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**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*  
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## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Proposed Final Judgment and Competitive Impact Statement; United States v. General Electric Company and InnoServ Technologies, Inc.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in United States v. General Electric Company and InnoServ Technologies, Inc., No. 1:98CV01744RCL (D.D.C., filed July 14, 1998). On July 14, 1998, the United States filed a Complaint alleging that the proposed acquisition of InnoServ by General Electric would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, permits General Electric to acquire InnoServ but requires that General Electric divest InnoServ's PREVU diagnostic software used in the maintenance and repair of diagnostic imaging machines (e.g., CT scanners, MRIs, x-ray machines). Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, D.C., in Room 215, 325 Seventh Street, N.W., and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, D.C.

Public comment is invited within 60 days of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mary Jean Moltenbrey, Chief, Civil Task Force, Antitrust Division, Department of

Justice, Suite 300, 325 7th Street, N.W., Washington, D.C. 20530 (telephone: 202/616-5935).

**Constance Robinson,**

*Director of Operations and Merger Enforcement, Antitrust Division.*

### Stipulation and Order

The undersigned parties, by their respective attorneys, stipulate that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties, and venue of this action is proper in the District of Columbia.

2. The Court may enter and file a Final Judgment in the form hereto attached upon the motion of any party or upon the Court's own motion at any time after compliance with the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)-(h)), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice on defendants and by filing that notice with the Court.

3. The defendants agree to comply with the proposed Final Judgment pending its approval by the Court, and shall, from the date of signing this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though it were in full force and effect as an order of the Court, provided, however, that defendants shall not be bound by the terms and provisions of the proposed Final Judgment unless and until the closing of any transaction in which General Electric Company directly or indirectly acquires all or any part of the assets or stock of InnoServ Technologies, Inc.

4. If the United States withdraws its consent, or the court does not enter the proposed Final Judgment pursuant to the terms of the Stipulation, the time for all appeals of any Court ruling declining entry of the Final Judgment has expired, and the Court has not otherwise ordered continued compliance with the Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

5. The parties request that the Court acknowledge the terms of this Stipulation by entering the Order in this Stipulation and Order.

Dated: July 14, 1998.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

Joel I. Klein,

*Assistant Attorney General.*

John M. Nannes,

*Deputy Assistant Attorney General.*

Constance K. Robinson,

*Director of Operations and Merger Enforcement.*

Mary Jean Moltenbrey,

*Chief, Civil Task Force.*

Susan L. Edelheit,

*Assistant Chief, Civil Task Force.*

Jon B. Jacobs, Fred E. Haynes, Joan H. Hogan,

Peter J. Mucchetti,

*Attorneys for the United States.*

Bernard M. Hollander,

*Senior Trial Attorney, Antitrust Division,*

*United States Department of Justice, 325 Seventh Street, NW., Suite 300, Washington, DC 20530, (202) 514-5012.*

For Defendant General Electric Company:

Richard L. Rosen,

*Arnold & Porter, 555 Twelfth Street, NW., Washington, DC 20004, (202) 942-5499.*

For Defendant InnoServ Technologies, Inc.:

Malcolm R. Pfunder,

*Gibson, Dunn & Crutcher LLP, 1050*

*Connecticut Avenue, NW., Washington, DC 20036, (202) 955-8227.*

So ordered on this \_\_\_\_ day of \_\_\_\_\_

United States District Judge.

### Final Judgment

Plaintiff, United States of America, filed its Complaint on July 14, 1998. Plaintiff and defendants, General Electric Company ("GE") and InnoServ Technologies, Inc. ("InnoServ"), by their attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence or admission by any party with respect to any issue of fact or law. Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court.

The essence of this Final Judgment is the prompt and certain divestiture through sale or licensing of certain rights or assets by the defendants to establish a viable competitor in the sale of service for certain models of GE diagnostic imaging equipment, in the sale of comprehensive asset-management or multi-vendor services, or in the licensing of advanced diagnostic software for use in any such service. Defendants have represented to the United States that the sale required below can and will be accomplished and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify

any of the divestiture provisions contained below.

Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed*:

#### *I Jurisdiction*

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against GE and InnoServ under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

#### *II Definitions*

As used in this Final Judgment:

(A) "Diagnostic imaging equipment" means equipment that produces images of the interior of the human body used for diagnostic or therapeutic purposes in the practice of medicine.

(B) "GE" means defendant General Electric Company, a New York corporation with headquarters in Fairfield, Connecticut, its successors, assigns, divisions, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and its directors, officers, employees, agents, consultants, or other persons acting for or on behalf of any of them.

(C) "InnoServ" means defendant InnoServ Technologies, Inc., a California corporation with headquarters in Arlington, Texas, its successors, assigns, divisions, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and its directors, officers, employees, agents, consultants, or other persons acting for or on behalf of any of them.

(D) "PREVU diagnostic package" means the intellectual property and any other related assets owned by InnoServ as part of its proprietary advanced diagnostic service, including its PREVU remote access software, PREVU computer, and cables necessary to interface the PREVU computer to diagnostic imaging equipment for the purpose of performing on-site and remote diagnostics.

#### *III Applicability*

This Final Judgment applies to the defendants, and each of their successors and assigns, subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any

of them who receive actual notice of this Final Judgment by personal service or otherwise.

#### *IV Sale of PrevU Diagnostic Package*

(A) GE is ordered, within 180 calendar days from the date of the filing of the Complaint in this action or five days after notice of entry of this Final Judgment by the Court, whichever is later, to sell InnoServ's PREVU diagnostic package to an acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to 30 calendar days, and shall notify the Court in such circumstances. GE agrees to use its best efforts to accomplish the sale as expeditiously as possible.

(B) Unless the United States otherwise consents in writing, the sale of the PREVU diagnostic package shall include the entire PREVU diagnostic package and be accomplished in such a way as to satisfy the United States, in its sole discretion, that the PREVU diagnostic package can and will be utilized by the purchaser as a part of a viable, ongoing business. The sale, whether made by GE under this section or by a trustee under Section V, shall be made to a purchaser that, in the United States' sole judgment: (1) has the capability and intent of competing effectively, and (2) has the managerial, operational, and financial capability to compete effectively, in the sale of service for certain models of GE diagnostic imaging equipment, in the sale of comprehensive asset-management or multi-vendor services, or in the licensing of advanced diagnostic software for use in any such service. Furthermore, none of the terms of any agreement between the purchaser and GE shall give GE the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively.

(C) In accomplishing the sale ordered by this Final Judgment, GE promptly shall make known, by usual and customary means, the availability of the PREVU diagnostic package. GE shall inform any person making inquiry regarding a possible purchase of the PREVU diagnostic package that the package is being sold pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. GE shall offer to furnish to all bona fide prospective purchasers, subject to confidentiality assurances, all information and documents relating to the PREVU diagnostic package customarily provided in a due diligence process—including access to personnel,

inspection of the assets, and any financial, operational or other documents relevant to the sale—except such information or documents subject to the attorney-client or work-product privileges. GE shall make available such information to the United States at the same time that such information is made available to any other person.

(D) GE shall provide to the purchaser of the PREVU diagnostic package and to the United States information relating to the personnel who have the primary responsibility for the development, maintenance, and distribution of the PREVU diagnostic package, and training thereon, to enable the purchaser to make offers of employment. GE will not interfere with any negotiations by the purchaser to employ any such person.

(E) If a sale is accomplished under this Final Judgment, GE may retain a non-exclusive, nonassignable license (without right to sublicense) to use the PREVU diagnostic package solely:

(1) In connection with fulfilling InnoServ service contracts in effect on the date of GE's acquisition of InnoServ;

(2) In connection with fulfilling any service contracts resulting from written proposals made by InnoServ to prospective customers that are outstanding on the date of GE's acquisition of InnoServ, provided that any such contract is entered into within 90 days of GE's acquisition of InnoServ; and

(3) in connection with fulfilling any renewals of any service contracts described in Section IV(E)(1) or (2), so long as the renewal was entered into prior to any sale of the PREVU diagnostic package.

Such a license pursuant to Section IV(E)(1), (2), and (3) shall expire, for each such contract, on the expiration date of the contract in effect on the date that the PREVU diagnostic package is sold.

(F) Nothing in this Final Judgment shall prevent the buyer of the PREVU diagnostic package from granting GE any non-exclusive rights to use the PREVU diagnostic package in addition to those rights listed in Section IV(E), but GE shall not make any such grant of additional rights a condition of the sale.

#### *V Appointment of Trustee*

(A) If GE has not sold the PREVU diagnostic package within the time period specified in Section IV(A), GE shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States to effect the sale of the PREVU diagnostic package. Until such time as a trustee has been appointed, GE shall continue to

use its best efforts to accomplish the sale of the PREVU diagnostic package.

(B) After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the PREVU diagnostic package. The trustee shall have the power and authority to accomplish a sale at the earliest possible time to a purchaser acceptable to the United States at the best price and on the best terms as are then obtainable upon the reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers respecting the PREVU diagnostic package as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of GE any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the sale.

(C) GE shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by GE must be conveyed in writing to the United States and the trustee within ten calendar days after the trustee has provided the notice required under Section VI.

(D) The trustee shall serve at the cost and expense of GE, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for this services and those of any professionals and agents retained by the trustee, any remaining money shall be paid to GE, or GE shall pay to the trustee any expenses not covered by the proceeds of the sale, and the trust shall then be terminated. The compensation and expenses of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the PREVU diagnostic package and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the sale and the speed with which it is accomplished.

(E) GE shall use its best efforts to assist the trustee in accomplishing a sale. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities relating to the assets to be sold, and GE shall develop financial and other information relevant to such assets customarily provided in a due diligence process as the trustee may reasonably

request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. GE shall take not action to interfere with or to impede the trustee's accomplishment of a sale. GE shall permit bona fide prospective purchasers of the assets to have reasonable access to personnel and to make such inspection of any and all financial, operational, or other documents and other information as may be relevant to a sale under this Final Judgment.

(F) After its appointment, the trustee, shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish a sale or license (as provided in V(G)-(H)) under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire or license, expressed an interest in acquiring or licensing, entered into negotiations to acquire or license, or was contacted or made an inquiry about acquiring or licensing, and interest in the PREVU diagnostic package, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to sell or license the PREVU diagnostic package.

(G) If the trustee has not accomplished a sale of the PREVU diagnostic package within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (i) the trustee's efforts to accomplish a sale, (ii) the reasons, in the trustee's judgment, why a sale has not been accomplished, and (iii) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter an order either:

(1) Extending the trust and the term of the trustee's appointment to sell the PREVU diagnostic package by a period that is reasonable in light of the trustee's earlier efforts and any additional efforts that the Court believes can reasonably be made to sell the PREVU diagnostic package; or

(2) Directing the trustee to proceed with licensing the PREVU diagnostic package pursuant to Section V(H).

(H) Upon entry of an order by the Court pursuant to Section V(G)(2) directing the trustee to license the PREVU diagnostic package, or upon the expiration of any extended period for the sale of the PREVU diagnostic package ordered by the Court pursuant to Section V(G)(1), the trustee shall, for one year, offer perpetual, fully paid-up (at a reasonable royalty rate), non-exclusive licenses to the PREVU diagnostic package to any interested service providers of diagnostic imaging equipment. The rights granted to such licensees shall include the perpetual right to use, copy, and sublicense the PREVU diagnostic package and to make and copyright derivative works from it. The trustee shall advertise the availability of such non-exclusive licenses in at least one national general circulation newspaper and one medical diagnostic imaging equipment trade publication, which publications shall be approved by the United States. GE shall pay for all expenses reasonably incurred by the trustee in its attempts to license the PREVU diagnostic package under this section. The trustee shall promptly notify the United States and GE of any persons who acquire a license under this section.

(I) If the trustee sells the PREVU diagnostic package, the trust will terminate when the trustee has fulfilled all its duties regarding the sale. Otherwise, at the end of the one-year licensing period, the trustee shall promptly file with the Court a report setting forth: (i) the trustee's efforts to license the PREVU diagnostic package, (ii) the name, address, and telephone number of each person who acquired a license, made an offer to license, expressed an interest in licensing, entered into negotiations to license, or was contacted or made an inquiry about licensing, any interest in the PREVU diagnostic package, and shall describe in detail each contact with any such person, and (iii) the trustee's recommendations about whether the trustee's continuing to license the PREVU diagnostic package would serve the public interest. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter an order either:

(1) Extending the trust and the term of the trustee's appointment to license the PREVU diagnostic package by a period that is reasonable in light of the

trustee's earlier efforts and any additional benefits to the public interest that the Court believes would result from continuing attempts to license the PREVU diagnostic package; or

(2) Terminating the trust.

#### VI. Notification

(A) Within two business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect any proposed sale pursuant to Section IV or V of this Final Judgment, GE or the trustee, whichever is then responsible for effecting the sale required herein, shall notify the United States of the proposed sale. If the trustee is responsible, it shall similarly notify GE. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the PREVU diagnostic package, together with full details of the same.

(B) Within 15 calendar days of receipt by the United States of such notice, the United States may request from GE, the proposed purchaser or purchasers, any other third party, or the trustee (if applicable) additional information concerning the proposed sale and the proposed purchaser or purchasers, and any other potential purchaser. GE and the trustee shall furnish any additional information requested from them within 15 calendar days of the receipt of the request, unless the parties shall otherwise agree.

(C) Within 30 calendar days after receipt of the notice or within 20 calendar days after the United States has been provided the additional information requested from GE, the proposed purchaser or purchasers, any third party, and the trustee, whichever is later, the United States shall provide written notice to GE and the trustee, if there is one, stating whether or not it objects to the proposed sale. If the United States provides written notice that it does not object, then the sale may be consummated, subject only to GE's limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a sale proposed under Section IV or Section V shall not be consummated. Upon objection by GE under Section V(C), a sale proposed under Section V shall not be consummated unless approved by the Court.

#### VII. Financing

GE shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

#### VIII. Preservation of Assets

Until any sale under this Final Judgment has been accomplished:

(A) GE shall preserve the PREVU diagnostic package in its existing condition and shall take no action with respect to the PREVU diagnostic package to cause any deterioration in the value of, or to deter any person from buying or licensing, the PREVU diagnostic package.

(B) GE shall continue to license, on reasonable terms, the PREVU diagnostic package to the persons who are licensees on the date of GE's acquisition of InnoServ.

(C) GE shall not, except as part of a divestiture approved by the United States, sell any part of the PREVU diagnostic package.

(D) GE shall appoint a person or persons to oversee the PREVU diagnostic package, and who will be responsible for GE's compliance with this section.

#### IX Affidavits

(A) Within 20 calendar days of the filing of the Complaint in this action, and every 30 calendar days thereafter until the sale has been completed under Section IV or V, GE shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding 30 days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the PREVU diagnostic package, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts GE has taken to solicit a purchaser for the PREVU diagnostic package and to provide required information to prospective purchasers including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by GE, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

(B) Within 20 calendar days of the filing of the Complaint in this action, GE shall deliver to the United States an

affidavit that describes in reasonable detail all actions GE has taken and all steps GE has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. GE shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in GE's earlier affidavit(s) filed pursuant to this section within 15 calendar days after the change is implemented.

(C) Until one year after a sale has been completed or, if a sale is not completed, one year after the trust under Section V is terminated, GE shall preserve all records of all efforts made to preserve, sell, and license the PREVU diagnostic package.

#### X Compliance Inspection

(A) For the purposes of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to GE, be permitted:

(1) Access during GE's office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or control of GE, which may have counsel present, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, GE's officers, employees, or agents, who may have counsel present, regarding such matters. The interviews shall be subject to GE's reasonable convenience and without restraint or interference by GE.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, GE shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

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

(D) If at the time information or documents are furnished by GE to the

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

#### *XI Retention of Jurisdiction*

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

#### **Competitive Impact Statement**

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

#### *I. Nature and Purpose of the Proceeding*

The United States filed a civil antitrust Complaint on July 14, 1998, alleging that General Electric Company's ("GE") proposed acquisition of InnoServ Technologies, Inc. ("InnoServ") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that GE and InnoServ compete in servicing individual pieces of GE medical imaging equipment and in the sale of comprehensive multi-vendor or asset-management services ("multi-vendor service"). Multi-vendor service involves contracting to service all or a significant portion of a hospital's medical equipment.

The proposed combination would substantially lessen competition and tend to create a monopoly in the markets for servicing certain models of GE imaging equipment, especially GE CT scanners and magnetic resonance imagers (MRIs), and in multi-vendor service. InnoServ is an effective competitor of GE in part because InnoServ is one of very few companies that has developed proprietary diagnostic software for servicing certain models of GE imaging equipment. The prayer for relief in the Complaint seeks: (a) an adjudication that the proposed

merger would violate Section 7 of the Clayton Act; (b) a permanent injunction preventing the transaction's consummation; (c) plaintiff's costs of this action; and (d) such other relief as is just and proper.

Prior to filing this suit, the parties reached a proposed settlement that permits GE to acquire InnoServ, yet preserves competition in the markets in which the transaction would raise significant competitive concerns. Along with the Complaint, the parties filed a Stipulation and proposed Final Judgment setting out the settlement terms.

The proposed Final Judgment orders GE to divest InnoServ's proprietary diagnostic service software and related materials, which are collectively known as the PREVU diagnostic package, to an acquirer acceptable to the United States. Unless the United States agrees to a time extension, GE must complete the divestiture within 180 calendar days after the filing of the Complaint or five days after notice of the entry of this Final Judgment by the court, whichever is later.

If GE does not complete the divestiture within the divestiture period, the Court, upon application of the United States, is to appoint a trustee selected by the United States to sell the PREVU diagnostic package. The proposed Final Judgment also requires that, until the divestiture mandated by the Final Judgment has been accomplished, GE must continue to license, on reasonable terms, the PREVU diagnostic package to persons who were PREVU licensees on the date GE acquires InnoServ.

If the trustee has not sold the PREVU diagnostic package within six months of its appointment, it will, for one year, license the package at a reasonable royalty rate to any service provider unless the Court grants the trustee additional time to complete a sale. The licenses will be perpetual, fully paid-up, and non-exclusive and include the perpetual right to use, copy, and sublicense the package and to make and copyright derivative works.

The plaintiff and defendants have stipulated that the court may enter the proposed Final Judgment after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce provisions of the Final Judgment and to punish violations thereof.

#### *II. Description of the Events Giving Rise to the Alleged Violation*

##### **A. The Defendants and the Proposed Transaction**

GE is a New York corporation headquartered in Fairfield, Connecticut. GE is a diversified technology, manufacturing, and services company. In 1997, GE's total revenues exceeded \$90 billion. Its wholly owned subsidiary General Electric Medical Systems ("GEMS"), located in Waukesha, Wisconsin, manufactures medical-imaging equipment such as CT scanners, MRIs, X-ray units, and nuclear-medicine cameras. GEMS is the leading servicer of GE imaging equipment in the United States. GEMS also services imaging equipment manufactured by other companies through GE HealthCare Services, GE's wholly owned multi-vendor and asset-management service group.

InnoServ, a California corporation headquartered in Arlington, Texas, is one of the nation's largest independent service organizations ("ISOs"). InnoServ services individual pieces of medical equipment and provides comprehensive asset management, multi-vendor maintenance and repair, and other specialized services for radiology, cardiology, biomedical, and laboratory equipment. For the fiscal year ending April 30, 1997, InnoServ's service revenues exceeded \$37 million. It has struggled financially for the past two years, however, losing over \$1.5 million for the nine months ending January 31, 1998. In March 1998, InnoServ publicly expressed concern about its ability to continue to meet its working capital requirements. For some time, InnoServ has been seeking potential buyers of the company, but only GE has made such an offer.

On May 19, 1998, the defendants signed a merger agreement providing that GE would acquire InnoServ's common stock for a purchase price of \$16 million. The United States filed this suit because the proposed merger threatened to decrease competition.

##### **B. Anticompetitive Consequences of the Proposed Transaction**

Competition between original equipment manufacturers such as GE and ISOs such as InnoServ has benefited hospitals and other owners of medical imaging equipment by driving down the cost of servicing their equipment. GE and InnoServ have been competitors in the market for servicing certain models of GE imaging equipment on a discrete basis and in the multi-vendor service market.

InnoServ is one of the few competitors of GE that has developed proprietary diagnostic software for servicing certain models of GE imaging equipment. Advanced diagnostic software enables a service engineer to more quickly service and maintain imaging equipment. GE also has developed and uses its own advanced diagnostic software for servicing imaging equipment.

GE's proposed acquisition of InnoServ would eliminate InnoServ as an independent competitor in the market for servicing certain models of GE imaging equipment on a discrete basis and in the multi-vendor service market. It would also give GE exclusive control over InnoServ's advanced service software. GE does not license its own advanced diagnostic software to competing service providers and likely would not license PREVU to its service competitors. Because InnoServ is an experienced service provider with access to advanced diagnostic software, GE's proposed acquisition of InnoServ would decrease competition and likely increase prices for imaging equipment service. Given InnoServ's financial difficulties, however, it is not clear whether it can continue as an independent competitor in these markets.

### III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would promote additional competition in servicing certain models of GE imaging equipment and in multi-vendor service by requiring GE to divest InnoServ's proprietary diagnostic service software and related materials to an acquirer acceptable to the United States. These service materials, which are collectively known as the PREVU diagnostic package, give InnoServ a competitive advantage in servicing certain models of imaging equipment and in multi-vendor service. Unless the United States agrees to a time extension, GE must complete the divestiture within 180 calendar days after the filing of the Complaint in this matter or five days after notice of the entry of this Final Judgment by the Court, whichever is later.

If GE does not complete the divestiture within the divestiture period, the Court, upon application of the United States, is to appoint a trustee selected by the United States to sell the assets. The proposed Final Judgment also requires that, until the divestiture mandated by the Final Judgment has been accomplished, GE must continue to license, on reasonable terms, the PREVU diagnostic package to persons

who were PREVU licensees on the date GE acquires InnoServ.

If the trustee has not accomplished the divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the sale, (2) the reasons, in the trustee's judgment, why the sale has not been accomplished, and (3) the trustee's recommendations. At the same time, the trustee will furnish such report to the plaintiff and defendants, who will each have the right to be heard and to make additional recommendations.

The Court will then either give the trustee additional time to accomplish a sale, depending on the trustee's earlier efforts and any additional efforts that the Court believes can reasonably be made to the accomplish the sale, or direct the trustee, for one year, to license the PREVU diagnostic package at a reasonable royalty rate to any service provider. The licenses will be perpetual, fully paid-up, and non-exclusive and include the perpetual right to use, copy, and sublicense the package and to make and copyright derivative works.

At the end of the one-year licensing period, the trustee shall promptly file with the Court a report setting forth: (1) the trustee's efforts to license the PREVU diagnostic package and (2) the trustee's recommendations as to whether the trustee's continuing to license the PREVU diagnostic package would serve the public interest. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations. The Court will then either: (1) have the trustee continue to license the PREVU diagnostic package for a period that is reasonable in light of the trustee's earlier efforts and any additional benefits to the public interest that would result from continuing attempts to license the package, or (2) terminate the trust.

If a trustee is appointed, the proposed Final Judgment provides that GE will pay all reasonable costs and expenses of the trustee and any professionals and agents retained by the trustee. After appointment, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to divest or license the PREVU diagnostic package as ordered under the proposed Final Judgment.

The divestiture of the PREVU diagnostic package will allow one or more third parties to use the software, which in turn will enable them to service more efficiently certain models of imaging equipment and better compete in the markets for servicing

individual pieces of imaging equipment and providing multi-vendor service. In addition to using the package in its service business, a buyer of PREVU could resell or license PREVU to other parties. Similarly, PREVU licensees could also use the package for servicing imaging equipment and/or sublicense PREVU to other parties. Both a buyer and licensees would be free to make and copyright derivative works. The ability to improve upon PREVU will encourage investment in developing advanced service software, which would further improve an entity's ability to compete with GE.

In conjunction with this settlement, GE has also agreed to consent to all of the relief that the Government was seeking in another case, *United States v. General Electric Company*, No. CV-96-121-M-CCL (D. Mont. Filed Aug. 1, 1996) (hereinafter "Montana case"). The settlement of the Montana case should help to alleviate some of the competitive concerns raised by this transaction, by eliminating agreements that prevented numerous hospitals around the country from competing with GE in some of the markets affected by this transaction. The United States considered whether obtaining full relief in the Montana case, by itself, would be a sufficient remedy for this case, but concluded that the Montana settlement would not fully address the competitive problems raised by the InnoServ transaction. The United States therefore required GE to divest PREVU in addition to settling the Montana litigation. The United States evaluated the merits of the settlement proposals in each case independently, concluding that the proposed settlement of this case is in the public interest for the reasons stated herein, and that the proposed settlement of the Montana case is in the public interest for reasons stated in the Competitive Impact Statement filed in that case today.

### IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages that the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *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 parties have stipulated that the Court may enter the proposed Final Judgment after compliance with the APPA, provided that the United States has not withdrawn its consent. The APPA conditions that entry upon the Court's prior determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will give all comments due consideration and respond to each of them. The United States remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and responses will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Mary Jean Moltenbrey, Chief, Civil Task Force, Antitrust Division, United States Department of Justice, 325 7th Street, N.W., Suite 300, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action and that 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

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint to enjoin GE's acquisition of InnoServ. The United States is satisfied, however, that the divestiture of the PREVU diagnostic package will promote competition in the relevant markets, particularly given that InnoServ's poor financial condition threatens its ability to continue operations. Incurring the substantial costs and uncertainty of a full trial on the merits of the Complaint is therefore unnecessary.

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

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after

which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider:

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

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.<sup>1</sup>

The United States Court of Appeals for the D.C. Circuit has held that this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties.<sup>2</sup> In conducting this inquiry, "[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."<sup>3</sup> Rather,

[A]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should \* \* \* carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.<sup>4</sup>

Accordingly, with respect to the adequacy of the relief secured by the decree, a court should not engage "in an unrestricted evaluation of what relief

would best serve the public."<sup>5</sup> Precedent requires that:

The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. [citations omitted] The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." [citations omitted] More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.<sup>6</sup>

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose of its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" <sup>7</sup>

### VIII. Determinative Documents

There are not determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.

Dated: July 14, 1998.

Respectfully submitted,

Jon B. Jacobs,

Fred E. Haynes,

Joan H. Hogan,

Peter J. Mucchetti,

*Attorneys for the United States, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 300, Washington, DC 20539, (202) 514-5012.*

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<sup>1</sup> 15 U.S.C. 16(e).

<sup>2</sup> See *United States v. Microsoft*, 56 F.3d 1448, 1461-62 (D.C. Cir. 1995).

<sup>3</sup> 119 Cong. Rec. 24598 (1973). See *United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93-1463, 93rd Cong., 2d Sess. 8-9 (1974), reprinted in U.S.C.A.N. 6535, 6538.

<sup>4</sup> *United States v. Mid-America Dairymen, Inc.*, 1977-1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

<sup>5</sup> *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981); see also *Microsoft*, 56 F.3d at 1460-62.

<sup>6</sup> *Bechtel*, 648 F.2d at 666; see *BNS*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. See also *Microsoft*, 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'") (citations omitted).

<sup>7</sup> *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), quoting *Gillette Co.*, 406 F. Supp. at 716 (citations omitted); *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).