UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

NATIONAL ASSOCIATION FOR COLLEGE ADMISSION COUNSELING,

Defendant.

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On December 12, 2019, the United States filed a civil antitrust Complaint alleging that Defendant National Association for College Admission Counseling ("NACAC") enacted certain mandatory rules (collectively referred to as the "Recruiting Rules") that unlawfully limited competition between its members in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

NACAC members include colleges and their admissions personnel and high schools and their guidance counselors. NACAC's college members compete with each other for college students, both college applicants and potential transfer students. Colleges compete on a number of different dimensions, including tuition cost, majors offered, ease and cost of application, campus amenities, quality of education, reputation of the institution, and prospects for employment following graduation. The Complaint, however, alleges that NACAC, through its

rulemaking authority, established three mandatory rules that limited the manner in which its college members could compete for college applicants and potential transfer students.

The first rule, the Transfer Student Recruiting Rule, expressly prevented colleges from affirmatively recruiting potential transfer students from other schools. The second rule, the Early Decision Incentives Rule, forbade colleges from offering incentives, financial or otherwise, to Early Decision applicants. The third rule, the First-Year Undergraduate Recruiting Rule, limited the ability of colleges to recruit incoming first-year students after May 1. These three rules—collectively "the Recruiting Rules"—were not reasonably necessary to any separate, legitimate business transaction or collaboration among NACAC and its members. According to the Complaint, the Defendant's Recruiting Rules unlawfully restricted competition between NACAC's members and were unreasonable restraints of trade that violated Section 1 of the Sherman Act, 15 U.S.C. § 1.

At the same time the Complaint was filed, the United States filed a Stipulation and Order and proposed Final Judgment, which would remedy the violation by enjoining the Defendant from enacting, maintaining, or enforcing the Recruiting Rules, subject to limited exceptions. NACAC members voted in September of 2019 to repeal the Recruiting Rules, effective as of that time, and the Final Judgment seeks to prevent NACAC from re-imposing those or any similar rules. The proposed Final Judgment also requires NACAC to take specific compliance measures and to cooperate in any investigation or litigation examining whether or alleging that NACAC enacted a Recruiting Rule or any similar rule in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

The United States and NACAC have stipulated that the proposed Final Judgment may be entered after compliance with 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 proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendant

NACAC is a nonstock corporation organized in the State of Delaware and headquartered in Arlington, Virginia. Beyond establishing ethics rules that govern its members, NACAC holds dozens of college fairs that allow prospective students to interact with a number of regional and national colleges.

B. Defendant-Established Anticompetitive Recruiting Rules

The Complaint alleges that NACAC, through the version of its Code of Ethics and Professional Practices ("CEPP" or "Ethics Rules") that was effective during and prior to 2018, established three rules that unreasonably restrained competition between its member colleges for college applicants and potential transfer students. These rules, described in more detail below, were voted on by NACAC's members and were mandatory not only for NACAC's members but also for any non-members that participated in NACAC's college fairs. Failure to abide by the rules embodied in the CEPP could have resulted in disciplinary actions by NACAC, including but not limited to exclusion from its college fairs or expulsion from NACAC.

1. Transfer Student Recruiting Rule

The first rule at issue is the Transfer Student Recruiting Rule, originally embodied at Section II.D.5 of the CEPP. That rule provided that:

> Colleges must not solicit transfer applications from a previous year's applicant or prospect pool unless the students have themselves initiated a transfer inquiry or the college has verified prior to contacting the students that they are either enrolled at a

> college that allows transfer recruitment from other colleges or are not currently enrolled in a college.

As described in the Complaint, this rule acted as a substantial impediment to competition between colleges for potential transfer students, and provided only limited exceptions that allowed for transfer recruitment. Absent this restriction, colleges will be free to recruit potential transfer students more aggressively, which will lead to colleges to making more attractive offers, like lower tuition costs or higher quality admissions packages.

2. *Early Decision Incentives Rule*

The second rule at issue is the Early Decision Incentives Rule, which was at Section II.A.3.a.vi of the CEPP. This rule stated that:

> Colleges must not offer incentives exclusive to students applying or admitted under an Early Decision application plan. Examples of incentives include the promise of special housing, enhanced financial aid packages, and special scholarships for Early Decision admits. Colleges may, however, disclose how admission rates for Early Decision differ from those for other admission plans.

This rule, as alleged in the Complaint, unreasonably limited the competition for Early Decision applicants. In the current admissions ecosystem, some colleges allow students to apply via Early Decision, which provides students with an accelerated decision on admission to that school but also requires from the student a binding commitment to attend if admitted. The Early Decision Incentives Rule forbade colleges from offering incentives (beyond the accelerated decision) to those students. This was an unreasonable restraint on competition. Absent this restriction, colleges will be free to offer a set of incentives for Early Decision applicants that best serves the college and its applicant base, including special scholarships, preferred housing, or other

discounts on tuition. Over time, this will lead to more aggressive recruitment of students through more attractive offers of admission.

3. First-Year Undergraduate Recruiting Rule

The final rule at issue is the First-Year Undergraduate Recruiting Rule, which was at Section II.B.5 of the CEPP. This rule required that:

> Colleges will not knowingly recruit or offer enrollment incentives to students who are already enrolled, registered, have declared their intent, or submitted contractual deposits to other institutions. May 1 is the point at which commitments to enroll become final, and colleges must respect that. The recognized exceptions are when students are admitted from a wait list, students initiate inquiries themselves, or cooperation is sought by institutions that provide transfer programs. These statements capture the spirit and intent of this requirement:
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> > a. Whether before or after May 1, colleges may at any time respond to a student-initiated request to reconsider an offer or reinstate an application.
> >
> > b. Once students have declined an offer of admission, colleges may no longer offer them incentives to change or revisit their college decision. Before May 1, however, colleges may ask whether candidates would like a review of their financial aid package or other incentives before their admission is canceled, so long as the question is asked at the time that the admitted students first notify them of their intent to cancel their admission.
> >
> > c. After May 1, colleges may contact students who have neither deposited nor withdrawn their applications to let them know that they have not received a response from them. Colleges may neither offer nor imply additional financial aid or other incentives unless students have affirmed that they have not deposited elsewhere and are still interested in discussing fall enrollment.

This rule imposed several limits on the ability of colleges to recruit incoming first-year students. First, it prevented colleges from recruiting students who the colleges knew had declared their intent, through making a deposit or otherwise, to attend another institution. Second, it prevented colleges from offering incentives to students who had declined an offer of admission (with the

limited exception set forth in II.B.5.b. of the CEPP). Third, it limited the ability of colleges, after May 1, to recruit students who had neither made a deposit nor withdrawn their application.

The First-Year Undergraduate Recruiting Rule imposed significant restrictions on competition between colleges for first-year students. It limited the ability of colleges to continue to compete for students who had declined an offer of admission and significantly restricted the ability of colleges to compete for students after May 1. Absent these restrictions, colleges will be free to offer more aggressive financial aid packages or other inducements to students to entice them to enroll. Due to this enhanced competition, students will receive more attractive offers of admission.

C. NACAC's Recruiting Rules Were Unlawful Agreements under Section 1 of the Sherman Act

Horizontal restraints that are not reasonably necessary to any separate, legitimate business transaction or collaboration are unlawful under Section 1 of the Sherman Act. Section 1 outlaws any "contract, combination . . . , or conspiracy, in restraint of trade or commerce." 15 U.S.C. § 1. Courts have long interpreted this language to prohibit only "unreasonable" restraints of trade. *Bus. Elecs. Corp. v. Sharp Elecs. Corp.*, 485 U.S. 717, 723 (1988). Courts have consistently found that trade association rules are no different than horizontal agreements entered into between the association's members. For example, in *National Society of Professional Engineers v. United States*, 435 U.S. 679 (1978), the Supreme Court upheld a challenge to a trade association's ban on competitive bidding as a horizontal agreement between its members. Other Supreme Court precedent is consistent with this outcome.[1] Additionally, when a trade association works to enforce a stated policy, it faces "more rigorous antitrust scrutiny." *Allied*

[1] See, generally, *Fed. Trade Comm'n v. Indiana Fed'n of Dentists*, 476 U.S. 447 (1986); *California Dental Ass'n v. Fed. Trade Comm'n*, 526 U.S. 756 (1999).

Tube & Conduit Corp. v. Indian Head, Inc., 486 U.S. 492, 501 n.6 (1988) (citing *Radiant Burners, Inc. v. Peoples Gas Light & Coke Co.*, 364 U.S. 656 (1961); *Fashion Originators' Guild of America, Inc. v. FTC*, 312 U.S. 457 (1941)).

The United States has historically challenged the actions of trade associations or other membership organizations where they advance unreasonable restraints among their memberships. In addition to the *Professional Engineers* case cited above, on June 27, 1995, the United States challenged several accreditation practices of the American Bar Association as violative of Section 1.[2] The United States has also challenged association rules in the chiropractic,[3] nursing,[4] and realty[5] industries, among others.

As described in the Complaint, NACAC's Recruiting Rules were horizontal agreements restricting competition between colleges for college applicants and potential transfer students. The Recruiting Rules suppressed and eliminated competition to the detriment of college applicants and potential transfer students by restraining the ability of NACAC's college members to recruit them. They were not reasonably necessary to achieve the otherwise market-enhancing rules contained in the CEPP. Accordingly, they were unlawful agreements under Section 1 of the Sherman Act.

[2] Complaint, *United States v. American Bar Association*, No. 95-cv-1211 (D.D.C. June 27, 1995).

[3] Complaint, *United States v. Oklahoma State Chiropractic Independent Physicians Association*, No 13-CV-21-TCK-TLW (N.D.Okla. January 10, 2013).

[4] Complaint, *United States v. Arizona Hospital and Healthcare Association*, No. CV07-1030-PHX (D.Ariz. May 22, 2007).

[5] Complaint, *United States v. National Association of Realtors*, No. 05C-5140 (N.D. Ill. Sept. 8, 2005).

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment sets forth (1) conduct in which the Defendant may not engage; (2) certain actions the Defendant is required to take to ensure compliance with the terms of the proposed Final Judgment; (3) the Defendant's obligations to cooperate with the United States in its investigations of the promulgation of any future rules similar to the Recruiting Rules; and (4) oversight procedures the United States may use to ensure compliance with the proposed Final Judgment.

A. Prohibited Conduct

Section IV of the proposed Final Judgment prevents the Defendant from establishing, maintaining, or enforcing any "Transfer Student Recruiting Rule," "Early Decision Incentives Rule," or "First-Year Undergraduate Recruiting Rule" or any similar rules. The proposed Final Judgment defines each of those terms in Section II, and the definitions are intended to correspond with the rules described in Section II.B of this Competitive Impact Statement. Furthermore, Section IV of the proposed Final Judgment requires that the Defendant abolish any "Transfer Student Recruiting Rule," "Early Decision Incentives Rule," or "First-Year Undergraduate Recruiting Rule" currently within its ethics rules.

B. Required Conduct

Section VI of the proposed Final Judgment sets forth various mandatory procedures to ensure the Defendant's compliance with the proposed Final Judgment, including a requirement to provide officers, directors, and management with copies of the proposed Final Judgment and annual briefings about its terms. Additionally, Section VI requires the Defendant to provide notice to its members about this action that includes a description of the terms of the proposed Final Judgment, the Competitive Impact Statement, and the Complaint. Finally, Section VI

requires the Defendant's Antitrust Compliance Officer to promptly notify the United States upon receipt of any complaint that the terms of the proposed Final Judgment have been violated.

C. Compliance

To facilitate monitoring of the Defendant's compliance with the proposed Final Judgment, Section VII permits the United States, upon reasonable notice and a written request: (1) access during the Defendant's office hours to inspect and copy, or at the option of the United States, to require the Defendant to provide electronic or hard copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of the Defendant, relating to any matters contained in the proposed Final Judgment; and (2) to interview, either informally or on the record, the Defendant's officers, employees, or agents.

Additionally, Section VII requires the Defendant, upon written request of the United States, to submit written reports or responses to interrogatories relating to any of the matters contained in the proposed Final Judgment.

D. Enforcement and Expiration of the Final Judgment

The proposed Final Judgment contains provisions designed to promote compliance and make the enforcement of the Final Judgment as effective as possible. Paragraph IX(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, the Defendant has agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that the Defendant has waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance

obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph IX(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore the competition the United States alleged was harmed by the Defendant's challenged conduct. The Defendant agrees that it will abide by the proposed Final Judgment, and that it may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph IX(C) of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that the Defendant has violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the proposed Final Judgment, Paragraph IX(C) provides that, in any successful effort by the United States to enforce the Final Judgment against the Defendant, whether litigated or resolved before litigation, that the Defendant will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Paragraph IX(D) states that the United States may file an action against the Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time

for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section X of the proposed Final Judgment provides that the Final Judgment will expire seven years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and the Defendant that the continuation of the Final Judgment is no longer necessary or in the public interest.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the Defendant.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and the Defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the

proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

Chief, Technology and Financial Services Section
Antitrust Division
United States Department of Justice
450 Fifth Street, NW, Suite 7100
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against NACAC. The United States could have continued the litigation and sought preliminary and permanent injunctions against NACAC. The United States is satisfied, however, that the requirements of the proposed Final Judgment will preserve competition among colleges for the provision of college services to college applicants and potential transfer students

in the United States. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

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 60-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, the Court, in accordance with the statute as amended in 2004, 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). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust

violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable").

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may "not to make de novo determination of facts and issues." *United States v. W. Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead, "[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General." *W. Elec. Co.*, 993 F.2d at 1577 (quotation marks omitted). "The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest." *Microsoft*, 56 F.3d at 1460 (quotation marks omitted). More demanding requirements would "have enormous practical consequences for the government's ability to negotiate future settlements," contrary to congressional intent. *Id.* at 1456. "The Tunney Act was not intended to create a disincentive to the use of the consent decree." *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g.*, *Microsoft*, 56 F.3d at 1461 (recognizing courts should give "due respect to the Justice Department's . . . view of the nature of its case"); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) ("In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.") (internal citations omitted); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting "the deferential review to which the government's proposed remedy is accorded"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) ("A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case"). The ultimate question is whether "the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft*, 56 F.3d at 1461 (*quoting W. Elec. Co.*, 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even

should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Pub. L. 108-237 § 221, and added the unambiguous instruction 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." 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). "A court can make its public interest determination based on the competitive impact statement and response to public comments alone." *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *Enova Corp.*, 107 F. Supp. 2d at 17).

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 20, 2019

Respectfully submitted,

/s

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