UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAFRAN, S.A.,

SAFRAN USA INC.,

and

RTX CORPORATION,

Defendants.

COMPETITIVE IMPACT STATEMENT

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 July 20, 2023, Safran S.A. ("Safran") agreed to acquire certain assets of the Collins Aerospace business from RTX Corporation ("RTX") for approximately $1.8 billion. The United States filed a civil antitrust Complaint on June 17, 2025, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition for the development, manufacture, and sale of trimmable horizontal stabilizer actuators ("THSAs") for large aircraft in the worldwide market in violation

of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the United States filed a proposed Final Judgment and an Asset Preservation and Hold Separate Stipulation and Order ("Stipulation and Order"), which are designed to remedy the loss of competition alleged in the Complaint.

Under the proposed Final Judgment, which is explained more fully below, Defendant Safran is required to divest its North American actuation business, including the development, manufacture, and sale of THSAs; secondary flight control actuation products and nose-wheel steering gearboxes; and Safran's Canada-based electronic control units business, to Woodward, Inc. ("Woodward").

The Stipulation and Order requires Defendants to take certain steps to operate, preserve, and maintain the full economic viability, marketability, and competitiveness of the assets that must be divested pending entry of the Final Judgment by this Court. In addition, management, sales, and operations of the assets that must be divested must be held entirely separate, distinct and apart from Defendants' other operations. The purpose of these terms in the Stipulation and Order is to ensure that competition is maintained during the pendency of the required 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 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 EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

Safran S.A. is incorporated in France and has its headquarters in Paris, France. Safran produces a wide range of products for the aerospace industry and other industries, including

THSAs for large aircraft. Safran USA, Inc. is a US-based subsidiary of Safran headquartered in Alexandria, Virginia. In 2024, Safran had revenues of approximately €27 billion.

RTX is incorporated in Delaware and is headquartered in Arlington, Virginia. RTX is a major provider of aerospace and defense electronics systems. RTX produces, among other products, THSAs for large aircraft. In 2024, RTX had revenues of approximately $80 billion.

Pursuant to an asset purchase agreement dated July 20, 2023, Defendant Safran proposes to acquire certain assets from Defendant RTX's Collins Aerospace business. The transaction is valued at approximately $1.8 billion.

B. Prior Divestiture in UTC-Rockwell Collins

On October 1, 2018, the Antitrust Division entered a consent decree requiring United Technologies Corporation ("UTC") to divest two businesses critical to the safe operation of aircraft to resolve competitive concerns raised by UTC's acquisition of Rockwell Collins, Inc. ("Rockwell Collins"). One of the divestiture businesses identified in the decree was Rockwell Collins's THSA business. Because of the safety critical nature of THSAs, it was imperative that the divesture buyer have an established presence in the aerospace industry with well-established customer relationships. Ultimately, the Antitrust Division approved Safran as the divestiture buyer and, since that time, Safran has operated the divested business as a viable competitor in the market for THSAs.

In April of 2020, following UTC's acquisition of Rockwell Collins, UTC merged with Raytheon Company, forming the company now branded as RTX. The Complaint alleges that Safran's proposed acquisition of RTX would recombine the THSA assets that were divested to resolve the Division's concerns with UTC's acquisition of Rockwell Collins.

C. The Competitive Effects of the Transaction

The Complaint alleges that the transaction will result in anticompetitive effects in the market for the development, manufacture, and sale of THSAs for large aircraft.

1. Relevant Product Market

Actuators are responsible for the proper positions of an aircraft by manipulating the control surfaces on its wings and tail section. A THSA is a type of actuator and helps an aircraft maintain the proper altitude during flight by adjusting ("trimming") the angle of the horizontal stabilizer, the control surface of the aircraft's tail responsible for aircraft pitch. This control surface is critical to the safety and performance of the aircraft, as a loss of control could cause the aircraft to crash. The stabilizer encounters significant aerodynamic loads for extended periods of time, and the THSA must be capable of handling these loads. THSAs thus tend to be the largest and most technically demanding actuators on an aircraft.

THSAs vary in size, complexity, and cost based on the size and type of aircraft on which they are used. Because large aircraft encounter significantly higher aerodynamic loads than smaller aircraft, THSAs for large aircraft are considerably larger, more complex, and more expensive than those used on smaller aircraft. Large aircraft primarily include commercial aircraft that seat at least six passengers abreast (such as the Airbus A320 and A350 and the Boeing 737, 787, and 777x) and military transport aircraft, but exclude regional aircraft, business jets, and tactical military aircraft.

THSAs can also vary in the type of power source used to effect actuation. Actuation can be effected using an electric or hydraulic source of control. Typically, an aircraft uses only one type so that all actuation on the aircraft, including THSAs, is controlled by either electric or hydraulic means. At the design phase, large aircraft manufacturers can choose either type of

power source to control actuation. Once a plane is designed, manufacturers are unable to switch between electric or hydraulic actuation components, including THSAs, due in part to the certification required for these components.

THSAs for large aircraft do not have technical substitutes. Large aircraft manufacturers cannot switch to THSAs for smaller aircraft, or actuators for other aircraft control surfaces, because those products cannot adequately control the lift and manage the load generated by the horizontal stabilizer of a large aircraft. A small but significant increase in the price of THSAs for large aircraft would not cause aircraft manufacturers to substitute THSAs designed for smaller aircraft or actuators for other control surfaces in volumes sufficient to make such a price increase unprofitable. Accordingly, THSAs for large aircraft are a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

2. Relevant Geographic Market

The relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18 is worldwide. THSAs for large aircraft are marketed internationally and may be sourced from suppliers globally because transportation costs are a small proportion of the cost of the product and, thus, are not a major factor in supplier selection.

3. Competitive Effects

Safran and RTX are two of the leading suppliers in the worldwide market for the development, manufacture, and sale of THSAs for large aircraft. Safran and RTX have respectively won two of the most significant recent contract awards for THSAs for large aircraft: the Boeing 777X and the Airbus A350. Boeing and Airbus are the world's largest manufacturers of passenger aircraft, and these aircraft represent two of only three THSA awards by these manufacturers in this century. Other producers of THSAs tend to concentrate on THSAs for

smaller aircraft, such as business jets or regional jets, or to focus on products for other aircraft control surfaces.

Safran and RTX view each other as a significant competitive threat for the development, manufacture, and sale of THSAs worldwide for large aircraft. The two companies are among the few that have demonstrated expertise in designing and producing THSAs for large aircraft. Each firm considers the other company's offering when planning bids. Customers have benefitted from the competition between Safran and RTX for the development, manufacture, and sale of THSAs worldwide for large aircraft. Competition between two of the leading suppliers of a product results in more favorable contractual terms, more innovative products, and shorter delivery times. The combination of Safran and certain assets from RTX's Collins Aerospace business would eliminate this competition and its future benefits to customers. Post-acquisition, Safran likely would have the incentive and the ability to increase prices profitably and offer less favorable contractual terms.

Safran and RTX also invest significantly to remain leading suppliers for the development, manufacture, and sale of THSAs worldwide for large aircraft, and aircraft manufacturers expect them to remain leading suppliers of new products in the future. The combination of Safran and certain assets from RTX's Collins Aerospace business would likely eliminate this competition, depriving large aircraft customers of the benefit of future innovation and product development.

The proposed acquisition, therefore, likely would substantially lessen competition for the development, manufacture, and sale of THSAs worldwide for large aircraft in violation of Section 7 of the Clayton Act.

4. Difficulty of Entry

Sufficient, timely entry of additional competitors into the market for THSAs for large aircraft is unlikely to prevent the harm to competition that is likely to result if the proposed transaction is consummated.

Designing and developing a THSA for large aircraft is technically difficult. Even manufacturers of THSAs for smaller aircraft face significant technical hurdles in designing and developing THSAs for large aircraft. As aerodynamic loads are a major design consideration for THSAs, and such loads are tightly correlated with the size of the aircraft, THSAs for large aircraft present more demanding technical challenges than those for smaller aircraft.

Opportunities to enter are limited. Because certification of a THSA is expensive and time-consuming, once a THSA is certified for a particular aircraft type, it is rarely replaced in the aftermarket by a different THSA. Accordingly, competition between suppliers of THSAs generally only occurs when an aircraft manufacturer is designing a new aircraft or an upgraded version of an existing aircraft, which are infrequent occurrences because development costs for such aircraft can be tens of billions of dollars. As a result, several years usually pass between contract awards for THSAs for a new aircraft design.

Potential entrants into the production of THSAs for large aircraft face several additional obstacles. First, manufacturers of large aircraft are more likely to purchase THSAs from those firms already supplying THSAs for other large aircraft. The important connection between THSAs and aircraft safety drives aircraft manufacturers toward suppliers experienced with production of THSAs of the relevant type and size. While some companies may have demonstrated experience in THSAs for smaller aircraft, such experience is not considered by

customers to be as relevant as experience in THSAs for large aircraft. A new entrant would face significant costs and time to be considered a potential alternative to the existing suppliers.

Substantial time and significant financial investment would be required for a company to design and develop a THSA for large aircraft. Even companies that already make other types of THSAs would require years of effort and an investment of many millions of dollars to develop a product that is competitive with those offered by existing large aircraft THSA suppliers.

As a result of these barriers, entry into the market for THSAs for large aircraft would not be timely, likely, or sufficient to defeat the substantial lessening of competition that would likely result from Safran's acquisition of certain assets from RTX's Collins Aerospace business.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

Paragraph IV.A of the proposed Final Judgment requires Defendant Safran, within 90 days after the entry of the Stipulation and Order by the Court or within 90 days after regulatory approvals are received, to divest Safran's North American actuation business, explained in further detail below, including the development, manufacture, and sale of THSAs, secondary flight control actuation products, and nose-wheel steering gearboxes; and Safran's Canada-based electronic control units business to Woodward. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with the acquirer. Regulatory approvals, as defined in Paragraph II.J, include any approvals or clearances: (1) from the Committee on Foreign Investment in the United States ("CFIUS") or under antitrust or competition laws that are required for the Safran-RTX transaction to proceed; and (2) under antitrust or competition laws that are required for Woodward's acquisition to proceed.

Defendant Safran is required to divest the Divestiture Assets, which consist of all of its rights, titles, and interests in and to all property and assets related to the Divestiture Business.

The Divestiture Business, defined in Paragraphs II.E, includes: (1) Safran's North American actuation business, including the development, manufacture, and sale of THSAs, secondary flight control actuation products, and nose-wheel steering gearboxes; and (2) Safran Electronics & Defense, Canada Inc., Safran's Canada-based electronic control units business.

Paragraph II.F of the proposed Final Judgment identifies nine categories of Divestiture Assets, including: (1) real property interests at specified locations used in the Divestiture Business in Peterborough, Canada; (2) a transitional Safran brands license; (3) all other real property related to the Divestiture Business; (4) all personal property, including machines, manufacturing equipment, tools, inventory, and materials; (5) all contracts, contractual rights, and customer relationships and all other agreements, commitments, and understandings, including supply agreements; (6) all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations; (7) all records and data; (8) all intellectual property owned, licensed, or sublicensed, either as licensor or licensee; and (9) all other intangible property. These Divestiture Assets are broadly defined to ensure a complete divestiture of all assets needed for the Divested Businesses. Any exceptions to the divestiture obligations are specified in the proposed Final Judgment.

The Divestiture Assets do not include certain specified assets, as defined in Paragraph II.H as Excluded Assets, including: (1) the interests in specified facilities located in Mexicali, Mexico and Irvine, California; (2) any intellectual property associated with the brand names "Safran" and "SEDA"; and (3) the contracts to supply (i) Virgin Galactic with the mechanical portion of an electromechanical THSA actuator (on a build to print basis); (ii) the signal interface unit for user ("SIFU") remote data concentrator for Archer Aviation, Inc.; (iii) the French legacy THSA activity consisting of original equipment THSAs produced at Safran's facilities in

specified locations in France, for a limited number of specified aircraft; (iv) the maintenance, repair, and operation services and related spare parts for the Mitsubishi Heavy Industries (MHI) CRJ family; and (v) the contract to supply Bell with actuation products unrelated to THSA for helicopters.

The proposed Final Judgment contains provisions intended to facilitate the acquirer's efforts to hire certain employees. Specifically, Paragraph IV.H of the proposed Final Judgment requires Defendant Safran to identify all Relevant Personnel, including by providing the acquirer and the United States with organization charts and information relating to these employees and making them available for interviews. It also provides that Defendants must not interfere with any negotiations by the acquirer to hire these employees. In addition, for employees who elect employment with the acquirer, Defendant Safran must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, provide any pay pro rata, provide all compensation and benefits that those employees have fully or partially accrued, and provide all other benefits that the employees would generally be provided had those employees continued employment with Defendant Safran, including but not limited to any retention bonuses or payments. This paragraph further provides that Defendant Safran may not solicit to rehire any of those employees who were hired by the acquirer, unless an employee is terminated or laid off by the acquirer or the acquirer agrees in writing that Defendant Safran may solicit to hire that individual. The non-solicitation period runs for one year from the date of the divestiture.

Paragraph IV.B of the proposed Final Judgment requires Defendant Safran to transfer all contracts, agreements, and relationships to the acquirer and to make best efforts to assign, subcontract, or otherwise transfer contracts or agreements that require the consent of another

party before assignment, subcontracting, or other transfer. This includes the transfer of customer contracts, such as a contract with Airbus, S.E. for THSAs, and supplier contracts.

The proposed Final Judgment requires Defendant Safran to provide certain transition services to maintain the viability and competitiveness of the Divestiture Business during the transition to the acquirer. Paragraph IV.L of the proposed Final Judgment requires Defendant Safran, at the acquirer's option, to enter into a transition services contract(s) for back office, billing, provisioning, human resources, accounting, employee health and safety, and information technology services and support for a period of up to 24 months. The acquirer may terminate the transition services agreement, or any portion of it, without cost or penalty at any time upon commercially reasonable notice. The paragraph further requires Defendant Safran, at the acquirer's option and subject to the United States's approval, in its sole discretion, to enter into one or more extensions of this transition services agreement for a total of up to an additional 12 months and that any amendments to or modifications of any provisions of a transition services agreement are subject to approval by the United States in its sole discretion. Paragraph IV.L also provides that employees of Defendant Safran tasked with supporting this agreement must not share any competitively sensitive information of the acquirer with any other employee of Defendants, unless such sharing is for the sole purpose of providing transition services to the acquirer.

Paragraph IV.K of the proposed Final Judgment requires Defendant Safran, at the acquirer's option, to enter into a contract for operation of the portion of the Divestiture Assets located at specified locations in Mexicali, Mexico for a period of up to 24 months. The acquirer may terminate the operation contract, or any portion of it, without cost or penalty at any time upon commercially reasonable notice. Upon the acquirer's request, the United States, in its sole

discretion, may approve one or more extensions of the operation contract for up to an additional 12 months and that any amendments to or modifications of any provisions of a supply contract are subject to approval by the United States, in its sole discretion. Paragraph IV.K also provides that employees of Defendant Safran tasked with supporting this contract must not share any competitively sensitive information of the acquirer with any other employee of Defendants, unless such sharing is for the sole purpose of operation of the Divestiture Assets under this contract.

Paragraph IV.M of the proposed Final Judgment requires Defendants, at acquirer's option, to enter into a lease or assignment of a lease for a specified location in Irvine, California, for a period of up to 12 months. The acquirer may terminate the lease, or any portion of it, without cost or penalty at any time upon commercially reasonable notice. The paragraph further provides that Defendants, at the acquirer's option and subject to the approval of the United States, in its sole discretion, must enter into one or more extensions of this lease or assignment of a lease for a total of up to an additional 12 months and that any amendments to or modifications of any provisions of a lease are subject to approval by the United States, in its sole discretion.

Section VIII of the proposed Final Judgment provides that the United States may appoint a monitor who will have the power and authority to investigate and report on Defendants' compliance with the terms of the Final Judgment and the Stipulation and Order, including Paragraphs IV.H, IV.K., IV.L, IV.M. and Section X. The monitor will not have any responsibility or obligation for the operation of Defendants' businesses. The monitor will serve at Defendant Safran's expense, on such terms and conditions as the United States approves, and Defendants must assist the monitor in fulfilling his or her obligations. The monitor will provide periodic reports to the United States and will serve until 180 days after the expiration of the

transition services agreements, operation agreements, and lease, and the expiration of Defendants' obligations in Section X of the proposed Final Judgment to prevent Acquirer's competitively sensitive information from being shared or disclosed by or through the implements of the obligations required by the proposed Final Judgment.

Paragraph XIV.A of the proposed Final Judgment provides that, if at any time during the five (5) year period following entry of the Final Judgment, the United States determines at its sole discretion that the Final Judgment has failed to fully redress the violations alleged in the Complaint, then the United States may re-open the proceeding to seek additional relief, including divestiture of additional assets.

Paragraph XIV.B of the proposed Final Judgment 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. Under the terms of this paragraph, Defendants have 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 Defendants have 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 XIV.C of the proposed Final Judgment provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment is intended to remedy the loss of competition the United States alleges would otherwise be harmed by the transaction. Defendants agree that they will abide by the proposed Final Judgment and that they 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.

Paragraph XIV.D of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that a Defendant has violated the Final Judgment, the United States may apply to the Court for an extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XIV.D provides that, in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, the Defendant must reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with that effort to enforce this Final Judgment, including the investigation of the potential violation.

Paragraph XIV.E of the proposed Final Judgment states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XV of the proposed Final Judgment provides that the Final Judgment will expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court

and Defendants that the divestiture has been completed and continuation of the Final Judgment is no longer necessary or in the public interest.

The relief required by the proposed Final Judgment is designed to remedy the loss of competition alleged in the Complaint by establishing an independent and economically viable competitor in the market for THSAs for large aircraft. The assets referenced above must be divested in such a way as to satisfy the United States, in its sole discretion, that the assets can and are likely to be operated by the acquirer as a viable, ongoing business that can compete effectively in the relevant market.

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 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 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:

Soyoung Choe
Acting Chief, Defense, Industrials and Aerospace Section
Antitrust Division
United States Department of Justice
450 Fifth St. NW, Suite 8700
Washington, DC 20530
ATR.DIA-Information@usdoj.gov

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

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Safran's acquisition of certain assets of the Collins Aerospace business from RTX. Under the circumstances present here, however, the

United States concludes that entry of the proposed Final Judgment is in the public interest insofar as it avoids 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). 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); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a proposed Final 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 mechanisms to enforce the final judgment are clear and manageable").

As the U.S. 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 in the government's Complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not "make de novo determination of facts and issues." *United States v. W. Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead, "[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General." *W. Elec. Co.*, 993 F.2d at 1577 (quotation marks omitted). "The court should also bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is the one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest." *Microsoft*, 56 F.3d at 1460 (quotation marks omitted); *see also United States v. Deutsche Telekom AG*, No. 19-2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would "have enormous practical consequences for the government's ability to negotiate future settlements," contrary to congressional intent. *Microsoft*, 56 F.3d at 1456. "The Tunney Act was not intended to create a disincentive to the use of the consent decree." *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g.*, *Microsoft*, 56 F.3d at 1461 (recognizing courts should give "due respect to the Justice Department's . . . view of the nature of its 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 citations omitted)); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting "the deferential review to which the government's proposed remedy is accorded"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) ("A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case."). The ultimate question is whether "the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft*, 56 F.3d at 1461 (*quoting W. Elec. Co.*, 900 F.2d at 309).

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*, 38 F. Supp. 3d at 75 (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 ("[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.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Pub. L. 108-237 § 221, and added 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*, 38 F. Supp. 3d at 76 (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). This language explicitly wrote into the statute what Congress intended when it first 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). "A court can make its public interest determination based on the competitive impact statement and response to public comments alone." *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *Enova Corp.*, 107 F. Supp. 2d at 17).

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.

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Respectfully submitted,

FOR PLAINTIFF
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/s/

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