DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Heterogeneous System Architecture Foundation

Notice is hereby given that, on June 18, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Heterogeneous System Architecture Foundation (''HSA Foundation'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Huawei Technologies Co., Ltd., San Diego, CA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HSA Foundation intends to file additional written notifications disclosing all changes in membership.

On August 31, 2012, HSA Foundation 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 October 11, 2012 (77 FR 61786).

The last notification was filed with the Department on April 29, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 17, 2019 (84 FR 22520).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–14661 Filed 7–9–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Harris Corporation and L3 Technologies, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Harris Corporation and L3 Technologies, Inc.,* Civil Action No. 1:19–cv–01809. On June 20, 2019, the United States filed a Complaint alleging that the proposed merger of Harris Corporation (''Harris'') and L3 Technologies, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires the Defendants to divest Harris's night vision business.

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

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Maribeth Petrizzi, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530 (telephone: 202–307–0924).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

UNITED STATES OF AMERICA, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW, Suite 8700, Washington, D.C. 20530, Plaintiff, v. *HARRIS CORPORATION, 1025 West NASA Boulevard, Melbourne, FL 32919,* and, *L3 TECHNOLOGIES, INC., 600 Third Avenue, New York, NY 10016,* Defendants.

Civil Action No.: 1:19–cv–01809
Judge: Hon. Thomas F. Hogan

COMPLAINT

The United States of America (''United States''), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants Harris Corporation (''Harris'') and L3 Technologies, Inc. (''L3'') to enjoin the proposed merger of Harris and L3. The United States complains and alleges as follows:

I. NATURE OF THE ACTION

1. Pursuant to an agreement and plan of merger dated October 12, 2018, Harris and L3 propose to merge in a transaction that would create the sixth-largest defense contractor in the United States.

2. Harris and L3 are the only suppliers of image intensifier tubes for use by the United States military. Image intensifier tubes are the key component in night vision devices such as goggles and weapon sights, which are purchased by the U.S. Department of Defense (''DoD''). Night vision devices amplify visible light and allow soldiers and aircrews to see their surroundings in dark conditions. The proposed merger would eliminate competition between Harris and L3 and create a monopoly for image intensifier tubes for night vision devices purchased by DoD (hereinafter ''U.S. military-grade image intensifier tubes'').

3. As a result, the proposed transaction likely would substantially lessen competition in the market for the design, development, manufacture, sale, service, and distribution of U.S. military-grade image intensifier tubes in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. THE DEFENDANTS

4. Harris is incorporated in Delaware and has its headquarters in Melbourne, Florida. Harris provides night vision devices and image intensifier tubes, tactical communications solutions, electronic warfare solutions, and space and intelligence systems. In 2018, Harris had sales of approximately $6.2 billion.

5. L3 is incorporated in Delaware and is headquartered in New York, New York. L3 provides night vision devices and image intensifier tubes; intelligence, surveillance, and reconnaissance systems; aircraft sustainment, simulation, and training; and security and detection systems. In 2018, L3 had sales of approximately $10.2 billion.

III. JURISDICTION AND VENUE

6. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

7. Defendants design, develop, manufacture, sell, service, and distribute U.S. military-grade image intensifier tubes. Defendants' activities in the design, development, manufacture, sale, service, and distribution of these products substantially affects 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.

8. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. § 1391(c).

IV. U.S. MILITARY-GRADE IMAGE INTENSIFIER TUBES

A. Background

9. Image intensifier tubes amplify visible light and are integrated into night vision devices produced by Harris, L3, and other companies. Night vision devices allow the user to see in dark conditions, increasing the situational awareness, threat detection, and mission performance of soldiers and aircrews operating in low-light environments. Night vision devices come in the form of goggles, binoculars, and monoculars and can be handheld or mounted to objects like helmets or weapons. There are over half a million such devices in use today, and DoD expects to purchase at least one hundred thousand additional devices over the next few years.

10. DoD also purchases significant quantities of image intensifier tubes as replacement parts for night vision devices currently in the field. In addition, as L3 and Harris innovate and develop improved image intensifier tubes with greater resolution and light amplification, DoD purchases these more advanced image intensifier tubes to upgrade existing night vision devices. DoD is likely to purchase half a million image intensifier tubes for replacements or upgrades over the next few years.

B. Relevant Markets

1. Product Market

11. The quality and usefulness of an image intensifier tube is defined by several characteristics, the most important of which are size, weight, power consumption, and especially sensitivity, which relates to the ability of the tube to amplify low levels of visible light without producing excessive distortion in the resulting image. DoD requires highly capable image intensifier tubes, as the lives of soldiers and aircrews depend on the performance of the night vision devices incorporating these tubes. Less capable image intensifier tubes are therefore not a substitute for the highly capable image intensifier tubes that DoD views as U.S. military grade.

12. Other night vision technologies such as thermal imaging devices and digital light amplification systems are not substitutes for U.S. military-grade image intensifier tubes. Thermal imaging devices, such as microbolometers and infrared focal plane arrays, detect infrared radiation emitted by warm objects rather than amplifying visible light. Thermal imaging devices also differ from image intensifier tubes in range and sensitivity to environmental factors such as humidity and dust. Night vision equipment incorporating thermal imaging devices tends to be larger, heavier, and substantially more expensive than similar equipment incorporating image intensifier tubes. Although some night vision devices incorporate both image intensifier tubes and thermal imaging devices to combine the benefits of the two and create a ''fused'' image, thermal imaging devices cannot replicate the performance of image intensifier tubes or replace them in night vision devices.

13. Digital light amplification systems based on charge-coupled device (''CCD'') or complementary metal oxide semiconductor (''CMOS'') detectors are also not adequate substitutes for U.S. military-grade image intensifier tubes. CCD- and CMOS-based devices tend to be heavier, consume more power, and cost significantly more than devices incorporating image intensifier tubes. Moreover, because such devices are digital, and therefore require a certain amount of signal processing, the images produced also tend to lag behind the actual scene being viewed, potentially creating disorientation in the user.

14. For the foregoing reasons, DoD will not substitute less-capable image intensifier tubes, thermal imaging devices, or CCD- or CMOS-based digital light amplification systems for U.S. military-grade image intensifier tubes in response to a small but significant and non-transitory increase in the price of U.S. military-grade image intensifier tubes. Accordingly, U.S. military-grade image intensifier tubes are a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. § 18.

2. Geographic Market

15. For national security reasons, DoD only considers domestic producers of U.S. military-grade image intensifier tubes. DoD is unlikely to turn to any foreign producers in the face of a small but significant and non-transitory price increase by domestic producers of U.S. military-grade image intensifier tubes.

16. The United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

C. Anticompetitive Effects of the Proposed Transaction

17. Harris and L3 are currently the only firms that develop, manufacture, and sell U.S. military-grade image intensifier tubes. The merger would therefore give the combined firm a monopoly in this product market, leaving DoD without a competitive alternative for this critical component of night vision devices.

18. Harris and L3 compete for sales of U.S. military-grade image intensifier tubes on the basis of quality, price, and contractual terms such as delivery times. This competition has resulted in higher quality, lower prices, and shorter delivery times, and has fostered innovation, leading to U.S. military-grade image intensifier tubes with higher sensitivity and resolution. The combination of Harris and L3 would eliminate this competition and its future benefits to DoD customers. Post-transaction, the merged firm likely would have the incentive and ability to reduce research and development efforts that lead to innovative and high-quality products and to increase prices and offer less favorable contractual terms.

19. The proposed merger, therefore, likely would substantially lessen competition in the design, development, manufacture, sale, service, and distribution of U.S. military-grade image intensifier tubes in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

D. Difficulty of Entry

20. Sufficient, timely entry of additional competitors into the market for U.S. military-grade image intensifier tubes is unlikely. Production facilities for U.S. military-grade image intensifier tubes require a substantial investment in both capital equipment and human resources. A new entrant would need to set up a foundry to produce electronic components, establish production lines capable of manufacturing fiber optic subcomponents, and build assembly lines and testing facilities. Engineering and research personnel would need to be assigned to develop, test, and troubleshoot the detailed manufacturing process, involving hundreds of steps, that is necessary to produce U.S. military-grade image intensifier tubes. Any new products would require extensive testing and qualification before they could be used in night vision devices for the U.S. military. As a result, entry would be costly and time-consuming.

21. Moreover, a new entrant is unlikely to recover these costs. Although CMOS-based night vision

devices currently are not suitable for DoD uses and thus are not reasonable substitutes for night vision devices based on U.S. military-grade image intensifier tubes, research and development on these devices is progressing. Industry observers expect these devices to begin replacing night vision devices based on U.S. military-grade image intensifier tubes at some point in the next five to ten years. Because the market for U.S. military-grade image intensifier tubes will likely decline as this transition takes place, an entrant is unlikely to produce sufficient revenue to recover its costs of entry. The prospect of a declining market for U.S. military-grade image intensifier tubes thus would discourage new companies from entering.

22. As a result of these barriers, entry into the market for U.S. military-grade image intensifier tubes would not be timely, likely, or sufficient to defeat the anticompetitive effects likely to result from the merger of Harris and L3.

V. VIOLATIONS ALLEGED

23. The merger of Harris and L3 likely would lessen competition substantially in the design, development, manufacture, sale, service, and distribution of U.S. military-grade image intensifier tubes in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

24. Unless enjoined, the merger likely would have the following anticompetitive effects, among others, related to U.S. military-grade image intensifier tubes:

(a) actual and potential competition between Harris and L3 would be eliminated;

(b) competition likely would be substantially lessened; and

(c) prices likely would increase, innovation would decrease, and contractual terms likely would be less favorable to customers.

VI. REQUEST FOR RELIEF

25. The United States requests that this Court:

(a) adjudge and decree that Harris's merger with L3 would be unlawful and violate Section 7 of the Clayton Act, 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 L3 and Harris, or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine Harris with L3;

(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: June 20, 2019

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

Makan Delrahim,
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* LEAD ATTORNEY TO BE NOTICED

United States District Court for the District of Columbia

UNITED STATES OF AMERICA, Plaintiff, v. *HARRIS CORPORATION,* and *L3 TECHNOLOGIES, INC.,* Defendants.

Civil Action No.: 1:19–cv–01809
Judge: Hon. Thomas F. Hogan

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on June 20, 2019, the United States and Defendants, Harris Corporation (''Harris'') and L3 Technologies, Inc. (''L3''), 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, and Defendants agree, to make a certain divestiture for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the divestiture required below can and will be made and that Defendants will not later raise any 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*

The 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 which Defendants divest the Divestiture Assets.

B. ''Harris'' means Defendant Harris Corporation, a Delaware corporation with its headquarters in Melbourne, Florida, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''L3'' means Defendant L3 Technologies, Inc., a Delaware corporation with its headquarters in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Night Vision Business'' means Harris's business in the design, development, manufacture, sale, service, and distribution of image intensifier technology and night vision devices.

E. ''Divestiture Assets'' means the Night Vision Business, including:

1. the facilities located at 7625, 7635, and 7645 Plantation Road, Roanoke, Virginia; 7767 Lila Drive, Roanoke, Virginia; and 7671 Enon Drive, Roanoke, Virginia;

2. all tangible assets, including but not limited to: research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization for the Night Vision Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records; and all other records of the Night Vision Business; and

3. all intangible assets, including but not limited to: all patents; licenses and sublicenses; intellectual property; copyrights; trademarks; trade names; service marks; service names; technical information; computer software and related documentation; know-how; trade secrets; drawings; blueprints; designs; design protocols; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts, including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments.

F. ''Regulatory Approvals'' means any approvals or clearances pursuant to filings with the Committee on Foreign Investment in the United States (''CFIUS''), or under antitrust, competition, or other U.S. or international laws required for Acquirer's acquisition of the Divestiture Assets to proceed.

III. *APPLICABILITY*

A. This Final Judgment applies to Harris and L3, 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 Section V 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, Defendants shall require the purchaser 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.

IV. *DIVESTITURE*

A. Defendants are ordered and directed, within the later of forty-five (45) calendar days after the entry of the Hold Separate Stipulation and Order by the Court or fifteen (15) calendar days after Regulatory Approvals have been received, 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 use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making an 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 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 provide the Acquirer and the United States all information relating to all personnel in the Night Vision Business to enable the Acquirer to make offers of employment. Defendants will not interfere in any way with any negotiations or effort by the Acquirer to hire any Defendant employee in the Night Vision Business.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Night Vision Business; 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.

E. Defendants shall warrant to the Acquirer that each asset will be operational on the date of sale.

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

G. At the option of the Acquirer, Defendants shall enter into a transition services agreement for back office, human resource, and information technology services and support for the Night Vision Business for a period of up to twelve (12) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional six (6) months. If the Acquirer seeks an extension of the term of this transition services agreement, Defendants shall notify the United States in writing at least three (3) months prior to the date the transition services contract expires. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market value of the expertise of the personnel providing any needed assistance. The employee(s) of Defendants tasked with providing these transition services shall not share any competitively sensitive information of the Acquirer with any other employee of Defendants.

H. At the option of the Acquirer, Defendants shall enter into a contract for wafer sawing and sensor packaging services. Such an agreement shall be for a period of up to twelve (12) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional six (6) months. If the Acquirer seeks an extension of the term of this agreement, Defendants shall so notify the United States in writing at least three (3) months prior to the date the contract expires. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to the market value of the expertise of the personnel providing any needed assistance. The employee(s) of Defendants tasked with providing these services shall not share any competitively sensitive information of the Acquirer with any other employee of Defendants.

I. Defendants shall warrant to the Acquirer (1) that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets, and (2) 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.

J. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV or by Divestiture Trustee appointed pursuant to Section V of this Final Judgment shall include the entire Divestiture Assets and 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 of the design, development, manufacture, sale, service, and distribution of image intensifier technology and night vision devices. If any of the terms of an agreement between Defendants and the Acquirer to effectuate the divestiture required by the Final Judgment varies from the terms of this Final Judgment then, to the extent that Defendants cannot fully comply with both terms, this Final Judgment shall determine Defendants' obligations. The divestiture, whether pursuant to Section IV or Section V 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 in the business of the design, development, manufacture, sale, service, and distribution of image intensifier technology and night vision devices; 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 an 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. *APPOINTMENT OF DIVESTITURE TRUSTEE*

A. If Defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture 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 Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as the Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any agents, investment bankers, attorneys, accountants, or consultants, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such agents or consultants shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

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

D. The Divestiture Trustee shall serve at the cost and expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for any of its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement that provides the Divestiture Trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished, but the timeliness of the divestiture is paramount. If the Divestiture Trustee and Defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of the appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other agents or consultants, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any agents or consultants retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall provide or develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets; other confidential research, development, or commercial information; or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States setting forth the Divestiture Trustee's efforts to accomplish the divestiture 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 Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture; (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished; and (3) the Divestiture Trustee's recommendations. To the extent such reports contain

information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture 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 Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, the United States may recommend the Court appoint a substitute Divestiture Trustee.

VI. *NOTICE OF PROPOSED DIVESTITURE*

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or Section V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice 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 Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture 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 thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether 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 Paragraph V(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 V shall not be consummated. Upon objection by Defendants under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. *FINANCING*

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

VIII. *HOLD SEPARATE*

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

IX. *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 divestiture has been completed under Section IV or Section V, Defendants shall deliver to the United States an affidavit, signed by each defendant's Chief Financial Officer and General Counsel, which shall describe the fact and manner of Defendants' compliance with Section IV or Section V 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 limitation 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 VIII 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.

X. *COMPLIANCE INSPECTION*

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order 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, including agents 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 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 response 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 Section X 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 that Defendants furnish information or documents 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).

XI. *NO REACQUISITION*

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

XII. *RETENTION OF JURISDICTION*

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the 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.

XIII. *ENFORCEMENT OF FINAL JUDGMENT*

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the Final Judgment and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four (4) years following the expiration of the Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action under this Section, (2) any appropriate contempt remedies, (3) any additional relief needed to ensure the Defendant complies with the terms of the Final Judgment, and (4) fees or expenses as called for in Paragraph XIII(C).

XIV. *EXPIRATION OF FINAL JUDGMENT*

Unless the Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

I.

XV. *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, 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

United States District Court for the District of Columbia

UNITED STATES OF AMERICA, Plaintiff, v. *HARRIS CORPORATION,* and *L3 TECHNOLOGIES, INC.,* Defendants.

Civil Action No.: 1:19–cv–01809
Judge: Hon. Thomas F. Hogan

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 Harris Corporation (''Harris'') and L3 Technologies, Inc. (''L3'') entered into an agreement and plan of merger, dated October 12, 2018, pursuant to which Harris and L3 propose to combine in a transaction that would create the sixth-largest defense contractor in the United States. The United States filed a civil antitrust Complaint on June 20, 2019, seeking to enjoin the proposed transaction. The Complaint alleges that the likely effect of this merger would be to lessen competition substantially in the United States for the design, development, manufacture, sale, service, and distribution of U.S. military-grade image intensifier tubes in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the United States also filed a Hold

Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the transaction. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest Harris's business in the design, development, manufacture, sale, service and distribution of image intensifier technology and night vision devices (the ''night vision business''). Under the terms of the Hold Separate Stipulation and Order, Defendants will take certain steps to ensure that Harris's night vision business is operated as a competitively independent, economically viable, and ongoing business concern that will remain independent and uninfluenced by Harris and that competition is maintained during the pendency of the required divestiture.

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 proposed Final Judgment and to punish violations thereof.

II. *DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION*

A. The Defendants and the Proposed Transaction

Harris is incorporated in Delaware and has its headquarters in Melbourne, Florida. Harris provides night vision devices and image intensifier tubes, tactical communications solutions, electronic warfare solutions, and space and intelligence systems. In 2018, Harris had sales of approximately $6.2 billion.

L3 is incorporated in Delaware and is headquartered in New York, New York. L3 provides night vision devices and image intensifier tubes; intelligence, surveillance, and reconnaissance systems; aircraft sustainment, simulation, and training; and security and detection systems. In 2018, L3 had sales of approximately $10.2 billion.

Harris and L3 entered into an agreement and plan of merger, dated October 12, 2018, pursuant to which Harris and L3 propose to merge.

B. The Competitive Effects of the Transaction

1. Background

Image intensifier tubes amplify visible light and are integrated into night vision devices produced by Harris, L3, and other companies. Night vision devices allow the user to see better in dark conditions, increasing the situational awareness, threat detection, and mission performance of soldiers and aircrews operating in low-light environments. Night vision devices come in the form of goggles, binoculars, and monoculars and can be handheld or mounted to objects like helmets or weapons. There are over half a million such devices in use today, and the U.S. Department of Defense (''DoD'') expects to purchase at least one hundred thousand additional devices over the next few years.

DoD also purchases significant quantities of image intensifier tubes as replacement parts for night vision devices currently in the field. In addition, as Harris and L3 innovate and develop improved image intensifier tubes with greater resolution and light amplification, DoD purchases these more advanced image intensifier tubes to upgrade existing night vision devices. DoD is likely to purchase half a million image intensifier tubes for replacements or upgrades over the next few years.

2. Relevant Markets

As alleged in the Complaint, the quality and usefulness of an image intensifier tube is defined by several characteristics, the most important of which are size, weight, power consumption, and especially sensitivity, which relates to the ability of the tube to amplify low levels of visible light without producing excessive distortion in the resulting image. DoD requires highly capable image intensifier tubes, as the lives of soldiers and aircrews depend on the performance of the night vision devices incorporating these tubes. The Complaint alleges that less capable image intensifier tubes are therefore not a substitute for the highly capable image intensifier tubes that DoD views as U.S. military grade.

According to the Complaint, other night vision technologies such as thermal imaging devices and digital light amplification systems are not substitutes for U.S. military-grade image intensifier tubes. Thermal imaging devices, such as microbolometers and infrared focal plane arrays, detect infrared radiation emitted by warm objects rather than amplifying visible light. Thermal imaging devices also differ from image intensifier tubes in range and sensitivity to environmental factors such as humidity and dust. Night vision equipment incorporating thermal imaging devices tends to be larger, heavier, and substantially more expensive than similar equipment incorporating image intensifier tubes. Although some night vision devices incorporate both image intensifier tubes and thermal imaging devices to combine the benefits of the two and create a ''fused'' image, thermal imaging devices cannot replicate the performance of image intensifier tubes or replace them in night vision devices.

The Complaint further alleges that digital light amplification systems based on charge-coupled device (''CCD'') or complementary metal oxide semiconductor (''CMOS'') detectors are also not adequate substitutes for U.S. military-grade image intensifier tubes. CCD- and CMOS-based devices tend to be heavier, consume more power, and cost significantly more than devices incorporating image intensifier tubes. Moreover, because such devices are digital, and therefore require a certain amount of signal processing, the images produced also tend to lag behind the actual scene being viewed, potentially creating disorientation in the user.

For the foregoing reasons, DoD would not substitute less-capable image intensifier tubes, thermal imaging devices, or CCD- or CMOS-based digital light amplification systems for U.S. military-grade image intensifier tubes in response to a small but significant and non-transitory increase in the price of U.S. military-grade image intensifier tubes. Therefore, the Complaint alleges that U.S. military-grade image intensifier tubes are a relevant product market and line of commerce under Section 7 of the Clayton Act.

The Complaint alleges that the relevant geographic market for U.S. military-grade image intensifier tubes is the United States. For national security reasons, DoD only considers domestic producers of U.S. military-grade image intensifier tubes. DoD is unlikely to turn to any foreign producers in the face of a small but significant and non-transitory price increase by domestic producers of U.S. military-grade image intensifier tubes.

3. Anticompetitive Effects

As alleged in the Complaint, Harris and L3 are currently the only firms that develop, manufacture, and sell U.S. military-grade image intensifier tubes. The merger would therefore give the combined firm a monopoly in this product market, leaving DoD without a competitive alternative for this critical component of night vision devices.

According to the Complaint, Harris and L3 compete for sales of U.S. military-grade image intensifier tubes on the basis of quality, price, and contractual terms such as delivery times. This competition has resulted in higher quality, lower prices, and shorter delivery times and has fostered

innovation, leading to U.S. military-grade image intensifier tubes with higher sensitivity and resolution. The Complaint alleges that the combination of Harris and L3 would eliminate this competition and its future benefits to DoD customers. Post-transaction, absent the required divestiture, the merged firm likely would have the incentive and ability to reduce research and development efforts that lead to innovative and high-quality products and to increase prices and offer less favorable contractual terms.

4. Difficulty of Entry

According to the Complaint, sufficient, timely entry of additional competitors into the market for U.S. military-grade image intensifier tubes is unlikely. Production facilities for U.S. military-grade image intensifier tubes require a substantial investment in both capital equipment and human resources. A new entrant would need to set up a foundry to produce electronic components, establish production lines capable of manufacturing fiber optic subcomponents, and build assembly lines and testing facilities. Engineering and research personnel would need to be assigned to develop, test, and troubleshoot the detailed manufacturing process, involving hundreds of steps, that is necessary to produce U.S. military-grade image intensifier tubes. Any new products would require extensive testing and qualification before they could be used in night vision devices for the U.S. military. As a result, the Complaint alleges that entry would be costly and time consuming.

Moreover, as alleged in the Complaint, a new entrant is unlikely to recover these costs. Although CMOS-based night vision devices currently are not suitable for DoD uses, and thus are not reasonable substitutes for night vision devices based on U.S. military-grade image intensifier tubes, research and development on these devices is progressing, and industry observers expect these devices to begin replacing night vision devices based on U.S. military-grade image intensifier tubes at some point in the next five to ten years. Because the market for U.S. military-grade image intensifier tubes will likely decline as this transition takes place, the Complaint alleges that an entrant is unlikely to produce sufficient revenue to recover its costs of entry. The prospect of a declining market for U.S. military-grade image intensifier tubes thus would discourage new companies from entering.

III. *EXPLANATION OF THE PROPOSED FINAL JUDGMENT*

The divestiture required by the proposed Final Judgment will eliminate the anticompetitive effects of the transaction in the market for U.S. military-grade image intensifier tubes by establishing an independent and economically viable competitor. Paragraph IV(A) of the proposed Final Judgment requires Defendants, within the later of 45 calendar days after the entry of the Hold Separate by the Court or 15 calendar days after Regulatory Approvals have been received, to divest Harris's night vision business.[1] Paragraph IV(J) of the proposed Final Judgment provides that the business must be divested in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the design, development, manufacture, sale, service, and distribution of image intensifier technology and night vision devices. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with prospective purchasers.

In the event that Defendants do not accomplish the divestiture within the period prescribed in the proposed Final Judgment, Section V of 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 Defendants 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 obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the United States setting forth his or her efforts to accomplish the divestiture. At the end of six 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 proposed Final Judgment contains several provisions to facilitate the immediate use of the Divestiture Assets by the Acquirer. Paragraph IV(G) of the proposed Final Judgment requires Defendants, at the Acquirer's option, to enter into a transition services agreement for back office, human resource, and information technology services and support for the night vision business for a period of up to 12 months. Paragraph IV(H) of the proposed Final Judgment requires Defendants, at the Acquirer's option, to enter into a contract for wafer sawing and sensor packaging services to help facilitate the development of the next-generation of U.S. military-grade image intensifier tubes, for a period of up to 12 months. With respect to any agreements entered into under Paragraph IV(G) or IV(H), the United States, in its sole discretion, may approve one or more extensions for a total of up to an additional six months. If the Acquirer seeks an extension of any such agreement, Defendants must notify the United States in writing at least three months prior to the date the underlying agreement expires. Paragraphs IV(G) and IV(H) further provide that employees of Defendants tasked with providing services under such agreements must not share any competitively sensitive information of the Acquirer with any other employee of Defendants.

The proposed Final Judgment also contains provisions designed to promote compliance and make the enforcement of the Final Judgment as effective as possible. Paragraph XIII(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XIII(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore all competition that would otherwise be harmed by the merger. Defendants agree that they will abide by the proposed Final Judgment

[1] Paragraph II(F) of the proposed Final Judgment defines Regulatory Approvals as ''any approvals or clearances pursuant to filings with the Committee on Foreign Investment in the United States (''CFIUS''), or under antitrust, competition, or other U.S. or international laws required for Acquirer's acquisition of the Divestiture Assets to proceed.''

and that they may be held in contempt of the Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XIII(C) of the proposed Final Judgment provides that should the Court find in an enforcement proceeding that Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of the proposed Final Judgment, Paragraph XIII(C) provides that, in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved prior to litigation, the Defendant agrees to reimburse the United States for attorneys' fees, experts' fees, or costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Paragraph XIII(D) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated under Section XIV. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XIV of the proposed Final Judgment provides that the Final Judgment shall expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the merger in the provision of U.S. military-grade image intensifier tubes by establishing a new, independent, and economically viable competitor to the merged entity.

IV. *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.

V. *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 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 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 the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Maribeth Petrizzi, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, D.C. 20530.

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

VI. *ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT*

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions preventing the merger of Harris and L3. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of U.S. military-grade image intensifier tubes in the relevant market identified by the United States. 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.

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

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

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

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including

> consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether the Final Judgment may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the Final Judgment, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States* v. *Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead:

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

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2]

The United States' predictions with respect to the efficacy of the remedy are to be afforded deference by the Court. *See, e.g.*, *Microsoft*, 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case' ''); *United States* v. *Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' (internal citations omitted)); *United States* v. *Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained in the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft*, 56 F.3d at 1461 (*quoting United States* v. *Western Elec. Co.*, 900 F.2d 283, 309 (D.C. Cir. 1990)).

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60.

In its 2004 amendments to the APPA,[3] Congress made clear its intent to preserve the practical benefits of utilizing Final Judgments in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *United States* v. *Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000)).

VIII. *DETERMINATIVE DOCUMENTS*

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

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Respectfully submitted,

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

[3] Pub. L. 108-237, § 221.