



**U.S. Department of Justice**

Antitrust Division

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# **Digest of Business Reviews**

**2008-2015**

## DIGEST OF BUSINESS REVIEWS

2008

08-1 [Media Rating Council](#)

04/11/2008

Advertising

Accreditation

Facts: The Media Rating Council (“MRC”), a nonprofit, is the sole association that audits and accredits audience membership products (“AMPs”). AMPs measure the size and demographics of an audience for a particular medium. The financial value of advertising is based on particular kinds of AMPs called Currency AMPs. The MRC proposes to amend its rules to encourage a rating service that is replacing an already-accredited Currency AMP to obtain accreditation of the replacement product before discontinuing the previous product. Compliance with this proposed rule is voluntary, and a rating service will not be penalized for failure to comply.

Response: The Department has no present intention to challenge the proposed rule. MRC’s proposal may help smooth the transition from one Currency AMP to its replacement. Moreover, the proposal is unlikely to discourage competition in the creation of new Currency AMPs. The new rule will not affect rating services that are introducing entirely new Currency AMPs. And compliance with the rule is voluntary, even when a rating service is attempting to replace a previous Currency AMP.

## Financial Services

## Information Exchange

Facts: External Compliance Officer, Inc. (“ECO”), a privately-held corporation, provides anti-money laundering consulting services to financial institutions, including money transmitters. Money transmitter agents are intermediaries between money transmitters and consumers of money transmission services. Various federal and state laws require money transmitters to determine whether a prospective money transmitter agent presents a risk of money laundering or terrorist funding. The ECO proposes to aggregate information from money transmitters regarding whether and why they have terminated money transmitter agents. The ECO proposes to make this information available to client money transmitters in a database. The ECO will also notify money transmitter agents when they are added to the database.

Response: The Department has no present intention to challenge ECO’s proposal, as it is unlikely to harm competition and may help money transmitters comply with their federal and state law obligations to prevent money laundering and terrorist funding. The ECO’s proposed collection and dissemination of information is unlikely to produce collusion or otherwise harm competition among money transmitters. Notifying agents that they have been added to the database will help ensure that it contains accurate information about agent termination.

Clinical Trials

Model Contract

Facts: The CEO Roundtable on Cancer (“CRC”), a non-profit organization whose goal is to make continuous progress toward eliminating cancer, and the National Cancer Institute (“NCI”), the federal government’s principal agency for cancer research and training, propose to develop and publicize model clauses for use in clinical-trial agreements. Clinical-trial agreements typically involve three parties: a pharmaceutical or medical-device company, known as a sponsor; a hospital, clinic, or university where the research is performed, known as the research institution; and the physician in charge of the trial, known as the principal investigator. The CRC proposes to make the model language available to sponsors, research institutions, and principal investigators.

Response: The Department has no present intention to challenge the proposal. The model language is not likely to be anticompetitive and can be used to help increase efficiency in contract negotiations, potentially reducing costs and shortening the time needed to begin clinical trials. The model language does not contain any provisions specifying prices or rates, and each party acting independently will determine whether to use the language or any of its provisions.

## Electronics and Electrical Equipment

## Patent Licensing

Facts: The RFID Consortium LLC (the “Consortium”) proposes to pool patents that are essential for the UHF RFID Generation 2 (“Gen-2”) standard. UHF RFID systems help identify objects by labeling them with chips that transmit UHF radio signals when scanned with UHF RFID readers. The Consortium’s seven member companies hold patents that are essential to the Gen-2 standard, meaning that the patented technology is technically or economically necessary to implement the standard. The Consortium’s members have agreed to give it the nonexclusive right to grant nonexclusive licenses to these essential patents. The Consortium members will split the royalties, with each member receiving a share based in part on the number of patents the member contributes to the pool. The Consortium will grant any potential licensee a license to the pooled patents under reasonable and nondiscriminatory terms. To obtain a license from the Consortium, licensees must grant back to the Consortium the nonexclusive right to license their own patents that are essential to the Gen-2 standard. These licensees will then obtain part of the Consortium’s shared royalties. Finally, the Consortium proposes appointing an independent license administrator to oversee the day-to-day operation of the licensing agreement. The administrator will report only aggregated information to the Consortium members.

Response: Applying the rule of reason, the Department has no present intention to challenge the Consortium’s proposal. This patent pool is potentially procompetitive because it will prevent Consortium members from blocking access to their patents. Further, the Consortium will likely decrease transaction costs for both its members and its licensees. The patent pool also has numerous safeguards against harms to competition. For example, patents that are invalidated will be removed from the pool; only complementary rather than substitute patents are allowed in the pool; the Consortium likely will not harm downstream markets because it must issue licenses on nondiscriminatory terms and because Consortium members only will have access to aggregated information about licensees; and the grant back to the Consortium from licensees is nonexclusive and allows the licensees to join the shared royalty program.

Insurance

Competitor  
Collaboration

Facts: Ivy Capital Group, LLC (“Ivy”) proposes to form Concepta Services, LLC (“Concepta”). Concepta will offer large commercial insurance policies (defined as policies for over \$250 million) by consolidating the capacity of participating commercial insurers that could not independently underwrite such large policies. Concepta’s likely participating insurers currently generate approximately 5 percent of all premiums in the large commercial insurance market. Ivy represents that it will recruit insurers that specialize in different submarkets, so participating insurers will not have a substantial market share in any particular submarket.

Response: The Department has no present intention to challenge Concepta, at least with respect to the large commercial insurance market. Concepta could offer a new competitive option for consumers of large commercial insurance policies. Moreover, because the likely participating insurers represent less than 20 percent of the large commercial insurance market, the proposal falls within the “antitrust safety zone” provided by Section 4.2 of the Department of Justice’s and Federal Trade Commission’s *Antitrust Guidelines for Collaborations Among Competitors* (2000). The Department does not consider whether Concepta is likely to reduce competition in the smaller commercial insurance policy market because the Department currently lacks sufficient information about Concepta’s safeguards against its members’ collaboration in the smaller insurance market.

## DIGEST OF BUSINESS REVIEWS

2009

09-1 [Memorial Health, Inc. and St. Joseph's/Candler Health System](#) 09/04/2009

Hospital Services

Joint Purchasing

Facts: Memorial and St. Joseph's/Candler are 501(c)(3) non-profit organizations that own acute tertiary care hospitals in Savannah, Georgia, that serve Southeast Georgia and the low-country area of South Carolina. Memorial owns and operates the Memorial Health University Medical Center. St. Joseph's/Candler owns and operates St. Joseph's Hospital and Candler Hospital. Under the proposed agreement, Memorial and St. Joseph's/Candler would jointly evaluate medical and surgical products, designate suppliers, and negotiate prices and other terms with them.

Response: The Department has no present intention to challenge this joint purchasing agreement. The proposed joint purchasing agreement may yield volume discounts and reduced transaction costs for the hospitals and ultimately could result in lower costs and increased hospital services for consumers. Furthermore, the proposal meets the requirements of the antitrust safety zone set forth in Statement 7 of the Department's and Federal Trade Commission's *Statements of Antitrust Enforcement Policy in Health Care* (1996). The safety zone requires that the cost of all products purchased through the joint purchasing agreement account for less than 20 percent of the total revenue of all products and services sold by each participant in the agreement. It also requires that products purchased through the joint purchasing agreement from a given supplier account for less than 35 percent of that supplier's sale of those products in the relevant market. Memorial and St. Joseph's/Candler represented that they will meet the safety zone requirements.

## Transportation Services

## Joint Venture

Facts: The Reliance Network (“Reliance”) is a joint venture between numerous regional companies that provide less-than truckload (“LTL”) freight transportation. Reliance plans to compete with nationwide LTL transportation companies. While the Surface Transportation Board has approved some of Reliance’s proposed policies, thereby exempting these policies from antitrust law, Reliance represents that it needs to implement several additional policies to be able to compete with nationwide LTL transportation companies. First, Reliance proposes to implement procedures for collaborative pricing when a customer contacts a Reliance member about LTL services that will originate in the regions of multiple Reliance companies. Reliance represents that its members will not collaborate on other pricing. Second, it proposes to implement procedures to prevent a Reliance member company from expanding into another member’s territory without consent. If the company does not obtain consent, either Reliance or the company may withdraw the company from the network. Reliance represents that no member company or combination of member companies maintains over 20 percent of the market share in any region.

Response: The Department has no present intention to challenge Reliance’s proposals. The establishment of Reliance may promote competition by providing an additional nationwide LTL option. Further, Reliance’s proposals are unlikely to produce anticompetitive effects because no member has a significant share of LTL shipments within its own region, and it is unlikely that, absent Reliance, any member would be a significant current or future rival to any other member company. The Department notes, however, that Reliance will need to be careful about avoiding collaborative rate-setting between member companies that become actual competitors (which could happen if a member company obtains consent to compete in another member company’s territory).



## DIGEST OF BUSINESS REVIEWS

2010

10-1 [MyWire, Inc.](#)

02/24/2010

Internet News Services

Vertical Practice  
(Misc.)

Facts: MyWire, Inc. (“MyWire”) proposes to develop and operate an Internet media subscription news aggregation service, the Global News Service (“GNS”). MyWire, which does not provide any news content itself, proposes to implement GNS by entering into vertical nonexclusive agreements with news publishers. GNS will provide a client publisher with blocks that can appear alongside the publisher’s own news content. These blocks will contain hyperlinks to related content on the websites of other client publishers. The “sending” publisher will be paid a per-click fee by the “receiving” publisher at a uniform rate set by GNS. Publishers will designate whether their own related content is free or accessible for a fee, but they will not be able to set a fee for content that is free elsewhere. Customers who subscribe to GNS for a fee set by MyWire will be able to access any of GNS’s fee-based content. Publishers will also have the option to set their own per-item fees for non-GNS subscribers.

Response: The Department has no present intention to challenge GNS. GNS may benefit consumers and publishers by broadening consumers’ access to publishers’ content. The proposed agreements are purely vertical, and GNS will not provide information to publishers about other publishers. The proposed agreements are also nonexclusive, so other news aggregation services can compete with GNS. MyWire proposes to only set one price restriction (that publishers cannot set a fee for content that they provide for free elsewhere), and this restriction is necessary for GNS’s operation.

## Internet News Services

## Licensing

Facts: The Associated Press (“AP”) is a not-for-profit membership cooperative of media outlets. It proposes to create a registry to facilitate the licensing of original news content on the Internet. AP will retain all equity interests in the registry. It will consist of a centralized digital database where content owners can list content, specify uses for the content, and describe licensing terms on a per-item or blanket basis. The registry will be open to both members and nonmembers of AP on a nondiscriminatory and nonexclusive basis. Both content owners and content users will be charged fees for using the registry.

Response: The Department has no present intention to challenge the AP’s proposal. The registry will not be exclusive or exclusionary, so it is unlikely to have anticompetitive effects among content owners or users. The registry is unlikely to facilitate coordination among content owners because they will not be given access to competitors’ confidential business information, and because each content owner will set its license terms independently and unilaterally. Further, AP’s proposal may lead to competitive benefits by, for example, decreasing the transaction costs for licensing content.

## Hospital Services

## Information Exchange

Facts: Three broad-based associations—the Pacific Business Group on Health, the California Public Employees’ Retirement System, and the California Health Care Coalition, representing group purchasers of health care services for more than 7 million people—propose a data exchange program for hospital services called the Hospital Value Initiative (“HVI”). The HVI proposes to (1) analyze the claims data that major third-party health plans (hereinafter “payors”) receive from hospitals; (2) develop index scores from the data that will allow for comparison of the relative cost and resource utilization efficiency of hospitals in California; and (3) distribute these index scores to hospitals, payors, and group purchasers of health care services.

Response: The Department has no present intention to challenge HVI’s proposal. The proposal is not likely to produce anticompetitive effects because the exchange would involve old data and the program would not disclose disaggregated data or any hospitals’ actual service fees. The HVI’s data exchange program could potentially benefit consumers by increasing the transparency of the relative costs and resource efficiency of hundreds of hospitals in California. The proposed information exchange may reduce health care costs by improving competition among hundreds of hospitals in California and facilitating more informed purchasing decisions by group purchasers of health care services.

## DIGEST OF BUSINESS REVIEWS

2011

11-1 [Producers Guild of America](#)

08/26/2011

Television and Film Producing Services

Trade Association and  
Certification

Facts: The Producers Guild of America (PGA) is a voluntary professional trade association made up of television and film producers. It proposes to create a voluntary certification program designed to identify people who have performed what the PGA defines as the producer's role on a film or television show. The certification will distinguish these producers from financiers, actors, lawyers, or others in the industry who have negotiated for a producer's credit. The certification is therefore designed to improve clarity for the film industry and the public. Certification will be available to both PGA members and nonmembers. The certification process will begin when a studio or film production company voluntarily notifies the PGA of a show or film's credited producers. The PGA will then contact the listed producers and invite them to apply for certification. The PGA will establish a system to determine whether certification should be granted.

Response: The Department has no present intention to challenge the PGA's proposal. The certification is unlikely to produce anticompetitive effects because it is voluntary and will not prevent uncertified producers from providing producer services. The certification program may also produce the procompetitive benefit of providing additional clarity in film credits.

Textile Products

Licensing and Model  
Contract

Facts: The Work Rights Consortium (“WRC”) is a nonprofit corporation that attempts to ensure that licensees and manufacturers of college and university-licensed apparel and textile products comply with fair labor standards. To promote this compliance, WRC proposes to implement a Designated Suppliers Program (“DSP”). Schools that join the DSP will be encouraged but not required to incorporate certain terms into licensing agreements with the licensees of their college apparel. For example, the suggested terms would require licensees to pay factories enough to allow payment of living wages to the workers. College apparel produced under these standards would be labeled as such.

Response: The Department has no present intention of challenging the WRC’s proposal. The DSP is unlikely to lead to anticompetitive effects between potentially participating schools because use of the proposed licensing agreement terms is optional, even among DSP participants. The DSP is also unlikely to have a substantial effect on the labor market (because the impacted factories will constitute only a small portion of the labor market) or on downstream competition for apparel sales. Further, the DSP may provide an additional avenue for competition by providing information about whether apparel was produced according to DSP’s fair labor standards.

## DIGEST OF BUSINESS REVIEWS

2012

12-1 [STARS Alliance LLC](#)

07/03/2012

Nuclear Plants

Competitor  
Collaboration and Best  
Practices

Facts: STARS Alliance LLC (“STARS”) is a proposed collaboration of seven electricity companies that operate nuclear electric generation plants. STARS members are competitors only in limited geographical markets. Even in these limited geographical markets, the STARS members do not set the market clearing price for electricity. STARS proposes to share existing resources such as personnel and equipment. It also plans to share best practices and to coordinate joint planning and operating activities. STARS members are not required to participate in any STARS activity.

Response: The Department has no present intention to challenge the proposal. STARS is unlikely to have an anticompetitive effect. STARS members generally compete in different geographical markets. Even in the limited geographical markets where STARS members do compete, STARS is unlikely to affect electricity prices. The STARS members have also represented that they will not share competitively sensitive information with each other. Further, STARS may have a procompetitive effect by lowering costs, increasing output, or improving safety.

## Nuclear Plants

## Joint Purchasing

Facts: STARS Alliance LLC (“STARS”) is a proposed joint venture of seven electricity companies that operate nuclear electric generation plants. STARS members are competitors only in limited geographical markets. Even in these limited geographical markets, the STARS members do not set the market clearing price for electricity. STARS proposes to jointly procure eight categories of goods and services. STARS represents that its members purchase less than 20 percent of the U.S. market for each of the goods and services that it proposes to jointly procure. STARS members are not required to join in any joint purchasing activity. Further, STARS will prohibit its members from discussing downstream electricity prices. STARS will also prohibit discussion of the prices of upstream goods and services (other than to facilitate joint purchasing of the eight specified goods and services).

Response: The Department has no present intention to challenge the proposal. First, STARS’s proposed joint purchasing activities are unlikely to produce anticompetitive effects in the upstream markets for good and services. Because STARS represents less than 20 percent of the market for each of the goods and services that it will jointly procure, the joint purchasing activities fall within the “antitrust safety zone” provided by Section 4.2 of the Department of Justice’s and Federal Trade Commission’s *Antitrust Guidelines for Collaborations Among Competitors* (2000). Second, STARS’s proposed joint purchasing activities are unlikely to produce anticompetitive effects in any downstream electricity market. STARS members generally compete in different geographical markets. Even in the limited geographical markets where STARS members do compete, the joint venture is unlikely to affect electricity prices. Finally, STARS’s proposed joint purchasing activities may create efficiencies that produce a procompetitive effect.

## DIGEST OF BUSINESS REVIEWS

2013

13-1 [Columbia Fuel Services, Inc. and Lanmar Aviation, Inc.](#) 01/02/2013

Flight Support Services

Joint Venture

Facts: Columbia Fuel Services, Inc. (“CFS”) and Lanmar Aviation, Inc. (“LA”) are the only two companies that provide flight support services at the Groton-New London Airport (the “Airport”). These services include supplying fuel, renting hangars and office space, and providing baggage handling services. Flight operations have decreased at the Airport between 2006 and 2011, which has decreased the profitability of both companies. CFS and LA therefore propose forming a joint venture combining the companies’ flight support services at the Airport. The two companies represent that their combination will not result in supra-competitive prices because surrounding airports’ service companies will be able to compete for the joint venture’s business; aircraft operators can purchase fuel at other airports; and competitors could establish services at the Airport.

Response: The Department has no present intention to challenge the proposed joint venture. The proposed joint venture does not appear likely to produce anticompetitive effects, given the parties’ representations and the Department’s understanding of the competitive conditions for flight support services at the Airport.



## Hospital Services

Information Exchange  
and Best Practices

Facts: The association, consisting of 250 hospitals and continuing care facilities in New York and several nearby states, proposes a voluntary gainsharing program through which participating hospitals can measure physician performance against a benchmark—Best Practice Norms—and award bonuses to physicians for improvements in quality and efficiency. Each hospital would determine whether and to what extent to compensate the physicians. Best Practice Norms would be created based on publicly available, historical data.

Response: The Department has no present intention to challenge the proposal. First, the gainsharing program does not constitute a horizontal agreement among competing hospitals about compensation levels for physicians. No provision involves any agreement or coordination concerning the prices that participating hospitals or physicians charge for their services. Hospitals could independently and unilaterally choose whether to participate and determine a hospital-specific incentive payment cap. The two provisions regarding cap regulation and fair market value analysis are narrowly tailored to achieve the program's purpose and are not intended to coordinate or standardize hospital payments. Second, the program does not constitute an information exchange among hospitals that would facilitate anticompetitive coordination to limit physician compensation. The only shared information among the hospitals would be Best Practice Norms, which would be built on publicly available data and would be sufficiently aggregated to prevent identification of any competitively sensitive information. The proposed sharing of Best Practice Norms with participating hospitals therefore complies with the antitrust safety-zone requirements of Statement 6 of the Department of Justice's and Federal Trade Commission's *Statements of Antitrust Enforcement Policy in Health Care* (1996).

Financial Services

Patent Licensing

Facts: Intellectual Property Exchange International, Inc. (“IPXI”) is a proposed financial exchange. It intends to convert patent licenses into Unit License Rights (“ULRs”), which are meant to be standardized, transparent, and tradable instruments. A ULR is a nonexclusive sublicense of a patent that is extinguished upon a single use. Thus, each unit of a product that produces patents in a ULR would require the purchase of one ULR. To have a patent converted into a ULR, the patent holder will submit it for IPXI’s review. IPXI will perform market research to determine whether the patent is marketable as a ULR and, if so, what terms would be appropriate. If IPXI and the patent holder decide to go forward with the conversion, they will agree on the terms for selling the ULR on the primary market. IPXI may pool several patents into a single ULR, although all patent holders and IPXI will have to agree to the terms, and generally the patent holders will also have to agree to provide their individual patents as ULRs. IPXI’s staff will attempt to guarantee that IPXI does not offer ULRs that compete with each other.

Response: The Department declines to state its present enforcement intentions regarding IPXI’s proposal. Too many uncertainties exist to determine whether IPXI’s novel proposal will produce anticompetitive effects. The Department recognizes that IPXI’s proposal may lead to procompetitive effects such as increased licensing efficiency, improved price transparency, and beneficial pooling of ULRs. Further, IPXI proposes adequate safeguards against sharing competitively sensitive information. But it is not yet clear to the Department whether IPXI can successfully guarantee that it does not offer competing ULRs. Offering competing ULRs could raise competitive concerns because IPXI could act as a common agent to ensure that accommodating terms are set for all patent holders. Also, IPXI’s proposed patent pooling may raise anticompetitive concerns, in part because some of IPXI’s patent pools may include patents that are substitutes for one another.

## DIGEST OF BUSINESS REVIEWS

2014

14-1 [Flexi-Van Leasing, Inc. and Direct ChassisLink, Inc.](#) 09/23/2014  
Transportation Equipment Horizontal Agreement  
(Misc.)

Facts: Flexi-Van Leasing, Inc. (“FVLI”) and Direct ChassisLink, Inc. (“DCLI”) are chassis leasing companies that also manage chassis pools at the ports of Los Angeles and Long Beach, California (“LA/LB”). Chassis are used for the intermodal transportation of marine containers. Currently, six chassis pools operate at LA/LB. At present, a chassis pool’s customers must drop off their chassis at locations operated by the chassis pool’s owner. This procedure has increased congestion because the pool drop-off locations are often far from the chassis pool customers’ other drop-off and pick-up locations. FVLI and DCLI propose to enter into an agreement that will allow chassis pool customers to pick up and drop off chassis at FVLI and DCLI locations. FVLI and DCLI will continue to compete for customers for the pool interchange program, and a third-party service provider will ensure that the information exchanged between the two companies does not relate to customer pricing or other competitively sensitive terms. The two companies eventually intend to let other companies join this pool interchange program.

Response: The Department has no present intention to challenge the proposed agreement. Based on the parties’ representations and the available information about the competitive conditions related to the supply of chassis at LA/LB, the proposed agreement is unlikely to produce any anticompetitive effects.

## Cyber Security

## Information Exchange

Facts: CyberPoint International LLC (“CyberPoint”) is a privately-held company that provides cyber security services to commercial and government customers. It proposes to establish the True Security Through Anonymous Reporting (“TruSTAR”) cyber intelligence data-sharing platform, which will allow members to anonymously report attempted cyber attacks and provide information about the attackers and remediation solutions. These reports will then be distributed to TruSTAR members, who can ask follow-up questions about the attacks. TruSTAR members will be prohibited from sharing competitively sensitive information.

Response: The Department has no present intention to challenge CyberPoint’s proposal. Collaborations to share cyber-threat information are analyzed using the rule of reason. Here, the proposal may produce procompetitive effects by improving cyber security and reducing its costs. Three factors lead the Department to conclude that competitive harm is unlikely. First, the business purpose and nature of the agreement do not suggest harm to competition or consumers. Second, the type of information shared is highly technical data that is unlikely to lead to competitive coordination. Indeed, the Department of Justice and Federal Trade Commission approved of sharing this kind of information in their *Antitrust Policy Statement on Sharing of Cybersecurity Information* (2014). Third and finally, TruSTAR has adequate safeguards to ensure that competitors do not exchange competitively sensitive information.

## DIGEST OF BUSINESS REVIEWS

2015

15-1 [Institute of Electrical and Electronics Engineers, Incorporated](#)

02/02/2015

Electronics and Electrical Equipment

Standards Program

Facts: The Institute of Electrical and Electronics Engineers, Incorporated (“IEEE”) is a non-profit professional association. One of its operating units, the IEEE-Standards Association (“IEEE-SA”), develops standards for electrical systems. Working groups in the IEEE-SA invite participants to disclose patent claims that may be essential to the standards under development. If a participant makes such a disclosure, IEEE-SA requests (but does not require) that the participant submit a Letter of Assurance that discloses whether the participant commits to making a patent license available under reasonable and nondiscriminatory (RAND) terms to implementers of the standard. IEEE formed an ad hoc committee tasked with recommending ways to update the policy regarding RAND commitments. After receiving 680 comments from the public, the ad hoc committee produced a proposed policy, which the IEEE-SA Standards Board’s Patent Committee, the IEEE-SA Standards Board, and the IEEE-SA all approved, pending final approval by the IEEE. The proposed policy would state that a company that commits to providing RAND terms: (1) must license its patents for all compliant implementations; (2) cannot seek prohibitive orders against infringing implementers (but can seek money damages); and (3) may require a licensee to issue a grant back of licenses that are essential to the same standard. The proposed policy would also define “Reasonable Rate” to exclude any increase in the patent’s value based on the patented technology’s inclusion in the IEEE standard.

Response: The Department has no current intention to challenge the proposed policy. First, the ad hoc committee considered 680 public comments, and its proposal was approved by various levels of the IEEE organization. The Department therefore cannot conclude that the process for adopting the policy itself raises antitrust concerns. Second, the Department determines that the specific terms of the policy are unlikely to produce anticompetitive effects because, among other things: licensing rates will still be determined by bilateral negotiations; the policy’s definition of RAND terms is generally consistent with current trends in U.S. law; and patent holders can still participate in the IEEE-SA, even if they refuse to commit to providing RAND terms. Finally, many of the policy’s provisions will help define the RAND commitment, which may produce efficiencies by, for example, facilitating licensing negotiations, mitigating royalty stacking and hold up, and speeding adoption of IEEE standards.