

in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.”³

Accordingly, 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 1458 (D.C. Cir. 1995). Precedent requires that

“[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court’s role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ‘within the reaches of the public interest.’ More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.”⁴

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. “[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.’”⁵

VIII. Determinative Documents

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

For Plaintiff United States of America: J. Robert Kramer II, Chief, Litigation II Section, PA Bar No. 23963.

Maribeth Petrizzi, Assistant Chief, Litigation II Section.

Robert W. Wilder, Trial Attorney, Virginia Bar No. 14479, U.S. Department of Justice, Antitrust Division, 1401 H St., NW., Suite 3000, Washington, DC 20530, (202) 307-0924, (202) 307-6283 (Facsimile).

³ *United States v. Mid-America Dairymen, Inc.*, 1977-1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

⁴ *United States v. Bechtel*, 658 F.2d at 666 (internal citations omitted)(emphasis added); accord *United States v. BNS Inc.*, 858 F.2d at 463; *United States v. Nat’l Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 715. See also *United States v. Am. Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

⁵ *United States v. Am. Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff’d sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (quoting *United States v. Gillette Co.*, 406 F. Supp. at 716); see also *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Dated: December 23, 2002.

Certificate of Service

I, Robert W. Wilder, hereby certify that on December 23, 2002, I caused copies of the foregoing Competitive Impact Statement to be served on defendants Northrop Grumman Corporation and TRW, as indicated below:

Counsel for Defendant Northrop Grumman: James R. Loftis, III, Esquire, Gibson, Dunn & Crutcher LLP, 1050 Connecticut Ave. NW., Suite 900, Washington, DC 20036-5306, *Telephone No.:* (202) 955-8500, *Facsimile No.:* (202) 467-0539, Via Facsimile and U.S. Mail.

Counsel for Defendant TRW Corporation: Brian C. Mohr, Esquire, Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, NW., Washington, DC 20005-2111, *Telephone No.:* (202) 371-7774, *Facsimile No.:* (202) 661-9067, Via Facsimile and U.S. Mail.

Robert W. Wilder, Virginia Bar No. 14479, U.S. Department of Justice, Antitrust Division, 1401 H. Street, NW., Suite 3000, Washington, DC 20530, *Telephone No.:* (202) 307-6336.

Stipulation and Order

It is hereby Stipulated by and between the undersigned parties, subject to approval and entry by the Court, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed with an entered by the Court, upon the motion of any party or upon the Court’s own motion, at any time after compliance with the requirements of the Antitrust Procedure and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. If the United States has withdrawn its consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provision of the proposed Final

Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendants represent that the required actions set forth in Sections IV and V of the proposed Final Judgment can and will be implemented and followed and that the defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained therein.

7. This Stipulation shall be effective only upon the closing of the Northrop Grumman/TRW transaction.

Respectfully submitted,
For Plaintiff

United States of America: J. Robert Kramer II, Pennsylvania Bar No. 23963, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530, *Telephone:* (202) 307-0924, *Facsimile:* (202) 307-6283.

For Defendant

Northrop Grumman Corporation: Robert E. Nelson, Corporate Vice President, Business Strategy, Northrop Grumman Corporation, 1840 Century Park East, Los Angeles, California 90067, *Telephone:* (310) 201-3493, *Fax:* (310) 201-3494.

For Defendant TRW Inc.: William B. Lawrence, Ohio State Bar No. 0031971, Executive Vice President, General Counsel, and Secretary, TRW, Inc., 1900 Richmond Road, Cleveland, Ohio 44124, *Telephone:* (216) 291-7230, *Fax:* (216) 291-7872.

Dated: December 11, 2002.

Order

It is so ordered, this _____ day of _____, 2002.

United States District Court Judge

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint in this action on December 11, 2002, and plaintiff and defendants, Northrop Grumman Corporation (“Northrop”) and TRW Inc. (“TRW”), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of fact or law herein: and

Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court; and

Whereas, plaintiff requires defendants to agree to certain procedures for the purpose of remedying the loss of competition alleged in the Complaint; and

Whereas, defendants have represented to the United States that the procedures required below can and will be implemented and followed and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below:

Now Therefore, before the taking of any testimony, and without trial or adjudication