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 74 (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 74 (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 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 75 (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 75.

VIII. DETERMINATIVE DOCUMENTS

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

Dated: October 10, 2018

Respectfully submitted,

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DEPARTMENT OF JUSTICE

Antitrust Division

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

Notice is hereby given that, on September 6, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), UHD Alliance, Inc. (''UHD Alliance'') filed written 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

[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'').

[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.'').

limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, HP Inc., Houston, TX; and Quatius Ltd., Kwai Chung, HONG KONG–CHINA, have withdrawn 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 UHD Alliance intends to file additional written notifications disclosing all changes in membership.

On June 17, 2015, UHD Alliance 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 July 17, 2015 (80 FR 42537).

The last notification was filed with the Department on June 7, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 9, 2018 (83 FR 31775).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. CVS Health Corporation and Aetna Inc.; 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. CVS Health Corporation and Aetna Inc.,* Civil Action No. 1:18–cv–02340. On October 10, 2018, the United States filed a Complaint alleging that CVS Health Corporation's proposed acquisition of Aetna Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires the merging parties to divest Aetna's individual prescription drug plan business.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website 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 website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Peter Mucchetti, Chief, Healthcare and Consumer Products Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 4100, Washington, DC 20530 (telephone: 202–307–0001).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States Of America, U.S. Department of Justice, Antitrust Division, 450 5th Street NW, Suite 4100, Washington, DC 20530, State of California, 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102, State of Florida, PL–01, The Capitol, Tallahassee, FL 32399–1050, State of Hawaii, 425 Queen Street, Honolulu, HI 96813, State of Mississippi, P.O. Box 22947, Jackson, MS 39225, and *State of Washington, 800 Fifth Avenue, Suite 2000, Seattle, WA 98104–3188,* Plaintiffs, v., *CVS Health Corporation, 1 CVS Drive, Woonsocket, RI 02895,* and *AETNA Inc., 151 Farmington Avenue, Hartford, CT 06156,* Defendants.

Case No. 1:18–cv–02340
Judge Richard J. Leon

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, and the States of California, Florida, Hawaii, Mississippi, and Washington (''Plaintiff States''), bring this civil antitrust action to prevent CVS Health Corporation from acquiring Aetna Inc.

I. Introduction

1. CVS's proposed $69 billion acquisition of Aetna would combine two of the country's leading sellers of individual prescription drug plans, also known as individual PDPs. More than 20 million individual beneficiaries—primarily seniors and persons with disabilities—rely on these government-sponsored plans for prescription drug insurance coverage. Competition between CVS and Aetna to sell individual PDPs has resulted in lower premiums, better service, and more innovative products. The proposed acquisition would eliminate this valuable competition, harming beneficiaries, taxpayers, and the federal government, which pays for a large portion of beneficiaries' prescription drug coverage.

2. While CVS and Aetna compete throughout the United States, they are particularly strong in 16 geographic regions established by the Centers for Medicare & Medicaid Services (''CMS''). In these 16 regions, over 9.3 million people are enrolled in individual PDPs. Competition between CVS and Aetna is particularly important in these regions because they compete for similar customers by lowering prices and improving products. Moreover, they are two of the largest and fastest-growing competitors. Individuals in these 16 regions will experience harm, including price increases and quality reductions, from the loss of competition between CVS and Aetna.

3. Because the transaction likely would substantially lessen competition between CVS and Aetna for individual PDPs in these 16 regions, the proposed acquisition violates Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be enjoined.

II. Background

A. Medicare Drug Coverage

4. Medicare is a federal program that provides health insurance to qualified beneficiaries. Medicare offers coverage for outpatient prescription drugs under the Medicare Part D program, which harnesses competition between private insurance companies in order to lower prescription drug costs for Medicare beneficiaries and taxpayers, enhance plan designs, and improve quality of coverage.

5. Medicare beneficiaries obtain individual drug coverage in two main ways, depending on the type of medical insurance they have. Beneficiaries enrolled in Original Medicare, a fee-for-service program offered directly through the federal government, can enroll in a standalone individual PDP. Beneficiaries enrolled in Medicare Advantage, a type of private insurance offered by companies that contract with the federal government, can enroll in a plan that includes drug coverage.

6. No matter how beneficiaries obtain Medicare drug coverage, the federal government subsidizes the cost of that coverage. As explained in greater detail below, the federal government also provides additional subsidies to low-income beneficiaries under the low-income subsidy (''LIS'') program.

B. Individual PDPs

7. Individual PDPs provide beneficiaries with insurance coverage for a set of prescription drugs (the ''formulary''), a network of pharmacies where beneficiaries may fill prescriptions, and a set schedule of defined premiums and cost-sharing rates.

8. To offer individual PDPs, insurers must be approved by CMS. CMS has divided the 50 states and the District of Columbia into 34 Part D regions. To offer an individual PDP in a Part D region, the insurer must offer the plan at the same price to all individuals in the region and have a pharmacy network that is adequate to serve individuals throughout the region. No Part D region is smaller than a state, and some Part D regions encompass multiple contiguous states. Beneficiaries can enroll only in individual PDPs offered in the Part D region where they reside. The following map shows the Part D regions: