UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA Plaintiff v. CAMERON INTERNATIONAL CORPORATION and NATCO GROUP INC. Defendants	CASE NO.: 09-cv-02165 JUDGE: Hon. Rosemary M. Collyer DECK TYPE: Antitrust DATE STAMP:

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

Defendants Cameron International Corporation ("Cameron") and NATCO Group Inc. ("NATCO") entered into an Agreement and Plan of Merger, dated June 1, 2009, pursuant to which Cameron agreed to acquire NATCO in an all-stock transaction. On November 18, 2009, NATCO shareholders voted to approve the transaction and defendants closed the transaction that same day.

The United States filed a civil antitrust Complaint on November 17, 2009, seeking to enjoin Cameron's acquisition of NATCO. The Complaint alleged that the acquisition likely would substantially lessen competition for customized electrostatic desalters used in the oil refining industry (hereinafter, "refinery desalters") in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. That loss of competition likely would result in higher prices, less favorable terms of sale, and less innovation in the U.S. refinery desalter market.

The United States's Complaint also sought to remedy the harm resulting from Cameron's acquisition of certain refinery desalter assets from Chicago Bridge & Iron N.V. ("CB&I") in 2005. In that acquisition, Cameron, through Petreco International, Inc., acquired the desalting, dehydration, distallate treating, and gas oil separation equipment business of Howe Baker Engineers Ltd., which was a wholly owned subsidiary of CB&I (hereinafter, the "Howe Baker assets"). These assets primarily comprise the intellectual property and data necessary to manufacture desalters and dehydrators utilizing Howe Baker's Enhanced Deep-Grid Electrical ("EDGE") technology, and the trademark to the EDGE name. Cameron's acquisition of the Howe Baker assets reduced from two to one the number of sellers of refinery desalters in the U.S. market at that time. The Complaint alleged that the acquisition substantially lessened competition for refinery desalters in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. That loss of competition gave Cameron the power to raise prices, offer less favorable terms of sale, and invest less in technology in the U.S. refinery desalter market.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order ("Hold Separate") and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of Cameron's proposed acquisition of NATCO and

Cameron's consummated acquisition of the Howe Baker assets. Under the proposed Final Judgment, which is explained more fully below, Cameron is required to divest the Howe Baker desalter and dehydrator assets that it purchased from CB&I, as well as any additions to or improvements of those assets. In addition, Cameron is required to divest a fully paid-up, non-exclusive, worldwide, irrevocable license to NATCO's refinery desalter technology that utilizes dual frequency transformers and AC/DC power supplies (hereinafter, "dual frequency technology"). Finally, Cameron is required to divest an option to purchase either Cameron's or NATCO's pilot plant, which is equipment used to evaluate and simulate performance of desalter technologies on oil samples. Under the terms of the Hold Separate, Cameron and NATCO will take certain steps to ensure that the Howe Baker assets and the pilot plants are fully maintained in operable condition and that Cameron and NATCO maintain and adhere to normal repair and maintenance schedules for these assets.

The United States 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 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. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATIONS

A. The Defendants

Cameron is a worldwide provider of equipment used at or near oil or gas wells and in refineries. It also manufactures valves and flow measurement systems used in oil and gas drilling, production, transportation, and refining, as well as compression products, systems, and

services to the oil and gas industries. In 2008, Cameron reported total sales of approximately $5.85 billion. Cameron is the leading U.S. supplier of refinery desalters. Its sales of refinery desalters in the United States were approximately $10.2 million in 2008.

NATCO is a worldwide provider of equipment used to separate oil, gas, and water within a production stream and to remove contaminants. It also sells equipment used in refinery and petrochemical facilities around the world to improve processing and separation. NATCO reported revenues of $657 million in 2008. After Cameron, NATCO is the next most significant U.S. supplier of refinery desalters. NATCO's sales of refinery desalters in the United States were approximately $10.55 million in 2008.

B. The Competitive Effects of the Acquisitions on the U.S. Market for Refinery Desalters

1. Relevant Markets

Desalting is a critical initial stage of the refining process. Refinery desalters are used to remove salt from crude oil "downstream," which is the oil refining stage of production.

Refinery desalters consist of a steel pressure vessel with an external transformer and controller and a set of "internals," consisting primarily of electrostatic separation grids. In a refinery desalter, fresh water is mixed into the incoming crude oil to dissolve various salts. Inside the pressure vessel, high-voltage electrical charges cause water droplets containing dissolved salts to coalesce into larger droplets. As the water droplets reach a critical size, they sink to the bottom of the vessel. Oil is removed from the top of the vessel for further processing in the refinery and waste water is removed from the vessel bottom. Solids that sink to the bottom of the vessel also are removed.

Similarly, when oil is removed "upstream" from a production wellhead, it may be mixed with water, dissolved salts, and other impurities, including solids. A variety of separation equipment is used at the wellhead to remove these impurities from the oil. At times, electrostatic separation equipment is required to meet the specifications that are necessary for the oil to be transported away from the wellhead, with water typically removed to a volume of about one percent. Often there are no specifications for salt removal at the wellhead.

Compared to the electrostatic separation equipment used at the wellhead, refinery desalters remove water and salt to lower specified levels. For example, in a refinery desalter, separation of the water from the oil results in the removal of salt to levels of no more than two pounds of salt per thousand barrels, and often significantly less, and of water to levels of approximately 0.2 to 0.5 percent by volume. Refinery desalters must also produce cleaner effluent water than electrostatic separation equipment used at the wellhead.

Further, refinery desalters are more complex than electrostatic separation equipment used at the wellhead. For example, upstream electrostatic separation equipment removes water from only one kind of crude oil and the properties of that crude oil are known when purchasing the equipment. In contrast, refinery desalters are designed to be able to remove salt and water from different blends of crude oils. The different crude oils coming into refineries typically vary in density, the blends of crudes mixed together, electrical properties, salt content, and the amount of other impurities. In addition, refinery desalters handle higher oil volumes than electrostatic separation equipment used at the wellhead because refinery capacity is often much greater than output at a single production wellhead. And, unlike most electrostatic separation equipment used at the wellhead, refinery desalters often must: (1) remove solids; (2) handle oil that has been pre-

heated to approximately 230 to 300 degrees, which changes the electrical properties of oil; (3) handle water droplets of a much smaller size and tighter emulsions of oil and water; and (4) be able to perform effectively with changing feedstock crude oil. Finally, although electrostatic separation equipment used at the wellhead and refinery desalters each use chemicals that enhance their performance, optimizing the use of chemicals in a refinery desalter is far more difficult than optimizing their use at the wellhead.

A small but significant increase in the price of refinery desalters would not cause customers to substitute electrostatic separation equipment used at the wellhead, or any other type of equipment or chemicals, with sufficient frequency so as to make such a price increase unprofitable. Accordingly, the United States alleged that refinery desalters are a relevant product market within the meaning of Section 7 of the Clayton Act.

Refinery desalters are sold pursuant to bids, which are based on technical specifications from the customer and include commercial terms. Suppliers of refinery desalters use patented or proprietary technology and know-how—including expertise gained through years of trial and error and experience with prior installations—to custom-design refinery desalters that satisfy customer specifications. Refineries evaluate the competing bids based on compliance with technical specifications and commercial considerations such as price, delivery schedule, and terms of sale. The exact technical and commercial needs of the customer differ for each refinery desalter project.

Those competitors that could constrain Cameron from raising prices on bids for refinery desalters in the United States typically are suppliers with a substantial U.S. presence, including sales, technical, and support personnel and parts distribution within the United States. Refineries

prefer such suppliers because, during the design, bid, execution, and installation phases of a project, customers interact with suppliers to address design recommendations and changes, track construction progress, and ensure successful installation. Further, customers purchasing refinery desalters can avoid costly delays or downtime in refinery operations by selecting a desalter supplier that is able to respond quickly and effectively to requests for service or replacement parts during the operating life of the desalter.

A small but significant increase in the price of refinery desalters in the United States would not cause a sufficient number of customers in the United States to turn to manufacturers of refinery desalters that do not have a substantial physical presence in the United States so as to make such a price increase unprofitable. Accordingly, the United States alleged that the United States is a relevant geographic market with the meaning of Section 7 of the Clayton Act.

2. Anticompetitive Effects

The proposed acquisition of NATCO by Cameron would substantially lessen competition in the U.S. refinery desalter market. Most new desalter sales in the United States result from competitive bids and customers typically seek alternative bidders. When the bidding is competitive, each bidder may be aware of its competitors, but does not know the technical or commercial terms of its competitors' bids prior to submitting its own bid. That uncertainty likely restrains each bidder's pricing.

Currently only three competitors—including Cameron and NATCO—have sold refinery desalters in the United States since 2007. The third competitor often does not submit bids on U.S. refinery desalter projects and has sold only one refinery desalter in the United States. Cameron's acquisition of NATCO therefore would reduce the current number of bidders on U.S.

refinery desalter projects from three to two or, when the third competitor does not or cannot bid, from two to one. It would also eliminate many customers' preferred alternative to Cameron. As a result, after acquiring NATCO, Cameron would gain the incentive and ability to profitably raise its bid prices significantly above the level they would be absent the acquisition. Post-acquisition, Cameron would be aware that many customers strongly prefer it as a supplier to the sole remaining competitor. The remaining refinery desalter manufacturer cannot fully constrain a unilateral exercise of market power by Cameron, and it would have the incentive to increase its bid price in response to such an exercise of market power. The elimination of NATCO as a competitor would also reduce the remaining bidder's incentive to offer quick delivery or other terms of sale attractive to customers and to invest in certain technology improvements, such as NATCO's innovative dual frequency technology.

Entry or expansion by any other firm into the U.S. refinery desalter market likely would not prevent the substantial lessening of competition that would likely result if Cameron acquired NATCO. Firms attempting to enter into the development, production, and sale of refinery desalters in the United States face several barriers to entry. First, the technology and expertise involved in developing and producing refinery desalters capable of handling U.S. crude feedstocks is difficult to obtain. Second, establishing a reputation for successful performance and gaining customer confidence is difficult to do and can take years and the expenditure of substantial sunk costs. And, the small size of the U.S. refinery desalter market may deter firms from investing in establishing the personnel and parts distribution presence required to compete

effectively in the United States. Finally, suppliers of refinery desalters must demonstrate that they are financially sound and will be able to respond quickly and effectively to a request for service or parts and to meet warranty obligations years after the sale.

Therefore, the United States alleged that Cameron's acquisition of NATCO would substantially lessen competition in the development, production, and sale of refinery desalters in the United States. The acquisition would likely lead to higher prices, less favorable terms of sale, and less innovation in the U.S. refinery desalter market, in violation of Section 7 of the Clayton Act.

Moreover, Cameron's acquisition of the Howe Baker assets did substantially lessen competition in the U.S. market for refinery desalters. Competition between Cameron and CB&I benefitted customers because Cameron and CB&I competed directly based on price, terms of sale, and technology. In 2005, when Cameron acquired the Howe Baker assets, Cameron and CB&I accounted for approximately 75 and 25 percent, respectively, of refinery desalter sales in the United States. Therefore, Cameron's acquisition of the Howe Baker assets resulted in a reduction in the number of competitors selling refinery desalters in the United States from two to one. As a result, Cameron gained the power to raise prices, offer less favorable terms of sale, and invest less in technology.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestitures required by the proposed Final Judgment will eliminate the anticompetitive effects that would otherwise likely result from Cameron's acquisition of NATCO. The divestitures will also eliminate the anticompetitive effects that resulted from Cameron's acquisition of the Howe Baker assets. These divestitures make available assets that

will facilitate the creation of at least one additional independent, economically viable competitor to Cameron in the U.S. refinery desalter market.

The proposed Final Judgment requires Cameron and NATCO to divest the following assets, among other things, within ninety (90) days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later: (1) the Howe Baker desalter and dehydrator assets, including all tangible and intangible property associated with them; (2) a license to NATCO's dual frequency technology; and (3) an option to purchase either Cameron's or NATCO's pilot plant. The proposed Final Judgment also requires Cameron and NATCO to provide the Acquirer or Acquirers of the divestiture assets information relating to personnel involved in the development, production, sale, repair, or service of refinery desalters to enable them to make offers of employment, and prevents Cameron and NATCO from interfering with any negotiations by the Acquirer or Acquirers to employ any employee whose primary responsibility is the development, production, sale, repair, or service of refinery desalters. In addition, at the option of the Acquirer or Acquirers, the proposed Final Judgment requires Cameron and NATCO to provide a transition services agreement. This agreement must be sufficient to meet all or part of the Acquirers' needs for assistance in matters relating to the utilization of the divestiture assets for a period of at least six months.

The assets required to be divested must be divested in such a way as to satisfy the United States in its sole discretion that these assets can and will be operated by the Acquirer or Acquirers as viable, ongoing businesses that can compete effectively in the development, production, sale, repair, and service of refinery desalters in the United States. These assets may be divested to one or more Acquirers, provided that the assets listed in paragraphs II(J)(1) and (2)

of the proposed Final Judgment (the Howe Baker assets) are divested to the same purchaser and that all of the assets listed in paragraphs II(J)(3) and (4) of the proposed Final Judgment (the dual frequency license and pilot plant option) are divested to the same purchaser. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

In the event that defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price and terms obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects that likely would result if Cameron acquired NATCO because the Acquirer will have a license to NATCO's innovative dual frequency technology as well as an option to purchase a pilot plant to test crude oils. Those provisions also will eliminate the anticompetitive effects that resulted from Cameron's acquisition of the Howe Baker assets

because the Acquirer will obtain the desalter and dehydrator assets that Cameron purchased from CB&I in 2005.

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, 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 United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. 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:

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
450 Fifth Street, N.W., Suite 8700
Washington, D.C. 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 defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions preventing Cameron's acquisition of NATCO and an order compelling Cameron to divest the Howe Baker assets. The United States is satisfied, however, that the divestiture of the assets described in the proposed Final Judgment will preserve competition for the development, production, and sale of refinery desalters in the United States. Thus, the proposed Final Judgment would achieve 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 sixty-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 in accordance with the statute, the court 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
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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). 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); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. InBev N.V./S.A.*, 2009-2 Trade Cas. (CCH) ¶76,736, 2009 U.S. Dist. LEXIS 84787, No. 08-1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the 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 United States Court of Appeals for the District of Columbia has held, under the APPA a court considers, 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 Microsoft*, 56 F.3d at 1458-62. 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) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

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

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[1] In determining whether a

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[1] *Cf. BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

proposed settlement is in the public interest, the court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[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.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). Therefore, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

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 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. As this Court confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." 489 F. Supp. 2d at 15.

In its 2004 amendments to the Tunney Act,[2] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, stating: "[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). The language wrote into the statute what Congress intended when it 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 Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the

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[2] The 2004 amendments substituted the word "shall" for "may" when directing the courts to consider the enumerated factors and amended the list of factors to focus on competitive considerations and address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.[3]

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: January 20, 2010

Respectfully submitted,

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[3] *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent 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."); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

CERTIFICATE OF SERVICE

I, Christine A. Hill, hereby certify that on January 20, 2010, I caused a copy of the foregoing Competitive Impact Statement to be served upon defendants Cameron International Corporation and NATCO Group Inc. by mailing the documents electronically to the duly authorized legal representatives of defendants as follows:

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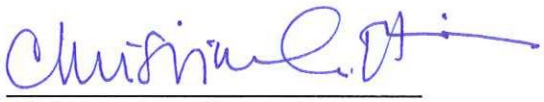

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