Billing Code: 4410-11

DEPARTMENT OF JUSTICE
Antitrust Division

United States v. Learfield Communications, LLC, IMG College, LLC, and A-L Tier I LLC
Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America v. Learfield Communications, LLC, IMG College, LLC, and A-L Tier I LLC*, Civil Action No. 1:19-cv-00389. On February 14, 2019, the United States filed a Complaint alleging that that Learfield Communications, LLC's ("Learfield") and IMG College, LLC's ("IMG") agreements not to compete for multimedia rights contracts for universities' athletic programs violate Section 1 of the Sherman Act, 15 U.S.C. §1. The proposed Final Judgment, filed at the same time as the Complaint, prohibits sharing of competitively sensitive information, agreeing not to bid or agreeing to jointly bid, and entering into or extending multimedia rights joint ventures (absent approval from the United States), and it requires Defendants to implement an antitrust compliance training program.

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 Owen M. Kendler, Chief, Media, Entertainment and Professional Services Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 4000, Washington, DC 20530 (telephone: 202-305-8376).

Patricia A. Brink,
Director of Civil Enforcement.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*, v. LEARFIELD COMMUNICATIONS, LLC, IMG COLLEGE, LLC, and A-L TIER I LLC, *Defendants*.	Civil Action No.: 1:19-cv-00389 Judge: Emmet G. Sullivan

COMPLAINT

The United States of America brings this civil action to enjoin anticompetitive conduct by IMG College ("IMG"), Learfield Communications, LLC ("Learfield"), and A-L Tier I LLC, and to obtain other equitable relief. The United States alleges as follows:

I. NATURE OF THE ACTION

1. Athletic programs of the nation's universities have limited opportunities to generate revenue, and thus sponsorship revenue from multimedia rights ("MMR") plays an important role in many of their budgets. Defendants IMG and Learfield, along with several smaller companies, manage MMR for university athletic programs across the country.

2. Agreements by and among Defendants not to compete, however, have restrained competition in the MMR market, harming the universities that rely on these firms for an important revenue source. These agreements constitute contracts,

combinations, or conspiracies in restraint of trade or commerce in the United States in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and should be enjoined.

II. JURISDICTION, VENUE, AND COMMERCE

3. The United States brings this action under Section 4 of the Sherman Act, 15 U.S.C. § 4, to obtain equitable relief and other relief to prevent and restrain Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. This Court has subject matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. § 4.

4. This Court has personal jurisdiction over each Defendant. Both IMG and Learfield transact business within the District of Columbia.

5. Defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. IMG and Learfield manage MMR for universities throughout the United States. They are engaged in a regular, continuous, and substantial flow of interstate commerce, and their MMR management and other services have had a substantial effect on interstate commerce.

6. 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).

III. THE DEFENDANTS

7. Defendant IMG, until its 2018 merger with Learfield, was a division of global entertainment firm WME Entertainment Parent LLC ("WME"). IMG provided a variety of services to universities, including trademark licensing, ticketing, and MMR management. In 2017, IMG's U.S. revenue for MMR management was approximately $402 million.

8. Defendant Learfield, until its 2018 merger with IMG, was owned by Philadelphia, Pennsylvania-based private equity firm Atairos Group Inc. ("Atairos"), which is substantially owned by Comcast Corporation. Learfield provided a similar set of services to universities as IMG, including MMR management. In 2017, Learfield's U.S. revenue for MMR management was approximately $406 million.

9. On December 31, 2018, Defendants announced that they completed a merger under which Learfield and IMG had merged into a new company—A-L Tier I LLC (d/b/a Learfield IMG College)—owned, in part, by WME and Atairos.

IV. INDUSTRY BACKGROUND

10. Across the country, over a thousand colleges and universities field men's and women's sports teams to compete in intercollegiate athletics. The majority of these athletic programs are small, with only a few sports and funded primarily by student fees. Many, however, include over a dozen men's and women's teams each, requiring extensive facilities, staffing, and funding.

11. Because of their size, major university athletic programs require substantial budgets, with funding drawn primarily from a handful of key sources, including television rights, ticket revenue, donations, and MMR.

12. Multimedia rights consist of advertising and promotional rights associated with school property and athletic activities. Although the package of rights may vary slightly from deal to deal, MMR management firms typically manage the school's print and digital athletic advertising, signage in stadiums and arenas, game and event sponsorships, promotions, and radio shows. While smaller schools may choose to

maintain MMR management in-house, nearly all major university athletic programs use an MMR management firm to manage their MMR.

13. MMR management firms serve several important functions. First, they oversee the general commercialization of a university's athletic rights, including identifying advertising and promotional opportunities, working with different constituencies to secure the most advertising revenue without undermining the interests and values of the university, and performing a variety of back office functions. Second, they assist the university in bringing MMR opportunities to market, such as providing facilities and infrastructure to produce radio shows and funding the construction of new stadium videoboards. Finally, MMR management firms develop and maintain relationships with advertisers.

V. COORDINATION IN THE MMR INDUSTRY

14. Defendants IMG and Learfield have agreed or otherwise coordinated to limit competition between one another and between themselves and smaller competitors.

15. At times, the coordination between IMG and Learfield has taken the form of joint ventures at specific universities. Under the guise of legitimate business arrangements, these joint ventures further Defendants' interests over schools', denying colleges the benefits of competition with little, if anything, in return.

16. In one such episode, IMG and Learfield provided MMR services through a joint venture that had been created years before. When the university's multimedia rights came up for bid, both IMG and Learfield initially prepared to submit independent bids in competition with each other. Before submissions were made to the school, however, executives of IMG and Learfield agreed not to submit competing bids and instead

submitted a joint bid. Absent the competing independent offers anticipated from both IMG and Learfield, the school accepted a joint bid that offered less revenue to the school than at least one of Defendants' planned independent bids.

17. With varying degrees of success, Defendants have also attempted to wield the joint venture structure as a way to co-opt smaller competitors. In one example, as part of a joint venture agreement between IMG and a smaller MMR provider, IMG secured a commitment under which the smaller provider would not bid on any of IMG's schools for over a year. IMG recognized the joint venture's value in removing the smaller provider as a competitor and projected millions in savings from not having to compete. In another example, IMG proposed to another bidder that they each withdraw their bids and submit a joint bid that would be less favorable to the school. In this instance, however, IMG's invitation did not succeed and the other firm ultimately won the bid.

18. Additionally, when IMG and Learfield have unwound established joint ventures at certain universities, the two firms have crafted non-compete agreements that continue to limit competition. As with the joint ventures themselves, these non-competes unreasonably denied schools the benefits of competition. And when one of the two firms wanted to compete, the other quickly moved to suppress the threatening bid, enforcing the agreement. In one example, a then-IMG executive asked Learfield for permission to bid on a Learfield school that was coming up for bid on which Learfield had a non-compete commitment from IMG. Learfield, however, did not consent and the school stayed with Learfield.

19. Even in the absence of a so-called joint venture or non-compete agreement, IMG and Learfield have sought ways to undermine competition. In some cases, an understanding not to compete is employed with an informal policing mechanism. In one such episode, Learfield bid for an IMG school without first receiving permission from IMG. As a result, a then-IMG executive reached out to a Learfield executive requesting that Learfield withdraw its bid. Learfield agreed and withdrew its bid as IMG had requested. The university, without Learfield's offer, signed an agreement with IMG.

20. These efforts to suppress competition also extended to others in the market. For example, Defendants have attempted to craft legal settlements with smaller competitors in ways that limit competition. In an employee dispute with one such competitor, Learfield secured a settlement that precluded the company from bidding on a certain university. And in another employee dispute, Learfield made a failed attempt to agree not to compete with a competitor for one another's MMR staff.

21. Defendants' agreements and attempted agreements not to compete, and to co-opt smaller competitors, reflect a culture of disregard for the antitrust laws and the competitive process. Accordingly, such conduct should be enjoined.

VI. VIOLATIONS ALLEGED

22. The agreements by Defendants not to compete constitute agreements that unreasonably restrain competition in the market for MMR management in the United States in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

23. Among other things, Defendants' conduct has and will continue to:

(a) harm the competitive process by suppressing or eliminating competition in MMR management;

(b) reduce the revenue received by universities; and

(c) cause the quality of MMR management to decrease.

24. These agreements are not reasonably necessary to accomplish any allegedly procompetitive goals. Any procompetitive benefits are outweighed by anticompetitive harm, and there are less restrictive alternatives by which Defendants would be able reasonably to achieve any procompetitive goals.

VII. REQUEST FOR RELIEF

25. The United States requests:

(a) that the aforesaid agreements not to compete against each other be adjudged to unreasonably restrain trade and to be illegal under Section 1 of the Sherman Act, 15 U.S.C. § 1;

(b) that Defendants be permanently enjoined from engaging in, enforcing, carrying out, or attempting to engage in, enforce, carry out, or renew the agreements in which Defendants are alleged to have engaged, or any other agreement having a similar purpose or effect, in violation of Section 1 of the Sherman Act, 15. U.S.C. § 1;

(c) that Defendants eliminate and cease enforcing all agreements not to compete and be prohibited from otherwise acting to restrain trade unreasonably;

(d) that Defendants be required to institute an antitrust compliance program;

(e) that the United States be awarded costs of this action; and

(f) that the United States be awarded such other relief as the Court may deem just and proper.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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Dated: February 14, 2019

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*, v. LEARFIELD COMMUNICATIONS, LLC, , IMG COLLEGE, LLC and A-L TIER I LLC, *Defendants*.	Civil Action No.: 1:19-cv-00389 Judge: Emmet G. Sullivan

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on January ___, 2019, alleging that Defendants violated Section 1 of the Sherman Act, 15 U.S.C. § 1, the United States and Defendant, 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 WHEREAS, this Final Judgment does not constitute any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, the United States and Defendants agree to be bound by the provisions of this Final Judgment pending its approval by this Court;

AND WHEREAS, the Defendants agree to undertake certain actions and to refrain from engaging in certain forms of communications and joint activities with their competitors;

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 and each of the parties to this action. The allegations in the Complaint arise under Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1. *See* 28 U.S.C. § 1331.

II. DEFINITIONS

As used in this Final Judgment:

A. "Advertiser" means an advertiser, sponsor, or corporate hospitality client or an agent or representative acting on behalf of an advertiser, sponsor, or corporate hospitality client.

B. "Agreement" means any agreement, understanding, pact, contract, or arrangement, formal or informal, oral or written, between two or more Persons.

C. "Bid" or "Bidding" means any offer or response to a Request for Proposal, Request for Submission, Request for Information, or any other request, either formal or informal, by a college, university, or athletic conference (including facilities owned or affiliated with such institutions) relating to a contract or other arrangement (including extensions or renewals of any existing contract or other arrangement) for the management, sale, commercialization, or other utilization of Multimedia Rights owned by the college, university, or athletic conference, or their owned or affiliated facilities.

D. "Communicate," "Communicating," and "Communication(s)" means to provide, send, discuss, circulate, exchange, request, or solicit information, whether

directly or indirectly, and regardless of the means by which it is accomplished, including orally or by written or recorded means of any kind, such as electronic communications, e-mails, facsimiles, telephone communications, voicemails, text messages, audio recordings, meetings, interviews, correspondence, exchange of written or recorded information, face-to-face meetings, or social media.

E. "Competitively Sensitive Information" means any non-public information of Defendants or any Competitor regarding the purchase or sale of Multimedia Rights, including without limitation non-public information relating to negotiating positions, tactics, or strategy, pricing or pricing strategies, Bids or Bidding Strategies, intentions to Bid or not to Bid, decisions to Bid, whether a Bid was or was not submitted, costs, revenues, profits, or margins.

F. "Competitor" means any Person (other than any Defendant) engaged in , or considering engaging in, the business of servicing, marketing, or commercializing Multimedia Rights or any Multimedia Rights contract, agreement, or opportunity. For the avoidance of doubt, colleges and universities are not "Competitors."

G. "Defendants" mean Learfield, IMG College, and A-L Tier I LLC.

H. "IMG College" means IMG College LLC headquartered in Winston-Salem, North Carolina, its successors and assigns (including but not limited to A-L Tier I LLC), and its subsidiaries, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

I. "Joint Venture" means any collaboration, formed by written or oral agreement, created by and among any Defendant and Competitor relating to the

management, sale, commercialization, or other utilization of Multimedia Rights or the Bidding for Multimedia Rights.

J. "Learfield" means Learfield Communications, LLC, a Delaware limited liability company headquartered in Plano, Texas, its successors and assigns (including but not limited to A-L Tier I LLC), and its subsidiaries, partnerships, joint ventures, and their directors, officers, managers, agents and employees.

K. "Management" means all directors, executives, and officers of a Defendant, or any other employee with management or supervisory responsibilities for a Defendant's Multimedia Rights business at or above the level of general manager at a college or university.

L. "Multimedia Rights" means the sponsorship and advertising rights of a college or university intercollegiate athletic program, including but not limited to in-venue signage, television advertising, radio advertising, print advertising, digital advertising, and social media advertising.

M. "Multi-Property Sales" means the promotion, marketing, or sales of Multimedia Rights in a package that includes more than one college, university, athletic conference, or venue.

N. "Person" means any natural person, university, athletic conference, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

III. APPLICABILITY

This Final Judgment applies to IMG College, Learfield, and A-L Tier I LLC and other Persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise. This Final Judgment is fully enforceable, including by penalty of contempt, against all of the foregoing.

IV. PROHIBITED CONDUCT

A. Defendants shall not, directly or indirectly:

1. Communicate with any Competitor concerning any Competitively Sensitive Information relating to a Bid or Bidding;

2. Agree, combine, conspire, or collude with any Competitor to participate in any joint Bid, collaborative Bid, cooperative Bid, or shared Bid;

3. Agree with any Competitor that any Defendant or any Competitor will not Bid for any Multimedia Rights contract, opportunity, or arrangement; or

4. Communicate, offer, invite, propose, encourage, facilitate, or suggest any joint Bid, collaborative Bid, cooperative Bid, or shared Bid with any Competitor.

B. The prohibitions under Paragraph IV.A apply to Defendant's Communicating or agreeing to Communicate through any third-party agent or third-party consultant at Defendants' instruction, direction, or request.

C. Without the prior written consent of the United States in its sole discretion, the Defendants shall not enter into, renew, or extend the term of any Joint

Venture or conduct other business negotiations in conjunction with or on behalf of any Competitor relating to the management, sale, commercialization, or other utilization of Multimedia Rights. The Defendants may apply for prior written consent of the United States in its sole discretion for permission to conduct specified categories of collaborations or sublicensing arrangements that would not reduce the number of Competitors Bidding.

V. CONDUCT NOT PROHIBITED

A. Nothing in Section IV shall prohibit Defendants from Communicating with a college, university, athletic conference, venue, or any other Person (other than a Competitor) seeking to contract for the management, sale, commercialization, or other utilization of such Person's own Multimedia Rights.

B. Nothing in Section IV shall prohibit Defendants from Communicating with an actual or prospective Advertiser.

C. Nothing in Section IV shall prohibit Defendants from Communicating or transacting with their employees, officers, directors, or owners, including for the avoidance of doubt, WME Entertainment Parent and its subsidiaries and Atairos.

D. Nothing in Section IV shall prohibit Defendants, after securing advice of counsel and in consultation with the Antitrust Compliance Officer appointed pursuant to Section VI *infra*, from Communicating with a Competitor concerning the formation of a Joint Venture that would be subject to the approval of the United States under Section IV(C) or a merger or acquisition, including transactions subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

E. Nothing in Section IV shall prohibit Defendants from Communicating with a Competitor concerning Multi-Property Sales.

F. Nothing in Section IV shall prohibit Defendants from Communicating with a Competitor if (i) the Competitor was engaged in a Joint Venture with any Defendant as of July 1, 2018 and the Communications relate solely to the operation of the Joint Venture in which Competitor and the Defendant are engaged; or (ii) the Competitor and Defendant are engaged in a Joint Venture approved by the United States pursuant to Paragraph IV(C) including, in either case (i) or (ii), waiving or terminating any provisions of the applicable Joint Venture agreement. Defendants shall maintain copies of all written or recorded Communications of the type referenced in this Paragraph V(F) for five years or the duration of the Final Judgment, whichever is shorter, following the date of the creation of such Communication, and Defendants shall make such documents available to the United States upon request.

G. Nothing in Section IV shall prohibit Defendant from engaging in conduct in accordance with the doctrine established in *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), *United Mine Workers v. Pennington*, 381 U.S. 657 (1965), and their progeny.

H. The preceding Paragraphs V(A) through (G) are for the avoidance of doubt and do not create any implications as to the scope or interpretation of Section IV.

VI. REQUIRED CONDUCT

A. Within ten days of entry of this Final Judgment, each Defendant shall appoint an Antitrust Compliance Officer who is an internal employee or Officer of the Defendant, and identify to the United States the Antitrust Compliance Officer's name,

business address, telephone number, and email address. Within forty-five days of a vacancy in a Defendant's Antitrust Compliance Officer position, such Defendant shall appoint a replacement, and shall identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. The Defendant's initial or replacement appointment of an Antitrust Compliance Officer is subject to the approval of the United States in its sole discretion. For the avoidance of doubt, a single Person employed by one Defendant may serve as the Antitrust Compliance Officer for all Defendants.

B. The Antitrust Compliance Officer shall have, or shall retain outside counsel who has, the following minimum qualifications:

1. be an active member in good standing of the bar in any U.S. jurisdiction; and

2. at least five years' experience in legal practice, including experience with antitrust matters.

C. The Antitrust Compliance Officer shall, directly or through the employees or counsel working at the Antitrust Compliance Officer's direction:

1. within fourteen days of entry of the Final Judgment, furnish to each Defendant's Management a copy of this Final Judgment, the Competitive Impact Statement filed by the United States with the Court, and a cover letter in a form attached as Exhibit 1;

2. within fourteen days of entry of the Final Judgment, in a manner to be devised by each Defendant and approved by the United States,

provide each Defendant's Management reasonable notice of the meaning and requirements of this Final Judgment;

3. annually brief each Defendant's Management on the meaning and requirements of this Final Judgment and the U.S. antitrust laws;

4. brief any Person who succeeds a Person in any position identified in Paragraph VI(C)(3), within sixty days of such succession;

5. obtain from each Person designated in Paragraph VI(C)(3) or VI(C)(4), within thirty days of that Person's receipt of the Final Judgment, a certification that the Person (i) has read and understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer; and (iii) understands that failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court;

6. annually communicate to each Defendant's Management that they may disclose to the Antitrust Compliance Officer, without reprisal for such disclosure, information concerning any violation or potential violation of this Final Judgment or the U.S. antitrust laws by the Defendant; and

7. maintain for five years or until expiration of the Final Judgment, whichever is shorter, a copy of all materials required to be issued under Paragraph VI(C), and furnish them to the United States

within ten days if requested to do so, except documents protected under the attorney-client privilege or the attorney work-product doctrine. For all materials required to be furnished under Paragraph VI(C) which a Defendant claims are protected under the attorney-client privilege or the attorney work-product doctrine, Defendant shall furnish to the United States a privilege log.

D. Each Defendant shall:

1. upon Management or the Antitrust Compliance Officer learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, (i) promptly take appropriate action to investigate, and in the event of a violation, terminate or modify the activity so as to comply with this Final Judgment, (ii) maintain all documents related to any violation or potential violation of this Final Judgment for a period of five years or the duration of this Final Judgment, whichever is shorter, and (iii) maintain, and furnish to the United States at the United States' request, a log of (a) all such documents and documents for which Defendant claims protection under the attorney-client privilege or the attorney work product doctrine, and (b) all potential and actual violations, even if no documentary evidence regarding the violations exist;

2. within thirty days of Management or the Antitrust Compliance Officer learning of any such violation or potential violation of any

of the terms and conditions contained in this Final Judgment, file with the United States a statement describing in detail any violation or potential violation of any of the terms and conditions contained in this Final Judgment, which shall include a description of any Communications constituting the violation or potential violation, including the date and place of the Communication, the Persons involved, and the subject matter of the Communication;

3. establish a whistleblower protection policy, which provides that any employee may disclose, without reprisal for such disclosure, to the Antitrust Compliance Officer information concerning any violation or potential violation by the Defendant of this Final Judgment or U.S. antitrust laws;

4. have its CEO, General Counsel or Chief Legal Officer certify in writing to the United States annually on the anniversary date of the entry of this Final Judgment that Defendant has complied with the provisions of this Final Judgment; and

5. maintain and produce to the United States upon request: (i) a list identifying all employees having received the annual antitrust briefing required under Paragraphs VI(C)(3) and VI(C)(4); and (ii) copies of all materials distributed as part of the annual antitrust briefing required under Paragraphs VI(C)(3) and V(C)(4). For all materials requested to be produced under this Paragraph VI(D)(5) for which a Defendant claims is protected under the attorney-client

privilege or the attorney work-product doctrine, Defendant shall furnish to the United States a privilege log.

6. file with the United States six months, twelve months, and twenty-four months after entry of this Final Judgment a report describing in detail the steps it has taken to (a) comply with the terms of this Final Judgement and (b) implement the provisions of Section VI.

E. For the avoidance of doubt, the term "potential violation" as used in Paragraph VI(D) does not include the discussion of future conduct.

F. If a Defendant acquires a Person in the business of the management, sale, commercialization, or other utilization of Multimedia Rights after entry of this Final Judgment, this Section VI will not apply to that acquired Person and the Management of that acquired Person until 120 days after closing of the acquisition of that acquired Person.

VII. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment or of any related orders, or of determining whether the Final Judgment should be modified, 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. to access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide

electronic or hard copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters that are the subject of this Final Judgment, not protected by the attorney-client privilege or the attorney work product doctrine; 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; and

3. to obtain from Defendants written reports or responses to written interrogatories, of information not protected by the attorney-client privilege or attorney work product doctrine, under oath if requested, relating to any matters that are the subject of this Final Judgment as may be requested.

B. No information or documents obtained by the means provided in this Section VII 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 for law enforcement purposes, or as otherwise required by law.

C. If at the time information or documents are furnished by Defendants to the United States, a Defendant represents and identifies 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 that Defendant marks 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 that Defendant ten calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII. 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.

IX. ENFORCEMENT OF FINAL JUDGMENT

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

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final

Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

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

X. EXPIRATION OF FINAL JUDGMENT

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

XI. NOTICE

For purposes of this Final Judgment, any notice or other communication required to be provided to the United States shall be sent to the person at the address set forth

below (or such other addresses as the United States may specify in writing to Defendants):

Chief
Media, Entertainment, and Professional Services Section
U.S. Department of Justice
Antitrust Division
450 Fifth Street, NW, Suite 4000
Washington, D.C. 20530

XII. 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.

IT IS SO ORDERED by the Court, this _____ day of _____, 201__.

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

_____
United States District Judge

EXHIBIT 1

[Company Letterhead]

[Name and Address of Antitrust Compliance Officer]

Re: *Prohibitions against Working with Competitors on MMR Bids*

Dear [XX]:

I provide you this notice regarding a judgment recently entered by a federal judge in Washington, DC prohibiting communicating and otherwise working with competitors when bidding on colleges and universities' multimedia rights contracts.

The judgment applies to our company and all of its employees, including you, so it is important that you understand the obligations it imposes on us. [CEO Name] has asked me to let each of you know that [s/he] expects you to take these obligations seriously and abide by them.

The judgment prohibits us from communicating with other multimedia rights firms about bidding on RFPs or other responses to colleges and universities seeking multimedia rights management services. The judgment also prevents us from jointly bidding, or seeking to bid jointly, for any multimedia rights contracts with other companies or from forming multimedia rights joint ventures. There are limited exceptions to these restrictions, which are listed in the judgment. The company will provide briefing on legitimate and illegitimate actions. You must consult with me if you have any questions on whether a particular circumstance is subject to an exception under the judgment.

A copy of the judgment is attached. Please read it carefully and familiarize yourself with its terms. The judgment, rather than the above description, is controlling. If

you have any questions about the judgment or how it affects your work activities, please contact me as soon as possible.

Please sign and return the attached Employee Certification to [Defendant's Antitrust Compliance Officer] within thirty days of your receipt of this letter. Thank you for your cooperation.

Sincerely,

[Defendant's Antitrust Compliance Officer]

Employee Certification

I, _____ [name], _____ [position] at _____ [station or location] do hereby certify that I (i) have read and understand, and agree to abide by, the terms of the Final Judgment; (ii) am not aware of any violation of the Final Judgment that has not been reported to [Defendant]; and (iii) understand that my failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court.

_____

Name:

Date:

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*, v. LEARFIELD COMMUNICATIONS, LLC, IMG COLLEGE, LLC, and A-L TIER I LLC, *Defendants*.	Civil Action No.: 1:19-cv-00389 Judge: Emmet G. Sullivan

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA" or "Tunney Act"), files this Competitive Impact Statement relating to the proposed Final Judgment against Defendants IMG College ("IMG"), Learfield Communications, LLC ("Learfield"), and A-L Tier I LLC (collectively "Defendants"), submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On February 14, 2019, the United States filed a civil antitrust complaint alleging that Defendants agreed or otherwise coordinated to limit competition between themselves and between themselves and smaller competitors. The Complaint alleges those agreements and that coordination unlawfully restrain trade in the multimedia rights ("MMR") management market under Section 1 of the Sherman Act, 15 U.S.C. § 1. The

Complaint seeks injunctive relief to enjoin the Defendants from engaging in similar conduct in the future.

Along with the Complaint, the United States filed a proposed Final Judgment. The proposed Final Judgment prohibits sharing of competitively sensitive information, agreeing not to bid or agreeing to jointly bid, and, absent approval from the United States, entering into or extending MMR joint ventures. It also requires Defendants to implement an antitrust compliance training program.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. 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. Industry Background

Millions of Americans enjoy college sports each year. Advertisers often try to reach college sports fans by advertising during games, promoting their products at college sports events, and sponsoring various aspects of college sports events and venues. Multimedia rights management companies transform universities' multimedia rights into revenue. Multimedia rights firms do this by selling advertising, promotional, and sponsorship opportunities associated with the universities' sports programs to companies and other groups trying to reach the universities' sports fans. The multimedia rights can include space on videoboards and scoreboards in football stadiums and basketball arenas, space on printed game programs, commercial time during radio broadcasts of games,

commercial time during radio and television broadcasts of coaches' shows, promotional contests during games, and various other methods of reaching fans.

B. Coordination in the MMR Industry

The Complaint alleges that IMG and Learfield have agreed or otherwise coordinated to limit competition between one another and between themselves and smaller competitors. At times, the coordination between IMG and Learfield has taken the form of joint ventures at specific universities. Under the guise of legitimate business arrangements, these joint ventures further Defendants' interests over schools', denying colleges the benefits of competition with little, if anything, in return. With varying degrees of success, IMG and Learfield have also attempted to wield the joint venture structure as a way to co-opt smaller competitors. Additionally, when IMG and Learfield have unwound established joint ventures at certain universities, the two firms have crafted non-compete agreements that continue to limit competition.

The Complaint also alleges that, even in the absence of a so-called joint venture or non-compete agreement, IMG and Learfield have sought ways to undermine competition, including employing an informal policing mechanism to enforce an understanding not to compete. Efforts to suppress competition have also extended to employee disputes and legal settlements.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment closely track the relief sought in the Complaint and are intended to provide prompt, certain, and effective remedies that will ensure that Defendants and their employees and agents will not impede competition by agreeing not to compete, entering into unapproved joint ventures, or sharing

competitively sensitive information with their competitors. The requirements and prohibitions in the proposed Final Judgment will terminate Defendants' illegal conduct, prevent recurrence of the same or similar conduct, and ensure that Defendants establish an antitrust compliance program. The proposed Final Judgment protects competition and consumers by putting a stop to the anticompetitive conduct alleged in the Complaint.

A. Prohibited Conduct

Section IV of the proposed Final Judgement prohibits Defendants from, directly or indirectly, communicating competitively sensitive information related to bidding with any MMR competitor.

Section IV also prohibits Defendants from agreeing with an MMR competitor not to bid, or to bid jointly, on an MMR contract, including invitations or suggestions to bid jointly Paragraph IV(C) outlines a process under which Defendants may seek approval from the United States to form an MMR joint venture, but otherwise prohibits entering into, renewing, or extending the term of any current or future MMR joint venture.

B. Conduct Not Prohibited

The proposed Final Judgment does not prohibit Defendants from undertaking activities necessary to win MMR contracts on their own, selling multimedia rights to advertisers, or creating packages for advertisers to advertise across MMR properties. Paragraph V(A) makes clear that the proposed Final Judgment does not prohibit Defendants from communicating with colleges, universities, athletic conferences, or venues seeking to enter into an MMR contract. Paragraph V(B) confirms Defendants are permitted to communicate with actual or prospective advertisers, and Paragraph V(E) allows Defendants to communicate with a competitor for the purpose of putting together

multi-property advertiser packages. Paragraph V(G) confirms that the proposed Final Judgment does not prohibit petitioning conduct protected by the *Noerr-Pennington* doctrine.

Paragraphs V(D) and V(F) permit certain conduct related to joint ventures. Specifically, Paragraph V(D) allows Defendants to have initial discussions with a competitor about the formation of a joint venture that would then be subject to approval by the United States. Paragraph V(F) makes clear that Defendants may communicate with competitors about the operation of a joint venture established on or before July 1, 2018.

C. Antitrust Compliance Obligations

Under Section VI of the proposed Final Judgment, Defendants must designate an Antitrust Compliance Officer who will be responsible for implementing training and antitrust compliance programs and ensuring compliance with the Final Judgment. Among other duties, the Antitrust Compliance Officer will be required to distribute copies of the Final Judgment and ensure that training on the Final Judgment and the antitrust laws is provided to Defendants' management. Section VI also requires Defendants to establish an antitrust whistleblower policy and remedy and report violations of the Final Judgment. Under Paragraph VI(D)(4), Defendants, through their CEO, General Counsel, or Chief Legal Officer, must certify annual compliance with the Final Judgment. This compliance program is necessary in light of Defendants' anticompetitive conduct.

D. Enforcement and Expiration of the Final Judgment

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

Paragraph IX(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore competition the United States alleged was harmed by Defendants' challenged conduct. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face, and as interpreted in light of this procompetitive purpose.

Paragraph IX(C) further provides that, should the Court find in an enforcement proceeding that Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such

other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of a proposed Final Judgment, Paragraph IX(C) provides that in any successful effort by the United States to enforce a Final Judgment against Defendants, whether litigated or resolved before litigation, Defendants agree to reimburse the United States for any attorneys' fees, experts' fees, or costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

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

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 Judgments

The United States and Defendants have stipulated that the Court may enter the proposed Final Judgment 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 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 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 before 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 website and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

Owen M. Kendler
Chief, Media, Entertainment & Professional Services Section
Antitrust Division
United States Department of Justice
450 5th Street, N.W., Suite 4000
Washington, DC 20530

Under Section VIII, 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, seeking injunctive relief against Defendants' conduct through a full trial on the merits. The United States is satisfied, however, that the relief sought in the proposed Final Judgment will terminate the anticompetitive conduct alleged in the Complaint and more quickly restore the benefits of competition. Thus, the proposed Final Judgment would achieve the relief the United States might 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 Judgments

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

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

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

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the decree is sufficiently clear, whether its 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. Instead:

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

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[1]

In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also U.S. Airways*, 38 F. Supp. 3d at 74–75 (noting that a court should not reject the proposed remedies because it believes others are preferable and that room must be made for the government to grant concessions in the negotiation process for settlements); *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"). The ultimate question is 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.'" *Microsoft*, 56 F.3d at 1461 (*quoting United States v. Western*

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

Elec. Co., 900 F.2d 283, 309 (D.C. Cir. 1990)). 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 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments,[2] 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

[2] The 2004 amendments substituted "shall" for "may" in directing relevant factors for a 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).

conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). 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. 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. *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"); S. Rep. No. 93-298 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

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: February 14, 2019

Respectfully submitted,

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