your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 7, 2016.

Deanna Meyer-Pietruszka,

Chief, Office of Policy, Regulations and Analysis.

[FR Doc. 2016–09709 Filed 4–26–16; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–986]

Certain Diaper Disposal Systems and Components Thereof, Including Diaper Refill Cassettes; Notice of Commission Determination Not To Review an Initial Determination Granting Complainants' Motion To Amend the Complaint and the Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 7) issued by the presiding administrative law judge (''ALJ'') on April 8, 2016, granting the complainants' unopposed motion to amend the complaint and notice of investigation to add two respondents.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 29, 2016, based on a complaint filed by Edgewell Personal Care Brands, LLC, of Chesterfield, Missouri, and International Refills Company, Ltd., of Christ Church, Barbados (collectively, ''Complainants''). 81 *FR* 10277–78. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain diaper disposal systems and components thereof, including diaper refill cassettes, by reason of infringement of certain claims of U.S. Patent Nos. 6,974,029 and 8,899,420. *Id.* at 10277. The Commission's notice of investigation named as respondents Munchkin, Inc., of Van Nuys, California; Munchkin Baby Canada Ltd., of Brampton, Canada; and Lianyungang Brilliant Daily Products Co. Ltd., of Lianyungang, China. *Id.* at 10278. The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

On March 31, 2016, Complainants filed an unopposed motion to amend the complaint and the notice of investigation in order to add two respondents: Lianyungang Rainbow Daily Products Co., Ltd., of Lianyungang, China; and Munchkin Asia Limited, of Hong Kong, China. Complainants argue that they learned through discovery that these parties are involved in the manufacture and/or sale for importation of the accused products in this investigation.

On April 8, 2016, the ALJ issued the subject ID and granted Complainants' motion to amend the complaint and the notice of investigation. No petitions for review were filed.

The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 22, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–09827 Filed 4–26–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Len Blavatnik; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Len Blavatnik,* Civil Action No. 1:15–cv–01631–RDM. On October 6, 2015, the United States filed a Complaint alleging that Len Blavatnik violated the premerger notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, with respect to his acquisition of voting securities of TangoMe, Inc. The proposed Final Judgment, filed at the same time as the Complaint, requires Blavatnik to pay a civil penalty of $656,000.

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

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's Web site, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Daniel P. Ducore, Special Attorney, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW., CC–8416, Washington, DC 20580 (telephone: 202–326–2526; email: *dducore@ftc.gov*).

Patricia A. Brink,

Director of Civil Enforcement.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA c/o Department of Justice, Washington, D.C. 20530, Plaintiff, v. LEN BLAVATNIK c/o Access Industries, 28 Kensington Church Street, 4th Floor, London, United Kingdom W8 4EP, Defendant.

CASE NO.: 1:15–cv–01631

JUDGE: Randolph D. Moss

FILED: 10/06/2015

COMPLAINT FOR CIVIL PENALTIES FOR FAILURE TO COMPLY WITH THE PREMERGER REPORTING AND WAITING REQUIREMENTS OF THE HART-SCOTT-RODINO ACT

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil antitrust action to obtain monetary relief in the form of civil penalties against Defendant Len Blavatnik (''Blavatnik''). Plaintiff alleges as follows:

NATURE OF THE ACTION

1. Blavatnik violated the notice and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a (''HSR Act'' or ''Act''), with respect to the acquisition of voting securities of TangoMe, Inc. (''TangoMe'') in August 2014.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. 18a(g), and pursuant to 28 U.S.C. 1331, 1337(a), 1345, and 1355 and over the Defendant by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

3. Venue is properly based in this District by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

THE DEFENDANT

4. Defendant Blavatnik is a natural person with his principal office and place of business care of Access Industries, 28 Kensington Church Street, 4th Floor, London, United Kingdom W8 4EP. Blavatnik is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1). At all times relevant to this complaint, Blavatnik had sales or assets in excess of $151.7 million. Blavatnik is the ultimate parent entity of Access Industries (''Access'').

OTHER ENTITIES

5. TangoMe is a corporation organized under the laws of Delaware with its principal place of business at 475 Ellis Street, Mountain View, CA 94043. TangoMe is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1). At all times relevant to this complaint, TangoMe had sales or assets in excess of $15.2 million.

6. LyondellBasell Industries N.V. (''LyondellBasell'') is a corporation organized under the laws of The Netherlands with its principal place of business at 1221 McKinney Street, Suite 700, Houston, TX 77010. LyondellBasell is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1). At all times relevant to this complaint, LyondellBasell had sales or assets in excess of $12.7 million.

THE HART-SCOTT-RODINO ACT AND RULES

7. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notifications with the federal antitrust agencies and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. 18a(a) and (b). These notification and waiting period requirements apply to acquisitions that meet the HSR Act's thresholds, which are adjusted annually. During the period of 2014 pertinent to this complaint, the HSR Act's reporting and waiting period requirements applied to transactions that would result in the acquiring person holding more than $75.9 million, if certain sales and asset thresholds were met, and all transactions (regardless of the size of the acquiring or acquired persons) where the acquiring person would hold more than $303.4 million of the acquired person's voting securities and/or assets, except for certain exempted transactions.

8. The HSR Act's notification and waiting period are intended to give the federal antitrust agencies prior notice of, and information about, proposed transactions. The waiting period is also intended to provide the federal antitrust agencies with an opportunity to investigate a proposed transaction and to determine whether to seek an injunction to prevent the consummation of a transaction that may violate the antitrust laws.

9. Pursuant to Section (d)(2) of the HSR Act, 15 U.S.C. 18a(d)(2), rules were promulgated to carry out the purposes of the HSR Act. 16 CFR 801–803 (''HSR Rules''). The HSR Rules, among other things, define terms contained in the HSR Act.

10. Pursuant to section 801.13(a)(1) of the HSR Rules, 16 CFR 801.13(a)(1), ''all voting securities of [an] issuer which will be held by the acquiring person after the consummation of an acquisition''—including any held before the acquisition—are deemed held ''as a result of'' the acquisition at issue.

11. Pursuant to sections 801.13(a)(2) and 801.10(c)(1) of the HSR Rules, 16 CFR 801.13(a)(2) and 801.10(c)(1), the value of publicly traded voting securities already held is the market price, defined to be the lowest closing price within 45 days prior to the subsequent acquisition.

12. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), provides that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which such person is in violation. For violations occurring on or after February 10, 2009, the maximum amount of civil penalty is $16,000 per day, pursuant to the Debt Collection Improvement Act of 1996, Public Law 104–134, 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 74 FR 857 (Jan. 9, 2009).

DEFENDANT'S PRIOR VIOLATION OF THE HSR ACT

13. On August 23, 2010, Blavatnik acquired 133,400 voting securities of LyondellBasell. At the time of the acquisition, Blavatnik already held voting securities of LyondellBasell. The value of the voting securities held by Blavatnik after the acquisition was approximately $634 million.

14. Although he was required to do so, Blavatnik did not file under the HSR Act prior to acquiring LyondellBasell voting securities on August 23, 2010.

15. Blavatnik continued to acquire LyondellBasell voting securities in August and September of 2010, acquiring a total of 3,270,500 additional voting securities.

16. On December 1, 2010, Access, acting on Blavatnik's behalf, made a corrective filing under the HSR Act for the August 23, 2010, acquisition of LyondellBasell voting securities, and the subsequent acquisitions in August and September of 2010. In a letter accompanying the corrective filing, Blavatnik acknowledged that the transaction was reportable under the HSR Act, but asserted that the failure to file and observe the waiting period was inadvertent. Blavatnik also committed that he and Access would consult with HSR counsel before making any

additional acquisitions of voting securities.

17. On January 4, 2011, the Premerger Notification Office of the Federal Trade Commission sent a letter to Access indicating that it would not recommend a civil penalty action regarding the August 23, 2010, LyondellBasell acquisition, but stating that Blavatnik ''still must bear responsibility for compliance with the Act. In addition, he is accountable for instituting an effective program to ensure full compliance with the Act's requirements.''

VIOLATION

18. On August 6, 2014, Blavatnik, through Access, acquired 2,818,182 shares of TangoMe voting securities. Blavatnik's voting securities represented approximately 29.1% of TangoMe's outstanding voting securities and were valued at approximately $228 million.

19. Prior to acquiring the TangoMe voting securities, neither Access nor Blavatnik conducted any HSR review of the proposed acquisition or consulted with HSR counsel, notwithstanding their commitments to do so made in connection with the LyondellBasell corrective filing.

20. On December 17, 2014, Blavatnik made a corrective filing under the HSR Act for the August 6, 2014, acquisition of TangoMe voting securities. The waiting period on the corrective filing expired on January 16, 2015.

21. Blavatnik was in continuous violation of the HSR Act from August 6, 2014, when it acquired the TangoMe voting securities valued in excess of the HSR Act's $75.9 million size-of-transaction threshold, through January 16, 2015, when the waiting period expired.

REQUEST FOR RELIEF

Wherefore, Plaintiff requests:

a. That the Court adjudge and decree that Defendant Blavatnik's acquisition of TangoMe voting securities on August 6, 2014, was a violation of the HSR Act, 15 U.S.C. 18a; and that Defendant Blavatnik was in violation of the HSR Act each day from August 6, 2014, through January 16, 2015.

b. That the Court order Defendant Blavatnik to pay to the United States an appropriate civil penalty as provided by the HSR Act, 15 U.S.C. 18a(g)(1), the Debt Collection Improvement Act of 1996, Public Law 104–134, 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 74 FR 857 (Jan. 9, 2009).

c. That the Court order such other and further relief as the Court may deem just and proper.

d. That the Court award the Plaintiff its costs of this suit.

Dated: October 6, 2015

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

/s/

William J. Baer
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Assistant Attorney General
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Antitrust Division
Washington, DC 20530

/s/

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/s/

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/s/

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/s/

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Federal Trade Commission
Washington, DC 20580
(202) 326–2694

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. LEN BLAVATNIK, Defendant.

CASE NO.: 1:15–cv–01631
JUDGE: Randolph D. Moss
FILED: 04/20/2016

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement to set forth the information necessary to enable the Court and the public to evaluate the proposed Final Judgment that would terminate this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THIS PROCEEDING

On October 6, 2015, the United States filed a Complaint against Defendant Len Blavatnik (''Blavatnik''), related to Blavatnik's acquisition of voting securities of TangoMe Inc. (''TangoMe'') in 2014. The Complaint alleges that Blavatnik violated Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the ''HSR Act''). The HSR Act states that ''no person shall acquire, directly or indirectly, any voting securities of any person'' exceeding certain thresholds until that person has filed pre-acquisition notification and report forms with the Department of Justice and the Federal Trade Commission (collectively, the ''federal antitrust agencies'' or ''agencies'') and the post-filing waiting period has expired.[1] The purpose of the notification and waiting period is to allow the agencies an opportunity to conduct an antitrust review of proposed transactions before they are consummated.

The Complaint alleges that Blavatnik, via an entity he controls, acquired voting securities of TangoMe in excess of the statutory threshold ($75.9 million at the time of acquisition) without making the required pre-acquisition filings with the agencies and without observing the waiting period, and that Blatvatnik and TangoMe each met the statutory size of person threshold at the time of the acquisition (Blavatnik and TangoMe had sales or assets in excess of $151.7 million and $15.2 million, respectively).

The Complaint further alleges that Blavatnik previously violated the HSR Act's notification requirements when he acquired shares in LyondellBasell Industries N.V. (''LyondellBasell'') in 2010. In August and September of 2010, Blavatnik made several acquisitions of LyondellBasell voting securities without making appropriate HSR filings and observing the required waiting periods. On December 1, 2010, Blavatnik made a corrective filing for these acquisitions. In a letter accompanying the corrective filing, Blavatnik acknowledged that these transactions were reportable under the HSR Act, but asserted that the failure to file and observe the waiting period was inadvertent. Blavatnik also committed that he would consult with HSR counsel before making any additional acquisitions of voting securities. On January 4, 2011, the Premerger Notification Office of the Federal Trade Commission sent a letter to Blavatnik indicating that it would not recommend a civil penalty action regarding the 2010 LyondellBasell acquisition, but stated that Blavatnik would be ''accountable for instituting an effective program to ensure full compliance with the [HSR] Act's requirements.''[2]

At the same time the Complaint was filed, the United States also filed a Stipulation and proposed Final Judgment that eliminates the need for a trial in this case. The proposed Final

[1] 15 U.S.C. 18a(a).

[2] Complaint, ¶ 17.

Judgment is designed to deter Blavatnik's HSR Act violations. Under the proposed Final Judgment, Blavatnik must pay a civil penalty in the amount of $656,000.

The United States and the Defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States first withdraws its consent. Entry of the proposed Final Judgment would terminate this case, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and punish violations thereof. Entry of this judgment would not constitute evidence against, or an admission by, any party with respect to any issue of fact or law involved in the case and is conditioned upon the Court's finding that entry is in the public interest.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATIONS OF THE ANTITRUST LAWS

A. Len Blavatnik and the Acquisitions of TangoMe Voting Securities

Len Blavatnik is a British businessman, investor, and philanthropist. In 1986, Blavatnik founded Access Industries (''Access''), a private international conglomerate company located in New York. Access, in turn, controls multiple entities engaged in three primary industries: natural resources and chemicals; media and telecommunications; and real estate.

TangoMe is a California based technology start-up known largely for its smartphone application *Tango.* With approximately 200 million registered users, *Tango* is a messaging app offering free video calls, texting, and photo sharing.

On August 6, 2014, Blavatnik, through Access, acquired shares of TangoMe voting securities. Blavatnik's voting securities represented approximately 29.1% of TangoMe's outstanding voting securities and were valued at approximately $228 million. This exceeded the HSR Act's $75.9 million size-of-transaction threshold then in effect.

Prior to acquiring the TangoMe voting securities, neither Access nor Blavatnik conducted any HSR review of the proposed acquisition or consulted with HSR counsel, notwithstanding Blavatnik's commitments made in connection with the 2010 LyondellBasell corrective filing. Blavatnik became aware of the missed HSR filing when Access conducted a periodic review of the company-wide holdings of TangoMe. After discovering the missed filing, Blavatnik promptly made a corrective filing on December 17, 2014. The waiting period expired on January 16, 2015.

B. Blavatnik's Violation of HSR

As alleged in the Complaint, Blavatnik acquired in excess of the $75.9 million in voting securities of TangoMe without complying with the pre-acquisition notification and waiting period requirements of the HSR Act. Blavatnik's failure to comply undermined the statutory scheme and the purpose of the HSR Act. Blavatnik's December 17, 2014, corrective filing included a letter acknowledging that the acquisitions were reportable under the HSR Act.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment imposes a $656,000 civil penalty designed to deter this Defendant and others from violating the HSR Act. The United States adjusted the penalty downward from the maximum because the violation was unintentional, the Defendant promptly self-reported the violation after discovery, and the Defendant is willing to resolve the matter by consent decree and avoid prolonged investigation and litigation. The penalty also reflects Defendant's previous violation of the HSR Act after pledging to consult counsel in order to prevent such violations. The United States expects this penalty to deter Blavatnik and others from violating the HSR Act. The relief will have a beneficial effect on competition because the agencies will be properly notified of acquisitions, in accordance with the law. At the same time, the penalty will not have any adverse effect on competition.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

There is no private antitrust action for HSR Act violations; therefore, entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust action.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendant have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provision of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's 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**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet Web site and, under certain circumstances, published in the **Federal Register**. Written comments should be submitted to:

Daniel P. Ducore

Special Attorney, United States

c/o Federal Trade Commission,

600 Pennsylvania Avenue NW.,

CC–8416

Washington, DC 20580

Email: *dducore@ftc.gov*

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

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

As an alternative to the proposed Final Judgment, the United States considered pursuing a full trial on the merits against the Defendant. The United States is satisfied, however, that the proposed relief is an appropriate remedy in this matter. Given the facts of this case, including the Defendant's self-reporting of the violation and willingness to settle quickly, the United States is satisfied that the proposed civil penalty is sufficient to address the violation alleged in the Complaint and to deter violations by similarly situated entities in the future, without the time, expense, and uncertainty of a full trial on the merits.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The APPA requires that remedies contained in 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.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one, as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v, U.S. Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[3]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations 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. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

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

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[4] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.''' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft,* 56 F.3d at 1461)); *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

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

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

[4] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing 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''').

complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[5] A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 76.

VIII. DETERMINATIVE DOCUMENTS

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

Date: April 20, 2016

Respectfully Submitted,

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Kenneth A. Libby
Special Attorney

[5] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) (''Absent 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.''); S. Rep. No. 93–298, at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA c/o Department of Justice Washington, D.C. 20530, Plaintiff, v. LEN BLAVATNIK c/o Access Industries, 28 Kensington Church Street, 4th Floor, London, United Kingdom W8 4EP, Defendant.

CASE NO.: 1:15–cv–01631
JUDGE: Randolph D. Moss
FILED: 10/06/2015

FINAL JUDGMENT

Plaintiff, the United States of America, having commenced this action by filing its Complaint herein for violation of Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and Plaintiff and Defendant Len Blavatnik, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by the Defendant with respect to any such issue:

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby Ordered, Adjudged, and Decreed as follows:

I.

The Court has jurisdiction of the subject matter of this action and of the Plaintiff and the Defendant. The Complaint states a claim upon which relief can be granted against the Defendant under Section 7A of the Clayton Act, 15 U.S.C. 18a.

II.

Judgment is hereby entered in this matter in favor of Plaintiff United States of America and against Defendant, and, pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L. 104–134 § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461), Federal Trade Commission Rule 1.98, 16 CFR 1.98, 61 FR 54549 (Oct. 21, 1996), and 74 FR 857 (Jan. 9, 2009), Defendant Len Blavatnik is hereby ordered to pay a civil penalty in the amount of six hundred fifty six thousand dollars ($656,000). Payment of the civil penalty ordered hereby shall be made by wire transfer of funds or cashier's check. If the payment is made by wire transfer, Defendant shall contact Janie Ingalls of the Antitrust Division's Antitrust Documents Group at (202) 514–2481 for instructions before making the transfer. If the payment is made by cashier's check, the check shall be made payable to the United States Department of Justice and delivered to:

Janie Ingalls
United States Department of Justice
Antitrust Division, Antitrust Documents Group
450 5th Street NW., Suite 1024
Washington, DC 20530

Defendant shall pay the full amount of the civil penalty within thirty (30) days of entry of this Final Judgment. In the event of a default or delay in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of the default or delay to the date of payment.

III.

Each party shall bear its own costs of this action.

IV.

Entry of this Final Judgment is in the public interest.

Dated: ____________________

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United States District Judge

[FR Doc. 2016–09782 Filed 4–26–16; 8:45 am]
BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

On April 20, 2016, the Department of Justice and the State of California on behalf of the California Department of Toxic Substances Control and Toxic Substances Control Account (''DTSC'') filed a complaint and lodged a proposed Consent Decree with the United States District Court for the Central District of California pertaining to environmental contamination at Operable Unit 2 (''OU2'') of the Omega Chemical Corporation Superfund Site (''Site'') in Los Angeles County, California. The complaint and proposed Consent Decree were filed contemporaneously in the matter of *United States of America and State of California on behalf of the Department of Toxic Substances Control*