Written submissions from the public must be filed no later than by close of business on January 20, 2022.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1255'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: December 29, 2021.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2021–28502 Filed 1–3–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. S&P Global Inc., et al.: 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, Order and 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. *S&P Global Inc., et al.,* Civil Action No. 1:21–cv–03003. On November 12, 2021, the United States filed a Complaint alleging that (1) S&P's proposed merger with IHS Markit Ltd. would violate Section 7 of the Clayton Act, 15 U.S.C. 18; and (2) the exclusivity and non-compete provisions of IHS Markit's Data License with GasBuddy LLC violate Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed at the same time as the Complaint: (1) Requires S&P and IHS Markit to divest three price reporting agency businesses, Oil Price Information Services (OPIS), Coals, Metals, and Mining (CMM), and PetrochemWire (PCW); (2) requires S&P and IHS Markit to waive the exclusivity and non-compete provisions of IHS Markit's Data License with GasBuddy; and (3) prohibits S&P, IHS Markit, and OPIS LLC from entering into, enforcing, renewing, or extending the term of any similar exclusive or non-compete provisions.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *https://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 Owen Kendler, Chief, Financial Services, Fintech, and Banking Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 4000, Washington, DC 20530 (email address: *owen.kendler@usdoj.gov*).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

United States District Court

for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW, Suite 4000, Washington, DC 20530, Plaintiff, v. *S&P Global Inc., 55 Water Street, New York, NY 10041,* and *IHS Markit Ltd., 4th Floor, Ropemaker Place, 25 Ropemaker Street, London, United Kingdom, EC2Y 9LY,* Defendants.

Civil Action No.: 1:21–cv–3003–JEB

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action against S&P Global Inc. (''S&P'') and IHS Markit Ltd. (''IHSM'') to enjoin S&P's proposed merger with IHSM, to enjoin anticompetitive conduct by IHSM, and to obtain other equitable relief. The United States complains and alleges as follows:

I. Introducton

1. On November 30, 2020, S&P and IHSM announced a merger to combine in an all-stock transaction that values IHSM at approximately $44 billion. S&P and IHSM are both financial and commodity information conglomerates, providing market data, indices, news, and analytical tools to participants in various financial and commodity markets around the world.

2. S&P and IHSM operate two of the four global price reporting agencies (''PRAs'') and two of the three leading PRAs in the United States. S&P provides PRA services through its Platts division (''Platts''), while IHSM offers PRA services primarily through its Oil Price Information Services (''OPIS''), Coal, Metals, and Mining (''CMM''), and PetrochemWire (''PCW'') businesses.

3. PRAs provide price assessments, news, and analysis related to numerous commodity markets around the world. PRAs sell their services to commodity industry participants (*e.g.,* oil refiners, commodities traders, large fuel consumers like airlines), that use the information to inform supply and demand decisions, as a reference for price terms in supply contracts, and as the basis for settling hedging instruments like futures contracts.

4. Competition between S&P's Platts division and IHSM's OPIS, CMM, and PCW businesses has resulted in lower prices and increased quality and innovation for PRA customers. The proposed merger would eliminate this significant competition in markets that are already highly concentrated.

5. Accordingly, the proposed merger is likely to lessen competition substantially in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

6. Separately, in 2016, IHSM's OPIS division entered into a 20-year exclusive data license and non-compete agreement (the ''Data License'') with a third-party data provider, GasBuddy LLC (''GasBuddy''), that operates a popular crowd-sourced retail gas price information app and has long provided OPIS with pricing data for resale to commercial customers (*e.g.,* retail gas station operators). This non-compete has effectively prevented and continues to prevent GasBuddy—a company well positioned to enter the retail gas price data market—from launching a data service that would compete with OPIS.

7. Accordingly, the Data License unreasonably restrains trade in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

II. Parties to the Proposed Merger and the Data License

8. S&P is a New York corporation headquartered in New York, New York. S&P is comprised of four business divisions: S&P Global Ratings, S&P Global Market Intelligence, S&P Dow Jones Indices, and S&P Platts. It reported global 2020 revenues of $7.44 billion.

9. S&P Platts, which offers PRA services, among other products and services, accounts for roughly 12% of S&P's revenue, reporting global 2020 revenues of $878 million.

10. IHSM is a Bermuda corporation headquartered in London, England. IHSM is comprised of four business divisions: Financials Services, Transportation, Consolidated Markets & Solutions, and Resources. It reported global 2020 revenues of $4.29 billion.

11. IHSM provides PRA services primarily through its OPIS, CMM, and PCW businesses, which are housed within IHSM's Resources division. OPIS, CMM, and PCW reported global 2020 revenues of approximately $140 million.

12. GasBuddy is a Delaware limited liability company that provides a crowd-sourced retail gas price information app. From 2013 until 2021, GasBuddy was owned by UCG Holdings LP (''UCG''). In early 2021, UCG sold GasBuddy to Professional Datasolutions, Inc.

III. Jurisdiction and Venue

13. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, and Section 4 of the Sherman Act, 15 U.S.C. 4, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18, and to prevent and restrain Defendant IHSM from violating Section 1 of the Sherman Act, 15 U.S.C. 1.

14. Defendants are engaged in, and their activities substantially affect, interstate commerce. Defendants both offer commodity price assessments, news, and analysis throughout the United States. This Court therefore has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and Section 4 of the Sherman Act, 15 U.S.C. 4, and 28 U.S.C. 1331, 1337(a), and 1345.

15. Defendants have each consented to personal jurisdiction and venue in this jurisdiction for purposes of this action. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391(b) and (c).

IV. Industry Background

16. PRAs provide commodity price assessments, news, and analysis that are critical to the proper functioning of numerous commodity markets. Some commodities, like corn or wheat, are traded on exchanges, which make price information readily accessible. But for many commodities—including many energy commodities like refined petroleum products (*e.g.,* gasoline and jet fuel), coal, and petrochemicals—trading is done off-exchange in private transactions with no reporting obligations. It is in these opaque markets where PRA price assessments are used as a proxy for the prevailing market price.

17. To produce these price assessments, PRAs collect information from commodity suppliers and participants in commodities transactions and then apply proprietary methodologies and editorial judgment. PRAs focus on providing daily price assessments, and often make the assessments available to subscribers via a data feed.

18. In most cases, PRAs assess prices at a given time for a specific commodity at a specific geographic location (*e.g.,* jet fuel in Los Angeles). In addition, most PRAs focus on assessing prices for spot (or bulk) transactions, which happen at the top of the supply chain (*e.g.,* at the refinery gate where the commodity is created). Some PRAs—like OPIS—also sell information regarding commodity prices down the supply chain at the wholesale (referred to as ''rack'' in the industry) and retail levels. In contrast to spot-level PRA services, however, collecting rack and retail prices does not involve any ''assessment.'' Rack and retail prices are posted and PRAs simply collect these posted (or charged) prices from market participants, or through third party aggregators, and then combine and offer the data to end customers. For example, retail gas station prices are knowable and the collection thereof does not require further assessment because gas stations advertise their prices for passing motorists.

19. PRA customers are located worldwide and span a wide range of industries. While major oil and gas companies, commodities traders, and large energy consumers generate the majority of PRA revenues, there are many smaller customers that participate in, or are affected by, commodity markets.

V. Relevant Markets Related to the Proposed Merger

A. Relevant Product Markets

20. S&P, through its Platts division, and IHSM, through its OPIS, CMM, and PCW businesses, both provide PRA services for refined petroleum products (*e.g.,* gasoline and jet fuel), coal, and petrochemicals. More specifically, both companies provide spot-level price assessments, and related news and analysis, for dozens of the same types of refined petroleum products, coal, and petrochemicals, across dozens of the same geographic locations across the United States and the world.

21. PRA services for any particular type of refined petroleum product, coal, or petrochemical are not a reasonable substitute for PRA services for any other type of refined petroleum product, coal, or petrochemical. Similarly, PRA services for a particular commodity at one geographic location are not a reasonable substitute for PRA services for the same commodity at a different geographic location. For example, the spot price of jet fuel in Los Angeles is not a reasonable substitute for a customer seeking the spot price of jet fuel in New York.

22. Despite the lack of substitutability between PRA services for different commodities, or for the same commodity at different geographic locations, spot-level PRA services for U.S.-located (i) refined petroleum products, (ii) coal, and (iii) petrochemicals can be analyzed in the

aggregate because each is offered under similar competitive conditions.

23. Therefore, spot-level PRA services for U.S.-located refined petroleum products, coal, and petrochemicals are each lines of commerce, or relevant product markets, for the purposes of analyzing the effects of the proposed merger under Section 7 of the Clayton Act, Clayton Act, 15 U.S.C. 18.

B. Relevant Geographic Market

24. Commodity market participants looking for spot-level PRA services for U.S.-located refined petroleum products, coal, or petrochemicals cannot reasonably turn to a PRA without significant U.S. operations and an established reputation for accurately reporting commodity prices and developments. To gather the trading details and market intelligence necessary to provide PRA services that customers can trust to reflect current trading conditions, PRAs must have a large number of U.S.-based analysts (referred to as ''price reporters'' in the industry) with close connections to the relevant players, and a detailed understanding of supply and demand dynamics, in the major U.S. trading hubs. In addition, PRA customers value established PRA providers that have a proven track record of accurately covering a given U.S. commodity market.

25. A hypothetical monopolist of spot-level PRA services for refined petroleum products, coal, or petrochemicals in the United States could profitably impose a small but significant non-transitory increase in price for its services without losing sufficient sales to render the price increase unprofitable. Accordingly, spot-level PRA services for refined petroleum products, coal, or petrochemicals in the United States is a relevant market for the purposes of analyzing the effects of the proposed merger under Section 7 of the Clayton Act, Clayton Act, 15 U.S.C. 18.

VI. S&P'S Proposed Merger With IHSM is Likely to Result in Anticompetitive Effects

26. Today, S&P and IHSM compete vigorously in each of the relevant markets, resulting in lower prices and increased quality and innovation for PRA customers.

27. In each of the relevant markets, S&P and IHSM are two of a very small number of companies providing PRA services. In spot-level PRA services for both refined petroleum products and coal in the United States, S&P and IHSM are two of the three companies that generate the vast majority of revenues in the two markets. And in spot-level PRA services for petrochemicals in the United States, S&P and IHSM are two of the four companies that generate the vast majority of revenues.

28. For many price assessments (*e.g.,* the spot price for jet fuel in Los Angeles), one PRA will become the market standard, or benchmark, after an initial period where PRAs vie for market adoption. Once market adoption occurs, that PRA's price assessment becomes embedded in the market ecosystem, as it is frequently referenced in price indexation formulas in supply contracts and in the relevant derivative contracts traded on major derivatives exchanges that are used by market participants to hedge their positions.

29. Competition among PRAs plays out in various forms. As referenced above, PRAs initially vie to become the benchmark price assessment for many commodities. Because benchmark price assessments can generate substantial subscription revenues, PRAs compete fiercely on price, quality, and innovation dimensions to gain benchmark status. And given the ongoing energy transition to more renewable energy sources like biofuels, there are likely to be many new benchmark opportunities in the near future. Established PRAs—like those operated by S&P and IHSM—are often best placed to compete for new benchmark opportunities.

30. Even after one PRA has been chosen as the benchmark, substantial competition remains between the PRAs covering that commodity, including competition (i) among the non-benchmark PRAs to serve as a secondary source for many customers, who use the secondary source as a ''second look'' to check the accuracy of the benchmark provider, and (ii) between the secondary source and the benchmark provider along both price and quality dimensions, resulting from the disciplining effect of this second-look, accuracy check.

31. While it is rare, some commodity markets have switched their benchmark from one PRA to another because of price and/or quality concerns. So, as one industry observer put it, ''[d]espite the enormous difficulties of displacing an incumbent and the extreme rarity of switches, rival PRAs have to nonetheless invest heavily in marketing and in business development staff in order to be considered as a credible alternative during those rare moments when the incumbent stumbles.'' [1]

[1] Owain Johnson, *The Price Reporters: A Guide to PRAs and Commodity Benchmarks* (Routledge 2018) at 34.

32. By eliminating the substantial head-to-head competition that exists today between S&P and IHSM, the proposed merger would result in higher prices and decreased quality and innovation for PRA customers. Accordingly, the proposed merger likely would substantially lessen competition in spot-level PRA services for refined petroleum products, coal, and petrochemicals in the United States.

VII. Absence of Countervailing Factors Related to the Proposed Merger

33. Entry into spot-level PRA services for refined petroleum products, coal, or petrochemicals in the United States is unlikely to be timely, likely, or sufficient to prevent the proposed merger's anticompetitive effects. As S&P and IHSM executives have recognized, barriers to entry into spot-level PRA services for refined petroleum products, coal, or petrochemicals in the United States are high. These barriers to entry include (i) the large sunk costs and significant other expenditures necessary to begin providing commodity price assessments, news, and analysis; (ii) significant time and expense to build a reputation for accurately covering commodity markets; and (iii) the difficulty of displacing a benchmark PRA provider once that PRA's price assessment becomes the benchmark and gets embedded in supply and derivative contracts. Unsurprisingly given all of these barriers, no significant PRA has entered in over 20 years.

34. The proposed merger is unlikely to generate verifiable, merger-specific efficiencies sufficient to reverse or outweigh the anticompetitive effects that are likely to occur.

VIII. The Data License Is an Unreasonable Restraint of Trade

35. As noted above, in addition to offering spot-level PRA services, OPIS also collects and resells information related to retail gas prices, largely in the United States. Since 2009, GasBuddy has been one of OPIS's two main sources of retail gas price data.

36. OPIS resells these data to customers like retail gas station operators or oil refiners, that use the data for competitive benchmarking and to inform supply and demand decisions.

37. In 2012, OPIS learned that ''GasBuddy [saw] a big opportunity in pursuing data sales,'' and GasBuddy notified OPIS in ''October [2012] that they [would] cease providing retail prices to [OPIS] effective Jan. 1 [2013].'' OPIS saw GasBuddy's plan as a significant threat to its retail gas price information business because it would greatly reduce the number of real-time

gas prices that OPIS could provide, and it would also ''greatly intensify competition in the retail pricing space.'' In response, OPIS made a ''tactical plan'' to ''buy[ ] GasBuddy'' to thwart this potential competition.

38. In March 2013, UCG—OPIS's then-owner—followed through with this plan and bought GasBuddy in a transaction that was below the reportability thresholds of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a.

39. In 2016, UCG sold OPIS to IHSM, but retained its ownership of GasBuddy. In order to maximize the value of OPIS and prevent GasBuddy from competing with OPIS under IHSM's ownership, UCG had OPIS and GasBuddy enter into the Data License, which (1) gave OPIS exclusive, worldwide rights to GasBuddy's data for 20 years; (2) required OPIS to pay no licensing fees for the data; and (3) subjected GasBuddy to a non-compete provision that restrained it from competing with OPIS or any other firm in the sale of retail gas price data to commercial customers. OPIS summarized the Data License simply as a ''long-term agreement where we are the sole distributor of GasBuddy data and they can't even sell it themselves.''

40. Retail gas price data providers compete to serve commercial customers on both price and quality, and the Data License has prevented—and continues to prevent—GasBuddy from launching a competing retail gas price data service. But for the non-compete agreement, GasBuddy would be free to enter the retail gas price data market and compete with OPIS. The non-compete provision imposed on GasBuddy is a horizontal restraint that stifles competition. The Data License, therefore, has resulted, and continues to result, in higher prices and lower quality in the retail gas price data market.

41. Furthermore, the non-compete provision imposed on GasBuddy was not reasonably necessary to a separate, legitimate transaction or collaboration. For example, the 20-year term of the non-compete was overbroad in its duration. That is, the noncompete was longer than necessary to effectuate and transfer any intellectual property, goodwill, or customer relationships associated with UCG's 2016 sale of OPIS. Nothing about IHSM's 2016 acquisition of OPIS justified a ban on competition between GasBuddy and OPIS until 2036. To the contrary, the non-compete simply inflated the value of OPIS and now protects only IHSM's desire to be free from competition in the market for the sale of retail gas price data.

42. The Data License, therefore, unreasonably restrains trade in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

IX. Violations Alleged

Count One: Violation of Section 7 of the Clayton Act, 15 U.S.C. 18

43. The United States hereby incorporates the allegations of paragraphs 1 through 42 above as if set forth fully herein.

44. S&P and IHSM are hereby named defendants on Count One of this Complaint.

45. S&P's proposed merger with IHSM is likely to substantially lessen competition in the relevant markets, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

46. Unless enjoined, the proposed merger would likely have the following anticompetitive effects, among others, in the relevant markets:

(a) eliminate present and future competition between S&P and IHSM;

(b) competition generally will be substantially lessened; and

(c) prices will likely increase and quality and innovation will likely decrease.

Count Two: Violation of Section 1 of the Sherman Act, 15 U.S.C. 1

47. The United States hereby incorporates the allegations of paragraphs 1 through 42 above as if set forth fully herein.

48. IHSM is hereby named as the defendant on Count Two of this Complaint.

49. Beginning at least as early as 2016, and continuing to this day, IHSM's subsidiary OPIS has engaged in a contract, the Data License, with GasBuddy that unreasonably restrains trade to OPIS's benefit, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

50. Unless enjoined, the contract would likely continue to have the following anticompetitive effects, among others:

(a) eliminate future competition between OPIS and GasBuddy for the sale of retail gas price information; and

(b) cause prices for retail gas price information to be higher than they would otherwise be and reduce the levels of quality, service, and innovation below what they would be absent the agreement.

X. Request for Relief

51. The United States requests that the Court:

(a) adjudge and decree S&P's proposed merger with IHSM to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) adjudge and decree that the Data License is a contract in unreasonable restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. 1;

(c) permanently enjoin Defendants from consummating S&P's proposed merger with IHSM or from entering into or carrying out any other agreement, understanding, or plan by which the assets or businesses of S&P and IHSM would be combined;

(d) permanently enjoin Defendant IHSM from enforcing the non-compete contained in the Data License;

(e) award the United States its costs of this action; and

(f) grant the United States such other relief the Court deems just and proper.

Dated: November 12, 2021

Respectfully Submitted,

Richard A. Powers,
Acting Assistant Attorney General, Antitrust Division.

Kathleen S. O'Neill,
Senior Director of Investigations and Litigation.

Owen M. Kendler,
Chief, Financial Services, Fintech, and Banking Section.

Lisa A. Scanlon,
Assistant Chief, Financial Services, Fintech, and Banking Section.

Travis Chapman,*
Vittorio Cottafavi, Collier Kelley, Rachel Zwolinski,

Trial Attorneys, Financial Services, Fintech, and Banking Section, Antitrust Division, 450 Fifth Street NW, Suite 4000, Washington, DC 20530, Telephone: (202) 353–9006, Email: *travis.chapman@usdoj.gov.*

* Lead Attorney to be noticed.

United States District Court

District of Columbia

United States of America, Plaintiff, v. *S&P Global Inc., IHS Markit Ltd.,* and *Oil Price Information Services, LLC,* Defendants.

Civil Action No.: 1:21–cv–3003–JEB

PROPOSED FINAL JUDGMENT

Whereas, Plaintiff, United States of America, filed its Complaint against S&P Global Inc. (''S&P'') and IHS Markit Ltd. (''IHSM'') on November 12, 2021;

And whereas, pursuant to a Stipulation and Order among S&P, IHSM, and Oil Price Information Services, LLC (''OPIS LLC'') (collectively, ''Defendants'') and Plaintiff, the Court has joined OPIS LLC as a defendant to this action for the

purposes of settlement and for the entry of this Final Judgment;

And whereas, Plaintiff and Defendants, have consented to entry of this Final Judgment without the taking of testimony, without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party relating to any issue of fact or law;

And whereas, S&P and IHSM agree to make a divestiture, and Defendants agree to undertake certain actions to remedy the loss of competition alleged in the Complaint;

And whereas, S&P and IHSM represent that the divestiture to News Corp. required by this Final Judgment can and will be made, Defendants represent that the other relief required by this Final Judgment can and will be made, and Defendants represent that they will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

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

I. Jurisdiction

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against S&P and IHSM under Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 1 of the Sherman Act, as amended (15 U.S.C. 1). Pursuant to the Stipulation and Order filed simultaneously with this Final Judgment joining OPIS LLC as a defendant to this action, OPIS LLC has consented to this Court's exercise of specific personal jurisdiction over OPIS LLC in this matter solely for the purposes of settlement and for the entry and enforcement of the Final Judgment.

II. Definitions

As used in this Final Judgment:

A. ''Data License'' means the Data License Agreement between Oil Price Information Service, LLC, and GasBuddy/Open Store, LLC, dated January 5, 2016.

B. ''Divestiture Business'' means (1) IHSM's Oil Price Information Service (''OPIS'') business, including the business known as PetrochemWire and OPIS's 15% stake in PRIMA Regulated Markets Limited and 25% stake in a2i systems A/S, and (2) IHSM's Coals, Metals, and Mining (''CMM'') business.

C. ''Divestiture Assets'' means all of S&P's and IHSM's rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, (1) owned by the Divestiture Business, or (2) primarily related to or used in connection with, or necessary to the operation of, the Divestiture Business (with the United States, in its sole discretion, to resolve any disagreement regarding which property and assets, tangible and intangible, are Divestiture Assets), including:

1. Lease agreements for offices located at: (a) 2099 Gaither Road, Rockville, MD 20850; (b) 3349 Highway 139, Wall Township, NJ 07719; and (c) 1295 Bandana Boulevard North, Saint Paul, MN 55018;

2. all other real property, including fee simple interests and real property leasehold interests and renewal rights thereto, and improvements to real property, together with all buildings, facilities, and other structures;

3. all tangible personal property, including fixed assets, office equipment and furniture, computer hardware, and supplies;

4. all contracts, contractual rights, and customer relationships, and all other agreements, commitments, and understandings, including supply agreements, teaming agreements, and all outstanding offers or solicitations to enter into a similar arrangement;

5. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations, and all pending applications or renewals;

6. all records and data, including (a) customer lists, accounts, sales, and credits records, (b) manuals and technical information that S&P and IHSM provide to their own employees, customers, suppliers, agents, or licensees, and (c) records and research data concerning historic and current research and development activities;

7. all intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (a) patents, patent applications, and inventions and discoveries that may be patentable, (b) registered and unregistered copyrights and copyright applications, and (c) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications; and

8. all other intangible property, including (a) commercial names and d/b/a names, (b) technical information, (c) design tools and simulation capabilities, (d) computer software and related documentation, know-how, trade secrets, quality assurance and control procedures, and (e) rights in internet websites and internet domain names.

D. ''Divestiture Date'' means the date on which the Divestiture Assets are divested to News Corp. pursuant to this Final Judgment.

E. ''GasBuddy'' means GasBuddy, LLC, a Delaware limited liability company with its headquarters in Boston, Massachusetts, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. ''IHSM'' means Defendant IHS Markit Ltd., a Bermuda corporation with its headquarters in London, United Kingdom, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

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

H. ''OPIS LLC'' means Defendant Oil Price Information Services, LLC, a Maryland limited liability company with its headquarters in Rockville, Maryland, its successors and assigns, and their directors, officers, managers, agents, and employees.

I. ''Relevant Personnel'' means all full-time, part-time, or contract employees of IHSM, wherever located, who work in OPIS or CMM, or whose job responsibilities relate primarily to the operation or management of the Divestiture Business, at any time between November 30, 2020, and the Divestiture Date. The United States, in its sole discretion, will resolve any disagreement regarding which employees are Relevant Personnel.

J. ''News Corp.'' means News Corporation, a Delaware corporation with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

K. ''Regulatory Approvals'' means (1) any approvals or clearances under antitrust, competition, or other U.S. or international laws that are required for the Transaction to proceed; and (2) any approvals or clearances under antitrust, competition, or other U.S. or international laws that are required for News Corp.'s acquisition of the Divestiture Assets to proceed.

L. ''S&P'' means Defendant S&P Global Inc., a New York corporation with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

M. ''Transaction'' means the proposed merger between S&P and IHSM.

III. Applicability

A. This Final Judgment applies to Defendants, as defined above, and all other persons, in active concert or participation with any Defendant, who receive actual notice of this Final Judgment.

B. If, prior to complying with Section IV and Section V of this Final Judgment, S&P and IHSM sell or otherwise dispose of all or substantially all of their assets or of business units that include the Divestiture Assets, S&P and IHSM must require any purchaser to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. S&P and IHSM are ordered and directed, within 30 calendar days after the Court's entry of the Asset Preservation and Hold Separate Stipulation and Order in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment to News Corp. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed 90 calendar days in total and will notify the Court of any extensions.

B. If S&P and IHSM have not received all Regulatory Approvals within 30 calendar days after the Court's entry of the Stipulation and Order in this matter, the time period provided in Paragraph IV.A. will be extended until 30 calendar days after all Regulatory Approvals are received. This extension allowed for securing Regulatory Approvals may be no longer than 120 calendar days past the time period provided in Paragraph IV.A., unless the United States, in its sole discretion, consents to an additional extension.

C. S&P and IHSM must use best efforts to divest the Divestiture Assets as expeditiously as possible. S&P and IHSM must take no action that would jeopardize the completion of the divestiture ordered by the Court, including any action to impede the permitting, operation, or divestiture of the Divestiture Assets.

D. Unless the United States otherwise consents in writing, divestiture pursuant to this Final Judgment must include the entire Divestiture Assets and must be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by News Corp. as part of a viable, ongoing business providing commodity price assessments and related news and analysis and that the divestiture to News Corp. will remedy the competitive harm alleged in the Complaint.

E. The divestiture must be accomplished in a manner that satisfies the United States, in its sole discretion, that none of the terms of any agreement between News Corp. and S&P and IHSM give S&P and IHSM the ability unreasonably to raise News Corp.'s costs, to lower News Corp.'s efficiency, or otherwise interfere in the ability of News Corp. to compete effectively in providing commodity price assessments and related news and analysis.

F. S&P and IHSM must cooperate with and assist News Corp. in identifying and, at the option of News Corp., hiring all Relevant Personnel, including:

1. Within 10 business days following the filing of the Complaint in this matter, S&P and IHSM must identify all Relevant Personnel to News Corp. and the United States, including by providing organization charts covering all Relevant Personnel.

2. Within 10 business days following receipt of a request by News Corp. or the United States, S&P and IHSM must provide to News Corp. and the United States additional information relating to Relevant Personnel, including name, job title, reporting relationships, past experience, responsibilities, training and educational histories, relevant certifications, and job performance evaluations. S&P and IHSM must also provide to News Corp. and the United States current and accrued compensation and benefits of Relevant Personnel, including most recent bonuses paid, aggregate annual compensation, current target or guaranteed bonus, if any, any retention agreement or incentives, and any other payments due, compensation or benefited accrued, or promises made to the Relevant Personnel. If S&P and IHSM are barred by any applicable law from providing any of this information, S&P and IHSM must provide, within 10 business days following receipt of the request, the requested information to the full extent permitted by law and also must provide a written explanation of S&P's and IHSM's inability to provide the remaining information, including specifically identifying the provisions of the applicable laws.

3. At the request of News Corp., S&P and IHSM must promptly make Relevant Personnel available for private interviews with News Corp. during normal business hours at a mutually agreeable location.

4. S&P and IHSM must not interfere with any effort by News Corp. to employ any Relevant Personnel. Interference includes offering to increase the compensation or improve the benefits of Relevant Personnel unless (a) the offer is part of a company-wide increase in compensation or improvement in benefits that was announced prior to November 30, 2020 or (b) the offer is approved by the United States in its sole discretion. S&P's and IHSM's obligations under this Paragraph IV.H.4. will expire 180 calendar days after the Divestiture Date.

5. For Relevant Personnel who elect employment with News Corp. within 180 calendar days of the Divestiture Date, S&P and IHSM must waive all non-compete and non-disclosure agreements; vest and pay to the Relevant Personnel (or to News Corp. for payment to the employee) on a prorated basis any bonuses, incentives, other salary, benefits or other compensation fully or partially accrued at the time of the transfer of the employee to News Corp.; vest any unvested pension and other equity rights; and provide all other benefits that those Relevant Personnel otherwise would have been provided had the Relevant Personnel continued employment with S&P and IHSM, including but not limited to any retention bonuses or payments. S&P and IHSM may maintain reasonable restrictions on disclosure by Relevant Personnel of S&P's and IHSM's proprietary non-public information that is unrelated to the Divestiture Assets or the provision of commodity price assessments and related news and analysis and not otherwise required to be disclosed by this Final Judgment.

6. For a period of 12 months from the Divestiture Date, S&P and IHSM may not solicit to rehire Relevant Personnel who were hired by News Corp. within 180 days of the Divestiture Date unless (a) an individual is terminated or laid off by News Corp. or (b) News Corp. agrees in writing that S&P and IHSM may solicit to rehire that individual. Nothing in this Paragraph IV.H.6. prohibits S&P and IHSM from advertising employment openings using general solicitations or advertisements and rehiring Relevant Personnel who apply for an employment opening through a general solicitation or advertisement.

G. S&P and IHSM must warrant to News Corp. that (1) the Divestiture Assets will be operational and without material defect on the date of their transfer to News Corp.; (2) there are no material defects in the environmental, zoning, or other permits relating to the operation of the Divestiture Assets; and (3) S&P and IHSM have disclosed all encumbrances on any part of the Divestiture Assets, including on intangible property. Following the sale of the Divestiture Assets, S&P and IHSM must not undertake, directly or indirectly, challenges to the environmental, zoning, or other permits

relating to the operation of the Divestiture Assets.

H. S&P and IHSM must assign, subcontract, or otherwise transfer all contracts, agreements, and customer relationships (or portions of such contracts, agreements, and customer relationships) included in the Divestiture Assets, including all supply and sales contracts, to News Corp.; *provided, however,* that for any contract or agreement that requires the consent of another party to assign, subcontract, or otherwise transfer, S&P and IHSM must use best efforts to accomplish the assignment, subcontracting, or transfer. S&P and IHSM must not interfere with any negotiations between News Corp. and a contracting party.

I. S&P and IHSM must use best efforts to assist News Corp. to obtain all necessary licenses, registrations, and permits to operate the Divestiture Business. Until News Corp. obtains the necessary licenses, registrations, and permits, S&P and IHSM must provide News Corp. with the benefit of S&P's and IHSM's licenses, registrations, and permits to the full extent permissible by law; *provided, however,* that S&P and IHSM need not assist News Corp. to obtain licenses, registrations, or permits to operate as benchmark administrators.

J. At the option of News Corp., and subject to approval by the United States in its sole discretion, on or before the Divestiture Date, S&P and IHSM must enter into a contract to provide transition services for back office, human resources, accounting, employee health and safety, and information technology services and support for a period of up to 180 days on terms and conditions reasonably related to market conditions for the provision of the transition services. Any amendment to or modification of any provision of a contract to provide transition services is subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve one or more extensions of any contract for transition services, for a total of up to an additional 180 days. If News Corp. seeks an extension of the term of any contract for transition services, Defendants must notify the United States in writing at least 90 days prior to the date the contract expires. News Corp. may terminate a contract for transition services, or any portion of a contract for transition services, without cost or penalty at any time upon commercially reasonable written notice. The employee(s) of S&P and IHSM tasked with providing transition services must not share any competitively sensitive information of News Corp. with any other employee of S&P and IHSM.

K. If any term of an agreement between S&P and IHSM and News Corp., including an agreement to effectuate the divestiture required by this Final Judgment, varies from a term of this Final Judgment, to the extent that S&P and IHSM, OPIS LLC, and News Corp. cannot fully comply with both, this Final Judgment determines S&P's, IHSM's, OPIS LLC's and News Corp.'s obligations.

V. Appointment of Divestiture Trustee

A. If S&P and IHSM have not divested the Divestiture Assets within the period specified in Paragraphs IV. A. and IV.B., S&P and IHSM must immediately notify the United States of that fact in writing. Upon application of the United States, which S&P and IHSM may not oppose, the Court will appoint a divestiture trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets to News Corp.

B. After the appointment of a divestiture trustee by the Court, only the divestiture trustee will have the right to sell the Divestiture Assets. The divestiture trustee will have the power and authority to accomplish the divestiture to News Corp., at a price and on terms obtainable through reasonable effort by the divestiture trustee, subject to the provisions of Sections IV and V of this Final Judgment, and will have other powers as the Court deems appropriate. The divestiture trustee must sell the Divestiture Assets as quickly as possible.

C. The divestiture trustee must notify the United States, S&P, and IHSM at least 7 calendar days before completion of the sale of the Divestiture Assets to News Corp. S&P and IHSM may not object to a sale to News Corp. by the divestiture trustee on any ground other than malfeasance by the divestiture trustee.

D. The divestiture trustee will serve at the cost and expense of S&P and IHSM pursuant to a written agreement, on terms and conditions, including confidentiality requirements and conflict of interest certifications, approved by the United States, in its sole discretion.

E. The divestiture trustee may hire at the cost and expense of S&P and IHSM any agents or consultants, including investment bankers, attorneys, and accountants, that are reasonably necessary in the divestiture trustee's judgment to assist with the divestiture trustee's duties. These agents or consultants will be accountable solely to the divestiture trustee and will serve on terms and conditions, including confidentiality requirements and conflict-of-interest certifications, approved by the United States in its sole discretion.

F. The compensation of the divestiture trustee and agents or consultants hired by the divestiture trustee must be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement that provides the divestiture trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished. If the divestiture trustee and S&P and IHSM are unable to reach agreement on the divestiture trustee's compensation or other terms and conditions of engagement within 14 calendar days of the appointment of the divestiture trustee by the Court, the United States, in its sole discretion, may take appropriate action, including by making a recommendation to the Court. Within three business days of hiring an agent or consultant, the divestiture trustee must provide written notice of the hiring and rate of compensation to S&P and IHSM and the United States.

G. The divestiture trustee must account for all monies derived from the sale of the Divestiture Assets sold by the divestiture trustee and all costs and expenses incurred. Within 30 calendar days of the Divestiture Date, the divestiture trustee must submit that accounting to the Court for approval. After approval by the Court of the divestiture trustee's accounting, including fees for unpaid services and those of agents or consultants hired by the divestiture trustee, all remaining money must be paid to S&P and IHSM and the trust will then be terminated.

H. S&P and IHSM must use best efforts to assist the divestiture trustee to accomplish the required divestiture to News Corp. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial information, or any applicable privileges, S&P and IHSM must provide the divestiture trustee and agents or consultants retained by the divestiture trustee with full and complete access to all personnel, books, records, and facilities of the Divestiture Assets. S&P and IHSM also must provide or develop financial and other information relevant to the Divestiture Assets that the divestiture trustee may reasonably request. S&P and IHSM must not take any action to interfere with or to impede the divestiture trustee's accomplishment of the divestiture to News Corp.

I. The divestiture trustee must maintain complete records of all efforts

made to sell the Divestiture Assets to News Corp., including by filing monthly reports with the United States setting forth the divestiture trustee's efforts to accomplish the divestiture ordered by this Final Judgment.

J. If the divestiture trustee has not accomplished the divestiture ordered by this Final Judgment within 180 days of appointment, the divestiture trustee must promptly provide the United States with a report setting forth: (1) The divestiture trustee's efforts to accomplish the required divestiture; (2) the reasons, in the divestiture trustee's judgment, why the required divestiture has not been accomplished; and (3) the divestiture trustee's recommendations for completing the divestiture. Following receipt of that report, the United States may make additional recommendations to the Court. The Court thereafter may enter such orders as it deems appropriate to carry out the purpose of this Final Judgment, which may include extending the trust and the term of the divestiture trustee's appointment by a period requested by the United States.

K. The divestiture trustee will serve until divestiture of all Divestiture Assets to News Corp. is completed or for a term otherwise ordered by the Court.

L. If the United States determines that the divestiture trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute divestiture trustee.

VI. Financing

S&P and IHSM may not finance all or any part of News Corp.'s purchase of all or part of the Divestiture Assets.

VII. Asset Preservation and Hold Separate Obligations

Defendants must take all steps necessary to comply with the Asset Preservation and Hold Separate Stipulation and Order entered by the Court.

VIII. Affidavits

A. Within 20 calendar days of the filing of the Complaint in this matter, and every 30 calendar days thereafter until the divestiture required by this Final Judgment has been completed, S&P and IHSM must deliver to the United States an affidavit, signed by each S&P's and IHSM's Chief Financial Officer and General Counsel, describing in reasonable detail the fact and manner of S&P's and IHSM's compliance with this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

B. S&P and IHSM must keep all records of any efforts made to divest the Divestiture Assets until one year after the Divestiture Date.

C. Within 20 calendar days of the filing of the Complaint in this matter, S&P and IHSM must deliver to the United States an affidavit signed by S&P's and IHSM's Chief Financial Officer and General Counsel, that describes in reasonable detail all actions S&P and IHSM have taken and all steps that S&P and IHSM have implemented on an ongoing basis to comply with Section VII of this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

D. If S&P or IHSM makes any changes to actions and steps described in affidavits provided pursuant to Paragraph VIII.D., S&P or IHSM, as applicable, must, within 15 calendar days after any change is implemented, deliver to the United States an affidavit describing those changes.

E. S&P and IHSM must keep all records of any efforts made to comply with Section VII until one year after the Divestiture Date.

IX. Required Conduct

Prior to the Divestiture Date, and no later than five business days after the Court's entry of the Stipulation and Order in this matter, S&P and IHSM must notify GasBuddy in writing that, effective on the date of completion of the Transaction, OPIS LLC (1) waives the exclusivity obligation in the license grant in Section 2(a) of the Data License, so as to render the license of GasBuddy retail data to OPIS LLC non-exclusive; and (2) waives the GasBuddy restrictive covenants, including the non-compete provision enumerated in Section 4(c) of the Data License. Before such written notice is provided to GasBuddy, the form and content of the written notice must be approved by the United States, in its sole discretion.

X. Prohibited Conduct

A. Without the prior written consent of the United States, in its sole discretion, S&P and IHSM will not (1) enter into, enforce, renew, or extend the term of any exclusive licenses for the provision to S&P and IHSM of GasBuddy's data; or (2) enter into, enforce, renew, or extend the term of any non-compete provisions relating to GasBuddy's data.

B. Without the prior written consent of the United States, in its sole discretion, OPIS LLC will not (1) enter into, enforce, renew, or extend the term of any exclusive licenses for the provision to OPIS LLC of GasBuddy's data or U.S. retail gas price data of any other third-party provider; or (2) enter into, enforce, renew, or extend the term of any non-compete provisions relating to GasBuddy's data or U.S. retail gas price data of any other third-party provider.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment or of related orders such as the Asset Preservation and Hold Separate Stipulation and Order or of determining whether this 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 Defendants, Defendants 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 Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants relating to any matters contained in this Final Judgment; and

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

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

C. No information or documents obtained pursuant to this Section 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 this Final Judgment, or as otherwise required by law.

D. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, 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. Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire ten years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 16.7(b).

E. If at the time that Defendants furnish information or documents to the United States pursuant to this Section, Defendants represent and identify 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 Defendants mark 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 Defendants ten (10) calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

XII. No Reacquisition

S&P and IHSM may not reacquire any part of or any interest in the Divestiture Assets during the term of this Final Judgment without prior authorization of the United States.

XIII. Retention of Jurisdiction

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

XIV. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree 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 this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This 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. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this 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 this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for an extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that 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 this Final Judgment, including in the investigation of the potential violation.

D. For a period of four years following the expiration of this Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this 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 the Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section XIV.

XV. Expiration of Final Judgment

Unless the Court grants an extension, this Final Judgment will expire 10 years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and continuation of this Final Judgment is no longer necessary or in the public interest.

XVI. Public Interest Determination

Entry of this 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 this 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 this Final Judgment is in the public interest.

Date: _____

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

_____

United States District Judge

United States District Court

District of Columbia

United States of America, Plaintiff, v. *S&P Global Inc., IHS Markit Ltd.,* and *Oil Price Information Services, LLC,* Defendants.

Civil Action No.: 1:21–cv–3003–JEB

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 November 29, 2020, S&P Global Inc. (''S&P'') and IHS Markit Ltd. (''IHSM'') entered into a merger agreement to combine in an all-stock transaction that values IHSM at approximately $44 billion. Separately, in January 2016, IHSM's Oil Price and Information Services LLC (''OPIS LLC'') division entered into a 20-year exclusive data license and non-compete agreement (''Data License'') with GasBuddy LLC (''GasBuddy''), an operator of a popular crowd-sourced retail gas price information app that has long provided OPIS LLC with pricing data for resale to commercial customers (*e.g.,* retail gas station operators).

The United States filed a civil antitrust Complaint on November 12, 2021, seeking to enjoin both: (1) The consummation of the proposed merger; and (2) the enforcement of the exclusivity and non-compete provisions contained in the Data License. The Complaint alleges that the likely effect of this merger would be to substantially lessen competition for spot-level price reporting agency (''PRA'') services for refined petroleum products, coal, and petrochemicals in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint also alleges that the Data License

unreasonably restrains trade in the market for the sale of retail gas price data in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

At the same time the Complaint was filed, the United States filed a proposed Final Judgment and an Asset Preservation and Hold Separate Stipulation and Order (''Stipulation and Order''), which are designed to remedy the loss of competition and the unreasonable restraint on trade alleged in the Complaint.

Under the proposed Final Judgment, which is explained more fully below, S&P and IHSM are required to divest three IHSM PRA businesses: (1) OPIS LLC, which focuses on refined petroleum products; (2) Coal, Metals, and Mining (''CMM''), which focuses predominately on coal; and (3) PetrochemWire (''PCW''), which focuses on petrochemicals. S&P and IHSM have agreed to divest OPIS LLC, CMM, and PCW to News Corporation (''News Corp.''), a global media conglomerate that operates a financial data company, Dow Jones & Company, Inc. (''Dow Jones'').

In addition, under the proposed Final Judgment, S&P and IHSM must waive the exclusivity and non-compete provisions of the Data License between OPIS LLC and GasBuddy. S&P, IHSM, and OPIS LLC are also prohibited, without the prior written consent of the United States, from entering into, enforcing, renewing, or extending the term of any similar exclusive or non-compete provisions.

Under the terms of the Stipulation and Order, until the divestiture is completed, S&P and IHSM must take certain steps to ensure that OPIS LLC, CMM, and PCW remain independent, economically viable, competitive, and saleable. In addition, the management, sales, and operations of these businesses must be held entirely separate, distinct, and apart from S&P's and IHSM's other operations. The purpose of these terms in the Stipulation and Order is to ensure that competition is maintained during the pendency of the required divestiture.

The Stipulation and Order also requires Defendants to abide by and comply with the provisions of the proposed Final Judgment until the proposed Final Judgment is entered by the Court or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment. On November 16, 2021, the Court entered the Stipulation and Order.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. 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 Violations

A. The Defendants and the Proposed Merger

S&P is a global financial data conglomerate headquartered in New York, New York and is comprised of four divisions: S&P Global Ratings, S&P Global Market Intelligence, S&P Dow Jones Indices, and S&P Platts. It reported global 2020 revenues of $7.44 billion. It provides PRA services through its S&P Platts division, which reported global 2020 revenues of $878 million and accounts for roughly 12% of S&P's revenue.

IHSM is a global financial data conglomerate headquartered in London, England and is comprised of four divisions: Financial Services, Transportation, Consolidated Markets & Solutions, and Resources. It reported global 2020 revenues of $4.29 billion. It provides PRA services primarily through its OPIS LLC, CMM, and PCW businesses, which are housed within IHSM's Resources division. OPIS LLC, CMM, and PCW reported global 2020 revenues of approximately $140 million and accounts for roughly 3% of IHSM's revenue.

OPIS LLC, currently an IHSM subsidiary, provides PRA services primarily related to refined petroleum products. OPIS LLC will be acquired by News Corp. pursuant to the divestiture required by the proposed Final Judgment.

Pursuant to a merger agreement dated November 29, 2020, S&P intends to merge with IHSM in an all-stock transaction that values IHSM at approximately $44 billion.

B. The Competitive Effects of the Proposed Merger

The Complaint alleges that the likely effect of this merger would be to substantially lessen competition for spot-level PRA services for refined petroleum products, coal, and petrochemicals in the United States.

1. Relevant Product Markets

PRAs provide commodity price assessments, news, and analysis that are critical to the proper functioning of numerous commodity markets. Some commodities, like corn or wheat, are traded on exchanges, which make price information readily accessible. But for many commodities—including many energy commodities like refined petroleum products (*e.g.,* gasoline and jet fuel), coal, and petrochemicals—trading is done off-exchange in private transactions with no reporting obligations. It is in these opaque markets where PRA price assessments are used as a proxy for the prevailing market price.

To produce these price assessments, PRAs collect information from commodity suppliers and participants in commodities transactions and then apply proprietary methodologies and editorial judgment. PRAs focus on providing daily price assessments, and often make the assessments available to subscribers via a data feed.

In most cases, PRAs assess prices at a given time for a specific commodity at a specific geographic location (*e.g.,* jet fuel in Los Angeles). In addition, most PRAs focus on assessing prices for spot (or bulk) transactions, which happen at the top of the supply chain (*e.g.,* at the refinery gate where the commodity is created).

PRA customers are located worldwide and span a wide range of industries. While major oil and gas companies, commodities traders, and large energy consumers generate the majority of PRA revenues, there are many smaller customers that participate in, or are affected by, commodity markets.

S&P, through its Platts division, and IHSM, through its OPIS LLC, CMM, and PCW businesses, both provide PRA services for refined petroleum products (*e.g.,* gasoline and jet fuel), coal, and petrochemicals. More specifically, both companies provide spot-level price assessments, and related news and analysis, for dozens of the same types of refined petroleum products, coal, and petrochemicals, across dozens of the same geographic locations across the United States and the world.

PRA services for any particular type of refined petroleum product, coal, or petrochemical are not a reasonable substitute for PRA services for any of other type of refined petroleum product, coal, or petrochemical. Similarly, PRA services for a particular commodity at one geographic location are not a reasonable substitute for PRA services for the same commodity at a different geographic location.

Despite the lack of substitutability between PRA services for different commodities within each category, or for the same commodity at different geographic locations, spot-level PRA services for U.S.-located (i) refined petroleum products, (ii) coal, and (iii) petrochemicals can be analyzed in the aggregate because each is offered under

similar competitive conditions. Spot-level PRA services for U.S.-located refined petroleum products, coal, and petrochemicals are each lines of commerce, or relevant product markets, for the purposes of analyzing the effects of the proposed merger under Section 7 of the Clayton Act, 15 U.S.C. 18.

2. Relevant Geographic Market

Commodity market participants looking for spot-level PRA services for U.S.-located refined petroleum products, coal, or petrochemicals cannot reasonably turn to a PRA without significant U.S. operations and an established reputation for accurately reporting commodity prices and developments. To provide customers with trustworthy trading details and market intelligence that reflect current trading conditions, PRAs must have a large number of U.S.-based analysts (referred to as ''price reporters'' in the industry) with close connections to the relevant players, and a detailed understanding of supply and demand dynamics, in the major U.S. trading hubs. In addition, PRA customers value established PRA providers that have a proven track record of accurately covering a given U.S. commodity market.

A hypothetical monopolist of spot-level PRA services for refined petroleum products, coal, or petrochemicals in the United States could profitably impose a small but significant non-transitory increase in price for its services without losing sufficient sales to render the price increase unprofitable. Accordingly, there are three relevant markets for the purposes of analyzing the effects of the proposed merger under Section 7 of the Clayton Act, 15 U.S.C. 18: (1) Spot-level PRA services for refined petroleum products in the United States; (2) spot-level PRA services for coal in the United States; and (3) spot-level PRA services for petrochemicals in the United States.

3. Competitive Effects

Today, S&P and IHSM compete vigorously in each of the relevant markets, resulting in lower prices and increased quality and innovation for PRA customers. In each of the relevant markets, S&P and IHSM are two of a few companies providing PRA services. In spot-level PRA services for both refined petroleum products and coal in the United States, S&P and IHSM are two of the three companies that generate the vast majority of revenues in the two markets. In spot-level PRA services for petrochemicals in the United States, S&P and IHSM are two of the four companies that generate the vast majority of revenues.

For many price assessments (*e.g.,* the spot price for jet fuel in Los Angeles), one PRA will become the market standard, or benchmark, after an initial period where PRAs vie for market adoption. Once market adoption occurs, that PRA's price assessment becomes embedded in the market ecosystem, as it is frequently referenced in price indexation formulas in supply contracts and in the relevant derivative contracts traded on major derivatives exchanges that are used by market participants to hedge their positions.

Competition among PRAs plays out in various forms. As referenced above, PRAs initially vie to become the benchmark price assessment for many commodities. Because benchmark price assessments can generate substantial subscription revenues, PRAs compete fiercely on price, quality, and innovation dimensions to gain benchmark status. The ongoing energy transition to more renewable energy sources like biofuels will likely create many new benchmark opportunities in the near future. Established PRAs (*e.g.,* those operated by S&P and IHSM) are often best placed to compete for new benchmark opportunities.

Even after one PRA has been chosen as the benchmark, substantial competition remains between the PRAs covering that commodity, including competition (i) among the non-benchmark PRAs to serve as a secondary source for many customers, who use the secondary source as a ''second look'' to check the accuracy of the benchmark provider, and (ii) between the secondary source and the benchmark provider along both price and quality dimensions, resulting from the disciplining effect of this second-look, accuracy check.

While it is rare, some commodity markets have switched their benchmark from one PRA to another because of price and/or quality concerns. So, as one industry observer put it, ''[d]espite the enormous difficulties of displacing an incumbent and the extreme rarity of switches, rival PRAs have to nonetheless invest heavily in marketing and in business development staff in order to be considered as a credible alternative during those rare moments when the incumbent stumbles.'' [2]

By eliminating the substantial head-to-head competition that exists today between S&P and IHSM, the proposed merger would result in higher prices and decreased quality and innovation for PRA customers. Accordingly, the proposed merger likely would substantially lessen competition in spot-level PRA services for refined petroleum products, coal, and petrochemicals in the United States.

4. Entry and Expansion

Entry into spot-level PRA services for refined petroleum products, coal, or petrochemicals in the United States is unlikely to be timely, likely, or sufficient to prevent the proposed merger's anticompetitive effects. As S&P and IHSM executives have recognized, barriers to entry into spot-level PRA services for refined petroleum products, coal, or petrochemicals in the United States are high. These barriers to entry include (i) the large sunk costs and significant other expenditures necessary to begin providing commodity price assessments, news, and analysis; (ii) significant time and expense to build a reputation for accurately covering commodity markets; and (iii) the difficulty of displacing a benchmark PRA provider once that PRA's price assessment becomes the benchmark and gets embedded in supply and derivative contracts. Unsurprisingly, given all of these barriers, no significant PRA has entered in over 20 years.

C. Competitive Effects of the Exclusive Data License and Non-Compete Agreement

The Complaint alleges that the Data License unreasonably restrains trade in the sale of retail gas price data.

In addition to offering spot-level PRA services, OPIS LLC also collects and resells information related to retail gas prices, largely in the United States. Since 2009, GasBuddy has been one of OPIS LLC's two main sources of retail gas price data. OPIS LLC resells these data to customers like retail gas station operators or oil refiners, that use the data for competitive benchmarking and to inform supply and demand decisions.

In 2012, OPIS LLC learned that ''GasBuddy [saw] a big opportunity in pursuing data sales,'' and GasBuddy notified OPIS LLC in ''October [2012] that they [would] cease providing retail prices to [OPIS LLC] effective Jan. 1 [2013].'' OPIS LLC saw GasBuddy's plan as a significant threat to its retail gas price information business because it would greatly reduce the number of real-time gas prices that OPIS LLC could provide, and it would also ''greatly intensify competition in the retail pricing space.'' In response, OPIS LLC made a ''tactical plan'' to ''buy[ ] GasBuddy'' to thwart this potential competition.

In March 2013, UCG Holdings LP (''UCG'')—OPIS LLC's then-owner—

[2] Owain Johnson, *The Price Reporters: A Guide to PRAs and Commodity Benchmarks* (Routledge 2018) at 34.

followed through with this plan and bought GasBuddy in a transaction that was below the reportability thresholds of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a.

In 2016, UCG sold OPIS LLC to IHSM, but retained its ownership of GasBuddy. In order to maximize the value of OPIS LLC and prevent GasBuddy from competing with OPIS LLC under IHSM's ownership, UCG had OPIS LLC and GasBuddy enter into the Data License, which (1) gave OPIS LLC exclusive, worldwide rights to GasBuddy's data for 20 years; (2) required OPIS LLC to pay no licensing fees for the data; and (3) subjected GasBuddy to a non-compete provision that restrained it from competing with OPIS LLC or any other firm in the sale of retail gas price data to commercial customers. OPIS LLC summarized the Data License simply as a ''long-term agreement where we are the sole distributor of GasBuddy data and they can't even sell it themselves.''

Retail gas price data providers compete to serve commercial customers on both price and quality, and the Data License has prevented—and continues to prevent—GasBuddy from launching a competing retail gas price data service. But for the non-compete agreement, GasBuddy would be free to enter the retail gas price data market and compete with OPIS LLC. The non-compete provision imposed on GasBuddy is a horizontal restraint that stifles competition. The Data License, therefore, has resulted, and continues to result, in higher prices and lower quality in the retail gas price data market.

Furthermore, the non-compete provision imposed on GasBuddy was not reasonably necessary to a separate, legitimate transaction or collaboration. For example, the 20-year term of the non-compete was overbroad in its duration. That is, the noncompete was longer than necessary to effectuate and transfer any intellectual property, goodwill, or customer relationships associated with UCG's 2016 sale of OPIS LLC. Nothing about IHSM's 2016 acquisition of OPIS LLC justified a ban on competition between GasBuddy and OPIS LLC until 2036. To the contrary, the non-compete simply inflated the value of OPIS LLC and now protects only IHSM's desire to be free from competition in the market for the sale of retail gas price data.

The Data License, therefore, unreasonably restrains trade in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment remedies the anticompetitive effects of the proposed merger by requiring S&P and IHSM to divest OPIS LLC, CMM, and PCW to preserve competition in the markets for spot-level PRA services for refined petroleum products, coal, and petrochemicals in the United States. The United States has evaluated News Corp. and deemed it a suitable acquirer of the businesses, with the incentive, acumen, experience, and financial ability to successfully operate and grow the businesses.

The proposed Final Judgment also addresses the anticompetitive effects of the Data License by requiring S&P and IHSM to waive the exclusivity and non-compete provisions in the agreement with GasBuddy. S&P, IHSM, and OPIS LLC are also prohibited, without the prior written consent of the United States, from entering into, enforcing, renewing, or extending the term of any similar provisions. The waiver of the exclusivity and non-compete provisions in the Data License will allow GasBuddy to compete in the market for sale of retail gas price data.

A. Divestiture

Paragraph IV.A of the proposed Final Judgment requires S&P and IHSM to divest the OPIS LLC, CMM, and PCW businesses to News Corp. The divestiture must be completed within 30 calendar days after the entry of the Stipulation and Order by the Court, unless (1) the United States, in its sole discretion, agrees to one or more extensions not to exceed 90 calendar days in total; or (2) S&P and IHSM have not received all of the regulatory approvals required for their proposed merger, in which case the deadline for completion of the divestiture will be within 30 calendar days of the receipt of all required approvals. The assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be operated by News Corp. as a viable, ongoing business that can compete effectively to provide spot-level PRA services for refined petroleum products, coal, and petrochemicals in the United States. S&P and IHSM must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with News Corp.

B. Divestiture Assets

The proposed Final Judgment requires S&P and IHSM to divest the OPIS, CMM, and PCW businesses. Specifically, defendants must divest all of S&P's and IHSM's rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, (1) owned by OPIS LLC, CMM, and PCW, or (2) primarily related to or used in connection with, or necessary to the operation of, OPIS LLC, CMM, and PCW (collectively, the ''Divestiture Assets''). The United States, in its sole discretion, will resolve any disagreement regarding which property and assets, tangible and intangible, are Divestiture Assets.

C. Personnel

The proposed Final Judgment contains provisions intended to facilitate News Corp.'s efforts to hire certain employees. Specifically, Paragraph IV.F of the proposed Final Judgment requires S&P and IHSM to provide News Corp. and the United States with organization charts and information relating to these employees and to make them available for interviews. It also provides that S&P and IHSM must not interfere with any negotiations by News Corp. to hire these employees.

In addition, for employees who elect employment with News Corp., S&P and IHSM must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, provide any pay pro rata, provide all compensation and benefits that those employees have fully or partially accrued, and provide all other benefits that the employees would generally be provided had those employees continued employment with S&P and IHSM, including but not limited to any retention bonuses or payments.

Paragraph IV.F further provides that S&P and IHSM may not solicit to rehire any of those employees who were hired by News Corp. within 180 days of the date of the divestiture, unless an employee is terminated or laid off by News Corp. or News Corp. agrees in writing that S&P and IHSM may solicit to rehire that individual. The non-solicitation period runs for 12 months from the date of divestiture for employees hired within 180 days of the date of the divestiture. A 12-month non-solicitation period is necessary in this matter because many OPIS LLC, CMM, and PCW executives, price reporters, and data analysts are integral to the successful operation of the Divestiture Assets. The ability of PRAs to gather trustworthy trading details and market intelligence is dependent largely on the close industry connections, and the detailed understanding of industry supply and demand dynamics, of its employees. Ensuring that News Corp. will have a full complement of

experienced PRA employees during its first year operating the to-be-divested businesses will position News Corp. to compete effectively against its PRA competitors. Notably, this non-solicitation provision does not prohibit S&P and IHSM from advertising employment openings using general solicitations or advertisements and re-hiring anyone who applies for an opening through a general solicitation or advertisement.

D. Customer Contracts, Licensing, and Transition Services Agreements

The proposed Final Judgment will facilitate the transfer to News Corp. of customers and other contractual relationships that are included within the Divestiture Assets. Paragraph IV.H of the proposed Final Judgment requires S&P and IHSM to assign, subcontract, or otherwise transfer all contracts, agreements, and customer relationships (or portions of such contracts, agreements, and customer relationships) included in the Divestiture Assets, including all supply and sales contracts, to News Corp. For any contract or agreement that requires the consent of another party to assign, subcontract, or otherwise transfer, S&P and IHSM must use best efforts to accomplish the assignment, subcontracting, or transfer. S&P and IHSM also must not interfere with any negotiations between News Corp. and a contracting party.

Paragraph IV.I of the proposed Final Judgment requires S&P and IHSM to use best efforts to assist News Corp. to obtain all necessary licenses, registrations, and permits to operate the Divestiture Assets, except with respect to S&P's and IHSM's licenses, registrations, or permits to operate as benchmark administrators, for which News Corp. intends to use the services of a third-party benchmark administrator. Until News Corp. obtains the necessary licenses, registrations, and permits, S&P and IHSM must provide News Corp. with the benefit of S&P's and IHSM's licenses, registrations, and permits to the full extent permissible by law.

The proposed Final Judgment requires S&P and IHSM to provide certain transition services to maintain the viability and competitiveness of the Divestiture Assets during the transition to News Corp. Paragraph IV.J of the proposed Final Judgment requires S&P and IHSM, at News Corp.'s option, to enter into a transition services agreement for back office, human resources, accounting, employee health and safety, and information technology services and support for a period of up to 180 days on terms and conditions reasonably related to market conditions for the provision of the transition services. Any amendment to or modification of any provision of a contract to provide transition services is subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve one or more extensions of any contract for transition services, for a total of up to an additional 180 days. If News Corp. seeks an extension of the term of any contract for transition services, Defendants must notify the United States in writing at least 90 days prior to the date the contract expires. News Corp. may terminate a contract for transition services, or any portion of a contract for transition services, without cost or penalty at any time upon commercially reasonable written notice. The employee(s) of S&P and IHSM tasked with providing transition services must not share any competitively sensitive information of News Corp. with any other employee of S&P and IHSM.

E. Appointment of Divestiture Trustee

If S&P and IHSM do not accomplish the divestiture within the period prescribed in Paragraphs IV.A and IV.B of the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that S&P and IHSM must pay all costs and expenses of the trustee. The divestiture trustee's commission must be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After the divestiture trustee's appointment becomes effective, the trustee must provide monthly reports to the United States setting forth his or her efforts to accomplish the divestiture. If the divestiture has not been accomplished within 180 days of the divestiture trustee's appointment, the United States may make recommendations to the Court, which will enter such orders as appropriate, in order to carry out the purpose of the Final Judgment, including by extending the trust or the term of the divestiture trustee's appointment.

F. Required and Prohibited Conduct Related to the Data License

In order to restore competition in the retail gas price data market, the proposed Final Judgment requires S&P and IHSM to waive the exclusivity and non-compete provisions contained in the Data License and prohibits S&P, IHSM, and OPIS LLC from entering into similar exclusive licenses or non-compete arrangements. Non-compete provisions that are broader than necessary to protect a legitimate business interest—such as the 20-year non-compete on GasBuddy contained in the Data License—operate as unreasonable horizontal restraints that stifle competition. The elimination of these provisions in this matter will allow GasBuddy, the most likely entrant and potential competitor to OPIS LLC in providing retail gas price data to commercial customers in the United States, to bring much-needed competition to the space.

Section IX of the proposed Final Judgment requires S&P and IHSM, no later than five business days after the Court's entry of the Stipulation and Order, to notify GasBuddy that they waive the exclusivity and non-compete provisions contained in the Data License. Paragraph X.A prohibits S&P and IHSM, without the prior written consent of the United States, in its sole discretion, from entering into, enforcing, renewing, or extending the term of any exclusive licenses for, or non-compete provisions relating to, GasBuddy's data. Paragraph X.B prohibits OPIS LLC, without the prior written consent of the United States, in its sole discretion, from entering into, enforcing, renewing, or extending the term of any exclusive licenses for the provision to OPIS LLC of GasBuddy's data or the U.S. retail gas price data of any other third party, or non-compete provisions relating to GasBuddy's data or the U.S. retail gas price data of any other third-party provider.

G. Enforcement and Expiration of the Proposed 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 XIV.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, Defendants have 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 Defendants have 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 XIV.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 harmed by the proposed merger and the exclusivity and non-compete provisions of the Data License. Defendants agree that they will abide by the proposed Final Judgment and that they 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 XIV.C provides that if the Court finds in an enforcement proceeding that a 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 XIV.C provides that, in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, the 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 XIV.D states that the United States may file an action against a 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 XV of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and 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 Defendants.

V. 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 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: Owen M. Kendler, Chief, Financial Services, Fintech, and Banking Section, Antitrust Division, United States Department of Justice, 450 Fifth St. NW, Suite 4000, 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 Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against S&P's merger with IHSM and the exclusivity and non-compete provisions of the Data License. The United States is satisfied, however, that the relief required by the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for spot-level PRA services for refined petroleum products, coal, and petrochemicals in the United States and promoting competition for retail gas price data in the United States. 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: December 20, 2021.

Respectfully submitted,

For Plaintiff United States of America:

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