Kathleen S. O'Neill
Joseph Chandra Mazumdar
Brian E. Hanna
Robert A. Lepore
U.S. Department of Justice
Antitrust Division
450 Fifth Street, NW, Suite 8000
Washington, D.C. 20530
Tel: (202) 307-2931
Fax: (202) 307-2874
Email: kathleen.oneill@usdoj.gov
Email: chan.mazumdar@usdoj.gov
Email: brian.hanna2@usdoj.gov
Email: robert.lepore@usdoj.gov

Tai Milder
U.S. Department of Justice
Antitrust Division
450 Golden Avenue
Box 36046, room 10-0101
Tel: (415) 934-5300
Fax: (415) 934-5399
Email: tai.milder@usdoj.gov

Attorneys for Plaintiff United States of America

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. VA PARTNERS I, LLC, et al., Defendants.	Case No. 16-cv-01672 (WHA) **COMPETITIVE IMPACT STATEMENT**

The United States, pursuant to the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement to set forth the information necessary to enable the Court and the public to evaluate the proposed Final Judgment that would terminate this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THIS PROCEEDING

On April 4, 2016, the United States filed a Complaint against VA Partners I, LLC, ("VA Partners I"), ValueAct Capital Master Fund, L.P. ("Master Fund"), and ValueAct Co-Invest International, L.P. ("Co-Invest Fund") (collectively, "ValueAct" or "Defendants"), related to Master Fund's and Co-Invest Fund's acquisition of voting securities of Halliburton Co. ("Halliburton") and Baker Hughes Incorporated ("Baker Hughes") in 2014 and 2015.

The Complaint alleges that ValueAct violated Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"). The HSR Act states that "no person shall acquire, directly or indirectly, any voting securities of any person" exceeding certain thresholds until that person has filed pre-acquisition notification and report forms with the Department of Justice and the Federal Trade Commission (collectively, the "agencies") and the post-filing waiting period has expired. *Id.* A key purpose of the notification and waiting period is to protect consumers and competition from potentially anticompetitive transactions by providing the agencies an opportunity to conduct an antitrust review of proposed transactions before they are consummated.

This case arises because ValueAct, an investment manager that is well known for actively involving itself in the management of the companies in which it invests, made substantial purchases of stock in two direct competitors with the intent to participate in those companies' business decisions, without complying with the notification and waiting period requirements of the HSR Act. Through these purchases, ValueAct simultaneously became one of the largest shareholders of both Halliburton and Baker Hughes. ValueAct established these positions as Halliburton and Baker Hughes – the second and third largest providers of oilfield services in the world – were being investigated for agreeing to a merger that threatened to substantially lessen competition in over twenty product markets in the United States. After the United States

challenged that merger on April 6, 2016, Halliburton and Baker Hughes abandoned their anticompetitive plan to merge. ValueAct's failure to comply with the HSR Act prevented the agencies from reviewing ValueAct's acquisitions in advance, compromising the agencies' ability to protect competition and consumers.

The Complaint alleges that the Defendants could not rely on the HSR Act's limited exemption for acquisitions made "solely for the purpose of investment" (the "investment-only exemption"). 15 U.S.C. §18a(c)(9) exempts "acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer." Voting securities are held "solely for the purpose of investment" if the acquirer has "no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer." 16 C.F.R. § 801.1(i)(1). As explained in the Complaint, ValueAct did not qualify for the investment-only exemption because it intended to participate in the business decisions of both companies.

The Complaint seeks a ruling that the Defendants' acquisitions of voting securities of Halliburton and Baker Hughes, without filing and observing the mandatory waiting period, violated the HSR Act. The Complaint asks the Court to issue an appropriate injunction and order the Defendants to pay an appropriate civil penalty to the United States.

On July 12, 2016, the United States filed a Stipulation and proposed Final Judgment that eliminates the need for a trial in this case. The proposed Final Judgment is designed to prevent and restrain Defendants' HSR Act violations. Under the proposed Final Judgment, which is explained more fully below, Defendants must pay a civil penalty of $11 million. Further, Defendants are prohibited from engaging in future conduct of the sort alleged in the Complaint.

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States first withdraws its consent. Entry of the proposed Final Judgment would terminate this case, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATIONS OF THE ANTITRUST LAWS

A. The Defendants and the Acquisitions of Halliburton and Baker Hughes Voting Securities

Master Fund and Co-Invest Fund are offshore funds organized under the laws of the British Virgin Islands, with each having a principal place of business in San Francisco, California. VA Partners I is the general partner of the Defendant Funds. VA Partners I is a limited liability company organized under the laws of Delaware, with its principal place of business in San Francisco, California.

ValueAct is well known as an activist investor. ValueAct's website explains that it pursues a strategy of "active, constructive involvement" in the management of the companies in which it invests. The website further elaborates: "[t]he goal in each investment is to work constructively with management and/or the company's board to implement a strategy or strategies that maximize returns for all shareholders."

ValueAct entities have previously violated the HSR Act by acquiring voting securities without making the required notifications. In 2003, ValueAct Capital Partners, L.P. filed corrective notifications for three prior acquisitions of voting securities. ValueAct outlined steps it would take to ensure future compliance with the HSR Act. No enforcement action was taken at that time. Master Fund then failed to make required filings with respect to three acquisitions that it made in 2005. ValueAct Capital Partners, L.P. agreed to pay a $1.1 million civil penalty to settle an HSR Act enforcement action based on these violations.

B. The Defendants' Unlawful Conduct

The Complaint in this case alleges that ValueAct violated the HSR Act in connection with acquisitions of voting securities of Halliburton and Baker Hughes in 2014 and 2015. In making these acquisitions, ValueAct improperly relied on the limited investment-only exemption from HSR filing requirements despite the fact that ValueAct intended from the outset to play an "active role" at both Halliburton and Baker Hughes. ValueAct's failure to file the necessary notifications prevented the Department from timely reviewing ValueAct's stock acquisitions,

which risked harming competition given that they resulted in ValueAct's becoming one of the largest shareholders in two direct competitors that were pursuing an anticompetitive merger.

The Complaint alleges that ValueAct committed three distinct violations of the HSR Act. First, Defendant Master Fund acquired voting securities of Halliburton in excess of the HSR Act's thresholds without complying with the notification and waiting period requirements. Second, Defendant Co-Invest Fund acquired voting securities of Halliburton in excess of the HSR Act's thresholds without complying with the notification and waiting period requirements. Third, Defendant Master Fund acquired voting securities of Baker Hughes in excess of the HSR Act's thresholds without complying with the notification and waiting period requirements.

As described in more detail in the Complaint, ValueAct intended from the time it made these stock purchases to use its position as a major shareholder of both Halliburton and Baker Hughes to obtain access to management, to learn information about the companies and the merger in private conversations with senior executives, to influence those executives to improve the chances that the Halliburton-Baker Hughes merger would be completed, and ultimately influence other business decisions regardless of whether the merger was consummated. ValueAct executives met frequently with the top executives of the companies (both in person and by teleconference), and sent numerous e-mails to these the top executives on a variety of business issues. During these meetings, ValueAct identified specific business areas for improvement. ValueAct also made presentations to each company's senior executives, including presentations on post-merger integration. The totality of the evidence described in the Complaint makes clear that ValueAct could not claim the limited HSR exemption for passive investment.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment contains injunctive relief and requires payment of civil penalties, which are designed to prevent future violations of the HSR Act. The proposed Final Judgment sets forth prohibited conduct, and provides access and inspection procedures to enable the United States to determine and ensure compliance with the proposed Final Judgment.

A. Prohibited Conduct

Section IV of the proposed Final Judgment is designed to prevent future HSR violations

of the sort alleged in the Complaint. Under this provision, the Defendants may not rely on the HSR Act's investment-only exemption if they intend to take, or their investment strategy identifies circumstances in which they may take, the following actions: (1) proposing a merger, acquisition, or sale to which the issuer of the acquired voting securities is a party; (2) proposing to another person in which the Defendant has an ownership stake the potential terms for a merger, acquisition, or sale between the person and the issuer; (3) proposing new or modified terms for a merger or acquisition to which the issuer is a party; (4) proposing an alternative to a merger or acquisition to which the issuer is a party, either before consummation or upon abandonment; (5) proposing changes to the issuer's corporate structure that require shareholder approval; or (6) proposing changes to the issuer's strategies regarding pricing, production capacity, or production output of the issuer's products and services.

The HSR Act exempts acquisitions made "solely for the purpose of investment." 15 U.S.C. 18a(c)(9) (emphasis added). As explained in the regulations implementing the HSR Act, an acquirer must have "no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer" to qualify for the investment-only exemption. 16 C.F.R. § 801.1(i)(1) (emphasis added).

ValueAct did not have a passive intent when it acquired stock in Halliburton and Baker Hughes. The proposed merger of these competitors was central to ValueAct's investment strategy. As described in the Complaint, ValueAct intended from the outset to use its ownership stake in each firm to influence the firm's management, as necessary, to increase the probability of the merger being consummated or propose alternatives if it could not be completed. An investor who is considering influencing basic business decisions – such as merger and acquisition strategy, corporate restructuring, and other competitively significant business strategies (e.g., relating to price, production capacity, or production output) – is not passive. Therefore, ValueAct was not entitled to rely on the investment-only exemption.

The prohibited conduct provision of the proposed Final Judgment is aimed at deterring future HSR violations of the sort alleged in the Complaint, in particular, those that pose the greatest threat to competition. This provision does not represent a comprehensive list of all

conduct that would disqualify an acquirer of voting securities from relying on the investment-only exemption of the HSR Act. Other actions, including but not limited to those described in the Statement of Basis and Purpose accompanying the HSR Rules to implement the Act, may disqualify an acquirer from relying on the investment-only exemption. Premerger Notification: Reporting and Waiting Period Requirements, 43 Fed. Reg. 33,450, 34,465 (July 31, 1978) (identifying conduct that may be inconsistent with the investment-only exemption).

In light of ValueAct's conduct at issue in this case and its past violations, this injunction is an appropriate means to ensure that ValueAct is deterred from violating the HSR Act again. If ValueAct does violate any of the provisions of the proposed Final Judgment, the Court may impose additional sanctions for contempt, if appropriate.

B. Compliance

Section V of the proposed Final Judgment sets forth required compliance procedures. Section V requires the Defendants to designate a compliance officer, who is required to distribute a copy of the Final Judgment to each person who has responsibility for, or authority over, each Defendant's acquisitions of voting securities. The compliance officer is also required to obtain a certification form from each such person verifying that he or she has received a copy of the Final Judgment and understands his or her obligations.

To help ensure that the Defendants comply with the Final Judgment, Section VI grants duly authorized representatives of the United States Department of Justice ("DOJ") access, upon reasonable notice, to each Defendant's records and documents relating to matters contained in the Final Judgment. The Defendants must also make their personnel available for interviews or depositions regarding such matters. In addition, the Defendants must, upon written request from duly authorized representatives of the Assistant Attorney General in charge of the DOJ's Antitrust Division, submit written reports relating to matters contained in the Final Judgment.

C. Civil Penalties

The HSR Act currently provides a maximum civil penalty of $16,000 per day for each day a defendant is in violation of the Act. This maximum penalty will be adjusted to $40,000 per day as of August 1, 2016, pursuant to the Federal Civil Penalties Inflation Adjustment Act

Improvements Act of 2015, Pub. L. 114-74 § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 C.F.R. 1.98, 81 Fed. Reg. 42,476 (June 30, 2016). The proposed Final Judgment imposes an $11 million civil penalty for the Defendants' failure to comply with the notice and waiting requirements of the HSR Act.

The Department considered several factors in assessing what penalty would be appropriate in this case. First, the facts as described in the Complaint make clear that ValueAct intended to take an active role in the business decisions of both Halliburton and Baker Hughes, and ValueAct should have recognized its filing obligation. To the extent that ValueAct had any doubt about its obligations, it could have sought the advice of the Federal Trade Commission's Premerger Notification Office, but did not do so. Second, as discussed above, ValueAct has previously violated the HSR Act six times. Finally, although the HSR Act is a strict liability statute, the Department considers it an aggravating factor that the transactions at issue raised substantive competitive concerns. ValueAct became one of the largest shareholders of two direct competitors, and proceeded to actively and simultaneously participate in the management of each company. Moreover, ValueAct established these positions as Halliburton and Baker Hughes were being investigated for agreeing to a merger that threatened to substantially lessen competition in over twenty product markets in the United States, and planned to intervene to influence the probability that the merger would be completed or to determine the companies' courses if it was not. As a result, the violations prejudiced the Department's ability to enforce the antitrust laws.

Together, these factors call for a substantial penalty. However, the Department did adjust the penalty downward from the maximum because the Defendants are willing to resolve the matter by consent decree and avoid prolonged litigation. Despite the downward adjustment, the penalty in this case will be the largest penalty ever imposed for a violation of the HSR Act. Such a penalty appropriately reflects the gravity of the conduct at issue, and will deter ValueAct and other companies from violating the HSR Act.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

There is no private antitrust action for HSR Act violations; therefore, entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust action.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendant have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (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 sixty (60) days of the date of publication of this Competitive Impact Statement in the *Federal Register*, or the last 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 United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the *Federal Register*. Written comments should be submitted to:

Kathleen S. O'Neill
Chief, Transportation, Energy and Agriculture Section
Antitrust Division
United States Department of Justice
450 Fifth Street, NW, Suite 8000
Washington, DC 20530
Email: kathleen.oneill@usdoj.gov

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this 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 pursuing a full trial on the merits against the Defendants. The United States is satisfied, however, that the proposed relief is an appropriate remedy in this matter. Given the facts of this case, the United States is satisfied that the injunction coupled with the proposed civil penalty is sufficient to address the violations alleged in the Complaint and to deter violations by similarly situated entities in the future, 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

The APPA requires that remedies contained in proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (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); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1, 10-11 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. U.S. Airways Group, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent 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 mechanism to enforce the final judgment are clear and manageable").[1]

As the United States 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 set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the decree, a court may not "'engage in an unrestricted evaluation of what relief would best serve the public.'" *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest*." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent

[1] The 2004 amendments substituted "shall" for "may" when setting forth the relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983)); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft*, 56 F.3d at 1461)); *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

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[2] *Cf. BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

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 (stating that "the '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. As the United States District Court for the District of Columbia recently confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding 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). The language wrote into the statute what Congress intended when it 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). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by

precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.[3] 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.

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.

Date: July 12, 2016

Respectfully Submitted,

/s/ Kathleen S. O'Neill

Kathleen S. O'Neill
U.S. Department of Justice
Antitrust Division
450 5th St. NW, 8000
Washington, DC 20530
Tel: (202) 307-2931
Fax: (202) 307-2784
Email: kathleen.oneill@usdoj.gov

[3] *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.*, No. 73-CV-681-W-1, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93-298, at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").