UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

UNITED STATES OF AMERICA, Plaintiff, v. FLEET/NORSTAR FINANCIAL GROUP, INC., Defendant.	Filed: 7/10/91 CIVIL DOCKET NO. 91-0221-P Judge Carter

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On July 5, 1991, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, alleging that the proposed acquisition of New Maine National Bank ("NMNB"), one of the three bridge banks established by the Federal Deposit Insurance Corporation ("FDIC"), by Fleet/Norstar Financial Group, Inc. and its affiliate, Fleet Bank of Maine (referred to collectively as "Fleet"), would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

The complaint alleges that the effect of the acquisition may be substantially to lessen competition in the provision of

business banking services in the Bangor, Pittsfield, and Presque Isle-Caribou geographic markets. Business banking services offered to business customers, include either collectively or individually, services such as checking accounts, commercial loans, or other services such as cash and coin, lockbox, cash management, and business expertise and advice. Both Fleet and NMNB compete directly in offering a variety of business banking services to business customers in each of the geographic markets. The proposed acquisition would result in substantial increases in concentration in markets that are already highly concentrated and for which regulatory and other market factors make it unlikely that effective entry will maintain competition in the relevant markets.

The complaint alleges that the proposed acquisition would, in particular, hurt the many small to medium-sized business customers purchasing business banking services in the Bangor, Pittsfield, and Presque Isle-Caribou markets. The complaint seeks, among other relief, to enjoin the proposed transaction and thereby to prevent its anticompetitive effects.

On July 5, 1991, the United States and Fleet filed a Stipulation by which they consented to the entry of a proposed Final Judgment. Under the proposed Final Judgment, as explained more fully below, defendant would be required to sell designated commercial banking branches[1] in each geographic market. The

[1] The proposed Final Judgment requires divestiture of six commercial bank branches.

United States and the defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations of the Judgment.

II.

EVENTS GIVING RISE TO THE ALLEGED VIOLATION

On January 6, 1991, the FDIC was appointed as receiver of Bank of New England and reorganized it and its affiliates into three bridge banks in Connecticut, Massachusetts, and Maine. NMNB, one of the three bridge banks, formerly operated in the State of Maine as Maine National Bank. After establishing the bridge banks, the FDIC solicited bids for the purchase of these banks pursuant to its congressional authority to arrange assisted transactions.[2]

Under the statutory provisions applicable to FDIC assisted transactions, Congress mandated that such transactions be subject to antitrust review, both by the bank regulatory agencies

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[2] 12 U.S.C. § 1823(c). An "assisted transaction" under 12 U.S.C. § 1823(c) can involve several different forms of assistance from the FDIC. The type of assistance rendered in this transaction included the FDIC's restoring Bank of New England and its affiliates to normal operations and supervising those operations until a purchaser was selected through FDIC bidding procedures.

involved and by the Department of Justice ("Department").[3] Furthermore, Congress expressly provided that the Department can challenge assisted transactions that would violate Section 7 of the Clayton Act.[4]

On April 22, 1991, the FDIC selected Fleet as the winning bidder. By the terms of Fleet's winning bid, Fleet would purchase certain assets and liabilities of the three bridge banks for $125 million, with $25 million being paid in cash and the remainder in preferred stock.

Fleet is the largest commercial bank operating in the State of Maine as measured by total deposits. Fleet controls total deposits of approximately $2.9 billion, which represent approximately 22 percent of total deposits from commercial banks and thrift institutions in the state. Fleet operates approximately 110 branch offices located throughout the State of Maine.

NMNB is the fifth largest commercial bank operating in the State of Maine, as measured by total deposits. NMNB controlled total deposits of approximately $959,712,000, which represent approximately 7 percent of total deposits from commercial banks and thrift institutions in the state. NMNB operates approximately 44 branches throughout the State of Maine.

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[3] See 12 U.S.C. § 1823(f)(7) and 12 U.S.C. §§ 1828(6) and (7)(a).

[4] See 12 U.S.C. §§ 1828(6) and (7)(a).

On April 23, 1991, the Board of Governors of the Federal Reserve Board ("Board") approved an interim management agreement between Fleet and the FDIC for Fleet's management of the bridge banks. Pursuant to the interim management agreement, Fleet would provide management, operational and support services necessary to supervise and manage the bridge bank operations. This agreement will terminate upon consummation of the acquisition.

On May 14, 1991, Fleet submitted its formal applications to the Board for consummation of the acquisition. At the request of the FDIC, the application was treated as an emergency transaction for expedited review. On July 1, 1991, the Board approved Fleet's application for consummation of the acquisition.[5] Under the Bank Merger Act, as amended, 12 U.S.C. § 1828,[6] the United

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[5] Fleet/Norstar Financial Group, Inc., Federal Reserve System Order, July 1, 1991.

[6] Sections 1828(c)(6) and (7)(A), 12 U.S.C. §§ 1828(6) and (7)(a), provide in pertinent part that:

> The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. . . . [T]he transaction may not be consummated before the fifth calendar day after the date of approval by the agency.
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> Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph (6) at which a merger transaction approved under paragraph (5) might be consummated. The commencement of such an action shall stay the effectiveness of the agency's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented.

States had five days from the date of the Federal Reserve Board's decision to prevent the proposed acquisition by filing a complaint with the Court.

The United States filed its complaint because the proposed acquisition would likely reduce competition in the provision of business banking services in certain relevant geographic markets in Maine. The likelihood of competitive harm appears greatest for small to medium-sized business customers because the proposed acquisition would eliminate one of only a few financial institutions serving these customers and would likely result in higher prices for business banking services.

Investigation by the United States shows that Fleet and NMNB compete in the provision of a wide range of banking services, including services to individual consumers and services to businesses in Maine. Many other financial institutions compete with Fleet and NMNB in the provision of consumer banking services. Only commercial banks and state chartered savings banks, however, are competitors for business customers in Maine. These are the only firms that provide business banking services, as defined in the complaint. Fleet and NMNB are two of the largest of these few firms. Fleet and NMNB each offer a variety of business banking services, and compete directly with one another in the relevant geographic markets of: Bangor, Pittsfield, and Presque Isle-Caribou. A significant number of business customers purchase both transaction accounts and

commercial loans as well as other business banking services from Fleet and NMNB.[7]

Few other financial institutions currently offer or appear likely to start offering within a reasonably short period of time business banking services in the relevant markets. Savings and loan associations are limited by law in the extent to which they make commercial loans; moreover, their ability to begin offering these services to businesses is substantially affected by capital requirements and their own capital positions. Under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989,[8] new, more significant capital requirements and other restrictions were placed upon the lending activities of savings and loan associations. Moreover, savings and loan associations in the relevant markets do not currently provide business banking services. The United States' investigation revealed that the above factors coupled with other economic factors concerning the cost, scale and expertise involved in offering business banking services, make it unlikely that savings and loan associations will be likely entrants into the provision of such services.

The investigation also revealed that credit unions in Maine are generally not current or potential competitors in business banking services due to a combination of legal and economic

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[7] Commercial loans include all loans to business customers not fully secured by real estate. Additional business banking services offered to business customers include but are not limited to cash and coin, lockbox, cash management, and business expertise and advice.

[8] 12 U.S.C. § 14647(t).

restraints. Credit unions offer services to individual consumers, but are not permitted to offer business banking services such as those provided to the business customers served by commercial banks and state chartered savings banks. Credit unions clearly do not offer the full range of business banking services provided by commercial banks and state chartered savings banks; for these reasons credit unions were excluded as suppliers of business banking services.

Loan production offices ("LPOs") do not offer transaction accounts and, under current regulation, are prohibited from doing so. Moreover, the LPOs in the State of Maine do not currently provide commercial loans to small and medium-sized businesses. Based on available evidence, even with a significant, non-transitory price increase for commercial loans to small and medium-sized businesses, LPOs are unlikely profitably to enter and make such loans.

Non-depository institutions may provide one or even a few of the services provided by commercial banks and certain thrift institutions. For example, investment or brokerage houses offer products that are offered by commercial banks or thrift institutions. Non-depository institutions, however, do not provide certain important business banking services, such as transaction accounts for business customers, which are offered by commercial banks and some thrift institutions. Thus, they are not included as suppliers of business banking services.

In the Bangor market, five other financial institutions (Key Bank, Casco Northern Bank, United Bank, Bangor Savings Bank and Peoples Heritage Savings Bank) offer business banking services. In the Pittsfield market, three other financial institutions (Key Bank, Peoples Heritage Savings Bank and Skowhegan Savings Bank) offer business banking services; and in the Presque Isle-Caribou market, five other financial institutions (Casco Northern Bank, Key Bank, First Citizens Bank, Peoples Heritage Savings Bank and Machias Savings Bank) offer business banking services.

Numerous small and medium-sized businesses operate in the State of Maine. Such businesses generally must obtain business banking services from banks which have offices in Maine, and many such businesses are economically able to obtain business banking services only from the banks located in the geographic markets where the business is situated. Business customers often purchase a number of different banking services from the bank with which they do business. For example, a business customer might use the bank for a checking account, credit for the purchase of inventory, payroll services, night deposit, and cash and coin.

The United States concluded that, for business banking services in Maine, the relevant geographic markets were those defined by the Federal Reserve Bank of Boston. Based on a variety of measures, the United States' investigation indicates that only a few firms provide business banking services, and a few of them have very large market shares; the others have much

smaller market shares. In Bangor, Fleet is the leading firm by a significant margin, and in Pittsfield and Presque Isle-Caribou, Fleet and NMNB are in the category of the largest firms. This market structure is significant, because it means that combining the two firms will significantly increase concentration. Concentration is important because it indicates the likelihood that a group of firms could exercise market power (i.e., raise prices or reduce output).

Under the Justice Department's Merger Guidelines,[9] when the Herfindahl-Hirschman Index ("HHI"),[10] a measure of market concentration, is over 1800, additional concentration resulting from a merger is a matter of significant concern. Where the HHI would increase by more than 50 points, the Department is likely to challenge the merger unless the Department concludes, on the basis of other relevant factors, that the merger is not likely substantially to lessen competition.

In this regard, the United States factored into its decision to challenge the proposed acquisition and in evaluating the

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[9] Department of Justice Merger Guidelines, 2 Trade Reg. Rep. (CCH) ¶ 13,102 at 20,529-30.

[10] The HHI is a measure of market concentration calculated by squaring the market share of each firm in the market and then summing the resulting numbers. For example, for a market supplied by four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 900 + 900 + 400 + 400 = 2600$). The HHI takes into account the relative sizes and distribution of firms in a market. It approaches zero when a market is supplied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is supplied by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparities in size among these firms increases.

proposed settlement, the financial viability of NMNB. The United States carefully calculated and reviewed data relating to "runoff" (loss of deposits) resulting from the erosion of public confidence in and the FDIC's subsequent takeover of NMNB. The United States concluded, even after factoring in the loss of these deposits, that concentration levels in the three relevant geographic markets were not sufficiently reduced to mitigate competitive concerns resulting from the proposed acquisition. Moreover, the United States concluded that it was unlikely that entry of new competitors into these markets, or rapid expansion of the smallest firms currently in the markets would occur so as to prevent any anticompetitive effects.

In the Bangor market, the HHI, calculated on the basis of total deposits[11] of firms offering business banking services, would increase (as a result of seven firms going to six) by 510 to 3271 if the proposed acquisition occurred. In the Pittsfield market, the HHI would increase (as a result of five firms going to four) by approximately 556 to 2605. In the Presque Isle-Caribou market, the HHI would increase (as a result of seven firms going to six) by approximately 213 to 2218. These measures indicate highly concentrated markets that would be further concentrated as a result of the proposed acquisition.

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[11] There is a relationship between the ability to accept deposits and the granting of credit and the provision of other business banking services. The deposits accepted by a financial institution are an important source of the loans made by it and a principal source of funds to support other services.

Finally, the United States considered and rejected defendant's assertion regarding a successful "failing company defense."[12] Defendant argued that because the FDIC selected it as the winning bidder of the bridge banks, it was the only available purchaser despite the fact that an award to another bidder would have created no competitive concerns. Acceptance of this argument, however, would lead to the conclusion that the failing company defense is available in every FDIC-assisted transaction. Such an argument would preclude consideration by the FDIC, the Board, and the Department of the likely competitive effects of any such transaction or its effects on the convenience and needs of the community. Congress, however, clearly and

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[12] The failing company defense, which has been recognized since International Shoe Co. v. Federal Trade Comm'n., 280 U.S. 291, 299-303 (1930), provides a defense for mergers that are otherwise anticompetitive that involve a failing or failed firm. Three elements are necessary for the defense:

> (1) the allegedly failing firm probably would be unable to meet its financial obligations in the near future; (2) it probably would not be able to reorganize successfully . . . .; and (3) it has made unsuccessful good faith efforts to elicit reasonable alternative acquisition offers of an acquisition of the failing firm that would both keep the firm in the market and pose a less severe danger to competition than the proposed merger.

1984 Merger Guidelines, ¶ 5.1. The burden of establishing these elements, including the burden of showing the unavailability of a less anticompetitive alternative purchaser, rests on the merging parties. United States v. General Dynamics Corp., 415 U.S. 486, 507 (1974); Citizen Publishing Co. v. United States, 394 U.S. 131, 138-39 (1969). In the United States' view, Fleet has not met that burden.

explicitly mandated a consideration of those effects by the FDIC, the Board, and the Department.

For all the above reasons, the United States found that each of these markets is highly concentrated; that each would become substantially more concentrated as a result of the proposed acquisition; and that entry and expansion were unlikely to offset the anticompetitive effects.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The risk to competition posed by this acquisition would be substantially reduced by the structural relief provided in the proposed Final Judgment in each of the relevant markets through divestiture of commercial bank branches. In addition, this structural relief substantially preserves the efficiencies that are anticipated to accrue from the acquisition.

Fleet is required, by Section IV. of the proposed Final Judgment, within six months of the filing date of the proposed Final Judgment to divest the following commercial bank branches:

1. In the Bangor market, the NMNB Merchant Plaza, NMNB Union Street, NMNB Orono, and the Fleet Stillwater branch assets and deposits;

2. In the Pittsfield market, the NMNB Pittsfield branch assets and deposits; and

3. In the Presque Isle-Caribou market, the Fleet Presque Isle branch assets and deposits.

To ensure that the divestitures are accomplished in such a way as to maintain competition, the proposed Final Judgment

prohibits the sale of the branches to certain very large firms who already have a significant competitive presence in the geographic markets. The proposed Final Judgment prohibits the sale of any of the above branches to Peoples Heritage Savings Bank. In addition, Fleet cannot sell the Bangor branches to Bangor Savings Bank. Fleet cannot sell the Pittsfield branch to Key Bank or Skowhegan Savings Bank. Fleet cannot sell the Presque Isle branch to Key Bank or Casco Northern Bank. The divestitures will bring about the entry of a new provider or make larger an existing, small provider of business banking services in each of these markets, thereby, ensuring that competition is not substantially lessened by the acquisition.

All purchasers must demonstrate to the satisfaction of the United States that they have a good faith intention to operate the divested branches as banking branches that offer business banking services. The proposed Final Judgment also requires that Fleet preserve the assets of the divested banking branches until purchased by a buyer. If Fleet fails to sell the branches within six months of the filing date of the proposed Final Judgment, Fleet shall file with the court and notify plaintiff within thirty days of the date the purchase contracts were required to be entered into by Fleet. The United States can then proceed under the terms of Section V. of the proposed Final Judgment to appoint a trustee to accomplish the branch divestitures.

The United States and Fleet have stipulated that the proposed Final Judgment may be entered by the Court at any time

after compliance with the APPA. The proposed Final Judgment constitutes no admission by any party as to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

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.[13] Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust actions under the Clayton Act. 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 private lawsuit that may be brought against the defendant.

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[13] The Bank Merger Act, 12 U.S.C.§ 1828, however, prevents the filing of an antitrust suit (other than a suit under § 2 of the Sherman Act) later than five days after the July 1, 1991, Board order.

V.

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

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 the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and response(s) of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to Constance K. Robinson, Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, N.W., Room 8104, Washington, D.C. 20001.

The proposed Final Judgment provides that the Court retains jurisdiction over this action and any party may apply to the Court for any order necessary or appropriate for its modification, interpretation or enforcement.

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered the following alternatives regarding divestiture of bank branches. In the Bangor market,

the United States considered requiring the defendant to divest the NMNB branch in Brewer; the United States also considered requiring divestiture of the Maine Savings Bank branch in Stillwater in lieu of the Fleet Stillwater branch. After evaluating the combined divestiture proposal for Bangor, the United States concluded that divestiture of the Fleet Stillwater branch and the NMNB branch on Union Street would resolve the United States' competitive concerns in the Bangor market.

As a final alternative to the proposed Final Judgment, the United States considered litigation for seeking an injunction to block Fleet's acquisition of NMNB. The United States rejected that alternative because the sale of the commercial bank branches will establish viable independent competitors to Fleet in all the relevant markets and likely will prevent the proposed acquisition from having significant anticompetitive effects in those markets.

VII.

STANDARD OF REVIEW UNDER THE TUNNEY ACT FOR PROPOSED FINAL JUDGMENT

The Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16 (1974), requires that proposed consent judgments in antitrust cases brought by the United States are subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed final judgment "is in the public

interest". In making that determination,

> the court may consider--
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> (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;
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> (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). The courts have recognized that the term, "public interest", "take(s) meaning from the purposes of the regulatory legislation."[14] Since the purpose of the antitrust laws is to "preserv(e) free and unfettered competition as the rule of trade,"[15] the focus of the "the public interest" inquiry under the Tunney Act is whether the proposed final judgment would serve the public interest in free and unfettered competition.[16] In conducting this inquiry, "(t)he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the

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[14] NAACP v. FPC, 425 U.S. 662, 669 (1976).

[15] Northern Pacific Railway Co. v. United States, 356 U.S. 1, 4 (1958). See also National Society of Professional Engineers v. United States, 435 U.S. 679, 692 (1978).

[16] Accord United States v. American Cyanamid Co., 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984); United States v. Waste Management, Inc., 1985-2 Trade Cas. (CCH) ¶ 66,651 at 63,046 (D.D.C. 1985).

benefits of prompt and less costly settlement through the consent decree process."[17] Rather,

> (a)bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making the 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.[18]

It is also unnecessary for the district court to "engage in an unrestricted evaluation of what relief would best serve the public."[19] 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." (citation omitted) More elaborate requirements might undermine the effectiveness of

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[17] 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 Responses to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. CODE CONG. & AD. NEWS 6535, 6538.

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

[19] 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).

> antitrust enforcement by consent decree. (emphasis added).[20]

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

> waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.[21]

The proposed consent decree, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a merger or whether it 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)."[22]

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[20] United States v. Bechtel, supra; United States v. BNS, Inc., supra, 858 F.2d at 463; United States v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); United States v. Gillette Co., supra, 406 F. Supp. at 716. See also United States v. American Cyanamid Co., supra.

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

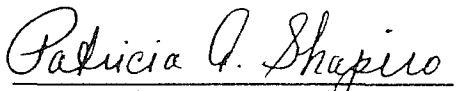
[22] United States v. American Tel. and Tel Co., 552 F. Supp. 131, 150 (D.D.C.), aff'd, 460 U.S. 1001 (1982) quoting United States v. Gillette Co., supra, 406 F. Supp. at 716; United States v. Alcan Aluminum, Ltd., 605 F. Supp. 619, 622 (W.D. Ky 1985).

VIII.

DETERMINATIVE DOCUMENTS

No documents were determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Respectfully submitted,



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