DEPARTMENT OF JUSTICE
Antitrust Division

United States v. Westinghouse Air Brake Technologies Corp.

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, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in United States of America v. Westinghouse Air Brake Technologies Corp. et al., Civil Action No. 1:16-cv-02147. On October 26, 2016, the United States filed a Complaint alleging that Westinghouse Air Brake Technologies Corp.'s ("Wabtec") proposed acquisition of Faiveley Transport S.A. and Faiveley Transport North America 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 Wabtec to divest Faiveley's U.S. freight brakes business.

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

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the Federal Register. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700,

Washington, DC 20530 (telephone: 202-307-0924).

/s/
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.

WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORP.
1001 Airbrake Avenue
Wilmerding, PA 15148

FAIVELEY TRANSPORT S.A.
Le Delage Building
Hall Parc - Bâtiment 6A
6ème étage
3, rue du 19 mars 1962
92230 Gennevilliers
CEDEX – France

and

FAIVELEY TRANSPORT NORTH AMERICA
50 Beachtree Boulevard
Greenville, SC 29605

Defendants.

CASE NO.: 1:16-cv-02147
JUDGE: Tanya S. Chutkan
FILED: 10/26/2016

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to enjoin the proposed acquisition of Faiveley Transport S.A. and Faiveley Transport North America (collectively, "Faiveley") by

Westinghouse Air Brake Technologies Corporation ("Wabtec") and to obtain other equitable relief. The United Sates alleges as follows:

I. INTRODUCTION

1. Wabtec proposes to acquire Faiveley, a global provider of railway brake equipment components that make up a critical system intimately linked to both the performance and safety of trains. Faiveley produces its brake system components in the United States through its subsidiary, Faiveley Transport North America. Wabtec is a leading manufacturer of rail equipment used in the assembly of freight cars built for use in the U.S. freight rail network. For purchasers of components of freight car brake systems, Wabtec and Faiveley are two of the top three suppliers approved by the Association of American Railroads ("AAR"), with combined market shares ranging from approximately 41 to 96 percent for many of the products in which they compete. Where a product must be AAR approved, customers must source it from an AAR-approved supplier of that product.

2. In 2010, Faiveley entered into a joint venture with Amsted Rail Company, Inc. ("Amsted"), a rail equipment supplier based in Chicago, Illinois, to form Amsted Rail Faiveley LLC ("ARF"). Faiveley owns 67.5 percent of ARF and Amsted owns the remaining 32.5 percent interest in the joint venture. As part of the joint venture, all of the freight car brake system components that are manufactured by Faiveley Transport North America are marketed and sold to customers by Amsted. Amsted and Faiveley do not compete for the sale of brake system components. Critically, the joint venture allows Faiveley to bundle brake components with Amsted's other products such as wheels and axles, thereby increasing its ability to compete for the sale of freight car brake system components.

3. Wabtec's proposed acquisition of Faiveley would eliminate head-to-head competition in the development, manufacture, and sale of several components of freight car brake systems in the United States. The proposed acquisition likely would give Wabtec the incentive and ability to raise prices or decrease the quality of service provided to customers in the railroad freight industry. The proposed acquisition also would eliminate future competition for control valves, the most safety-critical component on a freight car. If approved, the proposed acquisition would eliminate the entry of Faiveley into this market, thus maintaining a century-old duopoly between Wabtec and its only other control valve rival, and reducing the two incumbent control valve suppliers' incentive to compete.

4. Accordingly, the proposed acquisition likely would substantially lessen existing and future competition in the development, manufacture, and sale of freight car brake system components in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be enjoined.

II. JURISDICTION AND VENUE

5. 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 the defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

6. Defendants manufacture and sell components of freight car brake systems throughout the United States. They are engaged in a regular, continuous, and substantial flow of interstate commerce, and their activities in the development, manufacture, and sale of rail equipment have had a substantial effect upon 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.

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

III. DEFENDANTS AND THE PROPOSED ACQUISITION

8. Wabtec is a Delaware corporation headquartered in Wilmerding, Pennsylvania. It is one of the world's largest providers of rail equipment and services with global sales of $3.3 billion in 2015. Wabtec makes and sells rail equipment, including braking equipment, for a variety of different end uses, including the railroad freight industry. In 2015, Wabtec's annual worldwide sales of freight rail equipment were approximately $2 billion.

9. Faiveley Transport North America is a New York corporation headquartered in Greenville, South Carolina. Faiveley makes and sells rail equipment, including braking equipment, for a variety of end uses to customers in 24 countries, including the United States. In particular, it manufactures products used in freight rail applications. During the fiscal year beginning April 1, 2015 and ending March 31, 2016, Faiveley had global sales of approximately €1.1 billion, with approximately $174 million of revenue in the United States. Faiveley has manufacturing facilities in Europe, Asia, and North America, including six U.S. locations. Faiveley Transport North America is a wholly-owned subsidiary of defendant Faiveley Transport S.A., a société anonyme based in Gennevilliers, France.

10. On July 27, 2015, Wabtec entered into an Exclusivity Agreement with Faiveley whereby it made an irrevocable offer to acquire Faiveley, for cash and stock totaling approximately $1.8 billion, including assumed debt. The proposed acquisition would create the world's largest rail equipment supplier with expected revenue of approximately $4.5 billion per year and a presence in every key rail market in the world.

IV. TRADE AND COMMERCE

A. Industry Overview

11. Rail freight transport is the use of railroads and freight trains to transport cargo. A freight train is a group of freight cars hauled by one or more locomotives on a railway. A typical freight locomotive can haul as many as 25 to 100 freight cars.

12. The railroad freight industry plays a significant role in the U.S. economy, hauling key commodities such as energy products, automobiles, construction materials, chemicals, coal, petroleum, equipment, food, metals, and minerals. The U.S. freight rail network accounts for approximately 40 percent of the distance all freight shipments of commodity goods travel in the United States. The U.S. freight rail network is one of the most developed rail networks in the world and it supports approximately $60 billion in railroad freight shipments each year. This freight network consists of 140,000 miles of trackage owned and operated by seven Class I Railroads (as identified by the U.S. Department of Transportation), 21 regional railroads, and 510 local railroads.

13. Railroads and freight car leasing companies purchase new freight cars from car builders. Car builders build the body of the freight car and are responsible for sourcing and integrating all of the components needed for the various sub-systems required to assemble a functioning freight car. The most important sub-system is the safety critical brake system. Manufacturers of brake systems and brake system components sell their components and systems to car builders for new freight cars and directly to railroads and leasing companies for aftermarket maintenance of cars. Railroads and freight car leasing companies collectively purchase and maintain approximately 1.5 million freight cars utilized throughout the U.S. freight rail network. Freight railroads in the United States spend over $20 billion annually to acquire

new freight cars and maintain existing freight car fleets. Freight car maintenance is critical for the safety and performance of a freight train.

B. Railroad Freight Industry Regulation

14. Freight cars often must travel over multiple railroads' trackage in order to deliver commodities throughout the United States. Traveling over multiple lines requires freight car equipment to be mechanically interoperable and meet performance standards for certain types of rail equipment. In order for the brake systems on individual freight cars to work together properly, freight car brake systems must be comprised of industry-approved components and meet critical performance standards.

15. The Federal Railroad Administration of the U.S. Department of Transportation establishes strict standards to ensure interoperability of freight cars in use within the U.S. freight rail network. These standards require that certain freight car components achieve common performance and interoperability standards. For certain freight rail equipment, including freight car brake systems, the AAR is responsible for setting technical and performance standards. The AAR is a policy- and standard-setting organization comprised of full, affiliate, and associate members. Full members include the Class I railroads. Affiliate and associate members include rail equipment suppliers and freight car owners.

16. AAR's functions include technical and mechanical standard setting for freight rail equipment. The AAR manages fifteen technical committees comprised of select employees of full, affiliate, and associate members. These committees write technical and performance standards for components used on freight trains. They also approve products for use within the U.S. freight rail network. Thus, a component manufacturer like Wabtec or Faiveley must have AAR approval for many significant components of a freight train before its products can be used

in the United States. The length and difficulty of the AAR-approval process depends on the nature and function of the train component. Brake components face some of the lengthiest and most rigorous testing and approval processes because brakes are safety-critical components that must be fail-safe. The Brake Systems Committee of the AAR oversees the review and performance testing of brake equipment and it awards incremental approvals over time before a component can earn unconditional approval.

17. Freight car owners and operators view AAR approval as a critical certification. Industry participants view AAR approval as a high barrier to selling freight car brake systems and components in the United States.

C. Freight Car Brake Equipment Purchases

18. On average, there are expected to be approximately 75,000 new freight car builds per year in the United States. Demand for new cars is tied to macroeconomic conditions, including demand for the commodities that freight cars carry. In recent years demand for freight cars has ranged from approximately 63,000 to 81,000 new car builds per year. Railroads and freight car leasing companies typically issue requests for proposals to freight car builders who compete to provide complete freight cars built to specification. Freight car builders source sub-systems and components from suppliers, like Wabtec and Faiveley. Where a product must be AAR approved, car builders must source it from an AAR-approved supplier of that product. For certain components of a freight car brake system, Wabtec and Faiveley are two of the only three AAR-approved suppliers.

19. New freight car procurements typically include performance specifications identified by customers. Freight car builders use these specifications to source and price particular components for the procurement. Inclusion in new car procurements also becomes a

source for long-term revenues for component suppliers. Incumbent suppliers for many freight car brake system components enjoy an advantage in the aftermarket. Although components are technically interoperable, changing suppliers often introduces at least some switching costs and increased risk of failure for end-use customers. Thus, competitiveness for original equipment sales is critical.

20. Customers can purchase freight car brake equipment on a component-by-component basis. However, a large rail equipment supplier will typically offer better pricing to customers who purchase multiple freight car brake system components together as a bundle. For example, rail equipment suppliers will offer more competitive pricing to customers who purchase all the components for an entire freight car brake system rather than piecemeal purchases of certain components. Because product bundles may span multiple systems on a freight train, suppliers with broad offerings often have a competitive advantage over niche suppliers.

V. RELEVANT MARKETS

21. Defendants compete across a range of freight car brake system components, many of which require AAR approval. Each product described below constitutes a line of commerce under Section 7 of the Clayton Act, 15 U.S.C. § 18, and each is a relevant product market in which competitive effects can be assessed. They are recognized in the railroad freight industry as separate product lines, they have unique characteristics and uses, they have customers that rely specifically on these products, they are distinctly priced, and they have specialized vendors.

22. Mergers and acquisitions that reduce the number of competitors in already concentrated markets are more likely to substantially lessen competition. Concentration can be measured in various ways, including by market shares and by the widely-used Herfindahl-

Hirschman Index ("HHI"). *See* Appendix. Under the *Horizontal Merger Guidelines*, post-acquisition HHIs above 2500 and changes in HHI above 200 trigger a presumption that a proposed acquisition is likely to enhance market power and substantially lessen competition in a defined market. Given the high pre- and post-acquisition concentration levels in the relevant markets described below, Wabtec's proposed acquisition of Faiveley presumptively violates Section 7 of the Clayton Act. In almost all of these markets, customers would face a duopoly after the acquisition.

A. Relevant Market 1: Hand Brakes

23. A hand brake is a manual wheel located at the end of a freight car that, when turned, can engage a freight car's brake system without using pneumatic or hydraulic pressure. It is a secondary means to prevent a freight car from moving, for example, during maintenance or when being connected to a new locomotive.

24. The market for the development, manufacture, and sale of freight car hand brakes is already concentrated. Wabtec and Faiveley together hold approximately 60 percent of this market based on the quantity of hand brakes sold. Their only significant competitor holds most of the remaining share of the hand brakes market. A fourth, marginal competitor sells a negligible quantity of hand brakes each year. Further, this competitor does not manufacture any other significant components of a freight car brake system nor is it likely to begin doing so in the foreseeable future. Thus, it is unlikely to replace the competition that would be lost as a result of the proposed acquisition.

25. In the U.S. market for the development, manufacture, and sale of freight car hand brakes, the pre-acquisition HHI is 3,500. The post-acquisition HHI would be in excess of 5,000,

with an increase in HHI in excess of 1,500. Thus, this market is highly concentrated and would become significantly more concentrated as a result of the proposed acquisition.

B. Relevant Market 2: Slack Adjusters

26. A slack adjuster is a pneumatically-driven "arm" that applies pressure to the brake shoe (a friction material) in order to change the brake shoe's position relative to the train's wheel. As the brake shoe wears down, this adjustment in position maintains the brake systems' ability to apply the correct amount of braking force by ensuring the brake shoe is applied appropriately to the wheel to achieve optimal braking capability.

27. Combined, Wabtec and Faiveley have approximately 76 percent of this market based on quantity sold. Their only significant competitor has a market share of approximately 24 percent, thereby making the proposed acquisition a virtual merger-to-duopoly in the market for the development, manufacture, and sale of slack adjusters. The proposed acquisition threatens to further concentrate this market, as evidenced by the pre- and post-merger HHIs. The post-acquisition HHI would be approximately 6,300, reflecting an increase of approximately 2,800 as a result of the acquisition.

C. Relevant Market 3: Truck-Mounted Brake Assemblies

28. Freight car braking equipment is often mounted under the bogie (e.g., car), thereby serving as the foundation for the wheels. Truck-mounted brake assemblies ("TMBs"), however, are an approach to mounting the brakes on freight car designs for which body-mounted brakes are not suitable. TMBs are free standing equipment that do not require additional rigging and so are significantly lighter than their bogie counterparts. They are commonly used for special lightweight or low profile freight car designs.

29. Post-acquisition, the market for the development, manufacture, and sale of TMBs would be highly concentrated. Combined, Wabtec and Faiveley have approximately a 96 percent share of the market based on quantity sold. The post-acquisition HHI of the merged firm would be approximately 9,200, with an increase of approximately 3,600 resulting from the acquisition.

D. Relevant Market 4: Empty Load Devices

30. Empty load devices are incorporated into every freight car and detect when a freight car is empty. The empty load device relays this information to the brake system control board, which is then able to reduce the amount of braking force applied to the brakes on a freight car that is empty so that it decelerates in concert with the remainder of the freight cars in tow.

31. Post acquisition, the market for the development, manufacture, and sale of empty load devices would be highly concentrated. Combined, Wabtec and Faiveley have a 60 percent share of the market based on quantity sold. The post-acquisition HHI of the merged firm would be approximately 5,100, with an increase of approximately 1,700 resulting from the acquisition.

E. Relevant Market 5: Brake Cylinders

32. A brake cylinder is a component of a freight car brake system that converts compressed air into mechanical force to apply the brake shoe to the wheel in order to decelerate or stop o the train.

33. Post-acquisition, the market for the development, manufacture, and sale of brake cylinders would be highly concentrated. Combined, Wabtec and Faiveley have approximately a 41 percent share of the market based on quantity sold. The post-acquisition HHI of the merged firm would be approximately 5,100 with an increase of approximately 800 resulting from the acquisition.

F. Relevant Market 6: Control Valve and Co-Valves

34. Modern trains rely upon a fail-safe air (or pneumatic) brake system that uses changes in air pressure to signal each freight car to release its brakes. A reduction or loss of air pressure applies the brakes using the compressed air in the air reservoir. An increase in air pressure decreases the braking force applied until it is released. The control valve, often described as the brain of a freight car's brake system, regulates the flow of air to engage or disengage the brakes.

35. A control valve is the most highly-engineered, technologically-sophisticated component in a freight car brake system. Without it, a supplier cannot offer a complete freight car brake system. The development of a control valve also requires significant development time and financial resources. In addition, it faces one of the railroad freight industry's lengthiest and most rigorous testing and approval processes.

36. The market for the development, manufacture, and sale of control valves is characterized by a century-old duopoly between Wabtec and another manufacturer. Over the past five years, Wabtec had approximately 40 percent of the U.S. control valve market and its rival had the other 60 percent of the market.

37. On June 29, 2016, Faiveley obtained conditional approval from the AAR to sell a control valve. In doing so, it disrupted the duopoly by becoming the first firm in over 25 years and only the second firm in the last 50 years to develop a control valve and make substantial progress through the industry's formidable testing and approval process for freight car control valves. Thus, the proposed acquisition would eliminate a third potential supplier of control valves, and continue a longstanding duopoly for the foreseeable future.

38. Working closely with the control valve are its complementary valves: the dirt collector, angle cock, and vent valve (collectively, "co-valves"). A dirt collector is a ball style cut-out-cock with a dirt chamber that is installed adjacent to the control valve. It allows for impurities in the air compressor to be filtered out to keep the air lines feeding the braking system clear of obstructions that would reduce air pressure. An angle cock is placed at the end of the brake pipe and provides a means for closing the brake pipe at the end of the freight car. A vent valve is a device on a freight car that reacts to a rapid drop in brake pipe pressure and is used to exhaust air from the brake pipe during emergency brake applications. For new freight car builds, sales of co-valves correlate with the sale of the control valve. Customers have a preference for purchasing co-valves and control valves from the same supplier, to which they return for replacement parts in the aftermarket. While Faiveley currently has insignificant sales of angle cocks, vent valves, and dirt collectors, it is an AAR-approved supplier of these products.

G. Geographic Market

39. Based on customer location and the governing regulatory framework, the United States is the relevant geographic market for the development, manufacture, and sale of freight brake components. Wabtec and Faiveley compete with each other for customers located throughout the United States. When a geographic market is defined based on the location of customers, competitors in the market are firms that sell to customers in the specified region even though some suppliers that sell into the relevant market may be located outside the geographic market. In addition, before suppliers can sell components of freight car brake systems in the United States, they must first get AAR approval. The AAR's regulatory authority requires products be certified for interoperability within the U.S. freight rail network. Because these products are certified for use and sale anywhere in the United States, the regulatory framework

determines which firms can supply the U.S. customer base, which supports a United States geographic market. Furthermore, suppliers of freight car brake systems and components typically deliver their products and services to customers' locations and are able to price discriminate based on those locations.

40. In addition, a small but significant increase in price of each of the foregoing components of a freight car brake system sold into the United States would not cause a sufficient number of U.S. customers to turn to providers of freight brake components sold into other countries because those products lack AAR approval and interoperability with U.S. freight rail networks. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

VI. ANTICOMPETITIVE EFFECTS

41. Wabtec and Faiveley presently compete in the development, manufacture, and sale of many components of a freight car brake system, including hand brakes, slack adjusters, empty load devices, TMBs and brake cylinders. The defendants' combined shares in each of these markets range from approximately 41 to 96 percent. Therefore, the unilateral competitive effects of the proposed acquisition are presumptively harmful in these product markets under the *Horizontal Merger Guidelines*. The proposed acquisition likely will result in unilateral effects that substantially lessen competition in the markets for hand brakes, load detection devices, slack adjusters, TMBs, and brake cylinders, respectively.

42. In each of the foregoing relevant markets, Wabtec and Faiveley presently compete against each other and only one other large competitor. Prices and other terms of trade are usually determined by negotiations between suppliers and customers. Products are not highly

differentiated by function or performance, and price is the primary customer consideration given that performance is presumed after approval by the industry's standard-setting body, the AAR.

43. A merger between two competing sellers reduces the ability of buyers to negotiate better contract terms, including price, by leveraging competing offers. The loss of customer negotiating power can significantly enhance the ability and incentive of the merged entity to offer less competitive terms. Customers likely derive significant benefits from having Faiveley in the market today, as reflected by its substantial market shares in the relevant freight brake components identified above. The resulting loss of a competitor and increased concentration of market share indicate that the acquisition likely will result in significant harm from expected price increases and decreases in quality of service.

44. When the proposed acquisition was announced, Wabtec and a second manufacturer were the only AAR-approved suppliers of control valves, a duopolistic market they had shared for over a century.

45. As the second-largest railway brake manufacturer in the world, Faiveley was uniquely positioned to enter the control valve market. Faiveley had developed a control valve prototype that it intended to shepherd through the AAR's control valve testing and approval process. If successful, it would have become a third control valve supplier. But for the merger, Faiveley likely would have entered the control valve market, thereby invigorating competition between Wabtec and its only competitor in the control valve market. The entry of a third supplier of control valves likely would increase competition and allow customers to negotiate better prices and terms.

46. Faiveley's entry into the control valve market would pose an immediate threat to the incumbent suppliers, forcing them to compete aggressively or risk losing a sale to Faiveley.

Faiveley's customers anticipate it would offer price competition in order to gain quick acceptance of its control valve. As a result, Faiveley likely would have had a substantial impact on pricing, service and other commercial terms offered by the incumbent suppliers, even with a small initial share of actual sales. Therefore, the proposed acquisition is likely to result in anticompetitive unilateral effects in the market for control valves.

VII. ENTRY

47. Given the substantial time required to develop and qualify a component of a freight car brake system, timely and sufficient entry by other competitors into any of the relevant markets is unlikely to mitigate the harmful effects of the proposed acquisition.

48. The likelihood of another potential entrant in the control valve market is even more remote given the historical dearth of meaningful attempts to enter this market, as well as the substantial time and cost associated with entry into the control valve market.

VIII. VIOLATION ALLEGED

49. The acquisition of Faiveley by Wabtec likely would substantially lessen competition in each of the relevant markets in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

50. Unless enjoined, the acquisition likely would have the following anticompetitive effects, among others:

(a) actual and potential competition between Wabtec and Faiveley in the relevant markets would be eliminated;

(b) competition generally in the relevant markets would be eliminated; and

(c) prices and commercial terms for the relevant products would be less favorable, and quality and service relating to these products likely would decline.

IX. REQUEST FOR RELIEF

51. The United States requests that this Court:

(a) adjudge and decree Wabtec's proposed acquisition of Faiveley 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 Wabtec's proposed acquisition or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Faiveley with the operations of Wabtec;

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

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

Dated: October 26, 2016

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

/s/
RENATA B. HESSE (D.C. Bar #466107)
Acting Assistant Attorney General
Antitrust Division

/s/
MARIBETH PETRIZZI (D.C. Bar #435204)
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APPENDIX

Herfindahl-Hirschman Index

The Herfindahl-Hirschman Index ("HHI") is a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the relevant 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 its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*, v. WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORP., FAIVELEY TRANSPORT S.A., and FAIVELEY TRANSPORT NORTH AMERICA, *Defendants*.	CASE NO.: 1:16-cv-02147 JUDGE: Tanya S. Chutkan FILED: 10/26/2016

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

On July 27, 2015, Defendant Westinghouse Air Brake Technologies Corp. ("Wabtec") and Defendants Faiveley Transport S.A. and Faiveley Transport North America ("Faiveley") entered into an Exclusivity Agreement pursuant to which Wabtec made an irrevocable offer to acquire Faiveley for cash and stock totaling approximately $1.8 billion, including assumed debt.

The United States filed a civil antitrust Complaint on October 26, 2016, seeking to enjoin the proposed acquisition. The Complaint alleges that the acquisition likely would lessen competition substantially for the development, manufacture, and sale of various railroad freight car brake components including hand brakes, slack adjusters, truck-mounted brake assemblies, empty load devices, brake cylinders, and brake control valves in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition likely would result in significant harm from expected price increases and decreases in quality of service by the incumbent suppliers in the markets for those products.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order and a 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, Defendants are required to divest Faiveley's entire U.S. freight car brakes business, including all assets relating to Faiveley's freight car brake control valve development project (known as the FTEN) to a named buyer, Amsted Rail Company, Inc. ("Amsted"). These assets collectively are referred to as the "Divestiture Assets." Under the terms of the Hold Separate Stipulation and Order, Defendants will take certain steps to ensure that the Divesture Assets are operated as a competitively independent, economically viable and ongoing business concern, that the Divestiture Assets 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 Proposed Transaction

Wabtec is a Delaware corporation headquartered in Wilmerding, Pennsylvania. It is one of the world's largest providers of rail equipment and services with global sales of $3.3 billion in 2015. In the United States, Wabtec makes and sells rail equipment, including braking equipment, for a variety of different end-uses, including the railroad freight industry. Wabtec's annual global sales of freight rail equipment totaled approximately $2 billion in 2015.

Faiveley Transport S.A. is a société anonyme based in Gennevilliers, France. Faiveley makes and sells rail equipment, including braking equipment, for a variety of end uses to customers in 24 countries, including the United States. In particular, it manufactures products used in freight rail applications. During the fiscal year beginning April 1, 2015 and ending March 31, 2016, Faiveley had global sales of approximately €1.1 billion, with approximately $174 million of revenue in the United States. Faiveley has manufacturing facilities in Europe, Asia, and North America, including six U.S. locations.

Faiveley Transport North America is a wholly-owned subsidiary of Faiveley Transport S.A. It is a New York Corporation headquartered in Greenville, South Carolina. It is the sole business unit of Faiveley that is responsible for the development, manufacture, and sale of freight car brake components in the United States.

In 2010, Faiveley entered into a joint venture with Amsted, a rail equipment supplier based in Chicago, Illinois, to form Amsted Rail Faiveley, LLC ("ARF"). Faiveley owns 67.5

percent of ARF and Amsted owns the remaining 32.5 percent. As part of the joint venture, all of the freight car brake components that are manufactured by Faiveley currently are marketed and sold to customers by Amsted. Critically, the joint venture allows Faiveley to bundle brake components with Amsted's other products such as wheels and axles, thereby increasing its ability to compete for the sale of freight car brake components against Wabtec.

On July 27, 2015, Wabtec and Faiveley entered into an Exclusivity Agreement whereby Wabtec would acquire Faiveley for cash and stock totaling approximately $1.8 billion, including assumed debt. The proposed acquisition would create the world's largest rail equipment supplier with expected revenue of approximately $4.5 billion per year and a presence in every key rail market in the world. As part of that acquisition, Wabtec proposed to acquire all of Faiveley's freight car brakes business in the United States, including its interest in the ARF joint venture and Faiveley's FTEN freight car brake control valve now being developed. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States on October 26, 2016.

B. Background on Freight Car Brake Equipment Purchases

Rail freight transport is the use of railroads and freight trains to transport cargo. The railroad freight industry plays a significant role in the U.S. economy, hauling key commodities such as energy products, automobiles, construction materials, chemicals, coal, petroleum, equipment, food, metals, and minerals. The U.S. freight rail network accounts for approximately 40 percent of the distance all freight shipments of commodity goods travel in the United States. The U.S. freight rail network is one of the most developed rail networks in the world and it supports approximately $60 billion in railroad freight shipments each year. This freight network

consists of 140,000 miles of trackage owned and operated by seven Class I Railroads, 21 regional railroads, and 510 local railroads.

In order to deliver commodities throughout the United States, freight cars often must travel over multiple railroads' trackage. Traveling over multiple lines requires freight car equipment to be mechanically interoperable and meet common performance standards for certain types of rail equipment. In order for the brake systems on individual freight cars to work together properly, freight car brake systems must be comprised of industry-approved components and meet critical performance standards. For certain freight rail equipment, including freight car brake systems, the Association of American Railroads ("AAR") is responsible for setting technical and performance standards. The AAR is a policy- and standard-setting organization comprised of full, affiliate, and associate members. Full members include the Class I railroads. Affiliate and associate members include rail equipment suppliers and freight car owners.

AAR's functions include technical and mechanical standard setting for freight rail equipment. The AAR manages fifteen technical committees that write technical and performance standards for all components used on freight trains and approve products for use. Thus, a component manufacturer must have AAR approval for brake components before they can be used. Brake components face some of the lengthiest and most rigorous testing and approval processes because brakes are safety-critical components that must be fail-safe. The Brake Systems Committee of the AAR oversees the review and performance tests of braking equipment and it awards incremental approvals over time before a component can earn unconditional approval. Freight car owners and operators view AAR approval as a critical

certification. Industry participants view AAR approval as a high barrier to selling freight car brake systems and components in the United States.

Railroads and freight car leasing companies collectively spend over $20 billion annually to obtain new freight cars and to maintain approximately 1.5 million freight cars utilized throughout the United States. On average, there are expected to be approximately 75,000 new freight car builds per year in the United States, and demand for new cars is tied to macroeconomic conditions, including demand for the commodities these freight cars carry. In recent years, demand for freight cars has ranged from approximately 63,000 to 81,000 new car builds. Railroads and freight car leasing companies typically issue requests for proposals to freight car builders who compete to provide complete freight cars built to specification. Freight car builders source sub-systems and components from suppliers like, Wabtec and Faiveley. Where a product must be AAR approved, car builders must source it from an AAR-approved supplier of that product. For certain components of a freight car brake system, Wabtec and Faiveley are two of the only three AAR-approved suppliers of the product.

New freight car procurements typically include performance specifications identified by customers. Freight car builders use these specifications to source and price particular components for the procurement. Inclusion in new car procurements also becomes a source for long-term revenues for component suppliers. Incumbent suppliers for many freight car brake system components enjoy an advantage in the aftermarket. Although components are technically interoperable, changing suppliers often introduces switching costs and increased risk of failure for end-use customers. Thus, competitiveness for original equipment sales is critical.

C. Relevant Markets Affected by the Proposed Acquisition

Defendants compete across a range of freight car brake system components that require AAR approval. The Complaint alleges that each of these brake system components is a relevant product market in which competitive effects can be assessed. The different components are recognized in the railroad freight industry as separate product lines, they have unique characteristics and uses, they have customers that rely specifically on these products, they are distinctly priced, and they have specialized vendors. Competition would likely be lessened with respect to those components as a result of the proposed acquisition because there would be one fewer substantial equipment manufacturer in each of these highly concentrated markets. For purchasers of components of freight car brake components, Wabtec and Faiveley are two of the top three suppliers, with combined market shares of approximately 41 to 96 percent for the products in which they compete. Faiveley is expected to be an even stronger competitor after full commercialization of the FTEN.

1. U.S. Markets for Hand Brakes, Slack Adjusters, Truck-Mounted Brake Assemblies, Empty Load Devices, and Brake Cylinders

The Complaint alleges likely harm in five distinct product markets for freight car brake components that Faiveley currently sells under and through the ARF joint venture: hand brakes, slack adjusters, truck-mounted brake assemblies ("TMBs"), empty load devices, and brake cylinders. A hand brake is a manual wheel located at the end of a freight car that, when turned, can engage a freight car's brakes system without using pneumatic or hydraulic pressure. It is a secondary means to prevent a freight car from moving, for example, during maintenance or when being connected to a new locomotive. A slack adjuster is a pneumatically-driven "arm" that applies pressure to the brake shoe (a friction material) in order to change the brake shoe's

position relative to the train's wheel. As the brake shoe wears down, this adjustment in position maintains the brake systems' ability to apply the correct amount of braking force by ensuring the brake shoe is applied appropriately to the wheel to achieve optimal braking capability. TMBs are an approach to mounting brakes on freight car designs for which body-mounted brakes are not suitable. TMBs are free-standing equipment that do not require additional rigging and so are significantly lighter than body-mounted brakes. They are commonly used for special lightweight or low profile freight car designs. Empty load devices are incorporated into every freight car and detect when a freight car is empty. The empty load device relays this information to the brake system control board, which is then able to reduce the amount of braking force applied to the brakes on a freight car that is empty so that it decelerates in concert with the remainder of the freight cars in tow. A brake cylinder is a component of a freight car brake system that converts compressed air into mechanical force to apply the brake shoe to the wheel in order to stop or slow the train.

2. U.S. Market for Freight Brake Control Valves and Co-Valves

The Complaint also alleges likely harm in a distinct product market for freight car brake control valves and the associated co-valves that are typically sold with them. The control valve, often described as the brain of a freight car's brake system, regulates the flow of air to engage or disengage the brakes. A control valve is the most highly-engineered, technologically-sophisticated component in a freight car brake system. Without it, a supplier cannot offer a complete freight car brake system. The development of a control valve also requires significant development time and financial resources. In addition, it faces one of the railroad freight

industry's lengthiest and most rigorous testing and approval processes. This results in extremely high entry barriers for this market.

Working closely with the control valve are its complementary valves: the dirt collector, angle cock, and vent valve (collectively, "co-valves"). A dirt collector is a ball style cut-out-cock with a dirt chamber that is installed adjacent to the control valve. It allows for impurities in the air compressor to be filtered out to keep the air lines feeding the braking system clear of obstructions that would reduce air pressure. An angle cock is placed at the end of the brake pipe and provides a means for closing the brake pipe at the end of the freight car. A vent valve is a device on a freight car that reacts to a rapid drop in brake pipe pressure and is used to exhaust air from the brake pipe during emergency brake applications. These co-valves are an essential part of the development, manufacture, and sale of control valves, and for new freight car builds, sales of co-valves correlate with the sale of the control valve.

The market for the development, manufacture, and sale of control valves is characterized by a century-old duopoly between Wabtec and another manufacturer. Over the past five years, Wabtec had approximately 40 percent of the U.S. control valve market and its rival had the other 60 percent of the market.

On June 29, 2016, after a lengthy and expensive development process, Faiveley obtained conditional approval from the AAR to sell its control valve. In doing so, it become the first firm in over 25 years and only the second in the last 50 years to develop a control valve and make substantial progress through the industry's formidable testing and approval process. Faiveley has built the first 200 units and satisfactorily completed all AAR laboratory tests. It projects sales of a few thousand units over the next few years as it works with railroads to continue to test

and demonstrate the FTEN in various functional environments. Full commercialization and unconditional AAR approval is expected within seven years.

D. Geographic Market

As alleged in the Complaint, the United States is the relevant geographic market for the development, manufacture, and sale of freight brake components. Wabtec and Faiveley compete with each other for customers located throughout the United States.

When a geographic market is defined based on the location of customers, competitors in the market are firms that sell to customers in the specified region, even though some suppliers that sell into the relevant market may be located outside the geographic market. Before suppliers can sell components of freight car brake systems in the United States, they must receive AAR approval. The AAR's regulatory authority requires products be certified for interoperability within the U.S. freight rail network. Because these products are certified for use and sale anywhere in the United States, the regulatory framework determines which firms can supply the U.S. customer base, which supports a United States geographic market. Furthermore, suppliers of freight car brake systems and components typically deliver their products and services to customers' locations and are able to price discriminate based on customers' locations.

In addition, a small but significant increase in price of each of the foregoing components of a freight car brake system sold into the United States would not cause a sufficient number of U.S. customers to turn to providers of freight brake components sold into other countries because those products lack AAR approval and interoperability with U.S. freight rail networks.

E. Anticompetitive Effects

1. Freight Car Hand Brakes, Slack Adjusters, Truck-Mounted Brake Assemblies, Empty Load Devices, and Brake Cylinders

Wabtec and Faiveley presently compete vigorously in the development, manufacture, and sale of hand brakes, slack adjusters, TMBs, empty load devices, and brake cylinders, and because these markets are highly concentrated and subject to high entry barriers, unilateral anticompetitive effects would be likely to result from the acquisition. In each of the foregoing relevant markets, Wabtec and Faiveley presently compete against each other and another large competitor in a bargaining format where products are not highly differentiated by function or performance and price is the primary customer consideration, given that performance is presumed after approval by the industry's standard-setting body, the AAR. Given the nature and the extent of this competition, a merger between two competing sellers would remove a buyer's ability to negotiate these sellers against each other. The loss of this bargaining competition can significantly enhance the ability and incentive of the merged entity to obtain a result more favorable to it and less favorable to the buyer than the merging firms would have obtained separately, absent the merger. As its substantial market shares attest, customers derive significant benefits from having Faiveley in the market today. The resulting loss of a competitor and increased concentration of market share indicate that the acquisition likely will result in significant harm from expected price increases and decreases in quality of service if the proposed acquisition is consummated.

2. Freight Car Control Valves and Co-Valves

Wabtec and a second manufacturer are now the only unconditionally approved suppliers of freight car brake control valves. As the second-largest railway brake manufacturer in the

world, Faiveley was uniquely positioned to enter this market because of both its general competency and the substantial progress it has already made in developing the product. Absent the merger it would have become the only other freight car brake control valve supplier.

The proposed acquisition would eliminate future competition for the development, manufacture, and sale of control valves by eliminating Faiveley's entry into this market. Faiveley's entry into the control valve market would have posed an immediate threat to the incumbent suppliers' by forcing them to compete aggressively or risk losing a sale to Faiveley. This market is also characterized by bargaining and price competition and involves the same competitive dynamics described above. Faiveley's customers would have enjoyed enhanced price competition immediately as Faiveley strove to gain quick acceptance of its control valve. Over the long term, the existence of Faiveley as a third supplier would have continued to enhance competition.

Without the required divestiture of assets, Wabtec's acquisition of Faiveley would have eliminated important head-to-head competition in the development, manufacture, and sale of freight car brake components and likely would have given Wabtec the incentive and ability to raise prices and decrease the quality of service provided to the railroad freight car industry. Absent the required divestiture of assets, the acquisition also would have eliminated a third potential supplier of control valves, thereby freezing in place a longstanding duopoly in that market.

F. Barriers to Entry

Given the substantial time required to develop and qualify a component of a freight car brake system, timely and sufficient entry by other competitors into any of the relevant markets, is

unlikely to mitigate the harmful effects of the proposed acquisition. The likelihood of another potential entrant in the control valve market is particularly remote given the historical dearth of meaningful attempts to enter this market, as well as the substantial time and cost associated with entry into the control valve market.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestitures required by the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the relevant markets by establishing a new, independent, and economically viable competitor in the development, manufacture, and sale of freight car brake components by quickly transferring full ownership of the ARF joint venture to Amsted. It is also expected to eliminate the anticompetitive effects of the acquisition from the loss of competition in the development, manufacture, and sale of brake control valves by transferring to Amsted all assets relating to the FTEN control valve project, including the FTEN valve itself, as well as dirt collectors, angle cocks, and vent valves.

Paragraph II(G) of the proposed Final Judgment defines the Divestiture Assets to include all assets owned or under the control of Faiveley at the current ARF facility in Greenville, South Carolina, and include Faiveley's full and complete interest, rights, and property in ARF and the FTEN control valve. The Divestiture Assets include all tangible assets relating to ARF and the FTEN control valve, including, but not limited to, research and development activities; all manufacturing equipment, tooling and fixed assets, including, at the option of the Acquirer, the braking simulation testing equipment known as the "whale" located at Greenville, South Carolina, 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.

The Divestiture Assets also include all intangible assets relating to ARF and the FTEN control valve, 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 Faiveley provides to its own employees, customers, suppliers, agents or licensees, and all research data, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

Paragraph IV(A) of the proposed Final Judgment requires Defendants, within twenty (20) calendar days after the signing of the Hold Separate Stipulation and Order in this matter to divest the Divestiture Assets in a manner consistent with the Final Judgment to Amsted or an Acquirer acceptable to the United States, in its sole discretion. The Divestiture Assets must be divested in such a way as to satisfy the United States in its sole discretion that they assets 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 the named acquirer (Amsted) or any other prospective purchaser. The United States, in its sole discretion, may agree to one or more

extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances.

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

Paragraph IV(I) of the proposed Final Judgment provides that final approval of the divestiture, including the identity of the Acquirer, is left to the sole discretion of the United States to ensure the continued independence and viability of the Divestiture Assets in the relevant markets. In this matter, Amsted has been identified as the expected purchaser of the Divestiture Assets and is currently in final negotiations with Defendants for a purchase agreement. After a thorough examination of Amsted, its plans for the Divestiture Assets and the proposed sale agreements, as well as consideration of feedback from customers, the United States approved Amsted as the buyer. Amsted is a strong competitor in other freight car

equipment such as bogies, wheels, and axles. It is uniquely positioned as the current face of Faiveley brake components to the marketplace (through ARF) and has been the expected conduit through which FTEN was to be marketed by Faiveley absent the merger. Amsted's intimate familiarity with the products, the personnel, the AAR approval process, and the relevant customers should ensure that in its hands the Divestiture Assets will provide meaningful competition.

Under Paragraph IV(I) of the proposed Final Judgment, in the event Amsted is unable to acquire the Divestiture Assets, another Acquirer may purchase the Divestiture Assets, subject to approval by the Department in its sole discretion. The divestiture of assets must be accomplished as a single divestiture of all the Divestiture Assets to a single Acquirer. The Divestiture Assets may not be sold piecemeal. This is to protect the integrity of the Divestiture Assets as an ongoing, viable business and to enable the existing business to continue as a vigorous competitor in the future.

Section XI of the proposed Final Judgment requires Wabtec to provide notification to the Antitrust Division of certain proposed acquisitions not otherwise subject to filing under the Hart-Scott Rodino Act, 15 U.S.C. 18a (the "HSR Act"), and in the same format as, and per the instructions relating to the notification required under that statute. The notification requirement applies in the case of any direct or indirect acquisitions of any assets of or interest in any entity engaged in certain activities relating to freight car brake systems or components in the United States. Section XI further provides for waiting periods and opportunities for the United States to obtain additional information similar to the provisions of the HSR Act before such acquisitions can be consummated.

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
450 Fifth Street N.W., Suite 8700
Antitrust Division
United States Department of Justice
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 continued the litigation and sought preliminary and permanent injunctions against Wabtec's acquisition of Faiveley. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the development, manufacture, and sale of certain components of a freight car brake system, including hand brakes, slack adjusters, truck-mounted brake assemblies, empty load devices, brake cylinders, and control valves, in the relevant markets identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

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-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. at § 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 that the court's "inquiry is limited" because the government has "broad discretion" to determine the adequacy of the relief secured through a settlement); *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 inquiry under the APPA may consider, 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.

[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).

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*, 8 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 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.

[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'").

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'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 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.

[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.").

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: October 26, 2016

Respectfully submitted,

/s/

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORP., FAIVELEY TRANSPORT S.A., and FAIVELEY TRANSPORT NORTH AMERICA, Defendants.	CASE NO.: 1:16-cv-02147 JUDGE: Tanya S. Chutkan FILED: 10/26/2016

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on October 26, 2016, the United States and defendants, Westinghouse Air Brake Technologies Corp., Faiveley Transport S.A., and Faiveley Transport North America, 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 and assets by the defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires defendants to make a certain divestiture for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to the United States that the divestiture required below can and will be made and that defendants will 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 Amsted Rail Company, Inc., or another entity to which defendants divest the Divestiture Assets.

B. "Wabtec" means defendant Westinghouse Air Brake Technologies Corp., a Delaware corporation with its headquarters in Wilmerding, Pennsylvania, its successors and

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

C. "Faiveley" means defendant Faiveley Transport S.A., a French corporation with its headquarters in Gennevilliers, France, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees. "Faiveley" includes defendant Faiveley Transport North America, a New York corporation headquartered in Greenville, South Carolina, a wholly-owned subsidiary of Faiveley Transport S.A.

D. "Amsted" means Amsted Rail Company, Inc., an Illinois corporation with its headquarters in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees. Amsted is a wholly-owned subsidiary of Amsted Industries Incorporated of Chicago, Illinois.

E. "Amsted Rail Faiveley LLC" means the ongoing business and all associated assets of a joint venture that currently exists between Faiveley and Amsted, was established in 2010 for the purpose of manufacturing and selling freight car brake components, and has headquarters located in Greenville, South Carolina.

F. "FTEN control valve" means the ongoing project and all associated assets of the freight car brake control valve for freight car brake systems developed or under development by Faiveley.

G. "Divestiture Assets" means:

1. Faiveley's full and complete interest, rights, and property in Amsted Rail Faiveley LLC and the FTEN control valve;

2. All tangible assets relating to Amsted Rail Faiveley LLC and the FTEN control valve, including, but not limited to, research and development activities; all manufacturing equipment, tooling and fixed assets, including, at the option of the Acquirer, the braking simulation testing equipment known as the "whale" located at the Greenville, South Carolina, 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 relating to Amsted Rail Faiveley LLC and the FTEN control valve, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, and service names; technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, and design tools and simulation capability; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; quality assurance and control procedures; all manuals and technical information Faiveley provides to its own employees, customers, suppliers, agents or licensees; and all research data, 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 Wabtec and Faiveley, 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. DIVESTITURE

A. Defendants are ordered and directed, within twenty (20) calendar days after the signing of the Hold Separate Stipulation and Order in this matter to divest the Divestiture Assets in a manner consistent with this Final Judgment to Amsted or 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 defendants are attempting to divest the Divestiture Assets to an Acquirer other than Amsted, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment.

C. In accomplishing the divestiture ordered by 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.

D. Defendants shall provide the Acquirer and the United States information relating to Faiveley personnel with responsibilities for Amsted Rail Faiveley LLC or the FTEN control valve to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any Faiveley employee whose primary responsibility is the production, development, and sale of products relating to Amsted Rail Faiveley LLC and the FTEN control valve.

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

F. Defendants shall warrant to the Acquirer(s) that each asset will be operational on the date of sale.

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

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

I. 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 design, development, manufacture, marketing, servicing, distribution, and sale of products relating to Amsted Rail Faiveley LLC and the FTEN control valve. The divestiture, whether pursuant to Section IV or V of this Final Judgment, 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 design, development, manufacture, marketing, servicing, distribution, and sale of products relating to Amsted Rail Faiveley LLC and the FTEN control valve; and that none of the terms of any agreement between the Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. APPOINTMENT OF DIVESTITURE TRUSTEE

A. If defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States 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 Wabtec 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 Wabtec 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 Wabtec 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 report~~s~~ contains information that the Divestiture Trustee deems confidential, such report~~s~~ 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, defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall

similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to defendants and the Divestiture Trustee, if there is one, stating whether 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, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the 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, defendants shall 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, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

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

X. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States 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).

XI. NOTIFICATION

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), during the term of this Final Judgment, Wabtec, without providing advance notification to the Antitrust Division, shall not directly or indirectly acquire any assets of or any interest, including, but not limited to, any financial, security, loan, equity, or management interest, in any entity engaged in the design, development, production (including the provision of any input product comprising five percent or more of the value of any final product), marketing, servicing, distribution, or sale of freight car brake systems or components thereof in the United States.

B. Such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about freight car brake systems or components thereof described in Section V of the Complaint filed in this matter (including any input product comprising five percent or more of the value of any final product). Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the thirty-day period after notification, representatives of the Antitrust Division make a written request for additional information, Wabtec shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early

termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XII. NO REACQUISITION

Wabtec 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

[FR Doc. 2016-26781 Filed: 11/4/2016 8:45 am; Publication Date: 11/7/2016]