DEPARTMENT OF JUSTICE
Antitrust Division

United States v. Caledonia Investments plc

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. Caledonia Investments plc, Civil Action No. 1:16-cv-01620 (CRC). On August 10, 2016, the United States filed a Complaint alleging that Caledonia Investments plc violated the premerger notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, with respect to its acquisition of voting securities of Bristow Group, Inc. The proposed Final Judgment, filed at the same time as the Complaint, requires Caledonia Investments plc to pay a civil penalty of $480,000.

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 Daniel P. Ducore, Special Attorney, c/o

Federal Trade Commission, 600 Pennsylvania Avenue, NW, CC-8416, Washington, DC 20580 (telephone: 202-326-2526; e-mail: dducore@ftc.gov).

/s/
Patricia A. Brink
Director of Civil Enforcement

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA c/o Department of Justice Washington, D.C. 20530, Plaintiff, v. CALEDONIA INVESTMENTS PLC Cayzer House 30 Buckingham Gate London, UK SW1E6NN Defendant.	CASE NO.: 1:16-cv-01620 JUDGE: Christopher R. Cooper FILED: 08/10/2016

COMPLAINT FOR CIVIL PENALTIES FOR FAILURE TO COMPLY WITH THE PREMERGER REPORTING AND WAITING REQUIREMENTS OF THE HART-SCOTT RODINO ACT

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil antitrust action to obtain monetary relief in the form of civil penalties against Defendant Caledonia Investments plc ("Caledonia"). Plaintiff alleges as follows:

NATURE OF THE ACTION

1. Caledonia violated the notice and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a ("HSR Act" or "Act"), with respect to the acquisition of voting securities of Bristow Group, Inc. ("Bristow") in February 2014.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. § 18a(g), and pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and over the Defendant by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

3. Venue is properly based in this District by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

THE DEFENDANT

4. Defendant Caledonia is a public limited company organized under the laws of the United Kingdom with its principal office and place of business at Cayzer House, 30 Buckingham Gate, London, UK SW1E6NN. Caledonia is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. §18a(a)(1). At all times relevant to this complaint, Caledonia had sales or assets in excess of $141.8 million.

OTHER ENTITIES

5. Bristow is a corporation organized under the laws of Delaware with its principal place of business at 2103 City West Boulevard, Houston, TX 77042. Bristow is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. §18a(a)(1). At all times relevant to this complaint, Bristow had sales or assets in excess of $14.2 million. Bristow was

formerly named Offshore Logistics, Inc. ("Offshore Logistics").

THE HART-SCOTT-RODINO ACT AND RULES

6. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notifications with the federal antitrust agencies and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. § 18a(a) and (b). These notification and waiting period requirements apply to acquisitions that meet the HSR Act's thresholds, which are adjusted annually. During the period of 2014 pertinent to this complaint, the HSR Act's reporting and waiting period requirements applied to most transactions that would result in the acquiring person holding more than $50 million, as adjusted (at the time $70.9 million), if certain sales and asset thresholds were met, and all transactions (regardless of the size of the acquiring or acquired persons) where the acquiring person would hold more than $200 million, as adjusted (at the time $283.6 million), of the acquired person's voting securities and/or assets, except for certain exempted transactions.

7. The HSR Act's notification and waiting period are intended to give the federal antitrust agencies prior notice of, and information about, proposed transactions. The waiting period is also intended to provide the federal antitrust agencies with an opportunity to investigate a proposed transaction and to obtain effective preliminary relief to prevent the consummation of a transaction that may violate the antitrust laws.

8. Pursuant to Section (d)(2) of the HSR Act, 15 U.S.C. § 18a(d)(2), rules were promulgated to carry out the purposes of the HSR Act. 16 C.F.R. §§ 801-803 ("HSR Rules"). The HSR Rules, among other things, define terms contained in the HSR Act.

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

voting securities of [an] issuer which will be held by the acquiring person after the consummation of an acquisition" – including any held before the acquisition – are deemed held "as a result of" the acquisition at issue.

10. Pursuant to sections 801.13(a)(2) and 801.10(c)(1) of the HSR Rules, 16 C.F.R. § 801.13(a)(2) and. § 801.10(c)(1), the value of publicly traded voting securities already held is the market price, defined to be the lowest closing price within 45 days prior to the subsequent acquisition.

11. Section 802.9 of the HSR Rules, 16 C.F.R. § 802.9, provides that acquisitions solely for the purpose of investment are exempt from the notification and waiting period requirements if the acquirer will hold ten percent or less of the issuer's voting securities.

12. Section 801.1(i)(1) of the HSR Rules, 16 C.F.R. § 801.1(i)(1), defines the term "solely for the purpose of investment" as follows:

> Voting securities are held or acquired "solely for the purpose of investment" if the person holding or acquiring such voting securities has no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer.

13. Section 802.21(a) of the HSR Rules, 16 C.F.R. § 802.21(a), provides generally that a person who files and observes the waiting period before crossing a filing threshold may, within five years of the expiration of the waiting period, acquire additional voting securities of the issuer that do not cross a higher threshold, so long as the person does not acquire control of the issuer. For example, a person who files and observes the waiting period before crossing the $50 million threshold, as adjusted, may, assuming the person does not acquire control, acquire additional voting securities of the issuer up to the next threshold, which is $100 million, as adjusted. The acquiring person must file again, however, before it can cross the next higher

threshold, $500 million, as adjusted, or before the person acquires control of the issuer.

14. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), provides that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a maximum civil penalty of $10,000 for each day during which such person is in violation. Pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104-134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 74 Fed. Reg. 857 (Jan. 9, 2009), the maximum amount of civil penalty was increased to $16,000 per day. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 81 Fed. Reg. 42,476 (June 30, 2016), the maximum amount of civil penalty was increased to $40,000 per day.

DEFENDANT'S PRIOR VIOLATION OF THE HSR ACT

15. On December 19, 1996, Caledonia acquired 1,300,000 shares of voting securities of Offshore Logistics in a transaction negotiated with Offshore Logistics. As a result of that transaction, Caledonia held approximately six percent of the voting securities of Offshore Logistics, valued at approximately $19.8 million. The transaction gave Caledonia the right to appoint two people to the board of Offshore Logistics. Shortly after December 19, 1996, Caledonia named two of its employees to the board of Offshore Logistics.

16. At the time of the December 19, 1996, transaction, the relevant size of the transaction was $15 million.

17. Caledonia could not rely on the exemption for acquisitions solely for the purpose of investment because it intended to, and did, exercise its rights to appoint two members to Offshore Logistics' board of directors.

18. Although it was required to do so, Caledonia did not file under the HSR Act prior to acquiring Offshore Logistics voting securities on December 19, 1996.

19. On June 3, 1997, Caledonia made a corrective filing under the HSR Act for the December 19, 1996, acquisition of Offshore Logistics voting securities. In a letter accompanying the corrective filing, Caledonia acknowledged that the transaction was reportable under the HSR Act, but asserted that the failure to file and observe the waiting period was inadvertent. The United States and the Federal Trade Commission did not initiate an enforcement action against Caledonia for this violation of the Act.

VIOLATION

20. On June 5, 2008, Caledonia filed to acquire voting securities of Bristow valued in excess of $50 million, as adjusted. The waiting period on this filing expired on June 13, 2008.

21. Pursuant to Section 802.21(a) of the HSR Rules, 16 C.F.R. § 802.21(a), Caledonia could acquire additional voting securities of Bristow without filing under HSR for a period of five years, as long as its holdings did not exceed the $100 million threshold, as adjusted ($141.8 million as of February 3, 2014). That five-year period ended on June 13, 2013.

22. On February 3, 2014, Caledonia acquired 3,650 shares of Bristow voting securities as the result of vesting of restricted stock units. Because this acquisition occurred later than five years after the expiration of the waiting period of the previous filing, the HSR Rules required Caledonia to again file a notice prior to crossing the $50 million threshold, as adjusted

($70.9 million as of February 3, 2014). The voting securities that Caledonia held as a result of this acquisition from Bristow were valued at approximately $111 million.

23. Although it was required to do so, Caledonia did not file under the HSR Act prior to acquiring Bristow voting securities on February 3, 2014.

24. More than a year later, on February 4, 2015, Caledonia made a corrective filing under the HSR Act for the Bristow voting securities it had acquired on February 3, 2014. The HSR waiting period expired on March 6, 2015.

25. Caledonia was in continuous violation of the HSR Act from February 3, 2014, when it acquired the Bristow voting securities that resulted in it holding Bristow voting securities valued in excess of the HSR Act's $50 million size-of-transaction threshold, as adjusted, through March 6, 2015, when the waiting period expired.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests:

a. That the Court adjudge and decree that Defendant Caledonia's acquisition of Bristow voting securities on February 3, 2014, was a violation of the HSR Act, 15 U.S.C. § 18a; and that Defendant Caledonia was in violation of the HSR Act each day from February 3, 2014, through March 6, 2015.

b. That the Court order Defendant Caledonia to pay to the United States an appropriate civil penalty as provided by the HSR Act. 15 U.S.C. § 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L. 104-134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 74 Fed. Reg. 857 (Jan. 9, 2009), and the Federal Civil Penalties Inflation

Adjustment Act Improvements Act of 2015, Pub. L. 114-74, § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 C.F.R. 1.98, 81 Fed. Reg. 42,476 (June 30, 2016).

c. That the Court order such other and further relief as the Court may deem just and proper.

d. That the Court award the Plaintiff its costs of this suit.

Dated: 08/10/2016

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. CALEDONIA INVESTMENTS PLC, Defendant.	CASE NO.: 1:16-cv-01620 JUDGE: Christopher R. Cooper FILED: 08/10/2016

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement to set forth the information necessary to enable the Court and the public to evaluate the proposed Final Judgment that would terminate this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THIS PROCEEDING

On August 10, 2016, the United States filed a Complaint against Defendant Caledonia Investments PLC ("Caledonia"), related to Caledonia's acquisition of voting securities of Bristow Group, Inc. ("Bristow") in February 2014. The Complaint alleges that Caledonia violated Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"). The HSR Act provides that "no person shall acquire, directly or indirectly, any voting securities of any person" exceeding certain thresholds until that person has filed pre-acquisition notification and report forms with the Department of Justice and the Federal Trade Commission (collectively, the "federal antitrust agencies" or "agencies") and the post-filing waiting period has expired. 15 U.S.C. § 18a(a). A key purpose of the notification and waiting period is to protect consumers and competition from

potentially anticompetitive transactions by providing the agencies an opportunity to conduct an antitrust review of proposed transactions before they are consummated.

The Complaint alleges that Caledonia acquired voting securities of Bristow in excess of the statutory threshold ($70.9 million at the time of acquisition) without making the required pre-acquisition HSR filings with the agencies and without observing the waiting period, and that Caledonia and Bristow each met the statutory size of person threshold (Caledonia and Bristow had sales or assets in excess of $141.8 million and $14.2 million, respectively, at the time of the acquisition).

At the same time the Complaint was filed in the present action, the United States also filed a Stipulation and proposed Final Judgment that eliminates the need for a trial in this case. The proposed Final Judgment is designed to deter Caledonia from engaging in future HSR Act violations. Under the proposed Final Judgment, Caledonia must pay a civil penalty to the United States in the amount of $480,000.

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

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION OF THE ANTITRUST LAWS

A. Caledonia and the 2008 and 2014 Acquisitions of Bristow Voting Securities

Caledonia is a public limited company organized under the laws of the United Kingdom and headquartered in London. Caledonia has sales or assets in excess of $141.8 million.

Bristow is a Delaware corporation headquartered in Houston, Texas. Bristow provides helicopter services to the offshore energy industry and has sales or assets in excess of $14.2 million.

On June 5, 2008, Caledonia filed an HSR notification in connection with its acquisition of Bristow voting securities valued in excess of $50 million, as adjusted. The waiting period on this HSR filing expired on June 13, 2008. Pursuant to Section 802.21(a) of the HSR Rules, 16 C.F.R. § 802.21(a), Caledonia could acquire additional voting securities of Bristow without making another HSR filing for five years, or until June 13, 2013, as long as its holdings of Bristow securities did not exceed the $100 million HSR Act threshold, as adjusted.

B. Caledonia's Violation of the HSR Act

As alleged in the Complaint, on February 3, 2014, after the five-year window had elapsed, Caledonia acquired 3,650 additional shares of Bristow voting securities as the result of the vesting of restricted stock units. Following the vesting of these restricted stock units, Caledonia's voting securities of Bristow were valued at approximately $111 million, an amount in excess of the then-effective HSR Act $70.9 million size-of-transaction threshold. Accordingly, Caledonia was required to make an HSR filing and wait until the expiration of the waiting period before consummating the acquisition. Caledonia did not do so, however, incorrectly believing that its 2008 HSR filing enabled it to acquire additional shares of Bristow without making a new HSR filing. Caledonia's failure to comply with the HSR Act denied the agencies the opportunity to review Caledonia's acquisition of Bristow securities before it was consummated and thereby undermined the statutory scheme and the purpose of the HSR Act.

Caledonia made a corrective filing on February 4, 2015, shortly after learning of its obligation to file. Caledonia's February 4, 2015, corrective filing included a letter

acknowledging that the acquisitions were reportable under the HSR Act. The waiting period expired on March 6, 2015.

The Complaint further alleges that Caledonia previously violated the HSR Act's notification requirements when it acquired shares in Offshore Logistics, Inc. ("OLOG") in 1996, as Bristow was then named. On December 19, 1996, Caledonia acquired 1.3 million shares of OLOG voting securities through a transaction in which Caledonia also gained the right to name two persons to the OLOG board. Caledonia named two of its employees to the board of OLOG, and therefore could not rely on the HSR Act exemption for acquisitions made solely for the purpose of investment. *See* 15 U.S.C. § 18a(c)(9); 16 C.F.R. § 801.1(i)(1). Pursuant to the HSR Act, Caledonia was required to make a pre-acquisition notification filing prior to its acquisition of OLOG voting securities, but it failed to do so. On June 3, 1997, Caledonia made a corrective filing for this acquisition. In a letter accompanying the corrective filing, Caledonia acknowledged that the acquisition of OLOG voting securities was reportable under the HSR Act, but asserted that the failure to file and observe the waiting period was inadvertent. Caledonia also asserted that it "will do its utmost to ensure that it submits all required filings under the Act in the future." The United States did not file suit against Caledonia in connection with this earlier violation of the HSR Act.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment imposes a $480,000 civil penalty designed to deter the Defendant and others from violating the HSR Act. The United States adjusted the civil penalty downward from the maximum permitted under the HSR Act because the violation was inadvertent, the Defendant promptly self-reported the violation after discovery, and the Defendant is willing to resolve the matter by consent decree and avoid prolonged investigation

and litigation. The decision to seek a penalty also reflects Defendant's previous violation of the HSR Act. The relief will have a beneficial effect on competition because it will help ensure that the agencies will be properly notified of future acquisitions, in accordance with the law. At the same time, the penalty will not have any adverse effect on competition.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

There is no private antitrust action for HSR Act violations; therefore, entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust action.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and the Defendant have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this 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, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with this 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:

Daniel P. Ducore
Special Attorney, United States
c/o Federal Trade Commission
600 Pennsylvania Avenue, NW
CC-8416
Washington, DC 20580
Email: dducore@ftc.gov

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

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

As an alternative to the proposed Final Judgment, the United States considered pursuing a full trial on the merits against the Defendant. The United States is satisfied, however, that the proposed relief is an appropriate remedy in this matter. Given the facts of this case, including the Defendant's immediate self-reporting of the violation and willingness to promptly settle this matter, the United States is satisfied that the proposed civil penalty is sufficient to address the violation alleged in the Complaint and to deter violations by similarly situated entities in the future, without the time, expense, and uncertainty of a full trial on the merits.

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

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (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.

Id. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one, as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v, U.S. Airways Group, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (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]

As the United States Court of Appeals for the District of Columbia Circuit has held, a court conducting an inquiry under the APPA may consider, among other things, the relationship

[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).

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*, 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed

[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 'reaches of the public interest'").

remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom*., *Maryland v. United States*, 460 U.S. 1001 (1983); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements (citing *Microsoft*, 56 F.3d at 1461)); *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 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 (concluding that "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 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 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." 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 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 codified what Congress intended when it enacted the Tunney Act in 1974, as the author of this legislation, Senator Tunney, explained: "The 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*, 38 F. Supp. 3d at 76.

VIII. DETERMINATIVE DOCUMENTS

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

Date: August 10, 2016

Respectfully Submitted,

/s/ Kenneth A. Libby
Kenneth A. Libby
Special Attorney

[3] *See also United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *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.").

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA Plaintiff, v. CALEDONIA INVESTMENTS PLC Defendant.	CASE NO.: 1:16-cv-01620 JUDGE: Christopher R. Cooper FILED: 08/10/2016

FINAL JUDGMENT

Plaintiff, the United States of America, having commenced this action by filing its Complaint herein for violation of Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and Plaintiff and Defendant Caledonia Investments plc, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by the Defendant with respect to any such issue:

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged, and Decreed as follows:

I.

The Court has jurisdiction of the subject matter of this action and of the Plaintiff and the Defendant. The Complaint states a claim upon which relief can be granted against the Defendant under Section 7A of the Clayton Act, 15 U.S.C. § 18a.

II.

Judgment is hereby entered in this matter in favor of Plaintiff United States of America and against Defendant, and, pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L. 104-134 § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54549 (Oct. 21, 1996), and 74 Fed. Reg. 857 (Jan. 9, 2009), and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 C.F.R. 1.98, 81 Fed. Reg. 42,476 (June 30, 2016), Defendant Caledonia Investments plc is hereby ordered to pay a civil penalty in the amount of four hundred eighty thousand dollars ($480,000). Payment of the civil penalty ordered hereby shall be made by wire transfer of funds or cashier's check. If the payment is made by wire transfer, Defendant shall contact Janie Ingalls of the Antitrust Division's Antitrust Documents Group at (202) 514-2481 for instructions before making the transfer. If the payment is made by cashier's check, the check shall be made payable to the United States Department of Justice and delivered to:

Janie Ingalls
United States Department of Justice
Antitrust Division, Antitrust Documents Group
450 5th Street, NW
Suite 1024
Washington, D.C. 20530

Defendant shall pay the full amount of the civil penalty within thirty (30) days of entry of this Final Judgment. In the event of a default or delay in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of the default or delay to the date of payment.

III.

Each party shall bear its own costs of this action.

IV.

Entry of this Final Judgment is in the public interest.

Dated: _____

_____
United States District Judge

[FR Doc. 2016-19988 Filed: 8/19/2016 8:45 am; Publication Date: 8/22/2016]