

Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determining whether those explanations are reasonable under the circumstances.

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

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, (9th Cir. 1988), quoting *United States v. Bechtel Corp.*, 648 F.2d 660,666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also, *Microsoft*, 56 F.3d 1448 (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 in 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.²

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

be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

² *United States v. Bechtel*, 648 F.2d at 666 (internal citations omitted) (emphasis added); see *United States v. BNS, Inc.*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716. See also *United States v. American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

is 'within the reaches of public interest.' (citations omitted)."³

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.

For Plaintiff United States of America:

Dated: October 22, 1997.

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Certificate of Service

I hereby certify under penalty of perjury that on this 22nd day of October, 1997, I caused copies of the foregoing competitive impact statement to be served via hand-delivery upon the following:

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³ *United States v. American 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.*, supra, 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

DEPARTMENT OF LABOR

Bureau of International Labor Affairs; U.S. National Administrative Office; National Advisory Committee for the North American Agreement on Labor Cooperation; Notice of Meeting Open to the Public

AGENCY: Office of the Secretary, Labor.

ACTION: Notice meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 94-463), the U.S. National Administrative Office (NAO) gives notice of a meeting of the National Advisory Committee for the North American Agreement on Labor Cooperation (NAALC), which was established by the Secretary of Labor.

The Committee was established to provide advice to the U.S. Department of Labor on matters pertaining to the implementation and further elaboration of the NAALC, the labor side accord to the North American Free Trade Agreement (NAFTA). The Committee is authorized under Article 17 of the NAALC.

The Committee consists of 12 independent representatives drawn from among labor organizations, business and industry, and educational institutions.

DATES: The Committee will meet on December 5, 1997 from 9:00 a.m. to 4:00 p.m.

ADDRESSES: University of Maryland, School of Law, 519 West Fayette St., Room 200, Baltimore, Maryland. The meeting is open to the public on a first-come, first served basis.

FOR FURTHER INFORMATION CONTACT: Irasema Garza, designated Federal Officer, U.S. NAO, U.S. Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C-4327, Washington, D.C. 20210. Telephone 202-501-6653 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Please refer to the notice published in the **Federal Register** on December 15, 1994 (59 FR 64713) for supplementary information.

Signed at Washington, D.C. on November 3, 1997.

Irasema T. Garza,

Secretary, U.S. National Administrative Office.

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