UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

COLUMBUS MCKINNON CORPORATION,

KKR NORTH AMERICA FUND XI L.P.,

and

KITO CROSBY LIMITED,

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 February 10, 2025, Columbus McKinnon Corporation ("CMCO") agreed to acquire all of the outstanding voting securities of Kito Crosby Limited ("Kito Crosby") for approximately $2.7 billion. The United States filed a civil antitrust Complaint on January 29, 2026, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition for electric chain hoists and overhead lifting chain in the United States 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 CMCO is required to divest its power chain hoist and chains businesses in the United States.

Under the terms of the Stipulation and Order, Defendants must take certain steps to operate, preserve, and maintain the full economic viability, marketability, and competitiveness of the assets that must be divested. 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

CMCO is incorporated in New York and headquartered in Charlotte, North Carolina. CMCO produces a wide range of material handling equipment and is a market leader in the United States for hoists, material handling digital power control systems, and precision conveyers. The company has a strong market position in certain chains, forged fittings, and linear actuator products. In 2024, CMCO had revenues of approximately $1 billion.

Kito Crosby Limited is a private limited company registered in the United Kingdom and headquartered in Arlington, Texas. Kito Crosby is a global leader in the lifting and securement hardware industry with key products including hoists, cranes, and lifting hardware. In 2024, Kito Crosby had revenues of approximately $1.1 billion. Kito Crosby is owned by KKR North America Fund XI L.P., a Cayman Islands exempted limited partnership with its principal place of business in New York, New York.

Pursuant to a Stock Purchase Agreement dated February 10, 2025, CMCO agreed to acquire all of the outstanding voting securities of Kito Crosby for approximately $2.7 billion.

B. The Competitive Effects of the Transaction

The Complaint alleges that the transaction will result in anticompetitive effects in the markets for the development, manufacture, distribution, and sale of electric chain hoists and overhead lifting chain in the United States.

1. Electric Chain Hoists

Electric chain hoists use a chain driven by an electric motor to lift, lower, and position heavy materials. Electric chain hoists are designed to be durable and can be used independently or integrated into a small overhead crane. Industries across the economy – including automotive, aerospace, energy, construction, and logistics – rely on electric chain hoists daily to increase efficiency and reduce strain on operators.

Electric chain hoists vary in capacity, voltages, chain length, and speed. Electric chain hoists are ideal for lifting lighter loads (generally less than three tons) and are easy for operators to use. Although electric chain hoists vary in price depending on their features, the majority of electric chain hoists sold in the United States are priced from approximately $2,000 to $6,000.

While there are other types of hoists that are designed to perform the same basic lifting, lowering, and positioning functions as electric chain hoists, none of the alternatives offer the same value proposition as electric chain hoists, and therefore are not close substitutes. These other types of hoists are intended for different applications and offer different benefits and drawbacks depending on the environment in which it will be used, how much weight will be lifted, and lift frequency. Accordingly, these other types of hoists are not effective substitutes for electric chain hoists.

2. Overhead Lifting Chain

Chains vary greatly in strength, durability, and reliability depending on how they are manufactured, the metals they are made from, and their size. To ensure safe and proper usage, the American Society of Testing & Materials ("ASTM") recommends certain specifications for chain used in different applications. The specifications for chain recommended for use in overhead lifting are defined by ASTM as "Grade 80" and "Grade 100." Overhead lifting chain is exclusively made from forged alloy steel while lower grade chain is made from carbon steel or stainless steel.

Chain manufacturers market chain as Grade 80 or Grade 100 and emboss the links that make up the chain with the grade for identification purposes. Chains that meet or exceed these specifications are collectively referred to as "overhead lifting chain." Since lower grades of chain are not recommended for overhead lifting by OSHA or ASME due to their inferior strength, there are effectively no substitutes for overhead lifting chain.

3. Competitive Effects

The transaction is likely to substantially lessen competition in the markets for the development, manufacture, distribution, and sale of electric chain hoists and overhead lifting

chain in the United States. CMCO and Kito Crosby are the two largest suppliers of electric chain hoists in the United States with a combined market share of over 70 percent. The market for electric chain hoists is already highly concentrated and, as evidenced by the parties' combined share, would be significantly more concentrated after the proposed acquisition. CMCO and Kito Crosby compete directly against one another to provide electric chain hoists to customers. CMCO and Kito Crosby offer more product features and local customer support than other market participants. Defendants have lowered prices and improved customer service as a result of competition from the other.

CMCO and Kito Crosby are also two of the three largest suppliers of overhead lifting chain in the United States and have a combined market share of more than 60 percent. The market for overhead lifting chain is already highly concentrated and would become significantly more concentrated after the proposed acquisition. CMCO and Kito Crosby compete head-to-head to supply overhead lifting chain to customers. This competition has resulted in lower prices, investments in new production capabilities, and better terms of sale.

After the acquisition of Kito Crosby, CMCO likely would have the incentive and ability to profitably increase prices for and reduce the quality of its electric chain hoists and overhead lifting chain. The proposed acquisition, therefore, likely would substantially lessen competition for the development, manufacture, distribution, and sale of electric chain hoists and overhead lifting chain in the United States in violation of Section 7 of the Clayton Act.

4. Difficulty of Entry

Entry or repositioning of new competitors into the market for the development, manufacture, distribution, and sale of electric chain hoists or overhead lifting chain is unlikely to

be sufficient or timely enough to prevent the loss of competition that will result from CMCO acquiring Kito Crosby.

Not only does entering each of the electric chain hoist or overhead lifting chain markets require significant time and investment to set up production facilities and test new products, brand reputation is also very important to competing successfully for customers in the lifting and rigging industries. Electric chain hoists and overhead lifting chain must operate reliably every time to avoid exposing workers to significant risk. Customers often rely on personal experience and brand recognition as a proxy for quality in selecting a supplier since it can be difficult for customers to evaluate the quality of a particular electric chain hoist or overhead lifting chain.

Potential entrants into the production of electric chain hoists and overhead lifting chain also struggle to compete with established suppliers due to the scale advantages that larger suppliers benefit from given their increased production volumes. The fact that new entrants have higher average costs than incumbents deters entry into the markets for the development, manufacture, distribution, and sale of electric chain hoists and overhead lifting chain.

As a result of these high barriers, entry into the markets for the development, manufacture, distribution, and sale of electric chain hoists and overhead lifting chain would not be timely, likely, or sufficient to defeat the substantial lessening of competition that would likely result from CMCO's acquisition of Kito Crosby.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The relief required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by establishing an independent and economically viable competitor in the markets for the development, manufacture, distribution, and sale of electric chain hoists and overhead lifting chain. Paragraph IV.A of the proposed Final Judgment requires Defendants,

within 45 days after the entry of the Stipulation and Order by the Court, to divest Defendant CMCO's Power Chain Hoist and chains businesses in the United States to Pacific Avenue Capital Partners or an alternative acquirer acceptable to the United States, in its sole discretion. The assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be operated by the acquirer as a viable, ongoing business that can compete effectively in the markets for the development, manufacture, distribution, and sale of electric chain hoists and overhead lifting chain. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with the acquirer.

Defendants are required to divest the Divestiture Assets, which consist of all Defendant CMCO's rights, titles, and interests in and to all property and assets related to the Divestiture Business. The Divestiture Business, defined in Paragraph II.F, includes the business of the development, manufacture, distribution, and sale of Power Chain Hoists and chains by CMCO in the United States. As defined in Paragraph II.L, Power Chain Hoists includes all motorized lifting devices, irrespective of the source of power, that lift, lower, and position heavy loads using a chain.

Paragraph II.G of the proposed Final Judgment identifies categories of Divestiture Assets, including (1) real property interests at specified locations used in the Divestiture Business in Damascus, Virginia; Lexington, Tennessee; Lititz, Pennsylvania; and Abingdon, Virginia; (2) a transitional Columbus McKinnon trademark license; (3) all other real property related to the Divestiture Business; (4) all personal property, including fixed assets, machinery and manufacturing equipment, tools, vehicles, inventory, materials, office equipment and furniture, computer hardware, and supplies (including tangible personal property located CMCO's manufacturing facility in Wadesboro, North Carolina); (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.G, including (1) the interests in CMCO's manufacturing facility in Wadesboro, North Carolina; or (2) any intellectual property associated with the brand names "Columbus McKinnon," "CMCO," or "CM" other than what is provided in the transitional Columbus McKinnon trademark license, as defined in Paragraph II.O.

The proposed Final Judgment contains provisions intended to facilitate the acquirer's efforts to hire certain employees. Specifically, Paragraph IV.I of the proposed Final Judgment requires Defendant CMCO to identify to the acquirer and the United States all Relevant Personnel, including by providing organization charts and information relating to these employees and to make 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, Defendants 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 CMCO, including but not limited to any

retention bonuses or payments. Paragraph IV.J provides that Defendants CMCO and Kito Crosby may not solicit to re-hire 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 Defendants may solicit to hire that individual. The non-solicitation period runs for 24 months from the date of the divestiture.

Paragraph IV.B of the proposed Final Judgment will facilitate the transfer to the acquirer of customers, suppliers, and other contractual relationships that are included within the Divestiture Assets. Defendant CMCO must transfer all contracts, agreements, and relationships to the acquirer and must make best efforts to assign or otherwise transfer contracts or agreements that require the consent of another party to assign or otherwise transfer.

Paragraph IV.M of the proposed Final Judgment requires Defendant CMCO, at the acquirer's option, to enter into a supply contract for hooks, motors, drives, gears, hardware, and components related to the Divestiture Assets sufficient to meet acquirer's needs for a period of up to 24 months. The acquirer may terminate the supply contract, or any portion of it, without cost or penalty at any time upon 30 calendar days' notice. Upon the acquirer's request, the United States, in its sole discretion, may approve one or more extensions of the supply contract for up to an additional 12 months. Any amendment to or modification of any provisions of a supply contract is subject to approval by the United States, in its sole discretion. This provision will help to ensure that the acquirer will not face disruption to its supply of hooks, motors, drives, gears, hardware, and components related to the Divestiture Assets during an important transitional period.

The proposed Final Judgment requires Defendant CMCO to provide certain transition services to maintain the viability and competitiveness of the Divestiture Assets during the

transition to the acquirer. Paragraph IV.N of the proposed Final Judgment requires Defendant CMCO, at the option of the acquirer, to enter into a transition services agreement for back office, human resources, accounting, employee health and safety, supply chain logistics, and information technology services and support for a period of up to 12 months. The acquirer may terminate the transition services agreement, or any portion of it, without cost or penalty at any time upon 30 calendar days' notice. The paragraph further provides that the United States, in its sole discretion, may approve one or more extensions of the transition services agreement for a total of up to an additional 90 calendar days. Any amendment to or modification of any transition services contract is subject to approval by the United States, in its sole discretion. Paragraph IV.N also provides that employees of Defendant CMCO tasked with supporting this agreement must not share any competitively sensitive information of the acquirer with any other employee of Defendants.

Paragraph IV.O of the proposed Final Judgment provides that Defendant CMCO must enter into a contract or contracts for the operation of the portion of the Divestiture Assets located at CMCO's facility in Wadesboro, North Carolina for a period of up to 12 months. At the option of the acquirer, the United States, in its sole discretion, may approve one or more extensions of the contract for up to an additional 12 months. Any amendment to or modification of any such contract or extension is subject to approval by the United States, in its sole discretion. The acquirer may terminate the contract, or any portion of it, without cost or penalty at any time upon 30 calendar days' notice. Paragraph IV.O also provides that employees of Defendant CMCO tasked with supporting this agreement must not share any competitively sensitive information of the acquirer with any employee of Defendants other than those also tasked with providing services supporting this agreement.

If Defendants do not accomplish the divestiture within the period prescribed in Paragraph IV.A of the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that Defendants must pay all costs and expenses of the trustee. The divestiture trustee's commission must be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After the divestiture trustee's appointment becomes effective, the trustee must provide monthly reports to the United States setting forth his or her efforts to accomplish the divestiture. If the divestiture has not been accomplished within 180 calendar days of the divestiture trustee's appointment, the United States may make recommendations to the Court, which will enter such orders as appropriate, in order to carry out the purpose of the Final Judgment, including by extending the trust or the term of the divestiture trustee's appointment.

The proposed Final Judgment also contains provisions designed to promote compliance with and make enforcement of the Final Judgment as effective as possible. Paragraph XIV.A of the proposed Final Judgment provides that, if at any time during the five-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 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 Paragraph XIV.B, 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 provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment is intended to restore the competition the United States alleged in the Complaint. 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 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 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 years from the date of its entry, except that after five 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.

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.Public-Comments-Tunney-Act-MB@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 Columbus McKinnon's acquisition of Kito Crosby. The United States is satisfied, however, that the relief required by the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for electric chain hoists and overhead lifting chain in the United States. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation but avoids the time, expense, and uncertainty of a full trial on the merits.

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.

Dated: January 29, 2026

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:

/s/ Gabriella Neizmik

GABRIELLA NEIZMIK (D.C. Bar # 1044309)
ANNA CROSS
MIRANDA ISAACS
U.S. Department of Justice
Antitrust Division
Defense, Industrials, and Aerospace Section
450 Fifth Street NW, Suite 8700
Washington, DC 20530
Tel.: 202-598-8774
Email: gabriella.neizmik@usdoj.gov