



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 181 0162]

Axon Enterprise, Inc. and Safariland, LLC; Analysis of Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement; Request for Comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Please write: “Axon and Safariland; File No. 181 0162” on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW,

5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Jennifer Milici (202-326-2912),
Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW,
Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis of Consent Order to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Website (for April 17, 2020), at this web address: <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Axon and Safariland; File No. 181 0162” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Due to the public health emergency in response to the COVID-19 outbreak and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write “Axon and Safariland; File No. 181 0162” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at <http://www.ftc.gov> to read this Notice and the news release describing this matter. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Consent Order to Aid Public Comment

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.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

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