notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. 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, AT&T, Alpharetta, GA, has been added as a party 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 fd.io intends to file additional written notifications disclosing all changes in membership.

On May 4, 2016, fd.io 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 9, 2016 (81 FR 37211).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–02019 Filed 1–30–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Ahmet H. Okumus; 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. *Ahmet H. Okumus,* Civil Action No. 1:17–cv–00104. On January 17, 2017, the United States filed a Complaint alleging that Ahmet H. Okumus violated the notice 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 Web.com Group, Inc. The proposed Final Judgment, filed at the same time as the Complaint, requires Ahmet H. Okumus to pay a civil penalty of $180,000.

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, United States, 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.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, c/o Department of Justice, Washington, D.C. 20530, Plaintiff, v. *Ahmet H. Okumus, 767 Third Avenue, 35th Floor, New York, NY 10017*, Defendant.

Case No.: 1:17–cv–00104
Judge: Rosemary M. Collyer
Filed: 01/17/2017

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 Ahmet H. Okumus (''Okumus''). Plaintiff alleges as follows:

NATURE OF THE ACTION

1. Okumus 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 Web.com Group, Inc. (''Web.com'').

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 Okumus is a natural person with his principal office and place of business at 767 Third Avenue, 35th Floor, New York, NY 10017. Okumus 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, Okumus had sales or assets in excess of $156.3 million.

OTHER ENTITIES

5. Web.com is a corporation organized under the laws of Delaware with its principal place of business at 12808 Gran Bay Parkway West, Jacksonville, FL 32258. Web.com 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, Web.com had sales or assets in excess of $15.6 million.

THE HART-SCOTT-RODINO ACT AND RULES

6. 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. As of February 1, 2001, the size of transaction threshold was $50 million. In addition, there is a separate filing requirement for transactions in which the acquirer will hold voting securities in excess of $100 million, and for transactions in which the acquirer will hold voting securities in excess of $500 million. With respect to the size of person thresholds, the HSR Act requires one person involved in the transaction to have sales or assets in excess of $10 million, and the other person to have sales or assets in excess of $100 million. Since 2004, the size of transaction and size of person thresholds have been adjusted annually.

7. The HSR Act's notification and waiting period requirements 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.

8. Section (c)(9) of the HSR Act, 15 U.S.C. 18a(c)(9), exempts from the requirements of the HSR Act acquisitions of voting securities made solely for the purpose of investment if, as a result of the acquisition, the securities acquired or held do not exceed ten percent of the outstanding voting securities of the issuer.

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 801–03 (''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 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 802.21 of the HSR Rules, 16 CFR 802.21, provides that once a person has filed under the HSR Act and the waiting period has expired, the person can acquire additional voting securities of the issuer without making a new filing for five years from the expiration of the waiting period, so long as the holdings do not exceed a higher threshold than was indicated in the filing.

13. 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. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 81 FR 42,476 (June 30, 2016), the maximum amount of civil penalty is $40,000 per day.

DEFENDANT'S PRIOR VIOLATION OF THE HSR ACT

14. On September 11, 2014, Okumus acquired voting securities of Web.com. As a result of this acquisition, Okumus held approximately 13.5% of the voting securities of Web.com. Okumus did not file under the HSR Act because he was relying on the exemption for acquisitions solely for the purpose of investment. However, that exemption is limited to acquisitions which result in holding 10% or less of the voting securities of the issuer. Accordingly, Okumus was required to file under the HSR Act prior to acquiring Web.com voting securities on September 11, 2014. Okumus continued to acquire voting securities of Web.com through November 6, 2014.

15. On November 21, 2014, Okumus made a corrective filing under the HSR Act for the acquisitions of Web.com voting securities. In a letter accompanying the corrective filing, Okumus acknowledged that the transaction was reportable under the HSR Act, but asserted that the failure to file and observe the waiting period was inadvertent.

16. On December 31, 2014, the Premerger Notification Office of the Federal Trade Commission sent a letter to Okumus indicating that it would not recommend a civil penalty action regarding the September 11, 2014, Web.com acquisition. The letter advised, however, that Okumus ''still must bear responsibility for compliance with the Act'' and was ''accountable for instituting an effective program to ensure full compliance with the Act's requirements.''

DEFENDANT'S VIOLATION OF THE HSR ACT

17. In his corrective HSR Act filing for the 2014 Web.com acquisitions, Okumus filed at the $50 million threshold. After the expiration of the waiting period, Okumus was permitted under the HSR Act to acquire additional voting securities of Web.com without making another HSR Act filing so long as he did not exceed the $100 million threshold, as adjusted. As of February 25, 2016, the adjusted $100 million threshold was $156.3 million.

18. On June 2, 2016, Okumus began acquiring additional voting securities of Web.com. Okumus continued to acquire additional voting securities of Web.com through June 27, 2016.

19. On June 27, 2016, Okumus acquired 236,589 voting securities of Web.com. As a result of this acquisition, Okumus held voting securities of Web.com valued in excess of the $156.3 million threshold then in effect.

20. Although required to do so, Okumus did not file under the HSR Act or observe the HSR Act's waiting period prior to completing the June 27, 2016, transaction.

21. On July 14, 2016, Okumus sold 33,200 voting securities of Web.com. As a result of this sale, Okumus no longer held voting securities of Web.com valued in excess of the $156.3 million HSR Act threshold.

22. Okumus was in continuous violation of the HSR Act from June 27, 2016, when he acquired the Web.com voting securities valued in excess of the HSR Act's then applicable $156.3 filing threshold, through July 14, 2016, when he no longer held voting securities of Web.com valued in excess of $156.3 million.

REQUESTED RELIEF

WHEREFORE, Plaintiff requests:

a. That the Court adjudge and decree that Defendant's acquisition of Web.com voting securities on June 27, 2016, was a violation of the HSR Act, 15 U.S.C. 18a; and that Defendant was in violation of the HSR Act each day from June 27, 2016, through July 14, 2016;

b. That the Court order Defendant to pay to the United States an appropriate civil penalty as provided by the HSR Act, 15 U.S.C. 18a(g)(1), and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 81 FR 42,476 (June 30, 2016);

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

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

Dated: 01/17/2017

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

/s/

Renata B. Hesse, D.C. Bar No. 466107

Acting Assistant Attorney General, Department of Justice, Antitrust Division, Washington, DC 20530, D.C. Bar No. 269266.

/s/

Daniel P. Ducore, D.C. Bar No. 933721

Special Attorney.

/s/

Roberta S. Baruch

Special Attorney.

/s/

Kenneth A. Libby

Special Attorney.

/s/

Jennifer Lee,

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

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Ahmet H. Okumus*, Defendant.
Case No.: 1:17–cv–00104
Judge: Rosemary M. Collyer
Filed: 01/17/2017

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 January 17, 2017, the United States filed a Complaint against Defendant Ahmet H. Okumus (''Okumus''), related to Okumus's acquisition of voting securities of Web.com Group, Inc. (''Web.com'') in June 2016. The Complaint alleges that Okumus 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 provides 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. 15 U.S.C. 18a(a). A key purpose of the notification and waiting period is to protect consumers and competition from potentially anticompetitive transactions by providing the agencies an opportunity to conduct an antitrust review of proposed transactions before they are consummated.

The Complaint alleges that Okumus acquired voting securities of Web.com in excess of then-applicable statutory thresholds without making the required pre-acquisition HSR filings with the agencies and without observing the waiting period, and that Okumus and Web.com met the applicable statutory size of person thresholds.

At the same time the Complaint was filed in the present action, the United States also filed a Stipulation and proposed Final Judgment that eliminates the need for a trial in this case. The proposed Final Judgment is designed to deter Okumus' HSR Act violations. Under the proposed Final Judgment, Okumus must pay a civil penalty to the United States in the amount of $180,000.

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.

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

Okumus is an investor with his principal office and place of business in New York City. At all times relevant to the Complaint, Okumus had sales or assets in excess of $156.3 million. At all times relevant to the Complaint, Web.com, a Delaware corporation headquartered in Jacksonville, Florida, had sales or assets in excess of $15.6 million.

On November 21, 2014, Okumus filed under the HSR Act to acquire voting securities of Web.com. Okumus filed at the $50 million threshold, as adjusted. After the waiting period expired, Okumus was permitted under the HSR Act to acquire additional voting securities of Web.com for five years without making a new HSR filing so long as his holdings did not exceed the $100 million threshold, as adjusted. On June 27, 2016, Okumus acquired additional voting securities of Web.com. As a result of this acquisition, Okumus held voting securities of Web.com valued at approximately $156.6 million, which was in excess of $156.3 million, the as adjusted $100 million threshold in effect at the time. Although he was required to do so under the HSR Act, Okumus failed to make an HSR filing and observe the statutory waiting period before consummating the June 27, 2016 acquisition.

On July 14, 2016, Okumus sold voting securities of Web.com. As a result of this sale, he no longer held voting securities valued in excess of $156.3 million, and was no longer in violation of the HSR Act.

The Complaint further alleges that Okumus's June 2016 HSR Act violation was not the first time Okumus had failed to observe the HSR Act's notification and waiting period requirements. On September 11, 2014, Okumus acquired voting securities of Web.com. As a result of this acquisition, Okumus held approximately 13.5 percent of the voting securities of Web.com. Okumus did not file under the HSR Act prior to making this acquisition, relying on the exemption for acquisitions made solely for the purpose of investment. *See* 15 U.S.C. 18a(c)(9). However, the exemption is limited to acquisitions that result in holdings that do not exceed ten percent of the voting securities of the issuer; acquisitions that result in holding in excess of ten percent require an HSR filing regardless of the purpose of the acquisition. On November 21, 2014, Okumus made a corrective HSR filing for the September 11, 2014 acquisition, and explained in a letter accompanying the corrective filing that his failure to file was inadvertent. On December 31, 2014, the Premerger Notification Office of the Federal Trade Commission notified Okumus by letter that it would not recommend a civil penalty for the violation, but advised Okumus that he was ''accountable for instituting an effective program to ensure full compliance with the Act's requirements.''

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment imposes a $180,000 civil penalty designed to deter the Defendant and others from violating the HSR Act. The United States adjusted the penalty downward from the maximum permitted under the HSR Act because the violation was inadvertent, the Defendant promptly corrected the violation after discovery by selling voting securities, and the Defendant is willing to resolve the matter by consent decree and avoid prolonged investigation and litigation. The relief will have a beneficial effect on competition because the agencies will be properly notified of future 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 the Defendant have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions 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 this 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 promptly settle this matter, 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 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.

Id. § 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 that the court's ''inquiry is limited'' because the government has ''broad discretion'' to determine the adequacy of the relief secured through a settlement); *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.'').[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, a court conducting an inquiry under the APPA may 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. *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).[2] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the

[1] 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).

[2] *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' '').

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 government's 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 (concluding that ''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 complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court 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.'' 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). This language codified what Congress intended when it enacted the Tunney Act in 1974, as the author of this legislation, Senator Tunney, explained: ''The 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.[3]

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: January 17, 2017
Respectfully submitted,
/s/
Kenneth A. Libby,
Special Attorney U.S. Department of Justice, Antitrust Division, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, Phone: (202) 326–2694, Email: *klibby@ftc.gov.*

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *Ahmet H. Okumus*, Defendant.
Case No.: 1:17–cv–00104
Judge: Rosemary M. Collyer
Filed: 01/17/2017

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 Ahmet H. Okumus, 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:

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 and against Defendant, and, pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C.

[3] *See also 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.'').

18a(g)(1), and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74 §701 (amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 81 FR 42,476 (June 30, 2016), Defendant is hereby ordered to pay a civil penalty in the amount of one hundred eighty thousand dollars ($180,000). 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, D.C. 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. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

[FR Doc. 2017–02024 Filed 1–30–17; 8:45 am]

BILLING CODE 4410–11–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (17–003)]

Notice of Intent To Grant Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive patent license.

SUMMARY: NASA hereby gives notice of its intent to grant an exclusive patent license in the United States to practice the invention described and claimed in U.S. Patent Number 7,867,589 entitled ''Hybrid Cryogenic Tank Construction and Method of Manufacture thereof;''

U.S. Patent Number 7,641,949 entitled ''Pressure Vessel with Improved Impact resistance and Method of making the same;'' U.S. Patent Number 8,561,829 entitled ''Composite Pressure Vessel including Crack Arresting Barrier;'' U.S. Patent Number 8,297,468 entitled ''Fuel Tank for Liquefied Natural Gas'' and U.S. Patent Number 6,953,129 entitled ''Pressure Vessel with Impact and Fire Resistant and Method of making same'' to Cimarron Composites, having its principal place of business in Huntsville, Alabama (USA). The fields of use may be limited to design and manufacturing of composite tanks and pressure vessels for aerospace and other commercial applications.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

ADDRESSES: Objections relating to the prospective license may be submitted to Mr. James J. McGroary, Chief Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–0013.

FOR FURTHER INFORMATION CONTACT: Mr. Sammy Nabors, Technology Transfer Office/ZP30, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226.

SUPPLEMENTARY INFORMATION: This notice of intent to grant an exclusive patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Mark P. Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2017–02007 Filed 1–30–17; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board's Committee on Strategy, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: Tuesday, February 7, 2017 at 11:30 to 12:30 p.m. EST. Open session: 11:30 to 12:00 p.m.; closed session: 12:00 to 12:30 p.m.

SUBJECT MATTER: Open meeting subject: Review and discuss draft charge for the Committee on Strategy. Closed meeting subject: Review and discuss NSF draft Strategic Plan, 2018–2022.

STATUS: Partly open, partly closed.

This meeting will be held by teleconference. A public listening line will be available for the open portion of the meeting. Members of the public must contact the Board Office (call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the teleconference for the public listening number. Please refer to the National Science Board Web site for additional information and schedule updates (time, place, subject matter or status of meeting) which may be found at *http://www.nsf.gov/nsb/notices/.* The