UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KNORR-BREMSE AG,

and

WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION,

Defendants.

Case No. 1:18-cv-00747-CKK

Judge: Colleen Kollar-Kotelly

MOTION AND MEMORANDUM OF THE UNITED STATES IN SUPPORT OF ENTRY OF FINAL JUDGMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. §16(b)-(h) ("APPA" or "Tunney Act"), Plaintiff United States of America ("United States") moves for entry of the proposed Final Judgment filed in this civil antitrust proceeding on April 3, 2018, a copy of which is attached hereto as Exhibit A. The proposed Final Judgment may be entered at this time without further hearing if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement ("CIS") filed in this matter on April 3, 2018 (ECF Docket No. 3) explains why entry of the proposed Final Judgment would be in the public interest. The United States is filing simultaneously with this motion a Certificate of Compliance, attached hereto as Exhibit B, setting forth the steps taken by the parties to comply with all

applicable provisions of the APPA and certifying that the APPA's waiting period has expired.

I. BACKGROUND

On April 3, 2018, the United States filed a civil antitrust Complaint alleging that Defendants Knorr-Bremse AG ("Knorr") and Westinghouse Air Brake Technologies Corporation ("Wabtec") entered into unlawful agreements not to poach each other's employees in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Specifically, the Complaint alleges that Knorr and Wabtec entered into a series of agreements not to solicit, recruit, hire without prior approval, or otherwise compete for employees (collectively, "No-Poach Agreements"). In addition, the Complaint alleges that Knorr and Wabtec separately entered into No-Poach Agreements with Faiveley Transport North America, a U.S. subsidiary of Faiveley Transport S.A. ("Faiveley"), before Faiveley was acquired by Wabtec in November 2016. The No-Poach Agreements were not reasonably necessary to any separate, legitimate business transaction or collaboration between the companies. According to the Complaint, the Defendants' No-Poach Agreements unlawfully allocated employees between the companies and are per se unlawful restraints of trade that violate Section 1 of the Sherman Act, 15 U.S.C. § 1.

At the same time the Complaint was filed, the United States also filed a proposed Final Judgment; a Stipulation and Order ("Stipulation"); and a CIS that describes how the proposed Final Judgment is designed to remedy the anticompetitive effects of the Defendants' unlawful agreements. The Stipulation, which was signed by the Court on April 5, 2018, provides that the proposed Final Judgment may be entered by the Court after the completion of the procedures of the APPA. Entry of the proposed Final

Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. COMPLIANCE WITH THE APPA

The APPA requires a sixty-day period for the submission of written comments on a proposed Final Judgment. *See* 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed a CIS on April 3, 2018; published the proposed Final Judgment and CIS in the *Federal Register* on April 16, 2018 (*see* 83 Fed. Reg. 16,382-396); and ensured that a summary of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, were published in *The Washington Post* for seven days beginning on April 7, 2018 and ending on April 13, 2018. The sixty-day public comment period terminated on June 15, 2018 and the United States received no public comments.

Simultaneously with this Motion and Memorandum, the United States is filing a Certificate of Compliance that states all the requirements of the APPA have been satisfied. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.

III. STANDARD OF JUDICIAL REVIEW

Before entering the proposed Final Judgment, the APPA requires the Court to 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 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 its CIS, the United States explained the meaning and proper application of the public interest standard under the APPA and now incorporates those portions of the CIS by reference.

IV. ENTRY OF THE PROPOSED FINAL JUDGMENT IS IN THE PUBLIC INTEREST

As described above, the United States alleged in its Complaint that Knorr and Wabtec entered into a series of No-Poach Agreements that unlawfully allocated employees between the companies and eliminated competition for employees between Knorr and Wabtec. As explained in the CIS, the proposed Final Judgment is designed to eliminate the anticompetitive effects of these unlawful agreements by enjoining the Defendants from entering into, maintaining, or enforcing any No-Poach Agreements, subject to limited exceptions. The proposed Final Judgment also requires the Defendants to take specific compliance measures and to cooperate with the United States in any investigation or litigation examining whether or alleging that the Defendant entered into a No-Poach Agreement with any other person in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law, and no comments have

been submitted. There has been no showing that the proposed settlement constitutes an abuse of the United States' discretion or that it is not within the zone of settlements consistent with the public interest.

V. CONCLUSION

For the reasons set forth in this Motion and in the CIS, the Court should find that entry of the proposed Final Judgment is in the public interest and should enter the Final Judgment without further hearings. Accordingly, the United States respectfully requests that the Final Judgment, attached as Exhibit A, be entered as soon as possible.

Dated: July 2, 2018

Respectfully submitted,

/s

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