investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations.

The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On November 20, 2002, a petition was filed with the Commission and Commerce by Washington Mills Company, Inc., North Grafton, MA,[2] alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of refined brown aluminum oxide from China. Accordingly, effective November 20, 2002, the Commission instituted antidumping duty investigation No. 731–TA–1022 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 29, 2002 (67 FR 71195). The conference was held in Washington, DC, on December 11, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 6, 2003. The views of the Commission are contained in USITC Publication 3572 (January 2003), entitled Refined Brown Aluminum Oxide from China: Investigation No. 731–TA–1022 (Preliminary).

Issued: January 17, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–1447 Filed 1–22–03; 8:45 am]

BILLING CODE 7020–02–P

[2] On November 27, 2002, the petition was amended to include two additional petitioners, C–E Minerals, King of Prussia, PA, and Treibacher Schleifmittel Corporation, Niagara Falls, NY.

DEPARTMENT OF JUSTICE

Antitrust Division

Public Comments and Response on Proposed Final Judgment in United States of America v. The MathWorks, Inc. and Wind River Systems, Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comments received on the proposed Final Judgments on *United States of America* v. *The MathWorks, Inc. and Wind River Systems, Inc.,* Civil Action No. 02–888–A, filed in the United States district court for the Eastern District of Virginia, together with the United States' response to the comments.

Copies of the comment and response are available for inspection at Room 200 of the Department of Justice, Antitrust Division, 325 Seventh Street, NW., Washington, DC 20530, telephone (202) 514–2481, and at the Office of the Clerk of the United States District Court for the Eastern District of Virginia, Albert V. Bryan United States Courthouse, 401 Courthouse Square, Alexandria, VA 22314. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

United States' Response to Public Comments

Pursuant to Section 5(d) of the Clayton Act, as amended by Section 2 of the Antitrust Procedures and Penalties Act (codified at 15 U.S.C. 16(b)–(h) (the ''Tunney Act'')), the United States responds to public comments received regarding the proposed Final Judgments submitted for entry in this civil antitrust proceeding.

I. Background

On June 21, 2002, the United States filed a civil antitrust Complaint alleging that The MathWorks, Inc., (''The MathWorks'') and Wind River Systems, Inc. (''Wind River''), head-to-head competitors in the sale of dynamic control system design software products, restrained competition in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint alleged that, on February 16, 2001, The MathWorks and Wind River entered into a number of agreements (hereinafter, collectively, the ''MATRIXx Agreement'') pursuant to which, *inter alia,* The MathWorks obtained the executive worldwide right to price and sell Wind River's MATRIXx tools for a period of two and one half years. As a result of the MATRIXx Agreement, actual competition between Wind River's MATRIXx toolset and The MathWorks' Simulink toolset has been eliminated.

In April 2000, Wind River acquired Integrated Systems, Inc. (''ISI''). At the time, ISI was a well regarded vendor of software, tools, and engineering services for the embedded systems market.[1] Its embedded real-time operating system, deployed in more than 38 million devices worldwide as of 2000, was suppled to telecom/datacom, consumer electronics, automotive, aerospace, and emerging Internet appliance customers. As part of its software portfolio it produced the MATRIXx family of software products, which are standalone products designed to automate the analysis, modeling, generation of code for, and simulation of, complex control systems. Although ISI had spent considerable resources developing MATRIXx since the mid-1980s, its primary business continued to revolve around the embedded systems market.

Wind River, itself a significant vendor of software for embedded systems, pursued the acquisition of ISI, in large part, to obtain a skilled pool of embedded system software developers that it hoped would shorten the time it takes to reach the market of critical new embedded system products. Wind River soon came to view MATRIXx as a struggling product line within ISI with small revenue and no growth potential. More importantly, the MATRIXx market was neither within Wind River's core competency nor its central strategic focus for the future. Thus, Wind River decided not to devote any of its resources to the continued development and sale of MATRIXx.

Shortly after Wind River's acquisition of ISI, The MathWorks approached Wind River and began vigorously negotiating to acquire the MATRIXx assets. On February 16, 2001, The MathWorks and Wind River entered into the MATRIXx Agreement under which Wind River granted The MathWorks exclusive distribution and license rights to the MATRIXx toolset and the MATRIXx intellectual property (including the right to incorporate MATRIXx source code into The MathWorks products) during a thirty-month license period beginning on February 16, 2001. Following the expiration of the thirty-month license period, The MathWorks would have the option to acquire MATRIXx.

Under the MATRIXx Agreement, The MathWorks was required to provide two years of customer support (ending in February 2003) for existing MATRIXx users.[2] While Wind River agreed to

[1] Embedded systems are specialized computing systems used to control devices such as handheld computers, appliances or cars. These systems are typically invisible to the end-user, but enable operation of the devices.

[2] Wind River retained rights to the MATRIXx intellectual property during the license period in

Continued

continue fulfilling its existing customer support obligations, as well as to provide ''critical'' bug fixes during the license period, the MATRIXx Agreement provided that Wind River would not produce new versions of MATRIXx with feature enhancements. In fact, The MathWorks announced at the time it entered into the MATRIXx Agreement that there would be no further development of the MATRIXx products. The MathWorks and Wind River also agreed on the pricing of Simulink, The MathWorks' dynamic control system software product that competed head-to-head with MATRIXx, when purchased by MATRIXx customers. The companies specifically agreed that The MathWorks would give customers with current MATRIXx licenses, that switched to The MathWorks' suite of products, a discount amounting to 50% off the list price of The MathWorks' products for those that switched in the first year of the MATRIXx Agreement and 25% off for those that switched in the second year of the MATRIXx Agreement.

In return, The MathWorks agreed to make payments to Wind River totaling $11,500,000 over a three-year period on a set schedule, which were not contingent on the volume of MATRIXx products The MathWorks sold. Further, Wind River granted The MathWorks an option to purchase MATRIXx and certain MATRIXx intellectual property (*e.g.,* the source code, customer lists, trademarks and copyrights) twenty-eight months after closing for an additional sum of $2,000,000. Finally, the MATRIXx Agreement assigned certain patent rights to The MathWorks for $500,000.

On the same date that the United States filed its Complaint against The MathWorks and Wind River, the United States filed a Stipulation and proposed Final Judgment with Wind River that was designed to obtain the divestiture of the MATRIXx assets to a competitively viable third party. Although the nominal owner of the MATRIXx assets, Wind River's consent alone was insufficient to effectuate fully the relief sought by the United States in the Complaint because The MathWorks had previously acquired significant rights in the MATRIXx assets under the MATRIXx Agreement. The lawsuit therefore continued against The MathWorks. On August 15, 2002, the United States and The MathWorks filed a Stipulation and proposed Final Judgment that, in conjunction with the proposed Final Judgment agreed to by Wind River, would lead to either the prompt and certain divestiture of the MATRIXx assets to a competitively viable third party or the dismissal of the Complaint in this action.

The proposed Final Judgment agreed to by The MathWorks provides a framework detailing the manner and process pursuant to which a court-appointed Trustee would seek to sell the MATRIXx assets to a competitively viable third party. Among other things, this framework specifically outlines the rights and responsibilities of the United States and The MathWorks, addresses the period of time in which a definitive sales and licensing agreement must be consummated, and sets a minimum price at which the MATRIXx assets may be sold.

The Court may enter the proposed Final Judgments against Wind River and The MathWorks following compliance with the Tunney Act.[3] The Tunney Act, among other things, gives the public a 60-day period to submit comments about the proposed Final Judgments. The 60-day comment began on October 21, 2002, when the proposed Final Judgments and the Competitive Impact Statement (''CIS'') were published in the **Federal Register** (67 FR 64657 (2002)), and expired on December 20, 2002. During that period, two comments were received.

II. Response to Public Comments

On November 18, 2002, the United States received a comment regarding The MathWorks' proposed Final Judgment in this matter from Sudarshan Bhat addressing a single provision of The MathWorks' proposed Final Judgment. A true and correct copy of Mr. Bhat's comment, with confidential information redacted, is attached as Exhibit A. On December 20, 2002, the United States received a comment regarding the proposed Final Judgments in this matter from The Center for the Advancement of Capitalism (''CAC'') which purports to address the propriety of the proposed Final Judgments *en toto.* A true and correct copy of the CAC's comment is attached as Exhibit B. Each of these comments is addressed individually below.

A. Bhat Comment

Mr. Bhat complains that the minimum sale price of $2 million plus the costs and expenses of the Trustee for the MATRIXx assets, as required by Section IV(L) of The MathWork's proposed Final Judgment, ''makes no financial sense without additional contingencies.'' *Bhat Comment* at 1. He explains that immediately prior to The MathWorks acquisition of the MATRIXx assets, MATRIXx enjoyed annual revenue of $15–$16 million. Since The MathWorks acquired the MATRIXx assets however, MATRIXx revenue has fallen and ''is likely to reduce much further without the proper measures to restore competitiveness in the dynamics and control tools marketplace.'' *Id.* Given this, Mr. Bhat concludes that ''[t]he 2 million dollar purchase price is too much to risk in the current market conditions.'' *Id.* In essence, Mr. Bhat concludes that a divestiture of the MATRIXx assets will fail because the minimum sale price is not justified given the current level of annual revenue generated by MATRIXx.

Mr. Bhat insists that ''true competition can only be restored when marketing, customer support, development, sales and annual, revenues for MATRIXx assets are restores to the annual 15–16 million dollar levels immediately prior to Mathworks acquisition of MATRIXx assets.'' *Id.* Therefore, he suggests that the United States ''impose an annual penalty on Mathworks equal to MATRIXx sales revenue shortfall from the 2001 15–16 million dollar levels until the MATRIXx revenues are restores to the 2001 levels or until September 1, 2007, whichever comes first.'' *Id.* at 2. Mr. Bhat believes this annual penalty should ''be used to cover any operating budget shortfall for whoever is best qualified to acquire MATRIXx assets and restore competition to the marketplace.'' *Id.* Finally, Mr. Bhat indicates that his intention to bid for the MATRIXx assets is conditioned on the adoption of his suggested additions to the proposed Final Judgment.

The United States disagrees with the conclusions asserted by Mr. Bhat in his comment. In light of the fact that the MATRIXx assets have been successfully sold, it is unnecessary to amend the proposed Final Judgment in the manner suggested by Mr. Bhat.[4] On January 14, 2003, SoundView Technology

order to provide support service to two International Space Station customers.

[3] The Competitive Impact Statement (''CIS'') sets out the standard to be applied by the Court in determining whether entry of the proposed Final Judgment is in the public interest. CIS at 20–23.

[4] Nor does the United States believe it is appropriate to impose a ''penalty'' on The MathWorks equal to MATRIXx revenue shortfalls from 2001 levels. *Bhat Comment* at 2. This is a Government civil action for injunctive relief, and thus monetary damages are not available in this case. *See* 15 U.S.C. 4 (authorizing the United States ''to institute proceedings in equity to prevent and restrain such violations''). Moreover, the goals of the remedy in this case are to enjoin the unlawful conduct and restore competitive conditions in the market affected by The MathWorks' conduct. *See Nat'l Soc'y of Prof'l Eng'rs* v. *United States,* 435 U.S. 679, 697 (1978); *United States* v. *E.I. du Pont de Nemours & Co.,* 366 U.S. 316, 326 (1961).

Corporation (''SoundView''), as the court-appointed Trustee in this matter pursuant to its obligations under Section IV(I) of the proposed Final Judgment, reported to the United States that National Instruments Corporation acquired the MATRIXx assets on January 10, 2003, pursuant to a definitive sales and licensing agreement reached within the framework outlined in the proposed Final Judgment. Pursuant to Section IV(M)(1) of the proposed Final Judgment, the United States has concluded that National Instruments Corporation intends to invest in and develop the MATRIXx product line and has the potential to be a viable competitor in the sale of dynamic control system design software.

B. CAC Comment

CAC is a non-profit organization with the mission or providing analysis based on Ayn Rand's philosophy of objectivism.[5] CAC insists that the United States should withdraw the proposed Final Judgments and dismiss the Complaint in this matter or that the Court should reject entry of the proposed Final Judgments under the Tunney Act. *CAC Comment* at 2. CAC concedes, however, that its philosophical opposition to the antitrust laws is ''blatantly obvious.'' *Id.* at 3. This opposition animates every aspect of CAC's comment. CAC claims that ''[t]his'' case reveals both the fundamental defects of both the antitrust laws and the strategy employed by the Government in their enforcement.'' *Id.* CAC argues that ''[f]ree competition cannot be enforced by government flat'' and that the DOJ ''relies on static rules that fail to account for the complexity of business and yet seek to enforce an unjust and unworkable egalitarianism.'' *Id.* Further, CAC claims that the ''DOJ can not speak for the 'public interest,' because no such intest has ever existed.'' *Id.*

CAC, in essence, challenges the constitutionality of the Sherman Act and advocates for a form of laissez-faire capitalism unregulated by the Government. The United States disagrees with CAC's position. The Supreme Court has, on numerous occasions, upheld the constitutionality of the Sherman Act and the prohibition in Section 1 of the Act against any contract, combination or conspiracy that ''unreasonably'' deprives consumers of the benefits of competition or that would otherwise result in higher prices or inferior products and services. *See Standard Oil Co.* v. *United States,* 221 U.S. 1, 50, 58 & 68–70 (1911); *see also United States* v. *Joint Traffic Ass'n,* 171 U.S. 505, 570–73 (1898). In any event, challenging the constitutionality of the Sherman Act is far beyond the scope of this Tunney Act proceeding. *See United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1459 (D.C. Cir. 1995) (Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States alleges in its Complaint.).

CAC also argues that ''[n]othing in the proposed judgment benefits producers, consumers, or the foundations of the free market, unless it is held that capitalism is advanced by turning producers into serfs.'' *CAC Comment* at 3. CAC believes that ''while the customer's short-term costs might increase as a result of the MATRIXx acquisition, in the long term, competition would benefit from Wind River's decision to shed an unprofitable and stagnant product line.'' *Id.* For CAC argues, ''[i]n a free market, the more efficient allocation of resources is often fostered through the natural elimination of unnecessary or redundant competition, as appears to be the case here.'' *Id.* Accordingly, CAC asserts that ''[i]n the absence of this judgment, MATRIXx would be given the timely death the marketplace has condemned it to.'' *Id.* at 4. CAC's arguments suggest a superficial understanding of the proposed Final Judgments and the manner in which they are intended to address the Complaint in this matter.

During the United States' investigation in this matter, the Defendants argued that the MATRIXx assets had no economic value in the marketplace and that no competitively viable third party would be interested in purchasing the MATRIXx assets for any significant amount of money. Taking Defendants' arguments, along with customer concerns, into account, the United States agreed to a proposed settlement that would both test Defendants' assertions as to the MATRIXx assets' market value and maximize the possibility of restoring in a timely manner competition lost as a result of the illegal conduct. At the time, the United States firmly believed that one or more competitively viable purchasers existed and that an independent agent would succeed in finding a buyer. Pursuant to Section IV(O) of The MathWorks' proposed Final Judgment, however, the United States agreed that if no alternative viable purchaser emerged, the United States would dismiss the Complaint in this action. As noted above, SoundView, the court-appointed Trustee charged with attempting to sell the MATRIXx assets, has informed the United States that it has successfully sold the MATRIXx assets pursuant to a definitive sales and licensing agreement that meets the requirements of The MathWorks' proposed Final Judgment. The proposed Final Judgment in this matter strikes an appropriate balance between the public interest of prohibiting conduct the effect of which is to substantially lessen competition, and the desire for the marketplace to decide the economic and competitive value of goods and services based on their relative merits.

III. Conclusion

Mr. Bhat urges the United States to amend The MathWorks' proposed Final Judgment in order to make the MATRIXx assets more valuable to prospective purchasers thereby justifying the required minimum sales price. CAC, on the other hand, urges the Court to reject the proposed Final Judgments altogether and dismiss the Complaint with prejudice. The United States, however, has concluded that the proposed Final Judgments reasonably and appropriately addresses the harm alleged in the Complaint. Therefore, following publication of this Response to Comments in the **Federal Register** and submission of the United States' Certificate of Compliance with the Tunney Act, the United States intends to request entry of the proposed Final Judgments upon the Court's determination that entry is in the public interest.

Dated: January 15, 2003.

Respectfully submitted,

James J. Tierney,
Patricia A. Brink,
Kenneth W. Gaul,
Jeremy West,
J. Roberto Hizon,
David E. Blake-Thomas,
Patrick O'Shaughnessy,
Trial Attorneys.

U.S. Department of Justice, Antitrust Division, Networks & Technology Section, 600 E Street, NW., Suite 9500, Washington, DC 20530, Tel: 202/307/6200, Fax: 202/616–8544.

Paul J. McNulty,
United States Attorney.

By: Richard Parker,
Assistant United States Attorney, VSB No. 44751, 2100 Jamieson Avenue, Alexandria, VA 22314, Tel: 703/299–3700.

[5] Ayn Rand, a novelist-philosopher, first expressed her philosophy of objectivism in the best-selling novels, *The Fountainhead* (1943) and *Atlas Shrugged* (1957). On the issue of capitalism, she has stated: ''When I say 'capitalis' I mean a pure, uncontrolled, unregulated laissez-faire capitalism with a separation of economics, in the same way and for the same reasons as a separation of state and church.'' ''The Objectivist Ethics'' in *The Virtue of Selfishness* (1964).

Certificate of Service

I certify that on January 15, 2003, a true and correct copy of the United States' Response to Public Comments, related to the proposed Final Judgments in this matter against Defendants and agreed to by Defendants pursuant to the Stipulations and Orders filed with the Court, was served on the following counsel:

Counsel for Wind River Systems, Inc.

Richard L. Rosen,
Arnold & Porter, 555 Twelfth Street, NW., Washington, DC 2004–1206, Fax: 202/942–5999, by U.S. Mail.

Counsel for The Math Works, Inc.

Thane D. Scott,
Palmer & Dodge, LLP, 111 Huntington Avenue, Boston, Massachusetts 02199–7613, Fax: 617/227–4420, by: U.S. Mail.
J. Mark Gidley,
White & Case, LLP, 601 Thirteenth St., NW., Washington, DC 20005–3807, Fax: 202/639–9355, by: U.S. Mail.
James J. Tierney.
November 1, 2002.
To Attn: Reneta Hesse, Chief,
Networks and Technology Litigation Section, Antitrust Division, U.S. Department of Justice, Washington, DC 20530.
Re: MATRIXx Asset Sale contingencies,
Justice Department Settlement with Mathworks, Inc.

Dear Hesse, I believe the 2 million dollar sale price plus the US Department of Justice trustee costs is acceptable if the additional MATRIXx revenue shortfall contingencies mentioned later in this letter are imposed on Mathworks to quickly and effectively restore competitiveness to the dynamics and control tools marketplace.

The MATRIXx assets sale makes no financial sense without additional contingencies. The 2 million dollar purchase price is too much risk in the current market conditions. The risk is due to severely reduced [redacted as confidential] annual MATRIXx revenue under Mathworks that is likely to reduce much further without the proper measures to restore competitiveness in the dynamics and control tools marketplace.

It was Mathworks that blatantly committed anti-trust violation of Section 1 of the Sherman Act. It must be Mathworks that pays for restoring competition in the marketplace. It is just not fair for the MATRIXx customers to be held hostage and pay the price for restoration of credibility to the MATRIXx products.

From a marketing standpoint large legacy aerospace projects (examples are International Space Station and Boeing projects) have too much invested in MATRIXx tools over the last two decades that simply cannot switch to Simulink/RealTime Workshop tools because of prohibitive costs, lack of Ada support and lack of tool maturity. MATRIXx tools SystemBuild and AutoCode has evolved and has been successfully used on large aerospace projects for over 20 years while Simulink and RealTime Workshop have only been around for about 5 years. RealTime Workshop Ada has not even been released.

I believe true competition can only be restored when marketing, customer support, development, sales and annual revenues for MATRIXx assets are restored to the annual 15–16 million dollar levels immediately prior to Mathworks' acquisition of MATRIXx assets. The software development effort for MATRIXx under Wind River for financial year 2001 is estimated at about 2.5 million dollars. The marketing, customer support and sales were rolled into the overall WindRiver budget.

An ISI colleague of mine has already contacted a large number of people who were MATRIXx software developers just prior to Mathworks' acquisition of MATRIXx assets and confirmed that a substantial number of them were willing to join our group or for that matter any group willing to acquire MATRIXx assets and repair the market damage inflicted on the product by Mathworks. Formation of such a workforce would immediately place a demand for MATRIXx operating budgets which I would estimate about 4–5 million dollars annually. Compared to all the potential buyers, some key ex-ISI employees, including myself, are the most qualified to put together the original ISI/WindRiver team of MATRIXx developers and restore competition in the marketplace. And I urge the US Department of Justice to seriously evaluate this issue when choosing a suitable buyer for the MATRIXx assets.

I believe it is imperative that the US Department of Justice impose an annual penalty on Mathworks equal to MATRIXx sales revenue shortfall from the 2001 15–16 million dollar levels until the MATRIXx revenues are restored to the 2001 levels or until September 1, 2007, whichever comes first. These revenues are to be used to cover any operating budget shortfall for whoever is best qualified to acquire MATRIXx assets and restore competition to the marketplace. I also urge that the US Department of Justice require that Mathworks place such funds in escrow because there have been recent complaints by WindRiver about Mathworks not making the most recent installment payment.

In summary when I place a bid for MATRIXx assets, the bid will be contingent upon Mathworks making up for the revenue shortfall until MATRIXx products is restored to the pre-2001 annual revenue levels. I would appreciate the cooperation of the US Department of Justice, its trustee, SoundView Technology Group, and all the parties involved to make this happen and restore competitiveness to the dynamics and control tools marketplace.

Sincerely,
/S/
Sudarshan P. Bhat,
1410 Blackstone Rd, San Marino, CA 91108, 626–292–7479 (home), 626–379–9021 (cell).

Comments of The Center for the Advancement of Capitalism to the Proposed Final Judgment

Pursuant to the Tunney Act [1], The Center for the Advancement of Capitalism submits the following comments in response to the Proposed Final Judgments filed with the Court on June 21 and August 15, 2002.

Introductory Statement

The Center for the Advancement of Capitalism (''CAC'') is a District of Columbia corporation organized in 1998, and exempt from income tax under Section 501(c)(4) of the Internal Revenue Code. CAC's mission is to present to policymakers, the judiciary and the public analyses to assist in the identification and protection of the individual rights of the American people. CAC applies Ayn Rand's philosophy of Objectivism to contemporary public policy issues, and provides empirical studies and theoretical commentaries on the impact of legal and regulatory institutions upon the rights of American citizens.

CAC has no financial interest in the outcome of this case, nor has CAC received any compensation from the defendants in connection with these comments.

Comments

The Proposed Final Judgment (''PFJ'') currently before the Court seeks to undo the impact of the February 2001 agreement between MathWorks and Wind River. MathWorks obtained the exclusive right to distribute Wind River's MATRIXx software, and as a result MathWorks was able to combine

[1] Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h).

two stagnant products lines into a single offering. The United States claims this was illegal, because the loss of MATRIXx constituted a harm to consumers. Wind River customers complained to the United States that once MATRIXx was no longer serviced, they would ''have to begin a costly migration to the MathWorks' Simulink products.'' The United States initiated this case to preclude this from happening. The question now before the Court is whether the PFJ serves the interest. CAC believes that it does not.

This case is part of a federal antitrust effort to micromanage various facets of the private technology sector. In the past year alone, the Department of Justice prosecuted Computer Associates International for their alleged conduct during the consummation of an otherwise lawful merger [2], and the Federal Trade Commission imposed a settlement upon an industry that vehemently denied the need for government intervention.[3]

This matter picks up where those cases left off. Now the United States claims the right to force the sale of a business they know to be unprofitable to a mystery competitor that may not exist. The government wants to ''restore'' competition beyond the level that actually existed prior to the challenged conduct. In doing so, the United States has ignored the economic realities of the marketplace and the technical knowledge of the specific market they seek to regulate. Thus, the PFJ here results not from the United States acting in the public interest, but from the DOJ submitting a specious claim before the Court. For this reason, the United States should withdraw from the PFJ and dismiss its complaint, or in the alternative, the Court should reject entry of the PFJ under the Tunney Act.

At the heart of this case is the independent viability of the MATRIXx product line. Wind River acquired control of MATRIXx when they acquired Integrated Systems, Inc., in April 2000. In its own competitive impact statement, the United States admits that MATRIXx was on the road to decline well before the consummation of the agreement challenged here:

''Wind River, itself a significant vendor of software for embedded systems, pursued the acquisition of ISI, in large part, to obtain a skilled pool of embedded system software developers that it hoped would shorten the time to market for critical new embedded system products. Wind River soon came to view MATRIXx as a struggling product line within ISI with small revenue and no growth potential. More importantly, the MATRIXx market was neither within Wind River's core competency nor central strategic focus or the future. Thus, Wind river decided not to devote any of its resources to the continued development and sale of MATRIXx.'' [4]

The Government never refutes or challenges Wind River's claims with respect to MATRIXx. Instead, the DOJ simply ignores these concerns, and merrily proceeds on the basis of alleged consumer harm. There is no effort to place the challenged conduct in an overall business context, nor does the DOJ consider any evidence that the defendants' agreement benefited competition. Instead, the DOJ relied upon its own prejudiced theories of antitrust, and imposed this proposed judgment to force the defendants' behavior to conform to the Government's expectations. The DOJ thus substituted its own *business judgment* for that of MathWorks and Wind River without any credible arguments or evidence.

By the DOJ's admission, this case was initiated in large part by consumer complaints. Apparently, some MATRIXx users were unhappy at the prospect of having to pay the transitional costs of eventually converting to Simulink. An impartial observer would conclude that while the customers' short-term costs might increase as a result of the MATRIXx acquisition, in the long term, competition would benefit from Wind River's decision to shed an unprofitable and stagnant product line. In the free market, the more efficient allocation of resources is often fostered through the natural elimination of unnecessary or redundant competition, as appears to be the case here. Short-term pricing policies are not the overriding concern of the marketplace, yet they are the *exclusive* concern of the DOJ, which acts myopically to prevent any potential increase in consumer costs.

Free competition cannot be enforced by government fiat. Competition is an inherently dynamic process that must account for multiple variables, including the freedom to either enter or exit the market as the facts demand. Businesses rely on the expertise of their officers, employees, and partners to ensure both the profitability of the firm and the fulfillment of consumer needs. Businesses that successfully answer the question of production gain customers and wealth, businesses that fail lose both.

The DOJ, by contrast, relies on static rules that fail to account for the complexity of business and yet seek to enforce an unjust and unworkable egalitarianism. While claiming that it is protecting the free market, the Government maintains total faith in its ability to identify and enforce what is in the best interest of every single businessman and consumer in the United States absent their own uncoerced choices. This faith is usually referred to as protecting the ''public interest.''

Reasonable people understand, however, that the DOJ can not speak for the ''public interest,'' because no such interest has ever existed. The United States is a nation predicated on the defense of individual rights, not the collective interests of opposed pressure groups. Every individual has the right to assert their right to economic self-determination through the pursuit of voluntary trade. Objective laws are necessary to ensure the protection of individual rights in our system of voluntary trade, but that is far different than assigning the government arbitrary and capricious power to dictate economic outcomes, as is the situation here. In this case, the DOJ is suspending individual rights and replacing them with a definition of the ''public interest'' that doesn't hold water. Simply by asserting the metaphysical existence of the public interest in its enforcement of the antitrust laws, the DOJ denies almost every fact that drives the voluntary exchange between individuals in the free market.

This case reveals both the fundamental defects of both the antitrust laws and the strategy employed by the Government in their enforcement. Previously, in the DOJ's answer to CAC's objections to its proposed settlement agreement in United States v. Computer Associates International, Inc., *et al.* [5], the DOJ noted both CAC's philosophic opposition to the antitrust laws and the Supreme Court's history of upholding these laws. While CAC appreciates the DOJ's mastery of the blatantly obvious, we must respectfully point out that even within the context of the Supreme Court's odious approval of antitrust, the Government's position in this case and its subsequent settlement is logically defective.

Nothing in the proposed judgment benefits producers, consumers, or the

[2] *United States* v. *Computer Associates Int's, et al.,* Civil No. 01–020602 (D.D.C. April 23, 2002).

[3] *In re American Institute for Conservation of Historic and Artistic Works,* File No. 011–0244 (Sept. 10, 2002).

[4] 67 FR 64657, 64662 (October 21, 2002).

[5] 67 FR 66419 (Oct. 31, 2002).

foundations of the free market, unless it is held that capitalism is advanced by turning producers into serfs. Nothing in the proposed judgment benefits our proper understanding of the Constitution and the Executive Branch's role under that document. This settlement has everything to do with the Government asserting control over the economy, eroding the rights of businessmen, and introducing regulatory chaos into an already volatile technology market in the naked pursuit of a moral fiction. In the absence of this judgment, MATRIXx would be given the timely death the marketplace has condemned it to. With this judgment, that process will simply be prolonged, as two competitors are coerced to waste precious talent, time and money to compete far beyond the point that the marketplace has deemed such an endeavor to have practical value.

The Court must put a stop to the DOJ by rejecting entry of the proposed final judgment and dismissing the complaint with prejudice. The Court is well within its mandate under the Tunney Act to reject the proposed remedy in relationship to the violations that the United States alleges in its Complaint by holding the Government's definition of how the public interest is served by the remedy to be invalid. By protecting the public from gratuitous settlements that unjustly punish defendants, the Court would properly establish that the Tunney Act is a door that swings both ways. At a minimum, the Court should conduct a full hearing on the proposed remedy and demand the DOJ produce evidence placing the challenged conduct in its proper context.

Respectfully Submitted,

The Center for the Advancement of Capitalism

Dated: December 19, 2002.

/S/

S.M. Oliva,

Senior Fellow.

/S/

Nicholas P. Provenzo,

Chairman.

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[FR Doc. 03–1419 Filed 1–22–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

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

Notice is hereby given that, on December 19, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Apple, Cupertino, CA; Maximum Throughput, Montreal, Quebec, Canada; Omnibus Systems Ltd., Loughborough, England, United Kingdom; and SGI, Mountain View, CA have been added as parties to this venture.

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

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on September 17, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 6, 2002 (67 FR 67648).

Contance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–1416 Filed 1–22–03; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative and Production Act of 1993—Laser Forming of Complex Structures

Notice is hereby given that, on December 18, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), General Electric Company has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to and (2) the nature and objectives of a joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are GE Corporate Research and Development, Niskayuna, NY; Caterpillar Inc., Peoria, NY; Columbia University, New York, NY; A. Zahner Company, Kansas City, MO; and Native American Technologies Co., Golden, CO. The nature and objectives of the research project are to develop laser forming of complex structures. The activities of this project will be partially funded by an award from the Advanced Technology program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust.

[FR Doc. 03–1418 Filed 1–22–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mobile Wireless Internet Forum

Notice is hereby given that, on October 28, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Mobile Wireless Internet Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Equant Telecommunications SA, Sophia Antipolis, France; and ETRI, Daejon, Republic of Korea have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Mobile Wireless Internet Forum intends to file additional written notification disclosing all changes in membership.