ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of FXI Holdings, Inc. File No. 191-0087

INTRODUCTION

The Federal Trade Commission ("Commission") has accepted from FXI Holdings, Inc. ("FXI"), One Rock Capital Partners II, LP ("One Rock Capital"), Innocor Inc. ("Innocor") and Bain Capital Fund XI, LP ("Bain"), subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") designed to remedy the anticompetitive effects that would likely result from FXI's proposed acquisition of Innocor. The proposed Decision and Order ("Order") contained in the Consent Agreement requires FXI and Innocor to divest three polyurethane foam pouring plants to Future Foam, Inc. ("Future Foam").

The proposed Consent Agree

THE RELEVANT PRODUCT AND MARKET STRUCTURE

The relevant product market in which to assess the competitive effects of the proposed acquisition is Low-Density Foam for home furnishing uses. Polyurethane foam consists of various grades and densities with different properties and end uses. Both FXI and Innocor sell Low-Density Foam, commonly referred to as "light and white," to furniture manufacturers either directly or through third party fabricators. When used in home furnishing products, such as mattresses, mattress toppers, pet beds, pillows, chairs, and couches, Low-Density Foam serves as padding or cushioning. There are no reasonably interchangeable substitutes for Low-Density Foam in home furnishing applications.

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is a history of alleged anticompetitive conduct within the polyurethane foam industry, raising heightened concerns about further consolidation. The industry also shows an existing vulnerability to coordination, including significant awareness of interdependence among the suppliers, actions taken in recognition of that interdependence, and sufficient transparency among the producers to support coordination. Further consolidation is likely to increase the incentives and ability of the remaining firms to coordinate.

ENTRY

Entry into the Low-Density Foam markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the proposed Acquisition. A new entrant with a single pouring plant would face significant barriers to entry, such as higher procurement costs for critical inputs, including the various chemicals, which make up a substantial portion .15 Td [(a)-1 (m)8 (o4i5)-1 (v)12 (na)-1 (t)3 (i)-2 (on.)]TJ -0.005 Tw [((i)-1 v)-1 (variant costs for critical inputs)]

The Order also requires a monitor to oversee FXI's compliance with the obligations set forth in the Order. If FXI does not fully comply with the divestiture and other requirements of the Order, the Commission may appoint a Divestiture Trustee to divest the three facilities and perform FXI's other obligations consistent with the Order. The Order also requires that FXI and One Rock Capital shall not, without providing advance written notification to the Commission, acquire any polyurethane foam production plant in the states of Indiana, Michigan, Mississippi, Ohio, Oregon, and Washington for a period of ten years from the date the Order is issued.

The purpose of this analysis is to facilitate public comment on the Consent Agreement to aid the Commission in determining whether it should make the Consent Agreement final. This analysis is not an official interpretation of the proposed Consent Agreement and does not modify its terms in any way.