UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff*, v. LEGENDS HOSPITALITY PARENT HOLDINGS, LLC, *Defendant*.	Case No. 1:24-cv-5927-JPC

COMPETITIVE IMPACT STATEMENT

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In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (the "APPA" or "Tunney Act"), the United States of America files this Competitive Impact Statement related to the proposed Final Judgment filed in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On November 3, 2023, defendant Legends Hospitality Parent Holdings, LLC ("Legends") announced it had agreed to acquire ASM Global, Inc. ("ASM") for $2.35 billion ("Acquisition"). The transaction exceeded the thresholds established by Section 7A of the Clayton Act, 15 U.S.C. § 18a, also commonly known as the Hart–Scott–Rodino Antitrust Improvements Act of 1976 ("Section 7A" or "HSR Act"), and therefore required Legends and ASM to notify the federal antitrust agencies of the Acquisition and observe a waiting period before Legends could take control of ASM's business. The HSR Act[1] required Legends and ASM to continue operating separately and independently during the post-notification waiting period while the Antitrust Division of the Department of Justice conducted a pre-consummation antitrust review of the Acquisition. The waiting period did not expire until May 29, 2024.[2]

Instead of preserving ASM as an independent business, however, the Complaint alleges that Legends engaged in "gun-jumping" by assuming unlawful control of ASM prior to the expiration of the HSR waiting period, in violation of 15 U.S.C. 18a, and that Legends was continually in violation of the HSR Act each day beginning at least on December 7, 2023, until the waiting period ended on May 29, 2024.

The United States and the defendant have reached a proposed settlement that eliminates the need for a trial in this case. To resolve the HSR Act violation, the proposed Final Judgment

[1] Other antitrust laws also can apply to pre-closing conduct of transaction parties.
[2] Legends and ASM agreed to not close the Acquisition during the pendency of the Department of Justice's investigation.

requires Legends to pay a civil penalty of $3.5 million. The proposed Final Judgment also enjoins Legends from engaging in certain behavior and requires Legends to implement behavioral changes to deter future HSR Act violations.

The United States and Legends have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will 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. Background

Legends is headquartered in New York, New York and primarily focuses on providing food and beverage services, feasibility studies, project development, and sales services to venues. ASM, in turn, primarily provides venue management services (i.e. a bundle of related services necessary to operate a venue[3]) to venues that outsource management responsibilities to a third party. While Legends and ASM's core offerings are different, certain lines of business overlap. Both Legends and ASM conduct business throughout the United States and globally.

Venue owners (or owners of planned venues) often issue bid solicitations when seeking vendors or managers to develop, provide services to, or operate the venue. Vendors (including ASM and Legends) respond to these solicitations, creating a competitive bidding process.

Depending on the nature of the services solicited, vendors submitting bids in response to an RFP or similar solicitation may respond either individually or as part of a team whose members offer complementary products necessary to fulfill the RFP. For example, architects,

[3] Core venue management services include concert and live event booking, finance and accounting, marketing, human resources, housekeeping, security, parking, event services, production services, and technology services

developers, venue managers and others may create a team to provide a comprehensive response to an RFP seeking both development and management services. Competition between individual firms or teams leads to increased revenue, lower costs, and higher quality services for venues.

B. <u>Legends' Alleged Unlawful Conduct</u>

In May 2023, Legends won the rights to provide venue management services to a city-owned arena in California. Legends' work would begin after the July 31, 2024, expiration of incumbent ASM's management lease. ASM also competed for this opportunity. Legends' winning bid contained a detailed transition plan outlining key milestone dates for tasks necessary to effectuate the management shift. Absent the Acquisition, Legends was planning to provide those services itself to the arena. Due to the Acquisition of ASM, however, Legends decided to have ASM provide those services instead. After submitting its HSR filing, but before the expiration of the HSR waiting period, Legends decided that ASM would continue to operate the California arena. Accordingly, on December 7, 2023, Legends and ASM signed an initial agreement whereby ASM would book third-party events for the arena. Further, on April 9, 2024, Legends decided that ASM would continue providing venue management services for the California arena instead of transitioning the arena to Legends.

The purpose and intent of Legends' pre-closing conduct in connection with the California arena also are informed by aspects of Legends' course of conduct in connection with ASM, including conduct before and after submitting the HSR filing.

For example, while Legends and ASM were in discussions around the Acquisition but before the HSR filing, Legends sought to discuss competitive bidding strategies with ASM. In August 2023, Legends learned that a city in North Carolina was planning to issue an RFP for management of an existing entertainment complex, including an arena and other venues. A

senior Legends executive emailed Legends' then-CEO noting, "I assume we would rather have ASM chase this?" The then-CEO informed another executive, "we will find out if ASM is bidding as don't want to both be bidding," and set a calendar reminder for himself to speak with a senior ASM executive about the North Carolina RFP.

In addition, in early 2023, Legends and ASM learned that a university was planning to develop a new arena. Both Legends and ASM initially took steps to form separate independent bids for the new arena. However, after Legends and ASM were in discussions around the Acquisition, their posture changed, such that in May 2023 they decided that they would instead try to bid together. While constructing their joint bid, Legends and ASM exchanged competitively sensitive information surrounding the arena development project.

Legends and ASM engaged in similar behavior in 2024 for a different proposed university arena. Prior to the Acquisition negotiations, Legends and ASM took independent actions to win the development of the new arena. This posture changed in 2024, when, during the HSR waiting period, Legends and ASM pursued plans to submit a joint bid and exchange related information.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The relief required by the proposed Final Judgment will appropriately address the violation alleged in the Complaint, penalize Legends, and deter others from violating the HSR Act. The proposed Final Judgment imposes a civil penalty for violation of the HSR Act and bars recurrence of the challenged conduct on penalty of contempt. It additionally requires Legends to appoint an antitrust compliance officer at its expense, to conduct compliance training, to certify compliance with the Final Judgment, to maintain a whistleblower protection policy, and to provide the United States inspection and interview rights to assess compliance with the Final Judgment.

A. Civil Penalty

Under Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), any person who fails to comply with the HSR Act is liable to the United States for a civil penalty of not more than $51,744 for each day that person is in violation of the act.[4] The Complaint alleges that defendant was in violation of the HSR Act beginning at least on December 7, 2023, until the expiration of the statutory waiting period on May 29, 2024. The United States accepted $3.5 million—an amount that is less than the maximum penalty permitted under the HSR Act—as an appropriate civil penalty for settlement purposes. A lower penalty is appropriate because of Legends' demonstrated willingness to take corrective internal action and because it is willing to resolve the matter by the proposed Final Judgment, thereby avoiding the risks and costs associated with a prolonged investigation and litigation.

B. Prohibited Conduct

Paragraphs V(A) & V(B) of the Final Judgment are designed to prevent future violations of the antitrust laws during a pending transaction. Under these provisions, Legends is prohibited

[4] Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 89 Fed. Reg. 1,445 (Jan. 10, 2024) (increasing maximum penalty to $51,744 per day).

from, during any negotiation and interim period[5] of a transaction[6] or in connection with an actual or potential collaboration agreement,[7] and except as otherwise permitted by the Final Judgment:

- Sharing competitively sensitive information with any competitor;
- Communicating with any competitor concerning any competitively sensitive information relating to a bid or bidding, including whether to bid or not to bid;
- Agreeing with any competitor to participate in any joint bid, collaborative bid, cooperative bid, or shared bid for any contract, opportunity, or arrangement or for a part of any contract, opportunity, or arrangement; or
- Agreeing with any competitor that Legends or any competitor will not bid for any contract, opportunity, or arrangement or for a part of any contract, opportunity, or arrangement.

Paragraphs V(A) & V(B) apply to communicating, agreeing, or sharing directly, indirectly, and through any third-party agent or consultant working at Legends' instruction, direction, or request.

Paragraph V(C) provides a limited exception permitting Legends to engage in the conduct prohibited by Paragraph V(A) in connection with a collaboration agreement, provided

[5] "Negotiation and Interim Period" means the period between the commencement of negotiations with respect to an offer to enter into a Transaction, and the date when negotiations are abandoned or when any resulting Transaction is consummated or abandoned. Final Judgement, ¶ II(J).

[6] "Transaction" means any Agreement to acquire any voting securities, assets, or non-corporate interests, form a joint venture, settle litigation, or license intellectual property with any Person where such Agreement is reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. Final Judgement, ¶II(L).

[7] "Collaboration Agreement" means any Agreement by and among Defendant and any Competitor to collaborate or team in offering or providing Venue Development Services or to act as the Venue Manager. "Collaboration Agreement" does not include contracting for services where Legends is acting as the agent of a client or acting pursuant to a contract with a client. Final Judgment, ¶II(D).

that Legends first secures advice of antitrust counsel, consults with the antitrust compliance officer (*see* §III(C), *infra*), and obtains advance written permission from its CEO or General Counsel. Although certain communications in connection with a collaboration agreement may be permissible under certain circumstances, this internal review and approval provision ensures that, in light of Defendant's conduct, it will not take future actions that may reduce competition without first conducting a thorough antitrust review. Finally, Paragraph V(C) explains that nothing in the proposed Final Judgment precludes the United States from investigating or, if appropriate, bringing action against Legends or anyone else for violating the antitrust laws.

C. **Required Conduct**

Under Paragraphs VI(A)–VI(D) of the proposed Final Judgment, Legends must appoint or employ, at its expense, an experienced antitrust lawyer to serve as Legends' antitrust compliance officer. Legends will identify its proposed antitrust compliance officer or any replacement officer to the United States, which will have sole discretion to approve or disapprove the designation. Paragraphs VI(E)–VI(H) outline the antitrust compliance officer's required duties, which include providing all covered persons[8] with copies of the Final Judgment (as entered) and of this Competitive Impact Statement; ensuring that all covered persons receive training on the requirements of the Final Judgment and certify that they have done so; filing written reports affirming Legends' compliance with the Final Judgment; and disclosing to the

[8] Paragraph II(H) of the Final Judgment defines covered persons as "(i) any employee or agent of Defendant whose principal job responsibilities include the sales, client outreach, or the negotiation of terms or development of Bids or proposals for services to Venues (other than employees or agents whose responsibilities are entirely clerical or limited to document preparation); (ii) all General Managers of any Venue managed by Defendant (iii) Defendant's Chief Executive Officer and each of his or her direct reports; (iv) members of Defendant's Board of Directors; and (v) designated Board observers."

United States any violations of the Final Judgment or of the antitrust laws and the steps Legends took to remedy the potential violation.

In addition, Paragraph VI(J) of the Final Judgment obligates Legends to maintain an antitrust whistleblower program through which employees may identify potential violations of the Final Judgment or of the antitrust laws without fear of reprisal.

To ensure compliance, Paragraph VI(I) requires both Legends' CEO and its General Counsel to annually certify Legends' compliance with the Final Judgment. Paragraph VII(A) grants authorized personnel from the United States the right to access Legends' files and interview its personnel upon request.

D. Enforcement of Final Judgment

The proposed Final Judgment also contains provisions designed to make enforcement of the Final Judgment as effective as possible. Paragraph X(A) provides that the United States retains and reserves all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court, and Section IX retains this Court's jurisdiction over any enforcement proceedings. Under the terms of Paragraph X(A), Legends has agreed that, in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Legends has waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Paragraph X(D) entitles the United States to file an enforcement action up to four years after the expiration of the Final Judgment (if, for example, the United States discovers a violation

after the Final Judgment's expiration). In addition, to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of a proposed Final Judgment, Paragraph X(C) obligates Legends to reimburse the United States for any attorneys' fees, experts' fees, or costs incurred in connection with any successful enforcement effort, including enforcement efforts resolved before litigation.

To further aid enforcement, Paragraph X(B) underscores that the proposed Final Judgment is intended to remedy the loss of competition the United States alleges was harmed by Legends' conduct. Legends agrees that it will abide by the proposed Final Judgment and that it may be held in contempt of the Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Finally, Section XI of the proposed Final Judgment provides that the Final Judgment will expire seven years from the date of its entry if Legends has paid the civil penalty in full, but also authorizes the United States to move to extend the Final Judgment's term if Legends is found by the Court to have violated the Final Judgment (or stipulates that it has done so).

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

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 neither impairs nor assists 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 Defendant.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Legends 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. *See* Stipulation and Proposed Order, ¶II(A). 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 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 60 days of the date of publication of this Competitive Impact Statement in the Federal Register, or within 60 days of the first 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 U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the *Federal Register* unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to:

Owen M. Kendler
Chief, Financial Services, Fintech & Banking Section
Antitrust Division
United States Department of Justice
450 Fifth St. NW, Suite 4000
Washington, DC 20530

Section IX of the proposed Final Judgment provides that the Court retains jurisdiction over this action, and that 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

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits involving the alleged HSR Act violation against Defendant. The United States is satisfied, however, that the relief required by the proposed Final Judgment is important and meaningful while also avoiding the time, expense, and uncertainty of a full trial on the merits.

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

Under the Clayton Act and APPA, proposed Final Judgments, or "consent decrees," in antitrust cases brought by the United States are subject to a 60-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); *see also United States v. Int'l Bus. Mach. Corp.*, 163 F.3d 737, 740 (2d Cir. 1998). 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); *see generally United States v. Keyspan*, 763 F. Supp. 2d 633, 637–38 (S.D.N.Y. 2011) (discussing Tunney Act standards). 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); *accord United States v. Alex. Brown & Sons, Inc.*, 963 F. Supp. 235, 238 (S.D.N.Y. 1997), *aff'd sub nom*. *United States v. Bleznak*, 153 F.3d 16 (2d Cir. 1998) (citing *Microsoft*, 56 F.3d at 1460); *Keyspan*, 763 F. Supp. 2d at 637 (same).

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, "'[t]he Court's function is not to determine whether the proposed [d]ecree results in the balance of rights and liabilities that is the one that will *best* serve society, but only to ensure that the resulting settlement is 'within the *reaches* of the public interest.''" *United States v. Morgan Stanley*, 881 F. Supp. 2d 563, 567 (S.D.N.Y. 2012) (citing *Alex. Brown & Sons*, 963 F. Supp. at 238) (internal quotations omitted) (emphasis in original). In making this determination, "'[t]he [c]ourt is not permitted to reject the proposed remedies merely because the court believes other remedies are preferable. [Rather], the relevant inquiry is whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlement are reasonable.'" *Morgan Stanley*, 881 F. Supp. 2d at 567 (citing *United States v. Abitibi-Consolidated Inc.*, 584 F. Supp. 2d 162, 165 (D.D.C. 2008)); *see also United States v. Apple, Inc.*, 889 F. Supp. 2d 623, 631 (S.D.N.Y. 2012); *Alex.*

Brown & Sons, 963 F. Supp. at 238.[9] The government's predictions about the efficacy of its remedies are entitled to deference. *Apple*, 889 F. Supp. 2d at 631 (citation omitted); *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. ArcherDaniels-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); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) ("In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.") (internal quotations omitted).

"[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co*., 552 F. Supp. 131, 151 (D.D.C. 1982); *Apple*, 889 F. Supp. 2d at 637 n.10; *see also United States v. US Airways Grp., Inc.*, 38 F. Supp. 3d 69, 74 (D.D.C. 2014) (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); *Morgan Stanley*, 881 F. Supp. 2d at 568 (approving the consent decree even though the court

[9] *See also United States v. Bechtel Corp*., 648 F.2d 660, 666 (9th Cir. 1981) ("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."); *see generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

may have imposed a greater remedy). To meet this standard, "it is necessary only that the submissions provide an ample 'factual foundation for the government's decisions such that its conclusions regarding the proposed settlement are reasonable.'" *Apple*, 889 F. Supp. 2d at 639 (citing *Keyspan*, 763 F. Supp. 2d at 637–38).

Moreover, a 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 the APPA does not authorize a court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also Morgan Stanley*, 881 F. Supp. 2d at 567 ("A court must limit its review to the issues in the complaint and give 'due respect to the [Government's] perception of . . . its case.'") (citing *Microsoft*, 56 F.3d at 1461); *United States v. InBev N.V./S.A.*, No. 08-1965, 2009 U.S. Dist. LEXIS 84787, at *20 (D.D.C. Aug. 11, 2009) ("[T]he '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," 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. Courts cannot look beyond the complaint in making the public interest determination unless the complaint underlying the decree is drafted so narrowly such that its entry would appear "'to make a mockery of judicial power.'" *Apple*, 889 F. Supp. 2d at 631 (citing *United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1, 14 (D.D.C. 2007)).

In its 2004 amendments to the APPA, 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 Apple*, 889 F. Supp. 2d at 633 (declining to hold evidentiary hearing and finding "[a] hearing would serve only to delay the proceedings unnecessarily."); *US Airways*, 38 F. Supp. 3d at 75 (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; *see also Apple*, 889 F. Supp. 2d at 632 ("[P]rosecutorial functions vested solely in the executive branch could be undermined by the improper use of the APPA as an antitrust oversight provision.") (citation omitted). A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *Apple*, 889 F. Supp. 2d at 633; *US Airways*, 38 F. Supp. 3d at 75.

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: August 9, 2024

Respectfully submitted,

/s/ *Collier T. Kelley*

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