UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA, STATE OF MINNESOTA, STATE OF CALIFORNIA, STATE OF NORTH CAROLINA, STATE OF TENNESSEE, STATE OF TEXAS, and STATE OF UTAH, Plaintiffs, v. AGRI STATS, INC., Defendant.	No. 0:23-CV-03009-JRT-JFD

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 September 28, 2023, the United States filed a civil antitrust complaint against Defendant Agri Stats, Inc. On November 6, 2023, the States of California, Minnesota, North Carolina, and Tennessee joined the suit through an amended complaint, followed by Texas and Utah on November 15, 2023 through a second amended complaint (the "Complaint"; the United States and the six Plaintiff States are collectively referred to as

"Plaintiffs").[1] The Complaint alleges that Agri Stats violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by engaging in anticompetitive information sharing in three protein markets—broiler chicken,[2] pork, and turkey. For years, Agri Stats recruited the nation's largest meat processors to send vast amounts of competitively sensitive information to Agri Stats to standardize and distribute in detailed reports on pricing, margins, inventories, and operations. This conduct inflated prices and reduced output of broiler chicken, pork, and turkey meat in the United States.

On May 7, 2026, Plaintiffs filed a proposed Final Judgment and a Stipulation and Order (both of which were corrected on May 15, 2026), designed to remedy the loss of competition alleged in the Complaint. *See* ECF 742; 748. Under the proposed Final Judgment, which is explained more fully below, Agri Stats is: (1) prohibited from sharing any sales reports or non-public pricing information between and among competing protein processors, (2) prohibited from sharing most production, cost, and labor data at the facility level between and among competing meat processors, (3) prohibited from providing any information to competing protein processors that is on average less than 45 days old, (4) required to make the vast majority of its reports available to all interested purchasers on reasonable and non-discriminatory terms, and (5) required to create and implement an antitrust compliance program. Additionally, the proposed Final Judgment requires the appointment of a Monitor to oversee Agri Stats' compliance with the proposed Final

[1] As the amendments to the complaint did not materially change the original allegations, the operative complaint is referred to herein as the "Complaint."

[2] Broiler chickens are chickens raised for their meat.

Judgment and imposes substantial penalties should Agri Stats violate these or other provisions of the Final Judgment in the future.

Under the terms of the Stipulation and Order, Agri Stats must comply with the provisions of the proposed Final Judgment until it is entered by the Court or until the time for all appeals of any Court ruling declining entry of the proposed Final Judgment has expired. On May 18, 2026, the Court entered the Stipulation and Order. ECF 749.

The United States and Agri Stats 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.

II. DESCRIPTION OF EVENTS GIVING RISE TO THE ALLEGED VIOLATIONS

A. COMPETITIVE CONCERNS RAISED BY INFORMATION SHARING AMONG COMPETITORS

1. Increased Market Observability

The exchange of competitively sensitive information among competitors can reduce competition and raise the risk of collusion by increasing "market observability." Market observability refers to the extent to which firms can observe their competitors' strategic choices, like changes in price, output, or other terms of dealing with customers.[3] When information sharing reflects those strategic choices, either directly or indirectly, it increases market observability.

[3] *See* Merger Guidelines ¶ 2.3.B, United States Dep't of Justice & Fed. Trade Comm'n (Dec. 18, 2023) (discussing market observability).

Increased market observability through information sharing can reduce competition in multiple ways. *First*, even in the absence of collusion, market observability can reduce the intensity of competition between firms (*i.e.*, "softening competition"). *Second*, market observability can help sustain collusion, where there is an explicit or tacit understanding among competitors to suppress competition. Colluding competitors can use information sharing to determine if members of the conspiracy have deviated from the collusive agreement, enabling the conspirators to attempt to discipline the deviating members (*i.e.*, a "monitoring and punishment" system). *Third*, market observability can lay the foundation for future collusion by making a collusive agreement easier to implement and therefore more attractive.

Regarding the softening of competition, increased market observability through information sharing can reduce competition by helping firms predict how their competitors will react to competitive strategies. For example, when companies anticipate that their price cuts will be observed by their competitors—who may then cut prices in response—companies may refrain from cutting prices in the first place, factoring the mutual dependence of their businesses into their pricing strategies. Similarly, because output and costs are closely tied to pricing, information about companies' output, anticipated output, and costs can allow competitors to better predict how their rivals will price their goods. Additionally, in certain cases, information sharing may allow companies to identify efficient production practices implemented by their competitors. This can help less efficient firms become more efficient, but it can also reduce the incentives for firms to invest in innovation if competitors can quickly imitate the efficient firm and eliminate the competitive advantage gained by innovation.

Although information-sharing conduct should be assessed on a case-by-case basis, certain features of an information exchange tend to increase market observability and therefore pose greater likelihood of reducing competition, including the following:

Competitive sensitivity: Information that helps firms learn about competitors' strategic choices, including information related to prices, output, or costs, is particularly likely to increase market observability and reduce competition.

Granularity: Information that is disaggregated, particularly by company, customer, product, or geography, is generally more likely to increase market observability and reduce competition. However, even aggregated information (*e.g.*, averages), or information that is anonymized, may increase market observability and pose risks to competition. The competitive risk associated with granular information should be viewed as a spectrum and should be assessed on a case-specific basis.

Recency: Information that is recent provides greater market observability because it more likely reflects current market dynamics and allows firms to more effectively respond to their competitors' strategic choices. Like granularity, the competitive risk associated with recent information should be viewed as a spectrum and should be assessed on a case-by-case basis. To illustrate, information that is several months old may reflect current market dynamics when, for example, the information relates to contracts that are renewed only every six months or annually.

Reliability: The competitive risk of information sharing increases when the competitors trust the accuracy of the shared information. One way this can be accomplished is through an exchange that involves a trusted third party who audits and discloses the sources of the data.

2. Information Asymmetry

Information sharing can affect the negotiation process between buyers and sellers. When one side obtains information that the other side does not have, the side with more information benefits from that information asymmetry. For example, information that provides insight into a buyer's willingness to pay for a particular seller's product can be important bargaining information for sellers, and information concerning the seller's cost of producing that good can be important bargaining information for buyers. In both cases, the information allows the party to more accurately predict the limits of what the counterparty will accept.

This concept also applies in situations with multiple buyers or sellers. For example, when there are multiple sellers of a good, the amount the buyer is willing to pay to a particular seller is directly influenced by the pricing of other sellers. If a buyer negotiates with one seller and knows that other sellers charge significantly less, the buyer will be less likely to accept the first seller's price. Similarly, if a seller knows that competing sellers are offering the same or higher prices, it will be less likely to negotiate a lower price.

B. Agri Stats' Anticompetitive Conduct

As alleged in the Complaint, prior to the entry of the Stipulation and Order and filing of the proposed Final Judgment, Agri Stats' business model consisted of collecting, standardizing, and redistributing competitively sensitive information concerning prices, output, costs, and profit margins among competing meat processors in the broiler chicken, pork, and turkey industries. After auditing and standardizing the information it collected from processors, Agri Stats shared this information through written reports, an interactive online portal from which processors could download and query data, and personalized consulting services. Agri Stats presented much of this data on a facility-by-facility and company-by-company basis, typically ranking participating processors in order of performance. Agri Stats usually identified each company and facility participating in each report. Agri Stats typically shared information either weekly (where the information was between 6 and 13 days old) or monthly (where the information was between 30 and 60 days old).

During negotiations and when making strategic decisions, meat processors benefited from the highly granular pricing information in Agri Stats' Sales Reports. This pricing information was based on Agri Stats' unique and highly granular product categorization. Agri Stats would assign an Agri Stats product code to each processor's products based on various specifications, such as cut, weight, packaging, and many other variables. Each product code included the most similar products sold by competitors. For example, Agri Stats would categorize chicken sold in the grocery store by type of cut (*e.g.*, boneless chicken breast), weight, packaging, method of preservation, and other variables, and would compare all chicken breast products meeting those specifications produced by any participating chicken processor. Sometimes Agri Stats reported product categories with as few as two participating processors. Agri Stats' Sales Reports told a processor:

(1) how its price compared to the national average and top 25% price for that product; (2) how much more the processor could make if it charged the national average price; (3) how much more the processor could make if it charged the average price of a processor in the top 25% of pricing; and (4) how the processor ranked compared to the other processors selling that product (*e.g.*, fifth out of six). As a result, a processor selling below the national average and ranked toward the bottom of companies selling that product knew it could likely successfully implement price increases because a buyer would have few alternatives to purchasing from the processor. Agri Stats also provided consulting services to processors regarding its Sales Reports. The sales consulting sessions typically involved an Agri Stats account manager going through detailed sales information with the processor and pointing out products and/or customers the processor should consider for price increases.

On the other side of the negotiations, purchasers of meat, like grocery stores and restaurants, lacked comparable information identifying products for which they paid above the national average. Agri Stats refused to sell its information to meat purchasers, as well as farmers, workers, and other entities that negotiate with processors and could have used Agri Stats' information to negotiate more effectively. These non-meat-processor market participants were interested in purchasing Agri Stats information, but Agri Stats refused to sell its reports or other services to them. The information available to these market participants through other market sources (*e.g.*, United States Department of Agriculture reporting) was less granular than Agri Stats' Sales Reports and—for broiler chicken and turkey—reported voluntarily.

Thus, the information exchanged through Agri Stats' written reports and consulting services had many of the hallmarks of an anticompetitive information exchange. The information Agri Stats collected, compiled, and provided to processors was competitively sensitive, granular, recent, reliable, and only available to one side of the market.

Competitively sensitive: The information in Agri Stats' Sales Reports included information about competitors' prices and identified all participants in each report. The Sales Reports and other reports also included information related to output, costs (including compensation paid to workers), and profit margins. Processors could use the individualized output information to monitor companies' current output levels and make predictions about future output. Processors could use individualized cost information to detect output trends and inform pricing strategies.

Granular: The information exchanged through Agri Stats was highly granular. Information in the Sales Reports was presented at the near-SKU level, comparing pricing of processors' individual products.[4] Information in the other reports was presented at the facility or company level.

Recent: Agri Stats shared weekly reports, including weekly Sales Reports, featuring information from the previous week. Agri Stats also shared information in monthly reports that included information usually one month in arrears (*i.e.*, 30-60 days old).

[4] "SKU" refers to "Stock Keeping Unit" and is a unique code that processors use internally to identify each of their products.

Reliable: Agri Stats received information directly from processors' accounting systems and then audited that information. Agri Stats also typically required processors to submit information for all their facilities to receive Agri Stats' reports and services. These practices prevented processors from selectively withholding or manipulating the information sent to Agri Stats.

Asymmetric: Agri Stats refused to sell any of the information it exchanged to meat purchasers, workers, farmers, and others. This created an information asymmetry in favor of the meat processors in negotiations because there is no equivalent publicly available data (free or by purchase) that has the detail and reliability of Agri Stats.

C. The Competitive Effects of Agri Stats' Conduct

Agri Stats' conduct caused anticompetitive effects in the broiler chicken, turkey, and pork markets in the United States. *First*, meat processors used Agri Stats information to identify which products they could raise prices on, but they did not use Agri Stats information to lower prices. Similarly, processors used Agri Stats information to monitor each other's production and future production plans. Processors used this information to inform their own production and pricing decisions, leading to output below competitive levels in all three of the markets.

Processors most flagrantly used information in Agri Stats' Sales Reports to harm competition. The Sales Reports provided highly granular pricing information by comparing each processor's cuts of meat to similar cuts sold by the processor's closest competitors. The sales information informed processors which of their products were relatively low priced compared to their competitors and identified where the processor ranked in terms of pricing. When a processor ranked as one of the lowest-priced processors, it knew that if it raised its price, customers would be unlikely to resist because most competing processors charged higher prices. Processors used the sales information systematically to target products and customers for price increases in all three markets.

Second, econometric evidence performed by Plaintiffs' economic expert, Professor Marc Rysman, Ph.D., empirically confirmed that Agri Stats' conduct harmed competition in each of the three markets. In the broiler chicken market, Professor Rysman examined how processors used Agri Stats' Sales Reports by comparing (1) the likelihood of price increases on products Agri Stats indicated were relatively low priced with (2) the likelihood of price decreases on products Agri Stats indicated were relatively high priced. In a competitive market, economic theory predicts that relatively high prices would decrease at roughly the same rate as relatively low prices would increase, all other things being equal—a phenomenon known as "reversion to the mean." Professor Rysman's regression analysis showed that processors were nearly twice as likely to raise prices on products Agri Stats indicated were underpriced than they were to lower prices on products Agri Stats indicated were overpriced.[5] This empirical evidence confirmed documentary evidence that showed processors systematically using Agri Stats to target prices increases while not using Agri Stats to target price decreases.

---

[5] Professor Rysman analyzed the top ten and bottom ten products ranked by "Economic Impact" in Agri Stats' Sales Reports. He examined the likelihood of price changes over a one month and two month time horizon after receiving the Agri Stats Sales Reports.

In addition, Agri Stats suspended its reporting of information related to the markets for pork and turkey in response to private antitrust litigation. Professor Rysman therefore could measure Agri Stats' effects on prices when Agri Stats exited those markets. Professor Rysman found that after accounting for other factors that affect prices, pork prices fell up to 14.7% when pork processors stopped participating in Agri Stats, and turkey prices decreased by up to 13.6% when turkey processors stopped participating in Agri Stats. Agri Stats also previously introduced and subsequently ended a program related to reporting information on bacon. Professor Rysman's analysis similarly found that after Agri Stats began reporting information about bacon, bacon prices increased by over 20% and that after Agri Stats ended its bacon reporting, bacon prices fell approximately 8.6%.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The relief required by the proposed Final Judgment will remedy the harm to competition alleged in the Complaint. The terms described below are designed to ensure that Agri Stats ends its anticompetitive conduct and prevent Agri Stats from engaging in the same or similar conduct in the future.

A. Cessation of Sales Reports

Section IV of the proposed Final Judgment prohibits Agri Stats from offering Sales Reports or providing consulting advice based on pricing information. Agri Stats included in its Sales Reports detailed and granular price information and designed its Sales Reports to allow processors to use that detailed information to find opportunities to raise prices on their products. Processors used Agri Stats' Sales Reports systematically for decades to raise prices. Like the rest of Agri Stats' reporting, the Sales Reports were not offered to market participants other than processors, creating significant information asymmetries. Because of the history of Agri Stats' anticompetitive conduct, the United States and Plaintiff States required a full cessation, rather than modification, of Agri Stats' Sales Reports to remedy the significant anticompetitive effects flowing from Agri Stats' exchange of sales information.

While Agri Stats is prohibited from offering Sales Reports, Paragraph V.E of the proposed Final Judgment allows Agri Stats' subsidiary, Express Markets, Inc. ("EMI"), to continue offering its current price reporting in the same manner as it currently does. EMI's price reports differ from Agri Stats' Sales Reports in several ways: (1) historically, all market participants can (and many do) purchase EMI's information, avoiding the information asymmetry between buyers and sellers caused by Agri Stats' Sales Reports; (2) EMI presents its information to its customers at a significantly higher level of aggregation and does not provide facility or company-level information for competitors; and (3) EMI does not provide participant lists or otherwise indicate which processors' data it has included in the reporting.

Additionally, Paragraph V.E of the proposed Final Judgment imposes restrictions that ensure EMI cannot become a vehicle for reintroducing Agri Stats' Sales Reports, which the proposed Final Judgment expressly prohibits. *See* Paragraph V.E.6. In particular, the proposed Final Judgment requires EMI to continue making its price reporting publicly available for purchase by any interested party and prohibits EMI from identifying the processors who submit pricing data. Moreover, to the extent EMI seeks to add any new product categories to its price reports, Paragraph V.E.2 of the proposed Final Judgment requires EMI to provide notice and detailed information to the Monitor, the United States, and the Plaintiff States. Any new product category in EMI's price reporting must include at least five processors, and no individual processor can make up more than 50% of total sales of that category. In addition, any new product category must be requested by customers that are not meat processors. Under Paragraph V.E.2.a.ii of the proposed Final Judgment, the United States may object and prevent publication if the product category does not meet these requirements. Ultimately, the distinctions between EMI and Agri Stats reporting (and the restrictions imposed on those respective reports) ensure that the allowances for EMI will not diminish the efficacy of the relief secured by the proposed Final Judgment.

B. Prohibition on Granular Data

Under the proposed Final Judgment, Agri Stats is permitted to continue reporting non-sales information, but with significant restrictions to ensure that reporting cannot be used in ways that are anticompetitive. Previously, many Agri Stats reports contained granular information at the individual facility or company level, giving processors detailed visibility into their competitors' operations. Paragraph IV.B.4 of the proposed Final Judgment prohibits Agri Stats, with limited exceptions, from reporting production, cost, and labor data specific to the facility, complex, or company level, instead requiring Agri Stats to provide only aggregated industry averages or industry averages by quartile. In addition, Agri Stats can no longer report information about the number and identity of participants in a report, nor how the processor customer ranks on specific metrics by comparison to other participants. These prohibitions eliminate significant anticompetitive aspects of Agri Stats reporting.

C. Public Availability

Paragraph VI.C of the proposed Final Judgment ensures that the metrics remaining in Agri Stats reports will be made available for purchase on reasonable and non-discriminatory terms by interested purchasers, addressing the information asymmetry issues that were a core feature of Agri Stats' anticompetitive information exchanges. Paragraph VI.C.1 requires that Agri Stats must make monthly reports available for non-meat processors to sample before Agri Stats may charge yearly subscriptions to those non-meat processors. Paragraph VI.C.5 prohibits Agri Stats from requiring non-meat processors to contribute data or otherwise conditioning their purchase of Agri Stats reports on a requirement to purchase any other product or service. Paragraph VI.C.5 also requires Agri Stats to publicize in a conspicuous manner on its website that its reports are publicly available for purchase.

The proposed Final Judgment also ensures that Agri Stats cannot price discriminate against non-meat processors in a way that would *de facto* prevent public availability (and thus preserve information asymmetry). Paragraph VI.C.4 prohibits Agri Stats from requiring report buyers to agree to price or non-price terms that are meant to discourage or prevent non-meat processors from purchasing reports. Paragraph VI.C.3 prohibits Agri Stats from charging non-meat processors a higher price than the average price paid by small meat processors (who only have a single complex) on a report-by-report basis.

The only limited exceptions to the public availability requirements, as memorialized in Paragraph V.B, involve information for which evidence in the case did not indicate anticompetitive potential.

D. Data Confidentiality and Recency Restrictions

Paragraph VI.D of the proposed Final Judgment requires Agri Stats to adhere to certain restrictions, ensuring that it maintains the confidentiality of data. In particular, Paragraph VI.D.1 requires that for all statistics Agri Stats reports that reflect at least 50% of the sales for a protein segment, the statistic must contain data from at least three processors, with no processor representing more than 70% of the data reflected in the report. For Agri Stats reports that contain quartile averages, Paragraph VI.D.2 requires that Agri Stats ensure each quartile average is calculated from at least three complexes in that quartile.

Paragraph VI.E requires that every statistic in an Agri Stats report be composed of data that is at least (i) cumulatively 45 days old on average, and (ii) in the case of data that reflects production decisions, at least 90 days old from the time of that production decision. The phrase "cumulatively 45 days old on average" reflects that Agri Stats' reporting typically involves data from a date range occurring between approximately 30-60 days prior to publication in a report. Under Paragraph VI.E of the proposed Final Judgment, data for a given month will not be included in an Agri Stats Report until the first day of the second month after the given month (*e.g.*, February data will not be included in an Agri Stats Report until April 1). Accordingly, for a report sent on April 1 that contains data from

February, that data will vary from 59 days old to 32 days old, but will average to 45.5 days old.

These requirements, combined with public availability and the exclusion of facility-level data, address the concern that processors can use Agri Stats reports to effectively monitor output decisions by their competitors and either coordinate a reduction in output or make pricing decisions based on non-public information about competitor-specific or industry-wide output.

E. Monitor

Section VII of the proposed Final Judgment requires that Agri Stats be subject to an appointed Monitor selected by the United States. The Monitor will have the power and authority to investigate and report on Agri Stats' compliance with the terms of the Final Judgment and the Stipulation and Order, including Agri Stats' obligations with respect to cessation of Sales Reports, changes to its non-sales reports, data confidentiality, restrictions on recency of data, the requirement to make reports publicly available, and Agri Stats' antitrust compliance program.

The Monitor will serve at Agri Stats' expense and Agri Stats must assist the monitor in fulfilling his or her obligations. The Monitor will have the authority to take the steps necessary to accomplish his or her responsibilities and will provide periodic reports to the United States and the Plaintiff States describing Agri Stats' compliance with the terms of the Final Judgment. The Monitor will serve for seven years unless the United States determines that a shorter period is appropriate.

F. Compliance and Enforcement

The proposed Final Judgment also contains provisions designed to promote compliance with and make enforcement of the Final Judgment as effective as possible. Paragraph XII.A provides that the United States and Plaintiff States have the right to seek additional relief from the Court if the United States or the Plaintiff States determine that the monitorship has failed to secure Agri Stats' compliance with the terms of the Final Judgment or that Agri Stats has failed to use best efforts to cooperate with and assist the Monitor in his or her duties.

Paragraph XII.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 this paragraph, Agri Stats 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 Agri Stats 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 offenses that the Final Judgment addresses.

Paragraph XII.C 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 that Agri Stats has caused. Agri Stats 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.

Paragraph XII.D provides that if the Court finds in an enforcement proceeding that Agri Stats 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 XII.D provides that, in any successful effort by the United States to enforce the Final Judgment against Agri Stats, whether litigated or resolved before litigation, Agri Stats must reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with that effort to enforce the Final Judgment, including the investigation of the potential violation.

Paragraph XII.E states that the United States may file an action against Agri Stats 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 XIII of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry. However, after seven years from the date of its entry, the Final Judgment may be terminated upon motion to the Court and notice to Agri Stats provided by the United States, with the consent of all Plaintiffs, that 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 Agri Stats.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE FINAL JUDGMENT

The United States, Plaintiff States, and Agri Stats 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' response 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:

Kate Riggs
Chief, Anti-Monopoly and Collusion Enforcement Section
Antitrust Division
United States Department of Justice
450 Fifth Street NW
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 proceeding to trial on the merits against Agri Stats. The United States could have continued the litigation and, upon a finding of liability, sought injunctive relief against Agri Stats' anticompetitive conduct. The United States is satisfied, however, that the relief required by the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint. Thus, the proposed Final Judgment achieves all or substantially all the relief the United States would have obtained through litigation without 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. Associated Milk Producers, Inc.*, 534 F.2d 113, 117 (8th Cir. 1976) ("It is axiomatic that the Attorney General must retain considerable discretion in controlling government litigation and in determining what is in the public interest."); *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-cv-1965, 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (stating 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*, No. 08-cv-1965, 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-cv-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.*; *see also United States v. Mid-Am. Dairymen, Inc.*, No. 73-cv-681-W-1, 1977 WL 4352, at *9 (W.D. Mo. May 17, 1977) ("It was the intention of Congress in enacting [the] APPA to preserve consent decrees as a viable enforcement option in antitrust cases.").

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." (citation modified)); *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 the APPA 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*, No. 08-cv-1965, 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: May 21, 2026

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:

Mark H.M. Sosnowsky
Mark H.M. Sosnowsky
Acting Deputy Director of Civil Litigation
United States Department of Justice
Antitrust Division
450 Fifth St. NW, Suite 8000
Washington, DC 20530
Telephone: 202-412-7316
Email: mark.sosnowsky@usdoj.gov