UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA

and

STATE OF TENNESSEE

Plaintiffs,

v.

CRH PLC,

APAC-TENNESSEE, INC.

and

STANDARD CONSTRUCTION GROUP, INC.,

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

Defendants CRH plc ("CRH"), CRH's United States subsidiary APAC-Tennessee, Inc. ("APAC"), and Standard Construction Group, Inc. ("Standard") entered into an agreement pursuant to which CRH and APAC would acquire Standard's sand and gravel, hot-mix asphalt, and paving and construction services business. The United States and the State of Tennessee filed a civil antitrust Complaint on August 7, 2026, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this proposed acquisition would be to substantially lessen competition in the manufacture and sale of Tennessee Department of Transportation ("TDOT")-approved hot-mix asphalt (hereinafter "TDOT-approved hot-mix asphalt") in the Shelby County, Tennessee area 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 and the State of Tennessee filed a proposed Final Judgment and an Asset Preservation 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, Defendants are required, among other things, to divest APAC's Tuggle Road facility and Standard's Millington facility, which are in Shelby County. 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. The purpose of these terms in the Stipulation and Order is to ensure that competition is maintained during the pendency of the required divestitures.

The United States, the State of Tennessee, and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would 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

Defendant CRH is an Irish corporation with headquarters in Dublin, Ireland. Through a network of subsidiaries in the United States, including Defendant APAC—a Delaware corporation with its principal place business in Atlanta, Georgia that serves western Tennessee and northern Mississippi—CRH produces and sells construction materials and mineral resources. In the United States, CRH is a leader in the supply of aggregate, asphalt, and ready-mix concrete, among numerous other products. In 2025, CRH had global sales of approximately $37.4 billion.

Defendant Standard is a Tennessee corporation headquartered in Cordova, Tennessee. Standard owns four hot-mix asphalt plants and six sand and gravel plants. In 2024, Standard had sales of approximately $81 million.

On October 7, 2024, APAC and Standard entered into a letter of intent pursuant to which CRH and APAC would acquire Standard's sand and gravel, hot mix asphalt, and paving and construction services business. The effect of the proposed transaction, as initially agreed to by Defendants, may be substantially to lessen competition as a result of APAC's acquisition of Standard's assets.

B. The Competitive Effects of Transaction

Hot-mix asphalt is a composite material used to surface roads, parking lots, and airport tarmacs, among other uses. Hot-mix asphalt consists of aggregate, which includes sand, gravel and crushed stone, combined with liquid asphalt and other materials. Hot-mix asphalt has unique performance characteristics compared to other building materials, such as ready-mix concrete. For example, hot-mix asphalt is the desired material used to build roadways because it has optimal surface durability and friction, resulting in low tire wear, high breaking efficiency, and low roadway noise.

1. Relevant Product Market

As alleged in the Complaint, other products generally cannot be used as economically to build and maintain roadways and therefore are not adequate substitutes for TDOT-approved hot-mix asphalt. Ready-mix concrete in particular is significantly more expensive for paving roadways than hot-mix asphalt and takes significantly longer to set, delaying use of the road. Only in limited circumstances can ready-mix concrete be used to build new roads. In addition, ready-mix concrete cannot be used for repairing asphalt roads.

TDOT and other customers purchase significant quantities of TDOT-approved hot-mix asphalt for road construction and maintenance projects within the State of Tennessee. To ensure that roads are built safely and can withstand heavy usage over time, TDOT implements stringent material standards, provides precise specifications for hot-mix asphalt on each project, and performs tests to ensure that it meets TDOT specifications. Using TDOT-approved hot-mix asphalt that does not meet TDOT specifications could compromise the safety of the road or cause the need for repairs sooner than would otherwise be required. Therefore, hot-mix asphalt that does not meet TDOT specifications cannot be used for TDOT projects.

A small but significant increase in the price of TDOT-approved hot-mix asphalt would not cause customers to substitute other materials in sufficient quantities, or to use hot-mix asphalt that does not meet its specifications, with sufficient frequency so as to make such a price increase unprofitable. Accordingly, the manufacture and sale of TDOT-approved hot-mix asphalt is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

2. Relevant Geographic Market

As alleged in the Complaint, the relevant geographic markets for TDOT-approved hot-mix asphalt are local due to the physical characteristics of the material and high costs of transportation. Suppliers of TDOT-approved hot-mix asphalt typically deliver asphalt to a job site, and the geographic area an asphalt plant can profitably serve is primarily determined by the location of its plant in relation to the job site and the relative location of competing suppliers. This is because hot-mix asphalt must be maintained at a certain temperature range before it is poured or else it cannot be applied to the paving surface. Additionally, hot-mix asphalt is heavy and, as a result, expensive to transport, meaning that transportation costs can considerably affect the area a supplier can profitably serve. Lastly, the area a supplier can profitably serve depends on the location of its plant relative to competing plants because a hot-mix asphalt supplier often can charge a lower and more competitive price than its competitor if its plant is closer to the customer's location than its competitor's plant.

A small but significant post-acquisition increase in the price of TDOT-approved hot-mix asphalt to job sites in Shelby County, Tennessee would not cause customers to procure TDOT-approved hot-mix asphalt from suppliers outside Shelby County in sufficient quantities so as to make such a price increase unprofitable. Accordingly, Shelby County, Tennessee constitutes a relevant geographic market for TDOT-approved hot-mix asphalt within the meaning of Section 7 of the Clayton Act.

3. Anticompetitive Effects

As alleged in the Complaint, APAC's acquisition of Standard would substantially lessen competition in the market for TDOT-approved hot-mix asphalt in Shelby County, Tennessee, which has historically been dominated by APAC and Standard. APAC's proposed acquisition of Standard would reduce the number of competitors operating TDOT-approved hot-mix asphalt plants in Shelby County, Tennessee from three to two and would give the combined firm more than 45 percent of the market for TDOT-approved hot-mix asphalt sold there. The market for TDOT-approved hot-mix asphalt is already highly concentrated and, as evidenced by the parties' combined market share, would be significantly more concentrated after the proposed acquisition.

The Complaint further alleges that the elimination of Standard as an independent competitor in the manufacture and sale of TDOT-approved hot-mix asphalt is likely to facilitate anticompetitive coordination among the remaining producers in bidding to customers in the relevant geographic market. Suppliers in this industry have access to information about competitors' output, capacity, and costs, since bid information submitted to TDOT is public. Given these market conditions, eliminating an important hot-mix asphalt supplier is likely to further increase the ability of the remaining competitors to successfully coordinate, reducing the benefits of competition to customers.

APAC's proposed acquisition of Standard is likely to substantially lessen head-to-head competition in the manufacture and sale of TDOT-approved hot-mix asphalt in Shelby County, Tennessee. In Shelby County, APAC and Standard are two of the leading suppliers of TDOT-approved hot-mix asphalt and two of only a small number of suppliers that can supply TDOT-approved hot-mix asphalt.

APAC and Standard compete directly against one another in Shelby County, Tennessee to provide TDOT-approved hot-mix asphalt to customers. Price competition between APAC and Standard in the manufacture and sale of TDOT-approved hot-mix asphalt has benefited customers. APAC and Standard also vie to win customers' business by offering quality products, reliable delivery, and superior customer support.

As alleged in the Complaint, APAC's proposed acquisition of Standard's hot-mix asphalt assets in Shelby County, Tennessee would eliminate the competition between them and its benefits to customers. The proposed acquisition would substantially increase the likelihood that APAC would unilaterally increase the price of TDOT-approved hot-mix asphalt.

4. Absence of Countervailing Factors

As alleged in the Complaint, due to significant time, financial investment, and need for brand reputation, entry or repositioning of new competitors into the manufacture and sale of TDOT-approved hot-mix asphalt is unlikely to be sufficient or timely enough to prevent the loss of competition that will result from APAC acquiring Standard. A new entrant into the hot-mix asphalt market would need to purchase appropriate land close to an aggregate quarry, build a plant, procure the necessary land-use and environmental permits, and obtain TDOT approval of each hot-mix asphalt mix made. These actions and other prerequisites to competing in the relevant market involve significant costs and often take considerable time to accomplish. These high barriers to entry would preclude timely or likely entry into the manufacture and sale of TDOT-approved hot-mix asphalt by new competitors that would sufficiently remedy the substantial lessening of competition that would likely result from APAC's acquisition of Standard.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The relief required by the proposed Final Judgment would sufficiently remedy the loss of competition alleged in the Complaint by establishing an independent and economically viable competitor in the market for the manufacture and sale of TDOT-approved hot-mix asphalt in Shelby County, Tennessee. Paragraph IV(A) of the proposed Final Judgment requires Defendants, within 30 days after the entry of the Stipulation and Order by the Court in this matter, to divest the divestiture assets described below to Dunn Investment Company ("Dunn") or an alternative acquirer acceptable to both the United States and the State of Tennessee. The assets must be divested in such a way as to satisfy the United States, in its sole discretion, after consultation with the State of Tennessee, that the assets can and will be operated by the acquirer as a viable, ongoing business that can compete effectively in the manufacture and sale of hot-mix asphalt, including TDOT-approved hot-mix asphalt, in Shelby County, Tennessee. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with the acquirer.

A. Divestiture Assets

The assets Defendants are required to divest to Dunn or an alternative acquirer pursuant to the proposed Final Judgment include: (1) Standard's hot-mix asphalt plant located at 7666 Raleigh Millington Road, Millington, TN 38053, along with other related assets, defined in the proposed Final Judgment as the "Millington Divestiture Assets," and (2) APAC's hot-mix asphalt plant located at 4765 Tuggle Road, Memphis, TN 38113, along with other related assets, defined in the proposed Final Judgment as the "Tuggle Road Divestiture Assets." These divestiture assets include, among other things, real and personal property, contracts, agreements, licenses, and certain records, data, and intellectual property. If the acquirer of the divestiture assets is not Dunn, then additional assets are required to be divested at the acquirer's option. including a leasehold interest in the property on which the Tuggle Road facility sits, additional records and data, intellectual property, and intangible assets related to the divested plants.

B. Other Provisions

The proposed Final Judgment contains provisions intended to facilitate the Acquirer's efforts to hire certain employees. In the Final Judgment, Dunn would be hiring the relevant personnel listed in Appendix A. In the event Dunn is not the acquirer, then an alternative Acquirer, at the option of the Acquirer, can hire all full-time, part-time, or contract employees of APAC or Standard, wherever located, whose job responsibilities relate in any way to the Divestiture Assets, at any time between October 7, 2024, and the Divestiture Date. Specifically, Paragraph IV(J) of the proposed Final Judgment requires Defendants to provide the acquirer and the United States with 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 Defendants, including but not limited to any retention bonuses or payments. Paragraph IV(J)(6) further provides that Defendants may not solicit to 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 and other contractual relationships that are included within the Divestiture Assets. Defendants must transfer all contracts, agreements, and relationships to the acquirer and must make best efforts to assign, subcontract, or otherwise transfer contracts or agreements that require the consent of another party before assignment, subcontracting, or other transfer.

During the term of the Final Judgment, Defendants are required by Section XI of the proposed Final Judgment to provide the United States and the State of Tennessee advance notice of any direct or indirect acquisition of any interest in any business engaged in the manufacture and sale of hot-mix asphalt in the State of Tennessee that would not otherwise be reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"). Notification pursuant to this Section is not required, however, if the entity whose assets or interest are being acquired generated less than $5 million in revenue from the manufacture and sale of hot-mix asphalt in the State of Tennessee in the most recent completed calendar year.

Pursuant to Paragraph XI(B), Defendants must notify the United States and the State of Tennessee of such acquisitions as it would for a required HSR Act filing, as specified in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations. The proposed Final Judgment further provides for waiting periods and opportunities for the United States to obtain additional information analogous to the provisions of the HSR Act before such acquisitions can be consummated. Requiring notification before acquisition of an entity involved in the manufacture and sale of hot-mix asphalt in the State of Tennessee will permit the United States and the State of Tennessee to assess the competitive effects of that acquisition before it is consummated and, if necessary, seek to enjoin the transaction. The proposed Final Judgment's notification requirement is important because the market for the manufacture and sale of hot-mix asphalt is already highly concentrated and there is a possibility that transactions may not be large enough to trigger the applicable thresholds under the HSR Act.

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 and the State of Tennessee setting forth his or her efforts to accomplish the divestiture. If the divestiture has not been accomplished within 180 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 XV(A) provides that if, at any time during the five-year period following entry of the Final Judgment, the United State or the State of Tennessee determines in its sole discretion that the Final Judgment has failed to fully redress the violations alleged in the Complaint, then the United States or the State of Tennessee may re-open this proceeding to seek additional relief, including the divestiture of additional assets. The Court may order such additional relief if it finds by a preponderance of the evidence that there is a reasonably probability that the proposed Final Judgment did not fully redress the violations alleged in the Complaint.

Paragraph XV(B) provides that the United States and the State of Tennessee retain and reserve all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States or the State of Tennessee regarding an alleged violation of the Final Judgment, the United States or the State of Tennessee 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 XV(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 and the State of Tennessee allege would otherwise be harmed by the transaction. Defendants agree that they will abide by the proposed Final Judgment and that they may be held in contempt of the Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XV(D) provides that if the Court finds in an enforcement proceeding that a Defendant has violated the Final Judgment, the United States or the State of Tennessee 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 XV(D) provides that, in any successful effort by the United States or the State of Tennessee to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, the Defendant must reimburse the United States and the State of Tennessee 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 XV(E) states that the United States or the State of Tennessee 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 or the State of Tennessee 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 or the State of Tennessee may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XVI 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 joint motion by the United States and the State of Tennessee to the Court and notice by the United States and the State of Tennessee to 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, the State of Tennessee, 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
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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 CRH's acquisition of Standard. The United States is satisfied, however, that the relief required by the proposed Final Judgment will substantially remedy the anticompetitive effects alleged in the Complaint, preserving competition for the manufacture and sale of TDOT-approved hot-mix asphalt in Shelby County. Thus, the proposed Final Judgment achieves 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: August 7, 2026

Respectfully Submitted,

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