

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

S&P GLOBAL INC.,

IHS MARKIT LTD.,

and

OIL PRICE INFORMATION SERVICES,
LLC,

Defendants.

Case No.: 1:21-cv-3003-JEB

**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 November 12, 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 December 20, 2021 (Dkt. No. 7) 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

On November 12, 2021, the United States filed a civil antitrust Complaint seeking to enjoin (1) the proposed merger between S&P Global Inc. (“S&P”) and IHS Markit Ltd. (“IHSM”); and (2) the enforcement of the exclusivity and non-compete provisions contained in a data license between IHSM’s Oil Price and Information Services LLC (“OPIS LLC”) division and GasBuddy LLC (“GasBuddy”) (the “Data License”). The Complaint alleges that the likely effect of the merger would be to substantially lessen competition in the market for spot-level price reporting agency (“PRA”) services for refined petroleum products, coal, and petrochemicals 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 and decreased quality and innovation for PRA customers. The Complaint also alleges that the Data License unreasonably restrains trade in the sale of retail gas price data in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. This restraint prevented GasBuddy from launching a retail gas price service in competition with OPIS LLC, and therefore resulted in higher prices and decreased quality for gas price data customers.

At the same time the Complaint was filed, the United States also filed a proposed Final Judgment and an Asset Preservation and Hold Separate Stipulation and Order (“Stipulation and Order”) on November 12, 2021 and a CIS describing the events giving rise to the alleged violation and the proposed Final Judgment on December 20, 2021. The Stipulation and Order, which was agreed to by the parties and which was entered by the Court on November 12, 2021

(Dkt. No. 6), 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 S&P and IHSM to divest three IHSM PRA businesses: (a) OPIS LLC, which focuses on refined petroleum products; (b) Coal, Metals, and Mining (“CMM”), which focuses predominately on coal; and (c) PetrochemWire (“PCW”), which focuses on petrochemicals. The proposed Final Judgment also requires S&P and IHSM to waive the exclusivity and non-compete provisions of the Data License, and prohibits S&P, IHSM, and OPIS LLC, without the prior written consent of the United States, from entering into, enforcing, renewing, or extending the term of any similar exclusive or non-compete provisions. 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 November 12, 2021 and December 20, 2021, respectively; published the proposed Final Judgment and CIS in the *Federal Register* on January 4, 2022 (*see* 87 Fed. Reg. 239 (2022)); 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 December 23, 2021 to December 29, 2021. The public comment period concluded on March 7, 2022, 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
- (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 merger would be to substantially lessen competition in the market for spot-level PRA services for refined petroleum products, coal, and petrochemicals in the United States in violation of Section 7 of the Clayton Act. The United States also alleged in its Complaint that the Data License unreasonably

restrains trade in the sale of retail gas price data in violation of Section 1 of the Sherman Act. As explained in the CIS, the proposed Final Judgment is designed to (1) prevent the likely anticompetitive effects of the merger alleged by the United States by requiring the divestiture of three IHSM PRA businesses, OPIS LLC, CMM, and PCW; and (2) address the anticompetitive effects of the Data License alleged by the United States by requiring S&P and IHSM to waive the exclusivity and non-compete provisions in the agreement with GasBuddy, and prohibiting S&P, IHSM, and OPIS LLC, without the prior written consent of the United States, from entering into, enforcing, renewing, or extending the term of any similar provisions. 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: March 15, 2022

Respectfully submitted,

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