UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. DANFOSS A/S, and EATON CORPORATION PLC, Defendants.	Case No: 1:21-cv-1880-CJN

UNITED STATES' UNOPPOSED MOTION AND MEMORANDUM
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"), the United States of America ("United States") moves the Court to enter the proposed Final Judgment filed in this civil antitrust proceeding on July 14, 2021 (Dkt. No. 2-2) (attached as Exhibit A).

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 in this matter on July 20, 2021 (Dkt. No. 8), explains why entry of the proposed Final Judgment is in the public interest. The United States is also filing a Certificate of Compliance (attached as Exhibit B) 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

1. On July 14, 2021, the United States filed a civil antitrust Complaint seeking to enjoin the proposed acquisition of certain assets of Eaton Corporation plc's ("Eaton") hydraulics business by Danfoss A/S ("Danfoss"). The Complaint alleges that the likely effect of this transaction would be to substantially lessen competition in the market for the design, manufacture, and sale of orbital motors and hydraulic steering units in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed merger would eliminate this competition, leading to higher prices, lower quality, and diminished innovation.

The United States also filed a proposed Final Judgment and an Asset Preservation Stipulation and Order ("Stipulation and Order") on July 14, 2021, and a CIS describing the events giving rise to the alleged violation and the proposed Final Judgment on July 20, 2021. The Stipulation and Order, which was agreed to by the parties and which was entered by the Court on July 19, 2021 (Dkt. No. 7), provides that the proposed Final Judgment may be entered by the Court once the requirements of the APPA have been met.

The proposed Final Judgment requires Defendant Danfoss to divest the following assets: the Danfoss Orbital Motor Business; the Danfoss Steering Unit Business; the Eaton Orbital Motor Assets; the Eaton Steering Unit Assets, and certain Intellectual Property. Entry of the proposed Final Judgment will terminate this action, except that the Court will 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 July 14, 2021, and July 20, 2021, respectively; published the proposed Final Judgment and CIS in the *Federal Register* on July 23, 2021 (*see* 86 Fed. Reg. 39,059 (2021)); and caused a summary of the terms of the proposed Final Judgment and the CIS, along with directions for the submission of written comments, to be published in *The Washington Post* for seven days during the period July 22, 2021 to July 28, 2021. The public comment period concluded on September 27, 2021, and the United States did not receive any comments.

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, the Court, in accordance with the statute as amended in 2004, "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
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> (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." 15 U.S.C. § 16(e)(2). In its CIS, the United States explained the meaning and the proper application of the public interest standard under the APPA to this case and now incorporates those statements by reference.

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

The United States alleged in its Complaint that the likely effect of this transaction would be to substantially lessen competition in the market for the design, manufacture, and sale of orbital motors and hydraulic steering units in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. 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 Defendant Danfoss to divest the Danfoss Orbital Motor Business; the Danfoss Steering Unit Business; the Eaton Orbital Motor Assets; the Eaton Steering Unit Assets, and certain Intellectual Property. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment, and no comments were submitted. As explained in the CIS, 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.

Dated: October 7, 2021

Respectfully submitted,

/s/ Rebecca Valentine

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