UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA, STATE OF ARIZONA, STATE OF CALIFORNIA, STATE OF COLORADO, STATE OF CONNECTICUT, STATE OF FLORIDA, STATE OF HAWAII, STATE OF IOWA, STATE OF MARYLAND, STATE OF MINNESOTA, STATE OF NEW YORK, STATE OF NORTH CAROLINA, STATE OF OHIO, COMMONWEALTH OF PENNSYLVANIA, STATE OF TEXAS, STATE OF UTAH, STATE OF VERMONT, and STATE OF WISCONSIN, Plaintiffs, v. CAL-MAINE FOODS, INC., CENTRUM VALLEY HOLDINGS, LLC, VERSOVA HOLDINGS, LLC, VERSOVA MANAGEMENT COOPERATIVE, and HICKMAN'S EGG RANCH, INC., Defendants.	Civil Action No. 5:26-cv-04060

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 Judgments filed in this civil antitrust proceeding against Defendants Cal-Maine Foods, Inc. ("Cal-Maine"); Centrum Valley Holdings, LLC, Versova Holdings, LLC, and Versova Management Cooperative (collectively, "Versova"); and Hickman's Egg Ranch, Inc. ("Hickman's") (collectively, "Defendants").

I. NATURE AND PURPOSE OF THE PROCEEDING

On June 29, 2026, the United States, along with the States of Arizona, California, Colorado, Connecticut, Florida, Hawaii, Iowa, Maryland, Minnesota, New York, North Carolina, Ohio, Pennsylvania, Texas, Utah, Vermont, and Wisconsin ("Plaintiff States"), filed a civil antitrust Complaint alleging that Defendants restrained competition in the sale of shell eggs in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint alleges that Cal-Maine, Versova, and Hickman's violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by, among other things, coordinating to submit bids that were designed to artificially inflate the daily price quotations of Urner Barry Publications, Inc. ("Urner Barry"), a market reporting firm. The effect of Defendants' agreement has been to increase the prices retailers and consumers pay for eggs and to reduce competition among Defendants. The Complaint seeks to enjoin this anticompetitive conduct and stop it from recurring.

At the same time the Complaint was filed, the United States and Plaintiff States also filed proposed Final Judgments and Stipulations and Orders ("Stipulations and Orders"), which are designed to remedy the loss of competition alleged in the Complaint.

The proposed Final Judgments, which are explained more fully below, impose several requirements and restrictions on Defendants that Defendants have agreed to and that are designed to remedy the loss of competition alleged in the Complaint. First, the proposed Final Judgments impose restrictions on competitor communications regarding bidding strategies; the price, timing, and number of bids; and the information reported to any benchmark publication. Second, the proposed Final Judgments restrict Defendants from entering into any agreements with competitors regarding the price, number, or other terms of bids and transactions. Third, the proposed Final Judgments prohibit Defendants from communicating with competitors regarding bids that are intended to affect a benchmark or that are not based on legitimate business needs. Fourth, the proposed Final Judgments require Defendants to adopt and comply with a series of compliance measures for a term of five years.

Under the terms of the Stipulations and Orders, Defendants must abide by and comply with the provisions of the proposed Final Judgments until they are entered by the Court or until the time for all appeals of any Court ruling declining entry of the proposed Final Judgments has expired.

The United States, Plaintiff States, and Defendants have stipulated that the proposed Final Judgments may be entered after compliance with the APPA. Entry of the proposed Final Judgments will terminate this action, except that this Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgments and to punish violations thereof.

II. DESCRIPTION OF EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Shell Egg Industry

Eggs are produced by egg producers and sold to buyers including grocery stores, retailers, restaurants, and food-service distributors.[1] Several of the largest egg companies, including at least two Defendants, operated their egg business with a "net short" business model during the relevant period, meaning that they did not produce sufficient eggs to satisfy their existing customer demand. To meet the shortfall in their egg production, Defendants procure eggs from egg producers (or egg brokers) on an electronic exchange—a marketplace where buyers and sellers connect to trade eggs—or through direct purchases from egg producers (or egg brokers).

Egg producers, including Defendants, often sell eggs to retailers including grocery stores and restaurants under contracts for which the price of eggs is based on the daily price quotations published by the market reporting firm Urner Barry. Urner Barry's price quotations are based on,

[1] The egg industry often uses the phrase "shell eggs" to refer to whole eggs sold unbroken in their shells. Unless otherwise stated, the term "eggs" in this Competitive Impact Statement refers to "shell eggs."

among other things, trades, bids, and offers on an exchange in addition to self-reported trades not on an exchange. On exchanges, egg companies can submit either "bids" to purchase eggs or "offers" to sell eggs. Executed transactions are often referred to as "trades."

In determining its price quotations, Urner Barry considers whether trades, bids, and offers are at prices that are "premium" (prices that suggest Urner Barry's price quotations are too low), "discount" (prices that suggest that Urner Barry's current price quotations are too high), or "supportive" (prices that suggest that Urner Barry's current price quotations are approximately correct). Accordingly, egg companies' bids, offers, and trades for eggs on exchanges affect Urner Barry's price quotations.

B. The Agreement to Increase Egg Prices

Beginning in June 2022 and continuing through March 2025, Defendants conspired to artificially increase Urner Barry's daily price quotations, which increased the price of eggs sold to buyers including grocery stores, retailers, restaurants, and food-service distributors under contracts with prices pegged to Urner Barry's quotations.

Defendants agreed, among other things, to submit many bids, submit bids from multiple Defendants so that Urner Barry would perceive that a diverse set of market participants were bidding, submit many bids in the hours leading up to Urner Barry's egg price quotations, submit bids that were unlikely to lead to executed trades in order to increase Urner Barry's price quotations, and execute trades off of an electronic exchange at premium prices. Defendants also lobbied Urner Barry to increase its price quotations, including by citing their bids and trades at premium prices as justifications for Urner Barry to increase its price quotations. Defendants implemented these strategies to increase Urner Barry's price quotations, which in turn increased the price of eggs sold under contracts with prices pegged to those price quotations.

Defendants' coordinated conduct artificially inflated Urner Barry's price quotations. In addition, since many of Defendants' contracts with retailers base prices in part on Urner Barry's price quotations, Defendants' conduct also artificially increased the prices paid by retailers and, ultimately, consumers.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENTS

The relief required by the proposed Final Judgments will remedy the loss of competition alleged in the Complaint by restricting Defendants' ability to communicate with competitors regarding bids and prohibiting Defendants from entering any agreements with competitors on the price, number, or other terms of bids or transactions. The terms described below are designed to eliminate Defendants' anticompetitive conduct, prevent recurrence of the same or similar conduct, and establish robust antitrust compliance programs.[2]

A. Prohibitions Regarding Competitor Communications and Agreements

Section IV.A of the proposed Final Judgments prohibits Defendants from communicating or discussing with competitors certain information relating to bidding, including specific bidding strategies and the prices, timing, and number of bids. Section IV.A also prohibits Defendants from communicating with competitors about certain information that Defendants or competitors report to benchmark publications,[3] including Urner Barry.

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[2] There are minor differences among the three (3) proposed Final Judgments because each was negotiated with a different Defendant. For example, because Defendant Versova is organized as a cooperative, its Final Judgment's definition of "Member Commercial Associations" (which includes certain cooperatives) was tailored to account for this status. In addition, the proposed Final Judgment for Hickman's requires its reporting requirements under Paragraphs V.A.1 and VI.C.1 to be made by its Chief Financial Officer, rather than its general counsel, because Hickman's has represented that it does not employ a general counsel.

[3] "Benchmark publication" means any publication containing price quotations, benchmarks, indices, or market updates for eggs, including the daily quotations and reports published by Urner Barry, the USDA Agricultural Marketing Service Egg Market News Reports, and any successor publications.

Section IV.B prohibits Defendants from agreeing with their competitors regarding the number, pricing, or terms of bids or transactions submitted by Defendants or any competitor.

The proposed Final Judgments allow for four (4) narrow exceptions to the prohibition of Defendants communicating with competitors regarding specific bidding strategies and the prices, timing, and number of bids. First, Paragraph IV.A permits Defendants to communicate with competitors—and, if necessary, brokers acting as intermediaries—regarding the price, number, or terms of a specific transaction if that transaction is solely between the Defendant and the competitor (and, if applicable, the broker or brokers) to buy or sell eggs. Second, Paragraph IV.A permits Defendants to communicate with competitors (and, if necessary, a broker or brokers) regarding the price, number, or terms of an agreement to co-package eggs so long as the co-packaging agreement is solely between the Defendant and that competitor (and, if applicable, the broker or brokers). Third, Paragraph IV.A permits Defendants to make general statements in an earnings call or public filing regarding their past bids or bidding strategies, as long as those statements do not include current or forward-looking information about the prices, timing, or number of bids, or bidding strategies. Fourth, Paragraph IV.A permits each Defendant to communicate with any benchmark publication, such as Urner Barry, about their respective bids and transactions.

Additionally, the proposed Final Judgments include five exceptions applicable to both Paragraph IV.A's restrictions on communications with competitors and Paragraph IV.B's restrictions on agreements with competitors. First, Paragraph IV.C permits Defendants to communicate, discuss, negotiate, and agree with a competitor to buy and sell eggs if that purchase or sale is solely between the Defendant and that competitor. Second, Paragraph IV.C allows Defendants to agree with a person that is not a competitor to buy eggs from or sell eggs to that competitor, if those acquisitions or sales are based on legitimate business needs. Third, Paragraph IV.C permits each Defendant to communicate, discuss, negotiate, or agree with a cooperative or other commercial association of which it is a member regarding the bids and transactions of that commercial association so long as each Defendant does not communicate, discuss, negotiate, or agree with competitors that are members or owners of that commercial association regarding the current or future bids or transactions of Defendants or competitors. Fourth, Paragraph IV.C allows Defendants to communicate, discuss, negotiate, or agree with any person who purchases substantially more eggs than that person produces about bids or transactions by Defendants to acquire eggs for the benefit of that person. Fifth, Paragraph IV.C expressly notes that nothing in Section IV prohibits conduct other than as enumerated in Section IV.

Section IV includes restrictions on communications that Defendants can have with commercial associations, such as cooperatives, and the other members of those associations. These restrictions limit the ability of Defendants to coordinate to inflate benchmark publications through communications with cooperatives and other commercial associations and their members. As described in the Complaint, some of Defendants' coordination involved co-conspirator Cooperative A, a cooperative that Defendants, or farms they managed, were members of during most of the relevant time period.

B. Other Prohibited Conduct

Section V.B of the proposed Final Judgments prohibits Defendants from communicating with competitors or commercial associations regarding bids or transactions that are intended to affect benchmark publications or that are not based on legitimate business needs. Section V.C of the proposed Final Judgments further prohibits Defendants from encouraging, inducing, influencing, soliciting, advising, agreeing with, or assisting any competitor or commercial association to submit bids or execute transactions that are intended to affect benchmark publications or that are not based on legitimate business needs.

To ensure Defendants' compliance with the proposed Final Judgments, Section V.A requires each Defendant to provide the United States and the Plaintiff States a bi-annual (*i.e.*, twice a year) certification, made under penalty of perjury, that the Defendant did not communicate with any competitor or commercial association regarding bids or transactions that the Defendant knows were not based on legitimate business needs. Section V likewise requires each Defendant to provide the United States and the Plaintiff States bi-annual, written explanations, made under penalty of perjury, for each deleted bid (except for bids deleted because the Defendant acquired the necessary eggs through other transactions). The proposed Final Judgments require Defendants to continue to provide bi-annual certifications and written explanations for a period of five (5) years. These provisions enable the Department of Justice and the Plaintiff States to monitor Defendants' bids and transactions and prevent harm to competition.

C. Compliance Terms

Section VI of the proposed Final Judgments requires Defendants to submit a written antitrust compliance policy to the United States and the Plaintiff States and designate an antitrust compliance officer to conduct annual training, engage in compliance audits, and monitor meetings of commercial associations of which Defendants are members and which are reasonably anticipated to include discussion of the supply and demand or marketing of eggs.

Paragraph VI.C requires Defendants to submit an annual certification that they have established and maintained the antitrust compliance policy and annual training and that they complied with the requirements in Sections IV and V of the proposed Final Judgments. Paragraph VI.C further requires Defendants to submit a certification attesting that they have, among other things, taken reasonable steps to comply with Sections IV and V of the proposed Final Judgments, performed the bi-annual audits to ensure compliance with Sections IV and V, and that the antitrust compliance officer has attended or monitored through reports from outside antitrust counsel all commercial association meetings in which the supply and demand or marketing of eggs (including bidding) is reasonably anticipated to be discussed. Paragraph VI.D requires Defendants to notify the United States and the Plaintiff States if, during a defendant's commercial association meetings, any participant engages in conduct, including communications, prohibited by Sections IV and V. Paragraph VI.E requires each Defendant to submit to the United States and the Plaintiff States a detailed written description and documentation, among other things, of any commercial association that the Defendant joins prior to the expiration of the proposed Final Judgment. Finally, Paragraph VI.F requires each Defendant to provide a written copy of the Final Judgment to any commercial association of which it is or later becomes a member with a request that the commercial association share the copy of the Final Judgment with its members.

To facilitate monitoring compliance with the proposed Final Judgments, Section VII requires that Defendants must make available to the United States and the Plaintiff States, upon written request, access to books, records, data, and documents in their possession, custody, or control relating to any matters contained in the proposed Final Judgments. Defendants must also permit the United States and the Plaintiff States to interview, either informally or on the record, their officers, employees, or agents relating to any matters contained in the proposed Final Judgments. In addition, Defendants must, upon written request, prepare written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in the proposed Final Judgments.

D. Other Provisions

The proposed Final Judgments also contain provisions designed to promote compliance with and make enforcement of the Final Judgments as effective as possible.

Paragraph XI.A provides that the United States—and, in certain circumstances, Plaintiff States[4]—retains and reserves all rights to enforce the Final Judgments, 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 or a Plaintiff State regarding an alleged violation of any of the Final Judgments, the United States or Plaintiff State may establish a 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 Judgments with the standard of proof that applies to the underlying offense that the Final Judgments address.

Paragraph XI.B provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgments. This Paragraph provides that Defendants may be held in contempt for failing to comply with any provision of the proposed Final Judgments that is stated specifically and in reasonable detail, regardless of whether the provision is clear and unambiguous on its face, and that the proposed Final Judgments should not be construed against either party as the drafter.

Paragraph XI.C 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

[4] Each Plaintiff State retains enforcement authority with respect to actions by any Defendant that impact egg sales in the Plaintiff State.

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 XI.C provides that, in any successful effort by the United States or a Plaintiff State to enforce the Final Judgment against the Defendant, whether litigated or resolved before litigation, such Defendant must reimburse the United States or Plaintiff State 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 XI.D states that the United States may file an action against Defendants for violating the Final Judgments for up to four (4) years after the Final Judgments have expired. This provision is meant to address circumstances such as when evidence that a violation of a Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired 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. This provision, therefore, makes clear that, for four (4) years after the Final Judgments have expired, the United States may still challenge a violation that occurred during the term of the Final Judgments.

Finally, Section XII of the proposed Final Judgments provides that the Final Judgments will expire five (5) years from the date of their entry, except that after four (4) years from the date of their entry, the Final Judgments may be terminated upon motion by the United States to the Court and notice by the United States to Plaintiff States and Defendants that continuation of the Final Judgments are 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 Judgments 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 Judgments have no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENTS

The United States, Plaintiff States, and Defendants have stipulated that the proposed Final Judgments 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 each proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of each proposed Final Judgment within which any person may submit to the United States written comments regarding each 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 each 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:

Zachary Trotter
Acting Chief, Chicago Office

Antitrust Division
United States Department of Justice
209 South LaSalle Street, Suite 600
Chicago, IL 60604

The proposed Final Judgments provide 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 Judgments.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENTS

As an alternative to the proposed Final Judgments, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and brought the case to trial. The United States is satisfied, however, that the relief required by the proposed Final Judgments will remedy the anticompetitive effects alleged in the Complaint, preserving competition in the egg industry. Thus, the proposed Final Judgments achieve all or substantially all of the relief the United States would have obtained through litigation but avoid the time, expense, and uncertainty of a full trial on the merits.

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

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.*, *Id.* 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 Judgments.

Dated: August 4, 2026

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

STANLEY E. WOODWARD, JR.
Associate Attorney General

NICOLE A. SARRINE
Deputy Assistant Attorney General

JARED T. BOND
Acting Deputy Director of Civil Enforcement

MARK H.M. SOSNOWSKY
Acting Deputy Director of Litigation

/s/ Jeffrey Vernon
JEFFREY VERNON
Senior Litigation Counsel

NICHOLAS D. NIEMIEC
ANTHONY E. MANEIRO
Trial Attorneys

United States Department of Justice
Antitrust Division
450 Fifth Street N.W.,
Washington, DC 20530
(202) 367-6424
Jeffrey.Vernon@usdoj.gov