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Karen Dworkin,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Gemstar-TV Guide International, Inc. & TV Guide, Inc.

Proposed Final Judgment and Competitive Impact Statement. Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. sections 16(b) through (h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Gemstar-TV Guide International, Inc.,* Civil Action No. 03 CV 000198. On February 6, 2003, the United States filed a Complaint alleging that TV Guide, Inc. and Gemstar International Group Ltd. violated section 1 of the Sherman Act (15 U.S.C. 1) and section 7a of the Clayton Act (15 U.S.C. 18a), commonly known as the Hart-Scott-Rodino (''HSR'') Act. The complaint alleges that, prior to the consummation of their merger, the Defendants entered into agreements not to compete, to fix prices and to allocate markets and customers, in violation of the Sherman Act. The complaint also alleges that the Defendants effectively merged their decision-making processes and transferred substantial control over their businesses in violation of the Clayton Act, which prohibits certain asset acquisitions until the expiration or termination of statutory waiting periods. The proposed Final Judgment, filed the same time as the Complaint, enjoins the Defendants from engaging in similar conduct and requires the Defendants to allow rescission of certain contracts entered into during the period before they consummated their merger. The proposed Final Judgment also requires the Defendants to pay a civil penalty of $5,676,000 to resolve the HSR Act violation. The civil penalty component of the proposed Final Judgment is not open to pubic comment. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 Seventh Street, NW., on the Internet at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James R. Wade, Chief, Litigation III Section, Antitrust Division, Department of Justice, 325 7th St., NW., Suite 300, Washington, DC 20530, (telephone: (202) 616–5935).

Constance K. Robinson,

Director of Operations.

[Civil Action No. 03 0198]

Stipulation and Order

It is hereby stipulated by and between the undersigned parties, through their respective counsel, as follows:

1. The Court has jurisdiction over the subject matter of plaintiff's Complaint alleging defendants Gemstar-TV Guide International, Inc. (''GTV'') and TV Guide, Inc. (''TV Guide'') violated section 1 of the Sherman Act (15 U.S.C. 1) and section 7A of the Clayton Act (15 U.S.C. 18(a)), and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia. The defendants authorize David T. Beddow, Esq. of O'Melveny & Meyers LLP to accept service of all process in this matter on their behalf.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedure and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. GTV and TV Guide shall abide by and comply with the provisions of the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event that Plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event that the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. The parties' execution of this Stipulation and entry of the Final Judgment settles, discharges, and releases any and all claims of the plaintiff for civil penalties against:

(a) Defendant GTV, its directors, officers, employees, and agents, under § 7A of the Clayton Act, 15 U.S.C. 18(a), arising from the acquisition of TV Guide by GTV; and

(b) Defendant TV Guide, its directors, officers, employees and agents, under § 7A of the Clayton Act, 15 U.S.C. 18(a), arising from the acquisition of TV Guide by GTV.

Respectfully submitted, for Plaintiff United States of America.

Robert Faulkner (D.C. Bar No. 430163),

U.S. Department of Justice, Antitrust Division, Litigation III Section, 325 7th Street, NW., Suite 300, Washington, DC 20530, Tel: (202) 514–0259, Fax: (202) 307–9952.

Dated: February 6, 2003.

For Defendants Gemstar-TV Guide International, Inc. and TV Guide, Inc.

David T. Beddow (D.C. Bar No. 288514),

O'Melveny & Myers LLP, 555 Thirteenth Street, NW., Washington, DC 20004–1109, Tel: (202) 383–5362, Fax: (202) 383–5414.

Order

The Court having considered the parties' Joint Motion for Entry of Stipulation and Order, and upon consent of the parties.

It is hereby ordered that defendants shall abide by and comply with all terms and provisions of the proposed Final Judgment pending compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

Parties Entitled To Notice of Entry of Order

Counsel for the United States

James R. Wade, Robert Faulkner, U.S. Department of Justice, Antitrust Division, Litigation III Section, 325 7th Street, NW., Suite 300, Washington, DC 20530, Tel: (202) 514–0259, Fax: (202) 307–9952.

Counsel for Gemstar-TV Guide International, Inc. and TV Guide, Inc.

David T. Beddow, Esq., O'Melveny & Myers LLP, 555 Thirteenth Street, NW., Washington, DC 20004–1109, Tel: (202) 383–5362, Fax: (202) 383–5414.

Final Judgment

Whereas, plaintiff United States of America filed its Complaint on February 6, 2003, alleging that defendants Gemstar-TV Guide International, Inc. (''GTV'') and TV Guide, Inc. (''TV Guide'') violated section 1 of the Sherman Act, 15 U.S.C. 1, and section 7A of the Clayton Act, 15 U.S.C. 18a, and plaintiff and defendants, by their attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against, or any admission by, any party regarding such issue of fact or law;

And whereas, defendants agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states claims upon which relief may be granted against defendants under section 1 of the Sherman Act (15 U.S.C. 1) and section 7A of the Clayton Act (15 U.S.C. 18a).

II. Definitions

As used in this Final Judgment:

A. ''Agreement'' and its variants means any agreement, mutual understanding or mutual plan, written or unwritten.

B. ''Competing Product'' means (i) any product, service or technology offered for sale, license or distribution by any defendant that is primarily used for the same purpose as any product, service or technology offered for sale, license or distribution by any other party to a proposed transaction with any defendant, or (ii) any product, service or technology offered for sale, license or distribution by any other party to a proposed transaction with any defendant that is primarily used for the same purpose as any product, service or technology offered for sale, license or distribution by any defendant.

C. ''Defendants'' means Gemstar-TV Guide International, Inc. and TV Guide, Inc.

D. ''Interactive Program Guide,'' or ''IPG,'' means the software and/or technology that allows television viewers to access and organize programming information on their television screens and then view a channel corresponding to a selected program.

E. ''IPG Agreement'' means any agreement to provide or license IPGs.

F. ''Negotiation And Interim Period'' means the period between the commencement of negotiations with respect to an offer to enter into an Agreement, and the date when negotiations are abandoned or when any resulting Agreement is consummated or abandoned.

G. ''Person'' means any individual, partnership, firm, corporation, association or other legal or business entity.

H. ''Pre-consummation Period'' means the period of time between the signing of an Agreement for a transaction that is reportable under section 7A of the Clayton Act and the rules, regulations and interpretations implementing section 7A, and the earlier of the expiration or termination of the waiting period under section 7A or the closing or abandonment of the reportable transaction.

III. Applicability

This Final Judgment applies to Defendants, including each of their directors, officers, managers, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who have received actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited and Required Conduct

A. When any Defendant has entered into a transaction that is reportable under section 7A of the Clayton Act, and the rules, regulations and interpretations implementing section 7A, the Defendants are enjoined and restrained from entering into any Agreement with any other party to the transaction that would, during the Pre-consummation Period, combine, merge, or transfer (in whole or in part) any operational or decision-making control over the marketing or distribution of any to-be-acquired product, service or technology.

B. During the Negotiation And Interim Period of any contemplated Agreement to acquire any voting securities or assets, form a joint venture, settle litigation, or license intellectual property, with any person offering a Competing Product, Defendants are enjoined and restrained from:

1. Entering into any Agreement with that Person to fix, raise, set, stabilize or otherwise establish price or output for any Competing Product offered during the Negotiation And Interim Period;

2. Entering into any Agreement with that Person to delay or suspend during the Negotiation And Interim Period sales efforts with respect to any Competing Product;

3. Entering into any Agreement with that person to allocate any markets or customers during the Negotiation And Interim Period with respect to any Competing Product; or

4. Disclosing or seeking the disclosure of information about current or future prices for, information or projections relating to future prices of, or contract offers related to Competing Products, except as such disclosures may be permitted in subsection V. D., or to the extent that such information is publicly available at the time disclosure occurs.

C. For a period of nine (9) months following the date that this Final Judgment is filed pursuant to 15 U.S.C 16(b), each Defendant shall permit the following service providers, each of which entered into an IPG Agreement with TV Guide between June 10, 1999, and July 12, 2000, or their successors, to terminate, without penalty, said IPG Agreements:

Cameron Communications (Carlyss, LA), Millennium Telcom, LLC (Keller, TX), Sweetwater Cable TV Co., Inc. (Rock Springs, WY), Coast Communications Co. (Ocean Shores, WA), Florida Cable, Inc. (Astor, FL), Pioneer Communications (Ulysses, KA), Standard Tobacco Co. (Maysville, KY), Pine Tree Cablevision (Wayne, PA).

Such termination shall be at the sole option of these service providers, or their successors. GTV or TV Guide shall, within twenty (20) days of the date that this Final Judgment is filed pursuant to 15 U.S.C. 16(b), distribute to each such service provider, or its successor, a letter containing the notice set forth in Exhibit A.

V. Permitted Conduct

Nothing in this Final Judgment shall prohibit Defendants from:

A. agreeing that a party to a transaction shall continue to operate in the ordinary course of business during the Pre-consummation Period:

B. agreeing that a party to a transaction forego conduct that would cause a material adverse change in the value of to-be acquired assets during the Pre-consummation Period;

C. including a nonexclusive field of use restriction, or reaching an Agreement for a royalty fee, in any intellectual property license Agreement;

D. before closing or abandoning a transaction, conducting or participating in reasonable and customary due diligence, provide however, that no disclosure covered by subsection IV(B)(4) shall be permitted unless (1) the information is reasonably related to a party's understanding of future earnings and prospects; and (2) the disclosure occurs pursuant to a non-disclosure agreement that (a) limits use of the information to conducting due diligence and (b) prohibits disclosure of any such information to any employee of the person receiving the information who is directly responsible for the marketing, pricing or sales of the Competing Product(s); or

E. disclosing confidential business information related to Competing Products, subject to a protective order, in the context of litigation or settlement discussions.

IV. Compliance

A. GTV shall maintain an antitrust compliance program which shall include designating, within thirty (30) days of entry of this order, an Antitrust Compliance Officer with responsibility for achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, or a continuing basis, supervise the review of current and proposed activities to ensure compliance with this Final Judgment. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

(1) distributing within forty-five (45) days of entry of this Final Judgment, a copy of this Final Judgment to each current officer and director, and each employee, agent or other person who has responsibility for or authority over mergers and acquisitions;

(2) distributing in a timely manner a copy of this Final Judgment to any officer, director, employee or agent who succeeds to a position described in Section VI(A)(1);

(3) obtaining within sixty (60) days from the entry of this Final Judgment, and annually thereafter, and retaining for the duration of this Final Judgment, a written certification from each person designated in Sections VI(A)(1) & (2) that he or she: (a) Has received, read, understands, and agrees to abide by the terms of this Final Judgment; (b) understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment; and

(4) providing a copy of this Final Judgment to each merger partner before the initial exchange of a letter of intent, definitive agreement or other agreement of merger.

B. Within sixty (60) days of entry of this Final Judgment, GTV shall certify to Plaintiff that it has (1) designated an Antitrust Compliance Officer, specifying his or her name, business address and telephone number; and (2) distributed the Final Judgment in accordance with Section VI(A)(1).

C. For the term of this Final Judgment, on or before its anniversary date, GTV shall file with Plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections IV and VI.

D. If any GTV director or officer or the Antitrust Compliance Officer learns of any violation of this Final Judgment, GTV shall within three (3) business days take appropriate action to terminate or modify the activity so as to assure compliance with this Final Judgment, and shall notify the Plaintiff of any such violation within ten (10) business days.

VII. Plaintiff's Access and Inspection

A. For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the United States Department of Justice shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to GTV, be permitted: (1) Access during GTV's office hours to inspect and copy or at Plaintiff's option, to require GTV to provide copies of all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, GTV's directors, officers, employees, agents or other persons, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by GTV.

B. Upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, GTV shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the Plaintiff to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by GTV to Plaintiff, GTV represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and GTV marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which GTV is not a party.

VIII. Civil Penalty

Judgment is hereby entered in this matter in favor of Plaintiff, United States of America, and against defendants, GTV and TV Guide, and, pursuant to section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L. 104–134, 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461), and Federal Trade Commission Rule 1.98, 16 CFR § 1.98, 61 FR 54549 (Oct. 21. 1996), defendants are hereby ordered jointly and severally to pay a civil penalty in the amount of five million, six hundred and seventy-six thousand United States dollars (U.S. $5,676,000). Payment shall be made by wire transfer of funds to the United States Treasury through the Treasury Financial Communications System or by cashier's check made payable to the Treasurer of the United States and delivered to Chief, FOIA Unit, Antitrust Division. Department of Justice, Liberty Place, 325 7th Street, NW., Suite 200, Washington, DC 20530. Defendants shall pay the full amount of the civil penalties within thirty (30) days of the entry of this Final Judgment. In the event of a default in payment, a reasonable interest rate shall accrue thereon from the date of default to the date of payment. The portion of the Final Judgment requiring the payment of civil penalties for violation of section

7A of the Clayton Act is not subject to the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h)).

IX. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

X. Expiration of Final Judgment

Unless extended by this Court, this Final Judgment shall expire ten years from the date of its entry.

XI. Costs

Each party shall bear its own costs of this action.

XII. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Exhibit A

Notification of Available Option to Rescind Certain Contracts

Gemstar-TV Guide, International Inc. and TV Guide, Inc. (''TV Guide'') (collectively ''Gemstar'') have consented to the entry of the attached proposed Final Judgment to resolve a civil suit brought by the Antitrust Division of the Department of Justice. Under the proposed Final Judgment, Gemstar is required to permit your company to terminate, without penalty, the IPG agreement your company entered into with TV Guide between June 10, 1999 and July 12, 2000. Your company has the sole option to terminate its agreement with Gemstar so long as it makes its election no later than nine calendar months after February 6, 2003, which is the date that the proposed Final Judgment was filed with the Court. Please note that your option to terminate begins immediately and does not require final entry of the proposed Final Judgment.

You may exercise this option to terminate the contract by sending a letter to that effect to Gemstar at the following address:

Stephen H. Kay, Esq., General Counsel, Gemstar-TV Guide International, Inc., 135 North Los Robles Avenue, Suite 800, Pasadena, CA 91101.

Please contact Stephen H. Kay, Esq. at Gemstar 626–792–5700 if you need more information.

[Civil Action No. 03 CV 000198, Filed: March 19, 2003]

Competitive Impact Statement

The United States, pursuant to the Antitrust Process 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.[1]

I. Nature and Purpose of This Proceeding

On February 6, 2003, the United States filed a four-count Complaint against Gemstar-TV Guide International, Inc. (''GTV'') and its subsidiary TV Guide, Inc. (''TV Guide'') related to the conduct of GTV's predecessor Gemstar International Group, Ltd. (''Gemstar'') and TV Guide before July 2000, when Gemstar and TV Guide were competitors in the provision of interactive program guides, or ''IPGs,'' to cable, satellite and other multi-channel subscription television service providers (''service providers'').

The Complaint alleges that the Defendants entered into various agreements to fix prices and to allocate markets and customers, and that they began jointly conducting their IPG business, eliminating competition between them in violation of section 1 of the Sherman Act. 15 U.S.C. 1. Specifically, the Complaint alleges that, in June 1999, as Gemstar and TV Guide began the negotiations that would ultimately result in a merger agreement, they agreed that they would ''slow roll'' (*i.e.,* delay on-going contract negotiations with) certain customers. Upon agreeing to merge in October 1999, Gemstar and TV Guide also agreed that Gemstar would phase out its IPG marketing operations to service providers and that they would allocate specific customers between them. Additionally, Gemstar and TV Guide agreed on the prices and material terms that TV Guide would offer to service providers before consummating the proposed merger.

The Complaint also alleges that the Defendants violated section 7A of the Clayton Act, 15 U.S.C. 18a, which requires certain acquiring and acquired parties to file pre-acquisition Notification and Report Forms with the Department of Justice (''DOJ'') and the Federal Trade Commission (''FTC'') and to observe a statutorily mandated waiting period before consummating the acquisition. The fundamental purpose of the waiting period is to prevent the merging parties from combining during the pendency of an antitrust review and to maintain their identity as separate and independent actors.

In October 1999, Gemstar and TV Guide executed a merger agreement that required the filing of the Notification and Report Forms under section 7A of the Clayton Act. Rather then wait for the expiration of the statutory waiting period, however, Gemstar and TV Guide merged most of their IPG decision-making processes, transferred control over important assets, and acted jointly on numerous business decisions.

The Complaint seeks an adjudication that the Defendants' agreements violate section 1 of the Sherman Act, such other relief as the Court deems appropriate, and a civil penalty for violation of section 7A of the Clayton Act.

The United States and the Defendants have reached a proposed settlement that eliminates the need for a trial in this case. The proposed Final Judgment remedies the Sherman Act violations by enjoining the Defendants from reaching similar anticompetitive agreements with competitors. The proposed Final Judgment also provides that customers that signed IPG agreements with TV Guide between June 10, 1999, and July 12, 2000, may elect to terminate their contracts within nine months of filing of this proposed Final Judgment.

To resolve the Clayton Act violation, the proposed Final Judgment prohibits the Defendants, during the period between executing an agreement subject to section 7A and the expiration of the statutory waiting period, from entering into any agreement with the other contracting parties to combine, merge, or transfer, in whole or in part, any operational or decision-making control over the marketing or distribution of any to-be-acquired product, service, or technology. In addition, GTV has agreed to pay a civil penalty of $5,676,000, which is the maximum civil penalty available to address the section 7A violation.

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

[1] On February 6, 2003, the United States filed a civil Complaint, a Stipulation and Order, a proposed Final Judgment, and a Momorandum Regarding Procedures for Entering Judgments. As set forth in the Memorandum, the proposed Final Judgment would settle this case pursuant to the APPA, which applies to civil antitrust cases brought and settled by the United States. The APPA requires that the United States file a competitive impact statement in such proceedings. 15 U.S.C. 16(b).

enforce the provisions of the proposed Final Judgment and punish violations thereof. Entry of this judgment would not constitute evidence against, or an admission by, any party with respect to any issue of fact or law involved in the case and is conditioned upon the Court's finding that entry is in the public interest.

II. Description of the Events Giving Rise to the Alleged Violations of the Antitrust Laws

A. The Defendants and Their Merger

GTV is a Delaware corporation with its principal place of business in Pasadena, California. GTV is, as was its predecessor Gemstar, an international media and communications company that, among other things, develops, markets, and support interactive program guides (''IPGs'') and IPG technology to providers of multi-channel subscription television services (''service providers'') as well as to manufacturers of consumer electronics (''CE'') hardware, such as televisions and video cassette recorders. An IPG is a software application that allows television viewers to display and sort program listings on the TV screen.

TV Guide is a Delaware corporation with its principal place of business in Tulsa, Oklahoma. TV Guide is a leading provider of IPGs to service providers. In addition to its sales of IPGs, TV Guide offers several other television guidance products, including the TV Guide magazine.

In Spring 1999, Gemstar and TV Guide were negotiating a settlement of pending patent infringement and antitrust litigation. By June 1999, settlement discussions focused on the possible formation of a joint venture through which Gemstar and TV Guide would jointly market IPGs to service providers. By early August, the parties found that they could not reach final agreement on the proposed joint venture. By August 12, 1999, negotiations between Gemstar and TV Guide had shifted to the possibility of merging or entering into a cross-license agreement.

On October 4, 1999, Gemstar and TV Guide announced an agreement to merge, pursuant to which Gemstar would acquire substantially all of the outstanding TV Guide stock and the two companies would form a new entity. They also entered into an optional agreement to cross-license their patents (the ''Back-Up Cross License''). The Back-Up Cross License would take effect only if the merger failed to close by a certain date and if TV Guide, at its sole option, elected to trigger the agreement.

Gemstar and TV Guide filed the pre-acquisition Notification and Report forms required by section 7A of the Clayton Act in November 1999. After reviewing the parties' filings, the DOJ opened an investigation into the competitive effects of the proposed transaction. The mandatory statutory waiting period expired on June 19, 2000, although the parties voluntarily extended the time for the DOJ to conduct its investigation.

The DOJ ultimately did not file a Complaint seeking to enjoin the merger, and the parties consummated their agreement to merge on or about July 12, 2000. TV Guide is now a wholly owned subsidiary of GTV.

B. Competition in the Relevant Product Markets

A relevant product market defines the boundaries within which competition meaningfully exists. In this instance, one relevant product market consists of the provision of IPGs to service providers for use in providing digital cable and satellite television services in the United States. Service providers offer their subscribers multi-channel packages of television programming. The adoption of digital transmission allowed these providers to offer hundreds of programming options. Service providers considered an IPG—which allows the viewer to sort through these options—a navigational tool for which there was no realistic substitute.

Another relevant market is the market for providing IPGs to cable television service providers with systems committed to the GI/Motorola digital technology platform. In this context, a ''platform'' consists of hardware installed at various points in the cable television system, including digital set-top boxes deployed in television viewers' homes. Once a service provider has committed a system to a particular platform, it can only use IPGs that are compatible with the chosen platform on that system.

The relevant geographic market is the United States, given the need for close technical cooperation and support between IPG providers and U.S.-based set-top box manufacturers, service providers, and software companies.

Gemstar and TV Guide were direct competitors in these markets. Indeed, during the relevant 1999–2000 period, Gemstar and TV Guide were the only two established providers of IPG technology and services compatible with the GI/Motorola digital platform.

C. Illegal Sherman Act Agreements

1. The ''Slow Roll'' Agreement

In late Spring 1999, Gemstar was in the final phases of negotiating a long-term IPG agreement with Cox Communications, Inc. (''Cox''), a large service provider. TV Guide was also vying for Cox's business, having sent a draft IPG contract proposal to Cox in April. Similarly, both Gemstar and TV Guide were competing to sign Charter Communications, Inc. (''Charter'') to a long-term IPG deal.

On June 10, 1999, Peter C. Boyland III, then President and Chief Operating Officer of TV Guide, met with Henry Yuen, then Chief Executive Officer of Gemstar, to discuss the possibility that the two firms could settle their litigation by forming a joint venture that would market their IPG products and services. in a contemporaneous memorandum summarizing the June 10 meeting, Mr. Boylan stated that Dr. Yuen and Mr. Boylan had ''both acknowledged the need to slow roll Charter and Cox.'' What he meant was to cease or suspend competing for these customers' business until Gemstar and TV Guide could act jointly. Three days later, Dr. Yuen backed away from a draft contract with Cox, and thereafter ceased negotiating with Cox and Charter. TV Guide also stopped competing for their business during the joint venture discussions.

2. Market and Customer Allocation Agreements

At almost the same time that Gemstar and TV Guide announced their agreement to merge, they reached a broad agreement that Gemstar would phase out its marketing operations in the relevant markets in order to focus on sales and licensing of IPGs to consumer electronics (''CE'') firms while TV Guide negotiated IPG agreements with most service providers. Pursuant to this agreement, Gemstar stopped actively marketing its IPG to service providers, except for certain very small systems that used technology platforms that were different from those used by traditional cable and satellite television service providers. TV Guide had not previously sought to compete for this business and had not adapted its IPG to the platforms used by these companies.

Gemstar and TV Guide also agreed to allocate specific customers between them, reaching understandings as to whether TV Guide or Gemstar would approach and negotiate with particular customers during the period between the merger agreement and the consummation of the merger (the ''interim period''). Specifically, Gemstar and TV Guide agreed that TV Guide would negotiate with most service providers during the interim period.

3. Agreements to Fix Prices and Material Terms to Service Providers

Gemstar and TV Guide also agreed on the prices and terms that they would offer to most service providers during the interim period. To effectuate this agreement, they shared detailed and specific information about offers and counter-offers to service providers and kept each other apprised of individual contacts with customers. TV Guide provided Gemstar with its ''rate card,'' which included both rates and non-price terms, and, on at least two occasions, TV Guide provided Gemstar with full drafts of proposed IPG contracts before they were sent to service providers. On at least two occasions, Gemstar sent to TV Guide red-lined comments on TV Guide's draft IPG contracts. In the course of maintaining regular contact with Gemstar, TV Guide blind-copied or forwarded to Gemstar electronic correspondence between TV Guide and service providers related to negotiations for IPG agreements.

As a result of this agreement, the prices and terms that TV Guide offered during the interim period substantially differed from offers it had made prior to June 1999, when it began coordinating with Gemstar. During this period eight service providers entered into IPG agreements with TV Guide under prices and terms that conformed to the illegal agreement.

C. Pre-Merger Acquisition of Assets

Though their agreements and other actions, Gemstar and TV Guide, in effect, merged their IPG decision-making processes, and each acquired substantial operational and decision-making control over important assets of the other, before the expiration of the statutory waiting period prescribed by Section 7A of the Clayton Act. Gemstar, for example, gained review and veto authority over TV Guide's IPG contract offers, converted TV Guide into its agent in various respects, and gained substantial influence over TV Guide's separate IPG advertising business. TV Guide, for its part, acquired substantial amounts of control over Gemstar's business of providing IPGs to service providers, including Gemstar's business opportunities and customer relationships. In addition, the parties shared confidential business information and made joint decisions regarding various business opportunities.

E. The Defendants' Conduct Violates Antitrust Laws

1. Sherman Act Violations

Section 1 of the Sherman Act prohibits any ''contract, combination or conspiracy'' in ''restraint of trade.'' In the context of a merger, Section 1 requires competitors that have agreed to merge to maintain their status as independent economic entities throughout the pre-consummation period, i.e., until they can be legally combined. Here, the Complaint alleges three specific anticompetitive agreements that violated Section 1—to cease competing for customers, to allocate markets and customers, and to fix prices and terms. These agreements eliminated competition and foreclosed the possibility that customers could have obtained lower prices and secured better contract terms during the time before the merger could be legally consummated. Stand-alone agreements to fix prices, allocate markets or customers, or otherwise cease competition have long been condemned as per se violations of Section 1 of the Sherman Act. Given their harmful effect on competition and lack of any redeeming virtue, they are conclusively presumed to be unreasonable, without the need for an elaborate inquiry into the harm actually caused or to any potential business justifications for their use.

Here, the Antitrust Division concluded that no special circumstances justified the Defendants' conduct or removed it from the per se illegal category. The ''slow roll'' agreement, the market and customer allocations, and the fixing of prices and terms were not reasonably necessary to effectuate their merger agreement or the Back-Up Cross License Agreement, and thus were not ancillary to a legitimate business transaction. None of the restraints settled, or were reasonably ancillary to settling, the pending litigation. Similarly, the fact that many of the agreements were reached after the Defendants had agreed to merge did not change the character of the illegal restraints. The extensive coordination on prices and terms to be offered, whether in long-term contracts or otherwise, was not justified as necessary to protect any legitimate interest that Gemstar may have had in preserving TV Guide's business, or in preventing a material change in TV Guide's conduct that might adversely affect the value of the to-be-acquired business.

The Defendants' illegal agreements had the effect of lessening or eliminating competition between Gemstar and TV Guide in the provision of IPG technology and services in violation of Section 1 of the Sherman Act and denied customers the benefits of that competition. During the period when those agreements were in effect, some service providers signed long-term IPG contracts based on the fixed prices and terms. Moreover, but for the illegal agreements, some service providers may have signed long- or short-term IPG agreements on better prices and terms than the Defendants had agreed to offer.

2. Clayton Act Section 7A Violation

Section 7 of the Clayton Act is the principal statute used by the antitrust agencies to challenge anticompetitive mergers and acquisitions. It provides in pertinent part:

> No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.[2]

Prior to the enactment of section 7A of the Clayton Act, the DOJ and FTC often were forced to investigate anticompetitive acquisitions that had already been consummated without public notice. In those situations, the agencies' only recourse was to sue to unwind the parties' merger. The combined entity had the incentive to delay litigation so that years elapsed before adjudication and attempted relief. During this extended time consumers were harmed by the reduction in competition between the acquiring and acquired firms and, if the court ultimately found that the merger was illegal, effective relief was often impossible to achieve.

Congress enacted section 7A as a measure to strengthen and improve antitrust enforcement by giving the enforcement agencies an opportunity to investigate certain large acquisitions before they are consummated. In particular, section 7A prohibits certain acquiring parties from consummating the acquisition before a prescribed waiting period expires or is terminated.[3]

[2] 15 U.S.C. 18.

[3] Section 7A requires that ''no person shall acquire, directly or indirectly, any voting securities or assets of person'' exceeding certain thresholds until both have made premerger notification filings and the post-filing waiting period has expired. 15 U.S.C. 18a(a). At the time of the Defendants'

Continued

The parties are required to remain separate during the statutory waiting period and to preserve their status as independent economic actors during the antitrust investigation. The legislative history of section 7A underscores Congress' desire that competition existing before the merger should be maintained to the extent possible pending review by the antitrust enforcement agencies and the court.

The Complaint alleges that the Defendants violated section 7A by, in effect, merging their IPG decision-making and by giving Gemstar significant control over TV Guide's IPG business before the expiration of the statutory waiting period, thus accomplishing a defacto acquisition of assets under section 7A. Whether a de facto acquisition has occurred depends on the facts of each particular case. Courts have recognized that the execution of an acquisition agreement, combined with the assumption of significant operational or decision-making influence over the to-be-acquired business, can amount to an ''acquisition'' under section 7 of the Clayton Act, even if the parties have not formally consummated the transaction. Similarly, once parties have entered into an executory agreement subject to section 7A's requirements, they may not effectuate the acquisition by, for example, merging their operations or otherwise transferring significant operational, management or decision-making control over the to-be-acquired assets. In other words, once section 7A is triggered, parties to a merger agreement must, at a minimum, avoid combining prematurely in a way that would constitute an acquisition under section 7.[4]

Such premature combination of operations and assets significantly undermines the statutory scheme, which is designed to give the antitrust agencies the opportunity to conduct an investigation before the parties have combined their operations or acquired significant assets. It can contaminate the antitrust agencies' investigation by, among other things, providing a skewed picture of the competitive landscape and making it difficult or impossible to obtain meaningful relief should the antitrust agencies successfully enjoin a transaction.

III. Explanation of the proposed Final Judgment

The proposed Final Judgment contains equitable relief designed to prevent future violations of section 1 of the Sherman Act and section 7A of the Clayton Act, addresses the effects of the Defendants' conduct, and secures a monetary civil penalty for Gemstar's and TV Guide's violation of section 7A. The proposed Final Judgment sets forth required and prohibited conduct, a compliance program the Defendants must follow, and procedures available to the United States to determine and ensure compliance with the Final Judgment. Section IX provides that these conditions will expire ten years after the entry of the Final Judgment.

A. Prohibited Conduct

Section IV(A) of the proposed Final Judgment is designed to prevent future Clayton Act violations of the sort alleged in the Complaint. During the ''pre-consummation period''—after executing an agreement subject to the reporting requirements of section 7A and until the expiration of the statutory waiting period—the Defendants are prohibited from entering into any agreement with the other contracting parties to combine, merge, or transfer, in whole or in part, any operational or decision-making control over the marketing or distribution of any to-be-acquired product, service, or technology. This injunction applies to all transactions subject to the reporting requirements of section 7A, regardless of the particular products involved or whether the other party to the transaction competes with the Defendants. The injunction also applies to partial assumptions of control over the marketing or distribution of any to-be-acquired asset.

Section IV(B) is designed to prevent future violations of Sherman Act. In enjoins the Defendants from entering into various agreements with competitors between the beginning of negotiations until the consummation or abandonment of certain specified types of transactions. Specifically, this provision covers any agreement between the Defendants and any firm offering a competing product to acquire assets or securities, form a joint venture, settle litigation, or license intellectual property. During this period, the Defendants may not reach agreements with the other party affecting price or output, allocating markets or customers, or eliminating or delaying competition. Section IV(B) also enjoins the Defendants from disclosing, or seeking the disclosure of, competitively sensitive information during this period.

In addition, Section IV(C) of the proposed Final Judgment requires GTV to permit specified service providers, those that signed IPG agreements conforming to the agreed-upon prices and terms during the period between June 10, 1999, and July 12, 2000, the option to terminate, without penalty, those agreements. The decision to terminate those agreements rests solely with the service provider.

B. Permitted Conduct

Section V of the proposed Final Judgment identifies certain agreements and conduct that are permitted by the Judgment. Sections V(A) and V(B) ensure that the decree will not be interpreted to forbid certain ''conduct-of-business'' covenants that are typically found in merger agreements. Section V(A) permits the use of agreements obligating the to-be-acquired person generally to operate its business in the ordinary course of business consistent with past practices. Section V(B) permits the use of ''material adverse change'' provisions, which give the acquiring person certain rights to prevent material changes in the way a to-be-acquired firm conducts its business. These are customary provisions found in most merger agreements and are intended to protect the value of the transaction and prevent a to-be-acquired person from wasting assets.

Section V(D) recognizes a narrow exception to the prohibition on the exchange of competitively sensitive information. As a general rule, competitors should not obtain prospective customer-specific price

conduct, the post filing waiting period was either 30 days after filing or if the enforcement agency requested additional information, 20 days after the parties complied with the enforcement agency's request. 15 U.S.C. 18a(b). The enforcement agency may grant early termination of the waiting period, 15 U.S.C. 18a(b)(2), and often does so when a merger poses no competitive problems.

[4] This conclusion accords with the FTC regulations, which define an ''acquiring person'' as one who will ''hold'' voting securities or assets directly or indirectly through third parties. 16 CFR 801.2(a). ''Hold'' is further defined to mean ''beneficial ownership,'' 16 CFR 801.1(c). In its ''Statement of Basis and Purpose'' (''SBP''), 43 FR 33450 (July 31, 1978), which accompanied the regulations, the FTC stated that the existence of ''beneficial ownership'' was to be determined ''in the context of particular cases'' with respect to the person enjoying the ''indicia of beneficial ownership.'' Id. at 33459. The execution of a reportable agreement, combined with the assumption of significant influence over the to-be-acquired securities or assets, transfers sufficient ''indicia of beneficial ownership'' to amount to ''holding'' the securities or assets under the regulations. See William J. Baer, Report from the [FTC] Bureau of Competition (April 15, 1999) (''In the jargon of [section 7A], signing the contract transfers some indicia of beneficial ownership. By itself, that transfer is entirely lawful. But the transfer of additional indicia of ownership during the waiting period—such as assuming control through management contracts, integrating operations, joint decision making, or transferring confidential business information for purposes other than due diligence inquiries—are inconsistent with the purposes of [section 7A] and will constitute a violation.'')

information prior to the consummation of the transaction. Access to such information raises significant antitrust risks, as it could be used to enter into an illegal agreement that would be harmful to competition if the transaction is subsequently abandoned. Notwithstanding, there may be situations during the due diligence process in which an acquiring person may need information regarding pending contacts to value the business properly. Section IV(D) of the proposed Final Judgment permits GTV to obtain such information, subject to appropriate limitations and confidentiality undertakings.

C. Compliance

Sections VI and VII of the proposed Final Judgment set forth various compliance procedures. Section VI sets up an affirmative compliance program directed toward ensuring GTV's compliance with the limitations imposed by the proposed Final Judgment. The compliance program includes the designation of a compliance officer who is required to distribute a copy of the Final Judgment to each present and succeeding director, officer, employee, and agent with the responsibility for mergers and acquisitions, brief each such person regarding compliance with the Final Judgment, and obtain a certification from each such person that he or she has received a copy of the Final Judgment and understand his or her obligations under the judgment. In addition, the compliance officer must provide a copy of the Final Judgment to a merger partner before the initial exchange of a letter of intent, definitive agreement or other agreement of merger. Section VI of the proposed Final Judgment further requires the compliance officer to certify to the United States that GTV is in compliance and to report any violations of the Final Judgment.

To facilitate monitoring GTV's compliance with the Final Judgment, Section VII grants DOJ access, upon reasonable notice, to GTV's records and documents relating to matters contained in the Final Judgment. GTV must also make its personnel available for interviews or depositions regarding such matters. In addition, GTV must, upon request, prepare written reports relating to matters contained in the Final Judgment.

These provisions are adequate to prevent recurrence of the type of illegal conduct alleged in the Complaint. The proposed Final Judgment should ensure that, in future transactions, GTV will not enter into agreements to limit competition during the pre-consummation period. Consequently, customers will receive the benefits of free and open competition.

D. Civil Penalties [5]

Under section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), any person who fails to comply with the Act shall be liable to the United States for a civil penalty of not more than $11,000 for each day during which such person is in violation of the Act.[6] Both Gemstar and TV Guide were in violation of section 7A from the first full day following execution of the merger agreement until the expiration of the statutory waiting period. The Defendants have agreed to pay, within thirty days of the entry of the proposed Final Judgment, civil penalties reflecting $11,000 per day per Defendant (or $5,676,000). This is the maximum civil penalty the Court could impose on the Defendants at trial.

V. Remedies Available to Private Litigants

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 district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit and reasonable attorneys fees. Entry of the proposed Final Judgment will neither impair nor assist 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 effect as prima facie evidence in any subsequent private lawsuit that may be brought against Defendants.

Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants 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 injunction portion of 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 Sherman Act injunction contained in the 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**. The United States will evaluate and respond to comments. All comments will be given due consideration by the DOJ, 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 this Court and published in the **Federal Register.** Written comments should be submitted to: James R. Wade, Chief, Litigation III, United States Department of Justice, Antitrust Division, 325 7th St., NW., Suite 300, Washington, DC 20530.

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.

VII. 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 the Defendants. The United States is satisfied, however, that the proposed injunctive relief and payment of civil penalties are sufficient to address the harm alleged in the Complaint.

[5] The United States does not believe that the payment of civil penalties under section 7A is subject to the APPA, and courts in this district have consistently entered consent judgments for civil penalties under section 7A without employing APPA procedures. *See, e.g., United States* v. *Hearst Trust, et al.,* 2001–2 Trade Cases ¶73,451 (D.D.C.); *United States* v. *Input/Output, et al.,* 1999–1 Trade Cas. (CCH) ¶72,528 (D.D.C.); *United States* v. *Blackstone Capital Partners II Merchant Banking Fund, et al.,* 1999–1 Trade Cas. (CCH) ¶72,585 (D.D.C.); *United States* v. *Mahle GMBH, et al.,* 1997–2 Trade Cas. (CCH) ¶71,868 (D.D.C.); *United States* v. *Figgie Int'l, Inc.,* 1997–1 Trade Cas. (CCH) ¶71,766 (D.D.C.); *United States* v. *Foodmaker, Inc.,* 1996–2 Trade Cas. (CCH) ¶71,555 (D.D.C.); *United States* v. *Titan Wheel International, Inc.,* 1996–1 Trade Cas. (CCH) ¶71,406 (D.D.C.); *United States* v. *Automatic Data Processing, Inc.,* 1996–1 Trade Case. (CCH) ¶71,361 (D.D.C.); *United States* v. *Trump,* 1988–1 Trade Cas. (CCH) ¶67,968 (D.D.C.). Thus, in consent settlements seeking both equitable relief and civil penalties, courts have not required use of APPA procedures with respect to the civil penalty component of the proposed final judgment. *See United States* v. *ARA Services, Inc.,* 1979–2 Trade Cas. (CCH) ¶62,861 (E.D. Mo.). Consequently, the civil penalties component of the proposed Final Judgment is not open to public comment. The other provisions of the proposed Final Judgment, including the equitable relief to resolve the alleged violations of section 7A, are covered by the APPA and subject to comment.

[6] *Id.; see also* Pub. L. 104–134 § 31001(s) (Debt Collection Improvement Act of 1996); 16 CFR 1.98 (increasing maximum penalty to $11,000 per day).

VIII. Standard of Review under the APPA for Proposed Final Judgment

The APPA requires that injunctions of anticompetitive conduct 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.'' In making that determination, the court may consider

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing on the adequacy of such judgment;

(2) the impact of entry of such judgment 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 the determination of the issues at trial.

15 U.S.C. 16(e). As the Court of Appeals for the District of Columbia has held, the APPA permits a court to consider, 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 *United States* v. *Microsoft,* 56 F.3d 1448–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the 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 proceedings.[7] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court in making its public interest findings, 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.[8]

Accordingly, 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, 462–63 (9th Cir. 1988) quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir), cert. denied, 454 U.S. 1083 (1981); *see also Micosoft,* 56 F.3d at 1458. Precedent requires 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 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 decree.[9]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. 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.' ''[10]

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States alleges 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. Since 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 might have but did not pursue. *Id.*

IX. 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: March 19, 2003.

Respectfully Submitted,

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on March 5, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Boeing Company, St. Louis, MO; LUVIT AB, Lund, SWEDEN; Campus Pipeline, Salt Lake City, UT; PeopleSoft, Inc., Pleasanton, CA; Eduprise, Morrisville, NC; and R5 Vision Oy, Helsinki, FINLAND have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the

[7] *United States* v. *Gillette Co.*, 406 F.Supp. 713, 715 (D. Mass. 1975) citing 119 Cong. Rec. 24598 (1973). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, these procedures are discretionary. 15 U.S.C. 16(f). A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538–9.

[8] *United States* v. *Mid-America Dairymen, Inc.* 1977–1 Trade Cas. (CCD ¶ 61,508, 71980 (W.D. Mo. 1977); *see also United States* v. *Loew's Inc.,* 783 F.Supp. 211, 214 (S.D.N.Y. 1992); *United States* v. *Columbia Artists Mgmt., Inc.,* 662 F.Supp. 865, 870 (S.D.N.Y. 1987).

[9] *United States* v. *Bechtel Corp.,* 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F.Supp. 1127, 1142–3 (C.D. Cal. 1978) *United States* v. *Gillette Co.,* 406 F.Supp. at 716. *See also United States* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983).

[10] *Gillette*, 406 F.Supp. at 716; *See also United States* v. *Alcan Aluminum Ltd.,* 605 F.Supp. 619, 622 (W.D. Ky. 1985); *United States* v. *Carrols Dev. Corp.,* 454 F.Supp. 1215, 1222 (N.D.N.Y. 1978).