acquired in fee simple with a discretionary right of reverter.

The exchange is necessary to benefit the Park by preserving an undeveloped dry tropical forest and to assist GVI in support of its primary educational needs by providing a suitable location for a future school on the island that was diminished substantially by hurricane damage years ago. Currently, students must commute by boat each day or relocate to St. Thomas during the school year to complete a public high school education.

Mark A. Foust,

Regional Director, Interior Region 2.

[FR Doc. 2023–08623 Filed 4–24–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Activision Blizzard, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Activision Blizzard, Inc.,* Civil Action No 1:23–cv–00895. On April 3, 2023, the United States filed a Complaint alleging that Activision Blizzard, Inc. (''Activision'') and the teams in the *Overwatch* and *Call of Duty* Leagues owned by Activision agreed to suppress wages for professional esports players through the imposition of a ''Competitive Balance Tax,'' which penalized any team that paid total annual compensation to its players above a certain threshold set by Activision, in violation of section 1 of the Sherman Act, 15 U.S.C. 1.

The proposed Final Judgment, filed at the same time as the complaint, requires Activision to certify that it has ended all rules in the *Overwatch* and *Call of Duty* Leagues that impose an upper threshold on compensation for any player or players in those leagues; prohibits Activision from reinstating or implementing any rule that imposes an upper limit on compensation for any player or players in any professional esports league owned or controlled by Activision; requires Activision to provide notice of the meaning and requirements of the Final Judgment to all teams and players in professional esports leagues owned or controlled by Activision; requires Activision to implement a revised antitrust compliance policy; and imposes cooperation and reporting requirements.

Copies of the complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be submitted in English and directed to Chief, Civil Conduct Task Force, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8600, Washington, DC 20530 (email address: *ATRJudgmentCompliance@usdoj.gov*).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 Fifth Street NW, Washington, DC 20530, *Plaintiff,* v. Activision Blizzard, Inc., 3100 Ocean Park Blvd., Santa Monica, California 90405, *Defendant.*

Civil Action No.: 1:23–cv–00895 (Cobb, J.)

Complaint

The United States of America brings this civil antitrust action against Activision Blizzard, Inc. (''Activision''). Activision, a leading video game developer, owns and operates professional esports leagues built around two of its most popular team-based games, *Overwatch* and *Call of Duty.* For years, Activision and the independently owned teams in each league agreed to impose a ''Competitive Balance Tax.'' The Tax, which effectively operated as a salary cap, penalized teams for paying esports players above a certain threshold and limited player compensation in these leagues. This conduct had the purpose and effect of limiting competition between the teams in each league for esports players and suppressed esports players' wages. This conduct violates section 1 of the Sherman Act, 15 U.S.C. 1, and should be enjoined.

I. Industry Background

1. Today, few pastimes in the United States match the popularity and cultural impact of video games. An estimated 60 percent of Americans report they play video games on a weekly basis, and total consumer spending on video games in the United States reportedly topped $56 billion in 2022. Today's video game fans are not just interested in *playing,* but *watching* others play their favorite games on streaming sites such as Twitch and YouTube.

2. Two of Activision's most popular multiplayer video games are *Overwatch* and *Call of Duty. Overwatch* became one of the best-selling video games in 2016, its first year of release, and has since attracted millions of players. Since the release of the original *Call of Duty* game in 2003, Activision has published 18 additional titles in the series and reportedly has sold more than 400 million units, making it one of the best-selling video game franchises in history.

3. To capitalize on the success of *Overwatch* and *Call of Duty,* Activision created two professional esports leagues that feature teams comprising the very best *Overwatch* and *Call of Duty* players in the world. Launched in 2018, Activision's *Overwatch* League currently has 20 city-based teams located across North America, Europe, and Asia. The popularity of Activision's *Overwatch* League has been a leading contributor to the growth of esports in the United States. Soon after, in 2020, Activision launched its *Call of Duty* League with twelve teams using the same city-based model as the *Overwatch* League.

4. The *Overwatch* and *Call of Duty* Leagues have generated hundreds of millions of dollars for Activision from franchise fees, sponsorship revenues, exclusive streaming deals with YouTube, and the *Overwatch* League's television broadcast deal with Disney (including subsidiaries ESPN and ABC). Millions of viewers around the world have tuned in to watch professional *Overwatch* and *Call of Duty* players compete in league matches. In the inaugural season of the *Overwatch* League, 107 million viewers streamed matches over Twitch. By the next year, it was the most watched esports league in the world with more than 75.9 million hours watched. The *Call of Duty* League's official streaming channels attract more than 15 million views per month, and more than 300,000 viewers tuned in to the inaugural league championship in 2020.

5. The *Overwatch* and *Call of Duty* Leagues, like other sports leagues, feature independently owned teams that not only compete to win matches, but also compete to hire and retain the best players. Because *Overwatch* and *Call of Duty* are both multiplayer, team-based games, teams in the *Overwatch* and *Call of Duty* Leagues must recruit and sign a roster of players who fill different roles within the game and can work with and complement their teammates' skills. Esports pros spend thousands of hours practicing and honing their skills for a chance to make a professional roster; once they sign with a team, many players train at least eight hours every day and up to 70 hours each week.

6. Esports athletes often have short careers as a result of the intense physical and mental toll of elite competition, and thus have limited time to maximize their earnings.

II. The Competitive Balance Tax Suppressed Competition Between the Teams for Esports Players and Suppressed Wages

7. From the inception of each league, Activision and the teams agreed to impose rules that had the purpose and effect of substantially lessening competition for players by suppressing player compensation. Under these rules, which Activision called the ''Competitive Balance Tax,'' teams were fined if their total player compensation exceeded a threshold set by Activision each year. For every dollar a team spent over that threshold, Activision would fine the team one dollar and distribute the collected sum pro rata to all non-offending teams in the league. For example, if Activision set a Competitive Balance Tax threshold of $1 million, a team that spent $1.2 million on player compensation in a season would pay a $200,000 fine, which would be distributed to the other teams.

8. Teams recognized that their spending on player compensation would have been higher absent the Competitive Balance Tax. The Tax minimized the risk that one team would substantially outbid another for a player. The Tax not only harmed the highest-paid players, but also depressed wages for all players on a team. For example, if a team wanted to pay a large salary to one player, the team would have to pay less to the other players on the team to avoid the Tax. Teams also understood that the Tax incentivized their competitors to limit player compensation in the same way, further exacerbating the Tax's anticompetitive effects.

9. While players in other professional sports leagues have agreed to salary restrictions as part of collective bargaining agreements, the players in Activision's esports leagues are not members of a union and never negotiated or bargained for these rules.

10. In October 2021, as a result of the Department of Justice's investigation into the Competitive Balance Tax, Activision issued memoranda to all teams in the *Overwatch* and *Call of Duty* Leagues announcing that it would no longer implement or enforce a Competitive Balance Tax in either league.

11. The agreements between Activision and the teams in the *Overwatch* and *Call of Duty* Leagues to impose the Competitive Balance Tax constituted an unreasonable restraint of trade in violation of section 1 of the Sherman Act, 15 U.S.C. 1. Activision should be enjoined from implementing the Competitive Balance Tax or any similar rule or restraint that, directly or indirectly, imposes an upper limit on compensation for any player or players in any professional esports league that Activision owns or controls.

III. Jurisdiction and Venue

12. Activision is engaged in interstate commerce and in activities substantially affecting interstate commerce. Activision transacts business throughout the United States. *Overwatch* League and *Call of Duty* League are international professional esports leagues owned by Activision, and each league consists of independently owned city-based teams located across the United States and other parts of the world, including an *Overwatch* League team located in Washington, DC.

13. This Court has subject matter jurisdiction under 28 U.S.C. 1331, 28 U.S.C. 1337, and section 4 of the Sherman Act, 15 U.S.C. 4, to prevent and restrain Activision from violating section 1 of the Sherman Act, 15 U.S.C. 1.

14. Activision has consented to venue and personal jurisdiction in the District of Columbia. Venue is also proper in this judicial district under section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391.

IV. Defendant Activision Blizzard

15. Defendant Activision is a Delaware corporation headquartered in Santa Monica, California. Activision is a video game developer and publisher whose business includes the video game franchises *Overwatch* and *Call of Duty,* and the respective esports leagues for both franchises.

V. Violation Alleged (Violation of Section 1 of the Sherman Act)

16. The United States repeats and realleges paragraphs 1 through 15 as if fully set forth herein.

17. Activision's agreements with teams in the *Overwatch* and *Call of Duty* Leagues to impose the Competitive Balance Tax violated section 1 of the Sherman Act, 15 U.S.C. 1. The Competitive Balance Tax substantially lessened competition between teams in the *Overwatch* and *Call of Duty* Leagues for esports players and limited the players' compensation.

18. There is a reasonable expectation that the offense will recur unless the requested relief is granted.

VI. Requested Relief

19. The United States requests that this Court:

a. adjudge that Activision's agreements with teams in the *Overwatch* and *Call of Duty* Leagues to implement the Competitive Balance Tax rules are unlawful under section 1 of the Sherman Act, 15 U.S.C. 1;

b. permanently enjoin and restrain Activision from agreeing to or enforcing any rule that would, directly or indirectly, impose an upper limit on compensation for any player or players in any professional esports league that Activision owns or controls, including any rule that requires or incentivizes any team to impose an upper limit on its players' compensation or imposes a tax, fine, or other penalty on any team as a result of exceeding a certain amount of compensation for its players, and requiring Activision to take such internal measures as are necessary to ensure compliance with that injunction; and

c. award the United States such other relief as the Court may deem just and proper to redress and prevent recurrence of the alleged violations and to remedy the anticompetitive effects of the illegal agreements entered into by Activision.

Dated: April 3, 2023

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA,

JONATHAN S. KANTER (D.C. Bar #473286),
Assistant Attorney General for Antitrust.

DOHA MEKKI,
Principal Deputy Assistant Attorney General for Antitrust.

MICHAEL B. KADES,
Deputy Assistant Attorney General for Antitrust.

RYAN DANKS,
Director of Civil Enforcement.

MIRIAM R. VISHIO (D.C. Bar #482282),
Deputy Director of Civil Enforcement.

ERIC D. DUNN,
Counsel to the Assistant Attorney General.
DANIEL S. GUARNERA (D.C. Bar #1034844),
Acting Chief, Civil Conduct Task Force.
LARA TRAGER,
Acting Assistant Chief, Civil Conduct Task Force.

MICAH D. STEIN (D.C. Bar #177063) *
PETER NELSON
KATHLEEN KIERNAN (D.C. Bar #1003748)
VICTOR LIU (D.C. Bar #1766138)
Trial Attorneys
United States Department of Justice, Antitrust Division, 450 Fifth Street NW, Washington, DC 20530, Telephone: (202) 705–2503, Facsimile: (202) 307–5802, Email: *micah.stein@usdoj.gov.*
* LEAD ATTORNEY TO BE NOTICED

United States District Court for the District of Columbia

United States of America, *Plaintiff,* v. Activision Blizzard, Inc., *Defendant.*

Case No.: 1:23–cv–00895 (Cobb, J.)

[Proposed] Final Judgment

Whereas, Plaintiff, the United States of America, filed its Complaint on April 3, 2023, alleging that Defendant Activision Blizzard, Inc. violated section 1 of the Sherman Act, 15 U.S.C. 1;

And whereas, the United States and Defendant have consented to the entry of this Final Judgment (''Final Judgment'') without the taking of testimony, without trial or adjudication of any issue of fact or law, without the Final Judgment constituting any evidence against or admission by any party relating to any issue of fact or law, and without Defendant admitting liability, wrongdoing, or the truth of any allegations in the Complaint;

And whereas, Defendant represents that it ceased enforcement of the ''Competitive Balance Tax,'' a rule in the *Call of Duty* League and *Overwatch* League that required any Team that exceeded an upper threshold of Compensation to pay a tax to be distributed to all other Teams not exceeding that threshold, and agrees to undertake certain additional actions and refrain from certain conduct for the purpose of remedying the anticompetitive effects alleged in the Complaint;

And whereas, Defendant represents that the relief required by the Final Judgment can and will be made and that Defendant will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of the Final Judgment;

Now therefore, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendant under section 1 of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used in the Final Judgment:

A. ''Activision'' and ''Defendant'' mean Activision Blizzard, Inc., a Delaware corporation with its headquarters in Santa Monica, California, its successors and assigns, and its subsidiaries (including The *Overwatch* League, LLC and The *Call of Duty* League, LLC), divisions, groups, affiliates, partnerships, and joint ventures, and their owner(s) and operator(s), directors, officers, managers, agents, representatives, and employees.

B. ''Agreement'' means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

C. ''Compensation'' means all forms of wages, bonuses, and other payment for work rendered, and benefits, including housing and meal payments, insurance coverage, paid time off, vacation or personal leave, and annual or sick leave, but not including any (i) prize pool to be awarded by Defendant or Defendant's licensee to any Teams or players in any Professional Esports League, or (ii) marketing or promotional funding to be provided by Defendant or Defendant's licensee to any Teams or players in any Professional Esports League.

D. ''Esports Personnel'' means all officers of Defendant, and anyone employed by Defendant who is involved in the business or operations of any Professional Esports League.

E. ''Including'' means including, but not limited to.

F. ''Non-statutory Labor Exemption'' means the common law exemption from scrutiny under the antitrust laws that applies to concerted action or agreements imposed through the collective bargaining process between unions and nonlabor parties, as set forth in *Brown* v. *Pro Football, Inc.,* 518 U.S. 231 (1996), and related decisional law.

G. ''Person'' means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity.

H. ''Professional Esports League'' means any league in which video game players receive Compensation to compete for teams against other teams in a league format, where such league (i) is owned or controlled by Defendant, including the *Call of Duty* League and the *Overwatch* League; or (ii) features any video game owned or controlled by Defendant and as to which Defendant determines the rules regarding player Compensation, but excluding any amateur tournament or any league that operates entirely outside the United States.

I. ''Team'' means any team in any Professional Esports League, including its owner(s) and operator(s), directors, officers, managers, agents, representatives, and employees.

J. The ''Call of Duty League'' means the Professional Esports League featuring the video game *Call of Duty* (including all versions, sequels, and offshoots of the game), its owner(s) and operator(s), directors, officers, managers, agents, representatives, and employees.

K. The ''Overwatch League'' means the Professional Esports League featuring the video game *Overwatch* (including all versions, sequels, and offshoots of the game), its owner(s) and operator(s), directors, officers, managers, agents, representatives, and employees.

III. Applicability

The Final Judgment applies to Defendant and all other Persons in active concert or participation with Defendant who receive actual notice of the Final Judgment.

IV. Prohibited Conduct

A. Defendant must not impose any rule that would, directly or indirectly, impose an upper limit on Compensation for any player or players in any Professional Esports League, including any rule that requires or incentivizes any Team to impose an upper limit on its players' Compensation or imposes a tax, fine, or other penalty on any Team as a result of exceeding a certain amount of Compensation for its players.

V. Conduct Not Prohibited

A. Nothing in section IV prohibits Defendant from implementing any rule or engaging in any conduct covered by any applicable labor exemption (*e.g.,* the Non-statutory Labor Exemption).

B. Nothing in section IV prohibits Defendant from determining the Compensation to be paid to its own employees, including player employees of Teams in any Professional Esports League in which Defendant owns all of the Teams.

VI. Required Conduct

A. Within 20 days of entry of the Final Judgment, Defendant must certify in an affidavit from a senior legal officer that it has ended and will not implement or reinstate any rule that, directly or indirectly, imposes an upper

limit on Compensation for any player or players in any Professional Esports League, including any rule that requires or incentivizes any Team to impose an upper limit on its players' Compensation or imposes a tax, fine, or other penalty on any Team as a result of exceeding a certain amount of Compensation for its players.

B. Within 20 days of entry of the Final Judgment, Defendant must (i) identify or appoint a senior legal officer responsible for the supervision of Defendant's compliance with the terms and conditions of the Final Judgment and communicate to the United States all certifications and reports required by the Final Judgment, and (ii) provide to the United States the officer's name, business address, telephone number, and email address. Within 30 days of the departure of the designated senior legal officer or within 30 days of a decision by Defendant to identify or appoint a replacement, Defendant must provide to the United States the replacement officer's name, business address, telephone number, and email address. Defendant's initial identification or appointment of a senior legal officer, and identification or appointment of any replacement senior legal officer, are subject to the approval of the United States, in its sole discretion.

C. Any senior legal officer identified or appointed in accordance with this section VI must be an active member in good standing of the bar in any U.S. jurisdiction and must have, or must retain outside counsel who has, at least five years of legal experience, including experience with antitrust matters.

D. The Defendant and senior legal officer must:

1. within 30 days of entry of the Final Judgment, provide to all Esports Personnel, a director, officer, or manager of each Team, and, to the extent roster and contact information is known to Defendant, all players in all Professional Esports Leagues (i) a copy of the Final Judgment and the Competitive Impact Statement filed in this action, and (ii) in a manner to be devised by Defendant and approved by the United States, in its sole discretion, notice of the meaning and requirements of the Final Judgment;

2. within 30 days of entry of the Final Judgment, implement (i) a revised antitrust compliance policy, which must be approved by the United States, in its sole discretion, and (ii) a whistleblower protection policy, which must be approved by the United States, in its sole discretion, and which provides that any Person may disclose information concerning any violation or potential violation of the Final Judgment or the antitrust laws to the senior legal officer identified or appointed under this section VI, without reprisal for such disclosure;

3. annually provide to all Esports Personnel notice of the meaning and requirements of the Final Judgment, in a manner to be devised by Defendant and approved by the United States, in its sole discretion, and the antitrust compliance and whistleblower protection policies implemented pursuant to Paragraph VI(D)(2);

4. provide any Person who becomes an Esports Personnel, within 30 days of their assuming such role, (i) a copy of the Final Judgment and the Competitive Impact Statement filed in this action, (ii) notice of the meaning and requirements of the Final Judgment, in a manner to be devised by Defendant and approved by the United States, in its sole discretion, and (iii) the antitrust compliance and whistleblower protection policies implemented pursuant to Paragraph VI(D)(2);

5. obtain from all Esports Personnel, within 30 days of each such Person's receipt of the Final Judgment, a written certification that each such Person (i) has read and understands and agrees to abide by the terms of the Final Judgment, (ii) is not aware of any violation of the Final Judgment that has not been reported to Defendant, and (iii) understands that any failure to comply with the Final Judgment may result in an enforcement action for civil or criminal contempt of court against Defendant or any Person who violates the Final Judgment;

6. annually provide to a director, officer, or manager of each Team (i) a copy of the Final Judgment and the Competitive Impact Statement filed in this action, and (ii) notice of the meaning and requirements of the Final Judgment, in a manner to be devised by Defendant and approved by the United States, in its sole discretion;

7. in the event of a change of control of any Team, provide to a director, officer, or manager of that Team, within 30 days of any such change of control, (i) a copy of the Final Judgment and the Competitive Impact Statement filed in this action, and (ii) notice of the meaning and requirements of the Final Judgment, in a manner to be devised by Defendant and approved by the United States, in its sole discretion; and

8. certify in writing to the United States annually 30 days after the anniversary date of the entry of the Final Judgment that Defendant has complied with the provisions of the Final Judgment, with such writing including: (i) a list identifying all Esports Personnel and other Persons who received the materials required by Paragraphs VI(D)(3)–(7); and (ii) copies of all certifications obtained under Paragraph VI(D)(5).

E. Upon learning of any violation or potential violation of any of the terms and conditions contained in the Final Judgment, Defendant must:

1. promptly take appropriate action to terminate or modify the activity so as to comply with the Final Judgment;

2. maintain all documents related to any violation or potential violation of the Final Judgment for the duration of the Final Judgment;

3. within 30 days of learning of any violation or potential violation of any of the terms and conditions contained in the Final Judgment, file with the United States a statement describing the violation or potential violation and any steps Defendant has taken to address the violation or potential violation; and

4. at the United States' request, furnish to the United States a log of all documents maintained under Paragraph VI(F)(2), including identifying any such documents for which Defendant claims protection under the attorney-client privilege or the attorney work product doctrine.

VII. Compliance Inspection

A. For the purposes of determining or securing compliance with the Final Judgment or of determining whether the Final Judgment should be modified or vacated, upon written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, and reasonable notice to Defendant, Defendant must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

1. to have access during Defendant's office hours to inspect and copy, or at the option of the United States, to require Defendant to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendant relating to any matters contained in the Final Judgment; and

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

B. For the purposes of determining or securing compliance with the Final Judgment or of determining whether the Final Judgment should be modified or vacated, upon the written request of an

authorized representative of the Assistant Attorney General for the Antitrust Division, Defendant must submit written reports or respond to written interrogatories, under oath if requested, relating to any matters contained in the Final Judgment.

VIII. Public Disclosure

A. No information or documents obtained pursuant to any provision the Final Judgment may be divulged by the United States 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, for the purpose of securing compliance with the Final Judgment, or as otherwise required by law.

B. In the event of a request by a third party, pursuant to the Freedom of Information Act, 5 U.S.C. 552, for disclosure of information obtained pursuant to any provision of the Final Judgment, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information, at 28 CFR 16.7. When submitting information to the Antitrust Division, Defendant should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire 10 years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 16.7(b).

C. If at the time that Defendant furnishes information or documents to the United States pursuant to any provision of the Final Judgment, Defendant represents and identifies in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' the United States must give Defendant 10 calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

IX. Retention of Jurisdiction

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

X. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of the Final Judgment, including the right to seek an order of contempt from the Court. Defendant agrees that in a civil contempt action, a motion to show cause, or a similar action brought by the United States relating to an alleged violation of the Final Judgment, the United States may establish a violation of the Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendant waives any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleges was harmed by the challenged conduct. Defendant agrees that it may be held in contempt of, and that the Court may enforce, any provision of the Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of the Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendant has violated the Final Judgment, the United States may apply to the Court for an extension of the Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce the Final Judgment against Defendant, whether litigated or resolved before litigation, Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that effort to enforce the Final Judgment, including in the investigation of the potential violation.

D. For a period of four years following the expiration of the Final Judgment, if the United States has evidence that Defendant violated the Final Judgment before it expired, the United States may file an action against Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of the Final Judgment for an additional term of at least four years following the filing of the enforcement action; (2) all appropriate contempt remedies; (3) additional relief needed to ensure Defendant complies with the terms of the Final Judgment; and (4) fees or expenses as called for by this section X.

XI. Expiration of Final Judgment

Unless this Court grants an extension, the Final Judgment will expire five years from the date of its entry, except that the Final Judgment may be terminated earlier upon notice by the United States to the Court and Defendant that continuation of the Final Judgment is no longer necessary or in the public interest. All requirements, including all notice, certification, and reporting requirements imposed by section VI.D, shall terminate automatically upon the expiration of this Final Judgment.

XII. Reservation of Rights

The Final Judgment terminates only the claims expressly stated in the Complaint. The Final Judgment does not in any way affect any other charges or claims filed by the United States subsequent to the commencement of this action.

XIII. Notice

For purposes of the Final Judgment, any notice or other communication required to be filed with or provided to the United States must be sent to the address set forth below (or such other address as the United States may specify in writing to Defendant): Chief, Civil Conduct Task Force, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, Washington, DC 20530, *ATRJudgmentCompliance@usdoj.gov*.

XIV. Public Interest Determination

Entry of the Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including by making available to the public copies of the Final Judgment and the Competitive Impact Statement, public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, any comments and response to comments filed with the Court, entry of the Final Judgment is in the public interest.

Date: ____, 2023

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16]

United States District Judge.

United States District Court for the District of Columbia

United States of America, *Plaintiff,* v. Activision Blizzard, Inc., *Defendant.* Civil Action No.: 1:23–cv–00895 (Cobb, J.)

Competitive Impact Statement

In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''APPA'' or ''Tunney Act''), the United States of America files this Competitive Impact Statement related to the proposed Final Judgment filed in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On April 3, 2023, the United States filed a civil antitrust Complaint against Activision Blizzard, Inc. (''Activision'' or ''Defendant''), which owns the *Overwatch* and *Call of Duty* professional esports leagues. The United States alleged that Activision and the independently owned teams in these leagues agreed to impose a ''Competitive Balance Tax,'' (or the ''Tax'') which substantially lessened competition between the teams for esports players. The Tax, which effectively operated as a salary cap, imposed a fine on any team whose total annual player compensation exceeded a threshold set by Activision. Activision would then distribute the collected sum of such fines to the other teams in the league that had not exceeded the threshold. The Complaint alleges that the Tax had the purpose and effect of limiting competition between the teams in each league for esports players and suppressed esports players' wages, in violation of section 1 of the Sherman Act, 15 U.S.C. 1.

The Complaint seeks injunctive relief to prevent Activision from agreeing to or enforcing any rule that would, directly or indirectly, impose an upper limit on compensation for any player or players in any professional esports leagues that Activision owns or controls.

At the same time the Complaint was filed, the United States filed a proposed Final Judgment and Stipulation and Order, which are designed to remedy the anticompetitive effects alleged in the Complaint.

The proposed Final Judgment, which is explained more fully below, imposes the following obligations on Activision:

- Activision must certify that it has ended all rules in the *Overwatch* and *Call of Duty* Leagues that impose an upper limit on player compensation;
- Activision is prohibited from reinstating or implementing any rule that imposes an upper limit on player compensation in any professional esports leagues it owns or controls;
- Activision must provide notice of the meaning and requirements of the Final Judgment to all teams and players in professional esports leagues it owns or controls;
- Activision must implement a revised antitrust compliance policy and a whistleblower protection policy; and
- Activision must remedy and report to the United States any violation or potential violation of the Final Judgment and cooperate with the United States for the purposes of determining or securing compliance with the Final Judgment.

Under the terms of the Stipulation and Order, Activision must abide by and comply with the provisions of the proposed Final Judgment until it is entered by the Court or until expiration of the time for all appeals of any Court ruling declining entry of the proposed Final Judgment.

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

II. Description of Events Giving Rise to the Alleged Violation

A. Activision's Professional Esports Leagues

Activision is a leading video game developer and publisher, which owns and operates professional esports leagues built around two of its most popular multiplayer video game franchises, *Overwatch* and *Call of Duty.* Activision is incorporated in Delaware and headquartered in Santa Monica, California.

Overwatch became one of the best-selling video games in 2016, its first year of release, and has since attracted millions of players. Since the release of the original *Call of Duty* game in 2003, Activision has published 18 additional titles in the series and reportedly has sold more than 400 million units, making it one of the best-selling video game franchises in history.

To capitalize on the success of *Overwatch* and *Call of Duty,* Activision created two professional esports leagues that feature teams comprising the very best *Overwatch* and *Call of Duty* players in the world. Launched in 2018, Activision's *Overwatch* League currently has 20 city-based teams located across North America, Europe, and Asia. The popularity of Activision's *Overwatch* League has been a leading contributor to the growth of esports in the United States. Soon after, in 2020, Activision launched its *Call of Duty* League with 12 teams using the same city-based model as the *Overwatch* League.

The *Overwatch* and *Call of Duty* Leagues have generated hundreds of millions of dollars for Activision from franchise fees, sponsorship revenues, exclusive streaming deals with YouTube, and the *Overwatch* League's television broadcast deal with Disney (including subsidiaries ESPN and ABC). Millions of viewers around the world have tuned in to watch professional *Overwatch* and *Call of Duty* players compete in league matches. In the inaugural season of the *Overwatch* League, 107 million viewers streamed matches over Twitch. By the next year, it was the most watched esports league in the world with more than 75.9 million hours watched. The *Call of Duty* League's official streaming channels attract more than 15 million views per month, and more than 300,000 viewers tuned in to the inaugural league championship in 2020.

The *Overwatch* and *Call of Duty* Leagues, like other sports leagues, feature independently owned teams that not only compete to win matches, but also compete to hire and retain the best players. Because *Overwatch* and *Call of Duty* are both multiplayer, team-based games, teams in the *Overwatch* and *Call of Duty* Leagues must recruit and sign a roster of players who fill different roles within the game and can work with and complement their teammates' skills. Esports athletes spend thousands of hours practicing and honing their skills for a chance to make a professional roster; once they sign with a team, many players train at least eight hours every day and up to 70 hours each week.

Esports athletes often have short careers as a result of the intense physical and mental toll of elite competition, and thus have limited time to maximize their earnings.

B. The Unlawful Agreements

The Complaint alleges that Activision and the teams in the *Overwatch* and *Call of Duty* Leagues engaged in unlawful conduct that suppressed compensation for professional esports players in those leagues. From the inception of each league, Activision and the teams agreed to impose rules that had the purpose and effect of substantially lessening competition for players by suppressing player compensation. Under these rules, which Activision called the ''Competitive Balance Tax,'' teams were

fined if their total player compensation exceeded a threshold set by Activision each year. For every dollar a team spent over that threshold, Activision would fine the team one dollar and distribute the collected sum pro rata to all non-offending teams in the league. For example, if Activision set a Competitive Balance Tax threshold of $1 million, a team that spent $1.2 million on player compensation in a season would pay a $200,000 fine, which Activision would then distribute to the other teams.

The Complaint alleges that teams recognized that their spending on player compensation would have been higher absent the Competitive Balance Tax. The Tax minimized the risk that one team would substantially outbid another for a player. The Tax not only harmed the highest-paid players, but also depressed wages for all players on a team. For example, if a team wanted to pay a large salary to one player, the team would have to pay less to the other players on the team to avoid the Tax. Teams also understood that the Tax incentivized their competitors to limit player compensation in the same way, further exacerbating the Tax's anticompetitive effects. While players in other professional sports leagues have agreed to salary restrictions as part of collective bargaining agreements, the players in Activision's esports leagues are not members of a union and never negotiated or bargained for these rules.

The Complaint further alleges that, in October 2021, as a result of the Department of Justice's investigation into the Competitive Balance Tax, Activision issued memoranda to all teams in the *Overwatch* and *Call of Duty* Leagues announcing that it would no longer implement or enforce a Competitive Balance Tax in either league.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment closely track the relief sought in the Complaint and are intended to provide prompt, certain, and effective remedies that will ensure that Activision will not agree to or enforce any rule that would, directly or indirectly, impose an upper limit on compensation for any player or players in any professional esports league that Activision owns or controls. The requirements and prohibitions in the proposed Final Judgment will ensure that Activision has terminated its illegal conduct and prevent recurrence of the same or similar conduct. The proposed Final Judgment protects competition and workers by putting a stop to the anticompetitive esports player compensation restrictions alleged in the Complaint.

A. Prohibited Conduct

The proposed Final Judgment broadly prohibits Activision from imposing a ''Competitive Balance Tax'' rule or any similar rule or restraint in professional esports leagues that it owns or controls. Specifically, section IV of the proposed Final Judgment ensures that Activision will not impose any rule that would, directly or indirectly, impose an upper limit on compensation for any player or players in any professional esports league owned or operated by Activision, including any rule that requires or incentivizes any professional esports team to impose an upper limit on its players' compensation or imposes a tax, fine, or other penalty on any professional esports team as a result of exceeding a certain amount of compensation for its players. Paragraph II(A) of the proposed Final Judgment provides that these prohibitions will continue to apply to Activision's ''successors and assigns.''

B. Conduct Not Prohibited

Section V clarifies that the proposed Final Judgment does not prohibit Activision from imposing compensation restrictions in certain limited and specified circumstances. Paragraph V(A) states that the proposed Final Judgment does not prohibit Activision from engaging in conduct protected by any applicable labor exemption to the antitrust laws. Paragraph V(B) states that the proposed Final Judgment does not prohibit Activision from determining the compensation to be paid to its own employees.

C. Required Conduct

Sections VI and VII of the proposed Final Judgment impose requirements on Activision to prevent recurrence of the anticompetitive conduct and to ensure compliance with the terms of the Final Judgment. Under Paragraph VI(A) of the proposed Final Judgment, Activision must certify in an affidavit from a senior legal officer that (1) it has ended all rules that impose an upper threshold on compensation for any player or players in any professional esports leagues that Activision owns or controls, and (2) it will not implement or reinstate any such rules in any professional esports leagues that it owns or controls.

Under section VI of the proposed Final Judgment, Activision must designate a senior legal officer who is responsible for supervising Activision's compliance with the Final Judgment. Among the duties required by Paragraph VI(D) of the proposed Final Judgment, the senior legal officer will be required to distribute copies of the Final Judgment, this Competitive Impact Statement, and notice of the meaning and requirements of the Final Judgment to (1) Activision's officers and any employees involved with Activision's esports business, (2) a director, officer, or manager of each team in Activision's professional esports leagues, and (3) all players in Activision's professional esports leagues. The senior legal officer must also implement a revised antitrust compliance policy and whistleblower protection policy at Activision.

Under Paragraph VI(D)(8), Activision must annually certify compliance with the Final Judgment. Paragraph VI(E) requires Activision to remedy and report to the United States any violation or potential violation of the Final Judgment.

Finally, section VII requires Activision to provide the United States with information and access to company records and employees for the purpose of determining or securing compliance with the Final Judgment.

D. Enforcement of Final Judgment

The proposed Final Judgment also contains provisions designed to promote compliance with and make enforcement of the Final Judgment as effective as possible. Paragraph X(A) provides that the United States retains and reserves all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court. Under the terms of this paragraph, Defendant has agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendant has waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Paragraph X(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment is intended to remedy the loss of competition the United States alleges would otherwise be caused by the challenged conduct. Defendant agrees that it will abide by the proposed Final Judgment and that it may be held in contempt of the Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as

interpreted in light of this procompetitive purpose.

Paragraph X(C) provides that if the Court finds in an enforcement proceeding that Defendant has violated the Final Judgment, the United States may apply to the Court for an extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph X(C) provides that, in any successful effort by the United States to enforce the Final Judgment against Defendant, whether litigated or resolved before litigation, Defendant must reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with that effort to enforce this Final Judgment, including the investigation of the potential violation.

Paragraph X(D) states that the United States may file an action against Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, section XI of the proposed Final Judgment provides that the Final Judgment will expire five years from the date of its entry, except that the Final Judgment may be terminated earlier upon notice by the United States to the Court and Defendant that continuation of the Final Judgment is no longer necessary or in the public interest.

IV. Remedies Available to Potential Private Plaintiffs

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 court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists 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 prima facie effect in any subsequent private lawsuit that may be brought against Defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

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

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the **Federal Register** unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to: Chief, Civil Conduct Task Force, Antitrust Division, United States Department of Justice, 450 Fifth St. NW, Suite 8600, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Activision. The United States is satisfied, however, that the relief required by the proposed Final Judgment will ensure that the anticompetitive conduct alleged in the Complaint is terminated and not reinstated by Activision and will restore the benefits of competition to players in professional esports leagues owned or operated by Activision. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

Under the Clayton Act and APPA, proposed Final Judgments, or ''consent decrees,'' in antitrust cases brought by the United States are subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a proposed Final Judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether

the mechanisms to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's Complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should also bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is the one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted); *see also United States* v. *Deutsche Telekom AG,* No. 19–2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Microsoft,* 56 F.3d at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' (internal citations omitted)); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment 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 W. Elec. Co.,* 900 F.2d at 309).

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 (''[T]he '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 to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added 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). ''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 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

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: April 17, 2023.

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:

Micah D. Stein (D.C. Bar #177063), U.S. Department of Justice, Antitrust Division, Civil Conduct Task Force, 450 Fifth Street NW, Suite 8600, Washington, DC 20530, Tel: 202–705–2503, Fax: 202–616–2441, Email: *Micah.Stein@usdoj.gov*.

[FR Doc. 2023–08726 Filed 4–24–23; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree for Natural Resource Damages Under the Oil Pollution Act

On April 19, 2022, the Department of Justice lodged a proposed consent decree with the United States District Court for the Eastern District of Louisiana in the lawsuit entitled *United States* v. *LLOG Exploration Offshore, L.L.C.,* Civil Action No. 2:23–cv–01301–WBV–KWR.

The United States filed this lawsuit with respect to a crude oil spill that occurred at the Mississippi Canyon Block 209 subsea oil production system (''MC 209'') in the Gulf of Mexico beginning on or about October 11, 2017. The oil spilled from a fractured subsea wellhead jumper that connected the MC 209 Well to a subsea manifold. The incident lasted 32 hours and resulted in an estimated discharge of 16,000 barrels of oil (672,000 gallons) into the waters of the Gulf of Mexico.

The Complaint seeks the recovery of damages for injury to, destruction of, loss of, or loss of use of natural