

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of

Axon Enterprise, Inc.,  
a corporation,

and

Safariland, LLC,  
a partnership.

Docket No. D9389

ORIGINAL

PUBLIC VERSION

**ANSWER AND AFFIRMATIVE DEFENSES OF  
RESPONDENT SAFARILAND, LLC**

Pursuant to 16 C.F.R. § 3.12, Respondent Safariland, LLC (“Safariland”), by and through its undersigned counsel, answers the Federal Trade Commission’s (“FTC” or “Commission”) January 3, 2020 Complaint as follows. Except to the extent specifically admitted herein, Safariland denies each and every allegation contained in the Complaint, including all allegations contained in headings or otherwise not contained in one of the Complaint’s 60 numbered paragraphs. Specifically, Safariland denies that it has engaged in conduct that violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, or Section 7 of the Clayton Act, 15 U.S.C. § 18, and denies that this proceeding is in the public interest.

**SPECIFIC RESPONSES TO THE FTC’S ALLEGATIONS**

**I. NATURE OF THE CASE**

1. Respondent Axon is the leading manufacturer and supplier of body-worn cameras (“BWCs”) and digital evidence management systems (“DEMS”) (collectively “BWC Systems”). BWCs are cameras specifically designed to withstand the rigorous demands of police usage and capture video and audio of police actions. BWCs operate in conjunction with DEMs, the software component. DEMS enable police departments to store BWC data in a central location, redact non-relevant images such as the faces of bystanders, share pertinent evidence with prosecutors, and maintain chain of custody of the video for evidentiary use.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in the first sentence, which relate solely to Axon, and therefore denies them. Safariland admits the allegations in the second sentence. Safariland also admits that body-worn cameras can work in conjunction with digital evidence management systems, but otherwise denies allegations in the third sentence. Safariland admits the allegations in the fourth sentence of paragraph 1.

2. On May 3, 2018, Respondent Axon acquired VieVu (the “Merger”), its closest competitor in the market for BWC Systems sold to large, metropolitan police departments. The

Merger eliminated direct and substantial competition between Respondent Axon and the “#2 competitor,” further entrenching Respondent Axon’s position as the dominant supplier of BWC Systems to large, metropolitan police departments.

**ANSWER:** Safariland admits that Axon acquired VieVu on May 3, 2018. Safariland lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 2, which relate to Axon, and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

3. Prior to the Merger, VieVu aggressively challenged Respondent Axon for the sale of BWC Systems to large, metropolitan police departments in the United States. This competition resulted in substantially lower prices for these customers, and provided customers with robust features and significant improvements. For example, Respondent Axon told its Board in May 2018 that the “VieVu business strategy [was to] [u]ndercut on price: Typically [REDACTED] less than Axon.” VieVu also focused on improving its products in part because Axon “is aggressively pushing feature set and existing customers are demanding those features.”

**ANSWER:** Safariland admits that VieVu competed against Axon and other competitors for certain body-worn camera RFPs prior to the sale of VieVu to Axon. Safariland also admits that the quotation in the last sentence is a partial quotation from an internal Safariland presentation. Safariland lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 3, which relate to Axon and customers, and therefore denies them.

4. VieVu was successful in winning accounts at prices substantially below Respondent Axon’s for several large, metropolitan police departments, including [REDACTED]. [REDACTED] Respondent Axon’s CEO admitted that it acquired VieVu to obtain the New York City Police Department (“NYPD”) account.

**ANSWER:** Safariland admits that VieVu was awarded business from the [REDACTED] [REDACTED] police departments. Safariland lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 4, which relate to Axon, and therefore denies them.

5. The competition between Respondent Axon and VieVu was intense, especially after VieVu won New York City with a substantially lower bid. VieVu’s former General Manager acknowledged that, “[w]e started a price war. . . .” Respondent Axon’s CEO testified that after losing the contract Respondent Axon made a free offer of 1,000 body-worn cameras to New York City. Respondent Axon eventually expanded its promotion, on or around April 5, 2017, when it offered free BWC Systems for one year to every police agency in the United States.

**ANSWER:** Safariland admits that VieVu was awarded business from the New York City police department prior to the sale of VieVu to Axon, but lacks sufficient knowledge to admit or deny the remaining allegations in the first sentence. Safariland admits that the second sentence

contains a partial quotation from an email written by VieVu's former General Manager regarding multiple competitors of VieVu. Safariland lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 5, which relate to Axon, and therefore denies them.

6. Post-merger, customers lost the benefit of this head-to-head competition, and Respondent Axon began to tout its pricing power, enacting "substantial price increases of [REDACTED] - including on body cameras and on the TASER weapon." This is exactly what Respondent Safariland predicted after the parties signed the Letter of Intent leading to the Merger: "I believe this will greatly improve their ability to increase price in the BWC market and I can easily see the stock lifting by 20% or more." The stock actually increased by more than 40% in the month following the acquisition.

**ANSWER:** Safariland admits that the second sentence contains a partial quotation from an email written by an employee of Safariland, but denies the remaining allegations in the second sentence. Safariland lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 6, which relate to Axon and customers, and therefore denies them.

7. In addition to increasing price on BWCs, Respondent Axon limited the availability of VieVu BWC Systems to customers and stopped developing new generations of VieVu hardware and software. [REDACTED]

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 7, which relate to Axon, and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

8. The Merger will likely entrench Respondent Axon's already dominant share of the relevant market and would significantly increase market concentration. Pre-Merger, Respondent Axon held over [REDACTED] share and VieVu held over a [REDACTED] share of sales by officer count of BWC Systems to large, metropolitan police departments in the United States.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 8, which relate to Axon and third parties, and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

9. Under the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines"), a post-merger market-concentration level above 2,500 points, as measured by the Herfindahl-Hirschman Index ("HHI"), and an increase in market concentration of more than 200 points renders a merger presumptively unlawful. Post-Merger market concentration would be more than 2,500, and the Merger would increase HHIs in an already concentrated market by well over 200 points. Thus, the Merger is presumptively unlawful.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 9 and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

10. New entry or repositioning by existing producers would not be timely, likely, or sufficient to counteract the anticompetitive effects of the Merger. Barriers to entry are high because of the substantial up-front capital investment required, switching costs, and the need for large, metropolitan police department references.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 10 and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

11. Respondent Axon cannot show that the Merger resulted in merger-specific efficiencies sufficient to outweigh the competitive harm caused by the Merger. Respondent Axon did not analyze or anticipate efficiencies when deciding to acquire VieVu.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 11, which relate to Axon, and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

12. As part of the Merger, Respondent Safariland entered several non-compete and customer non-solicitation agreements covering products and services not related to the Merger, and both Respondents entered company-wide non-solicitation agreements that all run for 10 or more years (together, “Non-Competes”). The Non-Competes are not reasonably limited to protect a legitimate business interest. The Non-Competes are contained in the Membership Interest Purchase Agreement (“Merger Agreement”) itself and in Exhibit E, the Product Development and Supplier Agreement (“Holster Agreement”).

**ANSWER:** Safariland admits that the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement, as executed on May 3, 2018, contained certain non-compete and non-solicitation provisions. Those provisions have been voided by amendment and are no longer in effect. Safariland denies the remaining allegations in Paragraph 12, to the extent they relate to it. To the extent the allegations are legal conclusions, no response is required.

13. The Holster Agreement is a decade-long supply agreement whereby Respondent Safariland would develop and exclusively supply conducted electrical weapons (“CEW”) holsters to Respondent Axon for its Taser-branded CEW. Respondent Axon is the dominant supplier of CEWs, and its Taser brand is synonymous with the category. Respondents Axon and Safariland executed the Holster Agreement as additional consideration for the Merger.

**ANSWER:** Safariland admits the allegations in the first sentence. Safariland lacks sufficient knowledge to admit or deny the allegations in the second sentence, which relate to Axon, and therefore denies them. Safariland denies the remaining allegations in paragraph 13. To the extent the allegations are legal conclusions, no response is required.

## II. JURISDICTION

14. Respondents are, and at all relevant times have been, engaged in commerce or in activities affecting “commerce” as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

**ANSWER:** Safariland admits the allegations in Paragraph 14 to the extent they pertain to it. To the extent the allegations are legal conclusions, no response is required.

15. The Merger constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

**ANSWER:** To the extent the allegations are legal conclusions, no response is required.

## III. RESPONDENTS

16. Respondent Axon is the dominant provider of BWC Systems. The majority of the largest metropolitan police departments in the United States use Respondent Axon’s BWC System solution. Respondent Axon’s newest model BWC is the “Axon Body 3,” and its DEMS is known as “[Evidence.com](#).” Respondent Axon changed its name in 2017 from TASER International, Inc.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 16, which relate to Axon, and therefore denies them.

17. Respondent Axon is also the dominant supplier of CEWs under the “Taser” brand, which is Respondent Axon’s flagship product and is employed by more than [REDACTED] of all police departments. In 2018, Respondent Axon had annual revenues of \$420 million.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 17, which relate to Axon, and therefore denies them.

18. Respondent Safariland manufactures and sells holsters (including for use with CEWs and other weapons), body armor, armor systems, and other safety and forensics equipment for the law enforcement, military, and recreational markets. Respondent Safariland purchased VieVu in 2015.

**ANSWER:** Safariland admits the allegations in Paragraph 18.

#### IV. THE MERGER AND ASSOCIATED AGREEMENTS

19. Pursuant to the Merger Agreement, Respondent Axon consummated the purchase of VieVu from Respondent Safariland on May 3, 2018 for approximately [REDACTED] million in cash, stock, earn-outs, and the Holster Agreement, which is included as Exhibit E in the Merger Agreement and was executed as additional consideration for the Merger. Pursuant to the Holster Agreement, Respondent Safariland agreed for 10 years, *inter alia*, to develop a new CEW holster for Respondent Axon's next-generation CEW and to supply CEW holsters exclusively to Respondent Axon. Respondent Axon agreed, *inter alia*, to make Respondent Safariland its preferred supplier of CEW holsters. Respondents Axon and Safariland also agreed, as part of the Merger Agreement and Holster Agreement, to Non-Competes related for products and services, customers, and employees.

**ANSWER:** Safariland admits that Section 2.01 of the Membership Interest Purchase Agreement, dated May 3, 2018, refers to "consideration specified in Section 2.02." Safariland refers the FTC to Section 2.02 ("Purchase Price") for a complete and accurate list of the consideration under the agreement. Safariland also admits the allegations in the second and third sentences to the extent they pertain to Safariland. Safariland further admits that the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement, as executed on May 3, 2018, contained certain non-compete and non-solicitation provisions. Those provisions have been voided by amendment and are no longer in effect. Safariland lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 19, which relate to Axon, and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

#### V. RELEVANT MARKET

20. The relevant market in which to analyze the effects of the Merger is the sale of BWC Systems, comprising BWCs and DEMS, to large, metropolitan police departments in the United States. A hypothetical monopolist in this relevant market would find it profit-maximizing to impose at least a small but significant and non-transitory increase in price ("SSNIP").

**ANSWER:** Safariland denies the allegations in Paragraph 20. To the extent the allegations are legal conclusions, no response is required.

##### A. Relevant Product Market

21. The relevant product market in which to assess the effects of the Merger is the sale of BWC Systems to large, metropolitan police departments. BWCs are the hardware component, and DEMS are the software component, of an integrated BWC System.

**ANSWER:** Safariland denies the allegations in the first sentence. To the extent the allegations are legal conclusions, no response is required. Safariland admits the allegations in the second sentence.

22. Large, metropolitan police departments frequently issue requests for proposals seeking to purchase BWCs and DEMS together as an integrated BWC System. The products are closely related, and it is important for the hardware and software to interoperate effectively.

**ANSWER:** Safariland admits that, prior to the sale of VieVu to Axon, VieVu responded to certain requests for proposals seeking to purchase BWCs and DEMS together as an integrated BWC System. Safariland lacks sufficient knowledge to admit or deny the allegations that the request occurred “frequently.”

23. Both Respondent Axon and VieVu focused on selling their products to large, metropolitan police departments, which have distinct requirements for BWC Systems that differ from the needs and preferences of other law enforcement organizations. Due to their particular needs, large, metropolitan police departments may require or prefer elements such as feature-rich and cloud-based DEMS, scalability for the BWC Systems deployment, references from other large metropolitan police departments, secured layers for authorized personnel access, automatic population of metadata for a video (e.g., officer, location, etc.), and tools that enable faster redaction of bystanders’ faces when a video is being prepared for public disclosure or use in court. VieVu recognized this. According to VieVu’s former General Manager, “VIEVU played in the large agency market, cloud, tech forward agencies, which is the same spot where Axon played.”

**ANSWER:** Safariland admits that, prior to the sale of VieVu to Axon, VieVu sold body-worn cameras to certain police departments. Safariland also admits that the quotation in the fourth sentence is a portion of testimony given at the investigational hearing of VieVu’s former General Manager. Safariland lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 23, which relate to Axon and unidentified police departments, and therefore denies them.

24. There are no reasonably interchangeable substitutes for BWC Systems, and large, metropolitan police departments could not realistically switch to other products in the face of a SSNIP for BWC Systems.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 24, which relate to unidentified police departments, and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

25. In-car camera systems are not substitutes for BWC Systems for large, metropolitan police departments. In-car camera systems are mounted in the vehicle, usually a front-facing camera to record what takes place in front of the vehicle, and a rear-facing camera to record what takes place inside the vehicle. In-car systems are more often used by highway patrol officers, or other officers who spend most of their time working in or directly outside of their patrol vehicles. Most officers in large, metropolitan police departments, however, are rarely in patrol cars and generally conduct their policing by other means, such as on foot, horse, and bike. Given the nature

of policing in metropolitan areas, these officers need cameras that can capture video when a police officer is not near a police vehicle, but is instead on the street or in a building. In-car systems are also significantly more expensive than BWC Systems. Respondent Axon's Chief Revenue Officer testified that in-car systems and BWC Systems are not good substitutes.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 25, which relate to unidentified police departments and Axon, and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

26. Records Management Systems ("RMS") are not substitutes for DEMS for large, metropolitan police departments. RMS collect and centralize in one source, in digital format, the many types of written reports generated by police agencies, including arrest, probation, and crime scene reports, whereas DEMS are designed principally to record video and audio evidence captured by BWCs. Industry participants do not view RMS as a substitute for BWC Systems or for the DEMS component of those systems.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 26, which relate to unidentified police departments, and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

## **B. Relevant Geographic Market**

27. The relevant geographic market in which to assess the competitive effects of the Merger is customers in the United States. The relevant market is a bid market in which it is possible to price discriminate to specific customers. Customers based in the United States cannot arbitrage or substitute based on different prices offered to customers outside the United States.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 27 and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

28. Many police departments also are required to comply with the FBI's Criminal Justice Information Service ("CJIS") standards. CJIS compliance requires storing BWC-generated data in the United States. Additionally, U.S.-based police departments look mostly to other U.S.-based police departments to vet potential BWC System vendors.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 28, which relate to unidentified police departments, and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

29. A hypothetical monopolist in the market for BWC Systems sold to large, metropolitan police departments in the United States would find it profit-maximizing to impose at least a small but significant and non-transitory increase in price ("SSNIP").



**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 26, which relate to unidentified police departments, and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

**VI. MARKET STRUCTURE AND THE MERGER'S PRESUMPTIVE ILLEGALITY**

30. The market for the sale of BWC Systems to large, metropolitan police departments based in the United States is highly concentrated. Prior to the Merger, Respondent Axon was already the dominant BWC System provider to these customers, with over [REDACTED] of the relevant market by officer count. Respondent Axon acknowledges this dominance—in a company presentation, it implored its salespeople to “embrace being the gorilla”—and Respondent Axon’s CEO confirmed that Respondent Axon is a “really strong market leader.” VieVu was the next largest competitor with over [REDACTED] of the relevant market by officer count. Post-Merger, the relevant market is even more highly concentrated, with Respondent Axon controlling over [REDACTED] of the relevant market by officer count.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 30, which relate to unidentified police departments and Axon, and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

31. Motorola, Panasonic, WatchGuard and Utility largely make up the rest of the relevant market. None of these other competitors pose the same competitive constraint on Respondent Axon as did VieVu. In particular, the other competitors’ BWC Systems [REDACTED]

[REDACTED] Consequently, these other competitors rarely provided significant competition to Respondent Axon in RFP processes conducted by large, metropolitan police departments.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 31, which relate to third parties and Axon, and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

32. Even when considering all customers (i.e., not just large, metropolitan police departments), Respondent Axon believed that post-Merger it had “about [REDACTED] of the US market.”

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 32, which relate to unidentified n police departments and Axon, and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

33. The Merger Guidelines and courts often measure concentration using HHIs. HHIs are calculated by totaling the squares of the market shares of every firm in the relevant market. Under the Merger Guidelines, a merger is presumed likely to create or enhance market power and is presumptively illegal when the post-merger HHI exceeds 2,500 and the merger increases the HHI by more than 200 points.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 33 and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

34. The Merger significantly increased concentration in the relevant market, as one firm now controls more than █████ of the relevant market by officer count. Motorola/WatchGuard, the next largest competitor, controls less than █████ of the relevant market by officer count. The Merger resulted in a post-Merger HHI in excess of 2,500, and increased concentration by more than 200 points. Therefore, the Merger is presumptively anticompetitive under the Merger Guidelines and applicable case law.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 34, which relate third parties, and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

## VII. ANTICOMPETITIVE EFFECTS

### A. The Merger Eliminated Vital Competition Between VieVu and Respondent Axon

35. The Merger eliminated intense price and innovation competition between Respondent Axon and VieVu in the relevant market. The result is likely to be higher prices, inferior service, and reduced quality and innovation.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 35, which relate to Axon, and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

36. Respondent Axon and VieVu were each other's closest competitors. For example, Respondent Safariland acknowledged: "We own the #2 player in the market, and to date we have seen no other credible market entrant," and "VieVu and Taser are consistently the finalists in major opportunities." Respondent Axon's Vice President of Investor Relations touted that by purchasing VieVu, Respondent Axon had "acquired #2 competitor."

**ANSWER:** Safariland admits that the quotations in the second sentence are partial quotations from a 2016 Safariland presentation. Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 36, which relate to Axon, and therefore denies them.

37. Stock analysts and the financial press also recognize that VieVu was Respondent Axon's most significant competitor. A Raymond James stock report states: "In May 2018, Axon closed the \$7.1 million strategic tuck-in acquisition of its most formidable body cam competitor, VieVu." A Bloomberg article dated May 4, 2018, entitled "The Biggest Police Body Cam Company Is Buying Its Main Competitor," declares that "[t]he combination of the two largest providers of the recording devices will create a dominant force in police surveillance." A May 18, 2018 article from the Motley Fool, entitled "Axon Enterprise Now Owns the Police Body Cam Market," asserts that "[t]here is going to be no stopping Axon Enterprise (NASDAQ:AAXN) now that it has acquired its main body camera rival VIEVU."

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 37, which relate to third parties, and therefore denies them.

38. Prior to the Merger, VieVu and Respondent Axon were the competitors that could best satisfy the RFP requirements, from both a technical and price perspective, for many of the largest metropolitan police agencies in the United States. For example, [REDACTED] all found that, of multiple bidders, Respondent Axon and VieVu had the best offerings by a significant margin.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 38, which relate to third parties and Axon, and therefore denies them.

39. Respondent Axon and VieVu vigorously and consistently competed on price in an effort to win large, metropolitan police department contracts. After Respondent Safariland acquired VieVu in 2015, VieVu lowered its pricing in an explicit effort to take market share from Respondent Axon. VieVu's former General Manager confirmed that in early 2016, VieVu "made a relatively deliberate decision to take price down in the market considerably," and VieVu admittedly "took [Axon] by surprise with disruptive pricing and nearly comparable technology." As late as 2018, VieVu's strategy was to "win on price typically [REDACTED] less than Axon."

**ANSWER:** Safariland admits that VieVu competed with Axon and other market participants on price prior to the sale of VieVu to Axon. Safariland also admits that the third sentence contains a portion of testimony given at the investigational hearing of VieVu's former General Manager and partial quotation of a Safariland presentation. Safariland lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 39, which relate to unidentified police department and Axon, and therefore denies them.

40. Competition between Respondent Axon and VieVu resulted in substantially lower prices for police departments. For example, [REDACTED] all received substantially lower bids from VieVu as compared to Respondent Axon. VieVu's lower pricing for [REDACTED] caused Respondent Axon to reduce its own bids. VieVu at times responded to Respondent Axon's competing bids by offering better terms.

**ANSWER:** Safariland admits that VieVu competed with Axon and other market participants prior to the sale of VieVu to Axon. Safariland lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 40, which relate to third parties and Axon, and therefore denies them.

41. Respondent Axon and VieVu also competed vigorously on non-price aspects of BWC Systems, including the development of various innovative features such as auto-activation of BWCs in the event of an officer unholstering a gun or Taser, and computer-assisted facial redaction tools for DEMS videos. Consumers benefited from this innovation competition.

**ANSWER:** Safariland admits that VieVu competed with Axon and other market participants prior to the sale of VieVu to Axon. Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 41, which relate to third parties and Axon, and therefore denies them.

42. Post-merger, customers lost the benefit of this head-to-head price and innovation competition, and Respondent Axon began to tout its pricing power, enacting “substantial price increases of [REDACTED] - including on body cameras and on the Taser weapon.” Respondent Axon has acknowledged the negative consequence of price increases on budget constrained law enforcement officers: “It’s no secret that budget constraints are a constant inconvenience for law enforcement agencies. Long needs lists + short funds = under equipped officers and potentially underserved communities.”

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 42, which relate to third parties and Axon, and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

43. Existing BWC System providers are unlikely to replace the competition that was lost as a result of the Merger between Respondents, the two closest competitors in the relevant market. While each remaining competitor has different strengths and weaknesses, each competitor faces real and significant challenges in replacing competition lost through Respondent Axon’s merger with VieVu. These challenges include, but are not limited to, reputation or lack of references from large, metropolitan police department customers, service levels that are inadequate for such customers, and software with limited functionality. Moreover, some of the other BWC System providers price significantly higher than VieVu and would not sufficiently replace VieVu’s aggressive pricing. The remaining firms in the relevant market are not likely to replace the competitive constraint of VieVu’s lower-priced offerings in a timely and sufficient way.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 43, which relate to third parties and Axon, and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

**B. As Part of the Merger, Respondents Agreed to Additional Provisions that Substantially Lessen Competition**

44. As part of the Merger Agreement, Respondents Axon and Safariland entered into the Non-Competes: Respondent Safariland agreed not to compete (i) for products and services that Respondent Axon supplies and in industries where Respondent Axon is active, irrespective of their relation to the Merger and (ii) for Respondent Axon's customers; and both Respondents agreed not to affirmatively solicit each other's employees. These agreements each last 10 or more years. The Non-Competes prevent actual and potential competition between Respondents Axon and Safariland. The Non-Competes are contained in the Merger Agreement itself and in Exhibit E, the Holster Agreement.

**ANSWER:** Safariland admits that the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement, as executed on May 3, 2018, contained certain non-compete and non-solicitation provisions. Those provisions have been voided by amendment and are no longer in effect. Safariland denies remaining allegations in paragraph 44.

*Non-Compete Agreements for Respondent Axon's Products/Services and Industries*

45. In Section 5.03(a) of the Merger Agreement, Respondent Safariland agreed not to engage in "(a) body worn video products and services, (b) in-car video products and services, (c) digital evidence management products and services provided to third parties that ingest digital evidence audio and video files, and (d) enterprise records management systems provided to third parties," anywhere in the world for 10 years.

**ANSWER:** Safariland admits that the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement, as executed on May 3, 2018, contained certain non-compete and non-solicitation provisions. Safariland refers the FTC to the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement for the full text of those provisions, which have been voided by amendment and are no longer in effect. Safariland denies remaining allegations in paragraph 45.

46. In Section 15.1 of the Holster Agreement, Respondent Safariland agreed not to compete in the "CEW industry, BWC industry, fleet or vehicle camera industry, surveillance room camera industry, and digital evidence management system and storage industry, with regard to law enforcement, military, security or consumers," anywhere in the world for 12 years. Respondent Axon was concerned about Respondent Safariland potentially entering into competition with Respondent Axon's lucrative CEW business. Respondent Axon's CEO called the 12-year CEW non-compete a "hidden jewel in the deal."

**ANSWER:** Safariland admits that the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement, as executed on May 3, 2018, contained certain non-compete and non-solicitation provisions. Safariland refers the FTC to the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement for the full text of those provisions, which have been voided by amendment and are no longer in effect.

Safariland lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 46, which relate to Axon, and therefore denies them.

***Non-Compete Agreements for Respondent Axon's Customers***

47. In Section 5.03(c) of the Merger Agreement, Respondent Safariland agreed not to solicit or entice any of Respondent Axon's customers or potential customers for purposes of diverting business or services away from Respondent Axon, for 10 years.

**ANSWER:** Safariland admits that the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement, as executed on May 3, 2018, contained certain non-compete and non-solicitation provisions. Safariland refers the FTC to the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement for the full text of those provisions, which have been voided by amendment and are no longer in effect. Safariland denies the remaining allegations in paragraph 47.

48. In Section 15.3 of the Holster Agreement, Respondent Safariland agreed not to solicit or entice any of Respondent Axon's customers or potential customers for purposes of diverting CEW, CEW holster, or CEW accessory business or purchases away from Respondent Axon, for 11 years.

**ANSWER:** Safariland admits that the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement, as executed on May 3, 2018, contained certain non-compete and non-solicitation provisions. Safariland refers the FTC to the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement for the full text of those provisions, which have been voided by amendment and are no longer in effect. Safariland denies the remaining allegations in paragraph 48.

***Employee Non-Solicitation Agreements***

49. In Section 5.03(b) of the Merger Agreement, Respondent Safariland agreed not to hire or solicit any of Respondent Axon's employees, or encourage any employees to leave Respondent Axon, or hire certain former employees of Respondent Axon, except pursuant to a general solicitation. Respondent Safariland agreed to refrain from this activity for 10 years.

**ANSWER:** Safariland admits that the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement, as executed on May 3, 2018, contained certain non-compete and non-solicitation provisions. Safariland refers the FTC to the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement for the full text of those provisions, which have been voided by amendment and are no longer in effect. Safariland denies the remaining allegations in paragraph 49.

50. In Section 5.06(a) of the Merger Agreement, Respondent Axon agreed not to hire or solicit any of Respondent Safariland's employees, or encourage any employees to leave Respondent Safariland, or hire certain former employees of Respondent Safariland, except pursuant to a general solicitation. Respondent Axon agreed to refrain from this activity for 10 years.

**ANSWER:** Safariland admits that the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement, as executed on May 3, 2018, contained certain non-compete and non-solicitation provisions. Safariland refers the FTC to the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement for the full text of those provisions, which have been voided by amendment and are no longer in effect. Safariland denies the remaining allegations in paragraph 50 to the extent they pertain to it.

51. In Section 15.4 of the Holster Agreement, Respondents Axon and Safariland agreed not to solicit each other's employees for the purpose of inducing the employees to leave their respective employers, except pursuant to a general solicitation. Respondents Axon and Safariland agreed to refrain from this activity for 11 years.

**ANSWER:** Safariland admits that the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement, as executed on May 3, 2018, contained certain non-compete and non-solicitation provisions. Safariland refers the FTC to the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement for the full text of those provisions, which have been voided by amendment and are no longer in effect. Safariland denies the remaining allegations in paragraph 51 to the extent they pertain to it.

52. By prohibiting Respondent Safariland from competing against Respondent Axon--in terms of products and services Respondent Safariland can offer as well as customers Respondent Safariland can solicit--these provisions harm customers who would otherwise benefit from potential or actual competition by Respondent Safariland. By prohibiting Respondents Axon and Safariland from affirmatively soliciting each other's employees, these provisions eliminate a form of competition to attract skilled labor and deny employees and former employees of Respondents Axon and Safariland access to better job opportunities. They restrict workers' mobility, and deprive them of competitively significant information that they could use to negotiate better terms of employment.

**ANSWER:** Safariland admits that the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement, as executed on May 3, 2018, contained certain non-compete and non-solicitation provisions. Safariland refers the FTC to the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement for the full text of those provisions, which have been voided by amendment and are no longer in effect. Safariland denies the remaining allegations in paragraph 52 to the extent they pertain to it. To the extent the allegations are legal conclusions, no response is required.

53. The Non-Competes are not reasonably limited in scope to protect a legitimate business interest. A mere general desire to be free from competition is not a legitimate business interest. The Non-Competes go far beyond any intellectual property, goodwill, or customer relationship necessary to protect Respondent Axon's investment in VieVu. Moreover, even if a legitimate interest existed, the lengths of the Non-Competes are longer than reasonably necessary, because they prevent Respondent Safariland from competing for products and services, customers, and employees for 10 years or longer.

**ANSWER:** Safariland admits that the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement, as executed on May 3, 2018, contained certain non-compete and non-solicitation provisions. Safariland refers the FTC to the Membership Interest Purchase Agreement and the Product Development and Supplier Agreement for the full text of those provisions, which have been voided by amendment and are no longer in effect. Safariland denies the remaining allegations in paragraph 53 to the extent they pertain to it.. To the extent the allegations are legal conclusions, no response is required.

## VIII. LACK OF COUNTERVAILING FACTORS

### A. High Barriers to Entry and Expansion

54. Respondents cannot demonstrate that new entry or expansion by existing firms would be timely, likely, or sufficient to offset the anticompetitive effects of the Merger. *De novo* entrants into this market would face considerable barriers in replicating the competition that the Merger has eliminated. Effective entry into this market would require substantial, costly upfront investments in creating a new BWC System offering. The system also must be designed for use by law enforcement agencies, with features such as secured layers for authorized personnel access and strict recordation of file access history for chain of custody purposes. There are high switching costs related to the transfer of metadata for video files, and customers are sticky because moving data to a new provider and training officers on a new platform is challenging and expensive.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 53 and therefore denies them. To the extent the allegations are legal conclusions, no response is required.

### B. Efficiencies

55. Respondent Axon cannot show that merger-specific efficiencies would result from the Merger that will offset the anticompetitive effects. Respondent Axon's President admitted that potential efficiencies played no role in Respondent Axon's analysis of the Merger.

**ANSWER:** Safariland lacks sufficient knowledge to admit or deny the allegations in paragraph 53, which relates to solely Axon, and therefore denies them. To the extent the allegations are legal conclusions, no response is required.



**C. Failing Firm**

56. Respondents cannot demonstrate that Respondent Safariland was a failing firm under the criteria set out in the Horizontal Merger Guidelines.

**ANSWER:** Safariland denies the allegations in paragraph 56 to the extent they pertain to it. To the extent the allegations are legal conclusions, no response is required.

**IX. VIOLATIONS**

**Count I – Illegal Agreement**

57. The allegations of Paragraphs 1 through 56 above are incorporated by reference as though fully set forth herein.

**ANSWER:** To the extent the allegations are legal conclusions, no response is required.

58. The Merger Agreement constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

**ANSWER:** To the extent the allegations are legal conclusions, no response is required.

**Count II – Illegal Merger**

59. The allegations of Paragraphs 1 through 56 above are incorporated by reference as though fully set forth herein.

**ANSWER:** To the extent the allegations are legal conclusions, no response is required.

60. The Merger, including the Non-Competes, constitutes a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

**ANSWER:** To the extent the allegations are legal conclusions, no response is required.

**AFFIRMATIVE DEFENSES**

**FIRST DEFENSE**

1. The Complaint fails to state a claim against Safariland upon which relief can be granted.

**SECOND DEFENSE**

2. Neither the filing of this administrative action nor the contemplated relief are in the public interest, pursuant to 15 U.S.C. § 45.

**THIRD DEFENSE**

3. At the time of the sale of VieVu to Axon, VieVu was a failing firm under the criteria set out in § 11 of the Horizontal Merger Guidelines.

**FOURTH DEFENSE**

4. The Complaint fails to allege that the voided non-compete and non-solicitation provisions in the Membership Interest Purchase Agreement and Product Development and Supplier Agreement caused any actual or potential harm to competition, or that they would tend to do so.

**OTHER DEFENSES**

5. Safariland reserves the right to assert other defenses as discovery proceeds.

Safariland respectfully requests that the Administrative Law Judge (i) deny the FTC's contemplated relief, (ii) dismiss the Complaint in its entirety with prejudice, (iii) award Safariland its costs of suit, and (iv) award such other and further relief as the Administrative Law Judge may deem proper.

Dated: January 22, 2020

Respectfully submitted,

/s/ Joseph A. Ostoyich

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*Counsel for Safariland, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 22, 2020, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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Washington, DC 20580  
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The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to:

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By: /s/ Caroline L. Jones  
Caroline L. Jones

*Counsel for Respondent Safariland, LLC*

**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

January 22, 2020

By: /s/ Caroline L. Jones  
Caroline L. Jones

Notice of Electronic Service

I hereby certify that on January 22, 2020, I filed an electronic copy of the foregoing 2020-01-22 SAFARILAND Answer & Affirmative Defenses [PUBLIC], with:

D. Michael Chappell  
Chief Administrative Law Judge  
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Washington, DC, 20580

Donald Clark  
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Washington, DC, 20580

I hereby certify that on January 22, 2020, I served via E-Service an electronic copy of the foregoing 2020-01-22 SAFARILAND Answer & Affirmative Defenses [PUBLIC], upon:

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