programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 10, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–27087 Filed 12–13–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. James Dolan; 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. *James Dolan,* Civil Action No. 1:18–cv–02858. On December 6, 2018, the United States filed a Complaint alleging that James Dolan 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 Madison Square Garden Company. The proposed Final Judgment, filed at the same time as the Complaint, requires James Dolan to pay a civil penalty of $609,810.

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.

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

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 Roberta S. Baruch, Special Attorney, United States, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW, CC–8416, Washington, DC 20580 (telephone: 202–326–2861; e-mail: *rbaruch@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. *James L. Dolan, c/o The Madison Square Garden Company, Two Penn Plaza, New York, NY 10121,* Defendant.

Civil Action No. 1:18-cv-02858

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 James L. Dolan (''Dolan''). Plaintiff alleges as follows:

NATURE OF THE ACTION

1. Dolan 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 the Madison Square Garden Company (''MSG'') in 2017.

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 Dolan is a natural person with his principal office and place of business at Two Penn Plaza, New York, NY 10121. Dolan 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, Dolan had sales or assets in excess of $161.5 million.

OTHER ENTITY

5. MSG is a corporation organized under the laws of Delaware with its principal place of business at Two Penn Plaza, New York, NY 10121. MSG 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, MSG had sales or assets in excess of $16.6 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 Department of Justice and the Federal Trade Commission (collectively, 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 have been adjusted annually since 2004. The size of transaction threshold is $50 million, as adjusted ($80.8 million for most of 2017). In addition, there is a separate filing requirement for transactions in which the acquirer will hold voting securities in excess of $100 million, as adjusted ($161.5 million in 2017), and for transactions in which the acquirer will hold voting securities in excess of $500 million, as adjusted ($807.5 million in 2017). 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, as adjusted ($16.6 million in 2017), and the other person to have sales or assets in excess of $100 million, as adjusted ($161.5 million in 2017).

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. 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 C.F.R. §§ 801–03 (''HSR Rules''). The HSR Rules, among other things, define terms contained in the HSR Act.

9. Pursuant to section 801.13(a)(1) of the HSR Rules, 16 C.F.R. § 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.

10. Pursuant to sections 801.13(a)(2) and 801.10(c)(1) of the HSR Rules, 16 C.F.R. § 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.

11. Section 802.21 of the HSR Rules, 16 C.F.R. § 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.

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. 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 C.F.R. § 1.98, 83 Fed. Reg. 2902 (January 22, 2018), the maximum amount of civil penalty is currently $41,484 per day.

DEFENDANT'S PRIOR VIOLATION OF THE HSR ACT

13. On March 10, 2010, Dolan acquired voting securities of Cablevision Systems Corporation (''CVC'') that resulted in holdings exceeding the adjusted $50 million threshold then in effect under the HSR Act. Although he was required to do so, Dolan did not file under the HSR Act prior to acquiring CVC voting securities on March 10, 2010.

14. Subsequently, Dolan made additional acquisitions of CVC voting securities such that on November 30, 2010 his holdings exceeded the adjusted $100 million threshold then in effect under the HSR Act. Although he was required to do so, Dolan did not file under the HSR Act prior to making the acquisition of CVC voting securities on November 30, 2010.

15. On February 24, 2012, Dolan made a corrective filing under the HSR Act for the acquisitions of CVC voting securities. In a letter accompanying the corrective filing, Dolan acknowledged that the transactions were reportable under the HSR Act, but asserted that the failure to file and observe the waiting period was inadvertent.

16. On May 4, 2012, the Premerger Notification Office of the Federal Trade Commission sent a letter to Dolan indicating that it would not recommend a civil penalty action regarding the March 10, 2010, and November 30, 2010, CVC acquisitions. The letter advised, however, that Dolan ''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. Dolan is the Executive Chairman and a Director of MSG and, as a result of holding these positions, frequently receives restricted stock units (''RSUs'') as a part of his compensation package. On August 16, 2016, due to vesting RSUs, Dolan filed an HSR Notification for an acquisition of MSG voting securities that would result in holdings exceeding the $50 million threshold as adjusted. Early termination of the HSR Act's waiting period was granted on this filing on September 6, 2016, and Dolan completed the acquisition three days later. Dolan was permitted under the HSR Act to acquire additional voting securities of MSG without making another HSR Act filing so long as he did not exceed the $100 million threshold, as adjusted. As of February 27, 2017, the adjusted $100 million threshold was $161.5 million.

18. On September 11, 2017, Dolan acquired 591 shares of MSG due to vesting RSUs. As a result of this acquisition, Dolan held voting securities of MSG valued in excess of the $161.5 million threshold then in effect.

19. Although required to do so, Dolan did not file under the HSR Act or observe the HSR Act's waiting period prior to completing the September 11, 2017, transaction.

20. On November 24, 2017, Dolan made a corrective filing and the waiting period expired on December 26, 2017. Dolan was in continuous violation of the HSR Act from September 11, 2017, when he acquired the MSG voting securities valued in excess of the HSR Act's then applicable $100 million filing threshold, as adjusted ($161.5 million), through December 26, 2017, when the waiting period expired on his corrective filing.

REQUESTED RELIEF

WHEREFORE, Plaintiff requests:

a. That the Court adjudge and decree that Defendant's acquisition of MSG voting securities on September 11, 2017, 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 September 11, 2017, through December 26, 2017;

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 C.F.R. § 1.98, 83 Fed. Reg. 2902 (January 22, 2018);

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:

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

Makin Delrahim,
D.C. Bar No. 457795,
Assistant Attorney General,
Department of Justice,
Antitrust Division,
Washington, D.C. 20530

Roberta S. Baruch,
D.C. Bar No. 269266,
Special Attorney.

Kenneth A. Libby,
Special Attorney.

Jennifer Lee,
Special Attorney,
Federal Trade Commission,

Washington, D.C. 20530, (202) 326–2694.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *James L. Dolan,* Defendant.

Civil Action No. 1:18-cv-02858

[PROPOSED] 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 James L. Dolan, 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:

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. § 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), 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 C.F.R. § 1.98, 82 Fed. Reg. 8135 (January 24, 2017), Defendant is hereby ordered to pay a civil penalty in the amount of six hundred nine thousand eight hundred and ten dollars ($609,810). 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.

This Final Judgment shall expire upon payment in full by the Defendant of the civil penalty required by Section II of this Final Judgment.

V.

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

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *James L. Dolan,* Defendant.

Civil Action No. 1:18-cv-02858

COMPETITIVE IMPACT STATEMENT

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

I. NATURE AND PURPOSE OF THE PROCEEDING

On December 6, 2018, the United States filed a Complaint against Defendant James L. Dolan (''Dolan''), related to Dolan's acquisitions of voting securities of the Madison Square Garden Company (''MSG'') in September 2017. The Complaint alleges that Dolan 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 requirements 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 Dolan acquired voting securities of MSG in excess of then-applicable statutory threshold ($161.5 million at the time of acquisition) without making the required pre-acquisition HSR Act filings with the agencies and without observing the waiting period, and that Dolan and MSG 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 address the violation alleged in the Complaint and deter Dolan's HSR Act violations. Under the proposed Final Judgment, Dolan must pay a civil penalty to the United States in the amount of $609,810.

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 VIOLATION

Dolan is the Executive Chairman and a Director of MSG and an investor. At all times relevant to the Complaint,

Dolan had sales or assets in excess of $161.5 million. At all times relevant to the Complaint, MSG had sales or assets in excess of $16.6 million.

In his roles as Executive Chairman and Director of MSG, Dolan frequently receives restricted stock units (''RSUs'') as a part of his compensation package. On August 16, 2016, due to the imminent vesting of RSUs, Dolan made an HSR filing for an acquisition of MSG voting securities that would result in holdings exceeding the adjusted $50 million threshold then in effect. The Premerger Notification Office granted early termination on this filing on September 6, 2016, and Dolan completed the acquisition three days later. For a period of five years, Dolan was permitted under the HSR Act to acquire additional voting securities of MSG without making another HSR Act filing so long as he did not exceed the $100 million threshold, as adjusted. As of February 27, 2017, the adjusted $100 million threshold was $161.5 million.

On September 11, 2017, Dolan acquired 591 shares of MSG due to vesting RSUs. As a result of this acquisition, Dolan held voting securities of MSG valued in excess of the $161.5 million threshold then in effect. Although he was required to do so, Dolan did not file under the HSR Act or observe the HSR Act's waiting period prior to completing the September 11, 2017, transaction.

Dolan made a corrective HSR Act filing on November 27, 2017, after learning that this acquisition was subject to the HSR Act's requirements and that he was obligated to file. The waiting period for that corrective filing expired on December 26, 2017.

The Complaint further alleges that Dolan's September 2017 HSR Act violation was not the first time Dolan had failed to observe the HSR Act's notification and waiting period requirements. On March 10, 2010, Dolan acquired voting securities of Cablevision Systems Corporation (''CVC'') that resulted in holdings exceeding the adjusted $50 million threshold then in effect under the HSR Act. Although he was required to do so, Dolan did not file under the HSR Act prior to acquiring CVC voting securities on March 10, 2010. Subsequently, Dolan made additional acquisitions of CVC voting securities such that on November 30, 2010 his holdings exceeded the adjusted $100 million threshold then in effect under the HSR Act. Although he was required to do so, Dolan did not file under the HSR Act prior to making the acquisition of CVC voting securities on November 30, 2010. On February 24, 2012, Dolan made a corrective filing under the HSR Act for the acquisitions of CVC voting securities, and explained in a letter accompanying the corrective filing that his failure to file was inadvertent. On May 4, 2012, the Premerger Notification Office of the Federal Trade Commission notified Dolan by letter that it would not recommend a civil penalty for the violations, but advised Dolan 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 $609,810 civil penalty designed to address the violation alleged in the Complaint and 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 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 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 the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the 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 Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. 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 website and, under certain circumstances, published in the *Federal Register*. Written comments should be submitted to: Roberta S. Baruch, Special Attorney, United States, c/o Federal Trade Commission, 600 Pennsylvania Avenue, NW, CC–8407, Washington, DC 20580, Email: *rbaruch@ftc.gov*

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

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits 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 Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 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) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08-1965 (JR), 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'').

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 in the government's complaint, whether the decree is sufficiently clear, whether its 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. Instead:

> [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).[1]

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 74–75 (noting that a court should not reject the proposed remedies because it believes others are preferable and that room must be made for the government to grant concessions in the negotiation process for settlements); *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''). The ultimate question is 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.''' *Microsoft,* 56 F.3d at 1461 (*quoting United States* v. *Western Elec. Co.,* 900 F.2d 283, 309 (D.C. Cir. 1990)). 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 complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459-60. As a court in this district 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,[2] 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 explicitly wrote into the statute what Congress intended when it first 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)

[1] *See also 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'').

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for a 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).

(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. 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. *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''); S. Rep. No. 93–298 93d Cong., 1st Sess., 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.'').

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: December 6, 2018 Respectfully submitted,

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Usona Institute

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before February 12, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on October 31, 2018, Usona Institute, 2800 Woods Hollow Road, Madison, Wisconsin 53711 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
5-Methoxy-N-N-dimethyltryptamine	7431	I
Dimethyltryptamine	7435	I

The institute plans to manufacture the listed controlled substances synthetically in bulk for use in institute-sponsored research.

Dated: December 4, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–27132 Filed 12–13–18; 8:45 am]
BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Arizona Department of Corrections

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration or the proposed authorization to import on or before January 14, 2019. Such persons may also file a written request for a hearing on the application for registration and for authorization to import on or before January 14, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of a controlled substance in schedule I or II, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing. Additionally, pursuant to 21 CFR 1301.34(a), the Administrator of the Drug Enforcement Administration (DEA) shall, upon the filing of an application for registration to import a controlled substance in schedule I or II under 21 U.S.C. 952(a)(2)(B), provide notice and the opportunity to request a hearing to manufacturers holding registrations for the bulk manufacture of the substance and to applicants for such registrations.

The Attorney General has delegated his authority under the Controlled Substances Act,[1] including the provisions codified at 21 U.S.C. 952 and

[1] The provisions of federal law relating to the import and export of controlled substances—those found in 21 U.S.C. 951 through 971—are more precisely referred to as the Controlled Substances Import and Export Act. However, federal courts and DEA often use the term ''Controlled Substances Act'' to refer collectively to all provisions from 21 U.S.C. 801 through 971 and, for ease of exposition, this document will do likewise.