AG, Igersheim, BadenWurttemberg, GERMANY; Kunbus GmbH Industrial Communication, Denhendorf, BW, GERMANY; Azbil North America, Inc. (formerly Yamatake Sensing Control), Phoenix, AZ; LS Cable, Anyang-Si, Gyeonggi-do, REPUBLIC OF KOREA; VAT Vacuum Valves AG, Haag, St. Gallen, SWITZERLAND; Caron Engineering, Inc., Wells, ME; Spang Power Electronics, Pittsburgh, PA; Alstom Transport, LevalloisPerret, FRANCE; Endress+Hauser, Reinach, SWITZERLAND; Panasonic Corporation/Motor Company, Daito City, Osaka, JAPAN; Control Concepts Inc., Chanhassen, MN; Exlar Corporation, Chanhassen, MN; Hermary Opto Electronics Inc., Coquitlam, British Columbia, CANADA; Kaijo Corporation, Hamura City, Tokyo, JAPAN; and Procon Engineering Limited, Sevenoaks, Kent, England, UNITED KINGDOM, have been added as parties to this venture.

Also, Semtorq Inc., Aurora, OH; Real Time Objects & Systems, LLC, Brookfield, WI; Ross Controls, Troy, MI; RuggedCom Inc., Concord, Ontario, CANADA; Rockwell Automation/Reliance Electric, Greenville, SC; DAIDEN Co., Ltd., Kurume City, JAPAN; CommScope, Inc., Claremont, NC; Graco Inc., Minneapolis, MN; DDK Ltd., Tokyo, JAPAN; Souriau, York, PA; BOC Edwards, Crawley, West Sussex, UNITED KINGDOM; Yaskawa Eshed Technology Ltd., Rosh Ha'ayin, ISRAEL; Automationdirect.com, Curnming, GA; Comau S.p.A. Robotics & Final Assembly Division, Torino, ITALY; MettlerToledo, Greifensee, SWITZERLAND; Ten X Technology, Inc., Austin, TX; Cervis Inc., Warrendale, PA; IDEC IZUNI Corporation, Osaka, JAPAN; National Semiconductor, Santa Clara, CA; MISCO Refractometer, Cleveland, OH; Banner Engineering Corporation, Minneapolis, MN; ASI Advanced Semiconductor Instruments GrnbH, Berlin, GERMANY; AGM Electronics, Inc., Tuscon, AZ; Symbol Technologies, Inc., Holtsville, NY; Tyco Electronics, Schaffhausen, SWITZERLAND; NT International, an Entegris Company, Minneapolis, MN; LEONI Special Cables GrnbH, Friesoythe, GERMANY; HanYang System, Shihung-Shi, REPUBLIC OF KOREA; INNOBIS, CheonanSi, REPUBLIC OF KOREA; S–Net Automation Co., Ltd., Seoul, REPUBLIC OF KOREA; LinkBASE, Seoul, REPUBLIC OF KOREA; KELK, Toronto, Ontario, CANADA; TPC Mechatronics, Co., Ltd., Seoul, REPUBLIC OF KOREA; Robostar Co., Ltd., Ansan City, REPUBLIC OF KOREA; Hanyoung Nux, Incheon, REPUBLIC OF KOREA; Kuroda Pneumatics Ltd., Kawasaki, Kanagawa, JAPAN; S0ftDEL Systems Limited, Mumbai, INDIA; Elettro Stemi S.R.L., Altavilla Vicentina, ITALY; Welding Technology Corporation (WTC), Carol Stream, IL; KVC Co. Ltd., Bucheon-Si, REPUBLIC OF KOREA; Northern Network Solutions, LLC, Cottage Grove, MI; Hitachi Industrial Equipment Systems Co., Ltd., Tokyo, JAPAN; Seoil Electric Co., Ltd., Namyang-Si, REPUBLIC OF KOREA; Kun Hung Electric Co., Ltd., Seoul, REPUBLIC OF KOREA; Dynisco Instruments LLC, Franklin, MA; Electro-Sensors, Inc., Minnetonka, NN; Contrex Inc., Maple Grove, bIN; Korenix Technology Co. Ltd., Taipei, TAIWAN; Arlington Laboratory, Burlington, MA; Matsushita Electric Industrial Co., Ltd., Osaka, JAPAN; and Phoenix Digital Corporation, Scottsdale, AZ, have withdrawn as parties to this venture.

The following members have changed their names: Parker Hannif in Corp. (Veriflo Division) to Parker Hannif in Corporation, Cleveland, OH; Kistler-Morse Corporation to Kistler-Morse, Spartanburg, SC; Showa Electric Wire & Cable Co. to SWCC Showa Cable Systems Co., Ltd., Aomori-City, JAPAN; ARO Controls S.A.S. to ARO Welding Technologies S.A.S., Chateau du Loir, FRANCE; Komatsu Electronics Inc. to KELK, Hiratsuka, JAPAN; Hirschmann to Hirschmann, a Belden brand, Neckartenzlingen, GERMANY; Lumberg, Inc. to Lumberg, a Belden brand, Schalksmühle, GERMANY; Toshiba International Corporation to Toshiba Corporation, Tokyo, JAPAN; Sola/Heavy Duty to SolaHD, Rosemont, IL; Kuroda Precision Industries Ltd. to Kuroda Pneumatics Ltd., Kawasaki, Kanagawa, JAPAN; and MTT Company Ltd. to MTT Corporation, Hyogo, JAPAN.

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 ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA 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 February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on April 10, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 21, 2009 (73 FR 23884).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–10445 Filed 5–5–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Coatings for Infrastructure Joint Venture Agreement

Notice is hereby given that, on March 10, 2010, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Advanced Coatings for Infrastructure Joint Venture Agreement ("Advanced Coatings") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: MesoCoat Inc., Euclid, OH; Polythermics LLC, Kirkland, WA; and EMTEC, The Edison Materials Technology Center, Dayton, OH.

The general area of Advanced Coatings' planned activity is to develop a new innovative method for applying corrosion and wear resistant coatings to infrastructure.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–10443 Filed 5–5–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Baker Hughes Inc., et al.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v.

Baker Hughes Inc., et al., Civil Action No. 1:10–cv–00659. On April 27, 2010, the United States filed a Complaint alleging that the proposed acquisition by Baker Hughes, Inc. ("Baker Hughes") of BJ Services Company ("BJ") would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the market for vessel stimulation services in the United States Gulf of Mexico. The proposed Final Judgment, filed the same time as the Complaint, requires the Defendants to create a new competitor for vessel stimulation services by divesting their interests in two specially equipped stimulation vessels, Baker Hughes' HR Hughes and BJ's Blue Ray, as well as certain other tangible and intangible assets.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.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, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Donna Kooperstein, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, Washington, DC 20530, (telephone: 202–307–6349).

Patricia A. Brink,

Deputy Director of Operations and Civil Enforcement.

United States District Court for the District of Columbia

United States of America, Antitrust Division, 450 5th Street NW., Suite 8000, Washington, DC 20530, Plaintiff, v. *Baker Hughes Incorporated, 2929 Allen Parkway, Suite 2100, Houston, Texas 77019,* and *BJ Services Company, 4601 Westway Park Blvd., Houston, Texas 77041,* Defendants.

Case: 1:10-cv-00659
Assigned to: Kessler, Gladys
Assign. Date: 04/27/2010
Description: Antitrust

Complaint

The United States of America ("United States"), acting under the direction of the Attorney General of the United States, brings this civil action against Baker Hughes Incorporated ("Baker Hughes") and BJ Services Company ("BJ Services") to enjoin Baker Hughes' proposed merger with BJ Services, and to obtain other equitable relief. The United States complains and alleges as follows:

I. Nature of the Action

1. Baker Hughes' merger with BJ Services would combine two of only four companies that compete with specially equipped vessels to provide oil and gas companies with pumping services ("vessel stimulation services") necessary to enable and stimulate oil and gas production in the U.S. Gulf of Mexico ("Gulf"). These vessel stimulation services are used in the vast majority of offshore wells in the Gulf.

2. Baker Hughes and BJ Services compete head-to-head to provide vessel stimulation services in the Gulf, each with two vessels. This competition will be lost if this transaction is allowed to proceed. The merged firm, and the two other firms providing vessel stimulation services in the Gulf, will likely compete less aggressively, leading to higher prices and a reduction in service quality.

3. Absent the merger, Baker Hughes and BJ Services each need two vessels in the Gulf to compete effectively. With this transaction, the merged firm gains the incentive and ability to remove one or more stimulation vessels from the region in order to reduce the available supply of vessels and raise the price of vessel stimulation services in the Gulf. This will cause customers to pay more for vessel stimulation services.

4. Accordingly, the proposed merger would substantially lessen competition for vessel stimulation services in the Gulf and violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. The Parties and the Transaction

5. Baker Hughes is a Delaware corporation headquartered in Houston. A major supplier of products and services for drilling, formation evaluation, completion and production to the worldwide oil and natural gas industry, Baker Hughes reported total revenues of approximately $9.7 billion in 2009. Baker Hughes supports its two stimulation vessels in the Gulf with facilities in Louisiana and Texas.

6. BJ Services is a Delaware corporation headquartered in Houston. Also a leading worldwide provider of products and services to the oilfield industry, BJ Services reported revenues of $4.1 billion for fiscal year 2009. It supports its two stimulation vessels in the Gulf with facilities in Louisiana and Texas.

7. Baker Hughes proposes to acquire 100% of BJ Services' stock in exchange for newly issued shares of Baker Hughes stock and cash, valued at approximately $5.5 billion at the time the merger agreement was signed.

III. Jurisdiction and Venue

8. This action is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, which invests the Court with jurisdiction to prevent and restrain violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

9. Baker Hughes and BJ Services provide vessel stimulation services in the flow of interstate commerce and their activities in the development and sale of these services substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

10. The defendants have consented to venue and personal jurisdiction in this judicial district.

IV. Trade and Commerce

A. Background

1. Overview of Drilling and Completion Process

11. Offshore development of oil and natural gas resources in the Gulf involves several stages. An oil and gas company leases the exploration rights to a specific block from a state or the federal government, determines that it is seismically and economically feasible to drill for oil or gas in that block, and drills an exploratory well. Wells in the Gulf may be located in inland waters (generally 50 feet or less), on the shelf (50 to 1000 feet), in deepwater (1000 feet or greater), and in ultradeepwater (greater than 3500 feet of water).

12. After drilling the exploratory well, if the oil and gas company decides to extract the oil and natural gas, the well must be "completed," or prepared for production. The completion process is designed to enable and control the flow of oil and gas from the formation through the wellbore and to the surface.

13. During the completion process the oil and gas company installs cement casing that lines the wellbore and tubing through which the oil and gas will flow. Completion tools, such as packers, are installed at the bottom of the well to create a seal. Explosives punch holes through the casing into the formation so that the oil and gas can flow from the formation into the wellbore. Wells in the Gulf also generally require sand

control and stimulation services, described in greater detail below, which involve the installation of equipment and the pumping of fluids and other proppants downhole under high pressure, as part of the completion process.

14. Drilling and completing a well is extremely costly, particularly in deepwater. It can take months or longer to drill and complete an offshore well. The daily costs for the drilling rig and other assets often exceed $100,000 for wells on the shelf and may be as much as $1 million or more for wells in deepwater. A drilling rig and other assets remain at the drilling site while stimulation services are performed and throughout the completion process.

2. Sand Control and Stimulation Services

15. Due to the soft rock formations in the Gulf, nearly all wells require some form of sand control to prevent the formation sand from entering the wellbore and interfering with the flow of oil. Some wells also require a stimulation service known as acidizing, in which acid is pumped into the formation to repair damage on existing wells. Each reservoir of oil and gas deposits may require a customized sand control or stimulation service (referred to here interchangeably or collectively as "stimulation services") because it may have distinct rock formation, depth, temperature, pressure, and other characteristics.

16. There are a number of types of sand control and stimulation services. In a "gravel pack," screens, packers and other equipment, known as "sand control tools," are installed downhole in the production zone of the wellbore. A slurry of coarse sand mixed with brine is then pumped downhole at a pressure that does not fracture the formation. Because the diameter of the sand pumped downhole is larger than the diameter of the sand in the formation, these larger "pumped" grains of sand and the sand control screen serve as a two stage filter to block the formation sand from entering the wellbore. Another type of sand control, called a "high-rate water pack," is similar to a gravel pack except that it uses a different type of fluid and the pumping takes place at a pressure that will create minor fractures in formation.

17. The most common form of sand control service performed offshore in the Gulf is a "frac pack." After installation of the sand control tools, viscous fluids are pumped into the well under pressure high enough to produce fractures in the formation thirty feet or more from the wellbore. Various substances called proppants (such as sand, bauxite or other materials) are then pumped into the cracks to prop them open to facilitate the flow of oil or gas. Frac packs are highly effective in stimulating oil and gas production as well as preventing sand from migrating into the well. Performance of a frac pack is a complex engineering job that requires large amounts of fluid and proppants to be pumped under high pressure.

18. Stimulation vessels, on which pumps and other equipment are installed, perform most stimulation services in the Gulf. Oil and gas companies need the pumping portion of the job, performed by the stimulation vessel, to be completed promptly after the installation of the downhole sand control tools. Stimulation services represent a very small percentage of the total cost of completing a well. However, no other completion work can be performed if the vessel is late or unavailable, and any "down time" at the well site is extremely costly due to huge daily rig and other costs.

19. Stimulation vessels in the Gulf are designed for the specific purpose of performing stimulation services. The vessels are typically well over 200 feet in length and are equipped with high pressure pumps, blenders, and storage tanks to hold large quantities of fluid and proppant. Critical vessel specifications include its storage capacity and the horsepower and barrels per minute at which it can pump. A vessel is also equipped with a computer controlled system, called a dynamic positioning or DP system, that maintains a ship's position by using the vessel's own propellers and thrusters. These dynamic positioning systems are installed so that the vessels do not need to hold position by using anchors and chains or by being tied to the rig.

20. Stimulation service providers typically lease vessels under multi-year contracts from shipbuilders that design, construct or modify a vessel to meet the provider's specific criteria. Capital costs for the vessel and equipment can exceed $30 million, and the contracts have day rates that often exceed $20,000 per day.

21. To operate in the Gulf, a stimulation service vessel must comply with a federal law known as the "Jones Act." That Act requires that a vessel be built in the United States, bear a United States flag, and be staffed with a United States crew. Only a limited number of stimulation service vessels worldwide, in addition to those presently located in the Gulf, are Jones Act compliant, and these vessels are all operated by the same four firms that provide vessel stimulation service in the Gulf.

22. Stimulation service providers have their own experienced crews to operate a vessel's pumping and stimulation equipment. Stimulation service providers also rely extensively on technical support from engineers and scientists, who customize the stimulation job for the specific formation and conduct research to improve, develop and test stimulation services, fluids, sand control tools and other equipment.

23. Each of the four firms currently providing vessel stimulation services in the Gulf operates two stimulation vessels in that region. The companies bid both for annual or multi-year contracts, in which they often compete to be designated as a customer's primary supplier, as well as for specific jobs. For greater assurance that a vessel will be available when needed, customers completing wells in the deepwater often require that a vessel stimulation provider have two vessels in its fleet. Even when designated a customer's primary supplier, a stimulation service provider may not have a vessel available at the precise time that a customer needs the work. In that case, the customer will not wait for that supplier's vessel to be available because the downtime on the rig is so costly, but will call another provider of vessel stimulation services in the Gulf.

B. Relevant Market

24. The provision of vessel stimulation services for wells located in the Gulf is a line of commerce and a relevant market within the meaning of Section 7 of the Clayton Act.

25. Oil and gas companies have no economical alternatives to sand control or stimulation services and need these services on the great majority of offshore wells in the Gulf. While some offshore stimulation services, such as acidizing, simple gravel pack or water pack operations, may be provided by pumps that are mounted on skids rather than vessels, these skid-mounted pumps cannot perform most stimulation services in the Gulf. Skid-mounted pumps are not feasible for stimulation services such as frac packs, which require high horsepower and significant storage. Nearly all frac pack jobs in the Gulf must be done with vessels. Logistical and safety concerns also cause some customers to prefer vessels even when skid-mounted pumps are technically capable of performing a particular job. The relevant product is vessel stimulation services.

26. Oil and gas companies procuring vessel stimulation services for wells located in the Gulf require a provider to have stimulation service vessels capable

of providing the service in the region as well as facilities, engineers, sales and other staff to support the operation. The relevant geographic region is the Gulf. This region is defined based on the locations of customers.

27. A small but significant, non-transitory increase in the price of vessel stimulation services for wells located in the Gulf would not cause oil and gas company customers to turn to skid-mounted pumps or to any other type of service, or to vessel stimulation services provided outside the Gulf, or to otherwise reduce purchases of vessel stimulation services, in volumes sufficient to make such a price increase unprofitable.

C. Market Participants

28. The four vessel stimulation service providers in the Gulf are now the only significant vessel stimulation service providers operating anywhere in the world and the only providers with vessels that comply with the Jones Act. Thus, there are no other providers of vessel stimulation service to which an oil and gas company in the Gulf could turn if faced with a small but significant, non-transitory increase in the price of vessel stimulation services in the Gulf.

V. Likely Anticompetitive Effects of the Transaction

29. Baker Hughes' merger with BJ Services would leave only three firms to perform vessel stimulation services in the Gulf. Based on 2008 revenues for vessel stimulation services in the Gulf, BJ Services accounted for approximately twenty percent of all vessel stimulation service revenues and Baker Hughes accounted for approximately fifteen percent. The other two firms providing vessel stimulation services in the Gulf accounted for all other revenues. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI") (defined and explained in Appendix A), the transaction will increase the HHI by over 500 points, resulting in a post-merger HHI of approximately 3300 points.

30. This transaction will eliminate the head-to-head competition between Baker Hughes and BJ Services to provide vessel stimulation services in the Gulf. Baker Hughes and BJ Services have competed on price, terms of sale and service quality, and have spurred each other's efforts to develop and improve products, performance and technology. Customers have benefitted from this competition.

31. Baker Hughes and BJ Services are relatively close substitutes in the provision of vessel stimulation services. They charge similar prices for similar types of jobs and provide vessel stimulation services in the same water depths and at many of the same geological locations. Baker Hughes and BJ Services have ranked first and second in terms of numerous customers' total annual expenditures on vessel stimulation services in the Gulf.

32. The merger would remove the constraint the parties impose on each other's pricing. Post merger, Baker Hughes will likely find it profitable to raise the price of vessel stimulation services. Customers now differentiate among vessel stimulation service providers on the basis of reputation, service quality, equipment, and other factors. Those customers that viewed Baker Hughes and BJ Services as their first and second choices for vessel stimulation services will lose their next-best alternative for these services. The merged firm will have the incentive and ability to raise its price, since it will now capture some of the sales that would have been lost to BJ Services had Baker Hughes raised price pre-merger. The value of these diverted sales is likely to be high because both firms currently earn high price-variable cost margins. Baker Hughes' incentive to raise price post-merger will likely be recognized by the two other firms providing vessel stimulation services in the Gulf, leading them to bid less aggressively. As a result, customers will likely experience higher prices for vessel stimulation services and a reduction in service quality.

33. This transaction is also likely to reduce the number of stimulation vessels in the Gulf, leading to higher prices for vessel stimulation services. Absent the transaction, neither Baker Hughes nor BJ Services would have the incentive to move any of its stimulation vessels out of the Gulf because a firm needs two vessels in the region to compete effectively. By consolidating the firms' four vessels under one company's ownership, the transaction may present a profitable opportunity to remove one or two vessels from the Gulf, an opportunity Baker Hughes had recognized. With fewer vessels committed to provide service in the Gulf, utilization of the remaining vessels will likely increase, along with the likelihood that a vessel will be unavailable at any particular time. As a consequence, given customers' need for vessels to arrive at a precise time, firms providing vessel stimulation services in the Gulf will likely be able to increase prices.

34. The proposed transaction, therefore, is likely to lessen competition substantially in the provision of vessel stimulation services in the Gulf.

VI. Entry

35. Successful entry into the provision of vessel stimulation services in the Gulf is difficult, costly and time consuming. A provider of vessel stimulation services must obtain or build stimulation service vessels that are Jones Act compliant, and develop a reputation and establish its reliability before an oil and gas company will consider using its products or services. A problem with the vessel stimulation service not only causes delay, which is extremely costly; it can also damage the well, jeopardizing the customer's investment and its access to the oil-producing formation. With so much at stake, customers may require that the provider of vessel stimulation services demonstrate a track record of several years or undergo lengthy and expensive qualification inspections before being included in bids.

36. Most customers in the Gulf also require that a stimulation service provider have two capable vessels to ensure that a vessel is available to perform their work at the precise time required even if one of the provider's vessels is out of service or busy on another job. Building even one stimulation vessel for the Gulf takes a long time and requires large capital expenditures.

37. A provider of vessel stimulation services in the Gulf must support its operation with onshore facilities, such as technology centers. A strong technical team, including experienced engineers and scientists, is also essential.

38. A provider of vessel stimulation services may have a difficult time growing its business if it does not also offer a line of sand control tools. Many customers prefer obtaining sand control tools from the same company that provides the vessel stimulation service. This reduces the number of companies with which a customer must deal, often results in a discount in the price of the services and products, and also eliminates the possibility of "finger-pointing" between the providers in the event that there is a problem or delay with the sand control tools or stimulation services. All four providers of vessel stimulation services in the Gulf sell sand control tools in addition to stimulation services.

39. For these reasons, entry by an additional vessel stimulation service provider would not be timely, likely, and sufficient to prevent the substantial lessening of competition caused by the

elimination of BJ Services as an independent competitor.

VII. The Proposed Merger Violates Section 7 of the Clayton Act

40. Each and every allegation in paragraphs 1 through 39 of this Complaint is here realleged with the same force and effect as though said paragraphs were here set forth in full.

41. The proposed merger of BJ Services by Baker Hughes is likely to lessen competition substantially in violation of Section 7 of the Clayton Act in the provision of vessel stimulation services in the Gulf.

42. Baker Hughes's merger of BJ Services likely will have the following effects:

a. Actual and potential competition between Baker Hughes and BJ Services in the provision of vessel stimulation services in the Gulf will be eliminated;

b. Competition generally in the provision of vessel stimulation services in the Gulf will be lessened substantially; and

c. Prices paid by customers for vessel stimulation services in the Gulf will likely increase.

43. Unless restrained, the proposed merger will violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

VIII. Requested Relief

44. Plaintiff requests that this Court:

a. Adjudge and decree Baker Hughes' proposed merger with BJ Services to be unlawful and in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18;

b. Preliminarily and permanently enjoin and restrain Defendants and all persons acting on their behalf from consummating the proposed merger of BJ Services, or from entering into or carrying out any other agreement, plan, or understanding by which Baker Hughes would acquire, be acquired by, or merge with BJ Services;

c. Award the United States its costs for this action; and

d. Award the United States such other and further relief as the Court deems just and proper.

Dated: April 27, 2010.

Respectfully submitted,

/s/

Christine A. Varney,
Assistant Attorney General, DC Bar # 411654.

/s/

Molly S. Boast,
Deputy Assistant Attorney General.

/s/

Donna N. Kooperstein,
Chief, Transportation, Energy & Agriculture Section.

/s/

William H. Stallings,
Assistant Chief, Transportation, Energy & Agriculture Section.

/s/

Patricia A. Brink,
Deputy Director, Office of Operations.

/s/

Angela L. Hughes,
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Trial Attorneys U.S. Department of Justice Antitrust Division Transportation, Energy & Agriculture Section, 450 Fifth Street, NW., Suite 8000, Washington, DC 20530, Telephone: (202) 307–6410, Fax No. (202) 307–2784, angela.hughes@usdoj.gov.

Appendix A

Definition of HHI

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20%, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1,000 and 1,800 points are considered to be moderately concentrated, and markets in which the HHI is in excess of 1,800 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* ¶ 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission. *See id.*

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Baker Hughes Incorporated* and *BJ Services Company,* Defendants.

Civil Action No.:
Filed:
Judge:

Date Stamped:

Proposed Final Judgment

Whereas, Plaintiff United States of America ("United States") filed its Complaint on April 27, 2010, the United States and defendants Baker Hughes Incorporated and BJ Services Company, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

And whereas, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "Acquirer" means the entity to whom Defendants divest the Divestiture assets.

B. "Baker Hughes" means defendant Baker Hughes Incorporated, a Delaware corporation headquartered in Houston, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "BJ" or "BJ Services" means defendant BJ Services Company, a Delaware corporation headquartered in

Houston, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Blue Ray" means the marine stimulation vessel named the Blue Ray currently leased and operated by BJ in the Gulf, and any equipment installed on or used to operate the Blue Ray as of March 1, 2010.

E. "BrineStar Intangible Assets" means Patent Application Nos. 12/030,614 and 12/365,673 and associated Intangible Assets primarily used in connection with the design, development, testing, production, quality control, marketing, servicing, sale, installation, or distribution of BJ's BrineStar and BrineStar II products.

F. "Diamond Fraq Intangible Assets" means Patent Nos. 7,052,901; 7,343,972; 7,595,284; 7,645,724; 7,655,603; 7,347,266; 7,615,517; 7,530,393; 7,550,413; 7,543,644; 7,544,643; 7,527,102; 7,527,103; and associated Intangible Assets primarily used in connection with the design, development, testing, production, quality control, marketing, servicing, sale, installation, or distribution of Baker Hughes' Diamond Fraq products.

G. "Divestiture Assets" means the real property and Tangible and Intangible Assets listed in Schedules A through C. Divestiture Assets shall not be interpreted to include (a) any equipment installed on stimulation vessels other than the Blue Ray or HR Hughes; (b) BJ Services' ownership or leasehold interest in skids or non-vessel based pumping equipment; or (c) the Tangible or Intangible Assets primarily used in connection with the design, development, testing, production, quality control, marketing, servicing, sale, installation, or distribution of Baker Hughes' Sand Control Tools or BJ Services' Stimulation Fluids other than (i) those BJ Stimulation Fluids assets specifically set forth in Schedule C and (ii) any information, data, or documents relating to any Divestiture Assets.

H. "Gulf" means the United States Gulf of Mexico.

I. "HR Hughes" means the marine stimulation vessel named the HR Hughes currently leased and operated by Baker Hughes in the Gulf, and any equipment installed on or used to operate the HR Hughes as of March 1, 2010.

J. "Intangible Asset" means any asset other than a Tangible Asset, including, but not limited to:

(1) Patents or patent applications, licenses and sublicenses, copyrights, trademarks, trade secrets, trade names, service marks, and service names, but excluding the following trade names: BJ, Baker Oil Tools, and Baker Hughes.

(2) Know-how, including recipes, formulas, machine settings, drawings, blueprints, designs, design protocols, design tools, simulation capability, specifications for materials, specifications for parts and devices,

(3) Computer software (*e.g.* vessel communication and remote monitoring software), databases (*e.g.* databases containing technical job histories) and related documentation;

(4) Procedures and processes related to operations, quality assurance and control, and health, safety and environment;

(5) Data concerning historic and current research and development, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments;

(6) All contractual rights; and

(7) All authorizations, permits, licenses, registrations, or other forms of permission, consent, or authority issued, granted, or otherwise made available by or under the authority of any governmental authority.

K. "Latest Generation MST Intangible Assets" means Patent Nos. 7,490,669; 7,543,647; 6,397,949; 6,722,440; 7,124,824; 7,198,109; 7,201,232; 7,152,678; RE40648; 6,405,800; 7,021,389; 7,150,326; 7,497,265, and associated Intangible Assets primarily used in connection with the design, development, testing, production, quality control, marketing, servicing, sale, installation, or distribution of BJ's Multi-Zone Single Trip Well Completion System.

L. "Relevant Employees" means the employees listed in Schedule D.

M. "Sand Control Tools" means those tools used or installed in connection with the performance of Stimulation Services at or below the zones in which hydrocarbons are located; including but not limited to, the components of sump packer assemblies, frac pack assemblies, and high rate water pack assemblies; screens; fluid loss valves; blank pipe; isolation tubing; production seals; and service tools.

N. "Stimulation Fluids" means acids, proppants, gels, or other fluids or additives used to provide Stimulation Services.

O. "Stimulation Services" means acidizing, gravel packs, frac packs, high rate water packs, or hydraulic fracturing services performed from vessels or skid-mounted pumping equipment.

P. "Tangible Asset" means any physical asset (excluding real property or marine stimulation vessels not specifically identified as part of the Divestiture Assets), including, but not limited to:

(1) All machinery, equipment, hardware, spare parts, tools, dies, jigs, molds, patterns, gauges, fixtures (including production fixtures), business machines, computer hardware, other information technology assets, furniture, laboratories, supplies, materials, vehicles, spare parts in respect of any of the foregoing and other tangible personal property;

(2) Improvements, fixed assets, and fixtures pertaining to the real property identified as part of the Divestiture Assets;

(3) All inventories, raw materials, work-in-process, finished goods, supplies, stock, parts, packaging materials and other accessories related thereto; and

(4) Business records including financial records, accounting and credit records, tax records, governmental licenses and permits, bid records, customer lists, customer contracts, supplier contracts, service agreements; operations records including vessel logs, calendars, and schedules; job records, research and development records, health, environment and safety records, repair and performance records, training records, and all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents or licensees.

Q. "Transaction" means Baker Hughes' proposed merger with BJ Services, which was the subject of Hart-Scott-Rodino Report No. 2009–0748, filed with the Federal Trade Commission and the U.S. Department of Justice on September 14, 2009.

III. Applicability

A. This Final Judgment applies to Baker Hughes and BJ Services, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and VI of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the acquirer to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

C. Defendants shall require, as a condition of the sale of the Divestiture Assets, that the Acquirer agree to be bound by Section XI of this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within sixty (60) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestitures ordered by this Final Judgment, Defendants promptly shall make known widely the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process, except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities associated with the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

D. Defendants shall warrant to the Acquirer that each asset will be operational on the date of sale. Defendants shall maintain and enforce all intellectual property rights licensed to the Acquirer pursuant to the proposed Final Judgment.

E. Defendants shall not take any action that will impede in any way the permitting, operation, use, or divestiture of the Divestiture Assets.

F. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

G. Defendants shall take all necessary steps to accomplish the transfer of all interests the Defendants have in the HR Hughes, the Blue Ray, and any other Divestiture Asset in which the Defendants have an ownership or leasehold interest, including, but not limited to, obtaining authorization from Edison Chouest Offshore and Hornbeck Offshore Services LLC to assign Defendants' leasehold interests in the HR Hughes and the Blue Ray, respectively. Defendants agree to take all necessary steps, including paying all costs, to install the same communication, stimulation and instrumentation control software on the HR Hughes that is on the Blue Ray, or vice versa, at the preference of the Acquirer. Defendants will provide to the Acquirer copies of all manuals and training materials relating to the communication, stimulation and instrumentation control software on the HR Hughes and the Blue Ray and rights to training or service under any agreements Defendants have with third parties.

H. Except for assets discussed in IV G. above, Defendants shall use commercially reasonable efforts to obtain any necessary consent to assign contractual rights that are included in the Divestiture Assets, including, but not limited to, contractual rights to provide Stimulation Services, Sand Control Tools, or Stimulation Fluids for wells located in the Gulf, and contractual rights to purchase any inputs or components to those Services, Tools, or Fluids.

I. Where the Acquirer has the option to acquire specific facilities but chooses not to exercise that option:

(1) Defendants shall bear the expense of relocating to the location of the Acquirer's choice Tangible Assets that are part of the Divestiture Assets from any of those facilities.

(2) If the Acquirer chooses not to purchase the entire Completion Tool Technology Center of BJ (see Schedule B), Defendants shall, at the option of the Acquirer, make structural changes, at Defendants' expense, to Building E at the Completion Tool Technology Center, or to another location of the Acquirer's choosing, to enable the Acquirer to conduct testing of sand control tools. The structural changes will include the construction of up to two test cells that will be the equivalent in size, capabilities, technology, and rating of the test cells currently located at the Completion Tool Technology Center. Until the test cells are completed, and upon two business days notice, the purchaser will have the right to exclusive use, at no charge, of Building A at the Completion Tool Technology Center (in which test cells are currently located) for up to 14 days in any calendar month.

(3) If the Acquirer chooses not to purchase BJ's Southpark facility in Lafayette, Louisiana, Defendants shall add to the Completion Tool Technology Center, or to another location of the Acquirer's choosing, a sand control laboratory equivalent to Defendant Baker Hughes' sand control laboratory at its Lafayette Supercenter.

J. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by the trustee appointed pursuant to Section VI, of the Final Judgment, shall include all of the Divestiture Assets, and the divestiture shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business engaged in the design, development, production, marketing, servicing, distribution, and sale of the Stimulation Services, Sand Control Tools, and Stimulation Fluids for wells located in the Gulf, and that such divestiture will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to Section IV or Section VI of this Final Judgment:

(1) Shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively as a supplier of Stimulation Services, Sand Control Tools, and Stimulation Fluids for customers in the Gulf; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Right To Hire

A. To enable the Acquirer to make offers of employment, Defendants shall provide the Acquirer and the United States with organization charts and information relating to Relevant Employees, including name, job title,

responsibilities as of March 1, 2010, training and educational history, relevant certifications, and, to the extent permissible by law, job performance evaluations, and current salary and benefits information.

B. Upon request, Defendants shall make Relevant Employees available for interviews with the Acquirer during normal business hours at a mutually agreeable location and will not interfere with any negotiations by the Acquirer to employ Relevant Employees. Interference with respect to this paragraph includes, but is not limited to, offering to increase the salary or benefits of Relevant Employees other than as a part of a company-wide increase in salary or benefits granted in the ordinary course of business.

C. For Relevant Employees who elect employment by the Acquirer, Defendants shall waive all noncompete agreements and all nondisclosure agreements, except as specified in V D. below, vest all unvested pension and other equity rights, and provide all benefits to which the Relevant Employees would generally be provided if transferred to a buyer of an ongoing business.

D. Nothing in this Section shall prohibit Defendants from maintaining any reasonable restrictions on the disclosure by an employee who accepts an offer of employment with the Acquirer of the Defendants' proprietary non-public information that is (1) not otherwise required to be disclosed by this Final Judgment, (2) related solely to the Defendants' businesses and clients, and (3) unrelated to the Divestiture Assets.

VI. Appointment of Trustee

A. If Defendants have not divested the Divestiture Assets within the time period specified in Section IVA. of this Final Judgment, Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section VI D. of this Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, accountants or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VII.

D. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves. The trustee shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After payment of fees for the trustee's services and those of investment bankers, attorneys, accountants or other agents retained by it, all remaining money shall be paid to Defendants. After the trustee submits its final report, including the final accounting, to the court, the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. Defendants shall expeditiously reach agreement with the trustee on the trustee's fee arrangement.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Divestiture Assets, and Defendants shall develop financial and other information relevant to the Divestiture Assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with, delay, or impede the trustee's accomplishment of the divestitures.

F. After its appointment, the trustee shall file monthly reports with the United States setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestitures ordered under this Final Judgment within six (6) months after his or her appointment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VII. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants shall notify the United States of any proposed divestiture required by Section IV of this Final Judgment. Within two (2) business days following execution of a definitive divestiture agreement, the trustee shall notify the United States and Defendants of any proposed divestiture required by Section VI of this Final Judgment. The notice provided to the United States shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer.

Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within forty-five (45) calendar days after receipt of the notice or within thirty (30) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section VI C. of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section VI shall not be consummated. Upon objection by Defendants under Section VI C., a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

VIII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or VI of this Final Judgment.

IX. Hold Separate

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

X. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Section IV or VI, Defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Section IV or VI of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitations on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

XI. Conditions Placed Upon the Acquirer

A. For five years from the entry of this Final Judgment, unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), the Acquirer, without providing advance notification to the Antitrust Division, shall not directly or indirectly sell any of the Divestiture Assets or any interest (including, but not limited to, any financial, security, loan, equity, or management interest) in any of the Divestiture Assets to Halliburton Company or Schlumberger Ltd. Such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended. Notification shall be provided at least thirty (30) calendar days prior to completion of any such transaction, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, the Acquirer shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

B. The Acquirer shall not move the HR Hughes or the Blue Ray out of the Gulf for two years from the entry of this Final Judgment without the prior written consent of the Antitrust Division.

XII. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters

contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XIII. No Reacquisition

Defendants may not reacquire an ownership interest in any part of the Divestiture Assets during the term of this Final Judgment.

XIV. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XVI. Public Interest Determination

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 responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

United States District Judge

Schedule A

Stimulation Services

BJ Services Assets

1. *BJ Tangible Assets and Real Property:*

a. BJ's ownership and leasehold interest in the Blue Ray.

b. At the option of the Acquirer, BJ's ownership and leasehold interest in one or more of the following facilities:

i. BJ's Crowley facility at West Highway 90 and Roller Road in Crowley, Louisiana 70526.

ii. BJ's Sales Offices at 1515 Poydras Street, Suite 2000, New Orleans, Louisiana 70508;

iii. BJ's Sales Offices at 5005 Mitchelldale Street, Suite 250, Houston, Texas 77092.

c. All Tangible Assets owned, leased or licensed by BJ that are used in connection with the design, development, testing, production, quality control, marketing, servicing, sale, installation, or provision of Stimulation Services for wells located in the Gulf.

2. *BJ Intangible Assets:*

a. All Intangible Assets owned, leased or licensed by BJ that are used in connection with the design, development, testing, production, quality control, marketing, servicing, sale, installation, or provision of Stimulation Services for wells located in the Gulf.

b. *Exclusions:*

i. Excluded from this Schedule A is BJ's proprietary communication, stimulation, or instrumentation control software used in connection with the operation of the Blue Ray, *provided* that, if the Acquirer elects pursuant to Section IV G. to have Defendants install the same communication, stimulation and instrumentation control software on the HR Hughes that is installed on the Blue Ray, Defendants shall provide to Acquirer a non-exclusive right to such software, including,

(1) A worldwide, royalty-free, non-exclusive, perpetual, transferable license to all patents, trademarks, trade secrets, and other Intangible Assets in which Defendants assert intellectual property rights; such license shall grant the Acquirer the right (a) to make, have made, use, sell or offer for sale, copy, create derivative works, modify, improve, display, perform, and enhance the licensed Intangible Assets; and (b) to own any Intangible Assets the Acquirer generates pursuant to this license; and (c) to have end-user customers of the Acquirer enjoy the benefit of the Intangible Assets provided by the Acquirer pursuant to this license; and

(2) a right to obtain copies of, assignment of, or other effective transfer of all other Intangible Assets.

Baker Hughes Assets

1. *Baker Hughes Tangible Assets and Real Property:*

a. Baker Hughes' ownership and leasehold interest in the HR Hughes.

b. Baker Hughes' ownership and leasehold interest in the marine vessel stimulation dock facility located at Port Fourchon, Louisiana.

c. Baker Hughes' ownership and leasehold interest in any mooring buoy(s) located in or around Port Fourchon, Louisiana.

d. At the option of the Acquirer, Baker Hughes' ownership and leasehold interest in skids and non-vessel based pumping equipment that are used to perform Stimulation Services in the Gulf.

e. All Tangible Assets owned, leased or licensed by Baker Hughes that are used in connection with the assets, facilities and real property identified in 1(a)–1(d).

2. *Baker Hughes Intangible Assets:*

a. All Intangible Assets owned, leased or licensed by Baker Hughes that are primarily used in connection with or necessary for the use of the assets, facilities and real property identified in 1(a)–1(d).

b. With respect to Intangible Assets that are not included in paragraph 2(a) but that are used in connection with the assets, facilities and real property identified in 1(a)–1(d), Defendants shall provide to Acquirer a non-exclusive right to such Intangible Assets for the design, development, testing, production, quality control, marketing, servicing, sale, installation, and provision of Stimulation Services, including:

i. A worldwide, royalty-free, non-exclusive, perpetual, transferable license to all patents, trademarks, trade secrets, and other Intangible Assets in which Defendants assert intellectual property rights; such license shall grant the Acquirer the right (a) to make, have made, use, sell or offer for sale, copy, create derivative works, modify, improve, display, perform, and enhance the licensed Intangible Assets; (b) to own any Intangible Assets the Acquirer generates pursuant to this license; and (c) to have end-user customers of the

Acquirer enjoy the benefit of Stimulation Services provided by the Acquirer pursuant to this license; and

ii. A right to obtain copies of, assignment of, or other effective transfer of all other Intangible Assets.

Schedule B

Sand Control Tools

BJ Services Assets

1. *BJ Tangible Assets and Real Property:*

a. At the option of the Acquirer, BJ's ownership and leasehold interest in one of the following:

i. The entire Completion Tool Technology Center located at 16610 Aldine Westfield, Houston, Texas 77073;

ii. A portion of the Completion Tool Technology Center located at 16610 Aldine Westfield, Houston, Texas 77073 consisting of the real property associated with Buildings D and E; or

iii. A portion of the Completion Tool Technology Center located at 16610 Aldine Westfield, Houston, Texas 77073 consisting of the real property associated with Building E.

b. At the option of the Acquirer, BJ's ownership and leasehold interest in the Southpark facility located at 203 Commission Blvd., Lafayette, Louisiana 70508.

c. At the option of the Acquirer, all Tangible Assets owned, leased or licensed by BJ that are used in connection with the design, development, testing, production, quality control, marketing, servicing, sale, installation, or distribution of Sand Control Tools for wells located in the Gulf, except that Defendants have the right to retain one-half of the inventory of each of BJ's MST-related service tools and parts, and one-half of the inventory of BJ's MST-related consummables, located in the Gulf as of March 1, 2010.

2. *BJ Intangible Assets:*

a. All Intangible Assets owned, leased or licensed by BJ that are used in connection with the design, development, testing, production, quality control, marketing, servicing, sale, installation, or distribution of Sand Control Tools for wells located in the Gulf.

b. *Exclusions:*

i. Excluded from this Schedule B are the Latest Generation MST Intangible Assets, *provided* that Defendants shall provide to Acquirer a non-exclusive right to the Latest Generation MST Intangible Assets for the design, development, testing, production, quality control, marketing, servicing, sale, installation, and distribution of Sand Control Tools, including,

(1) A worldwide, royalty-free, non-exclusive, perpetual, transferable license to all patents, trademarks, trade secrets, and other Intangible Assets in which Defendants assert intellectual property rights; such license shall grant the Acquirer the right (a) to make, have made, use, sell or offer for sale, copy, create derivative works, modify, improve, display, perform, and enhance the licensed Intangible Assets; (b) to own any Intangible Assets the Acquirer generates pursuant to this license; and (c) to have end-user customers of the Acquirer enjoy the benefit of Sand Control Tools provided by the Acquirer pursuant to this license; and

(2) a right to obtain copies of, assignment of, or other effective transfer of all other Intangible Assets (*e.g.* data, drawings, and other materials in BJ's drawing vault and engineering design request files).

Schedule C

Stimulation Fluids

Baker Hughes Asset

1. *Baker Hughes Tangible Assets:*

a. All Tangible Assets owned, leased or licensed by Baker Hughes that are used in connection with the design, development, testing, production, quality control, marketing, servicing, sale, installation, or distribution of Stimulation Fluids for wells located in the Gulf.

2. *Baker Hughes Intangible Assets:*

a. All Intangible Assets owned, leased or licensed by Baker Hughes that are primarily used in connection with or necessary for Baker Hughes' design, development, testing, production, quality control, marketing, servicing, sale, installation, or distribution of Stimulation Fluids for wells located in the Gulf, but not including the Diamond Fraq Intangible Assets.

b. With respect to Intangible Assets that are not included in paragraph 2(a) but that are used in connection with the design, development, testing, production, quality control, marketing, servicing, sale, installation, or distribution of Stimulation Fluids for wells located in the Gulf (including but not limited to the Diamond Fraq Intangible Assets), Defendants shall provide to Acquirer a non-exclusive right to such Intangible Assets for the design, development, testing, production, quality control, marketing, servicing, sale, installation, and distribution of Stimulation Fluids, including,

i. A worldwide, royalty-free, non-exclusive, perpetual, transferable license to all patents, trademarks, trade secrets, and other Intangible Assets in which Defendants assert intellectual property rights; such license shall grant the Acquirer the right (a) to make, have made, use, sell or offer for sale, copy, create derivative works, modify, improve, display, perform, and enhance the licensed Intangible Assets; (b) to own any Intangible Assets the Acquirer generates pursuant to this license; and (c) to have end-user customers of the Acquirer enjoy the benefit of Stimulation Fluids provided by the Acquirer pursuant to this license, and;

ii. A right to obtain copies of, assignment of, or other effective transfer of all other Intangible Assets (*e.g.,* lab reports, lab notebooks, project books, mixing manuals, and technical papers).

BJ Services Assets

1. *BJ Tangible Assets:*

a. At the option of the Acquirer, Defendant BJ's ownership and leasehold interest in any trucks and tanks used by BJ to transport Stimulation Fluids for sale, distribution or installation for wells located in the Gulf.

2. *BJ Intangible Assets:*

a. With respect to the BrineStar Intangible Assets, Defendants shall convey to Acquirer a non-exclusive right to the BrineStar Intangible Assets for the design, development, testing, production, quality control, marketing, servicing, sale, installation, and distribution of Stimulation Fluids, including,

i. A worldwide, royalty-free, non-exclusive, perpetual, transferable license to all patents, trademarks, trade secrets, and other Intangible Assets in which Defendants assert intellectual property rights; such license shall grant the Acquirer the right (a) to make, have made, use, sell or offer for sale, copy, create derivative works, modify, improve, display, perform, and enhance the licensed Intangible Assets; (b) to own any Intangible Assets the Acquirer generates pursuant to this license; and (c) to have end-user customers of the Acquirer enjoy the benefit of Stimulation Fluids provided by the Acquirer pursuant to this license, and;

ii. A right to obtain copies of, assignment of, or other effective transfer of all other Intangible Assets (*e.g.* data, files, and other materials in BJ's drawing vault and engineering design request files).

Schedule D

Relevant Employees

1. *Relevant Employees means:*

a. All BJ employees whose job responsibilities as of March 1, 2010 included the design, development, testing, production, quality control,

marketing, servicing, sale, and/or provision of Stimulation Services for wells in the Gulf; but not including the vessel-based crews of stimulation vessels other than the Blue Ray;

b. All Baker Hughes employees whose job responsibilities as of March 1, 2010 included the provision of Stimulation Services using the HR Hughes and/or skid-based equipment for wells located in the Gulf; including all vessel-based and skid-based crews and related land-based support personnel;

c. All BJ employees whose job responsibilities as of March 1, 2010 included the design, development, testing, production, quality control, marketing, servicing, sale, installation, and/or distribution of Sand Control Tools for wells located in the Gulf; and

d. All Baker Hughes employees whose job responsibilities as of March 1, 2010 included the design, development, testing, production, quality control, marketing, servicing, sale, installation, and/or distribution of Stimulation Fluids for wells located in the Gulf.

2. Relevant Employees otherwise described in this Schedule D shall not include:

a. All Baker Hughes employees who, as of March 1, 2010, had a title of Vice President or higher;

b. A maximum of four BJ employees, to be selected by Defendants and identified to the United States and to the Acquirer, whose responsibilities are primarily related to the research and development of the Latest Generation MST Intangible Assets;

c. A maximum of one Baker Hughes employee, to be selected by Defendants and identified to the United States and to the Acquirer, whose responsibilities are primarily related to the research and development of Baker Hughes' Diamond Fraq Intangible Assets; and the individual who on March 1, 2010 held the position at BJ of Gulf Coast Region Sales Manager.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Baker Hughes Incorporated* and *BJ Services Company,* Defendants.

Civil Action No.:
Case: 1:10–cv–00659
Assigned to: Kessler, Gladys
Assign. Date: 04/27/2010
Description: Antitrust

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 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

Defendants Baker Hughes Incorporated ("Baker Hughes") and BJ Services Company ("BJ Services" or "BJ") entered into a merger agreement pursuant to which Baker Hughes would acquire 100% of BJ's stock for Baker Hughes stock then valued at approximately $5.5 billion. The United States today filed a civil antitrust Complaint seeking to enjoin the proposed transaction because its likely effect would be to lessen competition substantially for vessel stimulation services in the United States Gulf of Mexico ("Gulf") in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. This loss of competition would likely result in higher prices and reduced service quality in the Gulf vessel stimulation services market.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order ("Hold Separate") and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the proposed merger. Under the proposed Final Judgment, the terms of which are explained more fully below, Defendants are required to create a new competitor for vessel stimulation services by divesting their interests in two specially-equipped stimulation vessels, Baker Hughes' HR Hughes and BJ's Blue Ray, and other assets used to support their offshore stimulation services operations, including Baker Hughes' dock facilities at Port Fourchon, Louisiana, Baker Hughes' Gulf stimulation fluids assets, and BJ's sand control tools assets. Also included in the divestiture package is an expansive right to hire key personnel from both companies.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Industry

Baker Hughes is a major supplier of products and services for drilling, formation evaluation, completion, and production to the worldwide oil and natural gas industry. In 2009, Baker Hughes reported total revenues of approximately $9.7 billion. BJ Services is also a leading worldwide provider of products and services to the oil and gas industry. BJ Services reported revenues of $4.1 billion for the 2009 fiscal year.

Oil and gas companies lease offshore exploration rights from the state or federal government. After drilling a well to evaluate the formation, the company decides if it will be profitable to produce oil from that well. If so, the well will be "completed," or prepared for production. The completion process is designed to enable and control the flow of oil and gas from the formation through the wellbore and to the surface.

Due to the soft rock formations in the Gulf, virtually all wells require stimulation services as part of the completion process. These services generally encompass sand control, which is designed to prevent formation sand from clogging the well and enhance oil and gas production. Most stimulation services on the shelf (less than 1000 feet water depth) and virtually all stimulation services in deepwater are performed by specially-equipped stimulation vessels.[1] Stimulation vessels are typically well over 200 feet in length and are equipped with high pressure pumps, blenders, storage tanks and other equipment necessary to provide these services. To operate in the Gulf, a stimulation vessel must comply with a federal law known as the "Jones Act," which requires vessels to be U.S. flagged, U.S. built, and U.S. crewed.

Baker Hughes and BJ Services are two of only four firms in the Gulf that supply stimulation services with vessels to offshore oil and gas wells. The other two firms are Schlumberger and Halliburton. These four companies are the only significant vessel stimulation service providers in the world, and operate the only Jones Act compliant stimulation vessels. Each of these companies provides stimulation services in the Gulf with two stimulation vessels. Baker Hughes supplies stimulation services in the Gulf with the HR Hughes and the RC Baker, and BJ utilizes the Blue Dolphin and the Blue Ray.

Drilling and completing a well is extremely costly, particularly in deepwater, and the demand for stimulation vessel services is inelastic

[1] While some offshore stimulation services are performed by pumps that are mounted on skids rather than vessels, skid-mounted pumps are not feasible for most stimulation services in the Gulf. Even when a job could technically be performed by skid-mounted equipment, oil and gas companies often use a vessel due to safety and logistical concerns.

and time-sensitive. The daily costs for the drilling rig and other assets often exceed $100,000 for wells on the shelf, and may be $1 million or more for wells in deepwater. These assets remain at the drilling site while vessel stimulation services are performed and throughout the completion process. If a stimulation vessel is not available at the precise time its services are needed, the oil and gas company will incur the very high costs associated with the rig and other supporting assets while it waits for a vessel to arrive at the well site. To avoid this, many oil and gas customers in the Gulf require a vessel stimulation service provider to maintain two vessels in its fleet for greater assurance that a vessel will be available when needed.

Oil and gas companies in the Gulf obtain pricing for vessel stimulation services in two basic ways. They solicit bids for specific wells or projects, and they enter into annual or multi-year contracts that generally establish a discount off of list prices published by the stimulation service provider. Some oil and gas companies prefer to use one approach or the other, but most employ a combination of the two. Under the project approach, the pricing for a specific well or project may be established months or days before the stimulation service is provided. Under the contract approach, the discounts are generally established long before the stimulation service is rendered and are not tied to a particular well or project.[2] Generally, both approaches involve a bidding process in which the technical capabilities, reputation, and prices of multiple vessel stimulation service providers are evaluated, and preferred providers are chosen.

Demand for vessel stimulation services in the Gulf rises and falls with overall drilling levels and seasonal variation. During periods of sustained high demand, stimulation vessels are busier, and operators are forced to pay higher prices to ensure vessel availability, utilize less preferred suppliers, or even incur expensive rig-costs while waiting for a vessel.[3]

[2] Generally, these contracts do not guarantee vessel stimulation service providers a certain amount of stimulation services business, nor do they guarantee oil and gas customers the availability of a vessel for particular jobs or projects. They merely establish discounts that customers may invoke when they call on the supplier to provide services.

[3] During even generally "slow" seasons, vessels may be occupied with other jobs at the precise times a customer requires their services. Having available capacity "most of the month" is of little value to a customer whose operations require a vessel's services on a specific day.

B. The Market for Vessel Stimulation Services in the Gulf of Mexico

The United States has alleged in the Complaint that the provision of vessel stimulation services for wells located in the Gulf is a line of commerce and a relevant market within the meaning of Section 7 of the Clayton Act.

Oil and gas companies have no economical alternatives to sand control or stimulation services and need these services for the great majority of offshore wells in the Gulf. While some offshore stimulation services may be performed by pumps that are mounted on skids rather than vessels, skid-mounted pumping equipment is not feasible for most stimulation services in the Gulf, including frac packs—the most commonly used stimulation service in the Gulf—which require high horsepower and significant fluid and proppant storage. Oil and gas companies procuring these vessel stimulation services for wells located in the Gulf require a provider to have stimulation service vessels capable of providing the service in the region as well as the facilities, engineers, sales and other staff necessary to support the vessels. The relevant geographic region is the Gulf. This region is defined based on the locations of customers.

A small but significant, non-transitory increase in the price of vessel stimulation services for wells located in the Gulf would not cause customers to turn to skid-mounted pumps or to any other type of service, or to vessel simulation services provided outside the Gulf, or to otherwise reduce purchases of vessel stimulation services, in volumes sufficient to make such a price increase unprofitable.

C. The Anticompetitive Effects of the Proposed Transaction

1. The Market Is Highly Concentrated

The market for vessel stimulation services in the Gulf is highly concentrated, with just four firms competing to perform these services. Based on 2008 revenues for vessel stimulation services in the Gulf, BJ accounted for nearly twenty percent of all vessel stimulation service revenues and Baker Hughes accounted for nearly fifteen percent. The other two firms providing vessel stimulation services in the Gulf account for all other revenues. Using an accepted economic measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), described in Appendix A to the Complaint, the premerger HHI is 2801, making the market highly concentrated. By eliminating BJ as a competitor, the transaction would significantly increase concentration levels, resulting in a post-merger HHI of 3390. These high concentration levels create an economic and legal presumption that the proposed transaction is likely to significantly reduce competition in the market for vessel stimulation services.

2. Baker Hughes' Acquisition of BJ Is Likely To Result in Higher Prices for Vessel Stimulation Services in the Gulf

a. The Reduction in Bidders Is Likely To Result in Higher Prices

Absent entry of the proposed Final Judgment, the transaction would eliminate BJ as an independent competitor and reduce, from four to three, the number of bidders for vessel stimulation services in the Gulf. The loss of BJ as a bidder would likely lead to increases in prices.

Today, Baker Hughes and BJ are close competitors. BJ and Baker Hughes not only ranked first and second the past two years in terms of total expenditure on vessel stimulation services in the Gulf for numerous customers, the two share many of the same characteristics with one another. They charge similar prices for similar types of jobs and provide vessel stimulation services in the same water depths and at many of the same geological locations. This suggests that their products, while differentiated in some dimensions and facing competition from other providers, are relatively close substitutes for one another.

Pre-merger, an attempt by Baker Hughes to raise prices would cause disaffected customers for whom BJ is the next best alternative to shift business to BJ. But post merger, Baker Hughes could raise prices without concern of losing customers that viewed BJ as their next best choice. Given the closeness between BJ's and Baker Hughes' services, the diversion ratio between the two (the diversion ratio being the fraction of unit sales lost by one of the firms in response to a price increase that would be diverted to the other) is likely significant. Where that is the case, a merger likely provides the merged firm with the incentive to raise its prices as it recaptures sales it would have lost had it raised price absent the merger. And where, as is also the case here, the value of diverted sales between the merging firms is likely high (as evidenced by the high price-variable cost margins that both firms earn currently), a significant price increase will most likely be profitable for the merged firm.

Moreover, as firms in the market face intermittent or recurring capacity constraints, Halliburton and

Schlumberger could not likely expand supply easily or rapidly to serve customers in response to a post-merger price increase from Baker Hughes. In fact, Halliburton and Schlumberger would likely bid less aggressively because they would recognize that the merger gives Baker Hughes the incentive to raise prices.

The combination of Baker Hughes and BJ is also likely to lead to higher prices because, absent entry of the proposed Final Judgment, the merged firm would control four of the eight stimulation vessels in the Gulf. The anticompetitive effect of reducing the number of vessels controlled by its rivals would be particularly pronounced for project-specific bids, which may be requested by customers just days or weeks in advance. Instead of factoring in the availability of six rival vessels for these stimulation services projects, as each of the Defendants does currently when pricing its services, the merged firm would confront only four potentially available vessels. Thus, not only would the merger reduce the number of rival bidders, it would substantially increase the likelihood that the merged firm would be the sole supplier with available capacity on any given day. This would allow it to exercise greater pricing power.

b. The Merger May Also Result in a Reduction in Capacity Leading to Higher Prices

The transaction may also result in a reduction in the number of stimulation vessels in the Gulf, which would also lead to higher prices.[4] Today, because each company needs two vessels to remain competitive, neither Baker Hughes nor BJ Services has the incentive to move any of its stimulation vessels out of the Gulf. Absent entry of the proposed Final Judgment, the merged firm will have four vessels in the Gulf, giving it the opportunity, which Baker Hughes recognized, to remove one or more vessels without sacrificing the redundancy required by customers. With fewer vessels in the Gulf, utilization of the remaining vessels will increase, as will the likelihood that a vessel will be unavailable at any particular time. Given the highly time-sensitive nature of the stimulation services business in the Gulf, the importance of these services to oil and gas production, and the fact that these services represent a very small percentage of the overall costs associated with drilling and completing a well, oil and gas customers in the Gulf will likely pay higher prices to ensure a vessel is available when needed. Moreover, in periods of high demand, reduced vessel availability would likely mean that some oil and gas customers would be forced to accept delays in scheduling vessel stimulation services, resulting in significant rig expenses and opportunity costs.

3. The Anticompetitive Effects Are Not Likely To Be Prevented by Entry or Repositioning

Successful entry into the provision of vessel stimulation services in the Gulf is difficult, costly, and time consuming, requiring vessels and an array of supporting onshore assets relating to engineering, research and development, testing, performance, and marketing. A strong technical team, including experienced engineers and scientists, is essential. Additionally, customers want a supplier with a proven track record for reliable and successful performance and may require prospective bidders to undergo a lengthy and expensive qualification process. Many customers also require stimulation service providers to have two vessels as a measure of redundancy.

A provider of vessel stimulation services may have a difficult time growing its business if it does not also offer a line of sand control tools, increasing the difficulty of entry and competitive expansion. Producing sand control tools requires special skills and intellectual property. Sand control tools are installed in the well prior to performance of the stimulation services. Many customers prefer obtaining sand control tools from the same company that provides the vessel stimulation services. This reduces the number of companies with which a customer must deal, often results in a discount in the price of the services and products, and also eliminates the possibility of "finger-pointing" between the providers in the event that there is a problem or delay with the sand control tools or stimulation services. All four providers of vessel stimulation services in the Gulf sell sand control tools. Entry by an additional vessel stimulation service provider would not be timely, likely, and sufficient to prevent the substantial lessening of competition caused by the elimination of BJ Services as an independent competitor.

It is also unlikely that a small but significant non-transitory increase in prices on vessel stimulation services in the Gulf would cause competitors to reposition vessels from other geographic regions. The four companies currently servicing customers in the Gulf are the only significant providers operating anywhere in the world and the only providers with vessels that comply with the Jones Act. There are just three Jones Act compliant stimulation service vessels outside of the Gulf, and only one of them has the sophisticated dynamic positioning capability required by customers for deepwater stimulation projects in the Gulf. Moreover, all three vessels are under contract to provide stimulation services internationally, and are therefore unable to service customers in the Gulf in the near term. It is therefore unlikely that repositioning of vessels into the Gulf would offset the likely harm from the transaction.

III. Explanation of the Proposed Final Judgment

The divestiture required by Section IV of the proposed Final Judgment will eliminate the anticompetitive effects of the merger in the market for vessel stimulation services in the Gulf by establishing a new, independent and economically viable competitor. The package of divestiture assets includes all of the types of assets that Baker Hughes and BJ Services currently use to compete in this market, including: two stimulation vessels; operations, production and sales facilities; and tangible and intangible assets relating to the provision of stimulation services and the production and sale of sand control tools and stimulation fluids in the Gulf. In addition, because experienced personnel are critical to success in the vessel stimulation services business—and will be even more important to a new entrant seeking to secure the trust and business of risk-adverse customers—the divestiture package provides the acquirer with an expansive right to hire relevant personnel without interference from the merged firm.

The overriding goal of the proposed Final Judgment is to provide the acquirer of the divestiture assets with everything needed to replace the competition that would otherwise be lost as a result of the transaction. Where possible, the United States favors the divestiture of an existing business entity that has already demonstrated its ability to compete in the relevant market. In this case, however, neither Defendant's Gulf vessel stimulation services business operates as a stand-alone business. Moreover, the accompanying

[4] From the perspective of the merged firm, removing one or two vessels from the Gulf may have two potential advantages over a reduction in capacity that does not involve removing vessels. First, removing one or two vessels might credibly demonstrate to rival vessel stimulation providers that the merged firm will not compete aggressively in the Gulf in the near future. Second, the reduction in stimulation service capacity to which the merged firm would commit by such a movement (and the associated likely price increase) would be relatively large.

stimulation fluids and sand control tools operations are likewise intertwined with other businesses.[5] To ensure that the acquirer will have all assets necessary to be an effective, long-term competitor, while minimizing disruption to Defendants' broader operations, the proposed Final Judgment requires divestiture of assets from each of the merging parties' operations. The proposed Final Judgment also provides maximum flexibility to the acquirer by providing it with the option to buy some of the assets, depending on whether it needs such assets given its existing operations.

The "Divestiture Assets" are fully described in schedules to the proposed Final Judgment and fall into three major categories: Stimulation Services, Sand Control Tools, and Stimulation Fluids. The assets in these categories are described generally below.

A. Stimulation Services

The Divestiture Assets related to Defendants' provision of vessel stimulation services in the Gulf include: (1) Two stimulation vessels—Baker Hughes' HR Hughes and BJ's Blue Ray—and all equipment installed on the vessels; (2) Baker Hughes' dock and mooring facilities at Port Fourchon, Louisiana; (3) the option to acquire Baker Hughes' skids and non-vessel pumping equipment used to perform Gulf stimulation services; [6] (4) tangible and intangible assets used in connection with BJ's stimulation services for wells located in the Gulf; (5) the option to acquire BJ's vessel operations facility in Crowley, Louisiana; and (6) the option to acquire BJ's sales offices in New Orleans, Louisiana and Houston, Texas.

As explained above, all four competitors in the Gulf vessel stimulation services market compete with two vessels because many customers require redundancy. Thus, the divestiture package includes two vessels. These vessels have established track records, and are capable of performing stimulation services for virtually all wells in the Gulf. Both vessels are outfitted with sophisticated dynamic positioning systems (*i.e.,* DP–2 capability), which allow the vessel to hold its position using the vessel's own thrusters as opposed to an anchor or chains. This capability is a critical requirement for deepwater stimulation jobs in the Gulf, and many oil and gas customers require stimulation service providers to maintain two deepwater-capable vessels in the Gulf in order to be considered for such projects. Having two deepwater-capable vessels will position the acquirer to compete for these projects.

The divestiture package also requires divestiture of tangible and intangible assets associated with the vessels and with BJ's provision of stimulation services for wells located in the Gulf. These assets will provide the acquirer with the physical tools (*e.g.,* equipment, inventory and business records), and the bank of knowledge and rights (*e.g.,* job history databases, design know-how and contractual rights) needed to create an independent stimulation services business equivalent to one of Defendants' current operations.

B. Sand Control Tools

The Divestiture Assets related to Defendants' production and sale of sand control tools include: (1) Intangible assets used in connection with BJ's sand control tools for wells located in the Gulf; (2) the option to acquire tangible assets used in connection with BJ's sand control tools for wells located in the Gulf; (3) the option to acquire BJ's Southpark facility located in Lafayette, Louisiana, where BJ conducts assembly, sales, and support for its sand control tools; and (4) the option to acquire all or part of BJ's Completion Tool Technology Center in Houston Texas, where BJ's sand control tools are researched, tested, and manufactured.[7]

Baker Hughes and BJ produce and sell a full line of sand control tools, which are used in conjunction with the provision of stimulation services. Many oil and gas companies prefer to purchase these tools from the same company that provides the vessel stimulation service. To ensure that the acquirer can compete effectively in the vessel stimulation services market (and to avoid the competitive disadvantage that likely would result if the acquirer could not provide these complementary products), the divestiture requires Defendants to divest intangible assets associated with BJ's sand control tool business, including patents, designs and other know-how.[8] The acquirer will also have the option to acquire the tangible assets associated with certain of BJ's facilities, as well as BJ's tangible assets associated with the production and sale of sand control tools, including production and testing equipment and inventory.

C. Stimulation Fluids

The Divestiture Assets related to Defendants' production and sale of stimulation fluids in the Gulf include: (1) Tangible and intangible assets primarily used in connection with or necessary for Baker Hughes' stimulation fluids for wells located in the Gulf; and (2) the option to acquire BJ's trucks and tanks used to transport stimulation fluids in the Gulf.

In performing vessel stimulation services in the Gulf, the Defendants use a variety of acids, proppants, gels and other fluids and additives which are pumped downhole under pressure to stimulate the production of oil and gas. Although many of these fluids and additives are manufactured by third-parties, each vessel stimulation service provider in the Gulf has its own unique set of "recipes" and know-how relating to the blending and use of these fluids. These recipes and know-how represent an important qualitative aspect of the stimulation services provided by the Defendants. To ensure that the acquirer will be equipped with the necessary recipes and know-how, the divestiture package includes intangible assets used in connection with relating to Baker Hughes' stimulation fluids business.[9]

[5] For example, BJ's research and development for stimulation fluids for vessel stimulation services in the Gulf is intertwined with its extensive onshore fluids business.

[6] While the Complaint alleges that stimulation services performed with pumping equipment on skids is not in the same product market with vessel stimulation services, skid-based equipment is included in the divestiture package to ensure that the acquirer will be able to offer the full range of offshore stimulation services, as all competitors do now. The divestiture package is designed to not only preserve the competition that would be lost from the merger, but also to ensure the viability of the acquirer.

[7] BJ's Completion Tool Technology Center is located on 22 acres of land in Houston, Texas. There are five buildings on the property, as well as associated parking lots that are reached by three entrances. Pursuant to Schedule B of the proposed Final Judgment, the acquirer will have the option of acquiring the entire facility, or a portion of the property consisting of one or two buildings.

[8] The proposed Final Judgment requires total divestiture of intangible assets used in connection with the design, development, testing, production, quality control, marketing, servicing, sale, installation, or distribution of BJ's sand control tools for wells located in the Gulf. Defendants, however, will retain BJ's patents and other intangible assets associated with BJ's Multi-Zone Single Trip tool—which was developed by BJ in conjunction with a customer, and for which Baker Hughes has no comparable tool. Defendants will provide a worldwide royalty-free non-exclusive license to the acquirer for these patents and other intangible assets.

[9] The proposed Final Judgment requires (1) a total divestiture (with one exception discussed below) of intangible assets that are primarily used in connection with or necessary to the design, development, testing, production, quality control, marketing, servicing, sale, installation, or distribution of Baker Hughes' stimulation fluids for wells located in the Gulf; and (2) a royalty-free, worldwide license to all other intangible assets used in connection with Baker Hughes' stimulation fluids for wells located in the Gulf. The exception relates to Baker Hughes' specialized heavyweight frac fluid—Diamond Fraq. Defendants will retain Baker Hughes' patents and associated intangible assets primarily used in connection with Diamond Fraq, and will provide the acquirer with a license

Continued

Defendants will also divest tangible assets used in connection with Baker Hughes' stimulation fluids for wells located in the Gulf, as well as BJ's trucks and tanks used to transport stimulation fluids in the Gulf.

IV. Implementation of the Final Judgment

The Divestiture Assets must be divested in such a way as to satisfy the United States in its sole discretion that these assets can and will be operated by the acquirer as a viable, ongoing business that can compete effectively in the design, development, production, marketing, servicing, distribution or sale of vessel stimulation services, sand control tools and stimulation fluids in the Gulf. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

The proposed Final Judgment requires Defendants to accomplish the divestiture within sixty (60) days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment of the Court, whichever is later. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances.

In the event that Defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Baker Hughes will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price and terms obtained and the speed with which the divestiture is accomplished. After the trustee's appointment becomes effective, the trustee will provide monthly reports to the United States setting forth his or her efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the merger by enabling the acquirer to compete with the merged firm, and with Halliburton and Schlumberger, in the provision of vessel stimulation services in the Gulf, including the provision of fluids and sand control tools.

The proposed Final Judgment imposes certain obligations on the acquirer given the mobility of certain of the assets and the likelihood that a transaction involving their sale would be below Hart-Scott-Rodino reporting thresholds. Section XI requires the acquirer to keep the vessels in the Gulf for two years, unless it obtains consent otherwise from the Antitrust Division. This provision ensures that the acquirer gains experience in the Gulf to compete effectively there. Section XI also imposes a five-year requirement for the acquirer to provide the Antitrust Division notice prior to the sale or transfer of any of the divestiture assets to Halliburton or Schlumberger, should such a transaction not otherwise meet HSR thresholds. Given the limited number of competitors in the market today, the Antitrust Division would likely object to either Halliburton or Schlumberger as the proposed acquirer of the divestiture assets as such a divestiture would not likely remedy the competitive harm alleged in the Complaint. (See proposed Final Judgment, Sections IV J. & VII.) The notice provision will allow the Antitrust Division to determine whether a future sale of the divestiture assets by the acquirer to Halliburton or Schlumberger would frustrate the proposed Final Judgment's goal of preserving competition in the Gulf.

V. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

VI. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants 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 and published in the **Federal Register**.

Written comments should be submitted to: Donna N. Kooperstein, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, 450 5th Street, NW., Suite 8000, Washington, DC 20530.

VII. 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 Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions preventing Baker Hughes, Inc from acquiring BJ Services. The United States is satisfied, however, that the divestiture of the assets described in the proposed Final Judgment will preserve competition for the design, development, and sale of vessel stimulation services in the United States Gulf of Mexico. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

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to those patents and assets, as well as to BJ's BrineStar/BrineStar II heavyweight frac fluids, which use a different technology than Diamond Fraq.

VIII. 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 sixty-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 (DC Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.DC 2007) (assessing public interest standard under the Tunney Act).[10]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *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.DC 2001). 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).[11] 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 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.DC 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.DC 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 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. 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. *Id.* 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). 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 Senator 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

[10] 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).

[11] *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' ").

of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[12]

IX. 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: April 27, 2010

Respectfully submitted,

__/s/__

Angela L. Hughes, (DC Bar #3034210), Trial Attorney, U.S. Department of Justice, Antitrust Division, Transportation, Energy, and, Agriculture, 450 5th Street, NW; Suite 8000, Washington, DC 20530, Telephone: 202/307–6410, Facsimile: 202/307–2784, E-mail: *angela.hughes@usdoj.gov*

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BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection for the Evaluation of the Community-Based Job Training Grants; Comment Request

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments on a new data collection for the Evaluation of the Community-Based Job Training Grants.

A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before July 6, 2010.

ADDRESSES: Submit written comments to the Employment and Training Administration, Room N–5641, 200 Constitution Avenue, NW., Washington, DC 20210, *Attention:* Garrett Groves, Telephone number: 202–693–3684 (this is not a toll-free number), *Fax number:* 202–693–2766. *E-mail: Groves.Garrett@DOL.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Community-Based Job Training Grants (CBJTG) program is sponsored by ETA as an investment in building the capacity of community colleges to train workers in the skills required to succeed in high-growth, high-demand industries. CBJTG provides grants for the development and implementation of industry-specific job training programs at community colleges to meet the workforce needs of industry, including health care, energy, and advanced manufacturing, among others. Over 200 grants were issued from 2005 through 2008 in three rounds of grant competition, with a fourth round of grants awarded in early 2009. Grant recipients are primarily community and technical colleges, although in the later rounds of grants, some community college districts, State community college systems and organizations and agencies within the public workforce investment system were awarded grants.

ETA has contracted with the Urban Institute, a non-profit, non-partisan, research organization based in Washington, DC, to conduct an evaluation of the CBJTG program. The evaluation will mainly be based on data collected through a survey of grant recipients as well as a review of grant documents and exploratory site visits to a small number of grant projects. The survey data collected through this effort are the main data source for this study and will provide a comprehensive picture of the different grant-funded projects and identify grant implementation issues to date.

The survey will be administered to all grantees receiving awards in the first three rounds. To reduce respondent burden, the survey will be administered in a Web-based format that allows for automatic skip patterns. Grantees will also have the option to complete and return a paper version. Survey data will be complemented by data collected through ETA's existing quarterly reporting system to avoid any duplication and further reduce reporting burden for respondents. The survey will gather data on grantee organization type, size, and structure, project design and objectives, recruitment efforts and target populations, training and other program activities, capacity-building activities, partners' contributions and activities, and plans for sustaining programming and leveraging resources.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: New.

Agency: Employment and Training Administration.

Title: Evaluation of the Community-Based Job Training Grants.

OMB Number: 1205–0NEW.

Record Keeping: N/A.

Affected Public: Community-Based Job Training Grantees.

Total Respondents: 190.

Frequency: Once.

Total Annual Responses: 190.

Average Time per Response: 40 minutes.

[12] *See United States v. Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.DC 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.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (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, 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.").