

Exhibit A-12



Leslie Wulff, Civil Chief,
San Francisco Office,
Antitrust Division,
Department of Justice,
450 Golden Gate Avenue, Room 10-0101,
Box 36046,
San Francisco, CA 94102
Delivered electronically to: ATR.Public-Comments-Tunney-Act-MB@usdoj.gov

September 8, 2025

RE: *United States v. Hewlett Packard Enterprise Co. and Juniper Networks, Inc.*, No. 5:25-cv-00951-PCP (N.D. Cal.): Public Comment

Dear Ms. Wulff,

I write this comment on behalf of Protect Democracy Project (Protect Democracy), a non-partisan, non-profit organization dedicated to preventing the decline of our democracy into more authoritarian forms of government. As part of its work, Protect Democracy advocates for [independent law enforcement](#), which is essential to a democracy rooted in the rule of law. Protect Democracy has previously [advocated](#) for transparency regarding the Department of Justice (DOJ) decision-making when news reports created a perception that litigation decisions may have been politically motivated, rather than made in the public interest. I write today to ask that DOJ provide the transparency needed to put to rest public speculation regarding the motives for the settlement proposed in the Hewlett-Packard Enterprises (HPE)/Juniper merger.

A [speech](#) by former Principal Deputy Assistant Attorney General Roger Alford on August 18, 2025 to the Tech Policy Institute Aspen Forum, and news reports including a [Capitol Forum](#) article on July 24, 2025, allege that the settlement proposed to the HPE/Juniper merger was motivated by lobbyists rather than the public interest. These reports allege the settlement was accepted by political leadership within the DOJ who were persuaded by those lobbyists to override objections not only from career staff at the Antitrust Division but also the Division's Senate-confirmed leader, Assistant Attorney General Gail Slater.

In the interests of allaying public concern, and to safeguard the trust that the public and the courts place in the impartiality of DOJ's litigation decisions, we ask that the DOJ directly respond to these allegations regarding the process of the settlement negotiations in their upcoming filing to the court, rather than dismissing these allegations as unrelated to the substance or terms of the settlement.

The Tunney Act was proposed in response to a scandal that called into question whether the DOJ had entered into a settlement with the International Telephone and Telegraph Corporation motivated not by the public interest, but by political interests, [including](#) a \$100,000 to \$400,000

donation to a political party's national convention. Congress created the procedures governing court approval of settlements, in Senator Tunney's [words](#), because "the public has a direct and vital interest in effective enforcement of the antitrust laws, particularly *in the process* by which antitrust cases are resolved" (emphasis added).

The DOJ may be tempted to dismiss these allegations about process as unrelated to the adequacy of the proposed settlement. However, we urge the government to consider that the Tunney Act provides transparency into the process of the settlement negotiation on the premise that process *itself* is indicative as to whether the settlement was, in fact, made in the public interest. As such, comments regarding the process are related to the determination the statute calls on the court to make regarding the proposed settlement, and are as worthy of response as comments regarding the terms of the proposed settlement.

One way the Tunney Act provides transparency into the process of the settlement negotiations is in the disclosure of communications. The statute requires the parties to submit "a description of any and all written or oral communications by or on behalf of such defendant, including any and all written or oral communications on behalf of such defendant by any officer, director, employee, or agent of such defendant, or other person, with any officer or employee of the United States concerning or relevant to such proposal." 15 U.S.C. § 16(g).

In order to ensure that this requirement under the Tunney Act has been met, Protect Democracy urges the DOJ to work with the parties to submit, as part of its upcoming filing with the court:

- A complete log of communications described by the statute, covering the relevant period, and disclosing information about the communications similar to the information required to be disclosed as part of a privilege log.
- Include communications between the counsel of record of the parties and the Attorney General, or other employees of the Department of Justice.¹
- Ensure that communications made by lobbyists working on behalf of the parties are included in the log.
- Disclose whether any communications made are unable to be logged because they were made on platforms or by means which do not retain copies of content, such as Signal chats or Discord servers.
- Identify any evidence or analysis disclosed during settlement negotiations related to national security, and make clear whether such national security-related evidence or analysis was available to the DOJ prior to the commencement of litigation of the HPE-Juniper merger.

Protect Democracy urges the government to make the above disclosures to the court as part of its response to comments, and ensure that the court has sufficient time to review the log of

¹ While some of these communications may not be implicated under the terms of the statute, communications between DOJ officials and parties' counsel may be essential to understanding the process of the settlement negotiation, as illustrated by the essential information gleaned from [text messages](#) between the parties and then-leader of the Antitrust Division during DOJ's consideration of the T-mobile/Sprint merger in 2019.



communications and request copies of any communications necessary to aid the court in any evidentiary hearing. In the interests of addressing the allegations and allaying concerns regarding the DOJ's process for negotiating the settlement in this case, Protect Democracy urges the government to make this log of communications public.

Should the Department and the parties decline to disclose the information requested, Protect Democracy respectfully requests that the DOJ provide their reason or reasons not to disclose this information as part of their response to comments submitted to the court.

Supreme Court Justice Louis Brandeis taught that "sunshine is the best disinfectant." In this case, sunshine on the process used to reach this settlement is needed to restore trust in the impartial administration of our nation's antitrust laws – an impartiality that is critical not just to our nation's markets and businesses, but also to our consumers and citizens.

Sincerely,

Cerin Lindgrensavage
Counsel
Protect Democracy Project