Hannifin Corporation, an Ohio corporation with its headquarters in Cleveland, Ohio, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Clarcor" means defendant CLARCOR Inc., a Delaware corporation, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. "Divestiture Assets" means the Facet Filtration Business.

F. "Divestiture Products" means: (1) Aviation Fuel Filtration Products, including clay filter systems and elements used in aviation ground fuel filtration; (2) sewage water treatment systems, fuel/water separator and filter components systems and elements, and bilge water separators, that, in each instance are used in commercial marine, offshore drilling, and military marine filtration applications, and sold to customers under the PECOFacet brand; and (3) oil/water filtration and separation systems and sewage treatment systems, that, in each instance are used in environmental water filtration applications, and sold to customers under the PECOFacet brand.

G. "Facet Filtration Business" means all assets of Parker-Hannifin used in the design, development, manufacturing, testing, marketing, sale, distribution or service of Divestiture Products, including:

1. The facilities, to the extent leased or owned, located at:

   a. 470555 E 868 Road, Stilwell, OK 74960;

   b. 5935 S 129th E Ave, Suite A, Tulsa, OK 74134;

   c. Avenida da Ponte, 16, 15142, Arteixo, La Coruña, Spain;

   d. 22, Avenue des Nations, ZI Paris Nord II, BP 69055, 95972 Roissy CDG Cedex, France;

   e. C. so IV Novembre n. 58, 10070 Cafasse (Torino), Italy;

f. Units 4.3 and 4.4, Treforest Industrial Estate, Pontypridd, Mid Glamorgan, CF37 5FB, United Kingdom; and

g. Damsluisweg 40A 1332 ED, Almere, The Netherlands;

2. The 2,080 sq. ft. aviation fuel filtration testing lab building located at 8439 Triad Drive, Greensboro, NC 27409, including rights to reasonably access the facility;

3. All tangible assets used by the Facet Filtration Business, including all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records, but excluding: (i) PECOFacet Quick Response Centers and all assets therein, (ii) Parker-Hannifin offices located in Australia, Brazil, Canada, China, Germany, Malaysia, Mexico, and Morocco, and all assets therein, and (iii) Clarcor-owned distributors that sell Divestiture Products;

4. All intangible assets owned, licensed, controlled, or used primarily by the Facet Filtration Business, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names (excluding any trademark, trade name or service mark, or service name containing the names "Clarcor," "PECO," or "PECOFacet," except to the extent the Acquirer is required under existing U.S. military contracts for EI-qualified Aviation Fuel Filtration Products to use the name "PECOFacet," but in no event shall such use extend beyond one year following the entry of this

Final Judgment), technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, manuals and technical information defendants provide to their own employees, customers, suppliers, agents, or licensees, and research data concerning historic and current research and development efforts, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

H. "Relevant Employees" means all personnel primarily involved in the design, development, manufacturing, testing, marketing, sale, distribution or service of Divestiture Products.

I. "Required Regulatory Approvals" means clearance pursuant to any Committee on Foreign Investment in the United States ("CFIUS") filing or similar foreign investment filing, if any, made by the defendants and/or Acquirer and any approvals or clearances required under antitrust or competition laws.

J. "Transaction" means Parker-Hannifin Corporation's acquisition of CLARCOR Inc. pursuant to the Agreement and Plan of Merger dated as of December 1, 2016.

III. Applicability

A. This Final Judgment applies to Parker-Hannifin and Clarcor, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and Section V of this Final Judgment, defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestiture

A. Defendants are ordered and directed, within the later of: (1) one hundred thirty-five (135) calendar days after filing of the [Proposed] Order Stipulating to Modification of Order to Preserve and Maintain Assets, (2) five (5) calendar days after notice of entry of this Final Judgment by the Court, or (3) fifteen (15) calendar days after Required Regulatory Approvals have been received, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed thirty (30) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture

Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States with organization charts and information relating to Relevant Employees, including name, job title, past experience relating to the Facet Filtration Business, responsibilities, training and educational history, relevant certifications, and to the extent permissible by law, job performance evaluations, and current salary and benefits information, to enable the Acquirer to make offers of employment. Upon request, defendants shall make Relevant Employees available for interviews with the Acquirer during normal business hours at a mutually agreeable location and will not interfere with any negotiations by the Acquirer to employ any Relevant Employee. Interference with respect to this paragraph includes, but is not limited to, offering to increase the salary or benefits of Relevant Employees other than as a part of a company-wide increase in salary or benefits granted in the ordinary course of business.

D. For any Relevant Employees who elect employment with the Acquirer, defendants shall waive all noncompete and nondisclosure agreements, vest all unvested pension rights in accordance with the plan, and provide all benefits to which the Relevant Employees

would generally be provided if transferred to a buyer of an ongoing business. For a period of twelve (12) months from the filing of the [Proposed] Order Stipulating to Modification of Order to Preserve and Maintain Assets in this matter, defendants may not solicit to hire, or hire, any such person who was hired by the Acquirer, unless (1) such individual is terminated or laid off by the Acquirer or (2) the Acquirer agrees in writing that defendants may solicit or hire that individual. Nothing in Paragraphs IV(C) and (D) shall prohibit defendants from maintaining any reasonable restrictions on the disclosure by any employee who accepts an offer of employment with the Acquirer of the defendant's proprietary non-public information that is (1) not otherwise required to be disclosed by this Final Judgment, (2) related solely to defendants' businesses and clients, and (3) unrelated to the Divestiture Assets.

E. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Facet Filtration Business; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to the Acquirer that each tangible asset will be operational on the date of sale subject to ordinary course maintenance and wear and tear.

G. Defendants shall not take any action that will knowingly impede in any material way the permitting, operation, or divestiture of the Divestiture Assets.

H. Defendants shall warrant to the Acquirer that, except as may be expressly disclosed, there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each tangible asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the

environmental, zoning, or other permits relating to the operation of the Divestiture Assets, except as related to the asset identified in Paragraph II(G)(2) to the extent that the Acquirer's operation of the asset is inconsistent with past practice and materially impacts the operation of Parker-Hannifin's retained operations at the same location.

I. Within two years following the notice of entry of this Final Judgment, or as soon as is practicable under existing contracts or laws, defendants will use reasonable best efforts to transition retained products sold under the "PECOFacet" brand to a brand that does not include the "Facet" name.

J. At the option of the Acquirer, Parker-Hannifin shall enter a transition services agreement to provide back office and information technology services and support for the Facet Filtration Business for a period of up to twelve (12) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional twelve (12) months. If the Acquirer seeks an extension of the term of this transition services agreement, it shall so notify the United States in writing at least three (3) months prior to the date the transition services contract expires. If the United States approves such an extension, it shall so notify the Acquirer in writing at least two (2) months prior to the date the transition services contract expires. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to the market value of the expertise of the personnel providing any needed assistance. The Parker-Hannifin employee(s) tasked with providing these transition services may not share any competitively sensitive information of the Acquirer with any other Parker-Hannifin employee.

K. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business of the development, design, manufacture, testing, marketing, sale, or distribution of Aviation Fuel Filtration Products qualified to Energy Institute standards and sold to customers in the United States. Divestiture of the Divestiture Assets, whether pursuant to Section IV or Section V of this Final Judgment,

(1) shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the development, manufacture, and sale of Aviation Fuel Filtration Products qualified to Energy Institute standards that are sold to customers in the United States; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Divestiture Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to

the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the

value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within 14 calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be

filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such report contains information that the Divestiture Trustee deems confidential, such report shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or Section V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not

object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or Section V of this Final Judgment.

VIII. Asset Preservation

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the [Proposed] Order Stipulating to Modification of Order to Preserve and Maintain Assets, which is intended to supersede the Stipulation and Order to Preserve and Maintain Assets (D.I. 20) entered by this Court on October 16, 2017. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the proposed Order Stipulating to Modification of Order to Preserve and Maintain Assets in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or Section V, defendants shall deliver to the United States an affidavit, signed by each defendant's Chief Financial Officer and General Counsel which shall describe the fact and manner of defendants' compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into

negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the proposed Order Stipulating to Modification of Order to Preserve and Maintain Assets in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as the [Proposed] Order Stipulating to Modification of Order to Preserve and Maintain Assets, or of determining whether the Final Judgment should

be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. Pursuant to the Joint Stipulated Protective Order entered on November 29, 2017 and all applicable rules and regulations, no information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets that is primarily related to Aviation Fuel Filtration Products during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including its right to seek an order of contempt from this Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a

preponderance of the evidence, and they waive any argument that a different standard of proof should apply.

B. In any enforcement proceeding in which the Court finds that the defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. Defendants agree to reimburse the United States for any attorneys' fees, experts' fees, and costs incurred in connection with any effort to enforce this Final Judgment.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and defendants that the divestitures have been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

XV. 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 responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

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

IT IS SO ORDERED.

Date	Judge John E. Jones III

[FR Doc. 2018-01741 Filed: 1/29/2018 8:45 am; Publication Date: 1/30/2018]