152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead:

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

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[1]

In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also U.S. Airways*, 38 F. Supp. 3d at 74–75 (noting that a court should not reject the proposed remedies because it believes others are preferable and that room must be made for the government to grant concessions in the negotiation process for settlements); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant ''due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case''). The ultimate question is whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft*, 56 F.3d at 1461 (*quoting United States v. Western Elec. Co.*, 900 F.2d 283, 309 (D.C. Cir. 1990)). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments,[2] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns*, 489 F. Supp. 2d at 11. A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 38 F. Supp. 3d at 76. *See also United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); S. Rep. No. 93-298 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

VIII. Determinative Documents

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

Dated: February 14, 2019

Respectfully submitted,

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[1] *See also BNS*, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass'').

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

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on January 31, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ODVA, Inc. (''ODVA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. 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, Hirose Electric Co., Ltd., Tokyo, JAPAN; Diatrend Corporation, Osaka, JAPAN; SAMSON AG, Frankfurt am Main, GERMANY; Analytical

Technology, Inc., Collegeville, PA; Columbus McKinnon Corporation, Getzville, NY; CONTEC CO., LTD., Osaka, JAPAN; Dimetix AG, Herisau, SWITZERLAND; Dynapar Corporation, Gurnee, IL; Gefran S.P.A., Provaglio d'Iseo Brescia, ITALY; Honeywell Process Solutions, Houston, TX; Industrial Network Controls, LLC, Coopersburg, PA; INGENIA–CAT, SL, Barcelona, SPAIN; IVEK Corporation, North Springfield, VT; Leonton Technologies Co. Ltd., New Taipei City, TAIWAN; MKP Co., Ltd., Gyeonggi-do, REPUBLIC OF KOREA; NetTechnix E&P GmbH, Feldkirch, AUSTRIA; Reno Subsystems, Sparks, NV; Rinstrum Pty Ltd., Brisbane, AUSTRALIA; Tecnetics Industries Inc., St. Paul, MN; The Controls Group, Inc. dba Logix, Kirkland, WA; and Volktek Corporation, New Taipei City, TAIWAN, have been added as parties to this venture.

Also, Optoelectronics, Saitama, JAPAN; UNIPULSE Corporation, Tokyo, JAPAN; BF ENTRON Ltd. (British Federal), Kingswinford, UNITED KINGDOM; Criterion NDT, Auburn, WA; Digital Electronics Corporation (INDE), Osaka, JAPAN; EN Technologies Inc., Gyeonggi-do, REPUBLIC OF KOREA; General Electric Energy Division, Pittsburgh, PA; MYNAH Technologies, Chesterfield, MO; PMV Automation AB, Solna, SWEDEN; SKF USA Inc., Landsdale, PA; and Wittenstein SE, Igersheim, GERMANY, have withdrawn as parties to this venture.

In addition, Lumberg Automation has changed its name to Belden Deutschland GmbH, Schalksmühle, GERMANY.

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 ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA 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 Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on April 23, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 14, 2018 (83 FR 22288).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Space Enterprise Consortium

Notice is hereby given that, on January 31, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Space Enterprise Consortium (''SpEC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. 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, Aerodyne Industries, LLC, Cape Canaveral, FL; Altius Space Machines, Inc., Broomfield, CO; Aurora Engineering, LLC, Potomac, MD; Barnett Engineering & Signaling Laboratories, LLC, Colorado Springs, CO; BEI Precision Systems & Space Company, Inc., Maumelle, AZ; Boarhog, LLC, San Diego, CA; Brandywine Communications, Tustin, CA; Brandywine Photonics LLC, Exton, PA; Carillon Technologies Management Corporation, Alexandria, VA; Control Vision, Inc., Green Valley, AZ; deciBel Research, Inc., Huntsville, AL; Entegra Systems, Inc., Hanover, MD; Escape Communications, Inc., Torrance, CA; Integrity Communications Solutions, Colorado Springs, CO; L3 Technologies, Inc., SSG Division, Wilmington, MA; La Jolla Logic, San Diego, CA; Libration Systems Management, Inc., Albuquerque, NM; LinQuest Corporation, Los Angeles, CA; LoadPath, Albuquerque, NM; Lunar Resources, Inc., Houston, TX; Opterus R&D, Inc., Fort Collins, CO; Optimum Technologies, LLC, Leesburg, VA; Orbit Logic Incorporated, Greenbelt, MD; P3 Technologies, Inc., Jupiter, FL; Platron Manufacturing, Pflugerville, TX; Projects Unlimited, Dayton, OH; Quantum Research International, Huntsville, AL; Space Exploration Technologies Corp., Hawthorne, CA; Space Systems Integration, LLC, Great Falls, VA; Summation Research, Melbourne, FL; Tethers Unlimited, Inc., Bothell, WA; TMC Design Corporation, Las Cruces, NM; USfalcon, Inc., Cary, NC; Valley Tech Systems, Inc., Folsom, CA; Wyle Laboratories, Inc., Lexington Park, MD; and Zodiac Data Systems, Alpharetta, GA, have been added as parties to this venture.

Also, a.i. Solutions, Inc., Los Angeles, CA; Brilligent Solutions, Inc., Fairborn, OH; Electric Drivetrain Technologies, Castle Valley, UT; QuesTek Innovations, Inc., Evanston, IL; Saraniasat, Inc., Los Angeles, CA; Spectrum Laser and Technologies Inc. dba Spectrum AMT, Colorado Springs, CO; and Syscom, Colorado Springs, CO, have withdrawn 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 SpEC intends to file additional written notifications disclosing all changes in membership.

On August 23, 2018, SpEC 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 Act on October 2, 2018 (83 FR 49576).

The last notification was filed with the Department on November 8, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 6, 2018 (83 FR 62901).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

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DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On February 21, 2019, the Department of Justice lodged a proposed Partial Consent Decree (''Consent Decree'') with the United States District Court for the District of Massachusetts in the lawsuit entitled *United States, et al.* v. *City of Holyoke, Massachusetts,* Civil Action No. 19–cv–10332. In a Complaint, the United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), alleges that the City of Holyoke, Massachusetts, violated the Clean Water Act (CWA), 33 U.S.C. 1311 and 1319, by discharging pollutants from its wastewater collection system without authorization and not in compliance with its National Pollutant Discharge Elimination System permit. The Commonwealth of Massachusetts is a Plaintiff-Intervenor in the case. The proposed Partial Consent Decree requires that Holyoke submit a long-term, combined sewer overflow plan by December 31, 2019, with stipulated penalties attached for late submission. Civil penalties are deferred. The Consent Decree is partial in nature because, once the City develops its plan,