Analysis of Consent Order To Aid Public Comment

In the Matter of Axon Enterprise, Inc., and Safariland, LLC, Docket No. 9389

I. INTRODUCTION

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") with Safariland, LLC ("Safariland"). The Consent Agreement seeks to resolve allegations against Safariland in the administrative complaint issued by the Commission on January 3, 2020.

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or issue the Order.

II. CHALLENGED CONDUCT

This matter involves Safariland's sale to Axon Enterprise, Inc. ("Axon") of its body-worn camera systems division, VieVu, LLC ("VieVu"). The merger eliminated direct and substantial price and innovation competition between dominant supplier Axon and its closest competitor, VieVu, to serve large metropolitan police departments. According to the complaint, customers lost VieVu as a bidder for new contracts, which enabled Axon to impose substantial price increases.

In addition to transferring VieVu from Safariland to Axon, the parties' agreements included several non-compete and customer non-solicitation provisions, which grounded the inclusion of Safariland as a party to the administrative proceeding. These provisions barred Safariland from competing with Axon now and in the future on all of Axon's products, limited solicitation of customers and employees by either company, and stifled potential innovation or expansion by Safariland. These restraints, some of which were intended to last more than a decade, substantially lessened actual and potential competition and were not reasonably limited to protect a legitimate business interest, according to the complaint.

III. THE ORDER

Since the complaint issued, Safariland and Axon rescinded the agreement provisions that the complaint alleges are anticompetitive. To ensure that the parties do not enter new agreements with similar anticompetitive provisions, **Part II** of the Order enjoins Safariland from entering into any agreement with Axon that incorporates the language or substance of the rescinded provisions.

Part III of the Order requires Safariland to obtain prior approval from the Commission before it enters into any agreement with Axon that restricts competition between Axon and Safariland. By permitting agreements between Axon and Safariland, subject to prior approval, rather than imposing an absolute ban on future agreements between the parties, the Order permits agreements the parties can demonstrate are competitively neutral or procompetitive.

Part IV of the Order addresses Safariland's litigation assistance obligations. These provisions will help facilitate efficient discovery from Safariland in the ongoing litigation against Axon.

Part V contains antitrust compliance program and recordkeeping requirements. **Part VI** requires Safariland to file with the Commission verified written compliance reports. **Part VII** requires Safariland to notify the Commission in advance of changes in Safariland's structure, including any acquisition, merger or consolidation of Safariland, irrespective of Hart-Scott-Rodino reporting obligations. **Part VIII** requires that Safariland provide the Commission with access to certain information for the purpose of determining or securing compliance with the Order, and **Part IX** states that the purpose of the Order is to remedy the harm alleged in Paragraphs 44-53 and 59-60 of the complaint.

Part X provides that the Order will terminate 10 years from the date it is issued.

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment concerning the Order. It does not constitute an official interpretation of the Order or in any way to modify its terms.