

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THALES S.A. and GEMALTO N.V.,

Defendants.

Case No.: 1:19-cv-00569-BAH

**MOTION AND MEMORANDUM OF THE UNITED STATES
IN SUPPORT OF ENTRY OF FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C.

§ 16(b)-(h) (“APPA”), Plaintiff, the United States of America (“United States”), moves for entry of the proposed Final Judgment filed in this civil antitrust proceeding on February 28, 2019, a copy of which is attached hereto as Exhibit A. The proposed Final Judgment may be entered at this time without further hearing if the Court determines that entry is in the public interest. *See* 16 U.S.C. § 16(e). The defendants do not object to entry of the proposed Final Judgment without a hearing. The Competitive Impact Statement (“CIS”), filed in this matter on the same date, explains why entry of the proposed Final Judgment is in the public interest. The United States is also filing a Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act, attached hereto as Exhibit B, setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting period has expired.

I. BACKGROUND

On February 28, 2019, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by defendant Thales S.A. (“Thales”), of defendant Gemalto N.V.

(“Gemalto”), likely would substantially lessen competition in the provision of General Purpose (“GP”) Hardware Security Modules (“HSMs”), in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the United States also filed a Stipulation and Order and proposed Final Judgment requiring the divestiture of Thales’ GP HSM business, and the CIS. The CIS describes how the proposed Final Judgment is designed to remedy the likely anticompetitive effects of the proposed acquisition. The Stipulation and Order, which was signed and entered by the Court on March 5, 2019, provides in Section IV.A that the proposed Final Judgment may be entered by the Court after the completion of the procedures of 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 Final Judgment and to punish violations thereof.

II. COMPLIANCE WITH THE APPA

The APPA requires a sixty-day period for the submission of public comments on a proposed Final Judgment. *See* 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the CIS with the Court on February 28, 2019; published the proposed Final Judgment and CIS in the *Federal Register* on March 11, 2019 (*see* 84 Fed. Reg. 8745-8762); and ensured that a summary of the terms of the proposed Final Judgment, together with directions for the submission of written comments relating to the proposed Final Judgment, was published in *The Washington Post* for seven days beginning on March 6, 2019, and ending on March 12, 2019. The sixty-day public comment period terminated on May 13, 2019, and the United States received no comments.

Simultaneously with this Motion and Memorandum, the United States is filing a Certificate of Compliance that states that all the requirements of the APPA have been satisfied. The parties have stipulated that, upon motion of any party or upon the Court's own motion, the proposed Final Judgment may be entered by the Court at any time after compliance with the requirements of the APPA and without further notice to any party or other proceedings. Stipulation and Order, Section IV.A (ECF No. 2-1). It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.

III. STANDARD OF JUDICIAL REVIEW

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 in accordance with the statute, the court 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). Section 16(e)(2) of the APPA states 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.” In the CIS, the United States explained the meaning and proper application of the public interest standard under the APPA and now incorporates those provisions of the CIS by reference.

IV. ENTRY OF THE PROPOSED FINAL JUDGMENT IS IN THE PUBLIC INTEREST

The United States alleged in its Complaint that the acquisition of Gemalto by Thales likely would substantially lessen competition in the provision of GP HSMs in the United States, resulting in higher prices as well as a reduction in quality, product support, and innovation. As explained in the CIS, the remedy in the proposed Final Judgment is designed to eliminate the likely anticompetitive effects of this acquisition by requiring defendants to divest Thales’ GP HSM Products business, including all tangible and intangible assets primarily related to the production, operation, research, development, sale, or support of any Thales GP HSM Product. The proposed Final Judgment also requires the appointment of a Monitoring Trustee, selected by the United States and approved by the Court, to monitor Thales’ compliance with the terms of the Final Judgment and to help ensure compliance with it.¹

The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law, and no comments have been submitted. There has been no showing that the proposed settlement constitutes an abuse of the United States’ discretion or that it is not within the zone of settlements consistent with the public interest.

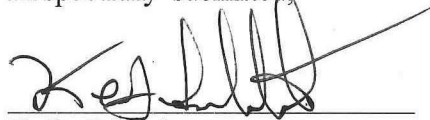
¹ Pursuant to this provision, the United States is concurrently filing with the Court an Unopposed Motion to Appoint a Monitoring Trustee.

V. CONCLUSION

For the reasons set forth in this Motion and Memorandum and in the CIS, the Court should find that the proposed Final Judgment is in the public interest and should enter the Final Judgment without further hearings. The United States respectfully requests that the Final Judgment, attached hereto as Exhibit A, be entered as soon as possible.

Dated: June 25, 2019

Respectfully submitted,



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