

Corporation ("SoundView"), as the court-appointed Trustee in this matter pursuant to its obligations under Section IV(I) of the proposed Final Judgment, reported to the United States that National Instruments Corporation acquired the MATRIXx assets on January 10, 2003, pursuant to a definitive sales and licensing agreement reached within the framework outlined in the proposed Final Judgment. Pursuant to Section IV(M)(1) of the proposed Final Judgment, the United States has concluded that National Instruments Corporation intends to invest in and develop the MATRIXx product line and has the potential to be a viable competitor in the sale of dynamic control system design software.

B. CAC Comment

CAC is a non-profit organization with the mission of providing analysis based on Ayn Rand's philosophy of objectivism.⁵ CAC insists that the United States should withdraw the proposed Final Judgments and dismiss the Complaint in this matter or that the Court should reject entry of the proposed Final Judgments under the Tunney Act. *CAC Comment* at 2. CAC concedes, however, that its philosophical opposition to the antitrust laws is "blatantly obvious." *Id.* at 3. This opposition animates every aspect of CAC's comment. CAC claims that "[t]his" case reveals both the fundamental defects of both the antitrust laws and the strategy employed by the Government in their enforcement." *Id.* CAC argues that "[f]ree competition cannot be enforced by government fiat" and that the DOJ "relies on static rules that fail to account for the complexity of business and yet seek to enforce an unjust and unworkable egalitarianism." *Id.* Further, CAC claims that the "DOJ can not speak for the 'public interest,' because no such interest has ever existed." *Id.*

CAC, in essence, challenges the constitutionality of the Sherman Act and advocates for a form of laissez-faire capitalism unregulated by the Government. The United States disagrees with CAC's position. The Supreme Court has, on numerous occasions, upheld the constitutionality of the Sherman Act and the prohibition

in Section 1 of the Act against any contract, combination or conspiracy that "unreasonably" deprives consumers of the benefits of competition or that would otherwise result in higher prices or inferior products and services. *See Standard Oil Co. v. United States*, 221 U.S. 1, 50, 58 & 68–70 (1911); *see also United States v. Joint Traffic Ass'n*, 171 U.S. 505, 570–73 (1898). In any event, challenging the constitutionality of the Sherman Act is far beyond the scope of this Tunney Act proceeding. *See United States v. Microsoft Corp.*, 56 F.3d 1448, 1459 (D.C. Cir. 1995) (Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States alleges in its Complaint.).

CAC also argues that "[n]othing in the proposed judgment benefits producers, consumers, or the foundations of the free market, unless it is held that capitalism is advanced by turning producers into serfs." *CAC Comment* at 3. CAC believes that "while the customer's short-term costs might increase as a result of the MATRIXx acquisition, in the long term, competition would benefit from Wind River's decision to shed an unprofitable and stagnant product line." *Id.* For CAC argues, "[i]n a free market, the more efficient allocation of resources is often fostered through the natural elimination of unnecessary or redundant competition, as appears to be the case here." *Id.* Accordingly, CAC asserts that "[i]n the absence of this judgment, MATRIXx would be given the timely death the marketplace has condemned it to." *Id.* at 4. CAC's arguments suggest a superficial understanding of the proposed Final Judgments and the manner in which they are intended to address the Complaint in this matter.

During the United States' investigation in this matter, the Defendants argued that the MATRIXx assets had no economic value in the marketplace and that no competitively viable third party would be interested in purchasing the MATRIXx assets for any significant amount of money. Taking Defendants' arguments, along with customer concerns, into account, the United States agreed to a proposed settlement that would both test Defendants' assertions as to the MATRIXx assets' market value and maximize the possibility of restoring in a timely manner competition lost as a result of the illegal conduct. At the time, the United States firmly believed that one or more competitively viable purchasers existed and that an independent agent would succeed in finding a buyer. Pursuant to Section IV(O) of The MathWorks' proposed

Final Judgment, however, the United States agreed that if no alternative viable purchaser emerged, the United States would dismiss the Complaint in this action. As noted above, SoundView, the court-appointed Trustee charged with attempting to sell the MATRIXx assets, has informed the United States that it has successfully sold the MATRIXx assets pursuant to a definitive sales and licensing agreement that meets the requirements of The MathWorks' proposed Final Judgment. The proposed Final Judgment in this matter strikes an appropriate balance between the public interest of prohibiting conduct the effect of which is to substantially lessen competition, and the desire for the marketplace to decide the economic and competitive value of goods and services based on their relative merits.

III. Conclusion

Mr. Bhat urges the United States to amend The MathWorks' proposed Final Judgment in order to make the MATRIXx assets more valuable to prospective purchasers thereby justifying the required minimum sales price. CAC, on the other hand, urges the Court to reject the proposed Final Judgments altogether and dismiss the Complaint with prejudice. The United States, however, has concluded that the proposed Final Judgments reasonably and appropriately addresses the harm alleged in the Complaint. Therefore, following publication of this Response to Comments in the **Federal Register** and submission of the United States' Certificate of Compliance with the Tunney Act, the United States intends to request entry of the proposed Final Judgments upon the Court's determination that entry is in the public interest.

Dated: January 15, 2003.

Respectfully submitted,

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⁵ Ayn Rand, a novelist-philosopher, first expressed her philosophy of objectivism in the best-selling novels, *The Fountainhead* (1943) and *Atlas Shrugged* (1957). On the issue of capitalism, she has stated: "When I say 'capitalis' I mean a pure, uncontrolled, unregulated laissez-faire capitalism with a separation of economics, in the same way and for the same reasons as a separation of state and church." "The Objectivist Ethics" in *The Virtue of Selfishness* (1964).