UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	
Plaintiff,	CASE NO.: 1:08-cv-00262 Assigned To: Hogan, Thomas F. Assign. Date: 02/19/2008 Description: Antitrust
v.	
THE THOMSON CORPORATION, and	
REUTERS GROUP PLC,	
Defendants.	

MEMORANDUM IN SUPPORT OF MOTION OF THE UNITED STATES FOR ENTRY OF FINAL JUDGMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA" or "Tunney Act"), the United States moves for entry of the Final Judgment in this civil antitrust case. Defendants The Thomson Corporation ("Thomson") and Reuters Group PLC ("Reuters") stipulated to the entry of the proposed Final Judgment upon compliance with the APPA and do not object to entry of this proposed Final Judgment without a hearing. The proposed Final Judgment filed herewith contains minor revisions to certain of the schedules,[1] but is otherwise substantially identical to the proposed Final Judgment filed on February 19, 2008. The Competitive Impact Statement, filed by the United States on February 19, 2008, explains why entry of the proposed Final Judgment is in the public interest. A

[1] In the version filed herewith, Schedules 3 and 4 have been revised to reflect the top contributors to Reuters as of this date. No other changes have been made.

Certificate of Compliance, filed herewith, sets forth the steps taken by the parties to comply with applicable provisions of the APPA and certifies that the statutory waiting periods have expired. If the Court determines that entry is in the public interest, the proposed Final Judgment may be entered at this time without further hearing. 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.

I. BACKGROUND

A. Thomson and Reuters

Thomson and Reuters are information services companies with a substantial presence in the distribution and sale of financial data, software, and associated services to financial professionals. Thomson is a Canadian corporation with its principal place of business in Stamford, Connecticut. Of Thomson's 2007 annual revenue of $7.3 billion, $2.2 billion came from the collection and distribution of a wide variety of financial data including securities prices, company profile and financial information (known as "fundamentals"), financial news, earnings estimates, analyst research, and economic data. Thomson's leading brands include Thomson ONE terminals, FirstCall estimates and research, I/B/E/S estimates, and Worldscope fundamentals. Thomson has operations in all of the world's major markets and has customers around the globe.

Reuters is a British public limited company with its principal place of business in London, England. Though Reuters is best known to consumers through its global media brand, $3.6 billion of the firm's approximately $3.9 billion annual revenue through September 30, 2007, came from the sale of financial data products, services, and software. Like Thomson, Reuters

collects and aggregates a broad range of financial and economic data, including fundamentals data, earnings estimates data, and aftermarket research reports. Reuters' major brands include its 3000 Xtra, Trader, and Station terminals; Reuters Market Data System software for disseminating data feeds throughout enterprises; Reuters Fundamentals (formerly Multex Fundamentals); and Reuters Estimates (formerly Multex Estimates). Reuters has operations and significant revenues in all major markets around the world.

A. Pre-Complaint Investigation

On May 15, 2007, Thomson and Reuters entered into a dual-listing agreement pursuant to which Thomson will control approximately 70% of the combined businesses. Over the next nine months, the United States Department of Justice ("Department") conducted an extensive, detailed investigation into the likely competitive effects of the transaction. The Department obtained substantial documents and information from Thomson, Reuters, and other market participants. The Department received and considered more than 100 boxes of hard-copy material and more than 500,000 electronic files. The Department conducted more than 100 interviews with customers, competitors, and other individuals with knowledge of the industry. The investigative staff analyzed this information and considered all of the issues presented. The Department concluded that Thomson's acquisition of Reuters would be likely to lessen competition substantially in the markets for fundamentals data, estimates data, and aftermarket research within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

As set forth in the Complaint and Competitive Impact Statement, the acquisition of Reuters by Thomson would have substantially lessened competition in the development, marketing, sale, and distribution of fundamentals data, earnings estimates data, and aftermarket

research reports. Successful entry into these markets is difficult, time consuming, and costly. In the affected markets, the acquisition would have eliminated actual and potential competition between Thomson and Reuters, with the likely effect of increasing prices. Thus, the Department filed its Complaint alleging competitive harm in these financial data markets and sought a remedy that would ensure that such harm is prevented.

B. The Proposed Final Judgment

On February 19, 2008, the United States filed its Complaint in this matter alleging that the proposed acquisition of Reuters by Thomson would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment and an Asset Preservation Stipulation and Order signed by plaintiff and defendants, consenting to the entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act. Pursuant to those requirements, the United States also filed its Competitive Impact Statement.

The proposed Final Judgment in this case is designed to preserve competition in the development, marketing, sale, and distribution of fundamentals data, earnings estimates data, and aftermarket research reports. The Divestiture include all of the assets necessary for an Acquirer(s) that possesses the capability to service institutional financial data users to provide independent and economically viable competition to the merged firm in the markets for distribution and sale of fundamentals data, earnings estimates data, and aftermarket research reports. The Divestiture Assets include (1) intellectual property (copies of databases, along with software and technical information), (2) rights to hire necessary personnel, (3) assignment of contributor contracts, (4) assignment of certain customer contracts that will provide the

Acquirer(s) access to an on-going revenue stream, and (5) a variety of transitional support services. Specifically, the Defendants are required to divest copies of the source databases of (i) Thomson's Worldscope fundamentals products, (ii) Reuters' earnings estimates products, and (iii) Reuters' aftermarket research products (which together encompass all of the data and/or research contained in the databases used by Thomson or Reuters to compete in the relevant markets), along with all tangible and intangible assets that an Acquirer(s) would need to operate and maintain the databases and promptly use them to produce competitively viable fundamentals, earnings estimates, and aftermarket research products.

II. COMPLIANCE WITH THE APPA

The APPA requires a sixty-day period for the submission of public comments on a proposed Final Judgment. *See* 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the Competitive Impact Statement on February 19, 2008; published the proposed Final Judgment and Competitive Impact Statement in the *Federal Register* on March 21, 2008 (*United States v. The Thomson Corp.*, 73 Fed. Reg. 15196); and published summaries of the terms of the proposed Final Judgment and Competitive Impact Statement, together with directions for the submission of written comments relating to the proposed Final Judgment, in *The Washington Post* for seven days beginning on March 28, 2008, and ending on April 3, 2008.

The sixty-day period for public comments ended on May 20, 2008. The Division did not receive any comments. As recited in the Certificate of Compliance, all the requirements of the APPA now have been satisfied. Accordingly, it is 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 FOR JUDICIAL REVIEW UNDER THE APPA

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, the court, in accordance with the statute as amended in 2004,[2] 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).

As the United States Court of Appeals for the District of Columbia Circuit has held,

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[2] The 2004 amendments substituted "shall" for "may" in directing relevant factors for the court to consider and amended list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1, 11 (D.D.C. 2007) (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

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. 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).[3] In making its public interest determination, a district 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 because this may only reflect underlying weakness in the government's case or

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[3] *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"), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983). *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'").

concessions made during negotiation." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting 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' 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. AT&T Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette*, 406 F. Supp. at 716); *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). To meet this standard, 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. 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. *Id*. at 1459-60. As this Court recently 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, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction "[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). This instruction explicitly writes into the statute the standard intended by the Congress that enacted the Tunney Act in 1974 , as Senator Tunney then 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 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.[4]

[4] *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"); 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."); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) 61,508, at 71,980 (W.D. Mo. 1977) ("[T]he Court, in making its public interest finding, should . . . carefully consider the explanations of the government in order to determine whether those explanations are reasonable under the circumstances.").

IV. CONCLUSION

For the reasons set forth in this Motion and Memorandum and in the Competitive Impact Statement, the United States respectfully requests the Court find that the proposed Final Judgment is in the public interest and enter the Final Judgment without further hearings.

Dated: May 29, 2008

Respectfully submitted,

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