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UNITED STATES OF AMERICA , *Plaintiff* v. , ZEN-NOH GRAIN CORP. and BUNGE NORTH AMERICA INC. *Defendants.*	, Civil Action No.:

PETITIVE IMP T T TEMENT

The United States of America under Section 2(b) of the Antitrust Procedures and Penalties Act 15 U.S.C. § 16(b)–(h) (the "APPA" or "Tunney Act") files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. N TU E ND PU P E THE P EEDING

On April 21 2020 Zen-Noh Grain Corp. ("ZGC") agreed to acquire 35 operating and 13 idled U.S. grain elevators from Bunge North America Inc. ("Bunge") for approximately $300 million ("the Transaction"). The United States filed a civil antitrust Complaint on June 1 2021 seeking to enjoin the proposed Transaction. The Complaint alleges that the likely effect of the Transaction would be to substantially lessen competition for purchases of corn and soybeans in nine geographic areas of the United States in violation of Section 7 of the Clayton Act 15 U.S.C. § 18. ,

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At the sa e t e the la nt was f led, the Un ted States f led a r sed F nal Judg ent and an Asset Preservat n and H ld Se arate St ulat n and Order (St ulat n”), wh ch are des gned t address the ant c et t ve effects f the Transact n. The r sed F nal Judg ent, ex la ned re fully bel w, requ res the Defendants t d vest certa n gra n elevat rs and related assets f Bunge r ZG aff l ate GB Enter r ses, Inc. (the D vest ture Assets”) t V ser n Gra n LL and V ser n Internat nal H ldc LL (V ser n”), r t an ther acqu rer r acqu rers acce table t the Un ted States, w th n 30 calendar days after entry f the St ulat n.

Under the ter s f the St ulat n, the Defendants w ll take certa n ste s t ensure that the D vest ture Assets re a n nde endent; that all f the D vest ture Assets re a n ec n cally v able, c et t ve, and saleable; that Defendants w ll reserve and a nta n the D vest ture Assets; and that the level f c et t n that ex sted between Defendants r r t the Transact n s a nta ned dur ng the endency f the requ red d vest ture.

The Un ted States and Defendants have st ulated that the r sed F nal Judg ent ay be entered after c l ance w th the APPA. Entry f the r sed F nal Judg ent w ll ter nate th s act n, exce t that the urt w ll reta n jur sd ct n t c nstrue, d fy, r enf rce the r v s ns f the F nal Judg ent and t un sh v lat ns there f.

II. DESCRIPTION OF EVENTS GIVING RISE TO THE ALLEGED VIOLATION

(A) The Defendants and the Proposed Transaction

Defendant ZG , headquartered n v ngt n, L u s ana, s a subs d ary f the Nat nal Federat n f Agr cultural erat ve Ass c at ns f Ja an. ZG wns and erates a state-f-the-art ex rt elevat r l cated n the M ss ss R ver near nvent, L u s ana, fr wh ch “ t trades and ex rts c rn, s ybeans, s rghu , wheat, and gra n by- r ducts. Ex rt elevat rs

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receive gr i rge vi b rge or r i th t h s bee purch sed from f rmers b i d e ev tors. Export e ev tors store the ggreg ted gr i u ti it c be o ded o to oce goi g ships. ZGC does ot ow i d gr i e ev tors d re ies upo its ffi i te CGB E terprises c. ("CGB") to supp the m jorit of the cor so be s d other gricu tur commodities ZGC exports u from Co ve t. Post- cquisitio ZGC i te ds to e se the e ev tors th t it proposes to cquire from Bu ge to CGB to oper te through CGB's who ow ed subsidi r Co so id ted Gr i d B rge Co.

CGB is 50-50 joi t ve ture betwee ZGC d tochu Corpor tio g ob tr di g comp . CGB oper tes more th 100 e ev tors i the U ited St tes m of which re oc ted o g the Mississippi Ohio Ark s s d i ois Rivers. CGB is the fifth- rgest gr i comp i the U ited St tes b stor ge c p cit . CGB's gr i merch disers re i d i co t ct with thous ds of f rmers ctive seeki g to purch se gr i from them. Curre t CGB se s pproxim te 60% of the gr i it purch ses to ZGC.

Defe d t Bu ge is the North Americ subsidi r of Bu ge Limited. Bu ge is rge gribusi ess d food i gredie t comp th t ow s d oper tes gr i e ev tors oi seed processi g p ts d edib e oi refi eries s we s gr i export termi s. Bu ge is the eighth- rgest gr i comp i the U ited St tes b stor ge c p cit . Post- cquisitio Bu ge wi co ti ue to purch se gr i i the U ited St tes vi its export e ev tor o the Mississippi River i Destreh Louisi d its export termi i Lo gview Washi gto (joi t ve ture with tochu Corpor tio). dditio to the export termi s Bu ge wi ret i ow ership i terests i eight gr i e ev tors i i ois d di .

The 35 oper ti g e ev tors ZGC proposes to cquire from Bu ge re oc ted i i e st tes – Ark s s ow i ois di Ke tuck Louisi Missouri Mississippi d

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Tennessee – p y ong the M ss ss pp R ve nd ts t but es, nd p edo n nt y h nd e co n nd soybe ns.

(B) R l vant Mark ts and th Comp titiv Eff cts of th Transaction e

A e c n consu e s benef t f o the p oduct v ty nd eff c ency of A e c n f e s, who nnu y p oduce f o e vo u e th n needed to eet do est c de nd. Co n nd soybe ns (co ect ve y efe ed to he e s "g n") e the p y c ops g own n the Un ted St tes. A e c n f e s p oduced 14.2 b on bushe s of co n nd 4.14 b on bushe s of soybe ns n 2020, nd ough y one-qu te of these g ns we e expo ted. In the Un ted St tes, g n y f ow f o the f d ect y to end use s ke eth no p nts nd feed s, o f e s y se the g n to ne by o ve g n e ev to s, whe e t s sto ed, gg eg ted, nd te t nspo ted by t n o b ge to o e d st nt do est c end use s o to po t e ev to s fo expo t.

Mo e th n 45% of the g n expo ted f o the Un ted St tes s sh pped out f o po t e ev to expo t te n s oc ted t the outh of the M ss ss pp R ve ne the Gu f of Mex co. The v st jo ty of th s g n s sou ced f o ve e ev to s oc ted ong the M ss ss pp nd ts t but es. These ve e ev to s, found s f no th s M nnesot , pu ch se g n f o su ound ng f s nd o d t onto b ges fo t nspo t to po t e ev to s. Ne y of the e ev to s ZGC seeks to cqu e f o Bunge e ve e ev to s oc ted on the M ss ss pp o ts t but es.

The ve hood of f e s depends on the b ty to se the co n nd soybe ns they g ow to pu ch se s who offe the the best p ce, net of t nspo t t on nd othe se ng costs th t f e s ncu . Eth no p nts nd feed nd c ush s pu ch se g n nd p ocess t nto us b e p oducts such s soy e o fue . R nd ve e ev to s so pu ch se g n nd sto e t unt t s so d nd t nspo ted to end use s, n e the do est c o expo t kets.

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For conv n nc o far r ay ll th r gra n to all r “country” l vator locat d n clo r prox ty to th far r than nd u r or ra l and r v r l vator . Such l vator rv a gra n coll ct on and buy ng po nt n rural co un t and ay prov d oth r rv c q lk gra n torag dry ng and cond t on ng rv c . Upon aggr gat ng uff c nt uant t of gra n or wh n ark t pr c ar o t attract v country l vator ult at ly r ll th gra n to nd u r or to th larg r ra l or r v r l vator that can tran port th gra n to nd u r or xport l vator .

Today ZGC and t aff l at CGB co p t aga n t Bung to purcha corn and oyb an fro far r . In part cular n n n g ograph c ar a a Bung r v r l vator and a n arby ZGC or CGB l vator r pr nt two of only a handful of gra n purcha ng alt rnat v for ar a far r . In tho n n g ograph c ar a ZGC and Bung curr ntly co p t aggr v ly to w n far r ’ bu n by off r ng b tt r pr c and or attract v a n t uch a fa t r gra n drop-off rv c and b tt r gra n grad ng. Fa t r drop-off rv c an far r can g t back to th r f ld or u ckly and ak b tt r u of th r truck and ploy ult at ly av ng t and on y. If on l vator grad ng gra n or har hly or ncon t ntly wh ch ay l ad to a low r pr c pa d th far r ha th opt on of ll ng to a co p t ng l vator wh ch ay grad d ff r ntly. Th Tran act on w ll l nat co p t t on b tw n ZGC and Bung n tho locat on . A r ult any U.S. far r ar l k ly to r c v low r pr c and poor r ual ty rv c wh n k ng to ll th r gra n.

1. Relevant Product Markets

ZGC (a nly through CGB) and Bung own gra n l vator pr ar ly locat d at ra l t r nal and along nav gabl r v r . Th y co p t w th oth r gra n purcha r nclud ng thanol proc or f d ll and cru h proc or to purcha corn and oyb an fro U.S.

farmers r ers a d c u try elevat rs. C r a d s y ea s are each disti ct pr ducts with ut reas a le su stitutes differi g fr m ther agricultural c mm dities a d e a ther i their physical characteristics mea s f pr ducti uses a d prici g. Because f the le gth f 7 gr wi g seas s a d the suita ility f c r a d s y ea s t certai climates a d regi s farmers f these cr ps w uld t switch t pr ducti f ther agricultural c mm dities i sufficie t um ers t re der u pr fita le a small ut sig ifica t decrease i price y a hyp thetical m ps ist f that cr p. The purchase f c r a d the purchase f s y ea s f r e d use r f r sale t the exp rt mar et each c stitute a releva t pr duct mar et a d li e f c mmerce u der Secti f the Clayt Act 15 U.S.C. § 18.

2. Relevant Geographic Markets

Farmers typically haul grai y truc t ear y elevat rs r e d users. Tra sp rtati c sts i crease sig ifica tly with every mile the farmers must tra sp rt the grai t reach a purchaser reduci g the farmers' pr fits. Tra sp rti g grai als c sumes farmers' time. F r these reas s a small cha ge i price w uld t li ely cause farmers t sig ifica tly expa d the dista ce they are willi g t drive t sell their grai . The dista ce a farmer is willi g t drive is determi ed i large part y the sec d-cl sest p te tial purchaser which is the est c mpetitive threat t the purchaser cl sest t the farmer.

Rail r river elevat rs a d ther grai purchasi g facilities such as grai crush pla ts a d etha l pla ts typically purchase grai fr m withi the facility's draw area. "Draw area" is a i dustry term that descri es the l cati s f farms fr m which the facility expects t acquire m st f its grai . Each elevat r r e d user has a u ique draw area due t characteristics such as surr u di g r ad c diti s cr p utput l cal t p graphy a d pr ximity f c mpeti g

purcha r h raw ar a of a grain purcha ing facility i t rmin by tran portation tim an co t an o i u ually v ry localiz

h raw ar a of on grain facility fr qu ntly will ov rlap with that of anoth r, r ulting in comp tition b tw n th faciliti to purcha grain from farm r Som farming ar a of th country may b locat uch that th y fall within th ov rlapping raw ar a of only a f w comp ting grain purcha ing faciliti In particular, in th following ar a wh r th D f n ant riv r l vator hav ov rlapping raw ar a , th r ar only a mall numb r of grain purcha r comp ting to purcha farm r corn an oyb an :

(a) T ’h ov rlapping raw ar a of l vator in th vicinity of McGr gor, Iowa;

(b) ’ T h ov rlapping raw ar a of l vator in th vicinity of Albany/Fulton, Illinoi ;

(c) T ’h ov rlapping raw ar a of l vator in th vicinity of Shawn town, Illinoi ;

( ) T h ov rlapping raw ar a of l vator in th vicinity of Caruth r vill , Mi ouri;

( ) T h ov rlapping raw ar a of l vator in th vicinity of Huffman, Arkan a ;

(f) T ’h ov rlapping raw ar a of l vator in th vicinity of O c ola, Arkan a ;

(g) ’ T h ov rlapping raw ar a of l vator in th vicinity of H l na, Arkan a ;

(h) T h ov rlapping raw ar a of l vator in th vicinity of Lak Provi nc , Loui iana; an

(i) h ov rlapping raw ar a of l vator in th vicinity of L tt worth, Loui iana

h g ographic ar a ati fy th hypoth tical monop oni t t t (a “monop oni t” i a buy r that control th purcha in a giv n mark t), th buy r- i count rpart to th hypoth tical monopoli t t t A hypoth tical monop oni t of th purcha of corn or oyb an in ach of th ar a woul impo at l a t a mall but ignificant an non-tran itory cr a in

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the pri e p i t rmers. Su h pri e e re se r these pr u ts w ul n t be e e te by rmers selling t pur h sers utsi e their l l re ue t the e sts tr nsp rt ti n. As rmers in these re s h ve lre y etermine the best use their rml n , pri e e re se - w ul ls n t be e e te by rmers' swit hing t gr wing ltern tive r ps. F rmers urrently gr wing rn r s ybe ns re unlikely nvert t pr u ti n ther gri ultur l mm ities in su i ient numbers t prevent sm ll but signi i nt e re se in pri e. N r ul re rmers thw rt p st tr ns ti n pri e e re se by selling inste t l l untry elev t rs. C untry elev t rs simply resell gr in t river n r il elev t rs r t ther en users; i De en nts l wer pri es p st tr ns ti n, untry elev t rs w ul be r e t l wer their wn pri e t rmers t m int in pr it bility. C nsequently, untry elev t rs nn t mitig te pri e e re se resulting r m the Tr ns ti n. There re, e h the verl pping r w re s b ve nstitute relev nt ge gr phi m rket within the me ning Se ti n 7 the Cl yt n A t, 15 U.S.C. § 18, r the purp ses n lyzing this tr ns ti n.

3. Competitive Effects

In the e h the nine relev nt ge gr phi m rkets, ZGC (n its ili te CGB) n Bunge re tw very sm ll number gr in pur h sers mpeting t buy rn n s ybe ns; in tw these m rkets, CGB n Bunge re the nly elev t rs v il ble t re rmers. F mers l te within these ge gr phi re s epen n this mpetiti n t bt in mpetitive pri e r their gr in. ZGC's quisiti n Bunge's elev t rs will subst nti lly lessen mpetiti n r the pur h se rn n s ybe ns in these m rkets, en bling it t unil ter lly epress pri es p i t rmers r their r ps.

Be use there re ew ltern tive gr in pur h sers within these ge gr phi re s, pur h ses gr in re highly n entr te , with the De en nts unting r m j rity

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corn and or o an purcha in a giv n ar. For xampl , in 2019, th D f ndant purcha d up ard of 95% of th total corn and o an output of farm r in P mi cot Count , Mi ouri; P mi cot Count fall ithin th dra ar a of Bung ' Caruth r vill , Mi ouri riv r l vator, and th dra ar a of CGB' Caruth r vill and Cotton ood, Mi ouri riv r l vator .

B liminating h ad-to-h ad comp tition t n ZGC (and it affiliat CGB) and Bung for grain purcha in th g ographic mark t , th Tran action ould r ult in lo r pric paid to farm r , lo r qualit of rvic off r d to farm r at th grain origination l vator , and r duc d choic of outl t for farm r to ll th ir grain. Th Tran action ould u tantiall l n comp tition and harm th man farm r lling th ir crop to riv r l vator along th Mi i ippi Riv r and it tri utari .

4. Entry

N ntr and xpan ion comp titor lik l ill not tim l and uffici nt in cop to pr v nt th lik l anticomp titiv ff ct of D f ndant ZGC' acqui ition of Bung ' l vator . Comp titor ar unlik l to con truct n l vator in th g ographic mark t cau of th high co t of con truction and th difficult of finding appropriat location to uild along th Mi i ippi or it tri utari . Ev n a uming uch a location could found and r gulator and p rmitting r quir m nt could fulfill d, con tructing a riv r l vator ould tak approximat l t o ar to compl t .

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

Th div titur r quir d th propo d Final Judgm nt ill r m d th lo of comp tition all g d in th Complaint ta li hing an ind p nd nt and conomicall via l comp titor for th purcha of corn and o an in c rtain g ographic mark t along th Mi i ippi and Ohio Riv r . Th propo d Final Judgm nt r quir th D f ndant to div t

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nine elev [1] in nine ge g phic m ke wi hin 30 d y f e he en y f he S ipul i n by he C u Vi e i n n he cqui e cqui e pp ved by he Uni ed S e In e ch f h e nine ge g phic m ke , Bunge elev c mpe e he d he d wi h ne m e ZGC CGB elev

The Dive i u e A e include he e l p pe y nd e l p pe y igh , fee imple in e e ; building , f cili ie , nd he uc u e , including bin , il , he g in ge f cili ie , nd d ck f cili ie ci ed wi h he nine g in elev The Dive i u e A e l enc mp ll exi ing g in inven ie he elev , nd ll c n c (including g in c n c), c n c u l igh , nd el i n hip , including cu me nd upplie el i n hip , nd ll he g eemen , c mmi men , nd unde nding , including, upply g eemen , e ming g eemen , nd le e , nd ll u nding ffe lici i n en e in imil ngemen h el e exclu ively he elev h will be dive ed

The Dive i u e A e mu be dive ed in uch w y i fy he Uni ed S e in i le di c e i n h he Dive i u e A e c n nd will be pe ed by he pu ch e vi ble, ng ing bu ine h c n c mpe e effec ively in he m ke f he pu ch e f c n nd he m ke f he pu ch e f ybe n Defend n mu ke ll e n ble ep nece y cc mpli h he dive i u e quickly nd mu c pe e wi h ny cqui e

If Defend n d n cc mpli h he dive i u e wi hin he pe i d p e c ibed in he p p ed Fin l Judgmen , he p p ed Fin l Judgmen p vide h he C u will pp in .

[1] In O ce l , A k n , Bunge h w elev l c i n , “Rive ide,” which he n me implie , bu he Mi i ippi, nd “L nd ide,” f me y c u h pl n l c ed bi inl nd f m he ive Bunge cu en ly pe e he w l c i n ne c mbined en i y, wi h L nd ide being u ed p im ily f ve fl w ge in upp f Rive ide; imil ly, he p p ed Fin l Judgmen nd S ipul i n view he w Bunge O ce l l c i n ne e f pu p e f emedying he likely h m f m he p p ed T n c i n

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divestit e t stee se e ted y the United States to exe te the divestit e. If a divestit e t stee is appointed, the p oposed Fina J dgment p ovides that Defendant GC wi pay a osts and expenses of the t stee. The divestit e t stee's ommission wi e st t ed so as to p ovide an in entive fo the t stee ased on the p i e o tained and the speed with whi h the divestit e is a omp ished. Afte the divestit e t stee's appointment e omes effe tive, the t stee wi p ovide pe iodi epo ts to the United States setting fo th his o he effo ts to a omp ish the divestit e. If the divestit e has not een a omp ished at the end of six months, the divestit e t stee and the United States wi make e ommendations to the Co t, whi h wi ente s h o de s as app op iate, in o de to a y o t the p pose of the t st, in ding y extending the t st o the te m of the divestit e t stee's appointment.

Unde Pa ag aph IV.I. of the p oposed Fina J dgment, Defendants m st oope ate with and assist the a q i e in identifying and, at the option of a q i e , hi ing (1) a f time, pa t time, o ont a t emp oyees emp oyed at the divested e evato s at any time etween A g st 21, 2020, and the divestit e date; (2) a e evato manage s, g ain me handise s, and e evato s pe intendents emp oyed y B nge o CGB whose jo esponsi i ities a e sha ed etween o among divested e evato s and any non-divested e evato s, at any time etween A g st 21, 2020, and the divestit e date; and (3) a egiona manage s emp oyed y B nge one o ganizationa eve a ove the e evato manage eve , whe eve o ated, whose jo d ties s ppo t the g ain p hasing siness of any of the B nge e evato s, at any time etween A g st 21, 2020, and the divestit e date. Defendants m st p ovide Vise ion, o any othe a q i e o a q i e s, with info mation on these emp oyees and a e p ohi ited f om inte fe ing with the effo ts of Vise ion, o any othe a q i e o a q i e s, to hi e them. Z

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The pr p e nal Ju gment nclu e a n n- lc t pr v n (Paragraph IV.I.6.) pr h t ng the Defen ant fr m attempt ng t reh re relevant per nnel that have agree t w rk f r the acqu rer, u ject t certa n narr w except n , uch a f an n v ual la ff y the acqu rer. The n n- lc t pr v n lm te n urat n t 12 m nth , wh ch a length f t me nten e t enc mpa the f r t harve t ea n f r wh ch the acqu rer w ll e perat ng the ve te elevat r . It al lm te n c pe t apply nly t certa n relevant per nnel— reg nal/general manager , elevat r manager , merchan er , kkeeper , an te uper nten ent —the empl yee m t nt mately nv lve w th farmer utreach an elevat r perat n. The categ r e f empl yee pr tecte y the n n- lc t pr v n are ntegral t ma nta n ng cu t mer relat n wh le wner h p f the a et tran t n ng; elevat r manager an the gra n merchan er , n part cular, are nee e t evel p an keep tr ng cu t mer relat n h p t get gra n nt the elevat r . Defen ant are n t re tr cte , h wever, fr m a vert ng empl yment pen ng u ng general lc tat n r a vert ement an reh r ng relevant per nnel wh apply f r an empl yment pen ng thr ugh a general lc tat n r a vert ement.

Un er Paragraph IV.M. f the pr p e nal Ju gment, at the pt n f the acqu rer r b acqu rer , an u ject t appr val y the Un te State n t le cret n, Defen ant mu t enter nt ne r m re c ntract t pr v e the acqu rer r acqu rer w th tran t n erv ce f r ack ff ce, human re urce , r nf rmat n techn l gy, f r a per f up t x m nth after the ve t ture ccur , n term an c n t n rea na ly relate t market c n t n f r the pr v n f the tran t n erv ce . The tran t n erv ce c vere y the pr p e nal Ju gment are th e that m ght rea na ly e nece ary t en ure that an acqu rer r acqu rer can rea ly an pr mptly u e the a et t c mpete n the relevant market .

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For th t r o th ro o d Final Judg nt, Paragra h XI.A. r quir D ndant ZG to rovid at l a t 30 cal ndar day advanc noti ication to th Unit d Stat o it int nt to dir ctly or indir ctly acquir any a t o , or any int r t in, grain urcha ing aciliti locat d within a 100- il radiu any div t d l vator. Th noti ication r quir nt o Paragra h XI.A. a li to tran action that ar not ubj ct to th r orting and waiting riod r quir nt o th Hart-Scott-Rodino Antitru t I rov nt Act o 1976, a a nd d, 15 U.S. . § 18a (th "HSR Act").[2] Noti ication o uch non-r ortabl tran action i n c ary b cau acqui ition o a ingl l vator ro anoth r grain urcha ing co any i not unco on in th grain indu try, and uch an acqui ition, or v n an acqui ition o a all uit o l vator , lik ly would not t th noti ication thr hold o th HSR Act, but n v rth l could hav a ub tantial antico titiv ct.

Th ro o d Final Judg nt al o contain rovi ion d ign d to ro ot co lianc and ak th n orc nt o th Final Judg nt a ctiv a o ibl . Paragra h XIV.A. rovid that th Unit d Stat r tain and r rv all right to n orc th rovi ion o th ro o d Final Judg nt, including it right to k an ord r o cont t ro th ourt. Und r th t r o thi aragra h, D ndant hav agr d that in any civil cont t action, any otion to how cau , or any i ilar action brought by th Unit d Stat r garding an all g d violation o th Final Judg nt, th Unit d Stat ay tabli h th violation and th a ro riat n o any r dy by a r ond ranc o th vid nc and that D ndant hav waiv d any argu nt that a di r nt tandard o roo hould a ly. Thi rovi ion align th C

[2] Paragra h XI.M. x t ro thi r orting r quir nt D ndant ZG ' acqui ition o grain urcha ing aciliti that w r l a d by D ndant ZG a o January 1, 2021. Th Unit d Stat ha alr ady account d or ZG ' control ov r tho a t in it co titiv analy i o th Tran action and tructuring o th div titur . C

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standa d plian e bligati ns with the standa d p that applies t the unde lying ense that the plian e it ents add ess.

Pa ag aph XIV.B. p vides additi nal la i i ati n ega ding the inte p etati n the p visi ns the p p sed Final udg ent. The p p sed Final udg ent was d a ted t est e petiti n that w uld the wise be ha ed by the t ansa ti n. De endants ag ee that they will abide by the p p sed Final udg ent, and that they ay be held in nte pt this C u t ailing t ply with any p visi n the p p sed Final udg ent that is stated spe i i ally and in eas nable detail, as inte p eted in light this p petitive pu p se.

Pa ag aph XIV.C. the p p sed Final udg ent p vides that i the C u t inds in an en e ent p eeding that De endants have vi lated the Final udg ent, the United States ay apply t the C u t a ne-ti e extensi n the Final udg ent, t gethe with su h the elie as ay be app p iate. In additi n, t pensate A e i an taxpaye s any sts ass iated with investigating and en ing vi lati ns the p p sed Final udg ent, Pa ag aph XIV.C. p vides that in any su ess ul e t by the United States t en e the Final udg ent against a De endant, whethe litigated es lved be e litigati n, that De endants will ei bu se the United States att neys' ees, expe ts' ees, and the sts in u ed in nne ti n with any en e ent e t, in luding the investigati n the p tential vi lati n.

Pa ag aph XIV.D. states that the United States ay ile an a ti n against a De endant vi lating the Final udg ent up t u yea s a te the Final udg ent has expi ed been te inated. This p visi n is eant t add ess i u stan es su h as when eviden e that a vi lati n the Final udg ent u ed du ing the te the Final udg ent is n t dis ve ed until a te the Final udg ent has expi ed been te inated when the e is n t su i ient ti e the United States t plete an investigati n an alleged vi lati n until a te the Final

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Judgm s xpir d or b rmi d. T is provisio , r for , m k s cl r , for four y rs f r Fi l Judgm s xpir d or b rmi d, U i d s m y s ill c ll g viol io occurr d duri g rm of Fi l Judgm . S

Fi lly, c io XV of propos d Fi l Judgm provid s Fi l Judgm will xpir y rs from d of i s ry, xc p f r fiv y rs from d of i s ry, Fi l Judgm m y b rmi d upo o ic by U i d s o Cour d D f d Ss div s i ur s b compl d d co i u io of Fi l Judgm is o lo g r c ss ry or i public i r s .

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

S c io 4 of Cl y o Ac , 15 U. .C. § 15, provid s y p rso w o s b i jur d s r sul of co duc pro ibi d by i rus l ws m y bri g sui i f d r l cour o r cov r r im s d m g s p rso s suff r d, s w ll s cos s d r so bl or ys' f s. E ry of propos d Fi l Judgm i r imp irs or ssis s bri gi g of y priv i rus d m g c io . U d r provisio s of c io 5( ) of Cl y o Ac , 15 U. .C. § 16( ), propos d Fi l Judgm s o prim f ci ff c i y subs qu priv l wsui m y b broug g i s D f d s.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

T U i d s d D f d s v s ipul d propos d Fi l Judgm m y b r d by Cour f r compli c wi provisio s of APPA, provid d U i d s s o wi dr w is co s . T APPA co di io s ry upo Cour 's d rmi io propos d Fi l Judgm is i public i r s .

T APPA provid s p riod of l s 60 d ys pr c di g ff c iv d of propos d Fi l Judgm wi i w ic y p rso m y submi o U i d s wri

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commen e din he p opo ed Fin l Jud men . Any pe on who wi he o commen hould do o wi hin 60 d y of he dS e of public ion of hi Compe i ive Imp c emen in he Fede l Re i e , o he l d e of public ion in new p pe of he umm y of hS Compe i ive Imp c emen , whicheve i l e . All commen eceived du in hi pe iod will be con ide ed by he U. . Dep men of Ju ice, which em in f ee o wi hd w i con en o he p opo ed Fin l Jud men ny ime befo e he Cou ' en y of he Fin l Jud men . The commen nd he e pon e of he Uni ed e will be filed wi h he Cou . In ddi ion, commen will be po ed on he U. . Dep men of Ju ice, An i u Divi ion' in e ne web i e nd, unde ce in ci cum nce , publi hed in he Fede l Re i e .

W i en commen hould be ubmi ed o:

Robe Lepo e
Chief, T n po ion, Ene y nd A icul u e ec ion
An i u Divi ion
U. . Dep men of Ju ice
450 Fif h ee , NW, ui e 8000
Wa hin on, DC 20530

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The p opo ed Fin l Jud men p ovide h he Cou e in ju i dic ion ove hi c ion, nd he p ie m y pply o he Cou fo ny o de nece y o pp op i e fo he modific ion, in e p e ion, o enfo cemen of he Fin l Jud men .

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

A n l e n ive o he p opo ed Fin l Jud men , he Uni ed e con ide ed full i l on he me i in Defend n . The Uni ed e could h ve con inued he li i ion nd ou h p elimin y nd pe m nen injunc ion in ZGC' cqui i ion of in elev o f om Bun e. The Uni ed e i i fied, howeve , h he dive i u e of e de c ibed in he p opo ed Fin l Jud men will emedy he n icompe i ive effec lle ed in he Compl in , p e e vin compe i ion fo he pu ch e of co n nd oybe n in he nine elev n eo phic

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marke a g he Mi i ippi a d Ohi River . Thu , he pr p ed Fi a Judgme achieve a r ub a ia y a he re ie he U i ed S a e w u d have b ai ed hr ugh i iga i , bu av id he ime, expe e, a d u cer ai y a u ria he meri he C mp ai .

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

The C ay Ac , a ame ded by he APPA, require ha pr p ed c e judgme i a i ru ca e br ugh by he U i ed S a e be ubjec a 60-day c mme peri d, a er which he C ur ha de ermi e whe her e ry he pr p ed Fi a Judgme "i i he pub ic i ere ." 15 U.S.C. § 16(e)(1). I maki g ha de ermi a i , he C ur , i acc rda ce wi h he a u e a ame ded i 2004, i required c ider:

> (A) t he c mpe i ive impac uch judgme , i c udi g ermi a i a eged vi a i , pr vi i r e rceme a d m di ica i , dura i re ie ugh , a icipa ed e ec a er a ive remedie ac ua y c idered, whe her i erm are ambigu u , a d a y her c mpe i ive c idera i beari g up he adequacy uch judgme ha he c ur deem ece ary a de ermi a i whe her he c e judgme i i he pub ic i ere ; a d
>
> (B) the impac e ry uch judgme up c mpe i i i he re eva marke r marke , up he pub ic ge era y a d i dividua a egi g peci ic i jury r m he vi a i e r h i he c mpa i c udi g c idera i he pub ic be e i, i a y, be derived r m a de ermi a i he i ue a ria .

15 U.S.C. § 16(e)(1)(A) & (B). I c ideri g he e a u ry ac r , he C ur ' i quiry i ece ari y a imi ed e a he g ver me i e i ed "br ad di cre i e e wi h he de e da wi hi he reache he pub ic i ere ." *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) (exp ai i g ha he "c ur ' i quiry i imi ed" i Tu ey Ac e eme); *United States v. InBev N.V./S.A.*, N . 08-1965 (JR), 2009 U.S. Di . LEXIS 84787, a *3 (D.D.C. Aug. 11, 2009) (i g ha a c ur ' review a c e judgme i imi ed a d y i quire "i whe her he g ver me ' de ermi a i ha he pr p ed remedie wi cure he a i ru

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viola io all d i h complai wa r a o abl , a d wh h r h m cha i m o forc h fi al jud m ar cl ar a d ma a abl ").

A h U.S. our of App al for h Di ric of olumbia ircui ha h ld, u d r h APPA a cour co id r , amo o h r hi , h r la io hip b w h r m dy cur d a d h p cific all a io i h ov r m ' complai , wh h r h propo d Fi al Jud m i uffici ly cl ar, wh h r i forc m m cha i m ar uffici , a d wh h r i may po i iv ly harm hird par i . *See Microsoft*, 56 F.3d a 1458–62. Wi h r p c o h ad quacy of h r li f cur d by h propo d Fi al Jud m , a cour may " o o mak d ovo d rmi a io of fac a d i u ." *United States v. W. Elec. Co.*, 993 F.2d 1572, 1577 (D. . ir. 1993) (quo a io mark omi d); *see also Microsoft*, 56 F.3d a 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D. . 2001); *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 16 (D.D. . 2000); *InBev*, 2009 U.S. Di . LEXIS 84787, a *3. I ad, "[ ]h bala ci of comp i ocial a d poli ical i r aff c d by a propo d a i ru co d cr mu b l f, i h fir i a c , o h di cr io of h A or y G ral." *W. Elec. Co.*, 993 F.2d a 1577 (quo a io mark omi d). "Th cour hould b ar i mi d h *flexibility* of h public i r i quiry: h cour ' fu c io i o o d rmi wh h r h r uli array of ri h a d liabili i i o ha will *best* rv oci y, bu o ly o co firm ha h r uli l m i wi hi h *reaches* of h public i r ." *Microsoft*, 56 F.3d a 1460 (quo a io mark omi d). Mor d ma di r quir m would "hav ormou prac ical co qu c for h ov r m ' abili y o o ia fu ur l m ," co rary o co r io al i . *Id.* a 1456. "Th Tu y Ac wa o i d d o cr a a di i c iv o h u of h co d cr ." *Id.* C

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The Un e es' pre c ons bou he eff c cy of he reme y re o be ffor e eference by he Cour . *See, e.g. Microsoft* 56 F.3 1461 (recogn z ng cour s shoul g ve " ue respec o he Jus ce Dep r men 's . . . v ew of he n ure of s c se"); *United States v. Iron , Mountain, Inc.* 217 F. upp. 3 146 152–53 (D.D.C. 2016) ("In ev lu ng objec ons o se lemen greemen s un er he Tunney Ac cour mus be m n ful h [ ]he governmen nee no prove h he se lemen s w ll perfec ly reme y he llege n rus h rms[;] nee only prov e f c u l b s s for conclu ng h he se lemen s re re son bly equ e reme es for he llege h rms.") (n ern l c ons om e); *United States v. Republic Servs., Inc.* 723 F. upp. 2 157 160 (D.D.C. 2010) (no ng " he eferen l rev ew o wh ch he governmen 's propose reme y s ccor e "); *United States v. Archer-Daniels-Midland Co.* 272 F. upp. 2 1 6 (D.D.C. 2003) ("A s r c cour mus ccor ue respec o he governmen 's pre c on s o he effec of propose reme es s percep on of he m rke s ruc ure n s v ew of he n ure of he c se"). The ul m e ques on s whe her " he reme es [ob ne by he F n l Ju gmen re] so nconson n w h he lleg ons ch rge s o f ll ou s e of he 're ches of he publ c n eres .'" *Microsoft* 56 F.3 1461 (*quoting W. Elec. Co.* 900 F.2 309).

Moreover he Cour 's role un er he APPA s l m e o rev ew ng he reme y n rel onsh p o he v ol ons h he Un e es h s llege n s compl n n oes no u hor ze he Cour o "cons ruc [s] own hypo he c l c se n hen ev lu e he ecree g ns , h c se." *Microsoft* 56 F.3 1459; *see also U.S. Airways* 38 F. upp. 3 75 (no ng h he cour mus s mply e erm ne whe her here s f c u l foun on for he governmen 's ec s ons such h s conclus ons reg r ng he propose se lemen s re re son ble); *InBev* 2009 U. . D s . LEXI 84787 *20 (" he 'publ c n eres ' s no o be me sure by comp r ng he v ol ons llege n he compl n g ns hose he cour bel eves coul h ve or even

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shoul h b n ll g "). B c us th "court's uthority to r i w th cr p n s ntir ly on th go rnm nt's x rcising its pros cutori l iscr tion by bringing c s in th irst pl c " it ollows th t "th court is only uthoriz to r i w th cr its l " n not to " cti ly r r t th compl int" to inquir into oth r m tt rs th t th Unit St t s i not pursu . *Microsoft* 56 F.3 t 1459–60.

In its 2004 m n m nts to th APPA Congr ss m cl r its int nt to pr s r th pr ctic l b n its o using cons nt ju gm nts propos by th Unit St t s in ntitrust n orc m nt Pub. L. 108-237 § 221 n th un mbiguous instruction th t "[n]othing in this s ction sh ll b constru to r quir th court to con uct n i nti ry h ring or to r quir th court to p rmit nyon to int r n ." 15 U.S.C. § 16( )(2); *see also U.S. Airways* 38 F. Supp. 3 t 76 (in ic ting th t court is not r quir to hol n i nti ry h ring or to p rmit int r nors s p rt o its r i w un r th Tunn y Act). This l ngu g xplicitly wrot into th st tut wh t Congr ss int n wh n it irst n ct th Tunn y Act in 1974. As S n tor Tunn y xpl in : "[t]h court is nowh r comp ll to go to tri l or to ng g in xt n proc ings which might h th ct o iti ting th b n its o prompt n l ss costly s ttl m nt through th cons nt cr proc ss." 119 Cong. R c. 24 598 (1973) (st t m nt o S n. Tunn y). "A court c n m k its public int r st t rmin tion b s on th comp titi imp ct st t m nt n r spons to public comm nts lon ." *U.S. Airways* 38 F. Supp. 3 t 76 (citing *Enova Corp.* 107 F. Supp. 2 t 17).

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VIII. DE E IVE DOCU S E

There are no determinative materials or do uments within the meaning of the APPA that were onsidered by the United States in formulating the proposed Final Judgment.

Dated: June 1, 2021

Respe tfully submitted,

/s/

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