UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENERAL ELECTRIC COMPANY,

ALSTOM S.A., and

POWER SYSTEMS MFG., LLC,

Defendants.

COMPETITIVE IMPACT STATEMENT

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

I. NATURE AND PURPOSE OF THE PROCEEDING

Defendant General Electric Company ("GE") and defendant Alstom S.A. entered into a set of agreements, dated November 4, 2014, pursuant to which GE intends to enter a multi-stage transaction with Alstom in which GE will acquire all of Alstom's power-related businesses, including Alstom's wholly owned subsidiary, defendant Power Systems Mfg., LLC ("PSM"). The value of the multi-stage transaction is approximately $13.8 billion.

The United States filed a civil antitrust Complaint on September 8, 2015, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of the acquisition would be to lessen competition substantially in the development, manufacture, and sale of aftermarket parts and service for GE 7FA gas turbines in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition likely would give GE the ability to raise prices, lessen innovation, and lower the quality of service for customers in the United States.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, GE is required to divest PSM, which includes the research, development, manufacturing, and repair and reconditioning facilities located in Jupiter, Florida, and Missouri City, Texas, and all of PSM's tangible and intangible assets. Under the terms of the Hold Separate Stipulation and Order, defendants will take certain steps to ensure that PSM is operated as a competitively independent, economically viable and ongoing business concern that will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Transaction

Defendant GE is a New York corporation with its principal offices in Fairfield, Connecticut. GE is a global manufacturing, technology and services company. GE's subsidiary, GE Power and Water, provides power generation, energy delivery, and water process technologies in a number of areas of the energy industry, including wind and solar, biogas and alternative fuels, and coal, oil, natural gas, and nuclear energy. GE offers a wide spectrum of heavy-duty gas turbines. GE also is the dominant supplier of aftermarket parts and service for GE gas turbines. In 2014, GE's worldwide revenues were $148.6 billion, and its revenues from aftermarket parts and service for the relevant GE gas turbines were approximately $730 million.

Defendant PSM, a Delaware corporation headquartered in Jupiter, Florida, is a wholly and directly owned subsidiary of defendant Alstom, a French corporation headquartered in Levallois-Perret, France. Alstom offers global power generation, electric grid, and rail solution products and services. PSM provides aftermarket parts and service for a variety of engines manufactured by other companies and for GE gas turbine engines, including the GE 7FA model (described below). In 2014, PSM's worldwide revenues were approximately $226 million, and revenues for aftermarket parts and service for the GE 7FA gas turbines were approximately $90 million.

Pursuant to a set of agreements dated November 4, 2014, GE intends to enter a multi-stage transaction with Alstom. First, GE will purchase Alstom's thermal and renewable power and grid business. Then, Alstom will acquire GE's rail signaling business. Finally, GE and Alstom will enter three joint ventures, each 51 percent owned by GE, involving the renewable

energy businesses, the grid, and a global nuclear and French steam turbine business, in which the French government will hold preferred shares and governance rights. GE will maintain complete ownership of the thermal power business, including PSM, acquired from Alstom. The value of the multi-stage transaction is approximately $13.8 billion.

B. Competitive Effects of the Transaction

An extensive investigation by the Department revealed that PSM is GE's primary competitor in the aftermarket sale of parts and services for the installed base of GE gas turbines in the United States, and that GE's acquisition of PSM likely would eliminate competition between GE and PSM in this market. A substantial number of power generation customers indicated that they currently experience the advantages of vigorous competition between PSM and GE, and the status of PSM as GE's primary competitor is confirmed in the firms' respective business documents. The competition between GE and PSM in the development, manufacture, and sale of aftermarket parts and service, particularly for GE 7FA gas turbines, clearly has benefitted customers on price, quality of service, and innovation.

Gas turbines are a type of internal combustion engine in which burning of an air-fuel mixture produces hot gases that spin a turbine to produce power. Gas turbines have been used to generate electricity since the 1930s. Today, gas turbines are widely used for power generation throughout the United States. The key internal working parts of a gas turbine engine are the rotor, the buckets (also known as blades), and the nozzles (also known as vanes). A full set of replacement parts typically can range in price from several million dollars up to $15 million.

Mature turbines, like other mechanical equipment, require servicing and new or refurbished replacement parts. Service is needed every three to eight years, with major overhauls

required every 10 to 16 years. Gas turbine aftermarket parts and service are provided by the original equipment manufacturer or by an independent service provider. GE 7FA gas turbines have life spans of approximately 30 years. With the initial sale of the gas turbine, the OEM and the customer usually enter into a long-term service agreement (LTSA), which may range from five to 15 years in duration. LTSAs, which are typically based on total hours of operation, cover the provision of replacement parts and service after the installation of the turbine. If a customer enters into a LTSA with the original equipment manufacturer, typically an independent service provider is unable to compete for the replacement parts or service business of that customer for the length of that LTSA. The original equipment manufacturer, however, often seeks to enter another LTSA when the first LTSA expires, and at that time competes with independent service providers.

GE's 7FA gas turbines remain the most common and one of the most technologically advanced GE models installed today. Only a limited number of firms have the capability and experience to reverse engineer, manufacture, and improve the formerly proprietary parts. Currently, GE's U.S. installed base is approximately 68 percent of all gas turbines in service in the power generation industry (generally, large gas turbines over 90 megawatts) and numbers over 1,220 machines; of these, 663 are GE 7FAs.

The Complaint alleges that, because gas turbine aftermarket parts and service are used exclusively for gas turbines, and because aftermarket parts and service for use in other types of turbines, such as steam or wind turbines, cannot be used in gas turbines, a small but significant increase in the price of aftermarket parts and service for GE 7FA gas turbines would not cause customers of those parts and service to substitute a different kind of aftermarket part or service,

or to reduce purchases of aftermarket parts or service for GE 7FA gas turbines, in volumes sufficient to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of aftermarket parts and service for GE 7FA gas turbines is a line of commerce and relevant market within the meaning of Section 7 of the Clayton Act.

Further, according to the Complaint, most U.S. customers of aftermarket parts and service for GE 7FA gas turbines consider only those qualified suppliers with a strong national presence and local support, including regional parts distribution centers. U.S. customers insist on facilities located in the United States for timely delivery of parts and prompt deployment of personnel. A small but significant increase in the price of aftermarket parts and service for GE 7FA gas turbines in the United States would not cause a sufficient number of U.S. customers to turn to providers of those parts and service that do not have a substantial presence in the United States so as to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

The Complaint also alleges that currently only three competitors, including GE and PSM, develop, manufacture, and sell new aftermarket parts to offer with their service for GE 7FA gas turbines in the United States. GE and PSM have market shares of 83 and nine percent respectively. A third firm, which manufactures some aftermarket parts, has a market share of only two percent. The remaining fringe participants in aftermarket service in the United States do not manufacture their own new parts and must provide either refurbished parts or parts made by PSM or the third firm because GE does not make parts available to third-party service providers.

According to the Complaint, the response of the third firm and the fringe participants in aftermarket parts and service would not be sufficient to constrain a unilateral exercise of market power by GE after the acquisition, nor would entry deter the expected competitive harm. Firms attempting to enter or expand into the development, manufacture, and sale of new aftermarket parts and service for GE 7FA gas turbines face substantial entry barriers in terms of cost and time. While many of the patents have expired on older GE 7FA models, a competitor must have the capability to produce the most complex replacement parts. Entrants must have extensive technical capabilities necessary to design and manufacture the parts, for example, unique buckets and nozzles are cast, and highly customized coatings are required to protect these metal alloy parts from melting in the combustion chamber. The required capabilities include design expertise, metals casting technology, and metals coating technology. Moreover, proven quality, extensive testing, and certification from customers is required before a new firm would be acceptable to customers.

The Complaint also alleges that the effect of PSM's successful entry on prices shows the beneficial impact of its presence in the market. Since 1998, when PSM began competing with GE to provide aftermarket parts and service for GE 7FA gas turbines, prices of GE 7FA replacement parts dropped by 60 to 70 percent. Further, gas turbine life-cycle costs (prices for GE LTSAs and renewed GE LTSAs) dropped by as much as 50 percent when PSM began to offer replacement parts for the GE 7FA gas turbines. Although other firms since have entered the market with some aftermarket parts and services, no firm, or combination of firms, is now positioned to constrain a unilateral exercise of market power by GE after the acquisition.

The Complaint also alleges that a merged GE and PSM likely would reduce innovation in the development of improved aftermarket parts for GE gas turbines.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the sale aftermarket parts and service used in the installed base of GE 7FA gas turbines by preserving an independent and economically viable competitor. Section IV of the proposed Final Judgment requires GE, within 90 days after the filing of the Complaint, or 5 days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest PSM as a viable ongoing business. PSM must be divested in such a way as to satisfy the United States, in its sole discretion, that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

Pursuant to Paragraph IV(H), final approval of the divestiture of PSM, including the identity of the acquirer, is left to the sole discretion of the United States to ensure the continued independence and viability of PSM in the relevant market. Ansaldo Energia S.P.A has been identified by GE as the expected purchaser of PSM and is currently in negotiations with GE for a final purchase agreement. As provided in Paragraph IV(B), in the event Ansaldo is not approved by the Department as the acquirer, another acquirer may buy PSM, also subject to approval by the Department in its sole discretion.

In Section X, the proposed Final Judgment also provides that the United States may appoint a Monitoring Trustee with the power and authority to investigate and report on

defendants' compliance with the terms of the proposed Final Judgment and the Hold Separate Stipulation and Order during the pendency of the divestiture, including regular reports on the process of the divestiture. In this matter, the European Commission also expects to appoint a Monitoring Trustee to facilitate the accomplishment of a divestiture of assets relating to competitive issues outside the United States. Coordination between the Department and the European Commission relating to of the appointment of a Monitoring Trustee will help ensure that the agencies' respective divestitures will be consistent and will be accomplished effectively.

The Monitoring Trustee would not have any responsibility or obligation for the operation of the parties' businesses. The Monitoring Trustee would serve at GE's expense, on such terms and conditions as the United States approves, and defendants must assist the trustee in fulfilling its obligations. The Monitoring Trustee would file monthly reports and would serve until the divestiture is complete. The Monitoring Trustee would serve until the divestiture of PSM is finalized pursuant to either Section IV or Section V of the proposed Final Judgment.

According to Section V of the proposed Final Judgment, in the event that GE does not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a Divestiture Trustee selected by the United States to effect the divestiture. If a Divestiture Trustee is appointed, the proposed Final Judgment provides that GE will pay all costs and expenses of the trustee. The Divestiture Trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After its appointment becomes effective, the Divestiture Trustee will file monthly reports with the Court and the United States setting forth its efforts to accomplish the divestiture. At the end of six months, if

the divestiture has not been accomplished, the Divestiture Trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the provision of aftermarket parts and service used in the installed base of GE 7FA gas turbines by preserving PSM as an independent and vigorous competitor to GE.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the

proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
450 Fifth Street, N.W.
Washington, DC 20530

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

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. The United States could have litigated and sought preliminary and permanent injunctions against GE's acquisition of Alstom's entre power business. The United States is satisfied, however, that the divestiture of PSM described in the

proposed Final Judgment will preserve competition for the provision of aftermarket parts and service for the installed base of GE 7FA gas turbines in the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, 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
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp.

2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. U.S. Airways Group, Inc.*, No. 13-cv-1236 (CKK), 2014-1 Trade Cas. (CCH) ¶ 78, 748, 2014 U.S. Dist. LEXIS 57801, at *7 (D.D.C. Apr. 25, 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[1] The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the 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 SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

> [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).[2] In determining whether a proposed settlement is in the public interest, 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." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *16 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' 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

---

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

as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *8 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft*, 56 F.3d at 1461); *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; *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *9 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable; *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself,"

'reaches of the public interest'").

and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60. As this Court 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." *SBC Commc'ns*, 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 that "[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); *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *9 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. 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.[3] A court can make its public interest determination based on the competitive

[3] *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.*, No. 73-CV-681-W-1, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the

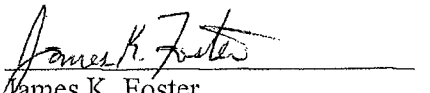
impact statement and response to public comments alone. *U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *9.

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: September 8, 2015

Respectfully submitted,



James K. Foster
United States Department of Justice
Antitrust Division, Litigation II Section
450 Fifth Street, NW
Suite 8700
Washington, DC 20530
Tel.: (202) 514-8362
Fax: (202) 514-9033
Email: james.foster@usdoj.gov

Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93-298, 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.").