

in the sale and development of patient monitors used to take the vital physiologic measurements of patients requiring critical care (“critical care monitors”) and of mobile, full-size C-arms used for surgical, orthopedic, pain management, and basic vascular procedures. To restore competition in these markets, the proposed Final Judgment, if entered, would require GE to fully divest two Instrumentarium businesses: Spacelabs, which was its primary critical care monitors business, and Ziehm, the business through which it developed and sold C-arms. The terms of the proposed Final Judgment, if entered, would require Instrumentarium to divest both Spacelabs and Ziehm in their entirety, within one hundred twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to an Acquirer acceptable to the United States in its sole discretion.

The United States has extended the time for GE to divest Spacelabs to February 20, 2004, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later. The United States has also extended the time to divest Ziehm to February 6, 2004, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later.

Plaintiffs 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 proposed Final Judgment, and to punish violations thereof.

II. Compliance with the APPA

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed a CIS on October 30, 2003. The United States published the proposed Final Judgment and

the CIS in the *Federal Register* on November 12, 2003, and in *The Washington Post* during the period from November 9-16 2003. The comment period expired on January 12, 2003. The United States received one comment. The United States filed its Response to Public Comment and the comment itself with this Court on January 30, 2004, and published the Response and the comment in the *Federal Register* on January 29, 2004.¹ The Certificate of Compliance filed simultaneously with this Motion recites that all the requirements of the APPA have now been satisfied. It is therefore appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment.

III. Standard of Judicial Review

Before entering the proposed Final Judgment, the Court is to determine that the Judgment is “in the public interest.” 15 U.S.C. § 16(e). 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; and
- (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).

In its CIS previously filed with the Court, the United States has explained the meaning and proper application of the public interest under the APPA, and now incorporates those statements herein by reference. The public, including affected competitors and customers, has had the

¹ The United States originally filed the Response to Public Comment on January 28, 2004. However, due to a filing error, the United States refiled its Response on January 30, 2004.

opportunity to comment on the proposed Final Judgment as required by law. There has been no showing that the proposed settlement constitutes an abuse of the United States' discretion or that it is not within the zone of settlements consistent with the public interest.

IV. Conclusion

For the reasons set forth in this Motion and in the CIS, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. The United States respectfully requests that the proposed Final Judgment annexed hereto be entered as soon as possible.

Dated this 12th day of February 2004.

Respectfully submitted,

_____/s/_____
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing United States' Motion for Entry of Final Judgment was served on the following counsel, by electronic mail in PDF format, this 12th day of February 2004:

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