UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, 1401 H Street, NW Suite 4000 Washington, DC 20530 (202) 307-1858	)	Civil No. 96-1415 (CRR)
STATE OF CALIFORNIA, by and through its Attorney General Daniel E. Lungren, 1300 I Street Sacramento, California 95814 (916) 324-7874	)	
STATE OF CONNECTICUT, by and through its Attorney General Richard Blumenthal, 110 Sherman Street Hartford, Connecticut 06105 (860) 566-5374	)	
STATE OF ILLINOIS, by and through its Attorney General Jim Ryan, 100 West Randolph Street Chicago, IL 60601 (312) 814-5610	)	
COMMONWEALTH OF MASSACHUSETTS, by and through its Attorney General Scott Harshbarger, 1 Ashburton Place Boston, Massachusetts 02108 (617) 727-2200	)	
STATE OF NEW YORK, by and through its Attorney General Dennis C. Vacco, 120 Broadway, Suite 2601 New York, New York 10271 (212) 416-8275	)	
STATE OF WASHINGTON, and by and through its Attorney General Christine O. Gregoire, 900 Fourth Avenue, Suite 2000 Seattle, Washington 98164	)	

(206) 464-7663)
STATE OF WISCONSIN)
by and through its Attorney General)
James E. Doyle, Jr.,)
123 West Washington)
Madison, Wisconsin 53707)
(608) 266-8986)
)
Plaintiffs,)
vs.)
)
THE THOMSON CORPORATION, and)
One Station Place)
Stamford, Connecticut 06902)
(203) 328-9400)
WEST PUBLISHING COMPANY)
620 Opperman Drive)
Eagan, Minnesota 55123)
1-800-328-9352)
)
Defendants.)
)

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

The plaintiffs filed a civil antitrust complaint on June 19, 1996, alleging that the proposed acquisition of West Publishing Company by the Thomson Corporation would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. West and Thomson are two of the largest publishers of legal research materials in the United

States.

The complaint alleges that the combination of these major competitors would substantially lessen competition in (1) the publication of research-enhanced cases and statutes ("enhanced primary law") in nine enhanced primary law product markets, (2) the markets for certain secondary law products, and (3) the market for the provision of comprehensive online legal research services. The prayer for relief seeks a judgment that the proposed acquisition would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. The prayer for relief also seeks a preliminary and permanent injunction preventing Thomson and West from carrying out the proposed merger, or any similar agreement, understanding or plan.

Shortly before that suit was filed, a proposed settlement was reached that permits Thomson to complete its acquisition of West, yet requires extensive divestitures and takes other steps to preserve competition in the markets in which the transaction raises significant competitive concerns. A Stipulation and proposed Final Judgment embodying the proposed settlement were filed at the same time the complaint was filed.

The proposed Final Judgment orders the defendants to divest the products listed in Exhibit A.1 and A.2 of this Competitive Impact Statement and to offer to divest the products listed in Exhibit A.3 and A.4 of this Competitive Impact Statement. In general, the defendants must complete these divestitures within nine months after entry of Final Judgment. If they do not, the Court may appoint a trustee to sell the assets. The proposed Final Judgment further requires Thomson to ensure that, until the divestitures mandated by the Final Judgment have been accomplished, the products to be divested will be operated independently as continuing, viable,

ongoing lines of business, and kept separate and apart from Thomson's and West's businesses in other products. The proposed Final Judgment also requires Thomson to license to any publisher, for a fee, the use of "star pagination" (explained below), and requires Thomson to extend the licenses of certain products to Lexis-Nexis.

The plaintiffs and Thomson 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. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

Defendant Thomson Corporation is a corporation organized and existing under the laws of the Province of Ontario, Canada, with its principal office in Toronto, Ontario, Canada. It is the world's largest publisher of information for professional markets, and it is one of the largest publishers of legal research materials in the United States.

West Publishing Company is a corporation organized and existing under the laws of the State of Minnesota, with its principal office in Eagan, Minnesota. West is the largest publisher of legal research materials in the United States, notably of court decisions contained in its National Reporter System.

On February 25, 1996, Thomson agreed to purchase West for approximately $3.42 billion in cash. This transaction, which would combine West and Thomson, precipitated the Government's suit.

B. Legal Research Materials

1. Enhanced Primary Law Products

Thomson and West compete directly with each other for print and/or CD-ROM sales in the following nine enhanced primary law product markets: United States code; United States Supreme Court case law; California code; California case law; Massachusetts code; Michigan code; New York code; Washington case law; and Wisconsin case law.

For both law reporters and codes, Thomson and West provide unique, enhanced primary law products. The enhanced case law reporters sold by Thomson and West in the above markets are distinguishable from any other legal research product in two respects. First, each reporter contains the entire body of case law for its respective jurisdiction. Second, each reporter contains comprehensive written descriptions of points of law within the opinions, also known as "headnotes" and "summaries." Similarly, Thomson's and West's enhanced codes are distinguishable from other codes because they contain the entire code for the jurisdiction and contain comprehensive written descriptions of relevant case law relating to code sections, also known as "annotations." There are no other codes or case law reporters in the above markets that offer this set of enhancements to consumers.

Unenhanced codes sold in print are not a substitute for enhanced primary codes, and legal researchers do not view them to be reasonably interchangeable. First, unenhanced codes are priced significantly lower than annotated primary codes. Second, unenhanced codes are used for different purposes than enhanced codes. For example, unenhanced codes are often used for the limited purposes of identifying the correct wording of a known statute or for obtaining a brief overview of the relevant statutes on a particular topic. Enhanced codes, unlike unenhanced

codes, are appropriate sources of information when a researcher has a need to promptly determine judicial interpretations of statutory language or to determine how statutes may apply to a particular factual situation -- the typical functions of an attorney providing legal advice as it relates to statutes.

Likewise, unenhanced case law sold in print is not a substitute for enhanced case law. Unenhanced case law is generally used for different purposes than enhanced case law. For example, unenhanced case law is useful to check the correct language in a known case. However, enhanced primary law is necessary when the legal researcher wishes to identify and evaluate judicial interpretation of points of law within an opinion, what case law might apply to a particular factual situation, or how case law can be used to support a particular legal position -- the standard practices of an attorney wishing to provide legal advice relating to case law.

Full-text searching of primary law on Lexis-Nexis, WESTLAW, and CD-ROM products is only a partial substitute to the enhanced primary law offered by Thomson and West. Full-text searching is not a good substitute, for most users and most uses, because it does not provide users with the editorial analysis of the West or Thomson enhanced primary materials.

Purchasers desiring to purchase enhanced codes would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in price. In addition, purchasers desiring to purchase enhanced case law reporters would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in price.

2. Secondary Law Materials

Thomson and West also compete against each other for print and/or CD-ROM sales of

national and state-oriented secondary law products, such as treatises and practice guides. Each of these competing products, together with similar competing products, is contained within a relevant secondary law product market ("relevant secondary law product markets"). One product from each such relevant secondary law product market is identified in Exhibit A (in addition to the enhanced primary law listed therein, as noted above). In each relevant secondary law product market, West and Thomson are either dominant or significant competitors.

Secondary law materials are used by researchers to become familiar with the law both before and after turning to primary law materials. These secondary materials enable the legal researcher, who might not have expertise in a particular area of the law, to begin his or her research in a focused manner. Secondary sources of law lead researchers to relevant case law, statutes, and other secondary law products. Secondary sources of law can also be used by researchers to provide clarification of primary law.

Purchasers desiring to purchase any of the secondary law products in the relevant secondary law product markets alleged in the complaint would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in price.

3. Comprehensive Online Legal Research Services

West, through WESTLAW, is one of two major competitors in the provision of comprehensive online legal research services; the other competitor is Lexis-Nexis. WESTLAW and Lexis-Nexis are the two largest comprehensive online legal research services and they compete directly with one another.

West places its own primary and secondary law products on WESTLAW. Lexis-Nexis

places its own and third parties' materials on its service, including some Thomson enhanced primary and secondary law products. Thomson licenses to Lexis-Nexis, among other products, the Auto-Cite electronic citator service. Auto-Cite is used to gather negative commentary on a case and quickly determine case history for use in correct citation. Thomson also licenses to Lexis-Nexis the United States Code Service, as well as several other Thomson enhanced primary law materials, and certain non-legal materials.

Print versions of the law are not adequate substitutes for comprehensive online legal research services. Legal researchers who have the necessary computer hardware and the necessary skills to use this product value the timeliness and speed of comprehensive online legal research services. Material provided on a comprehensive online legal research service is updated often and is thus more timely than material offered in printed form.

Full-text word searching of primary law on CD-ROMs is not an adequate substitute for comprehensive online legal research services. The content of most CD-ROMs is limited to a particular jurisdiction or topic. Moreover, the material contained on CD-ROMs is not as current as the material offered on an online legal research service. If the materials on CD-ROMs are not current, lawyers must still use online legal research services to supplement their research. Furthermore, the topical or limited jurisdictional focus of CD-ROMs limits their primary appeal to smaller law firms or firms specializing in a particular area of the law. These firms are not heavy users of comprehensive online legal research services.

While the Internet is a useful tool for some researchers, it is not a substitute for Lexis-Nexis and WESTLAW for several reasons. First, the material contained on the Internet is not nearly as comprehensive as the material offered on Lexis and WESTLAW. The Internet does not

provide access to historical opinions, every court's opinions, every jurisdiction's statutes, or the number of secondary law products that Lexis-Nexis and WESTLAW offer. Second, the Internet's search mechanism is not as sophisticated or effective as Lexis-Nexis' or WESTLAW's. Third, the case law offered on the Internet does not provide citations that are accepted by courts or are relied on by attorneys.

Purchasers of comprehensive online legal research services would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in price. Therefore, the provision of comprehensive online legal research services is an appropriate product market in which to assess the competitive effects of the acquisition.

C. Competition Between West and Thomson

Thomson and West compete directly to provide enhanced primary law in the relevant markets and consumers view the Thomson and West products as their first and second choices for primary law products. Indeed, in each relevant market, the Thomson and West products are the **only** printed products to which consumers can turn for enhanced primary law, and, to the limited extent to which full-text searching is a research enhancement, enhanced primary law products are offered by only Thomson, West, Lexis-Nexis and a few CD-ROM publishers.

It is unlikely that an entrant could offer comparable products, for three reasons. First, the entrant would have to compile an historical collection of cases. Second, the entrant would have to develop a sophisticated editorial staff capable of creating editorial enhancements that customers would accept as reliable. Third, West claims that its copyright is infringed by what is commonly referred to as "star pagination," the insertion of symbols in the text of decisions to indicate where

internal page breaks are in West's National Reporter System, and the placement nearby of the corresponding West reporter's page number. West page numbers are commonly required or expected by courts. West has granted few, if any, licenses to employ star pagination. Thus, existing or potential participants in the markets for primary law products cannot offer products with star pagination without the threat of costly infringement litigation.

West and Thomson also aggressively compete against each other in the sale of several secondary law products, referred to in Exhibit B. Thomson and West are the only publishers - - or two of very few publishers - - in each relevant secondary law product market. As with enhanced primary law, it is unlikely that an entrant would be able to offer comparable products. Thomson's and West's titles are established resources and it would take a long time for a putative entrant to overcome West's and Thomson's acceptance by consumers. Furthermore, West's claim of copyright infringement for "star pagination" has a significant effect on the competitive viability of CD-ROM products, where it would be possible to include both primary and secondary law products on the same CD-ROM.

Thomson and West compete vigorously on the basis of price for both enhanced primary law products and secondary law products. Thomson and West look almost exclusively to each other in making pricing decisions and promoting both their enhanced primary and their secondary law products in the relevant markets, and consumers have benefitted from this competition. Thomson and West also compete directly on the basis of quality. The quality of Thomson's and West's enhanced primary and secondary law products has improved as a result of such competition. Unless restrained, the proposed acquisition would allow the combined entity unilaterally to raise prices without the threat of a new entry into these markets by a third party.

Unless restrained, the proposed acquisition would also have an adverse effect on the quality of enhanced primary law products and secondary law products.

In the comprehensive online legal research services market, Thomson supplies enhanced primary law, secondary law products, non-legal products, and Auto-Cite to Lexis-Nexis. West offers the competing WESTLAW service, and consumers have benefitted from the vigorous competition that has existed between Lexis-Nexis and WESTLAW. To effectively compete against WESTLAW, Lexis-Nexis depends upon access to certain products that Thomson licenses to Lexis-Nexis. Unless restrained, the proposed acquisition will increase Thomson's incentive to exercise market power by increasing prices for, reducing quality and innovation of, or withholding access to certain products that Thomson licenses to Lexis-Nexis.

D. Anticompetitive Consequences of the Acquisition

The complaint alleges that Thomson's acquisition of West would substantially reduce or eliminate competition in (1) nine relevant enhanced primary law product markets, (2) the publication of secondary law in the relevant secondary law product markets and (3) the market for the provision of comprehensive online legal research services.

The complaint alleges that the acquisition would increase concentration significantly in the nine relevant enhanced primary law product markets and in the secondary law product markets. After the acquisition, the combined Thomson/West entity would dominate these relevant markets. Using a measure of market concentration called the HHI, defined and explained in Exhibit C, a combination of Thomson and West would substantially increase concentration in each of the nine relevant enhanced primary law product markets. The post-merger HHIs and increases in the HHIs

for each market are listed in Exhibit C. Post-merger HHIs range between 4521 and 9019; increases range from 959 to 4234.

The complaint also alleges that it is unlikely that a new entrant would enter into any of these relevant markets that would be capable of restraining any anti-competitive increase in price within a two-year period. In the nine relevant enhanced primary law product markets and in the secondary law product markets, there is now competition between the parties that would end after the acquisition, risking price increases and reduced product quality and innovation for consumers.

In the market for the provision of comprehensive online legal research services, Lexis-Nexis depends upon access to some of Thomson's products to compete effectively against WESTLAW. The complaint alleges that the acquisition is likely to lessen competition substantially in the market for comprehensive online legal research services by increasing Thomson's incentive to increase the prices of, reduce the quality of, or withhold access to certain materials it provides to Lexis-Nexis. As a result of such an exercise of market power, there could be material injury to Lexis-Nexis' ability to compete effectively, and thus harm to competition in this market. In the event of such an exercise of market power by Thomson, Lexis-Nexis would be unable or unlikely to replace the licensed Thomson products in such a way, or within such time, as to maintain the level of competition that existed between WESTLAW and Lexis-Nexis before the acquisition. Reduced competition in the provision of comprehensive online legal research services would mean higher prices and reduced product quality and innovation for consumers of those services.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment would preserve competition in the nine enhanced primary law product markets. The proposed Final Judgment requires the divestiture of enhanced code products for the United States, California, Massachusetts, Michigan, and New York. It also requires the divestiture of *U.S. Reports, L.Ed.*, a United States Supreme Court case law reporter. Divestiture of these, and all products to be divested pursuant to the proposed Final Judgment, must be accomplished by Thomson within nine months after entry of the Final Judgment. The defendants must divest the assets and rights associated with the divested products in such a way as to satisfy the plaintiffs that the divested products can and will be operated by the acquirer as viable, ongoing product lines, and that until the divestiture, the defendants will maintain them as such.

The proposed Final Judgment also permits states to reopen bidding of three state contracts to publish the official state reporter. This process will allow the states effectively to cause a divestiture of the state reporter products, and related productive assets, if they so choose. Because the state reporters are all contracted by a bid process, the reopening of the bidding would stimulate competition in the publication of state reporters.

Furthermore, under the proposed Final Judgment, one secondary law product in each of the relevant secondary law markets will be divested. Competition from buyers of the divested secondary products should cause Thomson to continually enhance and improve its products in response to such competition. Thus, the proposed Final Judgment would preserve competition in the secondary law product markets.

The proposed Final Judgment also requires Thomson to license the use of star pagination in the National Reporter System to other legal publishers. As noted above, West has claimed that

a licence is required for star pagination. There is pending litigation over the validity of West's copyright claim. See Oasis Publishing Co. v. West Publishing Co., ___ F. Supp. ___, 1996 WL 264773 (D.Minn. 1996); Matthew Bender and Company, Inc. v. West Publishing Co., Docket No. 94-CIV-0589 (S.D.N.Y.).

However, West has asserted a copyright claim and has thus far prevailed in litigation. As a result, only two licenses to use West pagination have been issued by West. This has created a barrier to entry for enhanced primary law and secondary law products incorporating such pagination. The proposed Final Judgment would allow any person to license use of the West pagination at maximum prices. Thus, the proposed relief reduces one important barrier to entry and provides publishers who wish to produce such products with a new option for introducing products that will compete with Thomson/West. Thus, this relief, together with the divestitures of enhanced primary and secondary law products, will aid in maintaining the vigorous competition in these markets that has existed before the merger.

The proposed Final Judgment should not be read to suggest that the plaintiffs believe that a license is required before a legal publisher may star paginate to defendants' products. Indeed, the Antitrust Division expressly reserves the right to assert its views concerning the extent, validity, or significance of any intellectual property right claimed by defendants, in judicial proceedings or in any other forum. The proposed Final Judgment shall have no impact whatsoever on any adjudication concerning these matters.

Additionally, pursuant to the proposed Final Judgment, Thomson must divest itself of Auto-Cite and extend the terms of existing licenses of Investext, ASAP and Predicasts databases to Lexis-Nexis. The divestiture of Auto-Cite will ensure that Thomson-West cannot injure

competition in the comprehensive online legal research services market by increasing prices for, reducing quality and innovation of, or by denying Lexis-Nexis access Auto-Cite. Likewise, the extension of the licenses will ensure that Lexis-Nexis will have access to these resources while it has the opportunity to make appropriate competitive adjustments. Furthermore, the divestiture of the enhanced primary law products and the secondary law products would enable the new owner of those products to make them available to Lexis-Nexis without the owner having the anticompetitive incentive that arises from owning the main Lexis-Nexis competitor.

If the defendants fail to divest the divestiture products within nine months after entry of final judgment, the Court, upon application of the United States, shall appoint a trustee nominated by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Thomson will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of the Divested Products and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished. After appointment, the trustee will file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under the proposed Final Judgment. If the trustee has not accomplished the divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. At the same time, the trustee will furnish such report to the parties, who will each have the right to be heard and to make additional

recommendations consistent with the purpose of the trust.

The proposed Final Judgment requires that Thomson maintain the Divested Products separate and apart pending divestiture.

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 plaintiffs and the 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:

Craig W. Conrath
Chief, Merger Task Force
Antitrust Division
United States Department of Justice
1401 H Street, N.W., Suite 4000
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 plaintiffs considered, as an alternative to the proposed Final Judgment, a full trial on the merits of their complaint against Thomson. The plaintiffs are satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in (1) the nine enhanced primary law product markets, (2) the markets for the relevant secondary law products, and (3) the market for the provision of comprehensive online legal research services. Thus, the proposed Final Judgment would achieve the relief the government 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 PROPOSED FINAL JUDGMENT

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) 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) (emphasis added). As the United States Court of Appeals for the D.C. Circuit recently held, this statute 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, 1461-62 (D.C. Cir. 1995).

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."[1/] Rather,

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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

> 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.

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 at 1460-62. 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 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.[2/]

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

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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. Rep. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

Bechtel, 648 F.2d at 666 (citations omitted)(emphasis added); see BNS, 858 F.2d at 463; United States v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); Gillette, 406 F. Supp. at 716. see also Microsoft, 56 F.3d at 1461 (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'") (citations omitted).

mandates certainty of free competition in the future. Court approval of a final judgment 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)."[3/]

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 Gillette Co., 406 F. Supp. at 716; United States v. Alcan Aluminum, Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985).

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: June 25, 1996

Respectfully submitted,

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Craig W. Conrath
Chief, Merger Task Force
U.S. Department of Justice
Antitrust Division, Merger Task Force
1401 H Street, N.W., Suite 4000
Washington, D.C. 20530
(202) 307-5779

EXHIBIT A

Exhibit A.1

U.S. Code Service
U.S. Reports, L.Ed.
U.S. Digest
Manual of Federal Practice, 4th Ed.
Bankruptcy Law & Practice, 6th Ed.
Bankruptcy (Epstein, Nickels & White)
Corbin on Contracts
Insurance Law (Appleman)
Search & Seizure (Thomson)
Ballantine's Law Dictionary
Auto-Cite
Deering's Annotated California Code
California ADR Practice Guide
California Civil Practice Handbook: Choice Between State and Federal Courts
California Civil Trialbook
California Litigation By the Numbers Court Rules Companion
California Negligence & Settlement
California Products Liability Law & Practice
California Trial
California Tort Law
Modern California Discovery
Colorado Trial Handbook
Trial Handbook for Connecticut Lawyers
Florida Criminal Practice & Procedure
Florida Evidence 2d
Illinois Jurisprudence
Indiana Appellate Handbook 2d
Kentucky Probate PSL
Kentucky Workers' Compensation PSL
Louisiana Code of Evidence -- Annotated
Louisiana Successions
Louisiana Workers' Compensation
Annotated Laws of Massachusetts
Massachusetts Corporations PSL

EXHIBIT A (continued)

Massachusetts Domestic Relations PSL
Massachusetts Landlord-Tenant Law
Massachusetts Real Estate PSL
Michigan Criminal Law
Michigan Statutes Annotated
Michigan Digest
New Jersey Criminal Procedure
New York Consolidated Laws Service
New York Wills and Trusts
Ohio Family Law
Ohio Probate
Modern Texas Discovery
Texas Civil Pre-Trial Procedure
Texas Trial and Appellate Practice
Washington Trial Handbook

Exhibit A.2

Michigan Law & Practice
New York Estate Administration
Pennsylvania Law Encyclopedia

Exhibit A.3

California Appellate Reports
California Reports
California Reports Advance Sheets
Washington Appellate Court Reports
Washington Supreme Court Reports
Wisconsin Official Reports
Wisconsin Official Reports Advance Sheets

Exhibit A.4

California Digest
Wisconsin Digest

EXHIBIT B
Secondary Law Products

U.S. Digest
Manual of Federal Practice, 4th Ed.
Bankruptcy Law & Practice, 6th Ed.
Bankruptcy (Epstein, Nickels & White)
Corbin on Contracts
Insurance Law (Appleman)
Search & Seizure (Thomson)
Ballantine's Law Dictionary
California ADR Practice Guide
California Civil Practice Handbook:
Choice Between State and Federal Courts
California Civil Trialbook
California Litigation By the Numbers Court Rules Companion
California Negligence & Settlement
California Products Liability Law & Practice
California Digest
California Trial
California Tort Law
Modern California Discovery
Colorado Trial Handbook
Trial Handbook for Connecticut Lawyers
Florida Criminal Practice & Procedure
Florida Evidence 2d
Illinois Jurisprudence
Indiana Appellate Handbook 2d
Kentucky Probate PSL
Kentucky Workers' Compensation PSL
Louisiana Code of Evidence -- Annotated
Louisiana Successions
Louisiana Workers' Compensation
Massachusetts Corporations PSL
Massachusetts Domestic Relations PSL
Massachusetts Landlord-Tenant Law
Massachusetts Real Estate PSL
Michigan Criminal Law
Michigan Digest
Michigan Law & Practice
New Jersey Criminal Procedure
New York Wills & Trusts
New York Estate Administration
Ohio Family Law
Ohio Probate
Pennsylvania Law Encyclopedia
Modern Texas Discovery
Texas Civil Pre-Trial Procedure
Texas Trial and Appellate Practice
Washington Trial Handbook
Wisconsin Digest

EXHIBIT C
DEFINITION OF HHI AND
CALCULATIONS FOR NINE MARKETS

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market

and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See *Merger Guidelines* § 1.51.

EXHIBIT C (continued)

The HHIs for the nine enhanced primary law markets are as follows:

The market for:	**Post Merger**	**HHI Increase**
Enhanced United States Supreme Court case law	5023	959
Enhanced United States statutory law	9019	3964
Enhanced California statutory law	8088	3866
Enhanced California case law	4762	1540
Enhanced New York statutory law	8686	3792
Enhanced Massachusetts statutory law	8954	4234
Enhanced Michigan statutory law	8702	4196
Enhanced Washington case law	4521	996
Enhanced Wisconsin case law	5535	2424