UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. ALLIEDSIGNAL INC. and HONEYWELL INC., Defendants.	Case No.: 1:99CV02959 (PLF) Deck Type: Antitrust Filed: 11/22/1999

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 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 November 8, 1999, the United States filed a civil antitrust Complaint alleging that the proposed merger of AlliedSignal Inc. ("AlliedSignal") and Honeywell Inc. ("Honeywell") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Honeywell and AlliedSignal are two of the leading manufacturers of aerospace products used by the U.S. military and by numerous commercial aviation and space companies. AlliedSignal competes against Honeywell in the production of traffic alert and collision avoidance systems, search and surveillance weather radar, reaction and momentum wheels, and inertial systems used in a wide range of applications. The proposed merger of Honeywell and AlliedSignal would substantially lessen or eliminate competition in major product areas

critical to the national defense and to the commercial aviation and space industries. Unless the merger is blocked, the loss of competition will likely result in higher prices, lower quality and less innovation for each of these products.

The prayer for relief in the Complaint seeks: (1) a judgment that the proposed merger would violate Section 7 of the Clayton Act; (2) a permanent injunction preventing AlliedSignal and Honeywell from merging; (3) an award to the United States of its costs in bringing the lawsuit; and (4) such other relief as the Court deems proper.

When the Complaint was filed, the United States also filed a proposed settlement that would permit AlliedSignal and Honeywell to merge, but would require divestitures to preserve competition in the relevant markets. This settlement consists of a Hold Separate Stipulation and Order and a proposed Final Judgment.

The proposed Final Judgment orders the defendants to divest, by February 29, 2000, or within five (5) days of the approval of the proposed merger by the European Commission, which has concurrent jurisdiction over the proposed merger, or within (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, certain businesses and associated assets as defined in Section II of the proposed Final Judgment. Specifically, the defendants must divest to a purchaser or purchasers acceptable to the United States and to the U.S. Department of Defense ("DoD") the Traffic Alert and Collision Avoidance Systems ("TCAS") Business of Honeywell; the Search and Surveillance Weather Radar ("SSWR") Business of AlliedSignal; the Teterboro Space and Navigation Business of AlliedSignal; the Cheshire Business of AlliedSignal; the AlliedSignal MicroSCIRAS Business, or, in the alternative, the Honeywell MEMS Business; and the AlliedSignal Micromachined Silicon Accelerator

("MSA") and Micromachined Accelerometer Gyroscope ("MAG") Technology Business (collectively, the "Divested Businesses"). Purchasers of the Teterboro Space and Navigation Business and the AlliedSignal MicroSCIRAS Business (or, as described in Section VI of the proposed Final Judgment, the Honeywell MEMS Business) must be approved simultaneously. The proposed Final Judgment authorizes the United States to nominate for appointment immediately up to two trustees to monitor the defendants' efforts to sell the Divested Businesses, and to sell those businesses if defendants cannot do so in the required time frame.

The terms of the Hold Separate Stipulation and Order ensure that each of the Divested Businesses shall be held separate and apart from the post-merger company and maintained as viable, independent competitors until such time as each business is divested.

The plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the 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 Defendants and the Proposed Transaction

AlliedSignal is a Delaware corporation headquartered in Morristown, New Jersey. The advanced technology and manufacturing company provides aerospace products and services, automotive products, chemicals, fibers, plastics and advanced materials. The company reported 1998 sales of about $15 billion, and sales to the U.S. Government (primarily aerospace-related) of about $1.9 billion. The aerospace business unit generated about half, or about $7.5 billion, of the company's

1998 revenues.

Honeywell, a Delaware corporation headquartered in Minneapolis, Minnesota, develops and supplies advanced technology controls and other products, systems and services to homes and buildings, industry, and space and aviation customers. The company had annual revenues of about $8.4 billion in 1998, approximately one-fourth of which were generated by Honeywell's space and aviation business.

Pursuant to an Agreement and Plan of Merger entered into by defendants on June 4, 1999, AlliedSignal proposes to merge its business with Honeywell.

B. The Relevant Markets

1. TCAS

A traffic alert and collision avoidance system is an avionics safety product that reduces the potential for mid-air collisions between aircraft. TCAS provides pilots with information on surrounding air traffic, alerts them when a nearby aircraft has the potential to be a hazard, and affords a means for coordinating evasive maneuvers for both aircraft. TCAS operates by transmitting to and eliciting replies from communications transponders installed on approaching aircraft. The system tracks aircraft within a specified range and altitude to determine whether they have the potential to become a collision threat.

2. Search and Surveillance Weather Radar

Weather radar uses radio wave reflections from water droplets and ice crystals to locate areas of rain, snow and other precipitation. Search and surveillance weather radar is a special type of weather

radar often installed on helicopters and frequently used in rescue missions. The radar employs traditional radio frequency technology, but also has a beaconing capacity which allows the pilot to detect radio transmissions emitted by small objects, such as a boat or an oil drilling rig, during poor weather conditions.

3. Reaction and Momentum Wheels

Reaction and momentum wheels are mechanical devices that move and stabilize satellites by spinning and generating torque. The desired combination of torque and momentum generated by changes in wheel speed repositions the satellite. Satellites typically have one to three reaction and momentum wheels.

4. Inertial Systems

An inertial measurement unit ("IMU") measures the linear acceleration and angular rate of rotation of a vehicle. A typical IMU includes three accelerometers and three gyroscopes. Accelerometers measure the linear acceleration of a vehicle, which is used to determine vehicle velocity and vehicle position. Gyroscopes measure the angular rate of rotation of a vehicle. From these measurements, a computer can calculate the vehicle's position and heading.

A variety of different types of gyroscopes are used in IMUs, including mechanical rate gyroscopes ("MRGs"), ring laser gyroscopes ("RLGs"), fiber optic gyroscopes ("FOGs"), and micro-electro-mechanical systems ("MEMS") gyroscopes. Each of these gyroscopes may substitute with the others as an input into an IMU, depending on performance,

cost and size requirements.

MRGs include gas, spinning mass and other comparable mechanical gyroscopes. Based upon technology developed in the 1950s, these gyroscopes (often employing magnets, gases and other masses) are generally larger and more expensive than those produced using newer technologies. Mechanical gyroscopes are utilized in high accuracy space applications, strategic missiles, and tactical munitions.

An RLG uses two laser beams housed in an optical cavity with a set of highly reflective mirrors. One laser beam travels clockwise around the optical cavity while the other moves counter-clockwise. When the gyroscope is rotated, a small difference in the circulation time for each beam occurs because one beam travels less distance than the other. This difference is used to compute the rate of angular rotation. RLGs are commonly used in commercial and military aviation, land applications, satellites, space launch vehicles and high performance tactical missiles.

FOGs employ optical fiber wound on a spool. Each FOG has a light source and control electronics to provide two beams of light, one traveling clockwise and the other counter-clockwise, through the wound coil. A detector on the coil output senses phase shifts between the two light beams and converts the phase shift into an angular rate of rotation. FOGs were developed after RLGs and are beginning to be utilized in commercial and military aviation, land applications, satellites, space launch vehicles and high performance tactical missiles.

MEMS is a developing technology which produces IMUs using silicon wafers made from semiconductor manufacturing processes and sophisticated micro-machining. MEMS technology holds tremendous potential for the next-generation IMU. MEMS IMUs may permit manufacturers to achieve

significant size, cost and weight reductions in the product. Depending on the ultimate degree of accuracy that MEMS IMUs provide, they could eventually supplement or replace numerous types of IMUs currently in the marketplace.

C. Harm to Competition as a Consequence of the Merger

AlliedSignal and Honeywell are two of only three manufacturers of TCAS used in U.S. military and commercial aircraft. Post merger, the combined firm would possess more than 60% of the TCAS market.

In addition, the merger of AlliedSignal and Honeywell would eliminate competition in the development, production, and sale of search and surveillance weather radar and effectively give the combined firm a monopoly in this market.

AlliedSignal and Honeywell are two of only four significant companies that produce reaction and momentum wheels for use in U.S. military and commercial space projects. Post merger, the combined firm would control over 50 percent of the reaction and momentum wheel market.

Finally, AlliedSignal and Honeywell are two of the leading inertial system manufacturers in the world. Each company competes to produce and sell inertial systems for tactical, strategic, navigation and space applications to the U.S. military and to numerous commercial and space customers. AlliedSignal and Honeywell each manufacture MRGs, RLGs, and FOGs that are used in inertial systems. In addition, the defendants are leading competitors in the development of a MEMS IMU. The merger of these two inertial

manufacturers would substantially limit competition in the production of inertial systems.

Entry by a new company would not be timely, likely or sufficient to prevent harm to competition in any of these markets. In each market, a successful entrant would have to design and develop sophisticated, high technology products, establish complex production processes, and meet rigorous qualification standards. Applicable laws and regulations may make it difficult, if not impossible, for manufacturers of the relevant products located outside the United States to sell their products to the U.S. military, a major purchaser. It is unrealistic to expect sufficient new entry in a timely fashion to protect competition in the relevant markets following the proposed merger.

The Complaint alleges that the effect of AlliedSignal's proposed merger with Honeywell would be to lessen competition substantially and to tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act. The combined firm would have the ability to increase prices for each relevant product, either unilaterally or in coordination with other competitors. In particular, the proposed merger likely would have the following effects, among others: actual and potential competition between AlliedSignal and Honeywell in the development, production, and sale of products in each of the relevant markets would be eliminated; competition in the development, production, and sale of products in each of the relevant markets would be eliminated or substantially lessened; prices for products in each relevant market likely would increase and quality

likely would decline; and innovation in each relevant market likely would decrease.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

A. The Divested Businesses

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the merger of Honeywell and AlliedSignal. The divestiture of the businesses required by the proposed Final Judgment, which collectively generate about $250 million in annual revenues, will ensure that competition will continue to flourish in the markets where AlliedSignal and Honeywell compete. Without the divestitures required by the proposed settlement, a broad range of commercial, space, and U.S. defense customers likely would suffer from higher prices for advanced avionics products essential to their businesses and from a decline in product quality and innovation.

Pursuant to the proposed Final Judgment, Honeywell will divest its TCAS Business, which it operates at its Glendale and Phoenix, Arizona facilities. The TCAS Business to be divested includes Honeywell's TCAS II computer, TCAS 2000 computer, TCAS 1500 computer (which is still under development), TCAS directional antenna, dedicated TCAS controller, and the dedicated TCAS display ("TCAS System"). The TCAS divestiture also includes, as common to the TCAS System and other systems of Honeywell, the Vertical Speed Indicator/Traffic Resolution Advisory ("VSI/TRA"), pressure transducer and ARINC Diversity/Mode S transponder used with the basic Honeywell TCAS System. The divested TCAS Business will include all relevant tangible and intangible assets used in

connection with the business and needed to make it a viable competitor in the TCAS marketplace.

AlliedSignal will, pursuant to the proposed Final Judgment, divest its SSWR Business, which it operates at its Olathe, Kansas facility. The SSWR Business includes AlliedSignal's RDR-1400 and RDR-1500 product lines. The divested SSWR Business will include all relevant tangible and intangible assets used in connection with the business and needed to make it a viable competitor in the SSWR marketplace.

AlliedSignal also will divest its Teterboro Space and Navigation Business located in Teterboro, New Jersey. The Teterboro Space and Navigation Business produces ring laser gyroscopes, fiber optic gyroscopes, inertial measurement units, reaction and momentum wheels, control moment gyroscopes, star sensors, sun shades, navigation and pointing systems and fire control systems. The divested Teterboro Space and Navigation Business will include all relevant tangible and intangible assets used in connection with the business and needed to make it a viable competitor in both the IMU marketplace and the reaction and momentum wheel marketplace.

AlliedSignal also will divest its IMU business located in Cheshire, Connecticut that produces rate-grade mechanical inertial measurement units and components. The Cheshire Business also includes AlliedSignal's Newark, Ohio repair and overhaul business. The divested Cheshire Business will include all relevant tangible and intangible assets used in connection with the business and needed to make it a viable competitor in the rate-grade mechanical IMU marketplace.

AlliedSignal also will divest its MicroSCIRAS Business, which it operates at its Redmond, Washington facility. MicroSCIRAS is a silicon-based MEMS technology. The divested AlliedSignal MicroSCIRAS Business includes the right to use the existing silicon engineering foundry at the

Redmond facility; an option to lease the existing Redmond engineering foundry, and/or an option to purchase the equipment currently in or authorized for the foundry, on November 1, 2000 or the date that AlliedSignal's separate silicon production foundry is completed, whichever occurs first. The divested MicroSCIRAS Business will include all relevant tangible and intangible assets used in connection with the business and needed to make it a viable competitor in the MEMS marketplace.

If AlliedSignal does not divest its MicroSCIRAS Business as required by the proposed Final Judgment, Honeywell's MEMS Business, which is located in Minneapolis and Plymouth, Minnesota, may be divested. The Honeywell MEMS Business will include all relevant tangible and intangible assets used in connection with the business and needed to make it a viable competitor in the MEMS marketplace.

Finally, AlliedSignal will divest its MSA and MAG Technology Business. IMUs to be produced with the technologies controlled by this business, which AlliedSignal acquired pursuant to two agreements identified in the proposed Final Judgment, potentially compete with the MEMS technology AlliedSignal is ordered to divest.

Each of the businesses to be divested is defined in detail in Section II of the proposed Final Judgment. The divestiture of the TCAS Business, the SSWR Business, the Teterboro Space and Navigation Business, and the Cheshire Business each involves the sale of production equipment or facilities which manufacture the identified products on a daily basis. In contrast, the divestiture of the AlliedSignal MicroSCIRAS Business, the Honeywell MEMS Business and the AlliedSignal MSA and MAG Technology Business each involves the sale or transfer of developing IMU technologies. With

one exception[1/], these latter three businesses do not yet have the current capability to produce IMU products at production level volumes for sale to the public.

B. Employees

The proposed Final Judgment contains other provisions designed to protect competition in the relevant product markets. The most important of these provisions relate to employees of the Divested Businesses and the firms that purchase the businesses.

Confidential Attachment A to the proposed Final Judgment lists for each business to be divested a group of employees who are important to operating the business. The proposed Final Judgment provides that, for a period of two years from the filing of the Complaint in this matter, defendants shall not solicit to hire, or hire, any individual listed in Confidential Attachment A who, within six months of the date of sale of a Divested Business that employs the individual, receives a reasonable offer of employment from the approved purchaser of the Divested Business, unless such employee is terminated or laid off by the purchaser. Defendants shall not interfere with any negotiations by the purchaser of a Divested Business to employ anyone listed in Confidential Attachment A, including, but not limited to, offering to increase in any way the employee's salary or other benefits (other than company-wide increases in salary or other benefits). In addition, AlliedSignal or Honeywell, as the case may be, shall, for each employee of the TCAS Business, the SSWR Business and the AlliedSignal MicroSCIRAS Business (or, as described in Section VI of the proposed Final Judgment, the

[1] The AlliedSignal MSA and MAG Technology Business owns, among other assets, patents which are exclusively licensed to Endevco Corporation and permit Endevco to manufacture micromachined silicon accelerometers sold to the public.

Honeywell MEMS Business) who elects to be employed by the purchaser of the Divested Business, vest all unvested pension and other equity rights of that employee. For each such employee, AlliedSignal or Honeywell shall also provide all benefits to which the employee would have been entitled if terminated without cause, provided the employee is still employed by the purchaser at the end of the time period covered by such benefit.

The proposed Final Judgment also directs that to the extent employees of any of the Divested Businesses remain employed by defendants, the sale of each Divested Business shall include the purchaser's right to reasonable access to such employees for up to eighteen (18) months from the date of the purchase. The services furnished will be provided free by defendants for the first six (6) months following the sale of the business. Thereafter, the charges for such services will be set by the defendants at a rate sufficient to cover the service provider's reasonable estimate of its actual costs for providing the services and, if applicable, consistent with the prices the service provider would charge to an affiliate.

C. Approval of Divested Business Purchasers and Appointment of Trustees

Each business divested pursuant to the proposed Final Judgment must be sold to a purchaser that can satisfy the United States and DoD, in their sole discretion, that the business will be a viable ongoing business. The purchaser must satisfy the United States and DoD, in their sole discretion, that it: (1) has the capability and intent of competing effectively in the development, production, and sale of the relevant products; (2) has the managerial, operational, and financial capability to compete effectively in the development, production, and sale of the relevant products; (3) is eligible to receive applicable DoD security clearances; and (4) is not hindered by the terms of any agreement between the purchaser and

defendants that gives either defendant the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere with the ability of the purchaser to compete effectively.

Immediately upon the filing of the proposed Final Judgment, the United States may, in its sole discretion, nominate no more than two trustees for Court appointment. The trustees shall serve at the cost and expense of defendants, on customary and reasonable terms and conditions agreed to by the trustees and the United States, unless modified by the Court. If two trustees are appointed, one trustee shall monitor the divestiture by defendants of the TCAS Business and the SSWR Business, and the other trustee shall monitor the divestiture by the defendants of the Teterboro Space and Navigation Business, the Cheshire Business, the AlliedSignal MicroSCIRAS Business, and the AlliedSignal MSA and MAG Technology Business.

In the event that defendants have not sold all of the businesses required to be divested pursuant to the proposed Final Judgment in the specified time frame, only the trustee monitoring defendants' attempts to divest each non-divested business shall have the power and authority to accomplish the divestiture. If the AlliedSignal MicroSCIRAS Business has not been divested, the trustee responsible for divesting that business may, in its sole discretion, divest the Honeywell MEMS Business instead. Defendants may not object to a divestiture by a trustee on any ground other than the trustee's malfeasance.

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 will neither impair nor assist 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 defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and defendants 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 sixty (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 sixty (60) days of the date of publication of this Competitive Impact

Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register. Written comments should be submitted to:

J. Robert Kramer II
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
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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 proposed 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 defendants. The United States could have brought suit and sought preliminary and permanent injunctions against the merger of AlliedSignal and Honeywell.

The United States is satisfied that the divestiture of

the described businesses and assets pursuant to the proposed Final Judgment will encourage viable competition in the research, development, production, and sale of TCAS, SSWR, reaction and momentum wheels, and inertial systems. The United States is satisfied that the proposed relief will prevent the merger from having anticompetitive effects in any of these markets.

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

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." In making that

determination, the Court may consider--

> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) the impact of entry of such judgment 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). As the Court of Appeals for the District

of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See United States v. Microsoft, 56 F.3d 1448, 1458-62 (D.C. Cir. 1995). The courts have recognized that the term "'public interest' take[s] meaning from the purposes of the regulatory legislation." NAACP v. Federal Power Comm'n, 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to preserve "free and unfettered competition as the rule of trade," Northern Pacific Railway Co. V. United States, 356 U.S. 1, 4 (1958), the focus of the "public interest" inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. United States v. American Cyanamid Co., 719 F.2d 558, 565 (2d Cir.1983), cert. denied, 465 U.S. 1101 (1984); United States v. Waste Management, Inc., 1985-2 Trade Cas. ¶ 66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, "the 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."[2/] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." United States v. BNS, Inc., 858 F.2d 456, 462 (9th Cir. 1988), quoting United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981). See also Microsoft, 56 F.3d 1448 (D.C. Cir.1995). Precedent requires that:

> the 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. The court's role in protecting the public interest is one of

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[2] 119 Cong. Rec. 24598 (1973). See United States v. Gillette Co., 406 F. Supp. 713, 715 (D.Mass.1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. §16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

> insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

> waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. Armour & Co., 402 U.S. 673, 681 (1971).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a proposed final judgment

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[3] United States v. Bechtel, 648 F.2d at 666 (citations omitted)(emphasis added); see United States v. BNS, Inc., 858 F.2d at 463; United States v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); United States v. Gillette Co., 406 F. Supp. at 716. See also United States v. American Cyanamid Co., 719 F.2d at 565.

requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' " (citations omitted).[4/]

VIII. DETERMINATIVE DOCUMENTS

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

FOR PLAINTIFF UNITED STATES OF AMERICA:

_____/s/_____
J. Robert Kramer II
Chief, Litigation II Section
PA Bar # 23963

_____/s/_____
Michael K. Hammaker
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and
P. Terry Lubeck
Janet Adams Nash

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[4] United States v. American Tel. and Tel Co., 552 F. Supp. 131, 150 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983), quoting United States v. Gillette Co.,supra, 406 F. Supp. at 716; United States v. Alcan Aluminum, Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985).

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