

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

UNITED STATES OF AMERICA

Plaintiff,

v.

ZF FRIEDRICHSHAFEN AG

and

WABCO HOLDINGS, INC.

Defendants.

Case No.: 1:20-cv-00182 (KBJ)

**PLAINTIFF UNITED STATES' UNOPPOSED MOTION AND MEMORANDUM
IN SUPPORT OF ENTRY OF THE PROPOSED FINAL JUDGMENT**

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

§ 16(b)–(h) (“APPA”), Plaintiff United States of America (“United States”) moves for entry of the proposed Final Judgment filed in this civil antitrust proceeding on January 23, 2020 (attached as Exhibit 1).

The proposed Final Judgment may be entered at this time without further proceedings if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement (“CIS”) filed by the United States on January 23, 2020, explains why entry of the proposed Final Judgment is in the public interest. With this motion, the United States is also filing a Certificate of Compliance (attached as Exhibit 2) showing that the parties have complied with all applicable provisions of the APPA and certifying that the 60-day statutory public comment period has expired.

I. BACKGROUND

On January 23, 2020, the United States filed a civil antitrust Complaint seeking to enjoin the proposed acquisition of WABCO Holdings, Inc. (“WABCO”) by ZF Friedrichshafen AG (“ZF”). The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition in the market for the design, manufacture, and sale of large commercial vehicle (“LCV”) steering gears in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition likely would result in higher prices, lower quality or service, less favorable contractual terms for customers, and reduced research and development efforts that would otherwise lead to innovative and high-quality products.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order (“Hold Separate Order”), a proposed Final Judgment, and a CIS that describes how the Final Judgment is designed to remedy the likely anticompetitive effects of the proposed acquisition alleged by the United States. The Hold Separate Order, which was signed by the Court on January 28, 2020, provides that the proposed Final Judgment may be entered by the Court once the requirements of the APPA have been met. 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 Certificate of Compliance filed with this Motion and Memorandum states that all the requirements of the APPA have been satisfied. In particular, the APPA requires a 60-day period for the submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the proposed Final Judgment and the CIS with the Court on January 23, 2020; published the proposed Final Judgment and CIS in

the *Federal Register* on January 31, 2020 (*see* 85 Fed. Reg. 5707-5719); and had summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, published in *The Washington Post* for seven consecutive days beginning on January 26, 2020, and ending on February 1, 2020. Thus, all publication requirements necessary under the APPA have been satisfied. The 60-day period for public comments ended on April 1, 2020. The United States received no comments relating to the proposed Final Judgment. It is now appropriate for the Court to enter the proposed Final Judgment if it finds that it is in the public interest pursuant to 15 U.S.C. § 16(e).

III. STANDARD OF JUDICIAL REVIEW

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether 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 “shall 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). The Court can make the public-interest determination based on the CIS alone. 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.” 15 U.S.C. § 16(e)(2). In its CIS, the United States explained the meaning and proper

application of the public interest standard under the APPA and incorporates those portions of the CIS by reference.

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

As described above, the United States alleged in its Complaint that the acquisition of WABCO by ZF likely would substantially lessen competition in the United States for the design, manufacture, and sale of LCV steering gears. As explained in the CIS, the proposed Final Judgment is designed to eliminate the likely anticompetitive effects of the acquisition alleged by the United States by requiring the divestiture of WABCO's subsidiary R.H. Sheppard Co., Inc. and related assets to an acquirer acceptable to the United States. The Defendants proposed, and the United States approved, Bendix Commercial Vehicle Systems LLC ("Bendix") as the acquirer. The divestiture to Bendix will be completed soon.

The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment, and no comments have been submitted. As the CIS makes clear, entry of the proposed Final Judgment is in the public interest.

V. CONCLUSION

For the reasons set forth in this Motion and Memorandum and in the CIS, the United States respectfully requests that the Court find that the proposed Final Judgment is in the public interest and enter the proposed Final Judgment.

