



**DEPARTMENT OF JUSTICE
Antitrust Division**

United States v. General Electric Company, et al.

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. General Electric Company, et. al., Civil Action No. 15-1460. On September 8, 2015, the United States filed a Complaint alleging that General Electric's proposed acquisition of Alstom S.A.'s power-related businesses 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 General Electric to divest Power Systems Mfg., LLC.

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, Litigation II 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, DC 20530,

Plaintiff,

v.

GENERAL ELECTRIC COMPANY
3135 Easton Turnpike
Fairfield, Connecticut 06828,

ALSTOM S.A.
3, Avenue André Malraux
92309 Levallois-Perret Cedex
France,

and

POWER SYSTEMS MFG., LLC,
1440 West Indiantown Road
Jupiter, Florida 33458,

Defendants.

CASE NO.: 1:15-cv-01460-RMC

JUDGE: Amy Berman Jackson

FILED: 09/08/2015

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 to enjoin the proposed acquisition of Alstom S.A. and Power Systems Mfg., LLC (“PSM”) by General Electric Company (“GE”) and to obtain other equitable relief. The United States alleges as follows:

I. NATURE OF THE ACTION

1. GE proposes to acquire PSM, a Florida-based wholly owned subsidiary of Alstom. GE is a leading producer of large gas turbines used in the United States for the production of electricity. GE and PSM are the two leading providers of aftermarket parts and service for the most common gas turbine model used for power generation in the United States, the GE 7FA, which represents nearly 70 percent of the GE installed base of gas turbines.

2. The proposed acquisition would eliminate head-to-head competition between GE and PSM. For a significant number of customers, typically power generation companies, GE and PSM are by far the two best sources of aftermarket parts and service for GE 7FA gas turbines, with a combined market share of approximately 92 percent. The proposed acquisition likely would give GE the ability to raise prices or decrease the quality of service provided to these customers. In addition, the proposed acquisition would eliminate PSM as a vigorous product innovator for the GE installed base and likely would reduce GE's incentive to innovate in response to PSM. As a result, the proposed acquisition likely would substantially lessen competition in the development, manufacture, and sale of gas turbine aftermarket parts and service in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. THE DEFENDANTS AND THE TRANSACTION

3. Defendant General Electric Company is a New York corporation with its principal offices in Fairfield, Connecticut. GE is a global manufacturing, technology and services company. GE's subsidiary, GE Power and Water, provides power generation, energy delivery, and water process technologies in a number of areas of the energy industry, including wind and solar, biogas and alternative fuels, and coal, oil, natural gas, and nuclear energy. GE offers a wide spectrum of heavy-duty gas turbines. GE also is the dominant supplier of

aftermarket parts and service for GE gas turbines. In 2014, GE's worldwide revenues were \$148.6 billion, and its U.S. revenues from aftermarket parts and service for GE 7FA gas turbines were approximately \$730 million.

4. Defendant Power Systems Mfg., LLC, a Delaware corporation headquartered in Jupiter, Florida, is a wholly owned subsidiary of Alstom, a French corporation headquartered in Levallois-Perret, France. Alstom offers global power generation, electric grid, and rail solution products and services. PSM provides aftermarket parts and service for a variety of engines manufactured by other companies and for GE gas turbine engines, including the GE 7FA model. In 2014, PSM's worldwide revenues were approximately \$226 million, and its U.S. revenues for aftermarket parts and service for GE 7FA gas turbines were approximately \$90 million.

5. Pursuant to a set of agreements dated November 4, 2014, GE intends to enter a multi-stage transaction with Alstom. First, GE will purchase Alstom's thermal and renewable power and grid business. Then, Alstom will acquire GE's rail signaling business. Finally, GE and Alstom will enter three joint ventures, each 51 percent owned by GE, involving the renewable energy businesses, the grid, and a global nuclear and French steam turbine business, in which the French government subsequently will obtain preferred shares and governance rights. GE will maintain complete ownership of the thermal power business, including PSM, acquired from Alstom. The value of the multi-stage transaction is approximately \$13.8 billion.

III. JURISDICTION AND VENUE

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

7. Defendants GE and PSM develop, manufacture, and sell aftermarket parts and service for GE 7FA gas turbines in the flow of interstate commerce. Defendants' activities in the development, manufacture, and sale of aftermarket parts and service for GE 7FA gas turbines substantially affect interstate commerce. The 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 the District of Columbia. Venue is therefore proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

IV. TRADE AND COMMERCE

A. Industry Background

9. Gas turbines are a type of internal combustion engine in which burning of an air-fuel mixture produces hot gases that spin a turbine to produce power. Gas turbines have been used to generate electricity since the 1930s. Today, gas turbines are widely used for power generation throughout the United States.

10. The key internal working parts of a gas turbine engine are the rotor, the buckets (also known as blades), and the nozzles (also known as vanes). The rotor is the main rotating component of the turbine. The buckets and nozzles are located in the combustion chamber and for the GE 7FA are configured in three stages. Stage one parts are the most difficult to design and manufacture, due to required heat tolerances, and are the most costly. The combustion chamber of the turbine is super-heated during its operation and the bucket and nozzle parts must be cooled to prevent melting the alloy materials that comprise the chamber. A full set of replacement parts typically can range in price from several million dollars up to \$15 million.

11. Gas turbines may be classified as mature or non-mature. Maturity relates to whether the gas turbine has been in operation long enough for aftermarket firms to reverse engineer and manufacture formerly proprietary replacement parts. Generally, a turbine is considered mature within 10 to 15 years after it is introduced into the market or installed. Mature turbines, like other mechanical equipment, require servicing and new or refurbished replacement parts.

12. GE 7FA gas turbines have life spans of approximately 30 years. Service is needed every three to eight years, with major overhauls required every 10 to 16 years. Gas turbine aftermarket parts and service can be provided by the original equipment manufacturer (“OEM”) that manufactured the original equipment or by an independent service provider. With the initial sale of the gas turbine, the OEM and the customer usually enter into a long-term service agreement (“LTSA”), which may range from five to 15 years in duration. LTSAs, which are typically based on total hours of operation, cover the provision of replacement parts and service after the installation of the turbine. If a customer enters into a LTSA with the OEM, typically an independent service provider is unable to compete for the replacement parts or service business of that customer for the length of that LTSA. Independent service providers may compete for a customer’s replacement parts and service business only upon the expiration of the LTSA. The OEM, however, often seeks to enter another LTSA when the first LTSA expires.

13. Some independent service providers offer only aftermarket service or a limited range of aftermarket parts. Generally, more firms provide older parts or basic services; fewer are able to provide parts or services that satisfy the heat tolerances of the first stage of the hot gas portion of the gas turbine. GE’s 7FA gas turbine was first installed in 1990 and remains the most common and one of the most technologically advanced GE models installed today. Only a

limited number of firms have the capability and experience to reverse engineer, manufacture, and improve the formerly proprietary parts.

14. Currently, GE's U.S. installed base numbers more than 1220 machines and comprises approximately 68 percent of all gas turbines in service in the power generation industry (generally, large gas turbines over 90 megawatts). Of this installed base, GE 7FAs represent 54 percent.

B. The Relevant Product Market

15. Gas turbine aftermarket parts and service are distinct for each brand and model. A rotor for a non-GE machine could not be used on a GE 7FA, and a nozzle for a GE 7FA engine likely could not be used on another GE model machine. Moreover, other types of parts and service cannot be substituted for GE 7FA aftermarket parts and service. For instance, aftermarket parts and service for steam or wind turbines cannot be used for GE 7FA gas turbines.

16. A small but significant increase in the price of aftermarket parts and service for GE 7FA gas turbines would not cause customers of those parts and service to substitute a different kind of aftermarket part or service, or to reduce purchases of aftermarket parts or service for GE 7FA gas turbines, in volumes sufficient to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of aftermarket parts and service for GE 7FA gas turbines is a line of commerce and relevant market within the meaning of Section 7 of the Clayton Act.

C. The Relevant Geographic Market

17. Although aftermarket parts for GE 7FA gas turbines may be manufactured outside of the United States, suppliers of aftermarket parts for GE 7FA gas turbines typically deliver them to their customer's locations in the United States.

18. Most U.S. customers of aftermarket parts and service for GE 7FA gas turbines consider only those qualified suppliers with a strong national presence and local support, including regional parts distribution centers. U.S. customers insist on facilities located in the United States for timely delivery of parts and prompt deployment of personnel.

19. A small but significant increase in the price of aftermarket parts and service for GE 7FA gas turbines in the United States would not cause a sufficient number of U.S. customers to turn to providers of those parts and service that do not have a substantial presence in the United States so as to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

D. Anticompetitive Effects of the Proposed Acquisition

20. GE's acquisition of PSM would eliminate competition between GE and PSM for aftermarket parts and service for GE 7FA gas turbines in the United States. The competition between GE and PSM in the development, manufacture, and sale of aftermarket parts and service for GE 7FA gas turbines in the United States has benefitted customers. GE and PSM compete directly on price, innovation, and quality of service.

21. Only three competitors, including GE and PSM, develop, manufacture, and sell aftermarket parts to offer with their service for GE 7FA gas turbines in the United States. GE and PSM have market shares of 83 and nine percent respectively. A third firm, which manufactures some aftermarket parts, has a market share of two percent. The remaining fringe participants in aftermarket service in the United States do not manufacture their own parts and must provide either refurbished parts or parts made by PSM or the third firm because GE does not make parts available to third-party service providers.

22. Customers with an expiring GE LTSA who want a provider of new aftermarket parts other than GE have two options, PSM or the third firm. Accordingly, the acquisition would reduce the number of competitors for the development, manufacture, and sale of aftermarket parts and service for GE 7FAs from three to two.

23. The third firm does not provide a complete line of 7FA aftermarket parts. In addition, the third firm does not meet the supplier qualification standards of some customers. For a customer trying to purchase a 7FA part not sold by the third firm or who has qualification standards not met by the third firm, the acquisition would reduce the number of suppliers for the development, manufacture, and sale of aftermarket parts and service for GE 7FAs to only one.

24. The response of the third firm and the fringe participants in aftermarket service would not be sufficient to constrain a unilateral exercise of market power by GE after the acquisition. The effect of PSM's entry on prices shows the impact of its presence in the market. Since 1998, when PSM began competing with GE to provide aftermarket parts and service for GE 7FA gas turbines, prices of GE 7FA replacement parts dropped by 60 to 70 percent. Further, gas turbine life-cycle costs (prices for GE LTSAs and renewed GE LTSAs) dropped by as much as 50 percent when PSM began to offer replacement parts for the GE 7FA gas turbines. Although other firms, including the third firm, since have entered the market with some aftermarket parts and services offerings, no firm, or combination of firms, is positioned to constrain a unilateral exercise of market power by GE after the acquisition.

25. A merged GE and PSM also likely would reduce innovation in the development of improved aftermarket parts for GE gas turbines. PSM has led innovation for aftermarket parts for GE 7FA turbines. Some of the aftermarket parts developed by PSM for GE turbines are superior in performance to GE parts.

26. As articulated in the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission, the Herfindahl-Hirschman Index (“HHI”), discussed in Appendix A, is a measure of market concentration. Market concentration is often a useful indicator of the level of competitive vigor in a market and the likely competitive effects of a merger. The more concentrated a market, the more likely it is that a transaction would result in a meaningful reduction in competition, harming consumers.

27. In the U.S. market for the development, manufacture, and sale of aftermarket parts and service for GE 7FA gas turbines, the pre-merger HHI is 6,994; the post-merger HHI is 8,448, with an increase in the HHI of 1,494. Consistent with the *Horizontal Merger Guidelines*, this market is highly concentrated and would become significantly more concentrated as a result of the proposed acquisition.

28. The proposed transaction, therefore, likely would substantially lessen competition in the development, manufacture, and sale of aftermarket parts and service for GE 7FA gas turbines in the United States and lead to higher prices and decreased innovation and quality of service in violation of Section 7 of the Clayton Act.

E. Difficulty of Entry

29. Entry of additional competitors into the development, manufacture, and sale of aftermarket parts and service for GE 7FA gas turbines in the United States is unlikely to be timely or sufficient to prevent the harm to competition caused by the elimination of PSM as a supplier of aftermarket products and service for the GE 7FA gas turbine.

30. Firms attempting to enter into the development, manufacture, and sale of aftermarket parts and service for GE 7FA gas turbines face substantial entry barriers in terms of

cost and time. While many of the patents have expired on older GE 7FA models, a competitor must have the capability to produce the most complex replacement parts.

31. First, entrants must have the technical capabilities necessary to design and manufacture the parts. Specific, unique buckets and nozzles are cast, and highly customized coatings are required to protect these metal alloy parts from melting in the combustion chamber. The required capabilities include design expertise, metals casting technology, and metals coating technology.

32. Second, customers of aftermarket parts or service that involve a shutdown of the gas turbine (“outage”) often require the provider to have a comprehensive list of parts, expertise with the specific gas turbine model and parts or service, and a superior record and reputation with customers. Such shutdowns involve significant expense and effort, so customers minimize the risk of extended or additional outages. Customers often take advantage of planned service outages to invite potential suppliers to obtain measurements and conduct inspections required for bids for the next round of planned aftermarket parts and service. Obtaining each of the qualifications required for aftermarket parts or service that involves outages is a significant challenge for a new entrant.

33. As a result of these barriers, entry into the development, manufacture, and sale of aftermarket parts and service for GE 7FA gas turbines in the United States would not be timely, likely, or sufficient to defeat the substantial lessening of competition that likely would result from GE’s acquisition of PSM.

V. VIOLATION ALLEGED

34. The acquisition of PSM by GE likely would substantially lessen competition for the development, manufacture, and sale of aftermarket parts and service for GE 7FA gas turbines in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

35. Unless enjoined, the transaction likely would have the following anticompetitive effects, among others:

a. actual and potential competition between GE and PSM in the market for the development, manufacture, and sale of aftermarket parts and service for GE 7FA gas turbines in the United States would be eliminated;

b. competition generally in the market for the development, manufacture, and sale of aftermarket parts and service for GE 7FA gas turbines in the United States would be substantially lessened;

c. prices for aftermarket parts and service for GE 7FA gas turbines in the United States likely would be less favorable, and innovation and quality of service relating to aftermarket parts and service for GE 7FA gas turbines in the United States likely would decline.

VI. REQUESTED RELIEF

36. The United States requests that this Court:

a. adjudge and decree GE's proposed acquisition of PSM to be unlawful and in violation of 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 acquisition of PSM by GE or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine PSM with the operations of GE;

c. award the United States its costs of this action; and

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

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

_____/s/
Renata B. Hesse
Acting Assistant Attorney General

_____/s/
Maribeth Petrizzi
Chief, Litigation II Section
D.C. Bar # 435204

_____/s/
David I. Gelfand
Deputy Assistant Attorney General
D.C. Bar # 416596

_____/s/
Dorothy B. Fountain
Assistant Chief, Litigation II Section
D.C. Bar # 439469

_____/s/
Patricia A. Brink
Director of Civil Enforcement

_____/s/
James K. Foster
Stephen A. Harris
Kerrie J. Freeborn (D.C. Bar # 503143)
Doha G. Mekki
Attorneys
U.S. Department of Justice
Antitrust Division, Litigation II Section
450 Fifth Street, NW, Suite 8700
Washington, DC 20530
Tel.: (202) 514-8362
Fax: (202) 514-9033
Email: james.foster@usdoj.gov

Dated: September 8, 2015

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 percent, 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 a maximum of 10,000 points when it 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 1,500 and 2,500 points are considered to be moderately concentrated and markets in which the HHI is in excess of 2,500 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* § 5.3 (issued by the U.S. Department of Justice and the Federal Trade Commission on August 19, 2010).

Transactions that increase the HHI by more than 200 points in highly concentrated markets will be presumed likely to enhance market power. *Id.*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENERAL ELECTRIC COMPANY,

ALSTOM S.A., and

POWER SYSTEMS MFG., LLC,

Defendants.

CASE NO.: 1:15-cv-01460-RMC

JUDGE: Amy Berman Jackson

FILED: 09/08/2015

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

Defendant General Electric Company (“GE”) and defendant Alstom S.A. entered into a set of agreements, dated November 4, 2014, pursuant to which GE intends to enter a multi-stage transaction with Alstom in which GE will acquire all of Alstom’s power-related businesses, including Alstom’s wholly owned subsidiary, defendant Power Systems Mfg., LLC (“PSM”). The value of the multi-stage transaction is approximately \$13.8 billion.

The United States filed a civil antitrust Complaint on September 8, 2015, seeking to

enjoin the proposed acquisition. The Complaint alleges that the likely effect of the acquisition would be to lessen competition substantially in the development, manufacture, and sale of aftermarket parts and service for GE 7FA gas turbines in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition likely would give GE the ability to raise prices, lessen innovation, and lower the quality of service for customers in the United States.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, GE is required to divest PSM, which includes the research, development, manufacturing, and repair and reconditioning facilities located in Jupiter, Florida, and Missouri City, Texas, and all of PSM's tangible and intangible assets. Under the terms of the Hold Separate Stipulation and Order, defendants will take certain steps to ensure that PSM is operated as a competitively independent, economically viable and ongoing business concern that will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered 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 Transaction

Defendant GE is a New York corporation with its principal offices in Fairfield, Connecticut. GE is a global manufacturing, technology and services company. GE's subsidiary, GE Power and Water, provides power generation, energy delivery, and water process technologies in a number of areas of the energy industry, including wind and solar, biogas and alternative fuels, and coal, oil, natural gas, and nuclear energy. GE offers a wide spectrum of heavy-duty gas turbines. GE also is the dominant supplier of aftermarket parts and service for GE gas turbines. In 2014, GE's worldwide revenues were \$148.6 billion, and its revenues from aftermarket parts and service for the relevant GE gas turbines were approximately \$730 million.

Defendant PSM, a Delaware corporation headquartered in Jupiter, Florida, is a wholly and directly owned subsidiary of defendant Alstom, a French corporation headquartered in Levallois-Perret, France. Alstom offers global power generation, electric grid, and rail solution products and services. PSM provides aftermarket parts and service for a variety of engines manufactured by other companies and for GE gas turbine engines, including the GE 7FA model (described below). In 2014, PSM's worldwide revenues were approximately \$226 million, and revenues for aftermarket parts and service for the GE 7FA gas turbines were approximately \$90 million.

Pursuant to a set of agreements dated November 4, 2014, GE intends to enter a multi-stage transaction with Alstom. First, GE will purchase Alstom's thermal and renewable power and grid business. Then, Alstom will acquire GE's rail signaling business. Finally, GE and Alstom will enter three joint ventures, each 51 percent owned by GE, involving the renewable energy businesses, the grid, and a global nuclear and French steam turbine business, in which the French government will hold preferred shares and governance rights. GE will maintain complete

ownership of the thermal power business, including PSM, acquired from Alstom. The value of the multi-stage transaction is approximately \$13.8 billion.

B. Competitive Effects of the Transaction

An extensive investigation by the Department revealed that PSM is GE's primary competitor in the aftermarket sale of parts and services for the installed base of GE gas turbines in the United States, and that GE's acquisition of PSM likely would eliminate competition between GE and PSM in this market. A substantial number of power generation customers indicated that they currently experience the advantages of vigorous competition between PSM and GE, and the status of PSM as GE's primary competitor is confirmed in the firms' respective business documents. The competition between GE and PSM in the development, manufacture, and sale of aftermarket parts and service, particularly for GE 7FA gas turbines, clearly has benefitted customers on price, quality of service, and innovation.

Gas turbines are a type of internal combustion engine in which burning of an air-fuel mixture produces hot gases that spin a turbine to produce power. Gas turbines have been used to generate electricity since the 1930s. Today, gas turbines are widely used for power generation throughout the United States. The key internal working parts of a gas turbine engine are the rotor, the buckets (also known as blades), and the nozzles (also known as vanes). A full set of replacement parts typically can range in price from several million dollars up to \$15 million.

Mature turbines, like other mechanical equipment, require servicing and new or refurbished replacement parts. Service is needed every three to eight years, with major overhauls required every 10 to 16 years. Gas turbine aftermarket parts and service are provided by the original equipment manufacturer or by an independent service provider. GE 7FA gas turbines have life spans of approximately 30 years. With the initial sale of the gas turbine, the OEM and

the customer usually enter into a long-term service agreement (LTSA), which may range from five to 15 years in duration. LTSAs, which are typically based on total hours of operation, cover the provision of replacement parts and service after the installation of the turbine. If a customer enters into a LTSA with the original equipment manufacturer, typically an independent service provider is unable to compete for the replacement parts or service business of that customer for the length of that LTSA. The original equipment manufacturer, however, often seeks to enter another LTSA when the first LTSA expires, and at that time competes with independent service providers.

GE's 7FA gas turbines remain the most common and one of the most technologically advanced GE models installed today. Only a limited number of firms have the capability and experience to reverse engineer, manufacture, and improve the formerly proprietary parts. Currently, GE's U.S. installed base is approximately 68 percent of all gas turbines in service in the power generation industry (generally, large gas turbines over 90 megawatts) and numbers over 1,220 machines; of these, 663 are GE 7FAs.

The Complaint alleges that, because gas turbine aftermarket parts and service are used exclusively for gas turbines, and because aftermarket parts and service for use in other types of turbines, such as steam or wind turbines, cannot be used in gas turbines, a small but significant increase in the price of aftermarket parts and service for GE 7FA gas turbines would not cause customers of those parts and service to substitute a different kind of aftermarket part or service, or to reduce purchases of aftermarket parts or service for GE 7FA gas turbines, in volumes sufficient to make such a price increase unprofitable. Accordingly, the development, manufacture, and sale of aftermarket parts and service for GE 7FA gas turbines is a line of commerce and relevant market within the meaning of Section 7 of the Clayton Act.

Further, according to the Complaint, most U.S. customers of aftermarket parts and service for GE 7FA gas turbines consider only those qualified suppliers with a strong national presence and local support, including regional parts distribution centers. U.S. customers insist on facilities located in the United States for timely delivery of parts and prompt deployment of personnel. A small but significant increase in the price of aftermarket parts and service for GE 7FA gas turbines in the United States would not cause a sufficient number of U.S. customers to turn to providers of those parts and service that do not have a substantial presence in the United States so as to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

The Complaint also alleges that currently only three competitors, including GE and PSM, develop, manufacture, and sell new aftermarket parts to offer with their service for GE 7FA gas turbines in the United States. GE and PSM have market shares of 83 and nine percent respectively. A third firm, which manufactures some aftermarket parts, has a market share of only two percent. The remaining fringe participants in aftermarket service in the United States do not manufacture their own new parts and must provide either refurbished parts or parts made by PSM or the third firm because GE does not make parts available to third-party service providers.

According to the Complaint, the response of the third firm and the fringe participants in aftermarket parts and service would not be sufficient to constrain a unilateral exercise of market power by GE after the acquisition, nor would entry deter the expected competitive harm. Firms attempting to enter or expand into the development, manufacture, and sale of new aftermarket parts and service for GE 7FA gas turbines face substantial entry barriers in terms of cost and time. While many of the patents have expired on older GE 7FA models, a competitor must have

the capability to produce the most complex replacement parts. Entrants must have extensive technical capabilities necessary to design and manufacture the parts, for example, unique buckets and nozzles are cast, and highly customized coatings are required to protect these metal alloy parts from melting in the combustion chamber. The required capabilities include design expertise, metals casting technology, and metals coating technology. Moreover, proven quality, extensive testing, and certification from customers is required before a new firm would be acceptable to customers.

The Complaint also alleges that the effect of PSM's successful entry on prices shows the beneficial impact of its presence in the market. Since 1998, when PSM began competing with GE to provide aftermarket parts and service for GE 7FA gas turbines, prices of GE 7FA replacement parts dropped by 60 to 70 percent. Further, gas turbine life-cycle costs (prices for GE LTSAs and renewed GE LTSAs) dropped by as much as 50 percent when PSM began to offer replacement parts for the GE 7FA gas turbines. Although other firms since have entered the market with some aftermarket parts and services, no firm, or combination of firms, is now positioned to constrain a unilateral exercise of market power by GE after the acquisition.

The Complaint also alleges that a merged GE and PSM likely would reduce innovation in the development of improved aftermarket parts for GE gas turbines.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the sale aftermarket parts and service used in the installed base of GE 7FA gas turbines by preserving an independent and economically viable competitor. Section IV of the proposed Final Judgment requires GE, within 90 days after the filing of the Complaint, or 5 days after notice of the entry of the Final Judgment by the Court,

whichever is later, to divest PSM as a viable ongoing business. PSM must be divested in such a way as to satisfy the United States, in its sole discretion, that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

Pursuant to Paragraph IV(H), final approval of the divestiture of PSM, including the identity of the acquirer, is left to the sole discretion of the United States to ensure the continued independence and viability of PSM in the relevant market. Ansaldo Energia S.P.A has been identified by GE as the expected purchaser of PSM and is currently in negotiations with GE for a final purchase agreement. As provided in Paragraph IV(B), in the event Ansaldo is not approved by the Department as the acquirer, another acquirer may buy PSM, also subject to approval by the Department in its sole discretion.

In Section X, the proposed Final Judgment also provides that the United States may appoint a Monitoring Trustee with the power and authority to investigate and report on defendants' compliance with the terms of the proposed Final Judgment and the Hold Separate Stipulation and Order during the pendency of the divestiture, including regular reports on the process of the divestiture. In this matter, the European Commission also expects to appoint a Monitoring Trustee to facilitate the accomplishment of a divestiture of assets relating to competitive issues outside the United States. Coordination between the Department and the European Commission relating to the appointment of a Monitoring Trustee will help ensure that the agencies' respective divestitures will be consistent and will be accomplished effectively.

The Monitoring Trustee would not have any responsibility or obligation for the operation of the parties' businesses. The Monitoring Trustee would serve at GE's expense, on such terms

and conditions as the United States approves, and defendants must assist the trustee in fulfilling its obligations. The Monitoring Trustee would file monthly reports and would serve until the divestiture is complete. The Monitoring Trustee would serve until the divestiture of PSM is finalized pursuant to either Section IV or Section V of the proposed Final Judgment.

According to Section V of the proposed Final Judgment, in the event that GE does not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a Divestiture Trustee selected by the United States to effect the divestiture. If a Divestiture Trustee is appointed, the proposed Final Judgment provides that GE will pay all costs and expenses of the trustee. The Divestiture 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 its appointment becomes effective, the Divestiture Trustee will file monthly reports with the Court and the United States setting forth its efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the Divestiture 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 acquisition in the provision of aftermarket parts and service used in the installed base of GE 7FA gas turbines by preserving PSM as an independent and vigorous competitor to GE.

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 sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
450 Fifth Street, N.W.
Washington, DC 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 litigated and sought preliminary and permanent injunctions against GE's acquisition of Alstom's entire power business. The United States is satisfied, however, that the divestiture of PSM described in the proposed Final Judgment will preserve competition for the provision of aftermarket parts and service for the installed base of GE 7FA gas turbines in 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 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 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. U.S. Airways Group, Inc.*, No. 13-cv-1236 (CKK), 2014-1 Trade Cas. (CCH) ¶ 78, 748, 2014 U.S. Dist. LEXIS 57801, at *7 (D.D.C. Apr. 25, 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").¹

¹ The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

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) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

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

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).² In determining whether a proposed settlement is in the public interest, a district court “must accord deference to the government’s predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.” *SBC Commc’ns*, 489 F. Supp. 2d at 17; *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *16 (noting that a court should not reject

² Cf. *BNS*, 858 F.2d at 464 (holding that the court’s “ultimate authority under the [APPA] is limited to approving or disapproving the consent decree”); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to “look at the overall picture not hypercritically, nor with a microscope, but with an artist’s reducing glass”). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether “the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the

the proposed remedies because it believes others are preferable); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be “deferential to the government’s predictions as to the effect of the proposed remedies”); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States’ prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. “[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ‘within the reaches of public interest.’” *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff’d sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *8 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft*, 56 F.3d at 1461); *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States “need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.” *SBC Commc’ns*, 489 F. Supp. 2d at 17.

Moreover, the court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to “construct [its] own hypothetical case and then evaluate the decree against

‘reaches of the public interest’’).

that case.” *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *9 (noting that the court must simply determine whether there is a factual foundation for the government’s decisions such that its conclusions regarding the proposed settlements are reasonable; *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (“the ‘public interest’ is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged”). Because the “court’s authority to review the decree depends entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60. As this Court recently confirmed in *SBC Communications*, courts “cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.” *SBC Commc’ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *9 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement

of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.³ A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *9.

VIII. DETERMINATIVE DOCUMENTS

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

Dated: September 8, 2015

Respectfully submitted,

/s/

James K. Foster
United States Department of Justice
Antitrust Division, Litigation II Section
450 Fifth Street, NW
Suite 8700
Washington, DC 20530
Tel.: (202) 514-8362
Fax: (202) 514-9033
Email: james.foster@usdoj.gov

³ See *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.*, No. 73-CV-681-W-1, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93-298, at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENERAL ELECTRIC COMPANY,

ALSTOM S.A., and

POWER SYSTEMS MFG., LLC,

Defendants.

CASE NO.: 1:15-cv-01460-RMC

JUDGE: Amy Berman Jackson

FILED: 09/08/2015

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on September 8, 2015, the United States and defendants, General Electric Company, Alstom S.A., and Power Systems Mfg., LLC, 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 the 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 Ansaldo or another entity to which defendants divest the Divestiture Assets.

B. “GE” means defendant General Electric Company, a New York corporation with its headquarters in Fairfield, Connecticut, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Alstom” means defendant Alstom S.A., a French corporation with its headquarters in Levallois-Perret, France, its successors and assigns, and its subsidiaries,

divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Closing” means the consummation of the divestiture of all the Divestiture Assets pursuant to either Section IV or V of this Final Judgment.

E. “Completion of the Transaction” means the closing of GE’s acquisition of Alstom.

F. “PSM” means defendant Power Systems Mfg., LLC, a Delaware company with its headquarters in Jupiter, Florida, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

G. “Ansaldo” means Ansaldo Energia S.P.A., an Italian corporation with its headquarters in Genoa, Italy, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

H. “Divestiture Assets” means PSM and the assets owned or under the control of PSM, including, but not limited to:

1. PSM’s rights with respect to the facilities located at 1440 West Indiantown Road, Jupiter, Florida 33458 and 4318 South Dr., Missouri City, Texas 77489;

2. All tangible assets, including 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 and authorizations issued by any governmental organization; 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; 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 PSM provides to its own employees, customers, suppliers, agents or licensees, and all research data relating to PSM, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

III. APPLICABILITY

A. This Final Judgment applies to GE, Alstom, and PSM, 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 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, they 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. DIVESTITURES

A. GE is ordered and directed, within ninety (90) 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 use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In the event that Ansaldo is not the Acquirer, GE 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 such information or documents subject to the attorney-client privileges 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 information relating to PSM personnel to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any PSM employee or any Alstom employee whose primary responsibility is the production, development and sale of aftermarket parts and service for GE 7FA gas turbines.

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 PSM; 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. Defendant GE shall warrant to the Acquirer that the Divestiture Assets will be operational on the Closing date.

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

G. Defendant GE 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.

H. 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 in the development, manufacture, and sale of aftermarket parts and service for GE 7FA gas turbines. The divestitures, whether pursuant to Section IV or V of this Final Judgment,

- (1) shall be made to an Acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the development, manufacture, and sale of aftermarket parts and service for GE 7FA gas turbines; 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 GE has 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 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 this 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 investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents 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 GE 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 its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to GE 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 providing the Divestiture 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. If the Divestiture Trustee and GE are unable to reach agreement on the Divestiture Trustee's or any agent's or consultant's compensation or other terms and conditions of engagement within fourteen (14) calendar days of 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 professionals or agents, 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 consultants, accountants, attorneys, and other agents 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 develop financial and other information relevant to such business as the

Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or 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 and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. 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. 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 contains 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, it 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, GE 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 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 GE and PSM, 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 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 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 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 V of this Final Judgment.

VIII. HOLD SEPARATE

Until the divestiture required by this Final Judgment has been accomplished, Alstom shall until the Completion of the Transaction, and GE shall until Closing, 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 divestiture ordered by this 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 V, Alstom shall until the Completion of the Transaction, and GE shall until Closing, deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or 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, Alstom shall until the Completion of the Transaction, and GE shall until Closing, 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. APPOINTMENT OF MONITORING TRUSTEE

A. Upon application of the United States, the Court shall appoint a Monitoring Trustee selected by the United States and approved by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor defendants' compliance with the terms of this Final Judgment and the Hold Separate Stipulation and Order entered by this Court, and shall have such other powers as this Court deems appropriate. The Monitoring Trustee shall be required to investigate and report on the defendants' compliance with this Final Judgment and the Hold Separate Stipulation and Order and the defendants' progress toward effectuating the purposes of this Final Judgment.

C. Subject to Paragraph X(E) of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of GE any consultants, accountants, attorneys, or other agents, who shall be solely accountable to the Monitoring Trustee, reasonably necessary in the Monitoring Trustee's judgment. Any such consultants, accountants, attorneys, or other agents shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

D. Defendants shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under any Order of this Court on any ground other than the Monitoring Trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the Monitoring Trustee within ten (10) calendar days after the action taken by the Monitoring Trustee giving rise to the defendants' objection.

E. The Monitoring Trustee shall serve at the cost and expense of GE pursuant to a written agreement with defendants and on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The compensation of the Monitoring Trustee and any consultants, accountants, attorneys, and other agents retained by the Monitoring Trustee shall be on reasonable and customary terms

commensurate with the individuals' experience and responsibilities. If the Monitoring Trustee and GE are unable to reach agreement on the Monitoring Trustee's or any agent's or consultant's compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Monitoring Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Monitoring Trustee shall, within three (3) business days of hiring any consultants, accountants, attorneys, or other agents, provide written notice of such hiring and the rate of compensation to defendants and the United States.

F. The Monitoring Trustee shall have no responsibility or obligation for the operation of defendants' businesses.

G. Defendants shall use their best efforts to assist the Monitoring Trustee in monitoring defendants' compliance with their individual obligations under this Final Judgment and under the Hold Separate Stipulation and Order. The Monitoring Trustee and any consultants, accountants, attorneys, and other agents retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to compliance with this Final Judgment, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Monitoring Trustee's accomplishment of its responsibilities.

H. After its appointment, the Monitoring Trustee shall file reports monthly, or more frequently as needed, with the United States, and, as appropriate, the Court setting forth defendants' efforts to comply with their obligations under this Final Judgment and under the Hold Separate Stipulation and Order. To the extent such reports contain information that the

Monitoring Trustee deems confidential, such reports shall not be filed in the public docket of the Court.

I. The Monitoring Trustee shall serve until the divestiture of all the Divestiture Assets is finalized pursuant to either Section IV or V of this Final Judgment.

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

XI. 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 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 Department of Justice, 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 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 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), or 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).

XII. NO REACQUISITION

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

XIII. 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.

XIV. EXPIRATION OF FINAL JUDGMENT

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

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, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

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

United States District Judge

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