## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1396]**

### Certain Medical Programmers With Printed Circuit Boards, Components Thereof, and Products and Systems for Use With the Same; Notice of Commission Determination Not To Review an Initial Determination Granting Complainants' Motion To Amend the Complaint and Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 11) of the presiding administrative law judge (''ALJ'') granting complainants' motion to amend the complaint to correct a typographical error on the cover page and the notice of investigation (''NOI'') to change the plain language description of the accused products in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on April 3, 2024, based on a complaint filed by Medtronic, Inc., Medtronic Logistics, LLC, and Medtronic USA, Inc., all of Minneapolis, Minnesota, and Medtronic Puerto Rico Operations Co. of Juncos, Puerto Rico (collectively, ''Medtronic''). 89 FR 23043–44 (Apr. 3, 2024). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain medical programmers with printed circuit boards, components thereof, and products and systems for use with the same by reason of the infringement of certain claims of U.S. Patent Nos. 8,712,540 and 9,174,059. *Id.* at 23043. The complaint further alleges that a domestic industry exists. *Id.* The NOI named one respondent: Axonics, Inc. (''Axonics'') of Irvine, California. *Id.* at 23044. The Office of Unfair Import Investigations (''OUII'') is also named as a party. *Id.*

On June 25, 2024, Medtronic filed a motion to amend the complaint and NOI to (i) correct a typographical error on the cover page of the complaint by substituting ''UNITED'' in place of ''MUNITED,'' and (ii) change the NOI's plain language description of the accused products—which presently reads ''sacral neuromodulation systems to control neurostimulators surgically implanted into a human patient, incorporating medical programmers and printed circuit boards used in same''—by substituting ''components thereof, and'' in place of ''incorporating.'' On July 5, 2024, Axonics filed a response to the motion opposing the amendment to the NOI, but not opposing the amendment to the complaint. Also on July 5, 2024, OUII filed a response in support of the motion.

On July 11, 2024, the ALJ issued the subject ID granting the motion. The ID finds that, in accordance with Commission Rule 210.14(b) (19 CFR 210.14(b)), good cause exists for amending the complaint and NOI as requested by Medtronic and neither the parties nor the public interest will be prejudiced. ID at 1, 3. No petitions for review of the subject ID were filed.

The Commission has determined not to review the subject ID. The complaint is amended to substitute ''UNITED'' in place of ''MUNITED,'' and the NOI is amended so that the plain language description of the accused products reads ''sacral neuromodulation systems to control neurostimulators surgically implanted into a human patient, components thereof, and medical programmers and printed circuit boards used in same.''

The Commission vote for this determination took place on August 12, 2024.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: August 12, 2024.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2024–18313 Filed 8–14–24; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. Legends Hospitality Parent Holdings, 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 Southern District of New York in *United States of America* v. *Legends Hospitality Parent Holdings, LLC,* Civil Action No. 1:24–cv–05927–JPC (S.D.N.Y.). On August 5, 2024, the United States filed a Complaint alleging that Legends violated section 7A of the Clayton Act, 15 U.S.C. 18a, also commonly known as the Hart–Scott–Rodino Antitrust Improvements Act of 1976 (''section 7A'' or ''HSR Act'') in connection with its proposed acquisition of ASM Global, Inc. The Complaint alleges Legends assumed unlawful control of ASM Global, Inc. prior to the expiration of the mandatory waiting period imposed by the HSR Act, and that Legends was continually in violation of the HSR Act each day beginning at least on December 7, 2023, until the waiting period ended on May 29, 2024.

The proposed Final Judgment, filed at the same time as the Complaint, requires Legends Hospitality to pay a $3.5 million civil penalty for violation of the HSR Act and bars recurrence of the challenged conduct on penalty of contempt. It additionally requires Legends to appoint an antitrust compliance officer at its expense, to conduct compliance training, to certify compliance with the Final Judgment, to maintain a whistleblower protection policy, and to provide the United States inspection and interview rights to assess compliance with the Final Judgment.

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 Southern District of New York. 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 submitted in English and directed to Owen Kendler, Chief, Financial Services, FinTech, and Banking Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 4000, Washington, DC 20530 (email address: *owen.kendler@usdoj.gov*).

**Suzanne Morris,**

*Deputy Director Civil Enforcement Operations, Antitrust Division.*

**United States District Court Southern District of New York**

*United States of America,* Department of Justice, Antitrust Division, 450 Fifth Street NW, Washington, DC 20530, Plaintiff, v. *Legends Hospitality Parent Holdings, LLC,* 61 Broadway, 24th Floor, New York, New York 10006, Defendant.

Case No. 1:24–cv–5927–JPC

**Complaint**

The United States of America brings this civil action to obtain equitable and monetary relief in the form of civil penalties against the Defendant, Legends Hospitality Parent Holdings, LLC (''Legends'') for violating the premerger notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (''HSR Act''), and alleges as follows:

*I. Introduction*

1. The HSR Act, 15 U.S.C. 18a, is an essential part of modern antitrust enforcement. It requires the buyer and seller of voting securities or assets in excess of a certain value to notify the Department of Justice and the Federal Trade Commission *prior* to consummating the acquisition, and to observe a suspensory waiting period after the notification is filed. A buyer could ''acquire'' assets without taking formal legal title, for instance by exerting operational control over the assets or otherwise obtaining ''beneficial ownership.'' The HSR Act's advance notice and waiting period requirements ensure that the parties to a proposed transaction continue to operate separately and independently during review, preventing anticompetitive acquisitions from harming consumers before the United States has had the opportunity to review them according to the procedures established by Congress in the Clayton Act. A buyer that prematurely takes beneficial ownership of assets, sometimes referred to as ''gun jumping,'' is subject to statutory penalties for each day it is in violation.

*II. Jurisdiction, Venue, and Interstate Commerce*

2. This Complaint is filed and these proceedings are instituted under Section 7A of the Clayton Act, 15 U.S.C. 18a, added by Title II of the HSR Act, to recover civil penalties for violations of that section and other relief.

3. This Court has jurisdiction over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. 18a(g), and pursuant to 28 U.S.C. 1331, 1337(a), 1345 and 1355.

4. The Defendant has consented to personal jurisdiction and venue in the United States District Court for the Southern District of New York for purposes of this action.

5. Legends is engaged in commerce, or in activities affecting commerce, within the meaning of Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1).

*III. The Defendant*

6. Defendant Legends is a global venue services company headquartered in New York, New York. It is majority-owned by Sixth Street Partners, its minority owners include the New York Yankees and the Dallas Cowboys, and it has a strategic partnership with The Kroenke Group. Legends focuses predominantly on food and beverage services, feasibility studies, project development, and sales.

*IV. Waiting Period Requirements of the HSR Act*

7. The HSR Act requires certain acquiring persons, and certain persons whose voting securities are acquired, to file notifications with the Department of Justice and Federal Trade Commission and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. 18a (a) and (b). Of relevance here, the notice and waiting requirements apply if, as a result of the acquisition, the acquiring person will ''hold'' assets or voting securities above the HSR Act's size of transaction threshold.

8. Pursuant to Section (d)(2) of the HSR Act, 15 U.S.C. 18a(d)(2), the Federal Trade Commission promulgated rules to carry out the purpose of the HSR Act. 16 CFR 801–803.

9. Section 801. 1(c) of the HSR Rules, 16 CFR 801.1(c) defines ''hold'' to mean ''beneficial ownership, whether direct, or indirect through fiduciaries, agents, controlled entities or other means.''

10. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), states that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which the person is in violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 89 FR 1,445 (Jan. 10, 2024), the maximum amount of civil penalty relevant to this Complaint is $51,744 per day.

*V. The Acquisition and the Defendant's Unlawful Conduct*

11. Legends and ASM Global, Inc. (''ASM'') began acquisition discussions in January 2023. ASM is a venue services company primarily focused on venue management, *i.e.* providing services related to the day-to-day operations of a venue like event booking, operations, sanitation, and security among other services. On November 3, 2023, Legends agreed to purchase ASM for $2.325 billion (''Acquisition''). On November 6, 2023, Legends filed its HSR notice with the Department of Justice.

12. The Acquisition exceeded thresholds established by the HSR Act and did not qualify for any of the HSR Act's exemptions. Consequently, the Acquisition was subject to the premerger and notification requirements of the HSR Act. The applicable waiting period, which was extended by the issuance of requests for additional information on January 8, 2024, expired on May 29, 2024.[1] During this statutory waiting period, the HSR Act [2] required Legends and ASM to continue to operate as separate and independent entities while the Antitrust Division of the Department of Justice conducted a pre-consummation antitrust review of the Acquisition. Legends, however, failed to adhere to its statutory obligation and assumed unlawful control of ASM prior to the expiration of the HSR waiting period.

13. In May 2023, Legends won the right to manage a city-owned arena in California upon the expiration of ASM's management lease on July 31, 2024. ASM also competed for this opportunity. As part of its bid for the California arena, Legends submitted a

[1] Legends and ASM agreed to not close the Acquisition during the pendency of the Department of Justice's investigation.

[2] Other antitrust laws also can apply to pre-closing conduct of transaction parties.

detailed transition plan that included key milestone dates for booking, operations, human resources, engineering, sanitation, production, security, event staffing and other services. Absent the Acquisition, Legends was planning to provide those services itself to the arena.

14. Due to the Acquisition with ASM, however, Legends decided to have ASM provide those services instead. After submitting its HSR filing, but before the expiration of the HSR waiting period, Legends decided that ASM would continue to operate the California arena. For example, on December 7, 2023, Legends and ASM signed an initial agreement whereby ASM would book third-party events for the California arena instead of Legends. Further, on April 9, 2024, Legends decided that ASM would continue providing venue management services for the California arena instead of transitioning the arena to Legends.

15. The purpose and intent of Legends' pre-closing conduct in connection with the California arena also are informed by aspects of Legends' course of conduct in connection with ASM, including conduct before and after submitting the HSR filing.

16. For example, while Legends and ASM were in discussions around the Acquisition, but before the HSR filing, Legends sought to discuss competitive bidding strategies with ASM. In August 2023, Legends learned that a city in North Carolina was planning to issue an RFP for management of an existing entertainment complex, including an arena and other venues. A senior Legends executive emailed Legends' then-CEO noting, ''I assume we would rather have ASM chase this?'' The then-CEO informed another executive, ''we will find out if ASM is bidding as don't want to both be bidding,'' and set a calendar reminder for himself to speak with a senior ASM executive about the North Carolina RFP.

17. In addition, in early 2023, Legends and ASM learned that a university was planning to develop a new arena. Both Legends and ASM initially took steps to form separate, independent bids for the new arena. However, after Legends and ASM were in discussions around the Acquisition, their posture changed, such that in May 2023 they decided that they would instead try to bid together. While constructing their joint bid, Legends and ASM exchanged competitively sensitive information surrounding the arena development project.

18. Legends and ASM engaged in similar behavior for a different proposed university arena. Prior to Acquisition negotiations, Legends and ASM were pursuing independent actions to try to win the development of the new arena. This posture changed in 2024, when, during the HSR waiting period, Legends and ASM pursued plans to submit a joint bid and exchange related information.

*VI. Violation of Section 7A of the Clayton Act*

19. Plaintiff alleges and incorporates paragraphs 1 through 18 as if set forth fully herein.

20. Legends' acquisition of ASM was subject to Section 7A premerger notification and waiting-period requirements.

21. Legends obtained beneficial ownership of ASM prior to observing the applicable waiting period in violation of Section 7A.

22. Accordingly, Defendant was continuously in violation of the requirements of the HSR Act each day beginning at least on December 7, 2023, until the waiting period was terminated on May 29, 2024.

*VII. Request for Relief*

Wherefore, Plaintiff requests:

(a) that the Court adjudge and decree that Defendant violated the HSR Act and was in violation during the period of 175 days beginning on December 7, 2023, and ending on May 29, 2024;

(b) order that Defendant pay to the United States an appropriate civil penalty as provided by the HSR Act, 15 U.S.C. 18(a)(g)(1), the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, 701 (further amending the Federal Civil Penalties Inflation Adjustment act of 1990, 28 U.S.C. 2461 note), and 16 CFR 1.98(a);

(c) that the Court enjoin Defendant from any future violations of the HSR Act;

(d) that the Court award the Plaintiff its costs of this suit; and,

(e) that the Court order such other and further relief as the Court may deem just and proper to redress and prevent recurrence of the alleged violations and to dissipate their anticompetitive effects.

Dated this 5th day of August, 2024.

Respectfully submitted,

**For Plaintiff United States of America**

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*Attorneys for the United States*

**United States District Court Southern District of New York**

*United States of America,* Plaintiff, v. *Legends Hospitality Parent Holdings, LLC,* Defendant.

Case No. 1:24–cv–5927

**[Proposed] Final Judgment**

*Whereas*, Plaintiff, United States of America, filed its Complaint on August 5, 2024, alleging that Defendant Legends Hospitality Parent Holdings, LLC violated Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the ''Hart-Scott-Rodino Act'');

*And whereas,* the United States and Defendant have consented to the entry of this Final Judgment without the taking of testimony, 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 relating to any issue of fact or law;

*And whereas,* Defendant agrees to undertake certain actions and refrain from certain conduct for the purpose of resolving the claims alleged in the Complaint;

*And whereas,* Defendant represents that the relief required by this Final Judgment can and will be made and that Defendant will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

*Now therefore, it is ordered, adjudged, and decreed:*

*I. Jurisdiction*

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendant under Section 7A of the Clayton Act (15 U.S.C. 18a).

*II. Definitions*

As used in this Final Judgment:

A. ''Legends'' or ''Defendant'' means Defendant Legends Hospitality Parent Holdings, LLC, a Delaware corporation with its headquarters in New York, New York, its successors and assigns, subsidiaries, divisions, groups, partnerships, joint ventures, and officers, managers, and employees. For the avoidance of doubt: (1) ''Legends'' shall include ASM Global Parent, Inc., following its acquisition by Legends Hospitality Parent Holdings, LLC; and (2) this provision applies only to subsidiaries, partnerships, or joint ventures in which Legends has a partial (more than 50%) or total ownership or control. Any ownership or control interest held jointly by Legends and any parent or owner of Legends shall be attributed to Legends and aggregated with Legends' ownership or control.

B. ''Agreement'' means any agreement, contract, or mutual understanding, whether formal or informal, written, or unwritten.

C. ''Bid'' or ''Bidding'' means any offer or response to a Request for Proposal, Request for Submission, Request for Information, Request for Qualifications, or any other similar request, relating to a contract or other arrangement (including extensions or renewals of any existing contract or other arrangement) to provide services to an existing or potential venue.

D. ''Collaboration Agreement'' means any Agreement by and among Defendant and any Competitor to collaborate or team in offering or providing Venue Development Services or to act as the Venue Manager. ''Collaboration Agreement'' does not include contracting for services where Legends is acting as the agent of a client or acting pursuant to a contract with a client.

E. ''Communicate'' or ''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, including electronic communications, emails, chats or other ephemeral messages, facsimiles, telephone communications, voicemails, text messages, audio recordings, meetings, interviews, correspondence, exchange of written or recorded information, face-to-face meetings, or social media.

F. ''Competitively Sensitive Information'' means any non-public information of Defendant or any Competitor, including 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; and costs, revenues, profits, or margins.

G. ''Competitor'' means any Person (other than Defendant) engaged in, or that Defendant's executives or senior managers know is considering engaging in, any of Defendant's present or future lines of business, including food and beverage or hospitality services, venue management, project management, sponsorship, and/or sales of premium seating.

H. ''Covered Person'' means: (i) any employee or agent of Defendant whose principal job responsibilities include the sales, client outreach, or the negotiation of terms or development of f Bids or proposals for services to Venues (other than employees or agents whose responsibilities are entirely clerical or limited to document preparation); (ii) all General Managers of any Venue managed by Defendant (iii) Defendant's Chief Executive Officer and each of his or her direct reports; (iv) members of Defendant's Board of Directors; and (v) designated Board observers.

I. ''Including'' means including, but not limited to.

J. ''Negotiation and Interim Period'' means the period between the commencement of negotiations with respect to an offer to enter into a Transaction, and the date when negotiations are abandoned or when any resulting Transaction is consummated or abandoned.

K. ''Person'' means any natural person, corporation, company, partnership, joint venture, firm, association, sole proprietorship, agency, board, authority, commission, office, institution, university, municipality, governmental entity, or other business or legal entity, whether private or governmental.

L. ''Transaction'' means any Agreement to acquire any voting securities, assets, or non-corporate interests, form a joint venture, settle litigation, or license intellectual property with any Person where such Agreement is reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

M. ''Venue'' means a facility that hosts publicly ticketed live events, including stadiums, arenas, convention centers, amphitheaters, clubs, and theaters.

N. ''Venue Development Services'' means managing, investing, or financing the development, construction, or renovation of venues. ''Venue Development Services'' does not include feasibility or market studies.

O. ''Venue Manager'' means the primary entity that manages a venue, including by providing services necessary to operate the venue, such as administration, operations, concert and live event booking, finance and accounting, marketing, human resources, housekeeping, security, parking, and/or production services.

*III. Applicability*

This Final Judgment applies to Defendant, as defined above, and all other Persons in active concert or participation with Defendant who receive actual notice of this Final Judgment.

*IV. Civil Penalty Under Section 7A of the Clayton Act*

A. Within thirty (30) days of entry of this Final Judgment, Defendant must pay a civil penalty in the amount of $3,500,000. Payment of the civil penalty must be made by wire transfer of funds or cashier's check. Prior to making a wire transfer, Defendant must contact the Budget and Fiscal Section of the Antitrust Division's Executive Office at *ATR.EXO-Fiscal-Inquiries@usdoj.gov* for instructions. A payment made by cashier's check, must be made payable to the United States Department of Justice—Antitrust Division and delivered to: Chief, Budget & Fiscal Section Executive Office, Antitrust Division United States Department of Justice Liberty Square Building, 450 5th Street NW, Room 3016, Washington, DC 20530.

B. In the event of a default or delay in payment, interest at the rate of eighteen (18) percent per annum will accrue from the date of the default to the date of payment.

*V. Prohibited Conduct*

A. Defendant may not, directly or indirectly, during any Negotiation and Interim Period of a Transaction or in connection with an actual or potential Collaboration Agreement:

1. Share Competitively Sensitive Information with any Competitor;

2. Communicate with any Competitor concerning any Competitively Sensitive Information relating to a Bid or Bidding, including whether to Bid or not to Bid;

3. Agree with any Competitor to participate in any joint Bid, collaborative Bid, cooperative Bid, or shared Bid for any contract, opportunity, or arrangement or for a part of any contract, opportunity, or arrangement; or

4. Agree with any Competitor that Defendant or any Competitor will not Bid for any contract, opportunity, or arrangement or for a part of any contract, opportunity, or arrangement.

B. The prohibitions in Paragraph V.A. apply to Defendant's Communicating, Agreeing, or sharing through any third-party agent or third-party consultant working at Defendant's instruction, direction, or request.

Notwithstanding the foregoing, nothing in this Final Judgment prohibits Defendant from engaging in conduct in Paragraphs V.A.1–4 above in connection with a Collaboration Agreement if Defendant first secures advice of antitrust counsel and consults with the Antitrust Compliance Officer, *see infra* Section VI, and obtains advanced written permission from Defendant's Chief Executive Officer or General Counsel. For avoidance of doubt, nothing in the Final Judgment, including compliance with this Paragraph V.C., precludes the United States from investigating or, if appropriate, bringing action against Defendant or any other person for violations of any antitrust law.

*VI. Required Conduct*

A. Within ten (10) days of entry of this Final Judgment, Defendant must appoint or employ an Antitrust Compliance Officer, and identify to the United States the Antitrust Compliance Officer's name, business address, telephone number, and email address. Within forty-five (45) days of a vacancy in Defendant's Antitrust Compliance Officer position, 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.

Defendant's initial and replacement appointment of an Antitrust Compliance Officer is subject to the approval of the United States in its sole discretion. Defendant is responsible for all costs and expenses related to the Antitrust Compliance Officer.

B. Notwithstanding the foregoing, for the first 120 days following entry of the Final Judgment, Defendant may retain outside counsel as an Antitrust Compliance Officer, subject to the approval of the United States in its sole discretion.

C. Unless otherwise agreed by the United States, the Antitrust Compliance Officer must have 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 matters, including at least five years' experience with antitrust matters.

D. Defendant may appoint or retain one or more Reserve Antitrust Compliance Officers meeting the qualifications set forth in VI.C to perform duties of the Antitrust Compliance Officer when the Antitrust Compliance Officer is not available. Defendant's initial and replacement appointment of a Reserve Antitrust Compliance Officer is subject to the approval of the United States in its sole discretion.

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

1. within thirty (30) days of entry of this Final Judgment, furnish to each Covered Person a copy of this Final Judgment, the Competitive Impact Statement filed by the United States with the Court, and an explanatory cover letter prepared by Defendant providing reasonable notice of the meaning and requirements of this Final Judgment, with notice provided to the United States;

2. brief and distribute a copy of this Final Judgment and the Competitive Impact Statement to any Person who succeeds to a position of a Covered Person, and provide reasonable notice of the meaning and requirements of this Final Judgment and the antitrust laws, within sixty (60) days of such succession;

obtain from each Covered Person, within thirty (30) days of that Person's receipt of this Final Judgment, a certification that he or she (i) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of this Final Judgment that has not been reported to the Antitrust Compliance Officer; and (iii) understands that any Person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against Defendant and/or any Person who violates this Final Judgment;

3. provide an Annual Antitrust Compliance Training to all Covered Persons and members of Defendant's Board of Directors on the meaning and requirements of this Final Judgment, the antitrust laws, and guidelines governing:

i. Sharing of Competitively Sensitive Information with any Competitor;

ii. Communication with any Competitor concerning any Competitively Sensitive Information relating to a Bid or Bidding, including whether to Bid or not to Bid;

iii. Agreeing with any Competitor to participate in any joint Bid, collaborative Bid, cooperative Bid, or shared Bid for any contract, opportunity, or arrangement or for a part of any contract, opportunity, or arrangement; or

iv. Agreeing with any Competitor that Defendant or any Competitor will not Bid for any contract, opportunity, or arrangement or for a part of any contract, opportunity, or arrangement.

Successors to Covered Persons must be provided an Annual Antitrust Compliance Training within sixty (60) days of such succession.

4. obtain from each Covered Person or successor, within thirty (30) days of that person's Annual Antitrust Compliance Training, a certification that he or she

(i) attended the training and reviewed the training materials, and (ii) is not aware of any violation of this Final Judgment that has not been reported to the Antitrust Compliance Officer;

5. maintain until four years following the expiration of this Final Judgment and furnish to the United States within ten days if requested to do so:

i. a list identifying all employees having received the notices and compliance training required under Paragraphs VI.E.2, VI.E.3, and VI.E.5, and the dates on which the employees received the notices and training;

ii. copies of all Annual Antitrust Compliance Training materials; and

iii. copies of all certifications and other materials required to be issued under Paragraph VI.E;

iv. a record of certifications received pursuant to this Section;

v. a copy of Defendant's whistleblower policy; and

vi. a record of all reports received pursuant to Paragraph VI.F. and VI.G.

6. annually communicate to all Covered Persons and all other employees that they must disclose to the Antitrust Compliance Officer, without reprisal, information concerning any potential violation of this Final Judgment or the antitrust laws; and

7. by not later than ninety (90) calendar days after entry of this Final Judgment and annually thereafter, file written reports with the United States affirming that Defendant is in compliance with its obligations under this Final Judgment, including the

training requirements under Paragraph VI.E.5;

F. If an officer, director, or executive of Defendant or a member of its Board of Directors learns of a potential violation of this Final Judgment or the antitrust laws by Defendant, he or she must promptly notify the Antitrust Compliance Officer.

G. Immediately upon the Antitrust Compliance Officer's learning of any violation or potential violation of any of the terms of this Final Judgment or the antitrust laws, Defendant must investigate and, in the event of a violation, must cease or modify the activity to comply with this Final Judgment and the antitrust laws. Defendant must maintain all documents as kept in the ordinary course discussed with, provided to, reviewed, or requested by the Antitrust Compliance Officer in connection with any reported violation or potential violation of this Final Judgment or in connection with any violation or potential violation of the antitrust laws reported to the Antitrust Compliance Officer pursuant to Paragraph VI.F. for four years following the expiration of this Final Judgment.

H. Within thirty (30) calendar days of the Antitrust Compliance Officer's learning of any potential violation of any of the terms of this Final Judgment, Defendant must file with the United States a statement describing the potential violation, including a description of all steps taken by Defendant to remedy the potential violation.

I. Defendant must have its Chief Executive Officer and its General Counsel certify in writing to the United States, no later than ninety (90) calendar days after this Final Judgment is entered and then annually on the anniversary of the date of the entry of this Final Judgment, that Defendant has complied with the provisions of this Final Judgment.

J. Defendant must maintain a whistleblower protection policy that provides any employee may disclose, without reprisal or adverse consequences for such disclosure, to the Antitrust Compliance Officer information concerning any violation or potential violation by Defendant of this Final Judgment or the antitrust laws.

*VII. Compliance Inspection*

A. For the purposes of determining or securing compliance with this Final Judgment or of any related orders such as the Stipulation and Order, or of determining whether this Final Judgment should be modified or vacated, upon written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, and reasonable notice to Defendant, Defendant must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

1. to have access during Defendant's office hours to inspect and copy, or at the option of the United States, to require Defendant to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendant relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, or depose Defendant's officers, employees, or agents, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant.

B. Upon the written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, Defendant must submit written reports or respond to written interrogatories, under oath if requested, relating to any matters contained in this Final Judgment.

*VIII. Public Disclosure*

A. No information or documents obtained pursuant to any provision this Final Judgment may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand-jury proceedings, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

B. In the event of a request by a third party, pursuant to the Freedom of Information Act, 5 U.S.C. 552, for disclosure of information obtained pursuant to any provision of this Final Judgment, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information, at 28 CFR 16.7. Defendant submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire 10 years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 16.7(b).

C. If at the time that Defendant furnishes information or documents to the United States pursuant to any provision of this Final Judgment, Defendant represents and identifies in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and 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,'' the United States must give Defendant 10 calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

*IX. Retention of Jurisdiction*

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

*X. Enforcement of Final Judgement*

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

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws, including Section 7A of the Clayton Act, and to restore the competition the United States alleges was harmed by Defendant. Defendant agrees that it 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 an enforcement proceeding in which the Court finds that Defendant has violated this Final Judgment, the United States may apply to the Court for

an extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against Defendant, whether litigated or resolved before litigation, Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that effort to enforce this Final Judgment, including in the investigation of the potential violation.

D. For a period of four years following the expiration of this Final Judgment, if the United States has evidence that Defendant violated this Final Judgment before it expired, the United States may file an action against Defendant in this Court requesting that the Court order:

(1) Defendant to comply with the terms of this Final Judgment for an additional term to be determined by the Court; (2) all appropriate contempt remedies; (3) additional relief needed to ensure the Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section X.

*XI. Expiration of Final Judgement*

Unless the Court grants an extension, this Final Judgment will expire seven (7) years from the date of its entry if Defendant has paid the civil penalty in full, except that if Defendant is found to violate this Final Judgment, either by the Court or by stipulation of the parties, the United States may move to extend the Final Judgment.

*XII. Reservation of Rights*

This Final Judgment addresses only the claims stated in the Complaint against Defendant, which solely alleges violations of 7A of the Clayton Act (15 U.S.C. 18a). The United States reserves all rights for any other claims against the Defendant. This Final Judgment thus does not in any way affect or address any other charges or claims that may be filed by the United States.

*XIII. 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 by making available to the public copies of this Final Judgment and the Competitive Impact Statement, public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, 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]

_____

Hon. John P. Cronan,
*United States District Judge.*

**United States District Court Southern District of New York**

*United States of America,* Plaintiff, *v. Legends Hospitality Parent Holdings, LLC,* Defendant.

Case No. 1:24–cv–5927–JPC

**Competitive Impact Statement**

**Table of Contents**



**Table of Authorities**

*Statutes*



*Cases*



*Other Authorities*



In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (the ''APPA'' or ''Tunney Act''), the United States of America files this Competitive Impact Statement related to the proposed Final Judgment filed in this civil antitrust proceeding.

*I. Nature and Purpose of the Proceeding*

On November 3, 2023, defendant Legends Hospitality Parent Holdings, LLC (''Legends'') announced it had agreed to acquire ASM Global, Inc. (''ASM'') for $2.35 billion (''Acquisition''). The transaction exceeded the thresholds established by Section 7A of the Clayton Act, 15 U.S.C. § 18a, also commonly known as the Hart–Scott–Rodino Antitrust Improvements Act of 1976 (''Section 7A'' or ''HSR Act''), and therefore required Legends and ASM to notify the federal antitrust agencies of the Acquisition and observe a waiting period before Legends could take control of ASM's business. The HSR Act [3] required Legends and ASM to continue operating separately and independently during the post-notification waiting period while the Antitrust Division of the Department of Justice conducted a pre-consummation antitrust review of the Acquisition. The waiting period did not expire until May 29, 2024.[4]

Instead of preserving ASM as an independent business, however, the Complaint alleges that Legends engaged in ''gun-jumping'' by assuming unlawful control of ASM prior to the expiration of the HSR waiting period, in violation of 15 U.S.C. 18a, and that Legends was continually in violation of the HSR Act each day beginning at least on December 7, 2023, until the waiting period ended on May 29, 2024.

The United States and the defendant have reached a proposed settlement that eliminates the need for a trial in this case. To resolve the HSR Act violation, the proposed Final Judgment requires Legends to pay a civil penalty of $3.5 million. The proposed Final Judgment also enjoins Legends from engaging in certain behavior and requires Legends to

[3] Other antitrust laws also can apply to pre-closing conduct of transaction parties.

[4] Legends and ASM agreed to not close the Acquisition during the pendency of the Department of Justice's investigation.

implement behavioral changes to deter future HSR Act violations.

The United States and Legends have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will 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. Background

Legends is headquartered in New York, New York and primarily focuses on providing food and beverage services, feasibility studies, project development, and sales services to venues. ASM, in turn, primarily provides venue management services (*i.e.* a bundle of related services necessary to operate a venue) [5] to venues that outsource management responsibilities to a third party. While Legends and ASM's core offerings are different, certain lines of business overlap. Both Legends and ASM conduct business throughout the United States and globally.

Venue owners (or owners of planned venues) often issue bid solicitations when seeking vendors or managers to develop, provide services to, or operate the venue. Vendors (including ASM and Legends) respond to these solicitations, creating a competitive bidding process.

Depending on the nature of the services solicited, vendors submitting bids in response to an RFP or similar solicitation may respond either individually or as part of a team whose members offer complementary products necessary to fulfill the RFP. For example, architects, developers, venue managers and others may create a team to provide a comprehensive response to an RFP seeking both development and management services. Competition between individual firms or teams leads to increased revenue, lower costs, and higher quality services for venues.

B. Legends' Alleged Unlawful Conduct

In May 2023, Legends won the rights to provide venue management services to a city-owned arena in California. Legends' work would begin after the July 31, 2024, expiration of incumbent ASM's management lease. ASM also competed for this opportunity. Legends' winning bid contained a detailed transition plan outlining key milestone dates for tasks necessary to effectuate the management shift. Absent the Acquisition, Legends was planning to provide those services itself to the arena. Due to the Acquisition of ASM, however, Legends decided to have ASM provide those services instead. After submitting its HSR filing, but before the expiration of the HSR waiting period, Legends decided that ASM would continue to operate the California arena. Accordingly, on December 7, 2023, Legends and ASM signed an initial agreement whereby ASM would book third-party events for the arena. Further, on April 9, 2024, Legends decided that ASM would continue providing venue management services for the California arena instead of transitioning the arena to Legends.

The purpose and intent of Legends' pre-closing conduct in connection with the California arena also are informed by aspects of Legends' course of conduct in connection with ASM, including conduct before and after submitting the HSR filing.

For example, while Legends and ASM were in discussions around the Acquisition but before the HSR filing, Legends sought to discuss competitive bidding strategies with ASM. In August 2023, Legends learned that a city in North Carolina was planning to issue an RFP for management of an existing entertainment complex, including an arena and other venues. A senior Legends executive emailed Legends' then-CEO noting, ''I assume we would rather have ASM chase this?'' The then-CEO informed another executive, ''we will find out if ASM is bidding as don't want to both be bidding,'' and set a calendar reminder for himself to speak with a senior ASM executive about the North Carolina RFP.

In addition, in early 2023, Legends and ASM learned that a university was planning to develop a new arena. Both Legends and ASM initially took steps to form separate independent bids for the new arena. However, after Legends and ASM were in discussions around the Acquisition, their posture changed, such that in May 2023 they decided that they would instead try to bid together. While constructing their joint bid, Legends and ASM exchanged competitively sensitive information surrounding the arena development project.

Legends and ASM engaged in similar behavior in 2024 for a different proposed university arena. Prior to the Acquisition negotiations, Legends and ASM took independent actions to win the development of the new arena. This posture changed in 2024, when, during the HSR waiting period, Legends and ASM pursued plans to submit a joint bid and exchange related information.

*III. Explanation of the Proposed Final Judgement*

The relief required by the proposed Final Judgment will appropriately address the violation alleged in the Complaint, penalize Legends, and deter others from violating the HSR Act. The proposed Final Judgment imposes a civil penalty for violation of the HSR Act and bars recurrence of the challenged conduct on penalty of contempt. It additionally requires Legends to appoint an antitrust compliance officer at its expense, to conduct compliance training, to certify compliance with the Final Judgment, to maintain a whistleblower protection policy, and to provide the United States inspection and interview rights to assess compliance with the Final Judgment.

A. Civil Penalty

Under Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), any person who fails to comply with the HSR Act is liable to the United States for a civil penalty of not more than $51,744 for each day that person is in violation of the act.[6] The Complaint alleges that defendant was in violation of the HSR Act beginning at least on December 7, 2023, until the expiration of the statutory waiting period on May 29, 2024. The United States accepted $3.5 million—an amount that is less than the maximum penalty permitted under the HSR Act—as an appropriate civil penalty for settlement purposes. A lower penalty is appropriate because of Legends' demonstrated willingness to take corrective internal action and because it is willing to resolve the matter by the proposed Final Judgment, thereby avoiding the risks and costs associated with a prolonged investigation and litigation.

B. Prohibited Conduct

Paragraphs V(A) & V(B) of the Final Judgment are designed to prevent future violations of the antitrust laws during a pending transaction. Under these provisions, Legends is prohibited from, during any negotiation and interim

[5] Core venue management services include concert and live event booking, finance and accounting, marketing, human resources, housekeeping, security, parking, event services, production services, and technology services.

[6] Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 89 FR 1,445 (Jan. 10, 2024) (increasing maximum penalty to $51,744 per day).

period [7] of a transaction [8] or in connection with an actual or potential collaboration agreement,[9] and except as otherwise permitted by the Final Judgment:

- Sharing competitively sensitive information with any competitor;
- Communicating with any competitor concerning any competitively sensitive information relating to a bid or bidding, including whether to bid or not to bid;
- Agreeing with any competitor to participate in any joint bid, collaborative bid, cooperative bid, or shared bid for any contract, opportunity, or arrangement or for a part of any contract, opportunity, or arrangement; or
- Agreeing with any competitor that Legends or any competitor will not bid for any contract, opportunity, or arrangement or for a part of any contract, opportunity, or arrangement.

Paragraphs V(A) & V(B) apply to communicating, agreeing, or sharing directly, indirectly, and through any third-party agent or consultant working at Legends' instruction, direction, or request.

Paragraph V(C) provides a limited exception permitting Legends to engage in the conduct prohibited by Paragraph V(A) in connection with a collaboration agreement, provided that Legends first secures advice of antitrust counsel, consults with the antitrust compliance officer (*see* § III(C), *infra*), and obtains advance written permission from its CEO or General Counsel. Although certain communications in connection with a collaboration agreement may be permissible under certain circumstances, this internal review and approval provision ensures that, in light of Defendant's conduct, it will not take future actions that may reduce competition without first conducting a thorough antitrust review. Finally, Paragraph V(C) explains that nothing in the proposed Final Judgment precludes the United States from investigating or, if appropriate, bringing action against Legends or anyone else for violating the antitrust laws.

C. Required Conduct

Under Paragraphs VI(A)–VI(D) of the proposed Final Judgment, Legends must appoint or employ, at its expense, an experienced antitrust lawyer to serve as Legends' antitrust compliance officer. Legends will identify its proposed antitrust compliance officer or any replacement officer to the United States, which will have sole discretion to approve or disapprove the designation. Paragraphs VI(E)–VI(H) outline the antitrust compliance officer's required duties, which include providing all covered persons [10] with copies of the Final Judgment (as entered) and of this Competitive Impact Statement; ensuring that all covered persons receive training on the requirements of the Final Judgment and certify that they have done so; filing written reports affirming Legends' compliance with the Final Judgment; and disclosing to the United States any violations of the Final Judgment or of the antitrust laws and the steps Legends took to remedy the potential violation.

In addition, Paragraph VI(J) of the Final Judgment obligates Legends to maintain an antitrust whistleblower program through which employees may identify potential violations of the Final Judgment or of the antitrust laws without fear of reprisal.

To ensure compliance, Paragraph VI(I) requires both Legends' CEO and its General Counsel to annually certify Legends' compliance with the Final Judgment. Paragraph VII(A) grants authorized personnel from the United States the right to access Legends' files and interview its personnel upon request.

D. Enforcement of Final Judgment

The proposed Final Judgment also contains provisions designed to make enforcement of the Final Judgment as effective as possible. Paragraph X(A) provides that the United States retains and reserves all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court, and Section IX retains this Court's jurisdiction over any enforcement proceedings. Under the terms of Paragraph X(A), Legends has 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 Legends has waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Paragraph X(D) entitles the United States to file an enforcement action up to four years after the expiration of the Final Judgment (if, for example, the United States discovers a violation after the Final Judgment's expiration). In addition, to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of a proposed Final Judgment, Paragraph X(C) obligates Legends to reimburse the United States for any attorneys' fees, experts' fees, or costs incurred in connection with any successful enforcement effort, including enforcement efforts resolved before litigation.

To further aid enforcement, Paragraph X(B) underscores that the proposed Final Judgment is intended to remedy the loss of competition the United States alleges was harmed by Legends' conduct. Legends agrees that it will abide by the proposed Final Judgment and that it may be held in contempt of the Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Finally, Section XI of the proposed Final Judgment provides that the Final Judgment will expire seven years from the date of its entry if Legends has paid the civil penalty in full, but also authorizes the United States to move to extend the Final Judgment's term if Legends is found by the Court to have violated the Final Judgment (or stipulates that it has done so).

*IV. Remedies Available to Potential Private Plaintiffs*

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

[7] ''Negotiation and Interim Period'' means the period between the commencement of negotiations with respect to an offer to enter into a Transaction, and the date when negotiations are abandoned or when any resulting Transaction is consummated or abandoned. Final Judgement, ¶ II(J).

[8] ''Transaction'' means any Agreement to acquire any voting securities, assets, or non-corporate interests, form a joint venture, settle litigation, or license intellectual property with any Person where such Agreement is reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. Final Judgement, ¶ II(L).

[9] ''Collaboration Agreement'' means any Agreement by and among Defendant and any Competitor to collaborate or team in offering or providing Venue Development Services or to act as the Venue Manager. ''Collaboration Agreement'' does not include contracting for services where Legends is acting as the agent of a client or acting pursuant to a contract with a client. Final Judgment, ¶ II(D).

[10] Paragraph II(H) of the Final Judgment defines covered persons as ''(i) any employee or agent of Defendant whose principal job responsibilities include the sales, client outreach, or the negotiation of terms or development of Bids or proposals for services to Venues (other than employees or agents whose responsibilities are entirely clerical or limited to document preparation); (ii) all General Managers of any Venue managed by Defendant (iii) Defendant's Chief Executive Officer and each of his or her direct reports; (iv) members of Defendant's Board of Directors; and (v) designated Board observers.''

three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists 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 Defendant.

*V. Procedures Available for Modification of the Proposed Final Judgement*

The United States and Legends 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. *See* Stipulation and Proposed Order, ¶ II(A). The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or within 60 days of the first 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 U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the **Federal Register** unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to: Owen M. Kendler, Chief, Financial Services, Fintech & Banking Section, Antitrust Division, United States Department of Justice, 450 Fifth St. NW, Suite 4000, Washington, DC 20530.

Section IX of the proposed Final Judgment provides that the Court retains jurisdiction over this action, and that 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*

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits involving the alleged HSR Act violation against Defendant. The United States is satisfied, however, that the relief required by the proposed Final Judgment is important and meaningful while also avoiding the time, expense, and uncertainty of a full trial on the merits.

*VII. Standard of Review Under the APPA for the Proposed Final Judgement*

Under the Clayton Act and APPA, proposed Final Judgments, or ''consent decrees,'' in antitrust cases brought by the United States are 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); *see also United States* v. *Int'l Bus. Mach. Corp.,* 163 F.3d 737, 740 (2d Cir. 1998). 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); *see generally United States* v. *Keyspan,* 763 F. Supp. 2d 633, 637–38 (S.D.N.Y. 2011) (discussing Tunney Act standards). 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); *accord United States* v. *Alex. Brown & Sons, Inc.,* 963 F. Supp. 235, 238 (S.D.N.Y. 1997), *aff'd sub nom. United States* v. *Bleznak,* 153 F.3d 16 (2d Cir. 1998) (citing *Microsoft,* 56 F.3d at 1460); *Keyspan,* 763 F. Supp. 2d at 637 (same).

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, '' '[t]he Court's function is not to determine whether the proposed [d]ecree results in the balance of rights and liabilities that is the one that will *best* serve society, but only to ensure that the resulting settlement is 'within the *reaches* of the public interest.' '' '' *United States* v. *Morgan Stanley,* 881 F. Supp. 2d 563, 567 (S.D.N.Y. 2012) (citing *Alex. Brown & Sons,* 963 F. Supp. at 238) (internal quotations omitted) (emphasis in original). In making this determination, '' '[t]he [c]ourt is not permitted to reject the proposed remedies merely because the court believes other remedies are preferable. [Rather], the relevant inquiry is whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlement are reasonable.' '' *Morgan Stanley,* 881 F. Supp. 2d at 567 (citing *United States* v. *Abitibi-Consolidated Inc.,* 584 F. Supp. 2d 162, 165 (D.D.C. 2008)); *see also United States* v. *Apple, Inc.,* 889 F. Supp. 2d 623, 631 (S.D.N.Y. 2012); *Alex. Brown & Sons,* 963 F. Supp. at 238.[11] The government's predictions about the efficacy of its remedies are entitled to deference. *Apple,* 889 F. Supp. 2d at 631 (citation omitted); *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. *ArcherDaniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the

[11] *See also United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981) (''The 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.''); *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' '').

Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'') (internal quotations omitted).

''[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); *Apple,* 889 F. Supp. 2d at 637 n.10; *see also United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 74 (D.D.C. 2014) (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); *Morgan Stanley,* 881 F. Supp. 2d at 568 (approving the consent decree even though the court may have imposed a greater remedy). To meet this standard, ''it is necessary only that the submissions provide an ample 'factual foundation for the government's decisions such that its conclusions regarding the proposed settlement are reasonable.' '' *Apple,* 889 F. Supp. 2d at 639 (citing *Keyspan,* 763 F. Supp. 2d at 637–38).

Moreover, a 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 the APPA does not authorize a court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also Morgan Stanley,* 881 F. Supp. 2d at 567 (''A court must limit its review to the issues in the complaint and give 'due respect to the [Government's] perception of . . . its case.' '') (citing *Microsoft,* 56 F.3d at 1461); *United States* v. *InBev N.V./S.A.,* No. 08–1965, 2009 U.S. Dist. LEXIS 84787, at *20 (D.D.C. Aug. 11, 2009) (''[T]he '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. Courts cannot look beyond the complaint in making the public interest determination unless the complaint underlying the decree is drafted so narrowly such that its entry would appear '' 'to make a mockery of judicial power.' '' *Apple,* 889 F. Supp. 2d at 631 (citing *United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1, 14 (D.D.C. 2007)).

In its 2004 amendments to the APPA, 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 Apple,* 889 F. Supp. 2d at 633 (declining to hold evidentiary hearing and finding ''[a] hearing would serve only to delay the proceedings unnecessarily.''); *U.S. Airways,* 38 F. Supp. 3d at 75 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24, 598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11; *see also Apple,* 889 F. Supp. 2d at 632 (''[P]rosecutorial functions vested solely in the executive branch could be undermined by the improper use of the APPA as an antitrust oversight provision.'') (citation omitted). A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *Apple,* 889 F. Supp. 2d at 633; *U.S. Airways,* 38 F. Supp. 3d at 75.

*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: August 9, 2024

Respectfully submitted,

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## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Respiratory Protection Program at Coal Mines

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that the agency receives on or before September 16, 2024.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** The purpose of this information collection is to collect four types of information from coal mine operators: revised standard operating procedures (SOPs), American Society for Testing and Materials (ASTM) recordkeeping, fit test records, and emergency respirator inspection records. The mine operator uses the information to properly issue respiratory protection to coal miners who need to use personal protective equipment where accepted engineering controls measures have not been developed or when necessary, by the nature of work involved (for example, while establishing controls or occasional entry into hazardous